

NOTICE OF MOTION
Involvement of Members in Matters Arising in Other Members' Wards
Moved by: Mayor Miller
Seconded by: Deputy Mayor Feldman

“**WHEREAS** City Council on February 1, 2 and 3, 2005, by its adoption of Policy and Finance Committee Report 2, Clause 19, requested the Integrity Commissioner to consider whether it is appropriate for a Member of Council, personally or through a staff member or other representative, to intervene on a ward matter in another member’s ward, and if so, under what circumstances; and

WHEREAS the Integrity Commissioner has prepared the attached report dated September 12, 2005 in response to Council’s request;

NOW THEREFORE BE IT RESOLVED THAT City Council consider the report (September 12, 2005) from the Integrity Commissioner and that the recommendations contained in the Recommendations Section of the report be adopted;

AND BE IT FURTHER RESOLVED THAT, in accordance with the provisions of Chapter 27 of the City of Toronto Municipal Code, leave be granted to introduce and debate this Notice of Motion at the meeting of Council on September 28, 2005.”

September 28, 2005

Attachment

According to Chapter 27 of the Municipal Code, the foregoing Notice of Motion:

Notice was previously given	
Meets Municipal Code provisions and only requires a simple majority to introduce and debate – Integrity Commissioner reporting protocol	(√)
Requires two-thirds to waive notice	
Requires two-thirds to re-open	
Fiscal Impact Statement provided	*
Should have Fiscal Impact Statement prior to debate	*
Requires two-thirds to waive requirement if Council wishes to debate	
Should be referred to the Committee/Community Council	
Requires two-thirds to waive referral if Council wishes to debate	
Recommendations are time sensitive	

* Deputy City Manager and Chief Financial Officer to advise.

Date: September 12, 2005

To: City Council

From: David Mullan, Integrity Commissioner

Subject: Report on Involvement of Members in Matters Arising in Other Members' Wards

Purpose:

To report in response to a Council request that the Integrity Commissioner consider whether and to what extent Councillors (and their staff) can involve themselves in ward matters arising in other Councillors' wards and whether the Code of Conduct should deal with this issue.

Financial Implications and Impact Statement:

This report has no financial implications.

Recommendations:

It is recommended that Council:

- (1) affirm the principle that a Member of Council may intervene on a ward matter in another Member's ward.
- (2) direct the City Manager (in consultation with the Integrity Commissioner) to prepare for Council a Protocol on Members of Council intervening on a ward matter in another Member's ward.
- (3) direct the City Manager (in consultation with the Integrity Commissioner) to prepare for Council amendments to the Code of Conduct for Members of Council reflecting the Protocol's standards for intervention on a ward matter in another Member's ward.

Background:

At its meeting of February 1, 2, and 3, 2005, City Council resolved to request the Integrity Commissioner to consider whether it is "appropriate for a Member of Council, personally or through a staff member or other representative, to intervene on a ward matter in another member's ward, and if so, under what circumstances". As a subsidiary matter, Council asked me to make

recommendations for any changes to the Code of Conduct for Members of Council that might be necessary or advisable in the light of my response to the principal question.

These requests arose out of disagreements among Members of Council about the extent to which such activities were appropriate and a sense on the part of some Members that the issue should not be left in a state of uncertainty but rather be settled by the adoption of rules or a protocol.

At present, the only relevant rules are those contained in the 2004 Staff Protocol for Councillor Requests. Acting on the request of the Mayor, the Chief Administrative Officer, now City Manager adopted this Protocol in December 2004. Among other matters, that Protocol sets out how staff are to deal with situations where a Councillor asks staff to provide information, attend a meeting, or make a site visit in relation to a ward matter arising in another Member's ward. The core of that Protocol is that staff must inform the ward Councillor of any such request and, in the case of meetings, site visits, or other actions, provide the ward Councillor with the opportunity to become involved.

In responding to Council's request, I sent a memorandum to all members of City Council inviting their input. That produced a limited number of responses. I also sought out Councillors whom I knew had a particular interest in this matter, and I arranged to interview the former Mayor of Toronto, John Sewell, who had commented in the media on the issue.¹ I also conducted some research as to whether this issue has arisen in other Canadian municipalities.

Analysis:

Should a Councillor Ever Get Involved in a Ward Matter in another Councillor's Ward?

In the course of my consultations, only one Councillor was of the view that the unwavering principle should be that of "No Go!" Under this view, when a constituent from another ward approaches a Councillor on an issue in that constituent's ward, the Councillor should refer the constituent to the ward Councillor or, at most, agree to contact the ward Councillor on behalf of the constituent but go no further than that.

