

## **Code of Conduct for Members of Council Inclusive of Lobbyist Provisions**

*(City Council on September 28 and 29, 1999, amended this Clause by:*

- (1) deleting the words “or is authorized to refuse disclosure of”, as embodied in the first paragraph of Section III of Attachment 1, and inserting in lieu thereof the words “or required to refuse to disclose”, so that such paragraph shall now read as follows:*

*“III. Confidential Information:*

*Confidential information includes information in the possession of the City which the City is either prohibited from disclosing, or required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.”;*

- (2) amending Recommendation No. (3) embodied in the report dated June 29, 1999, from the Chief Administrative Officer, as amended by the Administration Committee, to read as follows:*

*“(3) the Code of Conduct apply to Council and all other appointments to City agency, boards and commissions, subject to any necessary (legal) modification, as described in Section XIII of the Code of Conduct, including the Toronto Police Services Board and Boards of Directors of City-controlled corporations;”; and*

- (3) adding thereto the following:*

*“It is further recommended that:*

- (a) the Striking Committee be requested to submit a report to the next meeting of City Council to be held on October 26, 1999, outlining recommendations for appointment to the Ethics Steering Committee; and*
- (b) the following motion be referred to the Chief Administrative Officer for further consideration in conjunction with the preparation of Terms of Reference for a Lobbyist Registration Process, following consultation with Members of Council:*

*Moved by Councillor Mihevc:*

*‘It is further recommended that the Code of Conduct include a provision to preclude any “Consultant Lobbyists”, “Corporate In-House Lobbyists” and “Organization In-House Lobbyists” from serving as a City appointee on any City agency, board or commission.’ ”)*

**The Administration Committee recommends:**

- (1) the adoption of the report (June 29, 1999) from the Chief Administrative Officer subject to amending Recommendation No. (3) embodied therein to read as follows:**

**“(3) the Code of Conduct apply to Council appointees on City Agencies, Boards and Commissions subject to any necessary (legal) modification, as described in section XIII of the Code of Conduct;”; and**

- (2) that the Province of Ontario be requested to provide legislation authorizing the enactment by municipalities and their local boards, of lobbyist registration by-laws including enforcement provisions, based upon the New Ontario Lobbyist Registry legislation:**

**The Administration Committee submits the following report (June 29, 1999) from the Chief Administrative Officer:**

Purpose:

As directed, this report provides a single reference source on the provincial and federal legislation that govern the conduct of Council members and it recommends a Code of Conduct that supplements those laws. Other municipal Councils such as the Region of Halton, the Tasman (New Zealand) District Council, and the former municipalities of York and Toronto, have adopted a Code of Conduct. A Code of Conduct provides members with a common basis of acceptable conduct. It assists in the day-to-day work of Council members by presenting practical examples of conduct that are applicable to many situations and groups, including lobbyists. Formalized standards of conduct also aid in identifying potential problems that can lead to misunderstanding or criticism.

Funding Sources, Financial Implications and Impact Statement:

There are no new costs associated with implementing the recommendations of this report.

Recommendations:

It is recommended that:

- (1) the Code of Conduct be used as the vehicle for Council members to deal with lobbyists since the City lacks the legal authority to enact and enforce an effective lobbyist registry system;**
- (2) the Code of Conduct for Members of Council in Attachment 1 to this report be adopted;**
- (3) the Code of Conduct apply in spirit and intent to Council appointees and others who serve on City agencies, boards, commissions and other bodies, subject to any necessary (legal) modification, as described in section XIII of the Code of Conduct;**

- (4) an “Ethics” Steering Committee be created to recommend a process for monitoring the implementation of the Code of Conduct and to consider the additional policy matters raised in this report with the assistance of CAO, Legal, Clerk’s and Audit staff as required; and
- (5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

#### Council Reference and Background:

On June 3, 4 and 5, 1998, Council adopted the report from the Chief Administrative Officer (CAO) titled, Interim Report on a Registry of Lobbyists and Related Matters. In accordance with the report recommendations the CAO was directed to:

- (i) establish in consultation with the City Solicitor and City Clerk, more clear and specific Code of Conduct/Conflict of Interest provisions for Councillors than those in existing legislation;
- (ii) assess with the City Solicitor, the specific legislative authority of the City to establish lobbyist registration provisions and identify an appropriate process in light of previous municipal experience, the new Municipal Act, and new Provincial legislation respecting lobbyists;
- (iii) ensure that the employee Conflict of Interest provisions under development are inclusive of expectations on dealing with lobbyists; and
- (iv) ensure inclusion of ethical matters and provisions in the purchasing procedure report.

