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TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON FEBRUARY 4, 2014
FROM:	CATHY SAUNDERS CITY CLERK
SUBJECT:	MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE

RECOMMENDATION

That, on the recommendation of the City Clerk, with the concurrence of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer and the Deputy Clerk, the following actions be taken with respect to the Municipal Election Compliance Audit Committee:

- a) the attached proposed by-law (Appendix "A") BE INTRODUCED at the Municipal Council meeting to be held on February 11, 2014 to establish a Municipal Compliance Audit Committee for the 2014 Municipal Election in accordance with Sections 81 and 81.1 of the *Municipal Elections Act, 1996*, as amended;
- b) the attached proposed by-law (Appendix "C") BE INTRODUCED at the Municipal Council meeting to be held on February 11, 2014 to approve the appointments to the Municipal Election Compliance Audit Committee for the 2014 Municipal Election in accordance with Sections 81 and 81.1 of the *Municipal Elections Act, 1996*, as amended; and,
- c) the Elections Reserve BE APPROVED as the source of funding for the annual operating costs related to the Municipal Compliance Audit Committee for the 2014 Municipal Election.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Item #16 - Board of Control – March 24, 2010
 Item #18 – Board of Control – June 9, 2010

BACKGROUND

Section 81 and section 81.2 of *Municipal Elections Act, 1996 (MEA)*, pertaining to compliance audit applications, requires all municipalities and local boards to establish compliance audit committees. An excerpt from sections 81 and 81.1 of the *MEA* is attached as Appendix "B" to this report.

The following summarizes the requirements as set out in sections 81 and 81.1 of the *MEA*:

- mandatory appointment by all municipalities;
- minimum of three, maximum of seven members;
- the committee shall not include members of Council, employees or officers of the municipality or any persons who are candidates in the election for which the committee is established;
- appointed by October 1st of election year;
- serves a term concurrent with the term of office of the Council that takes office following the next regular election; and,
- Clerk has specific responsibility for the committee.

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The powers and functions of a compliance audit committee are as follows:

- consider a compliance audit application received by an elector and decide whether it should be granted or rejected
- if the application is granted, appoint an auditor to conduct a compliance audit
- receive the auditor's report
- consider the auditor's report and if the report concludes that the candidate appears to have contravened a provision of the *MEA* relating to election campaign finances, the committee may commence legal proceedings against the candidate for the apparent contravention
- if the report indicates that there was no apparent contravention and the committee finds that there were no reasonable grounds for the application, the council is entitled to recover the auditor's costs from the applicant

The Process

All candidates are required to file provincially-prescribed financial statements with the Clerk detailing their campaign financing activities. An eligible elector who believes, on reasonable grounds, that a candidate has contravened the *MEA*, relating to campaign finances, may apply for a compliance audit of the candidate's election campaign finances. The application must be made in writing to the City Clerk, include the reasons for the elector's belief that the candidate has contravened the *MEA*, and must be made within 90 days after the latest of:

- (a) the filing date under section 78 of the *MEA*;
- (b) the candidate's supplementary filing date, if any, under section 78 of the *MEA*;
- (c) the filing date for the final financial statement under section 79.1 of the *MEA*; or
- (d) the date on which the candidate's extension, if any, under subsection 80(4) of the *MEA*.

The Committee

The proposed terms of reference, attached as Schedule 1 to Appendix "A", provides for a Municipal Election Compliance Audit Committee composed of three (3) members.

It is important that the Municipal Election Compliance Audit Committee members possess an in-depth knowledge of the campaign finance rules of the *MEA* so that they can make independent decisions on the merits of the applications. As the Committee will operate as a quasi-judicial committee, prior experience on a committee, task force or tribunal would be an asset. A Committee composed of professionals such as auditors, accountants, lawyers, academics and other individuals having a familiarity with municipal election campaign financing rules is recommended.

To avoid possible conflicts of interest, any member appointed to the Municipal Election Compliance Audit Committee must declare that they will not prepare the financial statements of any candidate running for office on City Council for the term for which the Committee is established. Therefore, any member appointed to the Committee would have to agree to this in writing, prior to the appointment being made. Failure to adhere to this requirement shall result in the individual being removed from the Committee.

Appointments to the Committee

Municipal Council, at its meeting of June 14, 2010 appointed Tim Cobban, Andrew Wright and Christene Scrimgeour to the Municipal Elections Compliance Audit Committee established for the 2010 Municipal Election. The Civic Administration is recommending that the same three individuals be appointed to the Municipal Elections Compliance Audit Committee (MECAC) being established for the 2014 Municipal Election.

