

CITY OF HAMILTON

ELECTION COMPLIANCE AUDIT COMMITTEE

Procedure for the Election Compliance Audit Committee

1. AUTHORITY

- 1.1 Subsection 88.37(6) of the Act provides that the Clerk of the City of Hamilton, shall establish administrative practices and procedures for a Compliance Audit Committee and shall carry out any other duties required under the Act to implement the Compliance Audit Committee's decisions.

2. BACKGROUND

- 2.1 At its meeting of May 11, 2022, Council of the City of Hamilton established the 2022-2026 Election Compliance Audit Committee in accordance with section 88.37 of the Act for the 2022-2026 Term.
- 2.2 The Terms of Reference for the Committee are attached hereto as Schedule "1".

3. DEFINITIONS

In this Procedure:

"Act" means the *Municipal Elections Act, 1996 as amended*;

"Applicant" means an elector as defined under subsection 17(2) of the Act and as described under subsections 88.33(1) and 88.35(1) of the Act, who applies for a compliance audit of the election campaign finances of a Candidate or a Registered Third Party;

"Application" means an application accepted by the Clerk pursuant to subsection 88.33(2) and 88.35(2) of the Act;

"Auditor" means an auditor appointed by the Committee to conduct a compliance audit of a Candidate's or Registered Third Party's election campaign finances pursuant to subsection 88.33(10) and 88.35(4) of the Act following the Committee's decision to grant an Application pursuant to subsection 88.33(7) and 88.35(4) of the Act;

"Auditor's Report" means the report prepared by the Auditor pursuant to subsection 88.33(12) and 88.35(4) of the Act following a compliance audit of a Candidate's or Registered Third Party's election campaign finances;

"Candidate" means a person who is nominated under section 33 of the Act and whose election campaign finances are the subject of an Application for a compliance audit, an Auditor's Report or Clerk's Report;

"Chair" means the Chair of the Committee selected under section 8 of this Procedure;

"City" means the City of Hamilton;

“**Clerk**” means the City Clerk of the City of Hamilton or their designate;

“**Clerk’s Report**” means a report prepared by the Clerk pursuant to subsection 88.34(2) and 88.36(2) of the Act;

“**Committee**” means the Election Compliance Audit Committee of the City of Hamilton;

“**Contributor**” means an individual or entity that has made a contribution to the election campaign of a Candidate or to a Registered Third Party in relation to third party advertisements and has been identified in a Clerk’s Report;

“**Council**” means the Council of the City of Hamilton;

“**Delegate**” means any member of the public other than an Applicant, a Candidate, a Registered Third Party, a Contributor, the Clerk or an Auditor or the agent of any of them, who wishes to make a delegation before the Committee and who the Committee has approved to make a delegation;

“**Electronic Meeting**” means a Meeting or part of a Meeting held by a form of electronic technology allowing persons to hear one another;

“**Meeting**” means a meeting held by the Committee pursuant to the requirements of subsections 88.33- 88.36 of the Act but does not include a meeting held for the purpose of educating or training the members of the Committee provided that at such meeting, no member of the Committee discusses any pending Application, Clerk’s Report, Auditor’s Report or pending proceeding of the Committee; and

“**Registered Third Party**” means an individual, corporation or trade union that is registered with the City of Hamilton pursuant to the Act and whose election campaign finances in relation to third party advertisements are the subject of an Application for a compliance audit, Auditor’s Report or a Clerk’s Report.

4. APPLICATION

4.1 This Procedure shall be observed in all Meetings of the Committee.

4.2 All matters relating to the proceedings of the Committee not provided for in this Procedure shall be decided by the Chair of the Committee in consultation with the Clerk having regard to the City of Hamilton Procedural By-law and the *Statutory Powers Procedures Act* and the Committee may do whatever is necessary and permitted by law to enable the Committee to effectively and completely adjudicate on the matter before it.

5. MEETINGS

5.1 The Committee shall meet at the request of the Clerk.

- 5.2 The Clerk shall call a Meeting of the Committee when the Clerk considers it necessary, when required by the Act, or when requested to do so in writing by a majority of the Committee members.
- 5.3 Meetings shall be held at the offices of the City or such other location as the Clerk deems appropriate.
- 5.4 Meetings shall commence at the time and date to be set by the Clerk, and shall adjourn by vote of the Committee.
- 5.5 Where a Member of the Committee arrives after any Discussion Agenda Item has been moved and seconded for deliberation, that Member will not be permitted to participate in the Meeting as it relates to that Discussion Agenda Item until it has concluded and the Committee has issued its decision. Where a Meeting Agenda includes more than one Discussion Agenda Item, the Member shall be permitted to participate in all subsequent Discussion Agenda Items.
- 5.6 The Committee shall conduct its Meetings in accordance with its Procedure, the Council Procedural By-law and the *Statutory Powers Procedures Act*, with modifications as necessary.
- 5.7 Three (3) Committee members constitutes a quorum at Meetings of the Committee.
- 5.8 Members of the Committee shall comply with the *Municipal Conflict of Interest Act* and any applicable Code of Conduct by disclosing any pecuniary interest to the Clerk and, after making such a disclosure, by abstaining from Meetings for the duration of the consideration of the matter, discussion and voting with respect to the matter.
- 5.9 Meetings of the Committee shall be open to the public, however, deliberations of the Committee may be held in private in pursuant to subsections 88.33(5.1), 88.34(9.1), 88.35(4) and 88.36(6.1) of the Act.
- 5.10 Where the Committee desires to deliberate in closed session, they shall do so only by resolution.
- 5.11 Minutes of a closed session of the Committee shall be recorded by the Secretary.
- 5.12 Upon rising from closed session, the Chair shall report on any procedural resolutions passed in closed session and ask for any such resolutions to be moved and seconded and voted on by the members of the Committee.

