

Office of the Integrity Commissioner



Annual Report

2009 – 2010



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Commissioner's Remarks

This is the first Annual Report submitted to City Council since I was appointed as Integrity Commissioner for the City of Vaughan on February 24, 2009. My position began on April 7, 2010 following the resignation of William Weissglas, who was the first Integrity Commissioner for the City of Vaughan. Mr. Weissglas was appointed by Council on April 14, 2008 and ended his tenure in the position on November 6, 2008.

I would like to take the opportunity to acknowledge the invaluable contribution to this office of my Executive Assistant Cathy Passafiume. Her professionalism and dedication have been integral to the successful transition from the work involved in the creation of the first office of the Integrity Commissioner to the hard work involved in the effective running of this office over the past year.

In addition, I would like to acknowledge the significant foundation work completed by Mr. Weissglas in concert with the Members of the Accountability and Transparency Committee. During the past year, Joy Lerman and Bill Fitzgerald, the two members of the public appointed to the Committee brought frankness and perspective to the difficult task of developing and bringing forward the first Code of Ethical Conduct. Their efforts and dedication, together with the efforts of all members of the Committee and under the leadership of the Chair, Councillor Alan Shefman demonstrated an earnest commitment to the development of an ethical framework at the City of Vaughan, culminating in the drafting and adoption of the first Code of Ethical Conduct for the city.

A Glance Back, Looking Forward

Over the past year, I have encountered many issues that related to the development and maintenance of integrity, openness and accountability at the City of Vaughan. I would like to touch on some of these issues in some detail to highlight some important issues, the resolution of which will affect the direction this office may take in the year ahead.

Jurisdiction:

The Code of Ethical Conduct (the "Code") applies to the Mayor and all Members of Council. The mandate of the Integrity Commissioner is to ensure that the rules of the Code governing elected public officials are objectively communicated and applied.

Section 6 of the Complaint Protocol for the Code of Ethical Conduct outlines the direction that the Integrity Commissioner takes when a complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Ethical Conduct.

Although section 6 3(b) of the Complaint Protocol indicates that the Integrity Commissioner shall advise a complainant to review matters relating to non-compliance with the *Municipal Conflict of Interest Act* with their own legal counsel, the widely-held belief at the municipal government level is that the Act is an outdated statute. Pushing the expensive and daunting court-based process to litigate allegations of conflicts of

interest dissuades the public from filing any type of complaint and exposes Members of Council to significant out-of-pocket liability. If there is a true desire at the Provincial level to enhance public trust, there need to be amendments to the Act to render it both more effective and less cumbersome to the complainant and respondent. Until such time as the Province turns its mind to such changes, the Office of the Integrity Commissioner is left in the precarious position of facing potential contraventions of the Code that overlap into conflict of interest legislation with the public and Members of Council left unfairly vulnerable.

Independence:

The independence of the Integrity Commissioner is enshrined in section 221.3 of the *Municipal Act*, 2001. This section states

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing **in an independent manner** the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them;

[bold my emphasis]

The purpose of this section is to ensure that the Integrity Commissioner will be in a position to act free from undue influence from members of Council or City staff. There is a delicate balance that must be struck when carrying out the function of this office to provide Council with specific and general opinions and advice on the City's policies and protocols regulating Members of Council in relation to the Code compliance.

Necessarily, there will be overlap between Members' obligations under Code rules and compliance with and adherence to City policies. Performing the functions of this office in an independent manner requires the ability to frankly report to Council on matters that may impede the effective application of the Code.

Framework of the Office of the Integrity Commissioner

Many of the telephone calls and communications that were received from members of the public were in relation to matters and complaints that were not within the jurisdiction of this office. The creation of this office was widely covered in the media and many of the residents of Vaughan that I had the pleasure of speaking with or meeting found an open door and listening ear and assumed that this office could receive their concerns and complaints regarding City staff, processes or decisions.

