

	Council Code of Conduct		
	Policy Category: Governance/Protocol		
	Policy No.:		Implementing Procedure No.:
Approving Authority: <i>Council</i>		Effective Date: <i>February 1, 2014</i>	
Approved or Last Reviewed Date: <i>Revised by Council on June 24, 2014</i>		Next Review Year: <i>2015</i>	
Area(s) this policy applies to: <i>All Members of Council</i>		Owner Department: <i>Legislative Services</i>	

Table of Contents

1. Definitions
2. Statutory Provisions Regulating Conduct
3. Purpose
4. Principles of the Code of Conduct
5. Roles & Obligations
6. Confidentiality
7. Personal Information
8. Communications with Public & Media Relations
9. Relations with Staff
10. Gifts, Hospitality & Benefits
11. Use of City Property, Services & Other Resources
12. Election Campaign work
13. Improper Use of Influence
14. Business Relations
15. Transparency & Openness in Decision Making
16. Conduct at Meetings
17. Conduct of Members
18. Harassment & Discrimination
19. Compliance with Code of Conduct
20. Investigations

1. Interpretation:

1.1 Application

This Code applies to Members, except in respect of any of his or her own municipal election campaign related activities. Notwithstanding the above, Section 12: Election Campaign Work, applies to Members at all times.

1.2 Definitions

In the Council Code of Conduct (“Code”):

“City Records” means an original record which is either created or received by a department, division or officer of the City, related to a business function of the City. City Records do not include Constituent Records.

“Constituent Records” means a record which is generated or received by a Member acting in the capacity of an elected representative and relates to the Members’ mandate and function as an elected representative only. Such records are confidential to the Member, to the extent permitted by law. Constituent Records include a Member’s personal records, generated or received by them as a private citizen.

“Closed/In-Camera Meeting” means any meeting of Council that is closed to the public in accordance with s. 239 of the *Municipal Act, 2001*.

“Confidential Information” includes information in the possession of, or received in confidence by the City, that the City is prohibited from disclosing, or is required to refuse to disclose, or chooses not to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), or other legislation.

“Elected Official” includes individuals elected municipally, provincially or federally with whom the Member interacts.

“Family” includes a Member’s child, parent and spouse. For the purposes of this definition:

- a) child means a child born within or outside a marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;
- b) 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
- c) spouse means a person to whom the Member is married or with whom the Member is living in a conjugal relationship outside marriage.

“Gift” means any cash or monetary equivalent, fee, object of value, service, personal benefit, travel and accommodation or entertainment. A gift does not include remuneration.

“Harassment” includes, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted.

“Member” means a Member of Markham City Council.

“Personal Information”, as defined in *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), means information about an identifiable individual, including but not limited to:

- a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- c) any identifying number, symbol or other particular assigned to the individual;
- d) the address, telephone number, fingerprints or blood type of the individual;
- e) the personal opinions or views of the individual except if they relate to another individual;
- f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- g) the views or opinions of another individual about the individual; and
- h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

“Senior Executive” means any of the Chief Administrative Officer and Commissioners.

“Staff” includes anyone employed by the City of Markham including full-time, part-time, temporary or seasonal Staff, contract Staff, students and volunteers (in accordance with the *Municipal Act*, Members are not considered employees of the City).

2. Statutory Provisions Regulating Conduct

2.1 In addition to the Code, Members are required to comply with existing provincial or federal legislation, including but not limited to:

- a) *Municipal Act, 2001*;
- b) *Municipal Conflict of Interest Act*;
- c) *Municipal Elections Act, 1996*;
- d) *Municipal Freedom of Information and Protection of Privacy Act*;
- e) *Ontario Human Rights Code*;
- f) *Ontario Occupational Health and Safety Act*; and
- g) *Criminal Code of Canada*.

3. Purpose

3.1 The Code of Conduct identifies the City's expectations for the conduct of Members and establishes guidelines for appropriate conduct to ensure that:

- a) the decision making process of City Council is transparent, accessible and equitable, in accordance with the *Municipal Act*;
- b) decisions are made through appropriate channels of government structure;
- c) public office is not used for personal gain;
- d) the conduct of Members is of a high ethical standard; and
- e) there is fairness and respect for differences of opinion and a duty to work together for the common good.

The *Code of Conduct* also serves to uphold the principles, goals and values of the City and provide standards for appropriate interaction between Members, Staff, the public and Elected Officials.

