



# **COUNCIL CODE OF CONDUCT**



## **Proposed Revised City of Markham Council Code of Conduct**

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## 1. General Introduction and Purpose

Members of Markham City Council (Members) recognize their obligation to serve their constituents and the public in an accountable and transparent manner - understanding that as leaders of the community, they are held to a high standard of behaviour and conduct.

The *Council 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 *Council 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.

## 2. Framework and Interpretation

The *Council Code of Conduct* applies to all Members of Markham City Council, except in respect of any of their own municipal election campaign related activities. Notwithstanding the above, Section 12: Election Campaign Work, applies to Members at all times.

The *Council Code of Conduct* is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein. As a living document the *Council Code of Conduct* will be brought forward for review; at the beginning of each term of Council, when relevant legislation is amended, and at other times when appropriate, in the discretion of the City Clerk, or on the instructions of Council, to ensure that it remains current and continues to be a useful guide to Members.

Where a Member requests advice from the Integrity Commissioner (IC) and the Member discloses all relevant information to the IC for the purpose of obtaining the advice, the Member may rely on the written advice provided by the IC. The IC will be bound by the advice given to the Member, as long as the information, facts and circumstances remain unchanged, in the event that the IC is asked to investigate a complaint.

Members seeking clarification of any part of the *Council Code of Conduct* should consult with Markham's IC in accordance with Section 20 of this Code.

In addition to this *Council Code of Conduct*, Members are required to comply with existing provincial or federal legislation, including but not limited to the following:

- *Municipal Act, 2001*;
- *Municipal Conflict of Interest Act* (MCIA);
- *Municipal Elections Act, 1996*;
- *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA);
- *Ontario Human Rights Code*;
- *Ontario Occupational Health and Safety Act*; and
- *Criminal Code of Canada*.

### **3. Guiding Principles of the *Council Code of Conduct***

The following principles of conduct apply to all Members.

#### **3.1. 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.

#### **3.2 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*.

## 4. Definitions

In the *Council Code of Conduct*:

“City” means The Corporation of the City of Markham.

“City Clerk” means the Clerk and Returning Officer of The Corporation of the City of Markham.

“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.

“Confidential Meeting” means any meeting of Council that is closed to the public in accordance with s. 239 of the *Municipal Act, 2001*. (Also known as *in camera meetings*)

“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.

“Council” means the Council of the City.

“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 child where a parent has demonstrated a settled intention to treat that child as part of their family.
- b) parent means a person who has demonstrated a settled intention to treat a child as a member of their family whether or not that person is the natural parent of the child.
- 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.

“Integrity Commissioner” means a neutral officer or corporation appointed by and reporting to Markham City Council and who is responsible for performing, in an independent manner, the following functions:

- 1) The application of the *Council Code of Conduct*.
- 2) The application of any procedures, rules and policies of the City governing the ethical behaviour of Members.
- 3) The application of Sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*.
- 4) Requests by Members in respect of their obligations under the *Council Code of Conduct*.
- 5) Requests from Members in respect of their obligations under a procedure, rule or policy of the City governing the ethical behaviour of Members.
- 6) Requests from Members for advice in respect of their obligations under the *Municipal Conflict of Interest Act*.
- 7) The provision of educational information to Members, the City and the public about the City’s Council Code of Conduct and about the *Municipal Conflict of Interest Act*.

“Municipal Conflict of Interest Act” means the *Municipal Conflict of Interest Act, R.S.O. 1990, C. M50*, as amended from time to time.

“Municipal Freedom of Information and Protection of Privacy Act” means the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M56*, as amended from time to time.

“Member” means a member of 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.

"Social Media" means publicly available, third party hosted, interactive web technologies used to produce, post and interact through text, images, video and audio to inform, share, promote, collaborate or network.

"Staff" includes anyone employed by the City including full-time, part-time, temporary or seasonal Staff, contract Staff, students and volunteers in accordance with the *Municipal Act*, but does not include Members, who are not employees of the City.

"Nomination Day" means the last day for filing or withdrawing a nomination for election of a Member established in accordance with the *Municipal Elections Act, 1996*.

"Voting Day" means the day on which the final vote is to be taken in an election of a Member established in accordance with the *Municipal Elections Act, 1996*.

## 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 Confidential 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.

## 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 their 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.

8.2 In all media communications, including Social Media, Members will treat each other, Staff and members of the public with respect and shall avoid messaging that amounts to abuse, bullying or intimidation.

## **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 their 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 IC 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 their 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.

11.3 Members will not use information gained in the execution of their duties that is not available to the general public for any purposes other than their 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 City Clerk 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 their 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, their 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 they own or control, 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 they own or control, borrow money from any entity that regularly does business with the City unless such entity is regularly
- 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 Confidential Meeting, 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 *Council 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 their opinion, the Member has contravened the *Council Code of Conduct*:

- a) A reprimand; or
- b) Suspension of the remuneration paid to the Member in respect of their services as a Member of Council for a period of up to 90 days.