The more general opinion, however, was that there should be no absolute prohibition on Councillors involving themselves in ward matters in other Councillors' wards. Even one Councillor who said that he or she as a general rule did not respond to communications from constituents of other Councillors admitted to making exceptions in the case of family and friends in other wards.

The reasons advanced for allowing this kind of involvement are most commonly the following:

1. There is no general theory of ward-based, municipal electoral systems that prohibits Councillors from being active on ward matters in another Councillor's ward.
2. To set up barriers of this kind would be to encourage further the unhealthy spectre of each ward as the personal fiefdom of the Councillor for that Ward. This would create the potential for issues of general concern to never surface or never be examined seriously,

¹ John Sewell, "A kingdom of fiefdoms", eye Weekly, February 3, 2005, at 13.

and, in extreme cases, corruption of the Tammany Hall variety. Putting it another way, a ban could create an environment, particularly at the Community Council level, in which Councillors by tacit agreement simply do not raise concerns about issues in other Councillors' wards.

3. On some issues, constituents cannot expect to find a friendly or sympathetic ear in their own ward Councillor. That Councillor may be of a different political stripe from the constituent and have very different views on the need for pursuing the cause or issue that the constituent is advancing. In a matter involving contending points of view, the Councillor may be committed already to the cause of another constituent in her or his ward.
4. There will in fact be many issues over which there is no consensus on whether they are ward issues or city-wide or general interest issues. As a consequence, any ban based on that distinction might either lead to disagreement and frequent utilization of any complaint mechanism, or, more perniciously, cause Councillors to forego involvement rather than run the risk of allegations of improper involvement.²

Recently, in A City of Neighbourhoods: Report of the 2004 Vancouver Electoral Reform Commission ("The Berger Commission"), a report which recommended that Vancouver adopt a ward system in place of its current "at large" system, the issue was put in the following terms:

I have said that each ward will have its own ward Councillor; there is occasionally a concern expressed that, in some cases, this might actually restrict access to Council. As [one constituent] put it, "your ward representative may not be sympathetic to your cause." Can supporters of that cause turn to another Councillor?

Of course, under the ward system, citizens will not be restricted in their access to Council, or forced to deal only with their ward Councillor. This is simply not how ward systems work. Edmonton's City Clerk described that City's functioning in this way:

Residents' access to Councillors is not limited to the Councillor for a particular ward; under any system, any resident of the City may contact any Councillor about any issue.³

Of course, a Councillor's involvement in another Councillor's ward on a ward issue may not always be altruistic. It may occur because of other political ambitions such as running federally or provincially, or, more problematically, in order to cause trouble; to harass or create embarrassment to a Councillor with whom there is broader disagreement. However, these possibilities do not offset the contributions that Councillor involvement in issues arising in other wards can make to greater

² One Councillor suggested that the distinction could be based on matters that are dealt with at Community Council (ward) and issues that have to go to a Committee of Council itself (city-wide). I am skeptical as to whether this is an appropriate basis on which to draw the distinction.

³ At 50-51, and citing City of Edmonton, Office of the City Clerk, Ward Boundary Review (City of Edmonton, October, 2002), Section 1, p.3.

transparency and a fuller airing of important albeit ward-based issues. There may also be means other than an outright ban for dealing with abuses.

Given the potentially serious consequences of an outright prohibition and the views from other jurisdictions, I reject any argument that the City of Toronto adopt such a ban. There are clearly occasions on which it is perfectly appropriate for a Councillor to respond to a request for assistance from a constituent of another ward.

Should There Be Any Limits on Councillor Involvement in Ward Matters in another Councillor's Ward?

While the vast majority of Councillors with whom I spoke were opposed to an outright ban, all supported some form of regulation. For the most part, the type of regulation that they advocated was procedural. The common elements were:

1. When asked to become involved in a ward issue arising in another Councillor's ward, Councillors should tell the constituent that they are not the ward Councillor, provide the name of the ward Councillor, and inform the constituent that he or she is free to approach the ward Councillor. At that point, Councillors can properly discuss with the constituent whether he or she still wants them to be involved.
2. If Councillors then decide to become involved, the first point of contact should be the ward Councillor not only as a courtesy but also to ascertain whether the ward Councillor is engaged in the issue. Where the matter is under active consideration by the ward Councillor, the normal response would be to refrain from further action until the ward Councillor's involvement has ceased or unless the ward Councillor is supporting interests other than the constituent's.
3. When engaged in matters in another Councillor's ward, Councillors should also respect the terms of the 2004 Staff Protocol for Councillor Requests. These include the obligations placed on staff to keep the ward Councillor informed of requests for information as well as attendance at site visits and meetings with respect to the issue. The Protocol also emphasizes that staff involvement will be contingent on "the urgency of the request, the availability of staff and other work program priorities."
4. In the case of issues in another Councillor's ward that have broader or city-wide ramifications or that arise out of Councillors' specific responsibilities (such as a Commissioner of the TTC, a member of the Board of Directors of Ontario Hydro, or a chair or member of a Council committee), there should be no restrictions on taking action save that the Councillor should inform the ward Councillor of her or his impending involvement.
5. These operating principles should also be binding on Councillors' political staff when taking actions on behalf of their Councillor in another Councillor's ward, and to guard against misunderstandings and abuse, the staff member in question should deal at least initially with the ward Councillor, and not a member of that Councillor's staff.

