

Request for Decision

Adoption of Code of Conduct and Complaint Protocol

Presented To: Special City Council

Presented: Wednesday, Feb 06, 2019

Report Date: Wednesday, Jan 30, 2019

Type: Referred & Deferred Matters

Resolution

THAT the City of Greater Sudbury approves the Code of Conduct for Members of Council and Members of Local Boards and the Complaint Protocol for the Code of Conduct as outlined in the report entitled "Adoption of Code of Conduct and Complaint Protocol", from the General Manager, Corporate Services, presented at the City Council meeting on September 25, 2018;

AND THAT the necessary by-laws be prepared.

Relationship to the Strategic Plan / Health Impact Assessment

This report moves forward the following priorities under the Responsive, Fiscally Prudent, Open Governance pillar in the Corporate Strategic Plan:

- A. Focus on openness, transparency and accountability in everything we do.
- D. Emphasize the relationship between governance, community engagement and information, in support of better decision-making.

Report Summary

The report recommending the adoption each of the Code of Conduct for Members of Council and Members of Local Boards and the Complaint Protocol, in the form or substantially in the form attached to the report, appeared on the Council agenda of September 25th, 2018 and was deferred to January of 2019 for consideration by the new Council.

Financial Implications

Signed By

Report Prepared By

Carolyn Dawe
Assistant City Solicitor
Digitally Signed Jan 30, 19

Division Review

Eric Labelle
City Solicitor and Clerk
Digitally Signed Jan 30, 19

Financial Implications

Jim Lister
Manager of Financial Planning and Budgeting
Digitally Signed Jan 30, 19

Recommended by the Department

Kevin Fowke
General Manager of Corporate Services
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Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer
Digitally Signed Jan 30, 19

There are no direct financial implications to having a Code of Conduct or Complaint Protocol. Complaints will be directed to the Integrity Commissioner for investigation. The budget for the Integrity Commissioner is included in the base budget for 2019.

Presented To:	City Council
Presented:	Tuesday, Sep 25, 2018
Report Date	Tuesday, Sep 04, 2018
Type:	Managers' Reports

Request for Decision

Adoption of Code of Conduct and Complaint Protocol

Resolution

THAT the City of Greater Sudbury approves the Code of Conduct for Members of Council and Members of Local Boards and the Complaint Protocol for the Code of Conduct as set out in the report of the General Manager, Corporate Services, entitled Adoption of Code of Conduct and Complaint Protocol, presented at the City Council meeting on September 25, 2018;

AND THAT the necessary by-laws be prepared.

Relationship to the Strategic Plan / Health Impact Assessment

This report moves forward the following priorities under the Responsive, Fiscally Prudent, Open Governance pillar in the Corporate Strategic Plan:

- A. Focus on openness, transparency and accountability in everything we do.
- D. Emphasize the relationship between governance, community engagement and information, in support of better decision-making.

Report Summary

This report recommends that Council adopt each of the Code of Conduct for Members of Council and Members of Local Boards and the Complaint Protocol, in the form or substantially in the form attached to this report.

Financial Implications

There are no direct financial implications to having a Code of Conduct or Complaint Protocol. Complaints will be directed to the Integrity Commissioner for investigation. The budget for the Integrity Commissioner will be funded from the reserve for various (professional services) for 2018 and will be included in the base budget for 2019.

Signed By

Report Prepared By

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Digitally Signed Sep 4, 18

Division Review

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Financial Implications

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Recommended by the Department

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Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer
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Background

Legislative changes in recent years have enhanced accountability and transparency requirements for municipalities. Bill 68 has taken a further step in this direction by requiring that municipalities establish Codes of Conduct for Members of the Council of the municipality and of its Local Boards. In conjunction with this requirement, is the duty imposed to appoint an Integrity Commissioner who reports to council and who is responsible, with respect to Council and Local Boards, for:

- the application of the Code of Conduct for Members;
- the application of any procedures, rules and policies governing the ethical behaviour of Members;
- the application of provisions of the *Municipal Conflict of Interest Act* to Members;
- requests from Members for advice respecting a Member's obligations under the Code of Conduct;
- requests from Members of Council and of Local Boards for advice respecting their obligations under a procedure, rule or policy governing the ethical behaviour of Members;
- requests from Members of Council and of Local Boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*; and
- educating Members, the municipality and the public about the municipality's Code of Conduct for Members of Council and of Local Boards and about the *Municipal Conflict of Interest Act*.

These legislative changes were reported to Council at the January 23, 2018 City Council meeting. At that meeting, Council approved the selection process for an Integrity Commissioner, and at its meeting of July 10, 2018, appointed Robert Swayze, the successful proponent in the procurement process. Mr. Swayze's role as Integrity Commissioner begins December 1, 2018, coinciding with the new term of Council.

