

Bill No. 100
2014

By-law No. E.-_____

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 Terms of Reference attached as Schedule "1" to this by-law, 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

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.

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.

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
- (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
- (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).