Queries or complaints from the public relating to actions, decisions or omissions of the City's administration, may be addressed in many ways. Although my mandate is limited to the application of the Code, adherence to the rules of the Code by Members of Council, investigation of complaints and education and outreach, the Integrity Commissioner's Annual Report is an appropriate place to not only outline the activities of this office over the past year, but also to provide constructive comments on some of the lacunae that this office encountered through the implementation of Council approved directives.

The *Municipal Act*, 2001 gives all municipalities (except for the city of Toronto which is governed by the *City of Toronto Act*) the discretionary authority to create accountability officers, including an Ombudsman, an Integrity Commissioner, a Lobbyist Registrar and an Auditor General.

As was demonstrated by the number of queries received by this office during this past year, in addition to the processes currently in place at the City to handle complaints from the public regarding administrative actions, decisions or omissions, there would appear to be some utility in the creation of an office or mechanism that could further enhance the accountability of the City. One example can be found in the City of Toronto where the Auditor General's Office administers a Fraud and Waste Hotline. The Auditor General is an independent accountability officer that reports directly to Toronto City Council. The Fraud and Waste Hotline is available to enhance awareness regarding the prevention and detection of any fraudulent or irregular activity. City employees, the general public and anyone doing business with the City can report suspected wrongdoing involving municipal resources, waste or contracts.

Certainly, the City of Vaughan, by way of discussions at appropriate Committees, has considered further accountability mechanisms. Some of these have recently been brought forward for discussion at City Council. Whether the City considers the creation of one or more of the accountability mechanisms contained in the *Municipal Act*, 2001, it should be noted that there needs to be an appropriate destination office created or a clearer explanation of existing City processes so that the public knows where to bring their queries regarding actions, decisions or omissions of the administration. The above would allow for appropriate re-direction by my office of the many informal complaints or questions that were received during the course of this year, for which I did not have jurisdiction to discuss or investigate.

Enforceability:

Of the 11 formal complaints received by this office between April 2009 and March 31, 2010, none have contained a recommendation of sanction to an elected official. However, most have contained either recommendations to Council in relation to City policies or in one instance, File 09.20.09 a recommendation that Council direct the respondent Member of Council to complete certain actions.

Integrity is by definition an internal component of one's behaviour manifested through

the decisions made and actions taken. An Ombudsman, an Auditor General, the Privacy Commissioner and other independent accountability officers are bodies that oversee the actions, omissions, decisions and contraventions of public institutions. An Integrity Commissioner oversees the application of rules of ethical behaviour in relation to elected officials. That being said, without a mechanism for which compliance with Council adopted Integrity Commissioner recommendations can be measured, some of the more controversial rulings may remain exercises in administrative rhetoric. (For an overview of all IC Recommendations, see page 17).

Councillors' Staff:

In April 2009, Council adopted the new Employee Code of Conduct. However, as I have noted in Complaint Investigation Report:

Council Member's staff can be distinguished from other members of the staff of the City of Vaughan. Council Member staff each receive direction from their Member of Council and carry out their duties at the pleasure of that Member of Council. In almost every function that they carry out in the Member's office, Council Member's Staff act as the agents of the Member, following their direction. Council Member's Staff have no obligation of political neutrality in the work they do or positions they take. I agree with the statement of the former Integrity Commissioner of the City of Toronto, Mr. David Mullan, when he said that "when [Council Members' staff] stand in the shoes of the Member, they should personally be bound by the constraints that the *Code of Conduct* places on that Member".

Insofar as Members of Council are regularly privy to confidential information acquired by virtue of their office, and insofar as their staff often have access to the same confidential information as the Members of Council, the rules regarding Confidential Information (Rule 3) and the Key Principles (Rule 1) necessarily include the transfer of responsibility and adherence to the rules where there is delegation from Member of Council to their staff.

Pursuant to Council's direction, I met and discussed with City staff, the issue of Council Member staff. I was pleased to see the City implement the new Employee Code of Conduct. However, the extent to which the scope of the obligations of Members of Council may coincide and be inextricably linked to the actions of their staff, will need further clarification at some point in the future.