6. DELEGATIONS

- 6.1 Any person other than an Applicant, a Candidate, a Registered Third Party, a Contributor, the Clerk or an Auditor or the agent of any of them, wishing to appear

before the Committee as a Delegate, shall submit a written request to the Clerk by 9:00 a.m. three (3) business days prior to the Committee Meeting. The Clerk shall forward the request to the Committee as soon as is practicable.

- 6.2 Delegations to the Committee referred to in subsection 6.1 of this Procedure shall be no more than five (5) minutes in length.
- 6.3 Upon receipt of a request pursuant to subsection 6.1 of this Procedure, the Clerk shall list the delegation request on the appropriate Agenda for the relevant Committee Meeting and the decision whether or not to entertain the delegation will be made by the Committee.

7. ELECTRONIC MEETING

- 7.1 At the discretion of the Clerk, the Committee may hold an Electronic Meeting and allow the participation of a Committee Member, Candidate, Contributor, Registered Third Party, Applicant, Auditor, a Delegate or agent via electronic means, and any person participating by electronic means shall have the same rights and responsibilities as if they were in physical attendance. This provision includes Electronic Meetings of the Committee in closed session.
- 7.2 The administration of an Electronic Meeting, including the means by which Members vote, shall be at the discretion of the Clerk, recognizing that technology and requirements will vary from time-to-time.
- 7.3 Individual rules of debate and conduct at Meetings may be modified as required, to facilitate an Electronic Meeting.
- 7.4 The Committee shall not hold an Electronic Meeting where a party satisfies the Committee that the holding of an Electronic Meeting is likely to cause the party significant prejudice.

8. CHAIR

- 8.1 When the Chair of the Committee is absent or is otherwise unable to act, the Vice Chair shall have all the powers of the Chair.
- 8.2 If the Chair of the Committee resigns as a member of the Committee or resigns as the Chair of the Committee, the Vice Chair shall act for the balance of the term of Council and until a successor is appointed.
- 8.3 The Chair is the liaison between members of the Committee and the Clerk on matters of procedure.
- 8.4 The Chair shall enforce the observance of order and decorum among the members of the Committee and the public at all Meetings.

8.5 The Chair shall serve as spokesperson for the Committee, when required.

9. MEETING NOTICE/AGENDA

9.1 Notice to the Public

- (1) Notice of a Committee Meeting will be provided to the public on the City's website meeting calendar at least five (5) days prior to a Meeting.
- (2) Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and *Municipal Act, 2001*, the Meeting agenda will be posted on the City's website and made available upon request at the Office of the City Clerk.
- (3) Redacted versions of written submissions and any other relevant documentation may be published to the City's website at the Clerk's discretion and subject to the *Municipal Freedom of Information and Protection of Privacy Act, 1990*.

9.2 Application by Applicant

- (1) Within ten (10) days of receipt of an Application, the Clerk shall send the Application to all members of the Committee requesting their availability to meet within the thirty (30) days following the Committee's receipt of the Application. **(Reference: MEA 88.33(4), 88.35(4))**
- (2) Where a Meeting of the Committee is required to consider the Application of an Applicant made pursuant to subsection 88.33(1) or 88.35(1) of the Act, the Clerk shall give not less than fourteen (14) days' notice of the time, place, manner and purpose of the Meeting to the Applicant and the Candidate or Registered Third Party and of the fact that if any party fails to attend the Meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice in relation to the Meeting, and of the ability for any of the parties to provide written submissions to be included in the meeting agenda within the timeframe established by the Clerk.
- (3) Where the Meeting is proposed to be held as an Electronic Meeting, notice of the Meeting shall include a statement that the Applicant and the Candidate or Registered Third Party may, by satisfying the Committee that holding the Meeting as an Electronic Meeting is likely to cause the party significant prejudice, require the Committee to hold the Meeting in person, and an indication of the procedure to be followed for that purpose.

- (4) Not less than five (5) days prior to a Meeting, the Clerk shall circulate an agenda including a copy of the Application, the financial statements of the Candidate or Registered Third Party, materials and any written submissions, to the Committee, Applicant, Candidate or Registered Third Party and Auditor, where applicable.
- (5) Every notice and document to be provided pursuant to this subsection 9.2 may be made by email or, where no valid email address has been provided to the Clerk, by mail.

