



## REPORT

Report Date: December 1, 2020  
Contact: Kelly Oehlschlager  
Contact No.: 604.873.7726  
RTS No.: 14206  
VanRIMS No.: 08-2000-20  
Meeting Date: December 11, 2020  
[Submit comments to Council](#)

TO: Auditor General Committee  
FROM: City Solicitor  
SUBJECT: Approval of Terms of Reference for External Representatives on the Auditor General Committee

### **RECOMMENDATION**

THAT the Auditor General Committee (the "Committee") approve the Terms of Reference/Code of Conduct for external liaison advisory members to the Committee substantially in the form attached as Appendix "A" to this Report.

### **REPORT SUMMARY**

On November 4, 2020, Council established the Auditor General Committee, approved its Terms of Reference, and appointed the following members of Council to the Committee:

- Rebecca Bligh
- Pete Fry
- Michael Wiebe
- Colleen Hardwick
- Sarah Kirby-Yung

The Terms of Reference provide that the Committee is to appoint two (2) external liaison advisory members to the Committee who are to have key skill sets to ensure an appropriate level of expertise and guidance on auditing issues to the Councillor members.

Prior to appointing the external members, the Auditor General Committee is required to approve a Terms of Reference/Code of Conduct to apply to and govern the external members' roles and responsibilities on the Committee.

This Report attaches as Appendix "A" a recommended set of Terms of Reference/Code of Conduct for those external members for the Committee's review and, if acceptable, approval.

## ***COUNCIL AUTHORITY/PREVIOUS DECISIONS***

On October 2, 2019, at the Standing Committee on City Finance and Services, Council unanimously voted in favour of a motion calling for the establishment of an Independent Auditor General Office for the City of Vancouver.

On December 17, 2019, Council approved the City's 2020 Budget, including Paragraph P which directed that "\$500,000 be reserved and allocated from the Operating Budget or existent \$750,000 remainder from the 2019 "Innovation Fund", toward the establishment of an Auditor General's Office in 2020."

On February 12, 2020, Council passed a motion to establish the Municipal Auditor General Informal Working Group to complete the information-gathering process, work with the CAAF on recommendations, and to then report back with recommendations to Council.

On July 10, 2020, the Informal Working Group and a representative of the CAAF presented their recommendations to Council on establishing an Office of Auditor General for Vancouver and these recommendations were approved unanimously by Council (the "AGO Resolution").

In November 4, 2020, Council unanimously approved the AGO Resolution and enacted a new Auditor General By-law as well as establishing and appointing Council members to each of the Auditor General Committee and the Auditor General Recruitment Committee.

## ***REPORT***

### ***Background/Context***

This Report recommends approval of the Terms of Reference/Code of Conduct for the external members of the Auditor General Committee.

### ***Strategic Analysis***

#### *Committee:*

As endorsed by Council in the AGO Resolution, and established by Council's November 4 resolution, the Auditor General Committee will:

- be comprised of 7 members, namely the 5 Councillors referred to above and 2 External Advisory Liaison Members (that will be appointed by the Committee once the external Terms of Reference/Code of Conduct is approved);
- the External Advisory Liaison Members will have performance audit experience to ensure an appropriate level of expertise and guidance on the new Auditor General;
- all members of the Committee have a clear mandate to provide oversight to the Auditor General and follow up on the work of the Auditor General with the City and any other organizations audited by the Auditor General all as set out in the Terms of Reference for the Committee approved by the AGO Resolution.

Accordingly, the Solicitor recommends that the Terms of Reference/Code of Conduct attached as Appendix “A” to this Report be approved by the Committee so that upon the selection and invitation by the Committee of prospective External Advisors, they have a Terms of Reference/Code of Conduct that properly articulates the legal status and parameters of the External Advisor’s role and responsibilities on the Committee.

***Implications/Related Issues/Risk***

***Financial***

No financial implications.

***Legal***

No legal implications.