Council amended the report by directing that the Federal government experience with its registry of lobbyists and disclosure be addressed, and that the matter of lobbyists registration when dealing with either politicians or City staff, be reported to the Corporate Services Committee.

On October 1, 1998 Council also referred two related additional motions to the CAO. The first motion requested the inclusion of similar conduct provisions for citizen members of agencies, boards and commissions in the code of conduct for members, including issues such as acting as lobbyists. The second motion requested that there be no lobbying of any member of Council by a member of a City agency, board or commission on behalf of a third party.

#### Comments and Context:

This report addresses the directives of Council in the following sequence:

- (i) an assessment of lobbyist legislation in other jurisdictions and its pertinence and applicability to the City;
- (ii) an overview of member conduct governed by law, presented by categories of behaviour to add clarity to the relevant Acts (Appendix 1);

- (iii) a summary of all governing Acts for Council members' easy reference (Appendix 2);
- (iv) a Code of Conduct for members consisting of policies that supplement the law, including lobbyist provisions (Attachment 1); and
- (v) other policy matters for the future consideration of Council and possible inclusion to the Code of Conduct.

#### Lobbyists and Recommended Processes for the City of Toronto:

##### (a) Purpose and Characteristics of Existing Legislation:

Lobbying is usually defined as direct or indirect efforts to solicit members' support and influence government decisions on behalf of another party or an organization, often away from public scrutiny. In the Province of Ontario, Bill 69, An Act to amend the *Members' Integrity Act* and to enact the *Lobbyists Registration Act, 1998*, was proclaimed into force in December of 1998. Under this Act, Ontario became the first province in Canada to adopt lobbyist provisions. In this regard, Ontario joins the government of Canada, the United States Federal government and several of its states, Australia and Germany, among others. These governments have implemented registry provisions for lobbyists in order to:

- (i) assuage concerns about public policy decisions being made behind closed doors;
- (ii) monitor and restrict situations where undue influence over elected members may occur;
- (iii) reinforce conflict of interest and code of conduct standards for elected members in the carrying out of their official duties; and
- (iv) instill confidence in the public and provide them with access to information on lobbyists.

Existing lobbyist registration systems across jurisdictions have common features such as defined categories of lobbyists and types of lobby organizations. All require registration of the organization's name and address, the names of individual lobbyists, and areas of the organization's interests. Some systems also require the names, addresses and principal activities of lobbyist clients. Most, but not all, of the registries containing this information are considered public information, but the implications of being registered vary considerably across jurisdictions. For example, once registered, some jurisdictions refuse lobbyist firms/groups access to government business, whereas this is uncommon in the North American context. In some jurisdictions, detailed financial information from lobbyist firms such as expenses and overhead costs is required, and some require photographs of lobbyists to be submitted. It should be pointed out that all of these systems require significant resources to administer, manage, verify, advise upon, rule upon and enforce.

In Canada, Industry Canada through the Office of the Ethics Counsellor, is responsible for

managing the lobbyist registry system. A Lobbyist Registration Branch has been established and an Annual Report is produced containing operating information and statistical data. For example, the report lists the subject matter of lobbying activities, as well as the names of federal departments and agencies contacted by lobbyists. The number of lobbyists registered and the number of lobbyists active are also provided for each of three categories of lobbyists (i.e., a total of 1,273 active lobbyists in the year 1997 to 1998). The federal government has also developed as part of its lobbyist registry system, a simple, non-statutory Code of Conduct for Lobbyists.

