

“Appendix A” - Council Code of Conduct Investigation Protocol

Under Section 223.4(1) of the Municipal Act, 2001, Council, a Member, or a member of the public may request the Integrity Commissioner (the “IC”) to conduct an inquiry about whether a Member has contravened the Council Code of Conduct.

1. Request for Inquiry

- a) A request for an inquiry shall be in writing.
- b) All requests for an inquiry shall be signed by an identifiable individual (which includes the signing officer of an organization).
- c) A request for an inquiry shall set out ~~all reasonable and probable the~~ grounds for the allegation that the Member has contravened the Council Code of Conduct, identifying with specificity the section(s) of the Code that were breached, ~~and shall include a supporting affidavit that sets out the~~ and provide all relevant evidence in support of the complaint request.
- ~~d) Staff in the office of the City’s Clerk, who are commissioners for taking affidavits, are authorized to swear the supporting affidavit.~~
- ~~e)d)~~ All requests must include a signed Consent and Confidentiality Agreement.
- ~~f)e)~~ All requests must be submitted within six weeks of the Complainant becoming aware of the alleged contravention, and no more than six months after the alleged violation.
- ~~g)f)~~ In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted to the IC and the IC shall not report to the City about whether or not a Member contravened the Council Code of Conduct.
- ~~h)g)~~ If the IC has not completed an inquiry into a potential Council Code of Conduct violation before Nomination Day for a regular election, the IC shall terminate the inquiry on that day. If the IC terminates an investigation, the IC shall not start another investigation into the matter unless, within 6 weeks after Voting Day in a regular election, the person who made the request or the Member or former Member whose conduct is concerned makes a written request to the IC that the inquiry be commenced.

2. Initial Review by the Integrity Commissioner

- a) The request shall be filed with the Municipal Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, within the time limitation and is a complaint with respect to non-compliance with the Council Code of Conduct and is not covered by other legislation or other Council policies.
- ~~b) If the request does not include the required affidavit, the City Clerk shall not forward the request to the IC until one is provided.~~
- ~~e)b)~~ If the ~~request~~complaint, including any supporting ~~evidence~~affidavit, is not on its face, a complaint with respect to non-compliance with the Council Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall instruct the City's Clerk to advise the Complainant in writing as follows:
 - a. If the complaint is, on its face, an allegation of a contravention of the Municipal Conflict of Interest Act, the IC will investigate it as outlined in Appendix "B".
 - b. If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the IC shall refer it to the appropriate authorities and advise the Complainant that if the Complainant wishes to pursue any such allegation, the Complainant must pursue it with the appropriate police service.
 - c. If the complaint on its face relates to non-compliance with the Municipal Freedom of Information and Protection of Privacy Act, the Complainant shall be advised that the matter will be referred to the City's Clerk for review.
 - d. If the complaint on its face is with respect to non-compliance with a different Council policy, with a separate complaint procedure, the Complainant shall be advised that the matter will be processed under that procedure.
 - e. In other cases, the Complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.
- ~~d)c)~~ The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

3. Integrity Commissioner Investigations

- a) If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- b) Other than in exceptional circumstances, the IC shall not report to Council on any complaint described in subsection (a) except as part of an annual or other periodic report.

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4. Investigation and Settlement

- a) If a complaint has been classified as being within the IC's jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- b) Section 223.4(2) of the Municipal Act, 2001, authorizes the IC to exercise the powers of a commission under Parts I and II of the Public Inquiries Act.
- c) When the Public Inquiries Act applies to an investigation of a complaint, the IC shall comply with the procedures specified in that Act and this Complaint Protocol, but if there is a conflict between a provision of the Complaint Protocol and a provision of the Public Inquiries Act, the provision of the Public Inquiries Act prevails.
- d) The IC will proceed as follows, except where otherwise required by the Public Inquiries Act:
 - a. Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegations by way of affidavit be filed written submission be filed within ten days or such longer period as the IC may authorize in writing; and
 - b. Serve a copy of the response provided by the Member upon the Complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- e) Section 33 of the Public Inquiries Act allows the IC to require anyone relevant to the complaint to give evidence and to access and examine any information relevant to the complaint and to enter any work location of the City relevant to the complaint for the purpose of investigation and settlement. The IC is to be provided free access to all books, accounts,

financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the City.