FINANCIAL INFORMATION:
2009/2010 STATEMENT OF EXPENDITURES

	April 7 – December 31, 2009	January 1 – March 31, 2010
Salaries and Benefits	76,900	29,383 (306.00 = benefits)
Membership/Fees	0.00	0.00
Meals	0.00	0.00
Training and Development	0.00	90.00
Seminars and Workshops	84.00	0.00
Office Supplies	1,050.00	130.00
Computer Supplies	0.00	0.00
Computer Hardware	0.00	0.00
Copier-Fax Supplies	0.00	0.00
Professional Fees	6,889.00	0.00
Wireless/Internet	525.00	131.00
Sundry Expenses	188.00	0.00
Total	85,636.00	29,734.00

Integrity Commissioner Activities, April 7, 2009 – March 31, 2010

A. Code of Ethical Conduct for Members of Council, City of Vaughan

On September 21, 2009, Vaughan City Council adopted the Code of Ethical Conduct for Members of City Council. Over the summer, members of the public were invited to provide the Office of the Integrity Commissioner with comments on the Code. Members of the public chose to communicate their comments in various ways. Although more comments were expected, those who came forward and shared their thoughts brought forward some very important issues in relation to the Code.

Number of Comments Received on the Code of Ethical Conduct over the public comment period:

Total	83
Written	3
City Staff	10
In Person	15
By Telephone	54
Group Meeting	1

Illustrative Comments Summary:

“Why is [the Code] to be given a ‘broad and liberal’ interpretation”

“Is there however an opp[o]rtunity to increase the audience in which this code covers. In other words, should this code of conduct not extend to the Senior management within the [C]ity itself as well?”

“Expenses...’are modest’. This is too generic to be considered as part of a code of conduct. Who determines what ‘modest’ is?”

“I would also like to offer comments regarding the necessity to clearly state the distinction between a member of council acting in a political, partisan fashion and a member of council acting on behalf of the City of Vaughan; and to provide severe sanctions when abuse of power takes place in this regard...On one hand the mayor and the councillors in the exercise of their fiduc[i]ary responsibility, must be able to access information to ensure the effectiveness and wellbeing of the corporation...On the other hand, in exercising this fiduc[i]ary responsibility, it is entirely inappropriate for myself as a member of council to use this right to information for partisan political purposes.”

“Page 6 item f) under Commentary as it relates to the City’s Purchasing Policies. If we are going to be transparent then we need a Purchasing By-law like other municipalities!!! As far as I am concerned the current policies are not adequate

for the City of Vaughan.”

“Will this code have whistle-blower protection for people who don’t want repercussions?”

“If you stop councillors from helping us, is the City going to help us?”

“Why do we need a Code? Isn’t this obvious to everyone?”

“This Code is too long and it has too much. How are you going to enforce it?”

“This Code should apply to City staff too.”

“There are so many holes in this new [C]ode of [C]onduct that you can drive a fleet of Mac trucks through it.”

Where appropriate, comments received by the public were incorporated in the Code that was adopted by Vaughan City Council and came into force on November 2, 2009.

Important to the effective adherence to and compliance with the Code, is the understanding by Members of Council of the practical meaning and day-to-day application of the rules. It is for this reason that I conducted a Code of Ethical Conduct Workshop for Members of Council on October 5, 2009. At that Workshop, the Integrity Commissioner of the Province of Ontario, Lynn Morrison attended as a guest speaker. http://www.city.vaughan.on.ca/integrity_commissioner/pdf/Ont%20Integrity%20Commissioner%20presentation.pdf I am grateful to Commissioner Morrison for her insight on matters of ethics at the Province of Ontario that she provided to the Members at the Workshop, in addition to the ongoing assistance that her office has provided to me over the past year. A second workshop was delivered on October 20, 2009 to ensure that all Members of Council gain a common understanding of the application of the rules in the Code.

Although not all Members of Council are members of the Accountability and Transparency Committee, the Committee meetings were well attended by all Members who brought earnest questions and commitment to the discussions.

Since the adoption of the Code, my office has received inquiries from many other municipalities regarding the Code, its development and its application.

B. Councillor Expense Policy

Complaint Investigation Report 09.25.08 was the first report that I submitted to City Council. In that report, I made several references to the recommendations of the external auditor Ernst and Young regarding Council Member expenses.