19.3 The *Municipal Act* does not authorize Council to impose an offence or administrative penalty other than those provided for under section 19.2.

## 20. Requests for Advice from the IC

20.1 All requests by a Member for advice from the IC shall be made in writing.

20.2 Advice provided by the IC to a Member shall be in writing.

20.3 If the IC provides educational information to the public, the IC may summarize advice they have provided in their Annual Report to the City but shall not disclose Confidential Information that could identify a person concerned.

## 21. Investigations

21.1 If a Member, a member of the public or Staff believes a Member has contravened the *Council Code of Conduct* they may submit a written complaint in accordance with the established Investigation Protocol (See **Appendix “A”**).

21.2 If a Member, a member of the public or Staff believes a Member has contravened any of Section(s) 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, they may submit a written complaint in accordance with the established Investigation Protocol (See **Appendix “B”**).

“Appendix A”

*Council Code of  
Conduct*

Investigation Protocol

## **“Appendix “A” - Council Code of Conduct - Investigation Protocol**

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

### **1. Request for Inquiry**

- I. A request for an inquiry shall be in writing.
- II. All requests for an inquiry shall be signed by an identifiable individual (which includes the signing officer of an organization).
- III. A request for an inquiry 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 for taking affidavits, are authorized to swear the supporting affidavit.
- V. 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*.
- VI. 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**

- I. The request shall be filed with the City 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 the *Council Code of Conduct* and not covered by other legislation or other Council policies.
- II. If the request does not include the required affidavit, the City Clerk shall not forward the request to the IC until one is provided.
- 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 IC shall instruct the City 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.

- b. 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.
  - c. 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.
  - d. 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.
- IV. 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

- I. 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.
- II. Other than in exceptional circumstances, the IC 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 IC's jurisdiction and not rejected under Section 2 **or 3**, the IC shall investigate and may attempt to settle the complaint.
- II. Section 223.4(2) of the *Municipal Act* authorizes the IC to exercise 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 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.
- IV. 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 allegation by way of affidavit 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.

- V. 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 City work location 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 municipality.
- VI. 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.
- VII. 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**

- I. The IC 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 IC shall also report to Council outlining their findings and/or recommended penalty and the terms of any settlement.
- III. 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.
- 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 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. 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 IC and has been reported out to 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 if the Commissioner reports to the municipality 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.

## 10. Confidentiality

- I. Section 223.5(1) of the *Municipal Act* provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- II. If the IC provides a periodic report to the municipality on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- III. 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

## **“Appendix “B” - Conflict of Interest Investigation Protocol**

Under Section 223.4,1(2) of the *Municipal Act*, 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 IC to conduct an inquiry about whether a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

### **1. Request for Inquiry**

- I. A request for an inquiry into a potential contravention of Section 5, 5.1 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.

- II. All requests shall be signed by an identifiable individual (including 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 Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* 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 for taking affidavits, are authorized to swear the supporting affidavit.
- V. 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**

- I. The request shall be filed with the City 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 or 5.2 of the *Municipal Conflict of Interest Act*.
- II. If the request does not include the required affidavit, the City Clerk shall not forward the request to the IC until one is provided.

III. If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with Section 5, 5.1 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 instruct the City Clerk to 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;
- b. 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 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.

IV. 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

- I. 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.
- II. Other than in exceptional circumstances, the IC 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 IC's jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- II. The IC shall complete their investigation within 180 days after the date of submission of the complaint.
- III. Section 223.4(2) of the *Municipal Act* authorizes the IC to elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- IV. 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.
- V. 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 allegation by way of affidavit 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.
- VI. 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 City work location 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 municipality. The IC may conduct a public meeting to discuss the inquiry.
- VII. 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, or 5.2 of the Act.
- VIII. After making their decision as to whether or not to apply to a judge as set out above, the IC will provide the City Clerk, the complainant and the Member with written reasons for the decision. Upon request, the City Clerk will also provide a copy of the written reasons to a member of the public.

- IX. The City shall pay any costs incurred by the IC in making its application to a judge as set out above.
- X. 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

- I. The IC's written submission to the City 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, or 5.2 of the Act shall constitute the final report on the matter.
- II. 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, or 5.2 of the Act, the resulting court decision shall constitute the final report on the matter. The City Clerk shall post this court decision on the City's website.

## 6. Confidentiality

- I. Section 223.5(1) of the *Municipal Act* provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- II. If the IC provides a periodic report to the municipality on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- III. 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 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 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 or 5.2 of the *Municipal Conflict of Interest Act*.