

From: Paul Bigioni
Director, Corporate Services & City Solicitor

Subject: Establishment of the 2022 Municipal Election Joint Compliance Audit Committee
File: A-2000

Recommendation:

1. That Report CLK 01-22 regarding the Establishment of the 2022 Municipal Election Joint Compliance Audit Committee be received;
 2. That the draft Terms of Reference for the 2022 Municipal Election Joint Compliance Audit Committee, included as Attachment No. 1 to Report CLK 01-22, be approved;
 3. That, in accordance with the Terms of Reference, the City Clerk be authorized to recruit and bring forward a by-law for the remuneration and appointment of a roster of individuals to serve on the 2022 Municipal Election Joint Compliance Audit Committee;
 4. That, at such time as the above referenced by-law is enacted by Council, the 2022 Municipal Election Joint Compliance Audit Committee be deemed established in accordance with the *Municipal Elections Act*; and,
 5. That the appropriate City of Pickering officials be authorized to take the necessary actions as indicated in this report.
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Executive Summary: The purpose of this Report is to seek approval of the Terms of Reference to establish the 2022 Municipal Election Joint Compliance Audit Committee (the "Committee") for the 2022 Municipal Election and to provide authority to the City Clerk to recruit members for the Committee in cooperation with the other participating bodies (Town of Ajax, City of Oshawa, Town of Whitby, and the Region of Durham). Once approved, the Report also provides authorization for the City Clerk to bring forward a by-law for the remuneration and appointment of the roster of individuals to serve on the Committee. Once enacted, the By-law will establish the 2022 Municipal Election Joint Compliance Audit Committee in accordance with the *Municipal Elections Act*.

Financial Implications: The Terms of Reference propose that a retainer fee of \$400.00 for each individual on the roster be approved. The retainer covers attendance at a mandatory training session and review of periodic updates or information supplied by the City Clerk. The cost of retainer fees would be shared equally among the participating bodies (being the City of Pickering, Town of Ajax, City of Oshawa, Town of Whitby, and Region of Durham). In addition to the retainer fee, a rate of \$350.00 for each meeting attended, plus mileage, would be paid by the City of Pickering to each of the three (3) members appointed to the

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Committee, for their attendance at a hearing should an application for a compliance audit be received or when a report is submitted to the Committee by the City Clerk. In the event of any application for a compliance audit in Pickering, the City would also be required to pay any auditor's costs and the costs, if any, of any external legal counsel for the Committee, in accordance with the provisions of the *Municipal Elections Act*.

It should be noted that there has been no change in the retainer or per meeting rates as compared to the 2018 Compliance Audit Committee. It should further be noted that participation in the Joint Compliance Audit Committee will result in cost savings, as the Region of Durham has agreed to cover the cost of recruitment advertising.

Discussion: Section 88.37 of the *Municipal Elections Act* (the "Act") requires a council or local board to establish a compliance audit committee before October 1 of an election year. The Act further states that the committee shall be composed of not fewer than three (3) and not more than seven (7) members, and shall not include:

- employees or officers of the municipality or local board;
- members of the council or local board;
- any persons who are candidates in the election for which the committee is established;
or
- any persons who are registered third parties in the municipality in the election for which the committee is established.

Compliance Audit Application Process

Section 88.33(1) of the Act provides that an eligible elector, who believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances, may apply for a compliance audit of the candidate's election campaign finances. The application must be submitted to the City Clerk in writing, include the reasons for the application, and must be made within 90 days after the latest of the following dates:

- the filing date for financial statements;
- the date the candidate filed a financial statement, if the statement was filed within 30 days after the applicable filing date;
- the candidate's supplementary filing date, if any; or,
- the date on which the candidate's extension, if any, expires.

In accordance with the Act, the Committee must consider any applications received within 30 days. The Committee will review the applications to determine whether the request for an audit should be granted or rejected. If the request is granted, the Committee will appoint an auditor to audit the candidate's election campaign finances. Upon completion of the audit, the Committee will review the auditor's report and it may, if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention. If the report concludes that a candidate does not appear to have contravened a provision of the Act

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relating to election campaign finances, the Committee may make a finding as to whether there were reasonable grounds for the application for a compliance audit. If the auditor's report indicates that there was no apparent contravention of the Act and the Committee finds that there were no reasonable grounds for the application, Council is entitled to recover the auditor's costs from the applicant. Compliance audits can also be commenced if the City Clerk identifies that any contributor to a candidate or registered third party appears to have contravened any of the contribution limits under Section 88.9 of the Act or if an eligible elector believes that a registered third party advertiser has contravened a provision of the Act pertaining to campaign finances.

