

## Council Code of Conduct Complaint 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 complaints shall be signed by an identifiable individual (which includes the signing officer of an organization).
- III. A complaint 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 complaint respecting a member who is seeking re-election 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 complaint 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 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.

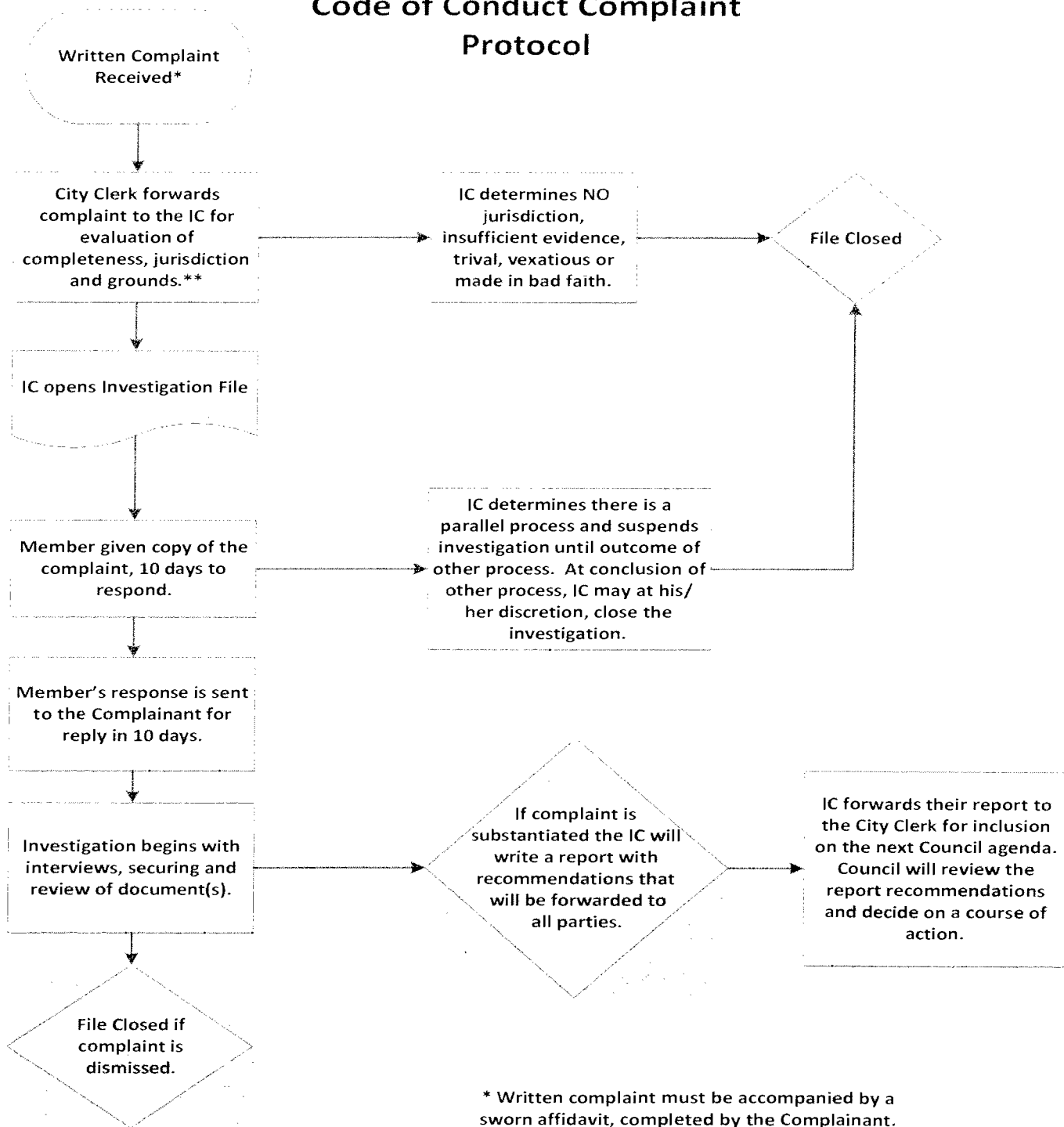
## 9. Council Review

- 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).

# City of Markham Code of Conduct Complaint Protocol



\* Written complaint must be accompanied by a sworn affidavit, completed by the Complainant.  
 \*\*All formal complaints are received by the City Clerk's office and then forwarded to the Integrity Commissioner's office for evaluation of jurisdiction, completeness and/or investigation.