REPORT TO COUNCIL

TO: Mayor and Council
FROM: Carolyn Downs, City Clerk
DATE OF MEETING: April 20, 2010
SUBJECT: MUNICIPAL ELECTION COMPLIANCE AUDIT COMMITTEE

EXECUTIVE SUMMARY:
In 2006 prior to the municipal election, City Council approved the establishment of a Compliance Audit Committee and provided that the Committee be delegated all of the responsibilities, powers and functions as set out in the Municipal Elections Act, 1996, in respect of compliance audit applications. Under the legislation in place in 2006, the creation of a Compliance Audit committee was optional. The Municipal Elections Act, 1996 has been amended and for the 2010 municipal election the establishment of Compliance Audit Committees is mandatory. Legislation requires that Committees must be in place by October of 2010, and that appointments to serve on the Committee be for the term of the 2010 elected Council.

This report is being presented in order to obtain Council approval to establish a Compliance Audit Committee and to authorize the City Clerk to seek candidates to serve on the Committee for a term ending November 30, 2014, as required in the Municipal Elections Act, 1996.

RECOMMENDATION:
THAT a By-Law be presented to amend By-Law 2004-360, in order to establish a Compliance Audit Committee prior to October 1, 2010, as required according to the Municipal Elections Act, 1996, as amended;
And further
THAT the mandate as set out in Schedule ‘A’ to the draft By-Law attached to Report 10-146 be adopted, it being understood that the Committee shall be delegated all of the responsibilities, powers and functions under Section 81 of the Municipal Elections Act, 1996, in respect of compliance audit applications;
And further
THAT pursuant to the Municipal Elections Act, 1996, as amended, (Section 81(13)) the municipality shall pay the auditor’s costs of performing the audit and (Section 81.1(5)) Council shall pay all costs in relation to the Committee’s operation and activities;
And further
THAT the City Clerk be authorized to contact representatives of the Limestone District School Board and the Algonquin and Lakeshore Catholic District School Board to determine if they wish to partner with the City of Kingston’s Compliance Audit Committee, it being noted that each of the Boards are also required under the amended legislation to appoint Compliance Audit Committees to review applications for compliance audit of School Board Trustee candidates.
And further
THAT in addition to the normal advertisements placed in the paper seeking volunteers to serve on Committees, that the City Clerk be authorized to solicit interest from auditors, accountants, lawyers and academics and that the list of potential candidates be submitted to the Nominations Committee for consideration and recommendation to Council.
AUTHORIZING SIGNATURES:

<table>
<thead>
<tr>
<th>ORIGINAL SIGNED BY CITY CLERK</th>
<th>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</th>
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<tbody>
<tr>
<td>Carolyn Downs, City Clerk</td>
<td>Gerard Hunt, Chief Administrative Officer</td>
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CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

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<tr>
<th>Commissioner</th>
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<tr>
<td>Cynthia Beach, Sustainability &amp; Growth</td>
<td>N/R</td>
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<td>Terry Willing, Community Development Services</td>
<td>N/R</td>
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<tr>
<td>Denis Leger, Corporate Services</td>
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<tr>
<td>Jim Keech, President and CEO, Utilities Kingston</td>
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(N/R indicates consultation not required)
OPTIONS/DISCUSSION:

The Municipal Elections Act, 1996 has been amended to provide that Compliance Audit Committees are now mandatory. Under the provisions of the Act 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 Compliance Audit committee is responsible for considering all applications for compliance audits and for deciding whether the application should be granted or rejected. The decision of the Compliance Audit Committee may be appealed to the Ontario Court of Justice.

The revised legislation provides that School Boards must also establish a Compliance Audit Committee for the review of any compliance audit applications received relating to school board trustee candidates. It is being recommended by staff that the City Clerk contact representatives of the Limestone District School Board and the Algonquin and Lakeshore Catholic District School Board to determine if the School Boards would be interested in partnering with the City of Kingston to have one Compliance Audit Committee responsible for reviewing applications for both City Council and School Board Trustee compliance audits.

The legislation provides that the Committee shall be comprised of no fewer than three and not more than seven members. Employees or officers of the corporation, members of Council, any candidates in the election for which the Committee is established cannot be members of the Committee. The term of office would commence on December 1, 2010 and would run for the term of Council to November 30, 2014. Compliance Audit Committee members must possess in depth knowledge of the campaign financing rules of the Act. Prior experience on a committee would also be an asset.

Due to the technical nature and expertise required of members of the Committee, it is recommended that the City Clerk solicit interest from auditors, accountants, lawyers and/or academics to serve on this Committee. The names of those who come forward would be submitted to the Nominations Committee as soon as is possible for appointment to the Committee prior to the October 1, 2010 deadline set out in the Municipal Elections Act, 1996.