***CONCLUSION***

The City Solicitor recommends the approval of the above Recommendations and attached Terms of Reference/Code of Conduct as important first steps of the Committee’s work towards the selection and appointment of the external members of the Auditor General Committee.

\* \* \* \* \*

**CITY OF VANCOUVER**  
**AUDITOR GENERAL COMMITTEE**

**EXTERNAL LIAISON ADVISORY MEMBERS - CODE OF CONDUCT/TERMS OF ENGAGEMENT**  
**("Reference Document")**

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Form 1 - Ownership Interest Disclosure Statement and Annual Statement of Compliance

1. **Definitions**

- (a) **"City"** means the City of Vancouver;
- (b) **"Confidential Information"** has the meaning given to it in section 9;
- (c) **"Costs"** means, in respect of any matter:
  - (1) all direct and indirect; and
  - (2) all consequential;  
losses, damages, liabilities, deficiencies, costs and expenses.
- (d) **"Third Party"** means any third party entity involved in any agreements, negotiations, or other dealings with the City or its affiliates;
- (e) **"Committee"** means the Auditor General Committee;
- (f) **"Committee's Terms of Reference"** means the Terms of Reference attached as Schedule "A" to this Reference Document;
- (g) **"External Advisor"** means an external liaison advisory member of the Committee (ie. those members who are not Councillors);
- (h) **"AGC Chair"** means the Committee Chair; and
- (i) **"Political Activity"** is applicable to the civic, regional, provincial, and national elections and includes:
  - (1) carrying on any activity in support of, within, or in opposition to a political party;
  - (2) carrying on any activity in support of or in opposition to a candidate before or during an election period; and
  - (3) seeking nomination as or being a candidate in an election before or during the election period.

To Each External Advisor:

## **2. General Intent**

The City thanks External Advisors for and greatly appreciates their generosity to our community in agreeing to sit as a member of the Committee, and provides the material set out in this Reference Document to assist in effectively understanding the terms of engagement and code of conduct that govern participation on the Committee. The purpose of this Reference Document is to set out the most important terms and conditions which apply to External Advisors.

## **3. Committee Composition and Term**

The Committee will be comprised of up to seven members, 5 of whom will be Councillors, and up to 2 of whom will be fully participating but non-voting External Advisors (due only to Vancouver Charter constraints). Appointment to the Committee will be for an initial term of three years. The Committee has been formed to serve at the discretion of City Council and each External Advisor serves at the discretion of City Council. As such, the term of an External Advisors' appointment may be extended for one additional three year term, or the Committee may be disbanded and/or an External Advisor's appointment may be withdrawn or cancelled without cause at any time, on written notice from the City. Committee membership will be reviewed by City Council on an annual basis.

## **4. Scope of Committee Activities**

The Committee has been established by City Council to provide confidential, objective, expert advice to City Council with respect to

- supporting the independence of the Auditor General,
- supporting the mandate of the Auditor General as set out in the Auditor General By-law, and
- providing the oversight prescribed by the Auditor general By-law to the Auditor General on behalf of Council,

all as more particularly set out in the Committee's Terms of Reference.

## **5. External Advisor is a Volunteer**

Since External Advisors sit as volunteers, they will not be entitled to any compensation and will not be an employee of the City. Accordingly, External Advisors are not entitled to Workers Compensation Board benefits nor any medical, disability or other insurance benefits or coverage of any kind.

## **6. Conflicts of Interest - Prior to Joining Committee**

Except as disclosed to the City in writing prior to starting on the Committee, the External Advisor now confirms that, to the best of their knowledge as of the date of joining the Committee, the External Advisor is not:

- (a) an elected official or employee of the City; or
- (b) an officer, director, shareholder, partner or employee of any business of a Third Party's;

such that there would be any conflict of interest or any appearance of conflict of interest in the External Advisor's participation on the Committee.