9.3 Clerk's Report

- (1) Following the preparation of a Clerk's Report in accordance with the requirements of the Act, the Clerk shall send a copy of the Clerk's Report to all members of the Committee requesting their availability to meet within the thirty (30) days following the Committee's receipt of a Clerk's Report. **(Reference: MEA 88.34(4), 88.36(4))**
- (2) Where a Meeting of the Committee is required to consider a Clerk's Report, the Clerk shall give not less than fourteen (14) days notice of the time, place, manner and purpose of the Meeting to the Contributor, and to the Candidate or Registered Third Party and of the fact that if any party fails to attend the Meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice in relation to the Meeting, and of the ability for any of the parties to provide written submissions to be included in the meeting agenda within the timeframe established by the Clerk.
- (3) Where the Meeting is proposed to be held as an Electronic Meeting, notice of the Meeting shall include a statement that the Contributor and the Candidate or Registered Third Party may, by satisfying the Committee that holding the Meeting as an Electronic Meeting is likely to cause the party significant prejudice, require the Committee to hold the Meeting in person, and an indication of the procedure to be followed for that purpose.
- (4) Not less than five (5) days prior to the Meeting the Clerk shall circulate an agenda including a copy of the Clerk's Report, materials and any written submissions, to the Committee, Contributor, and to the Candidate or Registered Third Party.
- (5) Every notice and document to be provided pursuant to this subsection 9.3 may be made by email or, where no valid email address has been provided to the Clerk, by mail.

9.4 Auditor's Report

- (1) Where an Auditor is appointed by the Committee to conduct an audit of the election campaign finances of a Candidate or Registered Third Party and

following the preparation of an Auditor's Report in accordance with the requirements of the Act, the Auditor shall send the Auditor's Report to the Candidate or the Registered Third Party, the Clerk and the Applicant;

- (2) Within ten (10) days after receiving the Auditor's Report, the Clerk shall forward the Auditor's Report to all members of the Committee and the Clerk shall request their availability to meet within the thirty (30) days following the Committee's receipt to consider the Auditor's Report. **(Reference: MEA 88.34(14))**
- (3) The Clerk shall give not less than fourteen (14) days notice of the time, place, manner and purpose of the Meeting to the Auditor, Applicant and Candidate or Registered Third Party and of the fact that if any party fails to attend the Meeting, the Committee may proceed in the party's absence and the party will not be entitled to further notice in relation to the Meeting, and of the ability for any of the parties to provide written submissions to be included in the meeting agenda within the timeframe established by the Clerk.
- (4) Where the Meeting is proposed to be held as an Electronic Meeting, notice of the Meeting shall include a statement that the Applicant and the Candidate or Registered Third Party may, by satisfying the Committee that holding the Meeting as an Electronic Meeting is likely to cause the party significant prejudice, require the Committee to hold the Meeting as an orally, and an indication of the procedure to be followed for that purpose.
- (5) Not less than five (5) days prior to the Meeting, the Clerk shall circulate an agenda including a copy of the Auditor's Report, materials and any written submissions, to the Committee.
- (6) Every notice and document to be provided pursuant to this subsection 9.4 may be made by email or, where no valid email address has been provided to the Clerk, by mail.

10. LACK OF QUORUM

- 10.1 If no quorum is present 30 minutes after the time fixed for a Meeting, or the resumption of a Meeting after an adjournment, or should a quorum at a Meeting be lost for a period of 30 consecutive minutes, the Clerk shall record the names of the members present and the Meeting shall stand adjourned until the next regular Meeting day scheduled by the Clerk.

11. ORDER OF BUSINESS

11.1 The Order of Business for the agenda, unless amended by the Committee in the course of the Meeting, shall be as follows:

- (a) Opening Statement;
- (b) Appoint a Chair and Vice-Chair (if required);
- (c) Approval of Agenda;
- (d) Declarations of Interest;
- (e) Adoption of Minutes of Previous Meetings;
- (f) Written Communications;
- (g) Delegation Requests;
- (h) Items for Discussion:
 - a. Consideration of Auditor Reports (if any);
 - b. Consideration of Clerk's Reports (if any);
 - c. Consideration of Applications (if any);

(g) Adjournment.

12. MEETING PROCEDURE

12.1 Opening Statement by Chair

The Chair (or Clerk at the first Meeting of the Committee) shall inform everyone in attendance of the agenda and procedures for the Meeting by reading an opening statement.

12.2 Appointment of the Chair and Vice Chair

At the first Meeting of the Committee, a Chair and a Vice Chair shall be appointed from among the members of the Committee.

12.3 Declarations of Interest

Following the Opening Statement and Approval of the Agenda, members of the Committee shall make any declaration of any pecuniary interest in accordance with subsection 11.1 of this Procedure.

12.4 Preliminary Motions

Before considering the substance of agenda items, the members of the Committee may make preliminary motions, including motions to change the order of business or to defer an agenda item, with respect to any business properly before the Committee.

12.5 Committee Business

Prior to consideration of an item on the agenda, the Chair shall identify for those present the agenda item to be considered.

12.6 More Than One Item

Where the agenda includes consideration of more than one Discussion Item, each item shall be considered by the Committee in its entirety before consideration of the next item with Auditor's Reports (if any) considered first, followed by Clerk's Reports (if any), followed by Applications (if any).