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All three applicants meet the membership criteria identified in the terms of reference for the MECAC, which are as follows:

“The Committee will be composed of three (3) members, with membership drawn from the following stakeholder groups:

- (a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;*
- (b) academic – college or university professors with expertise in political science or local government administration;*
- (c) legal profession with experience in municipal law, municipal election law or administrative law;*
- (d) professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and*
- (e) other individuals with knowledge of the campaign financing rules of the Municipal Elections Act, 1996.*

Members of Council, employees or officers of the municipality or any persons who are candidates in the election for which the committee is established are not eligible to be appointed to the Committee, pursuant to clause 81.1(2) of the Municipal Elections Act, 1996.

Further, an individual shall be deemed ineligible to be a member of the Committee if they prepare the financial statements of any candidate running for office on City Council during the term for which the Committee has been established.”

All three individuals have expressed interest in being appointed to the MECAC for the 2014 Municipal Election. The applications submitted by the three individuals are attached as Appendix “D” to this report, for the information of Municipal Council.

Financial Impact

The municipality is responsible for any costs resulting from the review of applications submitted to the MECAC. These costs include:

- Committee members’ honorarium, which is being recommended to be \$100.00 per member, per meeting
- auditor’s costs to perform an audit
- costs related to the Committee’s operations and activities
- legal costs related to an appeal to the Ontario Court of Justice with respect to a decision of the Committee
- legal costs to undertake legal action against the candidate for violations of the elections finance provisions of the *MEA*

Factors involved in determining MECAC costs include the number of compliance audit applications that are received, the number of meetings that are required to be held, and the complexity of the audits that need to be conducted. It is therefore difficult to pre-determine the costs that will result from the establishment of the MECAC process, as the number of applications to be submitted are unknown in advance. The Elections Reserve has been identified as the source of finance for the operational expenses of the MECAC.

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Penalties

The following penalties are available to the courts upon conviction of violations under the *Municipal Elections Act, 1996*:

- Individual:
 - maximum fine of \$25,000
 - if convicted of a corrupt practice, automatic loss of seat and ineligible to run or be appointed to office
 - the Court has discretion to impose up to six months imprisonment for corrupt practice and for any other offence if the offence was committed knowingly
 - ineligible to be elected or appointed to any office until after the next general election if convicted of a corrupt practice

- Unions and Corporations:
 - maximum fine of \$50,000

Conclusion

The City Clerk recommends that the attached proposed by-law (Appendix "A") BE INTRODUCED at the Municipal Council meeting to be held on February 11, 2014 for the purpose of establishing the Municipal Election Compliance Audit Committee for the 2014 Municipal Election with the source of financing for the operational costs of the Committee being identified as the Elections Reserve.

The City Clerk also recommends that the attached proposed by-law (Appendix "C") BE INTRODUCED at the Municipal Council meeting to be held on February 11, 2014 to appoint Tim Cobban, Andrew Wright and Christine Scrimgeour to the Municipal Election Compliance Audit Committee being established for the 2014 Municipal Election, in accordance with the *Municipal Elections Act, 2006*, as amended.

CONCURRED BY:	CONCURRED BY:
MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER/CHIEF FINANCIAL OFFICER	LINDA ROWE DEPUTY CITY CLERK
RECOMMENDED BY:	
CATHY SAUNDERS CITY CLERK	

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APPENDIX A

Bill No.
2014

By-law No.

A by-law to establish a Municipal Election Compliance Audit Committee for the 2014 Municipal Election in accordance with Sections 81 and 81.1 of the *Municipal Elections Act, 1996*, as amended.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001*, as amended, provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS section 81.1(1) of the *Municipal Elections Act, 1996*, as amended, requires Council to establish a Municipal Election Compliance Audit Committee;

AND WHEREAS this by-law and the Terms of Reference attached hereto as Schedule 1 comply with Section 270 of the *Municipal Act, 2001*, as amended, and Council Policy By-law A.-6151-17, with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions and the manner in which the municipality will try to ensure that its actions are transparent to the public;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The attached Terms of Reference (Schedule 1) to establish a Municipal Election Compliance Audit Committee for the 2014 Municipal Election be adopted.
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on February 11, 2014

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - February 11, 2014
Second reading - February 11, 2014
Third reading - February 11, 2014

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Schedule 1

TERMS OF REFERENCE

**MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE
FOR THE 2014 MUNICIPAL ELECTION**

Name

The name of the Committee is the “Municipal Election Compliance Audit Committee”.

