SUBJECT: Compliance Audit Committee CL07007 (City Wide)

RECOMMENDATION:

1. That, in accordance with Section 81(3.1) of the Municipal Elections Act, 1996, as amended, Council re-establish the Compliance Audit Committee for any City of Hamilton Municipal By-elections that may be required during the current term of council and for the 2010 general Municipal Election and delegate its powers and functions under Sections 81(3), (4), (7), (10) and (11) of the Act to the said Committee; and,

2. That the following citizens be reappointed to the Compliance Audit Committee for the term up to and including the 2010 Municipal Election:

   Mr. Gary Ostofi
   Ms. Mary Jane Weirshora
   Mr. John Klein
   Ms. Linda Lister
   Mr. Ross Anderson

Kevin C. Christenson
City Clerk
Corporate Services
EXECUTIVE SUMMARY:

In accordance with the authority given to Council under section 81 of the Municipal Elections Act (The Act), a Compliance Audit Committee was established for the 2004 by-election and the 2006 general election. A Provincial election will occur in the fall of this year and there is a strong probability that there will be a Federal election in the not too distant future. In the event that existing members of Council run successfully in the Provincial or Federal election, there may be the need for a City by-election. The City Clerk’s office has confirmed that the existing five members of the Compliance Audit Committee are willing to continue to serve on the committee up to and including the 2010 election.

BACKGROUND:

In the summer of 2004 Council received requests for compliance audits of specified candidate’s financial returns for the 2003 municipal election. As there had been no Compliance Audit Committee established, Council was placed in the position of addressing the request. Subsequently, Council determined that it did not again want to be placed in a situation where it had to make judgments on whether candidates or fellow Council members should be subject to a compliance audit. Consequently a resolution was brought forward in July of 2004 to establish a Compliance Audit Committee with the members to be selected by the Strategic Planning and Budgets Committee. The selection process and number of committee members (5) was ratified by Council on September 15, 2004 through adoption of report CL04012. On September 29, 2004 Council approved the appointment of the following citizens:

Gary Ostofi
Mary Jane Weirshora
John Klein
Linda Lister
Ross Anderson

The compliance audit process is set out in the The Act and can be summarized as follows:

- An elector who is entitled to vote in an election and 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 shall be made to the Clerk within 90 days after the filing date and shall be in writing setting out the reasons for the elector’s belief;
- Within 30 days after receiving the application, the Council shall consider the application and decide whether it should be granted or rejected;
The decision of Council 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 Council could have made;

If it is decided to grant the application, Council shall by resolution, appoint an auditor who is licensed under the *Public Accountancy Act* to conduct a compliance audit of the candidate’s election campaign finances;

An auditor appointed shall promptly conduct an audit of the candidate’s election campaign finances to determine whether he or she has complied with the provisions of the Act relating to election campaign finances and prepare a report outlining any apparent contravention by the candidate;

The auditor shall submit the report to the candidate, the Council, the Clerk and the applicant;

For the purpose of the audit, the auditor is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality and has the powers of a commission under Part II of the *Public Accountancy Act*, which Part applies to the audit as if it were an inquiry under that Act;

The City shall pay the auditor’s costs of performing the audit;

Council shall consider the report within 30 days after receiving it and may commence a legal proceeding against the candidate for any apparent contravention of a provision of the Act relating to election campaign finances; and

If the report indicates that there was no apparent contravention and Council finds that there were no reasonable grounds for the application, Council is entitled to recover the auditor’s costs from the applicant.

Section 81(3.1) and (3.2) of The Act gives Council the ability to establish a Compliance Audit Committee and delegate its powers and functions with respect to compliance audits provided that the committee is established before voting day. The Authority of the present Compliance Audit Committee does not go beyond the 2006 municipal election. It would be prudent to consider extending its appointment to cover any by-elections that may occur and the 2010 general election. This would enable Council to have the continued benefit of any experience that the committee members may acquire should a request for a compliance audit be received.

**ANALYSIS/RATIONALE:**

The previous Council determined that it did not want to be involved in decision making concerning the election financing of fellow Council members or municipal election candidates. Accordingly, it delegated its powers to a separate Compliance Audit Committee that was removed from the political forum. The new Municipal Act amendments stress the importance of an independent investigative process on issues of perceived misconduct. We concur with this approach and believe that it would be in Council’s best interest to continue with full delegation of its powers under section 81 of The Act to the Compliance Audit Committee.
ALTERNATIVES FOR CONSIDERATION:

Council could do nothing and allow the present appointments to lapse after the 2006 election financial reporting period. This would require that Council would have to respond to and decide on any future compliance audit requests.

Council could decide at some time before the next election or by-election to appoint a new Compliance Audit Committee by going through a new selection process.

The present committee has been delegated all of council’s compliance audit responsibilities under the Act. These include deciding on whether a compliance audit should be done, appointment of an auditor, review of the auditor’s report and determination on whether legal proceedings should be commenced or whether costs should be recovered from the applicant for the audit. With the exception of the decision on whether to do a compliance audit, Council could choose to retain any one or all of the duties in its appointment or reappointment of the committee.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Section 81(3.1) of the Municipal Elections Act notes that if a Compliance Audit Committee is established the Council shall pay all costs in relation to the operation and activities of the committee.

The committee will have a representative from the Office of the Clerk to schedule meetings, take minutes and prepare the required materials for committee’s deliberations.

POLICIES AFFECTING PROPOSAL:

Not applicable

RELEVANT CONSULTATION:

No specific consultation was undertaken as all actions required are set out in the Municipal Elections Act,

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.
Environmental Well-Being is enhanced.  ☒ Yes  ☐ No

Economic Well-Being is enhanced.  ☐ Yes  ☒ No

Does the option you are recommending create value across all three bottom lines?  
☐ Yes  ☒ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  
☐ Yes  ☒ No