12.7 Introduction and Recording of the Auditor (where applicable), Applicant, Candidate, Registered Third Party and Contributor

- (1) Prior to consideration of an Auditor's Report, the Chair shall introduce the Auditor and shall request the Candidate or Registered Third Party and the Applicant or their agents, if present, to identify themselves and to provide their names and mailing addresses to the Clerk.
- (2) Prior to consideration of a Clerk's Report, the Chair shall request the Contributor, the Candidate or Registered Third Party or their agents, if present, to identify themselves and to provide their names and mailing addresses to the Clerk.
- (3) Prior to consideration of an Application, the Chair shall request the Candidate or Registered Third Party and the Applicant or their agents, if present, to identify themselves and to provide their names and mailing addresses to the Clerk.
- (4) Prior to the presentation by any Delegate approved under subsection 6.3 of these Procedures, the Chair shall request the Delegate, if present, to identify themselves and to provide their name and mailing addresses to the Clerk.

12.8 Consideration of Agenda Items - Consideration of an Auditor's Report

- (1) Presentation by Auditor (where applicable):
 - (a) The Auditor may address the Committee.
 - (b) Members of the Committee may, through the Chair, ask questions of the Auditor; and
- (2) Presentation by Applicant or agent (where applicable)

- (a) The Applicant or agent may address the Committee and may respond to the content of the Auditor's address to the Committee;
 - (b) Members of the Committee may, through the Chair, ask questions of the Applicant or agent; and
- (3) Presentation by Candidate, Registered Third Party or agent (where applicable)
- (a) The Candidate or Registered Third Party or agent may address the Committee and may respond to the content of the Auditor's and Applicant's address to the Committee;
 - (b) Members of the Committee may, through the Chair, ask questions of the Candidate, Registered Third Party or agent ; and
- (4) Presentation by any Delegate who has been approved pursuant to subsection 6.3 of these Procedures.
- (5) Once the Auditor and any other presenters have addressed the Committee, the members of the Committee shall each have an opportunity to speak to the matter.
- (6) The Committee may retire to deliberate in private before rendering its decision.

12.9 Consideration of Agenda Items - Consideration of a Clerk's Report

- (1) Presentation by Clerk:
- (a) The Clerk may address the Committee;
 - (b) Members of the Committee may, through the Chair, ask questions of the Clerk;
- (2) Presentation by Contributor:
- (a) The Contributor or the Contributor's agent may address the Committee. The Contributor may respond to the content of the Clerk's address to the Committee;
 - (b) Members of the Committee may, through the Chair, ask questions of the Contributor;
- (3) Presentation by Candidate or Registered Third Party:

- (a) The Candidate or Registered Third Party or either of their agents may address the Committee. The Candidate or Registered Third Party may respond to the content of the Clerk's address to the Committee and the Contributor's address to the Committee;
- (b) Members of the Committee may, through the Chair, ask questions of the Candidate or Registered Third Party; and
- (4) Presentation by any Delegate who has been approved pursuant to subsection 6.3 of these Procedures.
- (5) Once the Clerk, Contributor, Candidate or Registered Third Party and any approved Delegates have addressed the Committee, the members of the Committee shall each have an opportunity to speak to the matter.
- (6) The Committee may retire to deliberate in private before rendering its decision.

12.10 Consideration of Discussion Agenda Items - Consideration of an Application

- (1) Presentation by Applicant or agent:
 - (a) The Applicant or the Applicant's agent may address the Committee;
 - (b) Members of the Committee may, through the Chair, ask questions of the Applicant; and
- (2) Presentation by Candidate or Registered Third Party:
 - (a) The Candidate or the Registered Third Party or either of their agent's may address the Committee. The Candidate or Registered Third Party may respond to the content of the Applicant's address to the Committee;
 - (b) Members of the Committee may, through the Chair, ask questions of the Candidate or Registered Third Party; and
- (3) Presentation by any Delegate who has been approved pursuant to subsection 6.3 of these Procedures.
- (4) Once the Applicant, the Candidate or Registered Third Party and any approved Delegates have addressed the Committee, the members of the Committee shall each have an opportunity to speak to the matter.
- (5) The Committee may retire to deliberate in private before rendering its decision.

12.11 Voting on an Item

Once a process set out in subsection 12.8, 12.9 or 12.10 of this Procedure has concluded, members of the Committee may make motions and vote on the item.