At the December 10th Audit and Operational Review Committee, the Draft Council Member Expense Policy was considered. Committee sought clarification from the Integrity Commissioner on whether the section entitled, “Community Expense: (Hosting events by Council Member)”, referred to on page 13 of the policy, and included as an eligible expense out of the Council member budget, is in compliance with the Code of Ethical Conduct.

This Policy # 01.37 was approved at the December 14th Council meeting, with the exception of the part entitled “Community Expense: (Hosting events by Council Member)”. A motion of City Council stated the following:

“That Attachment 1, Council Member Expense Policy, contained in the memorandum from the City Auditor, dated December 14, 2009, be approved, subject to the section titled ‘Community Expense (Hosting Events by Council Member)’ being deferred to the Committee of the Whole meeting on January 12, 2010, for a report from the Integrity Commissioner in consultation with the City Auditor, addressing the concerns raised.”

The City Auditor had previously forwarded a copy of the first draft of the Council Member Expense Policy to me for review. I had provided the City Auditor with my comments and suggested changes. As per the direction of Council contained in the motion of December 14, 2009, I met with the City Auditor on December 15, 2009 and went over the most recent version of the Expense Policy to ensure that the Council Member Expense Policy was in compliance with the Code of Ethical Conduct. The Policy was adopted by City Council on March 9, 2010.

Of particular relevance was the recommendation that any donations cheques received by a Member of Council in relation to Community Events should go directly to the event or organizing body or shall be made out to the City of Vaughan. If a Member of Council receives monies (i.e. nominal amounts to purchase coffee or other refreshments for a town hall meeting), the Member must follow Rule 2(1) of the Code which outlines exceptions to gifts and benefits rule.

Members were reminded that they are strongly encouraged to list all gifts and benefits they receive, however, in the case of categories (b), (e), (f), (g), (h) and (i) of Rule 2(1), where the value of the gift or benefit exceeds \$500, or if the total value received from any one source during the course of a calendar year exceeds \$500, the member **shall** within 30 days of receipt of the gift or reaching the annual limit, list the gift or benefit on a Councillor information statement.

C. Complaint Investigation and Reporting

Statistics – April 2009 – March 31, 2010

Complaints under the Code of Ethical Conduct	
Formal Complaints Received:	11 (1 ongoing from former Commissioner)
Informal Complaints Received:	21
Total:	32
Settled, Withdrawn or Abandoned:	1
Rejected as Not within the IC Jurisdiction and referred out:	16
Rejected as Frivolous or Vexatious:	2
Rejected after Formal Investigation:	2
No investigation:	2
Upheld (inadvertence or good faith):	3
Upheld (with sanctions):	0
Finding of compliance with Code:	4
Ongoing (as of March 31, 2010):	2
Formal Complaints by Staff:	0
Informal Complaints by Staff:	2
Formal Complaints by Public:	11
Informal Complaints by Public:	16
Formal Complaints by Members:	0
Informal Complaints by Members:	3
Question on the application of the Code	
Questions from the public:	205
Questions from City staff:	37
Questions from Members of Council:	36
Written opinions on the application of the Code	
Formal opinions requested by Members of Council:	15

D. Education and Outreach

In the period that covers this Annual Report, I met individually with all Members of Council, the previous and current City Manager, the City Commissioners, the City Auditor, the City Clerk and the Director of Corporate Communications.

With a view to sharing good governance and accountability best practices of other accountability officers and independent government bodies, I met with the following:

Integrity Commissioner of Ontario

(discussed the processes and procedures in place at the Province of Ontario, the differences and similarities in the obligations and reporting for Members of Provincial Parliament and Members of Vaughan City Council, the history of the office of the Integrity Commissioner of Ontario and ethical oversight in Ontario)

Manager, Elections, City of Toronto

(discussed the principles contained in the Candidate's Handbook in anticipation of the 2010 municipal election, the issues that have arisen in past elections that relate both to the *Municipal Elections Act* and the rules contained in the Code of Ethical Conduct at the City of Toronto)

Policy Advisor, Ombudsman Toronto

(discussed process regarding the confidentiality of investigations, security and independence of IT resources, secure case management systems and audit/reporting procedures at the office of the Ombudsman Toronto)

Chief Electoral Officer, Elections Ontario

(although the CEO of Elections Ontario is not responsible for running elections at the municipal level, we discussed issues of note from previous elections at the municipal level in Ontario and the guiding principles required to ensure the integrity of the election process)

Integrity Commissioners of Ontario: Quarterly meeting – Hosted by City of Toronto's Integrity Commissioner.

