

VanRIMS No.: 08-2000-20

MEMORANDUM

April 28, 2014

TO: Mayor and Council

CC: Penny Ballem, City Manager
Sadhu Johnston, Deputy City Manager
Janice MacKenzie, City Clerk
Kevin Quinlan, Director, Policy and Communication, Mayor's Office
Lynda Graves, Manager, Administration Services, City Manager's Office
Mike Magee, Chief of Staff, Mayor's Office
Rena Kendall-Craden, Director, Communications
Francie Connell, Director Legal Services

FROM: Janice MacKenzie
City Clerk

SUBJECT: Campaign Finance Regulation - Request for Staff Information (RTS 10573)

At the Regular Council meeting of April 15, 2014, a motion was put forward by Councillor Carr concerning the development and implementation of campaign financing guidelines to be voluntarily adopted by all parties and candidates for the election campaign period of the local general election in November 2014. Specifically, the motion proposes that Council establish an all-party subcommittee of Council to develop the guidelines including specified limits on sources and amounts of donations and campaign expenditures.

The motion put forward by Councillor Carr referenced a similar motion having been adopted by the North Vancouver City Council in November 2013. The North Vancouver motion urged candidates to abstain from accepting donations from certain parties.

The motion put forward by Councillor Carr was referred to staff for further information regarding:

- a. the alignment, if any, of voluntary measures with recognized best practices in campaign finance regulation;
- b. whether any other jurisdiction has chosen to rely on voluntary measures in lieu of campaign finance regulation, and the efficacy of such measures should they exist; and
- c. what financial, legal, staffing and other implications may result from the use of voluntary measures for an election

A. Background: Legal Framework for Local Government Elections in BC

Local government elections in British Columbia are governed by the Local Government Act and the parallel provisions in the Vancouver Charter. Under the Vancouver Charter and School Act, these rules also apply to the Vancouver Park Board and School Board elections. This means that the rules for conducting municipal elections are dictated by the Province. These rules are extensive and cover areas such as:

- When elections are held, how they are conducted, and who can vote;
- The qualifications for holding office and how the nomination process is conducted;
- The endorsement of candidates by elector organizations, and appointment of candidate representatives;
- The handling and management of campaign financing;
- Opportunities for voting and arrangements for voting;
- The conduct of voting proceedings, voting, and counting the vote;
- What constitutes an election offence; and
- rules governing other voting.

The Vancouver City Council, like other local governments in BC, only have election-related powers in those areas where the Province has explicitly given them power. For example, Council may, by by-law, use the Provincial list of voters as the City's list of registered voters. As well, the Province allows the City to decide when additional advance voting opportunities will be provided. This authority is exercised by by-law and, in the case of the City of Vancouver, is reflected in the Election By-law No. 9070.

B. Current Situation: Local Government Election Reform

The current campaign financing system is set out in the Vancouver Charter and Local Government Act. Each statute establishes rules that govern the incurring, recording, and disclosing of election expenses - they do not establish expense limits.

In May 2010, the Local government Election Task Force, which was a partnership between the Province and the Union of BC Municipalities, put forward over thirty recommendations concerning changes to local elections legislation. In response to these recommendations, in September 2013, the Province released a White Paper on Local Government Reform. This document addressed many of the recommendations put forward by the 2010 Task Force and provided a draft version of a proposed new *Local Elections Campaign Financing Act (LECFA)*.

In March 2014, the proposed *LECFA* legislation was introduced in the Legislature. It is expected to be enacted and receive Royal Assent by June 2014 and be in place for the 2014 general local election. Note that the proposed legislation includes moving to a four-year election term, which is consistent with the term of office for other local governments in other provinces.

The proposed *LECFA* legislation represents Phase I of campaign finance reform in BC local elections. The changes are significant and focused on improving accountability, transparency, compliance, and enforcement. Phase II of the campaign financing reform will involve introducing expense limits legislation in time for the next local election following 2014 - which will be in 2018, assuming the Province approves a four-year term of office. The limits are intended to further increase transparency, accountability and accessibility. In late 2013, the Province initiated targeted stakeholder engagement on expense limits.

For Phase I, many sections of the Vancouver Charter and Local Government Act are expected to be repealed and many other sections will be amended. The *Local Elections Campaign Financing Act* will govern in the place of those repealed sections. Elections BC will take on a new compliance and enforcement role under *LECFA*.

City staff are concerned about the timing of the proposed *LECFA* changes in light of the upcoming municipal election in November 2014. The timing leaves very little time for Elections BC to effectively communicate the new rules to the candidates, elector organizations, and third party advertisers, as well as to train the local government election officials in the application of the new campaign financing rules. The impact of this, if not well done, could be inadequate understanding and enforcement of the new rules. It is also possible that, at the last minute, the statute could allow Elections BC to require municipal staff to take on the enforcement role. This would create a very difficult situation.