## 7. Conflicts of Interest - Avoidance/Management After Joining Committee

External Advisors must avoid situations where their personal interests conflict with their duty to the Committee and the City. A conflict of interest occurs when an External Advisor's personal interest or obligation may influence their advice or performance on behalf of the Committee. A personal interest may create:

- an actual conflict, (for example - an External Advisor owns property or a business interest that is directly involved in providing goods or services to the City);
- a potential conflict, (for example - an External Advisor or their business is planning to bid on a procurement opportunity with the City); or
- a perceived conflict, (for example - a External Advisor who is involved in choosing or recommending suppliers or consultants for the Committee is a close friend of an employee of a particular supplier and often attends personal and family events in the presence of the supplier).

These examples are intended to illustrate the types of conflicts that should be avoided and should not be considered an exhaustive list.

While conflicts must be avoided wherever possible, some conflicts can be appropriately managed or cured through full disclosure and separation of duties. In general:

- External Advisors must take all reasonable measures to avoid situations in which they could directly or indirectly benefit personally from a transaction involving, or contract with, the City or from the External Advisor's knowledge of or ability to influence decisions for the Committee; and
- where an actual, potential or perceived conflict of interest may exist, the External Advisor: (i) must declare the conflict to the Committee; and (ii) must not participate in any discussions, advice by the Committee related to the matter from which the conflict arises.

## 8. Outside Activities and Directorships

External Advisors may engage in outside activities, including acting as a director of a corporation, provided those outside activities do not interfere with the proper discharge of their duties to the Committee and the City and do not imply the Committee's sponsorship or support for the outside organization or its initiatives.

Examples of activities that would interfere with the proper discharge of an External Advisors duties include:

- knowingly being employed by, having a financial interest in, or borrowing from (except on widely offered customary terms), a supplier or service provider of the Committee; and



- receiving fees or benefits for referring the Committee or Committee members to an outside business or referring an outside business to the Committee.

External Advisors must promptly disclose in writing to the City a list of all companies in which they have an interest.

## **9. Accepting Gifts**

From time to time External Advisors may receive gifts from Third Parties. Receiving significant gifts from Third Parties in their capacity as an External Advisor may place the External Advisor in a perceived conflict position.

Gifts from Third Parties may be accepted if they benefit the Committee and are within normal industry standards for business relationships and hospitality. External Advisors should be comfortable that the gift does not create a sense of obligation, would improperly influence the External Advisor's advice or would be perceived by third parties as being extravagant or excessive. For example, a normal course gift might be a memento to reflect the completion of a major project or may be given simply to reflect the importance of an ongoing business relationship.

Individual gifts from Third Parties of a material nature with an estimated value in excess of \$50.00 should be declined with thanks, unless it will create a difficult or awkward situation in which case it should be reported to the AGC Chair. The City may determine that the gift should be returned or disposed of in support of charitable purposes.

Multiple gifts from the same Third Party over a short period of time should be avoided.

The following gifts from Third Parties must not be accepted: cash, bonds, negotiable securities, personal loans, any type of gift card/certificate valued at over \$50.00, airline tickets or use of a vacation property.

## **10. Charitable and Political Donations**

The Committee encourages the valuable contribution that is made by External Advisors personally participating in charitable, community, political, and similar organizations.

- External Advisors may support causes of their choice, but must ensure that contributions are not associated, or perceived to be associated, with the Committee.
- External Advisors may not solicit donations from other External Advisors or from the Committee's employees, suppliers or service providers except in support of City-approved charitable initiatives, or with the written approval of the City.

## **11. Political Advocacy**

External Advisors should enjoy broad political freedoms and should be able to engage in democratic politics with few restrictions. However, such broad freedoms must be exercised so as not to call into question an External Advisor's ability to perform their duties as an External Advisor in a professional and impartial manner. External Advisors may engage in any Political

Activity so long as it does not impair, or is not perceived as impairing, their ability to perform their duties as an External Advisor in a politically impartial manner.