Joint Municipal Election Compliance Audit Committee – Participating Bodies

Traditionally, each municipality in Durham Region, including the Region itself, have established their own individual Compliance Audit Committees. This has often resulted in the same individuals being appointed to multiple Compliance Audit Committees throughout Durham Region and beyond, resulting in the payment of multiple retainer fees and per meeting rates to the same individual by multiple municipalities. In 2018, some Durham Region municipalities collaborated on a joint municipal Compliance Audit Committee, similar to York Region, Halton Region, Muskoka and Niagara. The Joint 2018 Committee was a success and demonstrated the expected efficiencies through the sharing of costs of solicitation, recruitment, training and retainer fees. Additionally, the collaboration allowed for the pooling of resources to advertise across various mediums that will attract candidates with the skills required to effectively serve on Compliance Audit Committees. It is important to note that nothing in the Act precludes municipalities from sharing a Compliance Audit Committee.

To that end, the municipalities of Pickering, Oshawa, Whitby, Ajax, and the Region of Durham (the "Participating Bodies") are once again looking to collaborate on a joint Compliance Audit Committee for the 2022 Municipal Election. The Participating Bodies will embark on a joint recruitment process and will all bring the same roster of individuals forward to their respective councils for appointment by by-law. The Region of Durham has committed to covering the costs for recruitment advertising as well as being the central intake for applications. Advertisements will be placed in Workopolis, the Society of Ontario Adjudicators and Regulators, and Ontario Reports. These have been selected to target candidates with a financial and legal background as it is important that Committee members have an understanding of how to apply the election campaign finance provisions of the Act in order to fulfill their responsibilities. Preference will be given to candidates that have experience in compliance audit activities, accounting, law, investigative or adjudicative processes. Each Participating Body will also post the same ad in a newspaper having general circulation as well as on their respective websites. The selection and recruitment process will be determined by the Clerks of the participating bodies.

Terms of Reference

The Act specifies that compliance audit committees be composed of between three (3) and seven (7) members. To this end, the Participating Bodies have collaborated and developed the draft Terms of Reference (Attachment #1) and will each request that their respective municipal

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Councils approve the appointment of the same individuals to the roster, through by-law, with each roster containing no more than seven (7) members. As part of the recruitment process, and in addition to the requirements under the Act to serve on a Compliance Audit Committee, individuals with qualifications in the areas of auditing, accounting, law, law enforcement, and knowledge of municipal elections and the *Municipal Elections Act's* campaign financing rules will be sought for the roster. Prior experience on a committee or task force will also be considered an asset.

An appointed member of the Committee must not accept employment with any of the Participating Bodies or register as a candidate or a third party advertiser with any of the Participating Bodies. If they do so, they will be deemed to have resigned from the Committee. Further, all Committee members must agree in writing that they will not work or volunteer for, or contribute to, any candidate or registered third party in any capacity in an election of any of the Participating Bodies. If a person on the roster is identified as having participated or contributed to a candidate or a registered third party, that person shall not be eligible to be selected as a member with respect to a Compliance Audit Committee application within the applicable Participating Body where the participation or contribution occurred.

Once the roster of individuals has been approved by by-law, and should a compliance audit application be received, the City Clerk shall select three (3) individuals to serve on the Compliance Audit Committee in accordance with the Terms of Reference. Members of the Committee will have the ability to act simultaneously for multiple municipalities which will assist in meeting the tight timeframes under the *Municipal Elections Act*.

Upon establishment and appointment of the roster of individuals to the 2022 Municipal Election Joint Compliance Audit Committee, the Municipal Clerks of each Participating Body will establish administrative practices and procedures for the Committee in accordance with the Act. This will be a collaborative approach amongst the Participating Bodies and will provide consistency to the members serving on the Joint Committee. In accordance with the Terms of Reference, the mandate of the Compliance Audit Committee is considered complete at the end of the four year term of Council or when the Committee has disposed of any remaining matters in accordance with the Act, whichever is later.

Establishing a Compliance Audit Committee is required by the *Municipal Elections Act*. Staff seek authorization from Council to join with the other participating bodies to create a 2022 Municipal Election Joint Compliance Audit Committee, in accordance with the draft Terms of Reference included as Attachment #1, to deliver a highly professional, transparent and accountable compliance audit function to fulfill the requirements of the Act.

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Attachment:

1. Draft 2022 Municipal Election Joint Compliance Audit Committee Terms of Reference

Prepared By:

Approved/Endorsed By:

Original Signed By:

Original Signed By:

Susan Cassel
City Clerk

Paul Bigioni
Director, Corporate Services & City Solicitor

SC:sc

Recommended for the consideration
of Pickering City Council

Original Signed By:

Marisa Carpino, M.A.
Chief Administrative Officer

**2022 Municipal Election
Joint Compliance Audit Committee
Terms of Reference**

Name:

The name of the Committee is the “2022 Municipal Election Joint Compliance Audit Committee” (“the Committee”).

