

EXPLANATION

A By-law to Establish and Maintain an Independent Office of Auditor General

The attached By-law will implement Council's resolution of November 4, 2020, to establish and maintain an Independent Office of Auditor General. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services
November 4, 2020

CITY OF VANCOUVER

BRITISH COLUMBIA



BY-LAW NO. _____

**This By-law is printed under and
by authority of the Council of
the City of Vancouver**

_____, 2020

TABLE OF CONTENTS

PREAMBLE

SECTION 1 GENERAL

- 1.1 Name of By-law
- 1.2 Definitions
- 1.3 Table of Contents
- 1.4 Severability

SECTION 2 AUDITOR GENERAL

- 2.1 Independence and Accountability
- 2.4 Selection Process
- 2.6 Remuneration
- 2.8 Term

SECTION 3 MANDATE OF THE AUDITOR GENERAL

- 3.1 Powers, Duties and Limitations of the Auditor General
- 3.4 Responsibilities
- 3.7 Additional Powers, Duties and Responsibilities
- 3.9 Annual Audit Plan
- 3.11 Annual Reports and Recommendations
- 3.16 Peer Review
- 3.18 Mandate Review

SECTION 4 IMPLEMENTATION OF AUDITOR GENERAL MANDATE

- 4.1 Duty to Furnish Information
- 4.2 Access to Records
- 4.4 No Waiver of Privilege
- 4.5 Power to Examine on Oath
- 4.6 Duty of Confidentiality
- 4.8 *Freedom of Information and Protection of Privacy Act*

**SECTION 5
OFFICE OF THE AUDITOR GENERAL**

- 5.1 Office**
- 5.3 Office Budget**
- 5.6 City Corporate Policy Apply to Office**
- 5.8 Office Staff**
- 5.12 External Audit**

**SECTION 6
DISCLOSURE OF WRONGDOING AND
RETALIATION/REPRISAL PROTECTION**

- 6.1 Whistleblowing and Other Policies Apply, but Modified to Office**
- 6.2 Application of Whistleblowing and Protection Process to Office**

**SECTION 7
RECORDS RETENTION**

- 7.1 Independent Management of Records**
- 7.4 Records Retention Schedule for Office**
- 7.6 Record Retention and Disposition**
- 7.7 Non-Audit Records**
- 7.10 Reporting to Auditor General Committee on Record Retention Schedules**

**SECTION 8
ENACTMENT**

- 8. Force and Effect**

BY-LAW NO. _____

A By-law to Establish and Maintain an Independent Office of Auditor General

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts the following:

**SECTION 1
GENERAL**

Name of By-law

1.1 The name of this By-law, for citation, is the “Auditor General By-law”.

Definitions

1.2 In this By-law:

“Auditor General Committee” means the committee of Council created by Council pursuant to Section 161 of the Vancouver Charter to provide oversight to the Office of the Auditor General, and in any case where the Auditor General Committee has been disbanded or has less than 4 members of Council, and Council resolves to assume the duties of the Auditor General Committee, the “Auditor General Committee” is deemed to be Council meeting as a committee of the whole;

“Audit Record” means a record created by the Office of the Auditor General and classified as an Audit Record by the Auditor General;

“Board” means any of the Vancouver Police Board, Vancouver Public Library Board, or Vancouver Park Board;

“City-Controlled Corporation” means any entity owned or controlled by the City, including without limitation, Pacific National Exhibition, Vancouver Affordable Housing Agency Ltd., and Vancouver Economic Commission;

“Code of Conduct” means the policy adopted by Council entitled “Code of Conduct”;

“Non-Audit Record” means any record of the Office which is not classified by the Auditor General as an Audit Record;

“Office” or “Office of the Auditor General” means the Auditor General including all staff employed to report directly or indirectly to the Auditor General and, depending on the context, includes the physical premises, records and other appurtenances of the Office; and

“Recruitment Committee” means the committee of Council created by Council pursuant to Section 161 of the Vancouver Charter to recruit the Auditor General, and in any case

where the Recruitment Committee has been disbanded or has less than 4 members of Council, and Council resolves to assume the duties of the Recruitment Committee, the "Recruitment Committee" is deemed to be Council meeting as a committee of the whole.