External Advisors may seek nomination as candidates for City Council and for the Park Board, provided the External Advisor meets the following requirements:

- Notify the AGC Chair in writing, of the External Advisor's intention to consent to nomination, before being nominated;
- After advising the AGC Chair in writing, the External Advisor is entitled to and must take a leave of absence from the Committee, as follows:
  - i) Commencing on the first day of the nomination period or the date of notification, whichever is later; and
  - ii) Ending:
    - (A) if the External Advisor is not nominated, on the day after the end of the nomination period;
    - (B) if the External Advisor withdraws as a candidate, on the day after the withdrawal;
    - (C) if the External Advisor is elected, on the day the External Advisor resigns from the Committee and in no case later than the day on which the External Advisor swears the oath of office;
    - (D) if the External Advisor is not elected and no application for a judicial recount has been made, on the last day on which an application for a judicial recount may be made; and
    - (E) if the External Advisor is not elected and an application for a judicial recount has been made, on the date when the results of the judicial recount are determined.

## **12. Confidential Information**

For the purposes of this Reference Document, "Confidential Information" means any oral or written data, financial, operating, evaluation, and other information, submitted by a Third Party or generated by the Committee or the City as part of the Committee's activities, including without limitation:

- (a) all communications amongst the City, Third Parties, and the Committee occurring during or arising from the Committee's activities;
- (b) all financial, operating and other proprietary information in respect of the business, property and management of the Committee or any Third Party and any other information, written or oral, provided by the City or a Third Party as part of the Committee's activities;
- (c) any record, report, document, policy, practice, agreement, account, ledger or other data or information relating to the business or proposed business of the City or a Third Party, including without limitation any and all discoveries, inventions, processes, methods, techniques, know-how, trade secrets, and intellectual property and proprietary rights relating to the City or a Third Party, expressed in whatever form;

- (d) any record, report, document, policy, practice, agreement, or other data or information created by the City or the Committee in connection with the Committee's activities;

to which access is granted to or obtained by External Advisors from the City, but does not include any data or information which:

- (e) is or becomes publicly known or available through no breach of the terms of this Reference Document;
- (f) is disclosed with the prior written consent of the City; or,
- (g) is information required to be disclosed pursuant to the Freedom of Information and Protection of Privacy Act (British Columbia).

#### **10. Promise of Confidentiality by External Advisor**

The External Advisor acknowledges and agrees:

- (a) to keep all Confidential Information to which access is granted to or obtained by the External Advisor in strictest confidence and as being strictly private and confidential and not to disclose or permit disclosure of all or any portion of the Confidential Information, except as otherwise expressly permitted by this Reference Document or with the prior written authorization of the City;
- (b) not to use all or any portion of the Confidential Information in any way which may be reasonably considered as detrimental to the City or a Third Party, or which might be reasonably considered to adversely affect the integrity of the City or the Committee, or in any manner which would constitute a breach of any law, rule or regulation of any jurisdiction;
- (c) not to use all or any portion of the Confidential Information for any purposes other than the activities of the Committee; and,
- (d) to promptly advise the City in writing of any unauthorized use or disclosure or any anticipated use or disclosure of all or any portion of the Confidential Information comes to an External Advisors' attention and to take all reasonable steps to stop such unauthorized or anticipated use or disclosure.

#### **11. Return of Confidential Information**

On an annual basis at the direction of the City, External Advisors will promptly return to the City or destroy all records of the Confidential Information, without retaining copies and confirm such redelivery or destruction to the City by delivering to the City a certificate in writing which certifies such redelivery or destruction.

#### **12. Permitted Disclosures**

Despite anything above to the contrary, External Advisors may disclose all or any part of the Confidential Information as may be required by law or pursuant to an order of a court of competent jurisdiction, but only after advising the AGC Chair in writing, in order to allow the

City a timely opportunity to appeal any such order, before any disclosure is made of such Confidential Information.