These suggestions provide an ample basis for the drafting of a Protocol for Members of City Council and I would recommend that Council approve the taking of that step. Even without specific provision in the Code of Conduct, a consensus Protocol would not only provide guidance to Councillors but also prevent at least some of the disputes that have arisen in the past over this issue.

I should also point out that it is my view that this is not a domain where it is possible or prudent to write rules to govern every situation. As a result, I would recommend that the Protocol preserve the flexibility in the principles identified above. Thus, for example, while, in general, Councillors should not become involved in a ward matter arising in another ward without explaining carefully to the constituent that there is a ward Councillor who may be able to assist, there may be occasions where this is not necessary, such as where the other side of the issue already has the support of the ward Councillor or where it is otherwise clear that an approach to the ward Councillor would be futile. One Councillor suggested that a Councillor should never convene a public meeting with City staff in attendance in relation to a ward matter arising in another Councillor's ward. Once again, it may be that this should be the general operating principle. However, I would hesitate to make that a mandatory rule. There may be situations where the nature of the issue and its effective resolution make such a meeting desirable.

Should the Provisions of Any Protocol be Reinforced by Incorporation into the Code of Conduct for Members of Council?

The main purpose of any Protocol on the involvement of Councillors in other Councillors' wards is to provide a set of guidelines by which Councillors will govern their conduct. To the extent that the principles contained in the Protocol are general in nature and flexible in their application, there will inevitably be situations where Councillors will have to make a judgment as to how to respond or react; there will be no clear rule or precise obligation.

These considerations suggest that the most important role for the Integrity Commissioner in such a regime is not determining after the event whether a Councillor has engaged in unethical or otherwise inappropriate behaviour. Rather, the Integrity Commissioner would be most effectively deployed in giving advice and mediating disputes where the intervening Councillor and the ward Councillor disagree about the need for or extent of the intervening Councillor's involvement. I would therefore recommend that the Protocol make provision for such a role.

However, there are aspects of this issue for which the Code of Conduct and Code of Conduct Complaint Protocol should be available. To the extent that the Protocol on intervention requires provision of notice to the ward Councillor and there is a complete failure to provide that notice, the ward Councillor should have the right to complain under the Code of Conduct. Also, if the Protocol incorporates the provisions of the 2004 Staff Protocol for Councillor Requests, the Code of Conduct should be triggered where an intervening Councillor fails to observe the regulations that Protocol imposes on the involvement of staff. I would therefore recommend the addition of a provision to the Code of Conduct to deal with such situations.

Conclusions:

There are no compelling reasons for placing a ban on the involvement of other Councillors in ward matters arising in another Councillor's ward. Indeed, such a ban would have adverse consequences for the public interest, the representation interests of constituents, and the effective operation of the City of Toronto.

There is, however, room for the adoption of a Protocol regulating this activity in a limited manner and by reference primarily to general principles rather than a set of hard and fast rules. The general principles underlying that Protocol normally should require Councillors to explain to those seeking their intervention that there is a ward Councillor who is potentially available to assist. Nonetheless, once that option is made clear, Councillors other than the ward Councillor can become involved where the effective and appropriate resolution of the issue requires it. In situations where involvement does occur, the intervening Councillor (or political staff acting for the Councillor) should be under a continuing obligation to keep the ward Councillor apprised of the course of events and, in so far as staff are involved, to respect the terms of 2004 Staff Protocol for Councillor Requests.

The Protocol should make provision for the Integrity Commissioner to act as an advisor particularly in situations where the intervening and the ward Councillor have a difference of opinion over the need for or extent of the intervening Councillor's involvement. As a supplementary matter, the Protocol (reinforced by an addition to the Code of Conduct for Members of Council) should provide for the triggering of the complaint mechanism under the Code of Conduct in situations where it is alleged that there has been a violation of the notice provisions or the terms of the 2004 Staff Protocol for Councillor Requests.

David Mullan
Integrity Commissioner