At the January meeting, Council also passed the following resolution, as part of resolution CC2018-21:

“AND THAT staff are directed to develop a new code of conduct applicable to members of City Council and local boards, including a complaint protocol, and establish the office of the Integrity Commissioner, all as described in the report of the General Manager, Corporate Services entitled Implementation of an Integrity Commissioner presented at the City Council Meeting on January 23, 2018.”

Process in Developing Code

In developing the draft Code of Conduct and Complaint Protocol, staff reviewed those documents in effect in a number of municipalities, including: Hamilton, Mississauga, Sault Ste. Marie, Barrie, London, Kingston, Ottawa, Guelph, Port Hope and Toronto.

There were many commonalities between the Codes of Conduct and the Complaint Protocols of the various municipalities. The draft combined Code of Conduct and Complaint Protocol attached to this Report draws on the legislative requirements, concepts found in existing codes and the experience of the Integrity Commissioner who provided valuable input.

Code of Conduct - Application

The *Municipal Act, 2001* provides that the Code of Conduct is to apply to Members of Council, including the Mayor, and to Members of Local Boards. There are, however, a small number of local boards, such as the Library Board, the Police Service Board and the committee of management (at Pioneer Manor) which the Act has excluded from the application of the Code of Conduct.

Role of a Code of Conduct

A Code of Conduct is intended to supplement both legislative requirements as well as other City policies and procedures regarding ethical behavior.

Legislative guidelines regarding ethical behavior are found, for example, in the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, *Municipal Freedom of Information and Protection of Privacy Act*, the *Municipal Elections Act*, the *Ontario Human Rights Code*, the *Criminal Code*, the *Occupational Health and Safety Act*, the *Public Enquiries Act*.

City policies and procedures affecting ethical behavior impacting members of council and referenced in the Code include: the Workplace Violence, Harassment and Discrimination Prevention Policy and Program; the Council Expense Policy; the Policy on the Use of Municipal Resources in Elections and the Procedure By-law. This is not a comprehensive list of such policies.

The Code of Conduct is intended to assist Members of Council and of Local Boards by setting guidelines for acceptable conduct in the individual performance of their official duties. It promotes public confidence that the City's elected officials operate from a basis of integrity, transparency, justice and courtesy. It is a requirement of the Code that Members will respect the City's policies and procedures governing ethical behavior.

To assist Members in fulfilling their duties, the Code provides that a Member may at any time, seek advice from the Integrity Commissioner on questions within his jurisdiction and may rely on the advice provided. Requests and responses will be in writing to assist in documenting the particulars.

Code – Subject Matter

Regulation 55/18 made under the *Municipal Act, 2001*, prescribes minimum subject matter for a Code of Conduct for Members of Council and its local boards. The required topics to be addressed are:

- (a) gifts, benefits and hospitality;
- (b) respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be;
- (c) confidential information; and
- (d) use of property of the municipality or of the local board as the case may be.

These mandatory topics have been addressed in the draft Code of Conduct, along with additional topics, with a view to assisting both the Members and the public to understanding the

standards of behaviour. As noted in the Code, the behaviour of Members during the course of meetings of Council will continue to be governed by the City's Procedure By-law.

Complaint Protocol

The Code is enforced by the Integrity Commissioner. In accordance with the *Municipal Act*, the Integrity Commissioner may investigate complaints filed by members of the public regarding behavior governed by the Code or City policies, procedures or rules addressing ethical behavior; but may only investigate allegations under the *Municipal Conflict of Interest Act* (the "MCIA") which are filed by electors or persons demonstrably acting in the public interest.

Written complaints will be submitted directly to the Integrity Commissioner, by mail, fax, e-mail or courier. The City's website will set out the contact information for the Integrity Commissioner to assist the public. Time constraints exist for filing of complaints.

The Integrity Commissioner will undertake a preliminary screening and investigate only complaints which are within his jurisdiction. No investigation will be conducted if the complaint does not relate to a contravention of the Code of Conduct, a corporate policy governing ethical behavior or a contravention of the *Municipal Conflict of Interest Act*. The Integrity Commissioner will also refuse to investigate if he determines that the complaint is frivolous, vexatious, not made in good faith, or would not constitute a contravention. Complainants will be advised in writing if the complaint is not being investigated, and provided with a reason for that decision.

Where the Integrity Commissioner has determined that it is in order to investigate the complaint, the person who is the subject of the complaint will be provided with a copy of the complaint and provided an opportunity to respond. The investigative powers of the Integrity Commissioner include the right of access to City workplaces, records, files and other property.

Before the final report on an investigation is released, the Integrity Commissioner will provide the Member affected an opportunity to provide comment on the findings and any proposed sanctions. The Integrity Commissioner will generally attend at Council to present any report with findings of fault.

In the event that the Integrity Commissioner is of the opinion that the Member has contravened the Code or the Integrity Commissioner has the authority to recommend that Council impose:

- (a) a reprimand; or
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council or Member of a Local Board, as the case may be, for a period of up to 90 days.