In the Province of Ontario, the Integrity Commissioner is responsible for managing the lobbyist registry, associated operations and information provision. The Province has specifically excluded routine constituency work from lobbyist registration requirements. Senior levels of government have the authority to impose the investigative, evidential, enforcement and offence provisions necessary for an effective lobbyist registry system. At the Province of Ontario, failure of lobbyists to comply with the Act can result in fines of up to \$25,000.00.

(b) The Municipal Context:

Relationships between lobbyists and members, if conducted outside the realm of public scrutiny, can erode public confidence in Council and weaken public participation in government. At the municipal government level this is of particular relevance because of the frequency of direct contact with the general public and the nature of the City's responsibilities and authorities, including the often high-value capital projects and long-term contracts that it manages.

Council directed staff to examine the *Lobbyist Registration Act, 1998* and the *Municipal Act* for any new authority in this regard conferred on municipalities. The provincial lobbyist legislation replicates that of the Federal government to a significant degree and no mirror image provision for the municipal level of government was included. Nor do the proposals for a new *Municipal Act* alter the authority of the City in this regard. Ontario municipalities lack the legal authority to enact and enforce an effective lobbyist registration system.

(c) Former Municipal Experience with a Lobbyist Registry:

Previous municipal experiences in attempting to establish an effective lobbyist registry have been fraught with legal and administrative difficulties. As presented in more detail in the 1998 CAO report, Interim Report on a Registry of Lobbyists and Related Matters, the former City of Toronto enacted a by-law in 1989 to register lobbyists. Those who communicated with members or senior staff without having first registered, were subject to a fine. Most aspects of the by-law, including definitions, making an "appearance", monitoring and enforcement, proved to be unworkable. Continual changes and legal challenges lead to the repeal of the by-law in under a year.

As an alternative to the registry by-law, the former City then enacted a Lobbyist Disclosure By-law. This changed the onus to the "applicant", rather than the lobbyist, to file a

completed form with the Clerk. Staffing and administration was put in place with the penalty for not filing being that the matter would not be placed on the agenda of Council. In February of 1993, the Lobbyist Disclosure By-law was also repealed due to difficulties with procedures and administration. Problems included, for example, missed agenda items important to City business, legal and other disagreements, continual amendments to professional and other party exemptions, and ever-increasing lists of applications exempt from the disclosure requirements.

Of particular interest is that during the time the by-laws had been in force and lobbyist information had been collected, the degree of public use of the information was scant. Specifically, there had been only five cases of file review by a member of the press or Council and none by the general public, during a period covering about two and one-half years. Additionally, the data was insufficient to ascertain whether the information and disclosure forms provided value to Council members when they came before Committees where lobbying was indicated.

(d) Establishing Policy Respecting Lobbying:

Lobbying is acknowledged as an acceptable part of government processes, but municipalities are legally constrained in terms of their power and authority to establish, enact and enforce lobbyist by-laws to manage the process. Independent of the presence of any specific City legislation to govern lobbying, however, there are several mechanisms by which lobbyist behaviour and interaction with government officials is regulated including:

- (i) industry codes with which lobbyists representing a member sector must comply;
- (ii) professional codes of conduct with which lawyers and other professionals acting as lobbyists must comply; and
- (iii) the *Criminal Code*, for example, which covers influence peddling, bribery and fraud, municipal corruption and interference with the performance of official acts.

The City can manage lobbying attempts in several ways other than by establishing a lobbyist registry system. First, the independent regulation mechanisms noted above apply. Second, the purchasing and procurement policies of the City of Toronto ensure certain safeguards and integrity in dealing with external organizations. Third, Council may determine that it is in the best interests of public policy decisions to severely restrict or completely ban lobbyist activity when issuing certain competitive calls. In such cases, Council will have determined that the avoidance of intense lobbying of members and staff will maintain the integrity of the evaluation process for proposals. These special circumstances are normally characterized by high-value, high profile, long-term or intensely political matters. Fourth, adopting a Code of Conduct provides another set of checks and balances by establishing standards of conduct that are also applicable when dealing with lobbyists.