Term of the Committee

The term of the Committee shall be from December 1, 2014 to November 30, 2018.

Meetings

The Committee will meet as needed, with meetings to be scheduled by the City Clerk or his/her designate when a compliance audit application is received.

Mandate

The powers and functions of the Committee are set out in subsection 81 of the *Municipal Elections Act, 1996*, as amended (*MEA*). The Committee will be required to:

- (a) review and consider a compliance audit application received by an elector and decide whether it should be granted or rejected;
- (b) if the application is granted, appoint an auditor to conduct a compliance audit;
- (c) receive the auditor’s report;
- (d) consider the auditor’s report and if the report concludes that the candidate appears to have contravened a provision of the *MEA* relating to election campaign finances, the Committee may commence legal proceedings against the candidate for the apparent contravention; and,
- (e) if the report indicates that there was no apparent contravention and the Committee finds that there were no reasonable grounds for the application, the Council is entitled to recover the auditor’s costs from the applicant.

Composition

The Committee will be composed of three (3) members, with membership drawn from the following stakeholder groups:

- (a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates;
- (b) academic – college or university professors with expertise in political science or local government administration;
- (c) legal profession with experience in municipal law, municipal election law or administrative law;
- (d) professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and,
- (e) other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*, as amended.

Members of Council, employees or officers of the municipality or any persons who are candidates in the election for which the Committee is established are not eligible to be appointed to the Committee, pursuant to clause 81.1(2) of the *Municipal Elections Act, 1996*, as amended.

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Further, an individual shall be deemed ineligible to be a member of the Committee if they prepare the financial statements of any candidate running for office on City Council during the term for which the Committee has been established.

Appointment Process

All applicants will be required to complete an application outlining their qualifications and experience. A Nomination Committee consisting of the Chief Financial Officer/City Treasurer, the City Clerk and the Deputy City Clerk will submit a short list of candidates to Council through the Corporate Services Committee. Any vacancies which arise after December 1, 2014 shall be nominated by the Nomination Committee to Council, through the Corporate Services Committee.

Members will be selected on the basis of the following:

- (a) demonstrated knowledge and understanding of municipal election campaign financing rules and knowledge of the MEA and related regulations;
- (b) proven analytical and decision-making skills;
- (c) experience working on a committee, administrative tribunal, task force or similar setting;
- (d) availability and willingness to attend meetings; and,
- (e) excellent oral and written communication skills;

Members will be appointed by City Council.

Compensation

Members shall receive an honorarium of \$100.00 per meeting, to be funded from the Election Reserve. Administrative costs for such items as printing and mailing will be absorbed within the City Clerk's Operating Budget.

Staff Support

The City Clerk shall establish administrative practices and procedures for the Committee and shall carry out any other duties required under this Act to implement the Committee's decisions.

Funding

Costs related to the retention of an auditor will be funded from the Election Reserve.

Costs incurred as a result of a decision of the Committee being challenged to the Ontario Court of Justice shall be funded from the Election Reserve.

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APPENDIX "B"

EXCERPTS FROM THE *MUNICIPAL ELECTIONS ACT, 1996, AS AMENDED*

Compliance audit Application

81. (1) An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Requirements

(2) An application for a compliance audit shall be made to the clerk of the municipality or the secretary of the local board for which the candidate was nominated for office; and it shall be in writing and shall set out the reasons for the elector's belief. 2009, c. 33, Sched. 21, s. 8 (44).

Deadline

- (3)** The application must be made within 90 days after the latest of,
- (a) the filing date under section 78;
 - (b) the candidate's supplementary filing date, if any, under section 78;
 - (c) the filing date for the final financial statement under section 79.1; or
 - (d) the date on which the candidate's extension, if any, under subsection 80 (4) expires. 2009, c. 33, Sched. 21, s. 8 (44).

Application to be forwarded to committee

(4) Within 10 days after receiving the application, the clerk of the municipality or the secretary of the local board, as the case may be, shall forward the application to the compliance audit committee established under section 81.1 and provide a copy of the application to the council or local board. 2009, c. 33, Sched. 21, s. 8 (44).

Decision

(5) Within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected. 2009, c. 33, Sched. 21, s. 8 (44).

Appeal

(6) The decision of the committee may be appealed to the Ontario Court of Justice within 15 days after the decision is made and the court may make any decision the committee could have made. 2009, c. 33, Sched. 21, s. 8 (44).