While the Integrity Commissioner recommends sanctions the decision on this matter rests with Council, although there are some circumstances in which a Local Board may impose a sanction.

It should be noted that between nomination day and six weeks after voting day, no complaints may be accepted, investigated or reported on by the Integrity Commissioner and Council will not hear any reports on investigations.

Confidentiality guidelines governing the Integrity Commissioner, the investigations and reports are set out in the *Municipal Act, 2001*.

Next Steps

The attached Code of Conduct and Complaint Protocol are being presented to Council for consideration. If approved, a by-law adopting the Code of Conduct and Complaint Protocol in the form or in a form incorporating any direction from Council, will be presented at the November 20, 2018 meeting of Council, to be effective December 1, 2018.

A presentation by the Integrity Commissioner will be scheduled in 2019 for the new Council, to assist Members in better understanding the Code, the processes set out in the Complaint Protocol, and the processes for seeking advice from the Integrity Commissioner on matters of ethical conduct.

Summary

The *Municipal Act 2001*, requires every municipal council to adopt a Code of Conduct for Members of Council and of Local Boards. After review of municipal practices, the Code of Conduct and Complaint Protocol attached has been developed consistent with Council's direction of January 23, 2018, and is presented for consideration by Council.

REFERENCES

Report presented to City Council on January 23, 2018 entitled "Implementation of an Integrity Commissioner":

<http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&lang=en&id=1234&itemid=14236>

Council Resolution CC2018-21 dated January 23, 2018 regarding the Implementation of an Integrity Commissioner:

<http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=1234&itemid=rec>

Report presented to City Council on July 10, 2018 entitled "Appointment of Integrity Commissioner":

<http://agendasonline.greatersudbury.ca/?pg=agenda&action=navigator&lang=en&id=1244&itemid=14624>

Council Resolution CC2018-210 dated July 10, 2018 regarding Appointment of Integrity Commissioner:

<http://agendasonline.greatersudbury.ca/?pg=agenda&action=navigator&id=1244&itemid=rec>

Schedule “A”
to By-law 2018* of the City of Greater Sudbury
Code of Conduct for Members of Council and Local Boards
And Complaint Protocol

Part 1 – Code of Conduct

Purpose:

A legislated Code of Conduct helps to ensure that the members of Council and members of Local Boards, as defined in sections 1(1) and 223.1 of the *Municipal Act, 2001*, share a common basis of acceptable conduct in the individual conduct of their Official Duties. The Code of Conduct promotes public confidence that the City's elected representatives operate from a base of integrity, transparency, justice and courtesy.

Enforcement of the Code of Conduct by an independent Integrity Commissioner promotes public confidence in the process.

Definitions

1. For the purposes of this Code of Conduct:
 - (a) **“Applicant”** means a person who has applied for an investigation by the Integrity Commissioner of an alleged contravention of the *Municipal Conflict of Interest Act*;
 - (b) **“Application”** means a written request for an investigation with respect to an alleged contravention of the *Municipal Conflict of Interest Act*;
 - (c) **“City”** means the municipal corporation of the City of Greater Sudbury, or the geographic area of the municipal corporation of the City of Greater Sudbury, as the context requires;
 - (d) **“Complaint”** means a written request for an investigation with respect to an alleged contravention by a Member of the Code of Conduct or any other procedures, rule or policies governing ethical behaviour;
 - (e) **“Complainant”** means a person who has applied for an investigation by Integrity Commissioner of an alleged contravention of this Code of Conduct or any other procedures, rule or policies governing ethical behaviour;
 - (f) **“Confidential information”** includes but is not limited to information:
 - (i) in the possession of the City or Local Board that the City or Local Board is prohibited from disclosing, is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* or any other applicable law, or has exercised discretion to refuse to disclose;
 - (ii) identifying a matter or pertaining to the substance of a matter discussed or considered, or pertaining to advice received, presented, reviewed or discussed in an In-camera meeting under section 239 of the *Municipal Act, 2001*;