Given that the City does not possess the legal authority to enact and enforce an effective lobbyist registry system, it is recommended that the matter of the lobbying of elected

members be dealt with through the provisions of the Code of Conduct for Members of Council.

Legislated Conduct of Members of Municipal Council:

A Code of Conduct must be consistent with the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council:

- (i) the *Municipal Act*, and the Council Procedural By-law passed under section 55 of that Act;
- (ii) the *Municipal Conflict of Interest Act*;
- (iii) the *Municipal Elections Act, 1996*; and
- (iv) the *Municipal Freedom of Information and Protection of Privacy Act*.

The *Criminal Code* of Canada also governs the conduct of members of Council.

Council has directed that legislative requirements in the governing Acts be presented in a single document to provide a practical reference source. Since certain aspects of member conduct are referred to in more than one Act, descriptive categories of conduct have been developed to cross-reference them. Appendix 1 contains a brief explanation of the categories and cites the Acts that regulate them, as follows:

- (1) “General” conduct contained in legislation includes the general standard of conduct of members of Council, and declaration of conflict of interest; and
- (2) “Specific Types of Prohibited Conduct” contained in legislation includes:
  - (i) breach of (public) trust and fraud;
  - (ii) “influence peddling” including undue influence upon Council, and the offering and acceptance of extra benefits and gifts;
  - (iii) secret commissions;
  - (iv) misuse of information including the use of insider information for a personal benefit, the disclosure of confidential information, and the disclosure of personal information and other contravention of the *Municipal Freedom of Information and Protection of Privacy Act*;
  - (v) City property or funds including false return on public funds, refusal to deliver municipal property, and voting illegally on financial matters;
  - (vi) eligibility or requirements of office including non-compliance with the requirements of office or absence from meetings, holding incompatible offices or employment,

loss of citizenship or residency, conduct unbecoming, and defamatory statements (libel and slander); and

- (vii) municipal elections including interfering with ballots, furnishing false information to election officers, procuring votes, bribery or another “corrupt” practice, and non-compliance with financial or other matters.

Appendix 2 contains useful summaries of each separate Act and the Procedural By-law. In addition to this report, members will also be provided with a handout document that contains actual excerpts of the sections of each Act governing the conduct of Council members.

#### Authority to Develop a City of Toronto Code of Conduct for Council Members:

The legislated provisions for conduct tend to emphasize economic, or pecuniary, matters such as bribery, or voting on a matter in which one has a personal financial interest, or exceeding the allowable maximum election campaign expenditure. Those matters are outside the direct control of the municipality since it has no separate existence and can only act within the powers delegated to it by the Province. In turn, the Province is limited as to what it can delegate to a municipality, so that, for example, the Province may not give, nor may a municipality take, power over (federal) criminal matters. Nor may a Council pass by-laws that conflict with provincial legislation since by-laws are subordinate laws.

Under current legislation, a Council may still, however, establish principles and standards of behaviour to govern the conduct of its members if those matters are not covered by an Act, such as non-financial (i.e., non-pecuniary) interests, or conduct simply not addressed. The authority for passing a Code of Conduct in Ontario can be found in section 102 of the *Municipal Act* that allows the passage of by-laws “for the governing of the conduct of its members as may be deemed expedient and are not contrary to law.” Typically, a written Code of Conduct helps to ensure that all members are provided with a common basis for acceptable conduct. Such formalized standards supplement existing legislation in a manner consistent with that legislation and do not replace the conduct of members required by law.

#### Codes/Policies Respecting Conduct in Other Jurisdictions:

In developing the Code of Conduct for Members of Council a number of related policies applying to employees, Councillors, or both, were reviewed. These included municipal jurisdictions outside of Canada such as Los Angeles, England and Wales, and the Tasman District Council in New Zealand. The Ontario *Members Integrity Act, 1994* and similar documents from other provinces including Alberta were reviewed. Additionally, codes of conduct in related fields and professions such as that of the Institute of Public Administration of Canada for public sector employees, and that of the Ontario Professional Planners Institute, were examined for relevance. Materials from other municipalities in Ontario, such as the Regions of Halton and Peel and the City of Mississauga were reviewed, as were materials from the seven former municipalities now comprising the amalgamated City of Toronto, namely, East York, Etobicoke, Metropolitan Toronto, North York, Scarborough, Toronto and York.