12.12 Rules of Debate

- (1) When two or more members of the Committee wish to speak, the Chair shall designate the member who first requested to speak as the member who speaks first.
- (2) A member of the Committee may ask a question only:
 - (a) of a member who has already spoken on the matter under discussion;
 - (b) of the Chair;
 - (c) of an official of the City; or
 - (d) of any other person addressing the Committee in accordance with these Procedures.
- (3) A member of the Committee may ask a question only for the purpose of obtaining information relating to the matter then under discussion.
- (4) Any member of the Committee may propose a motion on the matter then under consideration and the Clerk shall record the motion in writing.
- (5) Every Committee member present at a Meeting of the Committee when a question is put shall vote on the question, unless prohibited from voting by statute, in which case the Clerk shall record the name of the member and the reason they are prohibited from voting.
 - (a) The matter put to a vote shall be in the form of a motion addressing the matter then under consideration.
 - (b) All motions must be introduced by a mover and seconded before the Chair may put the question or motion on the floor for consideration.
 - (c) After a motion is properly moved, it shall be deemed to be in the possession of the Committee, but may be withdrawn by the mover at any time before decision.
 - (d) A motion to amend shall relate to the subject matter of the main motion, shall not be received posing a direct negative to the question,

and shall be put to vote in reverse order in which the amendments are made. Only a motion to amend an amendment to the original motion shall be allowed and any further amendments must be made to the original motion.

- (e) The Committee shall endeavour to make decisions by consensus. If this is not possible, the decision of a majority of the members of the Committee is the Committee's decision and, in the case of a tie, the decision of the Chair governs.
- (6) Procedural motions and precedence of motions shall be subject to consideration as set out in the Council Procedural By-law.

12.13 Rules of Evidence

- (1) Applicants, Candidates, Third Party Advertisers, Contributors and/or their agents shall submit all written statements and documentary evidence to the Clerk a minimum of five (5) business days prior to the Meeting, to ensure its publication in the agenda for the Meeting.
- (2) Notwithstanding subsection 12.13(1) of these Procedures, a Candidate, Third Party Advertiser, Applicant, Contributor and/or their agents are entitled to submit additional information and evidence to the Committee at any time prior to the Committee rendering its decision with respect to the Application or Report under consideration, including at a Meeting. Committee members are entitled to receive additional information and evidence, and may determine whether such additional information and evidence will be considered in the course of their deliberations. In considering additional information and evidence, the Committee shall have regard for whether the introduction of the additional information and evidence may create a procedural unfairness towards any of the involved parties. If the Committee determines that a procedural unfairness would be caused by considering the additional evidence submitted, the Committee may at its discretion exclude the consideration of that evidence from its deliberations. Should the Committee decide to accept any additional information or evidence, it shall afford all parties an opportunity to respond to the additional information or evidence provided.

13 COMMITTEE DECISION

13.1 Auditor's Report

- (1) In accordance with subsection 88.33(17) of the Act, within 30 days of receipt of an Auditor's report, the Committee shall consider the Auditor's Report and, if the Auditor's Report concludes that the Candidate or Registered Third Party appears to have contravened a provision of the Act relating to election campaign finances, the Committee shall determine whether or not

to commence a legal proceeding against the Candidate or Registered Third Party for the apparent contravention;

- (2) The decision of the Committee following consideration of the Auditor's Report, shall be in writing, shall set out the reasons for the decision, and shall be signed by the members who concur in the decision, and shall be provided to the Clerk. In addition to the written decision, nothing herein shall prevent the Committee from delivering an oral decision at the Meeting;
- (3) The Clerk shall forward notice of the decision of the Committee to the Applicant and to the Candidate or Registered Third Party by email and by registered mail at the mailing addresses provided to the Clerk.

13.2 The Clerk's Report

- (1) In accordance with Section 88.34(8) and 88.36(5) of the Act, within 30 days after receiving a Clerk's Report, the Committee shall consider the Clerk's Report and decide whether to commence a legal proceeding against a Contributor for an apparent contravention of the Act.
- (2) The decision of the Committee, shall be in writing, shall set out the reasons for the decision, shall be signed by the members who concur in the decision, and shall be provided to the Clerk. In addition to the written decision, nothing herein shall prevent the Committee from delivering an oral decision at the Meeting.
- (3) The Clerk shall forward notice of the decision of the Committee to the Contributor by email and by registered mail at the mailing addresses provided to the Clerk.

13.3 The Application

- (1) In accordance with Section 88.33(7) and 88.35(4) of the Act, within 30 days after receiving the Application, the Committee shall consider the Application and decide whether to grant or reject the Application.
- (2) The decision of the Committee, whether granting or refusing an Application, shall be in writing, shall set out the reasons for the decision, shall be signed by the members who concur in the decision, and shall be provided to the Clerk. In addition to the written decision, nothing herein shall prevent the Committee from delivering an oral decision at the Meeting.
- (3) The Clerk shall forward notice of the decision of the Committee to the Applicant and the Candidate or Registered Third Party by email and registered mail at the mailing addresses provided to the Clerk.

- (4) If the Committee decides to grant the Application, it shall, by resolution, appoint an auditor, licensed under the *Public Accounting Act, 2004*, to conduct a compliance audit of the election campaign finances of the Candidate or the Registered Third Party.
- (5) At the request of the Committee, the Clerk may assist the Committee in locating and contacting available auditors to undertake the audit.

14 EXCEPTIONS TO THE PROCEDURE

- 14.1 The Committee may, by majority vote, waive any provision of this Procedure, as it considers appropriate to ensure the questions at issue are determined in a just manner.