- (iii) pertaining to matters of a type that could be discussed in an In-camera meeting under section 239 of the *Municipal Act, 2001*;
 - (iv) that is subject to solicitor/client privilege;
 - (v) that is of a personal nature to employees or clients of the City or Local Board; or
 - (vi) the publication of which may infringe on the rights of any person, including by example, the source of a complainant where the identity of the complainant is given in confidence.
- (g) “**Council**” means the Council of the City of Greater Sudbury;
- (h) “**Family Member**” means a **child, parent or spouse** of the Member, as those terms are defined in the *Municipal Conflict of Interest Act*:
- (i) “**child**” means a child born within or outside marriage and includes an adopted child and a person whom the parent has demonstrated a settled intention to treat as a child of his or her family;
 - (ii) “**parent**” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; and
 - (iii) “**spouse**” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.
- (i) “**Gift or Benefit**” means cash, fees, admission fees, advances, vouchers, invitations, services, hospitality, travel and accommodation, entertainment or other thing or consideration, given, donated, transferred or otherwise conveyed to a Member, unless the giver, donor, transferor or conveying person receives payment or other consideration of goods or property, of equal or greater value to the value of what was so provided;
- (j) “**In-camera**” means the conduct of a meeting or part of a meeting, of Council or a committee of Council, which is closed to the public as permitted under section 239 of the *Municipal Act, 2001*;
- (k) “**Integrity Commissioner**” means the person appointed by Council of the City as the Integrity Commissioner for the City, responsible to perform the functions of an integrity commissioner under part V.1 of the *Municipal Act, 2001*;
- (l) “**Local Board**” means a local board as defined in sections 1(1) and 223.1 of the *Municipal Act, 2001*;
- (m) “**Member**”, means a member of Council, including the Mayor, or a member of a Local Board;
- (n) “**Official Duties**” means the public duties or responsibilities of a Member in office and includes functions performed by Members necessary to demonstrate responsible and accountable government with respect to matters within the City’s or Local Board’s jurisdiction and which are done for the purpose of providing good government with respect to those matters; and

- (o) “**Social Media**” means web-based applications and on-line forums that allow users to interact, share and publish content such as text, links, photos, audio and video.

Application of the Code of Conduct

2. This Code of Conduct applies to every Member. This Code of Conduct shall be applied to Members who are members of a Local Board and not members of Council with necessary modifications applied in the discretion of the Integrity Commissioner.

Framework

- 3.(1) The Code of Conduct operates as a supplement to the legislative parameters within which the Members must operate. Members must comply with statutes of the Provincial Legislature and of the Parliament of Canada that govern the conduct of Members of Council, including:
- the *Municipal Act, 2001*;
 - the *Municipal Conflict of Interest Act*;
 - the *Municipal Elections Act, 1996*;
 - the *Municipal Freedom of Information and Protection of Privacy Act*;
 - the *Ontario Human Rights Code*;
 - the *Criminal Code (Canada)*;
 - *Occupational Health and Safety Act*; and
 - *Public Enquiries Act*.
- (2) The City's Procedure By-law 2018-**, as amended or replaced from time to time, governs the conduct of Council Members during meetings of Council and its Committees.
- (3) Other City By-laws, rules, procedures and policies also govern the ethical behavior of Members of Council and supplement this Code of Conduct.

General Principles

1. (1) Every Member shall serve, and be seen to serve, the public in a conscientious and diligent manner.
- (2) Every Member shall perform his or her functions with integrity, accountability and transparency and avoid the improper use of the influence of his or her office, and conflicts of interest, both apparent and real.
- (3) Every Member shall perform his or her Official Duties and arrange his or her private affairs in a manner that promotes public confidence and will bear close public scrutiny.
- (4) Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and

the By-laws, rules, procedures and policies of Council pertaining to their position as an elected official.

- (5) Members should act in a manner which recognizes that the public has a right to open government and transparent decision making, while acknowledging all rules regarding confidentiality contained in this Code of Conduct and in other legislation.

Gifts or Benefits

- 5.(1) No Member shall accept a Gift or Benefit that is connected, directly or indirectly, with the performance of the Member's Official Duties, or which would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or where the Gift or Benefit is related to a public function would exceed what a reasonable member of the public would consider to be appropriate in the circumstances.
- (2) For the purposes of subsection 5(1), a Gift or Benefit, provided with the knowledge of the Member, to a Family Member, to a member of staff of the Member, to any other person related to the Member, or to any other person, corporation or body with whom or which the Member is associated, that is connected, directly or indirectly, to the fact or performance of the Member's Official Duties, is deemed to be a Gift or Benefit to the Member.
- (3) Members are not precluded by this Code of Conduct from accepting:
 - a) compensation authorized by law;
 - b) such Gifts or Benefits that normally and reasonably accompany the duties of office and are received as an incident of protocol or social obligation;
 - c) a political contribution accepted and reported in accordance with applicable law;
 - d) admission to a widely-attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the entity responsible for organizing and presenting the event and unsolicited by the Member, if attending or participating in the Member's official capacity, including:
 - (i) participation in an event as a speaker or panel participant by presenting information related to City matters;
 - (ii) performance of a ceremonial function appropriate to the Member's office;
 - (iii) attendance at an event that is appropriate to the official capacity of the Member.
 - e) admission to a charity or community organization for whose benefit the event is being held, and unsolicited by the Member;
 - f) admission to a training or education program, including meals and refreshments furnished to all attendees, if such training or education is related to the Member's Official Duties and in the interests of the City;
 - g) services provided without compensation by persons volunteering their time;