Of these jurisdictions, the Region of Halton, the Tasman District Council, provincial governments, and the former municipalities of York and Toronto have, or had, Codes of Conduct for members of Council. In the former City of York, the code of conduct also applied to all employees and appointed representatives of the City. Etobicoke and other cities, such as Mississauga and Los Angeles, had or have policies for the conduct of elected officials on specific matters only, for example, breach of confidentiality, statements made by a member about a City employee, or on the restrictions and disclosure of gifts.

The variance among jurisdictions can be illustrated using provisions on gifts and benefits as an example. Some jurisdictions impose only general prohibitions that leave all interpretations open. They permit the acceptance of non-monetary gifts or advantages of “insignificant value” provided they will not raise doubts about the independence or impartiality of the member, or, will not “place the member or Corporation under any obligation or compromise”. In contrast, other jurisdictions prohibit entirely the receipt of any benefit or item. Still other jurisdictions, in recognition of the reality of the working environment of members, impose a monetary value threshold over which a gift, or service, or benefit must be disclosed.

#### Rationale for a City of Toronto Code of Conduct:

The Acts governing the conduct of members are narrow in scope and are directed at a limited number of matters. They do not include much beyond participation in decision-making and voting matters, nor do they address many situations where an attempt by others to influence the decisions of Council members may prove problematic. For example, the Acts are generally not concerned with the acceptance of gifts (that are not bribes), the use of staff to work on election campaigns, or the use of confidential information. Combined with the need to manage in an open, fair and transparent manner given their frequent interaction with constituents, Council directed staff to develop Code of Conduct provisions more clear and specific than those currently provided by legislation.

Rather than stating undefined goals, it is assumed that including specific standards and examples in a Code of Conduct is more useful to members. Accordingly, for example, items exempted as a gift or benefit should be specified. Similarly, examples of the types of confidential information that no member should use for personal gain or benefit, or for the benefit of others, should be provided.

Respecting the identification and handling of lobbying activities, definitions of lobbyists by the type of activity consistent with the definitions used in Canada at both the federal and provincial levels of government are useful. Furthermore, a practical checklist of questions to aid members in distinguishing lobbying from routine constituency matters, public advice seeking, public deputation processes, and regular business communications, will be of assistance.

It is, therefore, recommended that the Code of Conduct for Members of Council contained in Attachment 1 to this report be adopted. It is further recommended that Council establish an “Ethics” Steering Committee to recommend a process for monitoring the implementation of the Code of Conduct.

#### Future Policy Considerations:

The Council has within its authority the power to pass more formal policies and specific by-laws, some with penalty provisions, providing such provisions are compatible with the existing legislation governing the conduct of municipal members of Council. Council can also request special legislation or amendments to existing Acts.

While not being recommended for inclusion to the Code of Conduct at this time, a number of policy areas merit further consideration. It is recommended that the “Ethics” Steering Committee consider the following policy matters with the assistance of CAO, Legal, Clerk’s and Audit staff as required

(a) Employment of Relatives:

Legislation governing the conduct of members and the Code of Conduct states that no member should engage in activities in which they have a direct or indirect interest. Council could interpret this to mean that no member shall participate in the hiring, supervision or ongoing assessment of the job performance of a relative, and establish policy accordingly.

(b) Statements Respecting Staff:

Council could establish policy to strengthen accountability for statements made by members about employees. For example, a member could be required to clarify to the Council any statement attributed to him or her regarding a member of City of Toronto staff. Similarly, other than statements made at a Council meeting, Council could also require all statements quoted in the media that criticize a member of staff to also be clarified by the member.

