



Report to: General Committee

Date Report Authored: October 10, 2012

SUBJECT: Integrity Commissioner and Council Code of Conduct

PREPARED BY: Martha Pettit, Acting City Clerk, ext. 8220

RECOMMENDATION:

- 1) That the report entitled "Integrity Commissioner & Council Code of Conduct" be received for information purposes;
- 2) That Staff be authorized to proceed with the recruitment of an Integrity Commissioner, on a retainer basis, using the recruitment model detailed in this report;
- 3) That Council adopt the mandate for the Integrity Commissioner included with this report as Appendix 'A';
- 4) That Council adopt the complaint protocol included with this report as Appendix 'B';
- 5) That Council adopt and implement the Council Code of Conduct included with this report as Appendix 'C'; and
- 6) That the 2013 costs for the Integrity Commissioner be funded from the existing operating budget and that staff be authorized to monitor the expenses and that any adjustments required be considered in the 2014 operating budget process; and further,
- 7) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to seek Council approval for staff to pursue the recruitment of an Integrity Commissioner, on a retainer basis, and seek Council's concurrence with the attached position mandate, qualifications and recruitment process for hiring an Integrity Commissioner. Furthermore, staff are seeking Council's endorsement of the attached Council Code of Conduct.

BACKGROUND:

At the September 5, 2012 General Committee meeting staff were asked to report back on the appointment of an Integrity Commissioner position on a retainer basis including; budget implications, a detailed mandate for the role of the Integrity Commissioner and a complaint protocol. Staff were also directed to develop a draft Council Code of Conduct for Council's review.

OPTIONS/ DISCUSSION:Integrity Commissioner

Section 223.3 of the *Municipal Act, 2001* (the “Act”) now enables a municipality to appoint an Integrity Commissioner to perform functions related to the application of a Council Code of Conduct. This includes the ability to respond to requests to investigate suspected contraventions of the Council Code of Conduct and the right of free access to any records of a municipality that the Integrity Commissioner deems necessary to conduct his/her inquiry.

Staff are recommending that Council pursue the appointment of an Integrity Commissioner, on a retainer basis, to oversee any potential Code of Conduct violations as well as provide educational opportunities for staff and Council. The Integrity Commissioner is recommended to be hired on a yearly retainer basis. Additionally the City would be charged an hourly rate for any investigations undertaken by the Integrity Commissioner. Since this is a new experience for the City, and the number and complexity of the investigations or requests for advice is unknown at this time, staff believe this is the most cost effective model. This retainer model is used by 23 of the 24 municipalities in Ontario with Integrity Commissioners (the only exception being the City of Toronto, which employs its Integrity Commissioner on a salary basis).

If Council decides to proceed with the appointment of an Integrity Commissioner, the following considerations should be taken into account:

1. Delegation of Determining Penalty
The Act contains specific provisions regarding the delegation by Council of quasi-judicial functions (S. 23.1, 23.2, 23.3 and 23.4) to an Integrity Commissioner. These powers are sufficient to enable Council to delegate to an Integrity Commissioner the power to either recommend and impose a penalty or simply recommend a penalty where a contravention of the Code of Conduct has been found to have occurred. Council should therefore determine whether it wishes to retain the power to accept/reject/modify any penalty recommended by the Integrity Commissioner, or whether they wish to delegate the power to impose the penalty to the Integrity Commissioner.
2. Appeals
Determinations of a contravention of the Code of Conduct by the Integrity Commissioner and of a penalty by Council have no built-in statutory appeal mechanism. However, either or both decisions could be the subject of a judicial review application. If Council were to delegate the power to impose a penalty to the Integrity Commissioner, Section 284.1 of the Act would permit Council to create an appeal mechanism for decisions of the Integrity Commissioner. Such appeals could either go to Council or to a special body to be designated by Council. If appeals are to be permitted, rules and procedures to govern those appeals would have to be drafted and adopted by Council.

3. Qualifications

Before proceeding with the hiring of an Integrity Commissioner, Council will need to approve the mandate for the position. Attachment "A" is a draft mandate and qualifications for the Integrity Commissioner developed by staff based on examples from other municipalities. Note that an Integrity Commissioner is not required to be an employee of the City, but does have reporting requirements directly to City Council.

4. Recruitment

Staff recommend using a recruitment model that will involve the Human Resources Department and an Interview Selection Panel. Human Resources will recruit for the position and interested candidates can submit their applications directly to the City. The Interview Selection panel, comprised of the City Clerk and/or their designate, the City Solicitor and the Commissioner of Corporate Services, will review the applications and create a list of candidates they wish to interview. Following the first round of interviews the Interview Selection Panel will recommend 2-3 preferred candidates for the short-list. The short-list of candidates will be asked to attend a second interview where the Interview Selection Panel will be joined by the Chief Administrative Officer. Staff will put forth the name of the preferred candidate for appointment to Council for their endorsement.

5. Complaint Protocol

Markham Council will need to approve a complaint and investigation protocol to be used by the Integrity Commissioner. Attachment "B" is a draft complaint protocol developed by staff based on examples from other municipalities.

Code of Conduct

The Act now specifically allows Ontario municipalities to establish a Code of Conduct for Members of Council and Local Boards. The establishment of a Code of Conduct is a discretionary decision of Council and in accordance with the Act, the Codes can address: ethical behaviour, standards for appropriate interaction between members of Council and staff, residents and key stakeholders and the appropriate use of corporate resources.

Approximately 26 Ontario municipalities have adopted Codes of Conduct to date and based on staff research these codes have served municipalities well. Of the ten largest municipalities in Ontario, Markham is the only one that does not currently have a Council Code of Conduct (other cities that do have a Council Code of Conduct include Toronto, Ottawa, Mississauga, Brampton, Hamilton, London, Vaughan, Kitchener and Windsor). In order to properly provide the framework for enforceability, accountability and transparency surrounding the actions and behaviour of Members of Council staff recommend adopting the Council Code of Conduct included as Attachment "C".

FINANCIAL CONSIDERATIONS AND TEMPLATE:

The costs associated with retaining an Integrity Commissioner cannot be determined at this time. The costs would be dependent upon the retainer compensation and the frequency of which the Integrity Commissioner is requested to conduct investigations. From staff's research the annual retainer fee for an Integrity Commissioner ranges between \$1,500-\$3,000 and the hourly rate for service ranges from \$150-\$300. The cost for the Integrity Commissioner is estimated to be approximately \$20,000. This amount is comparable to the budget used in Richmond Hill and is based on 4 investigations being undertaken in the first year. It is recommended that the costs for 2013 be funded from the existing operating budget. Staff will monitor the expenses and any adjustments will be considered in the 2014 operating budget process.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services and Financial Services

RECOMMENDED BY:

02/11/2012

X



Martha A. Pettit
Acting City Clerk

X



Trinela Cane
Commissioner of Corporate Services

ATTACHMENTS:

Attachment "A" Integrity Commissioner Mandate & Qualifications

Attachment "B" Complaint Protocol

Attachment "C" Council Code of Conduct