Table of Contents

1.3 The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

Severability

1.4 A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

SECTION 2 AUDITOR GENERAL

Independence and accountability

2.1 The Auditor General will carry out, in an independent manner, the duties and responsibilities of their office as set out in this By-law.

2.2 The Auditor General is accountable only to Council and, although an employee of the City, will not report to or be accountable to City staff.

2.3 All City staff, outside of the Office of the Auditor General, are required to respect and support the independence of the Auditor General and the staff of the Office of the Auditor General.

Selection process

2.4 The selection process for the Auditor General will be conducted by the Recruitment Committee with the support of an external recruitment firm.

2.5 Appointment of the Auditor General will be recommended to Council by the Recruitment Committee.

Remuneration

2.6 Remuneration for the Auditor General will be set by Council based on the remuneration and benefits provided by the City to its General Managers and Deputy City Managers, and the recommendations of the Recruitment Committee.

2.7 The remuneration for the Auditor General will be reviewed at least every 24 months by the Auditor General Committee.

Term

2.8 The Auditor General will be appointed for a non-renewable fixed term of office of 7 years.

2.9 The term of office for the Auditor General may only be modified by a resolution of Council.

SECTION 3 MANDATE OF THE AUDITOR GENERAL

Powers, duties and limitations of Auditor General

3.1 The Auditor General is responsible for assisting Council in holding itself and City administrators accountable for the quality of stewardship over public funds and for achievement of value for money in city operations.

3.2 Despite Section 3.1, the responsibilities of the Auditor General do not include the matters described in Sections 230-232 of the *Vancouver Charter* for which the City's external auditor is responsible.

3.3 The authority of the Auditor General to exercise powers and perform duties under this By-law in relation to:

- (a) a Board, is limited to those powers and duties conferred by that Board on the Auditor General voluntarily,
- (b) a grant recipient, applies in respect of any grants received by the grant recipient directly or indirectly from the City, and pursuant to which there is a grant contract or other legal agreement which authorizes the City to audit the grant recipient.

Responsibilities

3.4 The Auditor General is responsible for carrying out financial (excluding attest), compliance and performance audits of all programs, activities and functions of all City departments, the offices of the Mayor and members of Council, Boards and City-Controlled Corporations.

3.5 Despite Section 3.4, the Auditor General may undertake financial (excluding attest), compliance and performance audits and provide recommendations to the applicable Board as well as the Auditor General Committee, but only upon the request of that Board.

3.6 All reports by the Auditor General on City-Controlled Corporations or Boards will be submitted first to that entity's board of directors or trustees prior to submitting the report to the Auditor General Committee.

Additional powers, duties and responsibilities

3.7 The Auditor General will consider undertaking such other duties respecting audit matters as are recommended by Council from time to time but is not required to adopt any such recommendation.

3.8 The Auditor General will immediately report to Council any attempts at interference with the work of the Office of the Auditor General.

Annual audit plan

3.9 The Auditor General will, on or before January 30 of each year (or within 90 days of appointment where the Auditor General is appointed less than 90 days prior to January 30) submit an annual audit plan to Council.

3.10 Only the Auditor general can alter the annual audit plan.

Annual reports and recommendations

3.11 Subject to Sections 3.12 and 3.13, the Auditor General will report annually to Council on the activities and achievements of the Auditor General over the past year.

3.12 Despite Section 3.11, the Auditor General will submit the annual report to the Auditor General Committee for comment prior to submitting the report to Council.

3.13 Despite Section 3.11, the Auditor General will submit any report regarding a City-Controlled Corporation, Board, or grant recipient to the board of directors or trustees of that entity at least 7 days before submitting the report to Council.