(c) Disclosure of Confidential Information:

The CAO, City Solicitor and City Clerk were directed by Council in June, 1999 to report on a system to prevent the disclosure of confidential reports and matters to the press and to include the actions that could be taken against any individual found to have released such information. Staff will address this in a separate report to Council that examines both the legal avenues and operational methods of prevention including penalty provisions for such disclosure.

(d) Post-Service Restrictions:

At both the federal and provincial governments, post-service restrictions on employment are in place respecting former elected senior officials (and senior staff). The purpose is to prevent the receipt of benefits by virtue of knowledge or influence obtained by previously holding office. Exceptions are provided if the contract or benefit is in respect of further duties in the service of the Crown. An additional intent is to also prevent government lobbying activity on behalf of a company by a member previously elected to that government.

Council does not possess the authority to regulate the activities of its former members, but it may wish to consider approving a purchasing policy to provide notification of the involvement of former Council members in competitive calls. In February 1998, Council adopted such a policy with regard to former senior management employees of the area municipalities, agencies, boards and commissions, hired by a firm bidding on a City contract. Council should consider whether a similar policy is appropriate for incorporation to the Code of Conduct for members. Council may also determine, for example, that there should be restrictions on such involvement by former members.

(e) Gifts and Benefits:

Stringent restrictions on the acceptance and giving of gifts and benefits by members has been, or is, in place in the former City of Toronto, the Cities of Montreal and Los Angeles, and the provinces of Nova Scotia and Ontario, among others. Council may wish to establish limitations in the Code specific to the acceptance or giving of any gift or personal benefit similar to the following example:

“No member shall accept any gift or personal benefit exceeding \$200.00 in value that normally accompanies the responsibilities of office and is received as an incident of protocol, custom, or social obligations. Nor shall any member accept any gift or personal benefit where the total value received directly or indirectly from one source in any twelve-month period exceeds \$200.00. Any gift received over the \$200.00 limit for which it would be an insult to the donor to refuse even after explanation of the City policy, would automatically become a gift to the City and the property of the City as a whole as opposed to any individual member.”

Similarly, Council may wish to include in the Code, a policy that specifies an upset limit on the value of any gift given by a member as an incident of protocol, custom or social obligation.

Conclusion:

Lobbying is acknowledged as an acceptable part of government processes. Seeking to manage rather than eliminate the lobbying of its members, Council directed staff to report on the feasibility of establishing a lobbyist registration system. Council also directed staff to develop a Code of Conduct with more clear and specific provisions than those contained in the legislation governing the conduct of Council members.

Ontario municipalities lack the legal authority to enact and enforce an effective lobbyist registration system and the proposals for a new *Municipal Act* confer no such authority. There are, however, several mechanisms other than a lobbyist registry that will assist the City to manage lobbying. First, there are independent codes that regulate the conduct of professional and industry groups, including their members who are lobbyists. Second, various policies of the City of Toronto ensure certain safeguards and integrity in dealing with external organizations. Third, Council can severely restrict or completely ban lobbyist activity when issuing certain competitive calls. Fourth, adoption of a

Code of Conduct will provide another set of checks and balances.

This report is recommending the adoption of a Code of Conduct that is consistent with, and supplementary to, legislated requirements. The four provincial Acts and the federal legislation governing the conduct of members, are narrow in scope and directed at a limited number of matters.

They do not address many of the situations where an attempt by others to influence the decisions of Council members may prove problematic. In contrast, the provisions of the recommended Code of Conduct in Attachment 1 to this report, cover the following areas pertinent to members in carrying out their official duties:

- (i) Preamble including key statements of principle;
- (ii) Statutory Provisions Regulating Conduct;
- (iii) Gifts and Benefits;
- (iv) Confidential Information;
- (v) Use of City Property, Services and Other Resources;
- (vi) Election Campaign Work;
- (vii) Business Relations;
- (viii) Conduct Respecting Current and Prospective Employment;
- (ix) Conduct at Council;
- (x) Conduct Respecting Staff (and Schedule to Code on Roles/Responsibilities);
- (xi) Conduct Respecting Lobbyists;
- (xii) Discreditable Conduct;
- (xiii) Applicability to Agencies, Boards, Commissions and Other Bodies; and
- (xiv) Compliance with the Code of Conduct.

