David M. Sanders, MA LLB

June 5, 2013

His Worship Mayor Katz
and Members of Executive Policy Committee
The City of Winnipeg
510 Main Street
Winnipeg, MB

Dear Mayor Katz and Members of EPC:

Re: **Regular Meeting of EPC, 9:00 a.m., Wednesday, June 5, 2013**
Report Item #3:
Responsible Winnipeg Campaign – Expenditures
Report Item #4:
Expenditures Criteria – Mayor's Office, Executive Policy Committee and Communication Function

Perhaps I missed it, but I don't believe that those responsible for authorizing the irresponsible "Responsible Winnipeg" ad campaign have actually admitted that it was a mistake, or apologized to the rest of City Council and the citizens of Winnipeg.

So, in the hopes of discouraging any repetition of that abuse of public funds, I wish to present the following comments on two of your agenda items.

Report Item #3 - Responsible Winnipeg Campaign – Expenditures

First of all, I would support the resolution referred to EPC from City Council, but I would suggest that the requested report be expanded to include the following:

a) Copies of all civic documents, including emails, requests for proposal, budget approvals, purchase orders, and suggested texts and data relating to the creation and implementation of the "Responsible Winnipeg" ad campaign.
b) A complete list of all ad placements in all media, and the dates and cost of each.
c) A report on the number of email responses obtained from citizens using the original Responsible Winnipeg website.
d) A detailed description of the role played by each Councillor and civic employee who was involved in the creation and implementation of the Responsible Winnipeg ad campaign.

And I would add that the report should be presented to City Council on June 26, and EPC before then, either on June 12 or at some subsequent EPC meeting prior to June 26.

If we can find out exactly how this happened, we may better understand how to ensure that it doesn't happen again.

We are told that the City is going to launch a much more informative, consultative, participative and effective budget process in the very near future. I applaud that objective, but right now I don't have much confidence in the City's financial leadership.

Report Item #4 - Expenditures Criteria – Mayor's Office, Executive Policy Committee and Communication Function

Which brings me to Item #4 on your agenda – the request to establish expenditures criteria similar to those incorporated in The Councillors' Representation Allowance (CRA) Fund Policy, which came into effect on January 1, 2012.

I support the resolution to direct the City Auditor, with assistance from the Legal Department, in developing a set of criteria for expenditures in these categories.

Given the central role played by the City Clerk's Office in the processing of Councillors' expenditures, I would add that the City Clerk should be named to assist the City Auditor with this task, along with the Legal Department.

I would also suggest that the City Auditor be asked to consider appropriate elements of the criteria employed in other jurisdictions.

For example, the Government Advertising Review Guidelines (2012), are employed by the Auditor General of Ontario to monitor the standards set out in the *Government Advertising Act, 2004*:

1. It must be a reasonable means of achieving one or more of the following purposes:
    i. To inform the public of current or proposed government policies, programs or services available to them.
    ii. To inform the public of their rights and responsibilities under the law.
    iii. To encourage or discourage specific social behaviour, in the public interest.
    iv. To promote Ontario or any part of Ontario as a good place to live, work, invest, study or visit or to promote any economic activity or sector of Ontario's economy.

2. It must include a statement that the item is paid for by the Government of Ontario.
3. It must not include the name, voice or image of a member of the Executive Council or a member of the Assembly.
4. It must not be partisan.
5. It must not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the government.
6. It must meet such additional standards as may be prescribed. 2004, c. 20, s. 6 (1).

The City might also consider meeting the ***Canadian Code of Advertising Standards***. I won't read it all, but I have highlighted the particularly relevant standards.

1. Accuracy and Clarity

In assessing the truthfulness and accuracy of a message, advertising claim or representation under Clause 1 of the *Code* the concern is not with the intent of the sender or precise legality of the presentation. Rather the focus is on the message, claim or representation as received or perceived, i.e. the general impression conveyed by the advertisement.

(a) Advertisements must not contain inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations, either direct or implied, with regard to any identified or identifiable product(s) or service(s).

(b) Advertisements must not omit relevant information in a manner that, in the result, is deceptive.

(c) All pertinent details of an advertised offer must be clearly and understandably stated.

(d) Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly visible and/or audible.

