



Report to: General Committee

Date Report Authored: May 26, 2014

SUBJECT: Revised Council Code of Conduct
PREPARED BY: Kimberley Kitteringham, City Clerk, ext.4729
Martha Pettit, Deputy Clerk, ext. 8220
Carlie Turpin, Public Services Coordinator, ext. 2082

RECOMMENDATION:

- 1) That the report entitled "Revised Council Code of Conduct" be received for information purposes; and,
- 2) That Council adopt the revised Council Code of Conduct included with this report as Attachment "A"; and,
- 3) That Council adopt the revised Investigation Protocol included with this report as Attachment "B"; and further,
- 4) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

To report back to Committee regarding recommended changes to Markham's Council Code of Conduct following the education and training session held on January 27, 2014.

BACKGROUND:

At the December 9, 2013 meeting, General Committee recommended that the proposed Code of Conduct take effect February 1, 2014, following an education and training session with Council and the City's Integrity Commissioner. This session took place on Monday, January 27, 2014.

During this meeting Committee suggested that staff report back on the following with respect to the Council Code of Conduct:

- 1) Section 1V - under Investigation Protocol - remove the words "respecting a member who is seeking re-election" so that this Section applies to all Members;
- 2) Black out period (within 90 days of the next general election) – assess whether the Code of Conduct should/should not apply to members during the blackout period and whether complaint submissions should be restricted to the existing Council term; and,
- 3) Penalties – determine if Council should only impose a penalty recommended by the Integrity Commissioner.

Committee also requested that staff ensure that the City's website was updated to include Frequently Asked Questions, Integrity Commissioner Biography, mandate and duties, etc. All supplementary information regarding the Integrity Commissioner and Council

Code of Conduct have been placed on the City's webpage. Staff are currently reviewing the layout of the City's page and will be making navigational improvements.

OPTIONS/ DISCUSSION:

1. Section 1V of Investigation Protocol

Committee requested this Section be amended so it applies to ALL Members of Council and not just those seeking re-election. As such, staff revised this Section so that it now reads: *"In a municipal election year, a Code of Conduct request may not be filed within 90 days of the next general election."*

2. Application of the Code During the Black Out Period

Committee discussed whether the Code should apply to members during the blackout period and whether complaints must be filed by the end of the existing term of Council. In response staff have added an additional section to the Code of Conduct (Section 1.1-Application) which states: *"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."*

Staff have also identified four (4) options for addressing complaints during the election period:

- Option 1A (Status Quo) – That a black out period be established prohibiting the submission of complaints prior to an election (the "black out period"); or
- Option 1B – In addition to the establishment of the blackout period, all complaints are required to be filed within the term in which the alleged contravention occurred; or
- Option 2A – In addition to the establishment of the blackout period , the application of the Code be suspended during the blackout period; or
- Option 2B– In addition to the establishment of the blackout period, the application of the Code be suspended during the blackout period and complaints are required to be filed within the term in which the alleged contravention occurred.

Option 1A reflects what is currently contained in the City's Code: *"In a municipal election year, a Code of Conduct complaint may not be filed within 90 days of the next general election."* (July 29, 2014). Staff are supportive of maintaining the status quo with respect to this issue and do not support any changes that result in the suspension of the Code.

3. Penalties

Committee discussed whether Council should only impose the penalty recommended by the Integrity Commissioner. Staff has reviewed this issue and restraining Council from imposing a greater penalty than that recommended by the Integrity Commissioner is effectively a delegation of the power to impose the penalty, or at least a partial delegation. While Section 23.1 of the Municipal Act confers on Council a general power

to delegate its duties under this Act to a person or other body, Section 23.2 of the Act does not permit a municipality to delegate quasi-judicial functions (the power to investigate and impose a penalty) to anyone other than a member of Council or a Committee of Council, an officer, employee or agent of the City, or body satisfying certain criteria that are not applicable here.

The appointment of ADR Chambers Inc. and specifically Mr. Justice Cameron, is not an employment or agency relationship and therefore, delegation, or even partial delegation of the power to impose a penalty to the Integrity Commissioner is not authorized by the Act.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

Not applicable

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services

RECOMMENDED

BY:

06/06/2014

28/05/2014

X



Kimberley Kitteringham
City Clerk

X



Catherine Conrad
City Solicitor

ATTACHMENTS:

Attachment "A" Council Code of Conduct

Attachment "B" Investigation Protocol