Definitions:

Clerk means the Clerk or secretary of the Participating Body, or their designate.

Participating Bodies means the Town of Ajax, Regional Municipality of Durham, City of Oshawa, City of Pickering, and the Town of Whitby.

Mandate:

The Committee is established pursuant to the requirements of section 88.37 of the Municipal Elections Act, 1996, S.O., 1996, c. 32, as amended (“the Act”) for the Participating Bodies.

The powers and functions of the Committee are set out in section 88.33 to 88.37 of the Act.

Term of Committee:

The term of appointment for the Committee shall be concurrent with the term of office of the council or local board elected in 2022, and shall therefore serve for four (4) years commencing on November 15, 2022 and concluding on November 14, 2026 or until such time the applicable Committee has disposed of any remaining matters in accordance with the Act, whichever is later.

Composition:

When a compliance audit application from an elector or a report from the Clerk indicating a candidate or registered third party has contravened any of the contribution limits under section 88.9 of the Act is received, the Committee comprised of three (3) members shall meet and consider the application and/or report in accordance with the Act.

Members forming the Committee shall be selected by the Clerk from a roster of qualified individuals, who have been jointly recruited by the Clerks of the Participating Bodies.

The following persons are ineligible for appointment:

- Employees or officers of any of the Participating Bodies;
- A member of council or of a local board of any of the Participating Bodies;

- Any persons who are candidates in an election of any of the Participating Bodies for which the Committee is established; or,
- Any persons who are registered third parties in an election of any of the Participating Bodies for which the Committee is established.

Should an appointed Committee Member accept employment with any of the Participating Bodies or register as a candidate or a third party with any of the Participating Bodies, they will have been deemed to have resigned.

All Committee Members shall agree in writing that they will not work or volunteer for, or contribute to, any candidate or registered third party in any capacity in an election of any of the Participating Bodies.

If a person on the roster to serve on the Committee is identified as having participated or contributed to a candidate's campaign or registered third party, that person shall not be eligible to be selected as a Member with respect to a Compliance Audit Committee application within the applicable Participating Body where the participation or contribution to a campaign or registered third party occurred.

Conduct of Members:

Members of the Committee shall comply and conduct themselves in accordance with the Joint Compliance Audit Committee Administrative Practices and Procedures for the Participating Bodies.

Members shall not use their position on the Committee for any personal or political gain.

Remuneration:

Remuneration will be as follows:

- \$400.00 retainer fee (costs will be shared equally by the Participating Bodies) for those individuals on the roster. The retainer fee shall cover attendance at a mandatory training session and review of periodic updates or information supplied by the Clerk of any of the Participating Bodies. Payment of the retainer fee does not denote membership on a Committee and covers the four (4) year term; and,
- \$350.00 per meeting attended, plus mileage in accordance with the rate normally paid to employees of the applicable Participating Body. The per meeting rate shall cover review of background or agenda materials as required in preparation for a meeting.

Membership Selection:

At a minimum, the recruitment of persons to be included on the roster of individuals shall be advertised in a local newspaper having general circulation and on the websites of the Participating Bodies. Other recruitment measures may be initiated by the Clerks of the Participating Bodies.

All applicants will be required to complete an application and may be subject to further screening and an interview. The selection process will be determined by the Clerks of the Participating Bodies.

Applicants must have the ability to understand and apply the election campaign finance provisions of the Act and must remain impartial in order to fulfill their responsibilities.

Preference will be given to candidates that have experience related to compliance audit activities or investigative or adjudicative processes.

The following criteria will be considered when appointing members:

- Demonstrated knowledge and understanding of municipal election campaign financing rules;
- Proven analytical and decision-making skills;
- Experience working on committees, boards, adjudicative bodies, task forces or similar settings;
- Experience in accounting and audit, law, law enforcement, academics, or municipal administration from related fields;
- Demonstrated knowledge of quasi-judicial proceedings;
- Availability and willingness to attend meetings; and,
- Excellent oral and written communication skills.

Meetings:

Meetings will occur as needed and shall be conducted in accordance with the Joint Compliance Audit Committee Administrative Practices and Procedures for the Participating Bodies.

Chair:

At the first meeting of a Compliance Audit Committee on a particular report or application, the members shall appoint one member to act as Chair for the duration of the Committee's deliberations on those matters on the agenda. The Chair shall retain the role for all matters on the agenda at a meeting.

Role of Clerk:

The Clerk will act as the main contact between the Committee, compliance audit applicant, candidate and registered third party. In accordance with section 88.37 (6) of the Act, the Clerk shall carry out any duties required under the Act to implement the Committee's decisions.