15 MINUTES

- 15.1 The Clerk shall prepare minutes of each Meeting of the Committee, including any closed sessions, and shall provide members of the Committee with a copy of the minutes as soon as the minutes are available.
- 15.2 The Committee members shall each review and sign the minutes to confirm the minutes reflect the Committee's actions.
- 15.3 The approved minutes will be posted on the City's website.

16 LEGAL PROCEEDING

- 16.1 The Committee, with the assistance of the Clerk, shall engage the services of legal counsel if it commences a legal proceeding against a Candidate or Registered Third Party or against a Contributor, for any apparent contravention of the Act.

Schedule “1” - Terms of Reference

ELECTION COMPLIANCE AUDIT COMMITTEE 2022-2026

TERMS OF REFERENCE

MANDATE

As required by Section 88.37(1) of the *Municipal Elections Act*, 1996 (the “MEA”), the City of Hamilton has established the Election Compliance Audit Committee (the “Committee”).

The Committee is responsible for reviewing and making decisions on Applications for municipal election campaign finance compliance audits by electors and on reports from the City Clerk respecting apparent contraventions of contribution limits.

APPLICATION BY ELECTOR FOR COMPLIANCE AUDIT OF CANDIDATE’S OR REGISTERED THIRD PARTY’S ELECTION CAMPAIGN FINANCES

An application for a compliance audit by an elector shall be made to the City Clerk for the City of Hamilton and it shall be in writing and shall set out the reasons for the elector’s belief that a Candidate or Registered Third Party has contravened a provision of the MEA relating to election campaign finances. **88.33(1)(2), 88.35 (1)(2) MEA**

Elector applications to the Committee shall use a form prescribed by the City Clerk and shall be accompanied by a declaration confirming that the applicant:

(a) is an eligible elector in the City of Hamilton; and

(b) has reasonable grounds to believe that the Candidate or Registered Third Party referenced in the application has contravened a provision of the MEA relating to election campaign finances.

RESPONSIBILITIES

Pursuant to sections 88.33 and 88.35 of the MEA, the Committee shall be responsible for:

1. Receiving and considering applications for a compliance audit by an elector and, within 30 days of receiving the application from the City Clerk, determining whether the compliance audit should be granted or rejected; **88.33(7), 88.35(4) MEA**
2. Prepare brief written reasons for the decision to either grant or reject the compliance audit and provide same to the Candidate or Registered Third Party, the Clerk of the municipality and the applicant; **88.33(8), 88.35(4) MEA**

3. Appointing an auditor, if a compliance audit is granted; **88.33(10), 88.35(4) MEA**
4. Receiving and considering the Auditor's report, and if the auditor's report concludes that the Candidate or Registered Third Party appears to have contravened a provision of the MEA relating to election campaign finances, within 30 days of receipt of the auditor's Report from the City Clerk, deciding whether to commence a legal proceeding against the Candidate or Registered Third Party; **88.33(17), 88.35(4) MEA** and,
5. Prepare brief written reasons for the decision whether or not to commence legal proceedings and provide same to the Candidate or Registered Third Party, the Clerk of the municipality and the applicant. **88.33(18), 88.35(4) MEA**

REPORTS FROM CITY CLERK REGARDING APPARENT CONTRAVENTIONS OF CONTRIBUTION LIMITS

The City Clerk shall prepare a report in respect of each contributor who appears to have contravened any of the contribution limits under section 88.9 or 88.13 of the MEA **88.34(1)-(6), 88.36 (1)-(4) MEA**

RESPONSIBILITIES

Pursuant to sections 88.34 and 88.36 of the MEA, the Committee shall be responsible for:

1. Receiving and considering report(s) prepared by the City Clerk identifying each contributor to a Candidate or Registered Third Party who appears to have contravened any contribution limits set out under section 88.9 or 88.13 of the MEA, and, within 30 days of receiving the report(s), deciding whether to commence a legal proceeding against a contributor for an apparent contravention of the contribution limits; **88.34(8), 88.36(5) MEA**
2. Prepare brief written reasons for the decision whether or not to commence a legal proceeding and provide same to the contributor and the Clerk of the municipality. **88.34(11), 88.36(7)**

CORRESPONDANCE FROM CITY CLERK

With respect to receiving information related to election compliance matters, the Committee may receive:

1. Memoranda issued by the City Clerk to the Committee, including but not limited to a notice if no applications were received by the relevant application deadline, and the results of the City Clerk's review of contributions if no over-contributions were identified. Such communications may be listed on the agenda for the following meeting of the Committee; and

2. Oral updates in open meeting, as required, in relation to matters that have been or are anticipated to be considered by the Committee during the 2022-2026 Term.

COMMITTEE MEMBERSHIP

The Committee will be comprised of five (5) Members selected by the General Manager of Corporate Service, the City Auditor and the City Clerk.

The following are not eligible to sit on the Committee:

- employees or officers of the municipality or local board;
- members of the council or local board;
- Candidates in the election for which the committee is established; or
- persons who are Registered Third Parties in the municipality in the election for which the Committee is established. **88.37(2) MEA**

Members must have a thorough understanding of the campaign finance rules, must be a resident of the City of Hamilton and be at least 18 years old (i.e. auditors, accountants, lawyers, etc.).