In addition, Appendices 1 and 2 of this report provide members with useful references to provincial and federal legislation and Council procedural policy, governing the conduct of members.

To the degree permitted in legislation and subject to any legal modifications as necessary, the Code of Conduct is also expected to apply to Council appointees and other representatives on agencies, boards and commissions. In addition, staff of Legal, Clerks and the CAO, are collaborating to ensure that other City policies and the matter of non-disclosure of confidential information are

compatible with the provisions of the Code of Conduct for Members of Council.

## Attachment 1

### Code of Conduct for Members of Council City of Toronto

#### Preamble:

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. To this end, adoption of the Code of Conduct for Members of Council is one of several initiatives being undertaken by the City of Toronto during its first term as a unified City. The public is entitled to expect the highest standards of conduct from the members it elects to local government. In turn, such standards will protect and maintain the City of Toronto's reputation and integrity. The Code of Conduct supplements and is compatible with the laws governing the conduct of members.

The key statements of principle that underline this are as follows:

- (i) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- (ii) no member of Council shall use the influence of their office for any purpose other than for the exercise of his or her official duties;
- (iii) Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- (iv) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, or the City Council.

#### I. Statutory Provisions Regulating Conduct:

This Code of Conduct is consistent with the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council as follow:

- (i) the *Municipal Act*, and the Council Procedural By-law passed under section 55 of that Act;
- (ii) the *Municipal Conflict of Interest Act*;
- (iii) the *Municipal Elections Act, 1996*; and
- (iv) the *Municipal Freedom of Information and Protection of Privacy Act*.

The *Criminal Code* of Canada also governs the conduct of members of Council.

## II. Gifts and Benefits:

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office. One example would be that no member should act as a paid agent before Council, or a committee of Council, or any agency, board, or commission of the City. Another example would be that no member should refer third parties to a person, partnership, or corporation in exchange for payment or other personal benefit.

Examples of exceptions to the non-acceptance of gifts or personal benefits by members in relation to their official duties are:

- (i) compensation authorized by law;
- (ii) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol, custom, or social obligations;
- (iii) a political contribution otherwise reported by law;
- (iv) services provided without compensation by persons volunteering their time;
- (v) suitable memento of a function honouring the member;
- (vi) 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;
- (vii) food and beverages consumed at banquets, receptions or similar events; and
- (viii) communication to the offices of a member, including subscriptions to newspapers and periodicals.

## III. Confidential Information:

Confidential information includes information in the possession of the City which the City is either prohibited from disclosing, or is authorized to refuse disclosure of, under the *Municipal Freedom of Information and Protection of Privacy Act*, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The *Municipal Act* allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters

authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, “confidential information” also includes this type of information.

No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by Council to do so. Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

Under the Procedural By-law (authorized under s. 55 of the *Municipal Act*), where a matter that has been discussed at an in-camera (closed) meeting remains confidential, no member shall disclose the content of the matter, or the substance of deliberations, of the in-camera meeting.

The following are examples of the types of information that a member of Council must keep confidential:

- (i) items under litigation, negotiation, or personnel matters;
- (ii) information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- (iii) price schedules in contract tender or Request For Proposal submissions if so specified;
- (iv) information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- (v) statistical data required by law not to be released (e.g., certain census or assessment data).

#### IV. Use of City Property, Services and Other Resources:

No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, web sites, Council transportation delivery services and Councillor global budgets) for activities other than the business of the Corporation. Nor should any member obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

#### V. Election Campaign Work:

Members are required to follow the provisions of the *Municipal Elections Act, 1996*. No

member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters) for any election campaign or campaign related activities. No member shall undertake campaign-related activities on City property during regular working hours. No member shall use the services of persons during hours in which those persons receive any compensation from the City.

VI. Business Relations:

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*.

VII. Conduct Respecting Current and Prospective Employment:

No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.

VIII. Conduct At Council:

Members shall conduct themselves with decorum at Council in accordance with the provisions of the Council Procedural By-law.