3.14 The Office of the Auditor General will report directly to Council (and to the applicable Board or City-Controlled Corporation) on any investigations or inquiries conducted by the Auditor General.

3.15 Where any report by or under the auspices of the Auditor General makes recommendations, such recommendations will include, if feasible:

- (a) suggested City staff member to take responsibility for implementing the recommendations (eg. City Manager or General Manager);
- (b) timelines by which the recommendations should be implemented;
- (c) timelines by which the responsible City manager should report back to Council on progress in implementing the recommendations;
- (d) suggested methodologies for implementing the recommendations; and
- (e) metrics by which the implementation of the recommendations can be measured and tracked.

Peer review

3.16 The Auditor General will undergo an external peer review once every three years to ensure compliance with recognized professional auditing standards.

3.17 The results of the external peer review will be reported to Council through the Auditor General Committee.

Mandate review

3.18 The Auditor General Committee may periodically review the mandate of the Auditor General and then recommend to Council adjustments to the mandate to reflect changing circumstances.

3.19 A periodic review of a mandate will include consultation with the incumbent Auditor General, in order to reflect the Auditor General's experience, advice and input.

SECTION 4 IMPLEMENTATION OF AUDITOR GENERAL MANDATE

Duty to furnish information

4.1 Subject to Section 4.3, all City staff are required to, and all City-Controlled Corporations and Boards are requested to, give the Auditor General such information regarding their powers, duties, activities, organization, financial transactions and methods of business as the Auditor General believes to be necessary to perform the duties of the Office under this By-law.

Access to records

4.2 Subject to Section 4.3, the Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the City, City-Controlled Corporations, Boards and grant recipients, as the case may be, that the Auditor General believes to be necessary to perform the duties of the Office under this By-law.

4.3 In the case of Boards and grant recipients, where required, the Auditor General must obtain legal consent for, or the legal right to, access the items listed in Section 4.2.

No waiver of privilege

4.4 Despite Sections 4.1 and 4.2, where a disclosure to the Auditor General under Sections 4.1, 4.2 or 4.3 may constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege, the applicable staff member and Auditor General must consult with the City Solicitor before the information is provided to the Auditor General. The City Solicitor will then take such steps as are considered necessary or appropriate to make the information available to the Auditor General while protecting the privilege or obtaining Council's consent to the waiver of the privilege.

Power to request an examination on oath

4.5 Where the Auditor General considers it necessary or advisable to examine any person under oath, the Auditor General may, in consultation with the City Solicitor, submit a request to do so to Council. If Council agrees to the request, and so resolves to do so, a barrister may then be appointed by the Council pursuant to Section 176 of the *Vancouver Charter*, and the barrister will then complete the investigation and report the results of same to Council and if appropriate, the Auditor General and City Solicitor.

Duty of confidentiality

4.6 Subject always to the Freedom of Information and Protection of Privacy Act, and all other applicable laws, and in order to allow for the free and unencumbered provision of information to the Auditor General without fear of reprisal, the Auditor General and every person acting under the instructions of the Auditor General must treat as confidential all matters that come to their knowledge in the course of carrying out the mandate of the Auditor General under this By-law.

4.7 Subject to Section 4.6, the persons required to maintain confidentiality under Section 4.6 will not communicate information to another person in respect of any matter described in Section 4.6 except as may be required,

- (a) in connection with the administration of this By-law, including reports made by the Auditor General, or with any proceedings under this By-law, or
- (b) under the Freedom of Information and Protection of Privacy Act,
- (c) under the *Criminal Code* (Canada), or
- (d) under any other applicable law.

Freedom of Information and Protection of Privacy Act

4.8 While this By-law does not take priority over, or supersede, the *Freedom of Information and Protection of Privacy Act*, the Auditor General and all staff working within the Office of the Auditor General will not disclose any records or information which are subject to confidentiality or privilege under this By-law except where required to do so by law under the *Freedom of Information and Protection of Privacy Act* or other applicable laws.