Any auditor appointed under 88.33(10), 88.35(4) cannot be a member of the Committee. To avoid perceived conflicts, any auditor or accountant appointed to the Committee must agree in writing that they have not and will not provide advice to, or prepare or audit the election financial statements of any Candidate seeking election to Council or to any Registered Third Party in the City of Hamilton during the term of the Committee. In addition, any lawyer or other legal professional appointed to the Committee must agree in writing that they have not and will not provide legal advice to any Candidate seeking election to Council or to any Registered Third Party or contributors to Candidates and Registered Third Parties in the City of Hamilton during the term of the Committee. All Members appointed to the Committee must agree in writing that they will not become a Candidate in the Hamilton municipal election and any by-elections during the term of Council that corresponds to the term of the Committee.

COMMITTEE MEETINGS

The Committee will meet as necessary for the purposes of reviewing an application for a compliance audit, a report from an auditor, or a report from the City Clerk with respect to contribution limits. The Committee may also meet as necessary to organize and plan its work.

Meetings of the Committee shall be open to the public, but the Committee may deliberate in private in accordance with sections 88.33(5.1), 88.34(9.1) and 88.36(6.1) of the MEA. Meeting notices and agendas will be communicated through the City's website. Reasonable notice of the Committee meetings shall be given in accordance with section 88.33(5), 88.34(9) and 88.36(6) of the MEA.

The Chair and Vice-Chair shall be elected at the Committee's first meeting.

Because the rules of "natural justice" require that both parties (applicant and Candidate or Registered third party) have the opportunity to fully present evidence, Members of the Committee must be present throughout a hearing.

A member of the Committee who arrives after a hearing has commenced will not be permitted to join the proceedings in progress.

ROLE OF THE CITY CLERK

In accordance with section 88.37(6) of the MEA the City Clerk of the municipality shall establish administrative practices and procedures for the Committee and shall carry out any other duties required under the MEA to implement the Committee's decisions.

The City Clerk shall call a meeting of the Committee when an application by an elector for a Compliance Audit has been received and when the City Clerk's report regarding apparent contraventions of contribution limits has been prepared.

Meeting dates, start times and locations shall be set by the City Clerk and posted to the City's website.

The City Clerk shall provide administrative support to the Committee, including the taking of minutes, the distribution of agendas and posting of materials to the City's website.

QUORUM

Three members will be required for quorum.

TERM

Members of the Committee shall serve the same term of office as the Council that takes office following a regular municipal election. Each new Committee shall be appointed before October 1 of an election year.

APPLICABLE LEGISLATIVE AUTHORITIES AND CORPORATE POLICIES

Municipal Elections Act, 1996

BY-LAW NO. 22-019 To Establish a Code of Conduct for Local Boards [\(Effective 2023\)](#)

Municipal Conflict of Interest Act, 1990

Statutory Powers Procedures Act, 1990

Schedule “2”- Code of Conduct

HAMILTON ADVISORY COMMITTEE/TASK FORCE CODE OF CONDUCT (2018)

Council has adopted this Code of Conduct for the guidance of Appointees to Advisory Committees and Task Forces providing recommendations to Standing Committees and to assist Appointees in performing their duties in a manner which will promote the public’s confidence in these Advisory Committees and Task Forces operating with integrity, transparency and courtesy.

It is recognized that the Code of Conduct cannot anticipate all possible fact situations in which Appointees may be called upon to exercise judgement as to the appropriate standard of conduct. When this occurs, Appointees are to ensure that their decisions maintain the Advisory Committee or Task Force’s integrity, transparency and courtesy.

This Code of Conduct does not apply to Members of Council who are subject to the Council Code of Conduct.

Failure to comply with this Code of Conduct may result in the Advisory Committee or Task Force:

- (1) requesting an apology from the Appointee; and/or
- (2) removing the Appointee from the Advisory Committee or Task Force for a portion or all of their term.

1. GOOD CONDUCT

Appointees shall act with honesty and integrity including:

- acting in a manner that contributes to the public’s confidence in the Advisory Committee or Task Force; and
- not engaging in conduct that may, or may appear to, constitute an abuse of their position as an Appointees.

2. MEETINGS

Appointees shall maintain proper control over meetings demonstrating respect for everyone who is involved in a proceeding.

Appointees are expected to attend all meetings of the Advisory Committee or Task Force. If an Appointee misses more than three meetings during their term, the Chair, after hearing and considering any explanation provided by the Appointee, may remove the Appointee from the Advisory Committee or Task Force for the remainder of their term.

3. COLLEGIALITY

Appointees shall respect and co-operate with other Appointees and the Advisory Committee or Task Force staff.

4. GIFTS OR BENEFITS

Appointees shall not accept a gift or benefit that may appear as being offered because they are an Appointees.

5. CONFIDENTIAL INFORMATION

Appointees shall not disclose to any member of the public any confidential information acquired by virtue of their position.

6. COMMUNICATION

Appointees should accurately communicate a recommendation or direction.

Appointees may provide their own personal opinion on a matter, provided that it is made clear to the party they are speaking to that the comments are their own and are not being made on behalf of the Committee.