4. Principles of the Code of Conduct

4.1 The following principles of conduct apply to all Members. Members are expected to:

- a) serve and be seen to serve their constituents in a conscientious and diligent manner;
- b) be committed to performing their functions with integrity and transparency;
- c) perform official duties and arrange their public affairs in a manner that promotes public confidence and respect, and will withstand close public scrutiny; and
- d) respect the role of Staff in the administration of the business affairs of the City.

4.2 The following principles of conduct apply to all Members. Members will:

- a) abide by the policies and by-laws of the City;
- b) avoid the improper use of the influence of their office, and conflicts of interest;
- c) seek to serve the public interest by upholding both the letter and the spirit of the laws, regulations, and policies established by the Government of Canada, Government of Ontario and Markham City Council; and
- d) fulfill their roles as set out in the *Municipal Act*.

5. Roles and Obligations

5.1 All Members are expected to:

- a) Respect the diversity of community views in developing an overall strategy for the future of the City;
- b) Set objectives and determine strategies to achieve the goals of the City as defined in the policies and by-laws approved by Council;
- c) Ensure sound financial management, planning and accountability; and
- d) Be aware of and understand statutory obligations imposed on Council as a whole, as well on each individual Member.

6. Confidentiality

Through the course of their official duties, Members may have access to Confidential Information. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, financial, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor client privilege.

6.1 Members will not disclose or release any Confidential Information, in either oral or written form, acquired by virtue of their office, except when authorized by Council. Council may not authorize the disclosure of Confidential Information which the City is prohibited from disclosing under MFIPPA.

6.2 Members will not disclose confidential information that may benefit themselves or others, including Confidential Information regarding the bidding or procurement of City property, services or assets.

6.3 Members will not disclose the content of any matter, or the substance of discussions, individually or collectively, at a Closed/In-Camera meeting until the Council or Committee discusses the information at a meeting that is open to the public or releases the information to the public.

6.4 Members will not permit any persons other than those who are entitled thereto to have access to Confidential Information.

6.5 Members will keep information confidential. This is a continuing obligation even if the Member ceases to be a Member of Council.

7. Personal Information

In their decision making process, Members will have access to Personal Information contained in City Records that IS subject to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). In addition, Members may have access to Personal Information in their Constituent Records and from other interested parties that IS NOT subject to MFIPPA.

7.1 While it is noted that Constituent Records are not covered by MFIPPA, Members will treat Personal Information contained in Constituent Records in accordance with the principles of MFIPPA.

7.2 Members will not disclose Personal Information without the consent of the individual, or the City Clerk in the case of Personal Information contained in City Records.

7.3 Members will not permit any persons, other than those who are entitled thereto, to have access to Personal Information.

7.4 Members will not use Personal Information for personal or private gain, or for the gain of his or her Family or any other person or corporation.

7.5 Members will not access, or attempt to gain access to, Personal Information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy or MFIPPA.

8. Communications with the Public & Media Relations

8.1 Members, when communicating with the public and media, are expected to accurately communicate the decisions of Council, even where a Member disagreed with the decision of Council, so that there is respect for and integrity in the decision making process of Council.

9. Relations with Staff

9.1 Members are expected to:

- a) work through the Senior Executive and their designates and not attempt to direct the activities of Staff or departments;
- b) be respectful of Staff. Members will direct any criticisms of Staff to the Senior Executive and refrain from criticizing Staff in public and the media; and
- c) honour the requirement for Staff to remain neutral and not compel Staff to engage in partisan political activities or subject Staff to threats or intimidation for refusing to engage in such activities.

10. Gifts, Hospitality and Benefits

10.1 Members are permitted to accept Gifts that meet the following criteria, subject to the reporting requirements outlined in 10.3:

- a) where authorized by law;
- b) would normally accompany the responsibilities of a political office and are received as an incident of protocol or social obligation;
- c) political contributions reported in accordance with applicable law;
- d) services provided without compensation by persons volunteering their time to a Member;
- e) suitable mementos from a function honouring the Member;
- f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event;
- g) tickets or admission to banquets, receptions, sporting events, cultural events, performances or similar events, for charitable, not-for-profit or community purposes, if:
 - i. Attendance is open and transparent and serves a legitimate charity fundraising or community purpose; and
 - ii. The value and venue location are reasonable;
- h) business meals that serve a legitimate public duty purpose;
- i) communications to the offices of a Member, including subscriptions to newspapers and periodicals related to the duties of Office; and
- j) sponsorships and donations for community events or initiatives organized or run by a Member, or a third party on behalf of a Member, where Council has authorized or endorsed the event or initiative.