- h) a suitable memento of a function honouring the Member;
 - i) food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or by political subdivisions of them;
 - j) food and beverages consumed at banquets, receptions or similar events, if:
 - (i) attendance serves a legitimate business purpose;
 - (ii) the person extending the invitation or a representative of the organization is in attendance; and
 - (iii) the value is reasonable and the invitations infrequent;
 - k) communications to the office of a Member of Council, including subscriptions to newspapers and periodicals.
- (4) Except in the case of paragraphs 5(3) (b), (h), (i), (j) or (k), a Member shall not accept a Gift or Benefit worth in excess of two hundred dollars (\$200.00) or Gifts or Benefits from one source during a calendar year in excess of two hundred dollars (\$200.00). In the case of Gifts or Benefits of a type described in 5(3) (b), (h), (i), (j) or (k), if the value thereof, or if the total value of any one or more such Gifts or Benefits provided to or received by a Member from any one source during the course of a calendar year exceeds two hundred dollars (\$200.00), the Member shall, within thirty (30) days of such provision or receipt, or of reaching or exceeding such amount, file a disclosure statement with the Integrity Commissioner. The disclosure statement shall indicate:
- (a) the nature of every such, Gift of Benefit;
 - (b) its source and date of its provision and/or receipt;
 - (c) the circumstances under which it was provided and/or received;
 - (d) its estimated value;
 - (e) what the Member intends to do with the Gift or Benefit; and
 - (f) whether any Gift or Benefit is regarded by the Member as the property of the City.
- (5) Every disclosure statement filed or required to be filed under subsection 5(4) shall be a matter of public record, and duly made available to the public.
- (6) n receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the Gift or Benefit might, in his or her opinion, create a conflict between a private interest and the public duty of the Member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the Member to justify receipt of the Gift or Benefit, and in the further event that the Integrity Commissioner determines that the Gift or Benefit may create a conflict as described above, may request the Member to return the Gift or Benefit, or pay to the donor the value of any Gift or Benefit already consumed.

Confidential Information

- 6.(1) No Member shall, contrary to any applicable privacy law, disclose, release by any means or in any way divulge to any person or to the public, any Confidential Information, including without limitation any personal information as that term is used in the *Municipal Freedom of Information and Protection of Privacy Act*, acquired by virtue of his or her office, except when required by law or authorized by Council or the Local Board to do so.
- (2) No Member shall misuse Confidential Information or other information that he or she has knowledge of by virtue of his or her position that is not in the public domain, including e-mails and correspondence, consultant's reports, draft documents, such that the use thereof may lead to financial or other gain of the Member or of any person related to the Member or cause detriment to the City, Council, a Local Board, the public or others.
- (3) Except for information that is relevant to matters before Council, a committee of Council or the Local Board as the case may be, Members enjoy the same level of access right to information as any other member of the community and must follow the same processes as any private citizen. No Member shall access or attempt to gain access to Confidential Information in the possession of the City or Local Board, unless it is necessary for the performance of his or her Official Duties and not prohibited by Council or Local Board policy.
- (4) Every Member shall ensure he or she complies with the *Municipal Act, 2001*, *Municipal Conflict of Interest Act*, *Municipal Freedom of Information and Protection of Privacy Act*, and other applicable legislation regarding open meetings, accountability and transparency.

Use of City Property, Services and Other Resources

- 7.(1) No Member shall use or permit the use of, City land, facilities, equipment, supplies, services, City employees or other resources, including City-owned materials, websites, Council transportation delivery services, or Councillor global budgets, for activities other than the business of the City and in accordance with City policies.
- (2) No Member shall obtain financial gain from the use or sale of any City-developed intellectual property, (including inventions and creative writings or drawings), computer program, technical innovation, or other item capable of being patented, in which property remains in the exclusive ownership of the City.
- (3) Every Member shall avoid waste, abuse and extravagance in the provision or use of public resources.
- (4) Every Member shall comply with the City's policies on use of City property, use of technology, the Sale of Information Technology Equipment Policy and related procedures and guidelines.

Expenses

8. Every Member shall comply with City policies in effect from time to time governing expenses, including the policy for Payment of Councillor Expenses and Travel and Business Expense Policy, and related procedures and guidelines and ensure that conditions related to each expense are met.

Election Campaign Work

9. Every Member shall comply with the *Municipal Elections Act, 1996* and the City's policy on the Use of Municipal Resources by Candidates during a municipal election and shall not use municipal resources in respect of a Provincial or Federal election.

Business Relations

- 10.(1) No Member shall act as a paid agent before Council, its committees or an agency, board or commission of the City.
- (2) No Member shall refer a third party to a person, partnership or corporation in exchange for payment or other personal benefit.