- f) The IC shall not issue a report finding a violation of the Council Code of Conduct on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.
- g) The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

5. Final Report

- a) The IC shall report to the Complainant and the Member, generally no later than 90 days after the making of the complaint.
- b) Where the complaint is sustained in whole or in part, the IC shall also report to Council outlining their findings and/or recommended penalty and the terms of any settlement.
- c) Where the complaint is dismissed, other than in exceptional circumstances, the IC shall not report to Council except as part of an annual or other periodic report.
- d) Any recommended corrective action or penalty must be permitted by the Municipal Act, 2001, and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated.

6. Member Not Blameworthy

- a) If the IC determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the IC shall so state in the report and shall recommend that no penalty be imposed.

7. Report to Council

- a) The City's Clerk shall process the report for the next meeting of Council. The report shall remain confidential until the matter has received complete and final disposition by the IC and has been reported out to Council.

8. Council Review

- a) Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- b) Section 223.4(5) of the Municipal Act, 2001, allows the City to impose either of the following penalties on a Member if the Commissioner reports to the City that, in their opinion, the Member has contravened the Council Code of Conduct:
 - a. A reprimand.
 - b. Suspension of the remuneration paid to the Member in respect of their service as a Member, for a period of up to 90 days.

9. Confidentiality

- a) Section 223.5(1) of the Municipal Act, 2001, provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- b) If the IC provides a periodic report to the City on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- c) If the IC reports to the City their opinion about whether a Member has contravened the Council Code of Conduct, the IC may disclose in the report such matters as in the IC's opinion are necessary for the purpose of the report (including the name of the Member whose conduct was investigated).

“Appendix B” - Conflict of Interest Investigation Protocol

Under Section 223.4.1(2) of the Municipal Act, 2001, a Member, an elector as defined in the Municipal Conflict of Interest Act, or a member of the public demonstrably acting in the public interest, may request the Integrity Commissioner (the “IC”) to conduct an inquiry about whether a Member has contravened Section 5, 5.1 and/or 5.2 of the Municipal Conflict of Interest Act.

1. Request for Inquiry

- a) A request for an inquiry into a potential contravention of Section 5, 5.1 and/or 5.2 of the Municipal Conflict of Interest Act shall be in writing and may only be made within six weeks of the Complainant becoming aware of the alleged contravention.

Note: If both of the following are satisfied, the six-week limitation period does not apply: 1) The Complainant became aware of the alleged contravention within the period starting six weeks before Nomination Day for a regular election and ending on Voting Day; and, 2) The Complainant makes the request for an inquiry within six weeks after Voting Day in a regular election.

- b) All requests shall be signed by an identifiable individual (including the signing officer of an organization).

- c) A request shall set out all reasonable and probable grounds, with supporting evidence, for the allegation that the Member has contravened Section 5, 5.1 and/or 5.2 of the Municipal Conflict of Interest Act and shall include a statutory declaration attesting to the fact that the Complainant became aware of the contravention not more than six weeks before the date of the request¹.

Commented [B1]: Cathie, see section 223.4.1(6) of the Municipal Act, 2001 – the statutory declaration is required by the Act and cannot be waived by the municipality.

¹ Or, in the case where the Complainant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, 1996, and ending on voting day in a regular election, a statutory declaration attesting to the fact that the applicant became aware of the alleged contravention during that period of time.

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e) ~~supporting affidavit documents that sets out the evidence in support of the complaint.~~

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d) ~~Staff in the office of the City's Clerk, who are commissioners for taking affidavits, are authorized to swear the supporting affidavit.~~

e)d) In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted and the IC shall not report to the City about whether or not a Member of Council contravened the Municipal Conflict of Interest Act.