4.9 All third party requests for access to the records of the Office will be managed by the Information and Privacy Officer of the City, in consultation with the City Solicitor and Auditor General as prescribed by the City's *Freedom of Information and Protection of Privacy By-law*.

SECTION 5 OFFICE OF THE AUDITOR GENERAL

Office

5.1 The Auditor General is independent of the City administration, subject to the requirements of this By-law.

5.2 The Auditor General has full carriage and control of, and is fully responsible for, the conduct and accountability of the Office of the Auditor General and will manage in compliance with applicable laws as well as such policies of the City that are of general application and do not interfere with the independence of the Office of the Auditor General.

Office Budget

5.3 The Auditor General is responsible for submitting an annual budget request to the Auditor General Committee which in turn is responsible for:

- (e) conducting such consultations and clarifications with the Auditor General as is considered appropriate by the Auditor General Committee;
- (f) submitting recommendations on the annual budget for the Auditor General to Council; and
- (g) providing regular updates to the City Manager and Director of Finance on the annual budget request process set out above (but for information purposes only) so as to facilitate the incorporation of such financial information into the general

corporate budget development process managed by the Director of Finance.

5.4 The Auditor General is not required to submit their budget request to the City Manager or Director of Finance for review, approval or recommendation.

5.5 Subject to Sections 5.3 and 5.4, the Auditor General's budget request will generally follow the corporate budget submission process as it relates to the level of information provided, and the formats used.

City corporate policy applies to Office

5.6 Subject to Section 5.7 below, the Auditor General is responsible for ensuring that the Office of the Auditor General complies with all corporate policies of general application to City staff, including without limitation:

- (a) Advertising (AG-010-01);
- (b) Alcohol, Controlled Drugs, and Medications Policy (ADMIN-011);
- (c) Breastfeeding in the Workplace (ADMIN-030);
- (d) Business Meeting and Discretionary Expenses (ADMIN-013);
- (e) Capital Budget Policy (ADMIN-005);
- (f) Code of Conduct (AE-028-01);
- (g) Community Relations - Intercultural and Race Relations (AG-001-01);
- (h) Diversity on Advisory Bodies Policy (COUN-004);
- (i) Ethical Purchasing Policy (AF-014-01);
- (j) Financial Disclosure Act - Requirements (ADMIN-015);
- (k) Financial Spending Authority (ADMIN-018);
- (l) Human Rights Harassment (AE-002-05);
- (m) Media Relations (AG-009-01);
- (n) Occupational Health and Safety (ADMIN-021);
- (o) Operating Budget Policy (ADMIN-004);
- (p) Privacy Policy (ADMIN-029);
- (q) Procurement Policy (ADMIN-008);
- (r) Respectful Workplace (AE-002-06);
- (s) Social Media (AG-009-02);

- (t) Sponsorship Policy (COUN-029);
- (u) Travel (ADMIN-026);
- (v) Whistleblowing - Reporting, Investigation and Protection (ADMIN-002); and
- (w) any amendments or replacements to the above, as well as any other City by-laws or policies of general application to City employees adopted by Council, from time to time.

5.7 Despite Section 5.6 above, where the Auditor General considers a particular section of a policy does or might interfere with the Auditor General's ability to perform, in an independent manner, the functions assigned to the Office of Auditor General by this By-law, a submission on same must be made to the Auditor General Committee which will in turn submit its recommendations on the issue to Council for decision.

Office staff

5.8 The Auditor General is responsible for the application of the City's employment-related policies to their staff with necessary modifications to reflect the independent nature of these functions.

5.9 The Auditor General will work with the City Manager, the General Manager of Human Resources, and the City Solicitor in areas where there is a staffing issue involving corporate responsibility or liability.

5.10 The Auditor General has the exclusive authority (on behalf of the City, as the employer) to appoint, promote, demote, suspend and dismiss all Auditor General staff, subject to the provisions of any City employment-related policies applicable to employees of the City.