10.2 Members are not permitted to accept any Gifts that are not listed in this Code connected directly or indirectly with the performance of his or her duties.

10.3 Members will maintain a list of all Gifts received in a calendar year, where the value of a single Gift, or the cumulative value of Gifts from a single source, exceeds \$350. This list must be available upon request by the Integrity Commissioner for the purposes of determining if the Gift is appropriate. Gifts described in clause 10.1(g) are exempt from the reporting requirement.

10.4 The Integrity Commissioner may call upon a Member to justify receipt of any Gift.

10.5 Members will not accept Gifts that would, to a reasonable member of the public, appear to be in gratitude or compensation for influence, to induce the Member to exercise his or her influence, or otherwise to go beyond necessary and appropriate public actions.

11. Use of City Property, Services & Other Resources

11.1 Members will not use for personal purposes, any City property, equipment, services or supplies, (for example, agency, board, or City-owned materials or website and City transportation delivery services, and any Member's expense budget), of any material consequence, other than for the purposes connected with the discharge of City duties, which may include activities within the Member's office of which City Council has been advised.

11.2 Members will not obtain or attempt to obtain financial gain from the use of City developed intellectual property, including but not limited to computer programs, technological innovations or other patentable items, while they are a Member or thereafter. All such property remains the exclusive property of the City of Markham.

11.3 Members will not use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

12. Election Campaign work

12.1 Members will comply with the provisions of the *Municipal Elections Act*. Members will not use the facilities, equipment, supplies, services or other resources of the City for any election-related activities.

12.2 Members will not undertake campaign-related activities on City property unless permitted by the Returning Officer or their designate.

12.3 Members will not use the services of persons for election-related purposes during hours in which those persons receive compensation from the City.

13. Improper Use of Influence

13.1 Members will not use their influence for any purpose other than the exercise of their official duties.

13.2 Examples of prohibited conduct are the use of a Member's status as a Member of Council to improperly influence the actions or decisions of Staff or others to the private advantage of the Member or his or her Family, Staff, friends or associates, business or otherwise. This would include an attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a Member's supposed influence within Council in return for present actions or inaction.

13.3 For the purpose of this provision, “private advantage” does not include a matter:

- a) that is of general application;
- b) that affects a Member, his or her Family, Staff, friends, or associates, business or otherwise as one of a broad class of persons; or
- c) that concerns the determination of the remuneration or benefits for Members as a whole.

14. Business Relations

14.1 Members will not, either personally or through a company he or she owns or controls, borrow money from any person that regularly does business with the City unless such person is regularly in the business of lending money. Members will not, either personally or through a company he or she owns or controls, will borrow money from any entity that regularly does business with the City unless such entity is regularly in the business of lending money.

14.2 Members are expected not to act as a paid agent before Council or Committee or any agency, board, or committee of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*.

14.3 Members will not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

15. Transparency and Openness in Decision Making

15.1 Members will conduct Council business and their duties in an open and transparent manner other than for those matters which, by virtue of the *Municipal Act* and other applicable legislation, are required or are authorized to be dealt with in a Closed/In-Camera session, so that stakeholders can view the process and rationale which has been used to reach decisions.

16. Conduct at Meetings

16.1 Members are expected to conduct themselves at Council and in City related business meetings with decorum, and where applicable, in accordance with the City’s Procedural By-law. Members are expected to show respect for deputants and fellow Members and Staff by being courteous and not distracting from the business of the Council during presentations and when other Members have the floor.

17. Conduct of Members

17.1 Members are expected to conduct themselves with appropriate decorum at all times and ensure that their behaviour does not bring the reputation of the City into disrepute.

17.2 Members are expected to be respectful of other Members, Staff and the public and their views and will encourage others to do the same.

18. Harassment & Discrimination

18.1 Harassment of another Member, Staff or any member of the public is prohibited under the *Ontario Human Rights Code*. Harassment, whether it occurs inside or outside the workplace, or whether it is related to the work environment or other activities of a Member, is inappropriate behaviour for the purpose of this Code of Conduct.