In order to avoid conflict of interest, care must be taken that any auditors or accountants appointed to the Compliance Audit Committee do not audit or prepare the financial statements of any candidate running for office. Accordingly, it is staff’s recommendation that any auditor or accountant appointed to the Committee would have to agree in writing to not undertake the audits or preparation of the financial statements of any candidate seeking election in the 2010 municipal election. Failure to adhere to this requirement would result in the individual being removed from the Committee.

EXISTING POLICY/BY LAW:
Municipal Elections Act, 1996

NOTICE PROVISIONS:
None

ACCESSIBILITY CONSIDERATIONS:
This report can be made available in alternate forms, upon request.
FINANCIAL CONSIDERATIONS:
Pursuant to the Municipal Elections Act, 1996, Section 81(13), the municipality shall pay the auditor’s costs of performing the audit, and Section 81.1(5); the municipality shall pay all costs in relation to the Committee’s operation and activities.

CONTACTS:
J. Bolognone, Deputy City Clerk

OTHER CITY OF KINGSTON STAFF CONSULTED:

EXHIBITS ATTACHED:

Exhibit A – Draft By-Law (including Terms of Reference for 2010 Compliance Audit Committee)
A BY-LAW TO AMEND BY-LAW 2004-360, “A BY-LAW TO DEFINE THE COMPOSITION AND TERMS OF REFERENCE FOR COMMITTEES ESTABLISHED BY THE CORPORATION OF THE CITY OF KINGSTON” (ADD 2010 COMPLIANCE AUDIT COMMITTEE)

PASSED: May 4, 2010

The Council of The Corporation of the City of Kingston hereby enacts as follows:

1. By-Law No. 2004-360, “A By-Law to Define the Composition and Terms of Reference for Committees Established by the Corporation of the City of Kingston”, as amended, is hereby further amended as follows:

   A. The Terms of Reference for the 2010 Compliance Audit Committee attached to this By-Law as Schedule ‘A’ shall be added to By-Law 2004-360, as amended, as Schedule C-7 – Legislated Committees.

GIVEN FIRST AND SECOND READINGS April 20, 2010

GIVEN THIRD READING AND PASSED xxx, 2010

CITY CLERK

MAYOR
1. **Committee Name**

   Kingston 2010 Election Compliance Audit Committee

2. **Duration**

   The Committee must be established before October 1, 2010 and the term of office is the same as the term of office of the Council (November 30, 2014).

3. **Mandate**

   The powers and functions of the Committee are set out in Sections 81 and 81.1 of the *Municipal Elections Act, 1996*, as amended. The Committee will be required to:
   
   a) consider all compliance audit applications received relating to election campaign finances of 2010 election candidates and decide whether the application should be granted or rejected;
   b) if an application is granted, appoint an auditor to conduct a compliance audit;
   c) consider the auditor’s report and
      i) 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;
      ii) if the report concludes that the candidate does not appear to have contravened a provision of the Act relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application;
   d) recover the costs of conducting the compliance audit from the applicant if the report indicates there was no apparent contravention and the Committee finds there were no reasonable grounds for the application.

4. **Membership**

   The Committee will be composed of three (3) members who are not employees or officers of the municipality or local board, members of the Council or local board or any persons who are candidates in the 2010 municipal election. Membership will be drawn from the following groups:
   
   a) accounting and audit – accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates; and/or
   b) academic – college or university professors with expertise in political science or local government administration; and/or
   c) legal; and/or
   d) other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*, as amended.

5. **Membership Selection**

   The City Clerk will contact individuals from the groups listed above. Members will be selected on the basis of the following:
   
   a) demonstrated knowledge and understanding of municipal election campaign financing rules;
   b) proven analytical and decision-making skills;
   c) experience working on a committee, task force or similar setting;
   d) availability and willingness to attend meetings;
   e) excellent oral and written communications skills.

   To avoid a conflict of interest, any auditor or accountant appointed to the Committee must agree in writing to not undertake the audits or preparation of the financial statements of any candidates seeking election in 2010. Failure to adhere to this requirement will result in the individual being removed from the Committee.

   All members are subject to approval of Kingston City Council.

   …continued on Page 2
6. **Chair**  
The Committee members will select a Chair from amongst its members at its first meeting.

7. **Staffing and Funding**  
Staff from the City Clerk’s Office will provide administrative support to the Committee.

8. **Meetings**  
All meetings of the Committee will be open to the public and the City’s website will be used to communicate the meeting notices and agendas.