Appointment of auditor

(7) If the committee decides under subsection (5) to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Same

(8) Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed under subsection (7). 2009, c. 33, Sched. 21, s. 8 (44).

Duty of auditor

(9) The auditor shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of this Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate. 2009, c. 33, Sched. 21, s. 8 (44).

Who receives report

- (10)** The auditor shall submit the report to,
- (a) the candidate;
 - (b) the council or local board, as the case may be;
 - (c) the clerk with whom the candidate filed his or her nomination;
 - (d) the secretary of the local board, if applicable; and

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(e) the applicant. 2009, c. 33, Sched. 21, s. 8 (44).

Report to be forwarded to committee

(11) Within 10 days after receiving the report, the clerk of the municipality or the secretary of the local board shall forward the report to the compliance audit committee. 2009, c. 33, Sched. 21, s. 8 (44).

Powers of auditor

(12) For the purpose of the audit, the auditor,

- (a) is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board; and
- (b) has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the audit as if it were an inquiry under that Act. 2009, c. 33, Sched. 21, s. 8 (44).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

(b) has the powers set out in section 34 of the *Public Inquiries Act, 2009* and section 34 applies to the audit.

See: 2009, c. 33, Sched. 21, ss. 8 (45), 13 (2).

Costs

(13) The municipality or local board shall pay the auditor's costs of performing the audit. 2009, c. 33, Sched. 21, s. 8 (44).

Power of committee

(14) The committee shall consider the report within 30 days after receiving it and may,

- (a) if the report concludes that the candidate appears to have contravened a provision of this Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention;
- (b) if the report concludes that the candidate does not appear to have contravened a provision of this Act relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application. 2009, c. 33, Sched. 21, s. 8 (44).

Recovery of costs

(15) If the report indicates that there was no apparent contravention and the committee finds that there were no reasonable grounds for the application, the council or local board is entitled to recover the auditor's costs from the applicant. 2009, c. 33, Sched. 21, s. 8 (44).

Immunity

(16) No action or other proceeding for damages shall be instituted against an auditor appointed under subsection (7) for any act done in good faith in the execution or intended execution of the audit or for any alleged neglect or default in its execution in good faith. 2009, c. 33, Sched. 21, s. 8 (44).

Saving provision

(17) This section does not prevent a person from laying a charge or taking any other legal action, at any time, with respect to an alleged contravention of a provision of this Act relating to election campaign finances. 2009, c. 33, Sched. 21, s. 8 (44).

Compliance audit committee

81.1 (1) A council or local board shall, before October 1 of an election year, establish a committee for the purposes of section 81. 2009, c. 33, Sched. 21, s. 8 (44).

Composition

(2) The committee shall be composed of not fewer than three and not more than seven members and shall not include,

- (a) employees or officers of the municipality or local board;
- (b) members of the council or local board; or

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(c) any persons who are candidates in the election for which the committee is established. 2009, c. 33, Sched. 21, s. 8 (44).

Term of office

(3) The term of office of the committee is the same as the term of office of the council or local board that takes office following the next regular election, and the term of office of the members of the committee is the same as the term of the committee to which they have been appointed. 2009, c. 33, Sched. 21, s. 8 (44).

Role of clerk or secretary

(4) The clerk of the municipality or the secretary of the local board, as the case may be, shall establish administrative practices and procedures for the committee and shall carry out any other duties required under this Act to implement the committee's decisions. 2009, c. 33, Sched. 21, s. 8 (44).

Costs

(5) The council or local board, as the case may be, shall pay all costs in relation to the committee's operation and activities. 2009, c. 33, Sched. 21, s. 8 (44).

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APPENDIX "C"

Bill No.
2014

By-law No.

A by-law to approve the appointments to the Municipal Election Compliance Audit Committee for the 2014 Municipal Election in accordance with Sections 81 and 81.1 of the *Municipal Elections Act, 1996*, as amended.

WHEREAS section 81.1(1) of the *Municipal Elections Act, 1996*, as amended, requires Council to establish a Compliance Audit Committee;

AND WHEREAS the Council of The Corporation of the City of London wishes to appoint Tim Cobban, Andrew Wright and Christene Scrimgeour to the Municipal Election Compliance Audit Committee for the 2014 Municipal Election;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Tim Cobban, Andrew Wright and Christene Scrimgeour be hereby appointed to the Municipal Election Compliance Audit Committee for the 2014 Municipal Election for the term commencing December 1, 2014 and ending November 30, 2018.
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on February 11, 2014.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - February 11, 2014
Second reading - February 11, 2014
Third reading - February 11, 2014