5.11 Subject to Sections 5.8 and 5.9, the Auditor General has the exclusive authority, with respect to the Office of Auditor General to:

- (a) create the positions and compensation levels for Auditor General staff, within the Council-approved annual budget for the Office, and generally within the City's salary structure, having regard for comparable compensation levels for City staff for purposes of internal equity, and
- (b) modify, delete, or add to those positions and modify compensation levels from time to time and at any time, as the Auditor General sees fit in order to better implement the mandate of the Office.

External audit

5.12 The operations of the Office of the Auditor General will be included in the scope of the annual attest audit of the City, which is conducted by an external auditor appointed by and reporting to Council.

5.13 The Office will undergo an annual compliance audit by an external auditor appointed by and reporting to Council.

SECTION 6
DISCLOSURE OF WRONGDOING AND RETALIATION/REPRISAL PROTECTION

Whistleblowing and other policies apply, but modified to office

6.1 The City's employment-related policies, including Whistleblowing – Reporting, Investigation, and Protection, will apply to the Office of the Auditor General.

Application of whistleblowing and protection process to Office

6.2 The policy entitled "Whistleblowing – Reporting, Investigation, and Protection" is now deemed to apply to the Office of the Auditor General by making the following changes (but only when the policy is being applied to the Office):

- (a) references to "City Manager" and "General Manager" are deemed to be to the "Auditor General"; and
- (b) references to "Staff" are deemed to include staff of the Auditor General as well the Auditor General.

6.3 Where it is alleged that the Auditor General or their staff has committed serious misconduct as defined in the Whistleblowing policy, improperly breached confidentiality, or engaged in retaliation or reprisal, the City Solicitor may elect to appoint a third party investigator to investigate and report on the matter, but in any event the findings will be reported to City Council by the City Solicitor or third party investigator, as applicable.

SECTION 7
RECORDS RETENTION

Independent management of records

7.1 The Auditor General has the exclusive authority and responsibility to manage the Audit Records of the Office in an independent manner.

7.2 Nothing in this Section 7 will be construed to limit or interfere with the independence of the Office, including without limitation, the independent management and retention of Audit Records for which the Auditor General is responsible.

7.3 The Auditor General may establish any guidelines and policies necessary to the implementation of this Section 7, including without limitation the categorization and definition of the records which are to be classified as Audit Records (and therefore impliedly classified as Non-Audit Records).

Record retention schedule for Office

7.4 The Auditor General has the exclusive authority and responsibility to establish and maintain appropriate Audit Record retention schedules for the Audit Records of the Office in accordance with:

- (a) recognized professional auditing standards
- (b) applicable legal requirements (as advised by the City Solicitor) and

- (c) in consultation with the City Clerk and Chief Technology Officer as to the standards generally applied by the City.

7.5 The Auditor General may seek the provision of services, advice or assistance in the creation and implementation of policies and recommendation of retention schedules as required from the City Clerk, Chief Technology Officer, and City Solicitor.

Record retention and disposition

7.6 No Audit Record of the Office will be destroyed unless the retention period established for the Audit Record in accordance with Section 7.4 above has expired and no information hold is applied on the Audit Record.

Non-Audit Records

7.7 Subject to this Section 7, the Auditor General is responsible for the application of the City's general corporate records retention schedules to the Non-Audit Records of the Office, as appropriate.

7.8 A retention schedule set out in the City's general records retention policies and schedules applies to the Non-Audit Records of the Office.

7.9 Any retention schedule containing an archival review designation for Non-Audit Records of the Office will be deemed to require review by the Auditor General.

Reporting to Auditor General Committee on record retention schedules

7.10 The Auditor General will include in the annual report to the Auditor General Committee the creation and any subsequent modification to the Auditor General's record retention policies, guidelines, and schedules as well as all aspects of its integration with the City's records retention systems for the Non-Audit Records.

**SECTION 8
ENACTMENT**

Force and effect

8. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this ____ day of November, 2020

Mayor

Acting City Clerk