2. Initial Review by Integrity Commissioner

- a) The request shall be filed with the City's Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with Section 5, 5.1 and/or 5.2 of the Municipal Conflict of Interest Act.
- b) If the request does not include the required statutory declaration affidavit, the City's Clerk shall not forward the request to the IC until one is provided.
- c) If the complaint including any supporting evidence affidavit, is not on its face, a complaint with respect to non-compliance with Section 5, 5.1 and/or 5.2 of the Municipal Conflict of Interest Act or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall advise the Complainant in writing as follows:
 - a. If the complaint is, on its face, an allegation of a contravention of the Council Code of Conduct, the IC will investigate it as outlined in Appendix "A".
 - b. If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the Integrity Commissioner shall refer it to the appropriate authorities and advise the Complainant that if the Complainant wishes to pursue any such allegation, the Complainant must pursue it with the appropriate police service;
 - c. If the complaint on its face relates to non-compliance with the Municipal Freedom of Information and Protection of Privacy Act, the Complainant shall be advised that the matter will be referred to the City's Clerk for review.

- d. If the complaint on its face is with respect to non-compliance with a different Council policy, with a separate complaint procedure, the Complainant shall be advised that the matter will be processed under that procedure; and
 - e. In other cases, the Complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.
- d) The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

3. Integrity Commissioner Investigations

- a) If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- b) Other than in exceptional circumstances, the IC shall not report to Council on any complaint described in subsection (a) except as part of an annual or other periodic report.

4. Investigation & Settlement

- a) If a complaint has been classified as being within the IC's jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- b) The IC shall complete their investigation within 180 days after the date of submission of the complaint.
- c) Section 223.4(2) of the Municipal Act, 2001, authorizes the IC to elect to exercise the powers of a commission under Parts I and II of the Public Inquiries Act.
- d) When the Public Inquiries Act applies to an investigation of a complaint, the IC shall comply with the procedures specified in that Act and this Complaint Protocol, but if there is a conflict between a provision of the Complaint Protocol and a provision of the Public Inquiries Act, the provision of the Public Inquiries Act prevails.

- e) The IC will proceed as follows, except where otherwise required by the Public Inquiries Act:
 - a. Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegations ~~by way of affidavit to~~ be filed within ten days or such longer period as the IC may authorize in writing; and,
 - b. Serve a copy of the response provided by the Member upon the Complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- f) Section 33 of the Public Inquiries Act allows the IC to require anyone relevant to the complaint to give evidence and to access and examine any information relevant to the complaint and to enter any work location of the City relevant to the complaint for the purpose of investigation and settlement. The IC is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the City. The IC may conduct a public meeting to discuss the inquiry.
- g) Upon completion of the inquiry, the IC may, if they deem 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, [and](#)/or 5.2 of the Act.
- h) After making their decision as to whether or not to apply to a judge as set out above, the IC will provide the City's Clerk, the Complainant and the Member with written reasons for the decision. Upon request, the City's Clerk will also provide a copy of the written reasons to a member of the public.
- i) The City shall pay any costs incurred by the IC in making its application to a judge as set out above.
- j) The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during their investigation.

5. Final Report

- a) The IC's written submission to the City's Clerk outlining their decision to not 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, [and](#)/or 5.2 of the Act shall constitute the final report on the matter.

- b) — Where the IC has applied 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, [and](#)/or 5.2 of the Act, the resulting court decision shall constitute the final report on the matter. The City's Clerk shall post this court decision on the City's website.

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6. Confidentiality

- a) Section 223.5(1) of the Municipal Act, 2001, provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- b) If the IC provides a periodic report to the City on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- c) The IC may disclose any information that is, in their opinion necessary for:
 - a. the purposes of a public meeting into an inquiry as to whether a Member has contravened Section 5, 5.1 [and](#)/or 5.2 of the Municipal Conflict of Interest Act;
 - b. in an application to a judge for a determination as to whether a Member has contravened Section 5, 5.1 [and](#)/or 5.2 of the Municipal Conflict of Interest Act; and,
 - c. in the written reasons provided by the IC as to why they did/did not apply to a judge as to whether a Member has contravened Section 5, 5.1 [and](#)/or 5.2 of the Municipal Conflict of Interest Act.