Conduct re Prospective and Future Employment

11. No Member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her Official Duties.

Conduct in Office, Including at Council and Committees

- 12.(1) Every Member shall conduct himself or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a Member, and at meetings of Council, Committees of Council or meetings of the Local Board as the case may be, and other meetings, and in the case of Members of Council, accordance with the provisions of the City's Procedure By-law, and other By-laws of the City, where applicable.
- (2) Failure by a Member of Council to comply with one or more provisions of the Council Procedure By-law does not, in itself, constitute a contravention of this Code of Conduct, in circumstances in which it is open to the body and/or the person chairing the meeting, to take appropriate steps to call the Member to order, or otherwise deal appropriately with the contravention, and the Member complies with the decision of the body or chairperson, and otherwise with the requirements of the Council Procedure By-law.
- (3) This section does not prevent a Member from requesting that the Council or Local Board as the case may be, grant a specific exemption or exception from strict application of this Code of Conduct, or of any other City policy or procedure, amend this Code of Conduct, or take no action in respect of a contravention of it, and such an exception or decision may be limited as to time or scope, and subject to amendment or revocation by the Council. Any such request to Council or a Local Board shall be made in a meeting open to the public.

Improper Use of Influence

- 13.(1) No Member shall use the influence of his or her office for any purpose other than the performance of the Member's responsibilities as a Member, and other Official Duties.
- (2) In addition to the general requirement contained in subsection 13.(1):
 - (a) No Member shall use her or his status as a Member to influence, or try to influence, improperly, any action or decision of another person or entity to the private advantage of:

- (i) the Member;
- (ii) any Family Member;
- (iii) any business or other associate;

or attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of constituents as part of their Official Duties;

- (b) No Member shall hold out the prospect or promise of future advantage through or related to, the supposed influence of the Member, in return for any decision, vote, action or inaction; and
 - (c) Every Member shall comply with the Purchasing By-law and shall not attempt to influence the decision making process as it relates to the award of contracts or settlement claims through personal contact or interaction with the parties administering or directly involved in such processes.
- (3) For the purposes of subsection 13.(2), “private advantage” does not include an advantage that:
- (a) affects a Member of Council, a Family member, City employee, friend or associate, as one of a broad class of persons; or
 - (b) concerns the remuneration or benefits of one or more Members of Council, as authorized by law.
- (4) Members should not advocate on behalf of any person at a hearing of an adjudicative board or tribunal and should not contact any member of such a board or tribunal regarding any application before it.

Conduct Respecting City Employees

- 14.(1) Only Council as a whole and no single Member, including the Mayor, has the authority to direct employees, approve budgets, policy, and other such matters, unless specifically authorized by Council.
- (2) Every Member shall be respectful of the role of City officers and employees to provide professional service and advice based on political neutrality and objectivity, and without undue influence from any one or more Members. Members shall refrain from any conduct which may deter, interfere or unduly influence employees in the performance of their duties, obligations and any standards of conduct prescribed for the employee's profession.
 - (3) No Member shall maliciously, falsely, negligently, recklessly, or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more City employees.
 - (4) No Member shall ask, expect or take any step to compel, any City officer or employee to engage in any partisan political activity, or be subjected to threat or discrimination for refusing to do so.
 - (5) No Member shall make requests or statements or take actions which may be construed as an attempt to influence the independent administration of justice.

- (6) No Member shall use, or attempt to use, the Member's authority or influence for the purpose of intimidating, threatening, coercing, or otherwise improperly influencing any City employee with the intent of interfering with that employee's duties, including the duty to disclose improper activity.

Discreditable Conduct

- 15.(1) Every Member of Council and of a Local Board shall:
 - (a) treat other Members, City officers and employees, and members of the public, appropriately, and without abuse, intimidation, harassment or violence; and
 - (b) make all reasonable efforts to ensure that his or her work environment is free from discrimination, harassment and violence.
- (2) Every Member shall act in compliance with the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*, and where applicable, the City's Workplace Violence, Harassment and Discrimination Prevention Policy and Program.

Respect for Decision Making Process

- 16.(1) Every Member shall accurately and adequately communicate the decisions of the Council or the Local Board, as the case may be, even if they disagreed with the decision of Council or the Local Board, as the case may be, such that respect for and trust and confidence in the decision-making processes is encouraged.
- (2) Every Member should refrain from making statements known to be false or with the intent to mislead Council or the Local Board as the case may be, or the public.
- (3) Every Member shall encourage public respect for and compliance with City processes, by-laws and policies.

Social Media

17. Every Member shall:
 - (a) adhere to any and all City policies and guidelines, regarding social media use; and
 - (b) always identify themselves without any attempt to cover, disguise or mislead as to their identity or status as an elected representative of the City when using social media.

Comply with Policies and Procedures

- 18.(1) Every Member shall adhere to such by-laws, policies and procedures adopted by Council or the Local Board as the case may be, that are applicable to them, whether or not specifically identified herein.
- (2) Nothing herein prevents a Member from requesting that Council or the Local Board grant an exemption from a policy.