(e) Both in principle and practice, all advertising claims and representations must be supportable. If the support on which an advertised claim or representation depends is test or survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with due recognition of the various costs of doing business.

(f) The advertiser must be clearly identified in an advocacy advertisement.

2. Disguised Advertising Techniques

No advertisement shall be presented in a format or style that conceals its commercial intent.

3. Price Claims

(a) No advertisement shall include deceptive price claims or discounts, unrealistic price comparisons or exaggerated claims as to worth or value. "Regular Price", "Suggested Retail Price", "Manufacturer's List Price" and "Fair Market Value" are deceptive terms when used by an advertiser to indicate a savings, unless they represent prices at which, in the market place where the advertisement appears, the advertiser actually sold a substantial volume of the advertised product or service within a reasonable period of time (such as six months) immediately before or after making the representation in the advertisement; or offered the product or service for sale in good faith for a substantial period of time (such as six months) immediately before or after making the representation in the advertisement.

(b) Where price discounts are offered, qualifying statements such as "up to", "XX off", etc., must be in easily readable type, in close proximity to the prices quoted and, where practical, legitimate regular prices must be included.

(c) Prices quoted in advertisements in Canadian media, other than in Canadian funds, must be so identified.

4. Bait and Switch

Advertisements must not misrepresent the consumer's opportunity to purchase the goods and services at the terms presented. If supply of the sale item is limited, or the seller can fulfil only limited demand, this must be clearly stated in the advertisement.

5. Guarantees

No advertisement shall offer a guarantee or warranty, unless the guarantee or warranty is fully explained as to conditions and limits and the name of the guarantor or warrantor is provided, or it is indicated where such information may be obtained.

6. Comparative Advertising

Advertisements must not, unfairly, discredit, disparage or attack one or more products, services, advertisements, companies or entities, or exaggerate the nature or importance of competitive differences.

7. Testimonials

Testimonials, endorsements or representations of opinion or preference, must reflect the genuine, reasonably current opinion of the individual(s), group or organization making such representations, and must be based upon adequate information about or experience with the product or service being advertised, and must not otherwise be deceptive.

8. Professional or Scientific Claims

Advertisements must not distort the true meaning of statements made by professionals or scientific authorities. Advertising claims must not imply that they have a scientific basis that they do not truly possess. Any scientific, professional or authoritative claims or statements must be applicable to the Canadian context, unless otherwise clearly stated.

9. Imitation

No advertiser shall imitate the copy, slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

10. Safety

Advertisements must not without reason, justifiable on educational or social grounds, display a disregard for safety by depicting situations that might reasonably be interpreted as encouraging unsafe or dangerous practices, or acts.

11. Superstitions and Fears

Advertisements must not exploit superstitions or play upon fears to mislead the consumer.

12. Advertising to Children

Advertising that is directed to children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information or illustrations that might result in their physical, emotional or moral harm.

Child-directed advertising in the broadcast media is separately regulated by the *Broadcast Code for Advertising to Children*, also administered by ASC. Advertising to children in Quebec is prohibited by the *Quebec Consumer Protection Act*.

13. Advertising to Minors

Products prohibited from sale to minors must not be advertised in such a way as to appeal particularly to persons under legal age, and people featured in advertisements for such products must be, and clearly seen to be, adults under the law.

14. Unacceptable Depictions and Portrayals

It is recognized that advertisements may be distasteful without necessarily conflicting with the provisions of this Clause 14; and the fact that a particular product or service may be offensive to some people is not sufficient grounds for objecting to an advertisement for that product or service.

Advertisements shall not:

(a) condone any form of personal discrimination, including that based upon race, national origin, religion, sex or age;

(b) appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;

(c) demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule;

(d) undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

The City might also consider the Government of Canada Treasury Board policies, including the Government Communications Policy and the Federal Identity Program.

As a matter of fact, it would be nice if the Government of Canada considered and followed those criteria too.

In any event, I believe it will take some time to do this task properly, and so I suggest that the City Auditor, City Clerk, and City Solicitor be asked to submit their recommendations to the Governance Committee of Council and then EPC, before the first City Council meeting in September.

Thank you.

David M. Sanders, M.A., LL.B.

DMS/bm