(discussed best practices to ensure consistent application of the *Municipal Act* provisions as they relate to the activities of independent accountability officers at the municipal level in Ontario)

Integrity Commissioners of Ontario: Quarterly meeting, April 8, 2010 – Hosted by the City of Vaughan's Integrity Commissioner.

(hosted the 2nd quarterly meeting of independent municipal ethics officers at the City of Vaughan Civic Centre. There are currently approximately 11 appointed Integrity Commissioners in Ontario. The offices are part-time, full-time, and on an as-needed basis, depending on the size of the municipality)

I spoke at:

Government of Ontario Annual Access and Privacy Workshop
<http://www.verney.ca/onap2009/presentations/958.pdf>

Kleinburg and Area Ratepayers Association (KARA), meeting
(discussed the role of the Office of the Integrity Commissioner, processes of the office, issues and challenges and answered questions of those in attendance)

I delivered training on the Code of Ethical Conduct to:

Members of Vaughan City Council (October 5th and 19th)
(All Members of Council were in attendance. This is very significant as it has been my experience in other municipalities that attendance at City training sessions has not received full attendance. The Members were attentive and demonstrated commitment to gaining a full understanding of their roles and responsibilities under the rules that they had adopted contained in the Code of Ethical Conduct. The significant number of questions that arose at the October 5th session, required me to schedule a second session to provide concrete examples of the application of the Code rules, in addition to providing Members with an opportunity to ask more detailed questions regarding their responsibilities. Both sessions had full attendance).

Council Member's Staff

(The Executive Assistants (EAs) of the Members of Council are the front line for the politician's offices. Although ethical behaviour in compliance with the rules of the Code is the responsibility of the Members of Council, an understanding of the rules by their staff is crucial to the effective operation of their offices.

There were two sessions delivered. The first was a general overview of the Code rules shortly prior to the Code being in force. The second session was requested by the Members of Council as they believed strongly in the need for an understanding of the Code in the day-to-day operation of their offices.)

Closing Remarks

Effective application of Integrity Commissioner recommendations:

As I mentioned earlier in this report, integrity by definition is an internal component of one's behaviour manifested through the decisions made and actions taken. Over the past year, some have suggested that the Integrity Commissioner should be given order-making powers to strengthen the effective implementation of her recommendations. I would not want order-making powers as the Integrity Commissioner. The ethical foundation of the decisions of the elected representatives cannot be "enforced" by me. I can and do make recommendations on the rules contained in the Code. The Code serves as a blueprint against which to measure whether the Members of Council are following the ethical decision making practices that they adopted and to which they pledged to adhere.

If there is a contravention of the Code and I find that it is not inadvertent, or if I recommend actions be taken because the contravention is in good faith, the "enforcement" of the adopted recommendation should come from the Member acknowledging that pursuant to an agreed upon ethical contract with the public, the highest decision making body of the City - Council - has decided that the contract has been broken. The consequence of a breach of the ethical contract is that the Member must adhere to the adoption by Council of the Integrity Commissioner's recommendation. This alone will maintain the trust of the electors. Democracy is not always a speedy process. Ultimately, if a decision relating to my reports is not followed, it will be enforced at the ballot box. If the contract of trust has been broken, it is the public, who have the order making power, to determine who deserves to be their representative.

Acknowledgements:

Finally, I would like to acknowledge the support that I have received from members of the public, City staff and the Members of Vaughan City Council. Vaughan has been in the centre of controversy since the 2006 municipal election. I work with facts not innuendo, heresay or preconceived notions. To date, I have received full cooperation from the Members of Vaughan City Council and they have collectively and individually demonstrated by their actions in relation to the Code of Ethical Conduct, a commitment to adhere to the rules.