### 12.1 Media Contact and Public Statements

In order to ensure that the Committee's reputation is maintained and that messages are consistent, all media inquiries should be directed to the AGC Chair. External Advisors should not make public statements regarding the Committee or the City.

### 13. Costs and Expenses

All incidental expenses associated with an External Advisor's role should be submitted to the AGC Chair, or such other person as may be designated from time to time. Expenses will be reviewed and approved by the AGC Chair provided they are within the City's approved expense reimbursement policy.

### 14. General Provisions

- (a) This Reference Document is governed by the laws of British Columbia and the courts of British Columbia will have exclusive jurisdiction over any and all disputes arising from it.
- (b) This Reference Document will bind and benefit External Advisors and their respective successors and assigns and will bind and benefit the City and its successors and assigns.
- (c) The relationship between the parties is that of a fiduciary relationship with External Advisors owing a fiduciary obligation of the utmost trust, confidence and loyalty to the City in keeping the Confidential Information confidential and avoiding or properly managing all actual and perceived conflicts of interest. However, aside from the above-noted obligations, nothing in this Reference Document creates any relationship of agency, partnership, or joint venture between the parties and neither party has the authority to act on behalf of the other party or commit that party in any way.
- (d) This Reference Document sets out the entire agreement concerning its subject matter and replaces and supersedes all prior discussions, agreements, and writings, if any, between the parties.
- (e) This Reference Document may not be amended except in writing and signed by each party. No condoning, excusing or over-looking by any party of any default or non-observance will operate as a waiver unless the waiver is expressly granted in writing and signed by the waiving party.
- (f) In the event of partial unenforceability or invalidity, or a change in the law, or other unintended event or occurrence, the parties will in good faith do everything and sign everything required to most nearly restore or approximate the original intent of this Reference Document.
- (g) Pursuant to the *Electronic Transactions Act* (British Columbia), the parties will be legally bound by the terms of this Reference Document upon transmission to the City of an e-mail acknowledging the External Advisor's agreement to same.

**15. Acknowledgement of Compliance**

All External Advisors are required, as a condition of their appointment, to complete the acknowledgement of compliance with this Reference Document attached as Form 1, within 30 days of their start date. Any material changes to this information will require another Form 1 to be completed and submitted to the AGC Chair within 30 days of any change.

**16. Applicable City Policies**

The City is committed to providing a work environment in which all individuals are treated with mutual respect and dignity. As such, the City has developed a "Human Rights and Harassment Policy" that addresses harassment as prohibited by the B.C. Human Rights Code, and a "Respectful Workplace Policy" that deals with disrespectful workplace behaviour that is not covered by human rights legislation. The City has also developed a "Whistleblowing-Reporting, Investigation and Protection" policy that sets out guidelines for the reporting and investigation of serious misconduct and provides protection from retaliation to those who report serious misconduct in good faith. These policies can be made available to External Advisors at their request.

**FORM 1**  
**OWNERSHIP INTEREST DISCLOSURE STATEMENT AND ANNUAL STATEMENT OF COMPLIANCE**

1. I have an interest in the companies set out in the attached document, which I am required to disclose pursuant to the Auditor General Committee Reference Document.

(Please list in an attached document all companies in which you have an ownership interest. If you have nothing to disclose, please sign and return this document with no attachment.)

2. I have received, read and understand the requirements of the Auditor General Committee Reference Document and will comply with the spirit and intent of the policies therein. I understand that non-compliance with the policies could result in termination of my appointment to the Auditor General Committee.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please return your completed form to:

AGC Chair  
C/O City Clerk  
City of Vancouver  
#320 - 507 West Broadway  
Vancouver, BC  
V5Z 0B4

**SCHEDULE "A"**  
**TERMS OF REFERENCE**  
**AUDITOR GENERAL COMMITTEE**

[Attach Terms of Reference as approved by Council]