C. Information Requested of Staff

Council has asked whether campaign finances regulation best practices includes the use of voluntary measures, and whether other jurisdictions have chosen to rely on voluntary measures in lieu of campaign finances regulation. If so, Council would like to know the effectiveness of such measures.

Staff have reviewed campaign financing systems in several other Canadian jurisdictions - federal, provincial, and local. In addition, staff conducted a literature review of political finance regulations around the world. On the basis of this review, staff were unable to locate the existence of any campaign financing systems that are voluntary in nature. Where a government has implemented a campaign financing system, the system is enforceable and typically applies to candidates, political parties, and, in many instances, third party advertisers. Campaign financing systems may establish rules concerning both campaign contributions and election spending for each group.

With respect to municipalities in Canada, some provinces have enacted legislative schemes empowering and allowing municipalities to set their own rules related to campaign contributions and/or campaign expenses (e.g. Manitoba, Newfoundland, Saskatchewan, Alberta). Other provinces are more prescriptive and have set campaign finance limits via provincial legislation to apply to all municipalities (e.g. Ontario, Quebec). Some provinces have not implemented a legislative scheme to address campaign financing limits. Where a province has not implemented a legislative scheme of any sort, it does not appear that local governments within that province have implemented voluntary measures.

As indicated previously, Vancouver City Council does not have the authority to pass a by-law or resolution governing campaign financing limits as that authority has not been granted by the Province. As such, any action taken by Council regarding the setting of campaign financing limits would be strictly voluntary in nature, and not enforceable in any manner. If voluntary restrictions were agreed on by the current Council, these voluntary measures would only apply to the current Council members - they would not apply to other candidates running in the upcoming 2014 general local election, nor would the voluntary measures apply to the electoral organizations or third party advertisers.

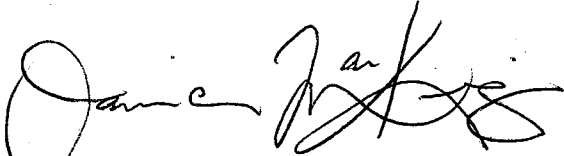
In the members motion put forward by Councillor Carr, reference was made to the November 2013 motion passed by the North Vancouver City Council that urged all candidates to abstain from accepting donations from developers with projects or potential projects before Council or from labour unions that represent employees of the City. Upon contacting the City of North Vancouver, Vancouver City staff were informed that the resolution is not binding nor enforceable in any manner.

City staff were also asked what legal, financial, staffing or other implications could result from the use of voluntary measures. Staff put forward the following points for Council's consideration:

- Legal staff have advised that the voluntary measures, at best, would only apply to existing members of Council who agree to be bound by the measures. The measures would not apply to other candidates running for office, elector organizations, or third party advertisers. This would result in an uneven playing field where some candidates agree to follow one set of rules/guidelines where campaign limits are set out by Vancouver City Council. All other candidates, elector organizations, and third party advertisers would follow a different set of rules set out by the Province where campaign financing limits are not currently restricted.
- Because the voluntary rules would only apply to current members of Council if they agreed to abide by the measures, it is questionable as to whether agreement to the detailed campaign financing rules could be obtained well enough in advance of the 2014 municipal election. It should be noted that under the current and new tabled *LECFA* legislation, the election expense period begins on January 1 in the year of a local government election. It is unclear whether this will apply for the 2014 elections.
- The Province has indicated its intent to implement the *LECFA* legislation in time for the 2014 municipal election. This will result in a new disclosure and reporting structure that is overseen by Elections BC. Significant education of all concerned will be required. If Council was to adopt voluntary expense limit measures on top of the changes resulting from *LECFA*, confusion could result which, in turn, could compromise the process.
- The Province began consulting with stakeholders regarding election expense limits in late 2013. The Province intends to implement expense limits in time for the 2018 general local election. As such, the voluntary campaign financing measures established by Council would likely only apply to the 2014 municipal election.
- Should Council agree to put in place voluntary campaign expense limits for the 2014 municipal election, significant staff effort would be required to support the proposed all-party subcommittee of Council in their work to develop detailed guidelines. The timing of this support would require additional staff to be dedicated to this activity. At present, current staff members are fully immersed in preparing for the 2014 municipal election.
- Once the detailed rules are established, staff time and effort would be required to develop communication tools, web forms, instructions, a disclosure and reporting process, and a compliance/enforcement process for the voluntary measures.

- Given that the voluntary measures would only apply as guidelines to existing members of Council or whoever committed to follow them, the literature suggests that the implementation of such rules could result in some distortions in the candidate funding activity resulting in reduced transparency, accountability, and compliance.

Should Council require any additional information, please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read "Janice MacKenzie". The signature is fluid and cursive, with the first name being particularly prominent.

Janice MacKenzie, MPA, B. Comm.
City Clerk