18.2 Members will not engage in workplace discrimination (as defined by the *Ontario Human Rights Code*), harassment (as defined by the *Ontario Human Rights Code* and the *Ontario Occupational Health and Safety Act*), or violence (as defined by the *Ontario Occupational Health and Safety Act*) when dealing with other Members, Staff, residents or other members of the public.

19. Compliance with Code of Conduct

19.1 Members are accountable to the public throughout the four-year Council term. Between elections they may become disqualified and lose their seat, for example, if they were to lose their eligibility under the *Municipal Act*, or for failing to declare a conflict of interest under the *Municipal Conflict of Interest Act*.

19.2 The *Municipal Act* authorizes Council to impose one or more of the penalties listed below, if so desired, on a Member following a report by the Integrity Commissioner that, in his or her opinion, the Member has contravened the Code of Conduct:

- a) A reprimand; or
- b) Suspension of the remuneration paid to the Member in respect to his or her services as a Member of Council or local board, as the case may be, for a period of up to 90 days.

20. Investigations

If a Member, the public or Staff believes a Member has contravened the Code of Conduct he or she may submit a written complaint in accordance with the established Investigation Protocol. (See Appendix A.)

“APPENDIX A”



Council Code of Conduct
Investigation Protocol

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

1. Request for Inquiry

- I. A request for an inquiry shall be in writing.
- II. All requests shall be signed by an identifiable individual (which includes the signing officer of an organization).
- III. A request shall set out all reasonable and probable grounds for the allegation that the member has contravened the Council Code of Conduct and shall include a supporting affidavit that sets out the evidence in support of the complaint.
- IV. Staff in the City Clerk's office, who are Commissioners of Oaths, are authorized to swear the supporting affidavit.
- V. In a municipal election year, a Code of Conduct request may not be filed within 90 days of the next general election.

2. Initial Review by Integrity Commissioner

- i. The request shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with the Council Code of Conduct and not covered by other legislation or other Council policies.
- ii. If the request does not include a supporting affidavit, the Integrity Commissioner shall defer the review until an affidavit is received.
- iii. If the complaint, including any supporting 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 Integrity Commissioner shall instruct the City Clerk to advise the Complainant in writing as follows:
 - a. 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;
 - b. If the complaint on its face relates to non-compliance with the *Municipal Conflict of Interest Act*, the Complainant shall be advised to review the matter with the Complainant's own legal counsel;

- 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 Clerk for review.
 - d. If the complaint on its face is with respect to non-compliance with a more specific 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 Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.
- iv. The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- v. The Integrity Commissioner shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

3. Integrity Commissioner Investigations

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

4. Investigation & Settlement

- I. If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under Section 2, the Commissioner shall investigate and may attempt to settle the complaint.
- II. Section 223.4(2) of the *Municipal Act* provides for the Integrity Commissioner to elect to investigate a complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- III. When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner 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.
- IV. The Integrity Commissioner 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 allegation by way of affidavit be filed within ten days or such longer period as the Integrity Commissioner 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 Integrity Commissioner may authorize in writing.

- V. Section 33 of the *Public Inquiries Act* allows the Integrity Commissioner to speak to anyone relevant to the complaint, access and examine any of the information relevant to the complaint and to enter any City work location relevant to the complaint for the purpose of investigation and settlement. The Integrity Commissioner 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 municipality.
- VI. The Integrity Commissioner shall not issue a report finding a violation of the 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.
- VII. The Integrity Commissioner 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

- I. The Integrity Commissioner shall report to the Complainant and the Member, generally no later than 90 days after the making of the complaint.
- II. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining his or her findings and/or recommended penalty and the terms of any settlement.
- III. Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other periodic report.
- IV. Any recommended corrective action or penalty must be permitted by the *Municipal Act* and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated.

6. Member Not Blameworthy

- I. If the Integrity Commissioner 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 Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

7. Copies

- I. The City Clerk shall give a copy of the report to the Complainant and the Member that was involved.

8. Report to Council

- I. The City Clerk shall process the report for the next meeting of General Committee, followed by Council. The report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been reported out to the Members of Council.

9. Council Review

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

10. Confidentiality

- I. Section 223.5(1) of the *Municipal Act* provides that the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties.
- II. If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.
- III. If the Integrity Commissioner reports to the municipality his or her opinion about whether a Member of Council has contravened the applicable Council Code of Conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purpose of the report (including name of the Member whose conduct was investigated).