Respectfully submitted by:

Suzanne Craig
Integrity Commissioner

Commissioner Reports

File 09.25.08

Committee of The Whole Sept 8/09

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/committee_2009/a20090908.cfm

Adopted at Council Sept 21/09

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/council_2009/pdf/0921-09m.pdf

File 09.29.09

Committee of The Whole Jan 12/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/committee_2010/a20100112.cfm

Adopted at Council

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/council_2010/pdf/0126-10m.pdf

File 08.18.09

Committee of The Whole Feb 2/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/committee_2010/a20100202.cfm

Adopted at Council Feb 16/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/council_2010/pdf/0216-10m.pdf

File 12.14.09(a)

Committee of The Whole Feb 23/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/committee_2010/a20100223.cfm

Adopted at Council May 4/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/council_2010/pdf/0504-10council%20minutes.pdf

File 11.17.09(a)

Committee of The Whole May 11/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/committee_2010/a20100511.cfm

Adopted at Council May 18/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/council_2010/pdf/0518-10council%20minutes.pdf

File 11.17.09(b)

Committee of The Whole May 11/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/committee_2010/a20100511.cfm

Adopted at Council May 18/10

http://www.city.vaughan.on.ca/vaughan/council/minutes_agendas/council_2010/pdf/0518-10council%20minutes.pdf

File 12.08.09

Committee of The Whole June 15/10 n/a

Adopted at Council n/a

IC Recommendations

File #	C.of.W	Report	Item	IC Recommendations	Adopted by Council	Recommendations Implemented	
						YES	NO
09.25.08	Sept 8/09	38	27	THAT City Council implement the recommendations contained in the Supplemental Report of the External Auditor regarding the Mayor's City-Related Expenses for 2007. In particular, that Council: in reference to city of Vaughan Policy 01.14 "Council Budget/Expenditure Policy" require all Corporate and Council expenditures to have detailed supporting documentation and original receipts from Members of Council and consider appropriate action to be taken where there has been a finding of non-compliance.	Sept 21/09	√	
09.29.09	Jan 12/10	1	24	THAT City Council consider the recommendations contained in the attached report. Mayor's Jackson's office receive training on the confidentiality and security requirements for City documents. Members of Council consider clarification on the interaction between their obligations under the Code of Ethical Conduct and other policies which apply to Members' staff.	Jan 26/10	√	Mayors' office training X
08.18.09	Feb 2/10	5	26	THAT City Council seriously consider the implementation of: the City Auditor's recommended amendments to the current City purchasing policies contained in Report 4 submitted to City Council on December 14, 2009 to facilitate more transparent procurement processes and to ensure that City policy is linked to the compliance by Members of Council with the rules contained in the Code of Ethical Conduct as well as the recommendations put forward by The Audit and Operational Review Committee of December 14, 2009.	Feb 16/10	√	
12.04.09(a)	Feb 23/10	9	25	THAT Council consider the recommendations contained in the attached report (Attachment 1), that Mayor Linda D. Jackson seek from appropriate City staff reasonable and complete answers to the questions of the Complainant.	Mar 9/10	√	
11.17.09(a)	May 11/10	21	35	THAT as a result of the investigation and findings, the Integrity Commissioner will be meeting with the City Manager and other appropriate staff to discuss the development of further protocols to address the matter of Members of Council responding to questions from members of the public.	May 18/10	TBD	
11.17.09(b)	May 11/10	21	36	THAT Members obtain a full understanding of the procedure for giving testimony before the Ontario Municipal Board. In this way, Members of Council will be seen to serve their constituents in a conscientious and diligent manner and perform their official duties with integrity and transparency.	May 18/10	√	
12.08.09	Jun 15/10	31	27	THAT City Council should make publicly available how the recommendations of the external auditor adopted by City Council were implemented to the satisfaction of and measured against the established accounting principles of the City Auditor.		TBD	