Integrity Commissioner

- 19.(1) The Code of Conduct is administered by the City's Integrity Commissioner, appointed by Council by By-law 2018-131 to perform, in an independent manner, the functions of an Integrity Commissioner under section Part V.1 of the *Municipal Act, 2001*.
- (2) Any Member seeking clarification of any part of this Code of Conduct is encouraged to consult with the Integrity Commissioner by way of written request for advice. Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.
- (3) The Integrity Commissioner, is not restricted to looking at the pecuniary interest of the Member, and for clarity, the Integrity Commissioner is specifically authorized to investigate issues of conflict in a broad and comprehensive manner, while carrying out his or her responsibilities regarding the Code of Conduct.
- (4) The Integrity Commissioner shall provide the following services:
 - (a) The application of this Code of Conduct for Members.
 - (b) The application of any procedures, rules and policies of the City and local boards governing the ethical behaviour of Members of Council and of Local Boards or of either of them.
 - (c) The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to Members of Council or of Local Boards.
 - (d) Requests from Members of for advice respecting their obligations under the Code of Conduct applicable to the Member. All requests for such advice and the advice in response thereto, shall be provided in writing.
 - (e) Requests from Members for advice respecting their obligations under a procedure, rule or policy of the City or of the Local Board, as the case may be, governing the ethical behaviour of Members. All requests for such advice and the advice in response thereto, shall be provided in writing.
 - (f) Requests from Members for advice respecting their obligations under the *Municipal Conflict of Interest Act*. All requests for such advice and the advice in response thereto, shall be provided in writing.
 - (g) The provision of educational information to Members, the City and the public about the City's Code of Conduct for Members and about the *Municipal Conflict of Interest Act*.

Investigations under the Code of Conduct

- 20.(1) The Complaint Protocol set out in Part 2 of this document shall govern allegations of wrongful behavior or activity under the Code of Conduct in Part 1 of this document (the "Code of Conduct". Every Member shall respect the procedures established in the Complaint Protocol and co-operate with requests for information during investigations under the Code of Conduct.

- (2) No Member shall engage in reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner or for making a Complaint to the Integrity Commissioner.
- (3) No Member shall obstruct the Integrity Commissioner in carrying out his or her responsibilities.
- (4) Without limiting the generality of subsection 20.(3), “obstruct”, under that subsection includes:
 - (a) destroying documents or records, including erasing electronic documents or records;
 - (b) withholding or concealing documents or records, including electronic documents or records; or
 - (c) failing to respond to the Integrity Commissioner within ten (10) days after a written request is given, or within such longer period as the Integrity Commissioner may allow.

Part 2 – Complaint Protocol

Formal Complaint/Application Process

- 21.(1) A Complaint that a Member has contravened the Code of Conduct or a corporate policy of the City governing ethical behaviour may be initiated by any person, any Member of Council, or by Council as follows:
 - a) a Complaint shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier;
 - b) a Complaint must be signed and dated by the Complainant who shall be an identifiable individual (Complaints may not be submitted by any group, organization or corporation);
 - c) a Complaint shall include:
 - (i) an explanation, with specific reference to sections of this Code of Conduct, as to why the issue raised is alleged to be a contravention of this Code of Conduct;
 - (ii) any evidence in support of the allegation; and
 - (iii) the names of any witnesses who can support the allegation
 - d) the alleged violation shall have taken place within sixty (60) days of filing the Complaint with the Integrity Commissioner;
- (2) If filed with the Integrity Commissioner on or after March 1, 2019, an Application to the Integrity Commissioner to inquire into an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* (“MCIA”) may be made by an elector as defined in Section 1 of the MCIA or by a person demonstrably acting in the public interest, as follows:

- (a) an Application shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier;
 - (b) an Application must be signed and dated by the Applicant who shall be an identifiable individual (An Application may not be submitted by any group, organization or corporation);
 - (c) an Application shall include:
 - (i) an explanation, with specific reference to sections of the MCIA, as to why the issue raised is alleged to be a contravention of the MCIA;
 - (ii) any evidence in support of the allegation;
 - (iii) the names of any witnesses who can support of the allegation;
 - (iv) a statutory declaration attesting to the fact that the Applicant became aware of the alleged contravention not more than six (6) weeks before the date of the Application in accordance with Section 223.4.1(5) & (6) of the *Municipal Act, 2001*; and
 - (d) an Application may only be made six (6) weeks after the Applicant became aware of the alleged contravention and otherwise in compliance with Section 223.4.1(5) & (6) of the *Municipal Act, 2001*.
- (3) The Integrity Commissioner shall undertake an initial review of a Complaint or an Application and shall determine whether the matter relates to non-compliance with the Code of Conduct or other corporate policy applying to Members or compliance with the MCIA. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the Complaint or Application, if it is not alleging such a contravention, or if the Complaint relates to the following matters:
- (a) **Criminal Matter** – if the Complaint relates to an allegation of a criminal nature consistent with the Criminal Code, the Complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
 - (b) **Municipal Freedom of Information and Protection of Privacy Act** – if the Complaint relates to a matter under the *Municipal Freedom of Information and Protection of Privacy Act*, the Complainant shall be referred to the Clerk; or
 - (c) **Municipal Elections Act** – if the Complaint relates to the enforcement of the *Municipal Elections Act*, the Complainant shall be referred to the Compliance Audit Process if the matter relates to campaign finances or to such other avenues of investigation as dictated by that act.
- (4) If the Integrity Commissioner determines that he or she does not have jurisdiction as described in Section 21.(3) the Integrity Commissioner shall advise the Complainant/Applicant in writing accordingly.
- (5) The Integrity Commissioner may dispose of a Complaint or Application on the basis that it is not within the jurisdiction of the Integrity Commissioner in a summary manner and may do so confidentially or report same to Council. The Integrity Commissioner may also seek further information or clarification from the Complainant/Applicant and shall