Appointees may refer the media or others making inquiries to the Chair, or, in the absence of the Chair, to the Vice-Chair

Schedule “3”- Broadcast Policy

Policy Respecting the Recording and Livestream Broadcasting of Hearings	Election Compliance Audit Committee
	Policy Approved: March 2023

1. Purpose

1.1 The purpose of this Policy, made under the authority of the *Statutory Powers Procedures Act* (“SPPA”) and the *Municipal Elections Act* (“MEA”), is to govern the livestream broadcasting and recording of meetings of the Election Compliance Audit Committee (“ECAC”) held under subsections 88.33, 88.34(8), 88.35(4) and 88.36(5) of the MEA.

2. Authority

2.1 The MEA states that the meetings of the ECAC held under section 88.33, 88.34(8), 88.35(4) and 88.36(5) shall be open to the public, but the committee may deliberate in private. **Reference: 88.33(5.1), 88.34(9.1), 88.35(4), 88.36(6.1) MEA.**

2.2 The SPPA allows for tribunals to hold an electronic hearing in a proceeding where their rules deal with electronic hearings **Reference: 5.2(1) SPPA.**

2.3 The SPPA sets out certain prohibitions relating to the taking of photographs, recordings and dissemination and makes it an offence to contravene those provisions. **Reference: 29 SPPA.**

3. Application

3.1 This policy applies to meetings of the ECAC held under section 88.33, 88.34(8), 88.35(4) and 88.36(5) of the MEA.

4. Definitions

“**broadcasting**”, in all its forms, means the live or recorded transmission, by electronic means, of a photograph, motion picture, video recording or other recording capable of producing an aural or visual representation of a meeting;

“**livestream**” means to broadcast audio and video of an event over the internet as it happens; and,

“**recording**”, in all its forms, means taking, by electronic means, a photograph, motion picture, video recording or other recording capable of producing an aural or visual representation of a meeting.

5. General

- 5.1 Meetings of the ECAC shall be open to the public and shall be broadcast via livestream on the City’s digital platforms subject to technological availability and specific requests not to livestream a particular hearing.
- 5.2 The ECAC will make every effort to balance public access to proceedings with the fair administration of justice and the protection of rights of all parties involved in a compliance audit.

6. Livestreaming of Meetings

- 6.1 All meetings of the ECAC held under section 88.33, 88.34(8), 88.35(4) and 88.36(5) of the MEA will be livestreamed via the City’s preferred streaming platform wherever possible and shall be contingent on the availability of meeting space at a location that supports streaming technology.
- 6.2 Where space supporting live streaming is not available, notification will be provided in advance of the meeting.
- 6.3 A statement will be read by the chair at the start of the meeting when live streaming of the meeting is taking place.
- 6.4 Despite section 6.1, a party may request that a meeting or part of a meeting not be livestreamed by making a request to the ECAC at the outset of the meeting.
- 6.5 In considering a request under section 6.4 to not livestream a meeting, the ECAC may consider:

- (i) whether the livestreaming of a meeting is likely to impact on the willingness of a party or a delegate to attend a meeting or to give evidence that is honest, candid or complete;
 - (ii) whether any party would be prejudiced by the livestreaming of the meeting;
 - (iii) whether sensitive, proprietary or confidential information of a business, financial or personal nature is likely to be disclosed during the hearing;
 - (iv) whether there are ongoing criminal or regulatory hearings involving the same parties or subject matter of the hearing; and
 - (iii) such other matters as the parties may raise and the ECAC may consider appropriate.
- 6.6 In determining whether to approve a request not to livestream a meeting made under section 6.4, the Chair of the ECAC will ask the parties and any delegates about any concerns they have before a decision is made by the ECAC.
- 6.7. Livestreaming will be suspended for committee deliberations where the ECA has decided to deliberate in private.
- 6.8 No other form of recording or broadcasting of an ECAC meeting is permitted unless prior permission has been given by the ECAC.

7. Recording of Meetings

- 7.1 A meeting of the ECAC will not be recorded or archived by the City.
- 7.2 A recording of a meeting of the ECAC may not be made by any party unless prior permission has been given by the Committee in advance.
- 7.3 Where permission has been granted to record the meeting, a statement will be read at the start of the meeting by the Committee Chair indicating that the meeting will be recorded.
- 7.4 Permission will not be given to record portions of the meeting that are closed for deliberation, in accordance with the MEA.

7.5 A request to record a committee meeting may be made to the ECAC. The ECAC may permit the request if the members are satisfied that:

- (i) access to a meeting by the members of the committee, the other participants in the meeting as well as members of the public and the media attending will not be impeded;
- (ii) the meeting will not be disrupted or delayed; and
- (iii) no participants will be negatively impacted (for example, an individual participating may be reluctant to speak)

7.6 The ECAC may permit a request to record subject to any conditions necessary to ensure that the conditions raised in section 7.5 are addressed. This may include limiting permission to only a part or parts of a meeting.

7.7 The ECAC may, at any time during a meeting, withdraw or limit their permission to record where the criteria provided under section 7.5 is no longer being met.

8. History

Date	Description
March 2023	Policy Approved