endeavour to apprise the Complainant/Applicant of subsequent steps and the processing of the Complaint or Application and any ensuing investigation.

- (6) If the Integrity Commissioner is of the opinion that a Complaint or Application is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Integrity Commissioner may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the Complaint/Application in a summary manner. The Integrity Commissioner shall advise the Complainant/Applicant in writing of his or her decision and reasons for not undertaking an investigation or terminating it.
- (7) If the Integrity Commissioner has decided to commence an investigation (except where otherwise required by the *Public Inquiries Act, 2009*, if applicable), the Integrity Commissioner shall provide a copy of the Complaint or Application and supporting evidence to the Member whose conduct is in question with a request for a written response to be provided within ten (10) days. The Integrity Commissioner may provide the response from the Member to the Complainant/Applicant with a request for a written reply also within ten (10) days. A Complainant or an Applicant may request that his/her Complaint or Application remain anonymous and, if approved by the Integrity Commissioner, the name will not be released.
- (8) The Integrity Commissioner shall review the written responses and may, if necessary, discuss the matter with anyone that the Integrity Commissioner considers is relevant to the Complaint or Application. The Integrity Commissioner may access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act, 2001* and may access any City workplace relevant to the Complaint or Application, including any documents or records under the custody or control of the City.
- (9) Before finalizing a report to Council which recommends sanctions, the Integrity Commissioner shall provide the Member with the basis for his or her findings and any sanctions that may be recommended. The Member shall have the opportunity to comment further, either in writing, verbally or in person to the Integrity Commissioner on the proposed findings and sanctions.
- (10) Upon conclusion of a Complaint investigation, the Integrity Commissioner shall:
 - (a) issue a report to Council on the findings of the investigation and, where there is a finding of contravention, the report shall contain the detailed findings and any recommended sanctions or any settlement; and
 - (b) provide a copy of the final report to the Member at the same time as the final report is made available to the Clerk and to the Complainant and at the same time the report becomes public.
- (11) Upon conclusion of an Application investigation, the Integrity Commissioner may, if he/she considers it appropriate, apply to a Judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member has contravened Section 5, 5.1 or 5.2 of that act.
- (12) The Integrity Commissioner shall:
 - (a) advise the Applicant if he or she will not be making an Application to a Judge; and

- (b) after deciding whether or not to apply to a Judge, provide a written report to Council providing reasons for the decision.
- (13) The Integrity Commissioner's report on a Complaint or an Application shall be placed on an agenda for consideration at a public meeting of the Committee of the Whole or Council, in accordance with the Procedure By-law, as determined by the Clerk in consultation with the Integrity Commissioner.
- (14) The Integrity Commissioner should generally complete his investigation and provide any required report to Council within 90 days of the complaint or application being filed. If additional time will be required to complete the investigation and report, the Integrity Commissioner shall report to Council explaining the delay, and where possible advising of the projected completion date.

Election Blackout Period

- 22.(1) No investigation shall be commenced or continued, nor shall the Integrity Commissioner report to Council respecting an investigation, and nor shall Council consider imposing sanctions regarding a Complaint, within the election period between nomination day and six (6) weeks after voting day. If an investigation is terminated on nomination day the Integrity Commissioner shall not commence another investigation in respect of the matter, unless the investigation is requested in writing by the Complainant/Applicant or the Member or former Member within six (6) weeks after voting day.
- (2) For the purposes of the October 2018 regular municipal election, the provisions contained in paragraph 23.(1)1 shall be interpreted as if the provisions of s.223.4 and 223.4.1 as amended were already in force.

Penalties

- 23.(1) Upon receipt of a final report with respect to a Complaint and the recommendations of the Integrity Commissioner, Council may, where the Integrity Commissioner has determined there was a violation of the Code of Conduct, impose either of the following two (2) penalties:
 - (a) a reprimand; or
 - (b) suspension of remuneration paid to the Member in respect of his or her services as a Member for up to ninety (90) days.
- (2) Council may also take the following actions:
 - (a) removal from membership of a committee;
 - (b) removal as chair of a committee;
 - (c) request the repayment or reimbursement of monies received; or
 - (d) request the return of property or reimbursement of its value.