IX. Conduct Respecting Staff:

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the Chief Administrative Officer, staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.

Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the City.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles



are captured in the Schedule to the Code of Conduct and include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.

X. Conduct Respecting Lobbyists:

The term “lobbyist” includes the following:

- (i) “consultant lobbyist” means a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;
- (ii) “corporate in-house lobbyist” means an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;
- (iii) “organization in-house lobbyist” means an employee of a non-profit organization, when one or more employees lobby public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and
- (iv) “volunteer lobbyist” means a person who lobbies without payment on behalf of an individual, corporation, or organization.

Lobbying is usually defined as direct or indirect efforts to solicit members support and influence government decisions on behalf of another party or an organization, often away from public scrutiny. Lobbying activity is to be distinguished from routine constituency matters, or advice seeking by members of the public, or contacts by members or employees of government conducting official business. Lobbying is also distinguishable from matters that are the subject of Committee deputation, or other processes that are a matter of public record where individuals are named and their interest and organizational affiliation identified.

Members shall be vigilant in their duty to serve public interests when faced with lobbying activity. Members can use the following as a guide to assist in identifying whether they are being lobbied:

- (i) During the past year, has the contact person attempted to influence you personally, for example, in any legislative or administrative action that would have benefited him or her or his or her employer financially?
- (ii) Does the contact person do business or seek to do business with the City?

- (iii) Is the contact person seeking to influence outcomes outside a public forum on a matter involving, for example, a license, permit or other entitlement for use currently pending before the City?
- (iv) Is the contact person a provincially or federally registered lobbyist employer or a client of a registered lobbyist? (Refer to the respective Web Sites)
- (v) Is the contact person a provincially or federally registered lobbyist or lobbying firm?
- (vi) Does the contact person fall within the definitions provided above?

XI. Discreditable Conduct:

All members of Council have a duty to treat members of the public, one another and staff fairly and to ensure that their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.

XII. Applicability to Agencies, Boards, Commissions and Other Bodies:

This Code of Conduct also applies in spirit and intent subject to any necessary (legal) modification, to appointees of Council and to other representatives who serve on City agencies, boards, commissions and other bodies. In legislation, the provisions of the *Municipal Conflict of Interest Act* also apply to local boards as defined in the Act, with decision-making power.

Advisory bodies like the Advisory Committee for Home for the Aged, or advisory boards to City operated community centres, for example, are not subject to the *Municipal Conflict of Interest Act* and are also excluded from the Code of Conduct. Council does not usually appoint advisory-only members and, in most cases, staff determine operations, policy and budget recommendations to Council. An advisory-only body (committee, or working group, for example) may determine that it is appropriate for its members to declare any pecuniary interest in a matter under discussion by the entity, to not participate in such discussion, and to leave the room during the discussion. An exception to this requirement may be where the interest relates to the general or shared interest or expertise that resulted in their participation in or appointment to the advisory body.

XIII. Compliance with the Code of Conduct:

Members of Council are accountable to the public through the three-year election process. Between elections they may become disqualified and lose their seat if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*, for example.

This Code of Conduct is an agreement by members on their expected conduct. It is adopted by confirmatory by-law, as opposed to a specific by-law with an offence provision (that

could be enforced under the *Provincial Offences Act* and could result in a fine of up to \$5000.00). While they may not be prosecuted or fined under it, members acknowledge the importance of the principles contained in this Code of Conduct and agree to support and adhere to it.

As the head of the Council, the Mayor has as one of his or her duties, to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed. Complaints or concerns from any person regarding alleged non-compliance with the Code by a member may be made to the Mayor in writing.

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### Schedule to the Code of Conduct Roles and Responsibilities of the Council, Members and Staff

Members of Council and staff of the City are both servants of the public and they are indispensable to one another. The Council directs the business of the City and passes by-laws, or resolutions as appropriate, for decisions adopted by Council.

Council has delegated responsibility to the Chief Administrative Officer for the administration of the affairs of the City in accordance with the by-laws adopted. This means that under the direction of the CAO, staff have the responsibility and the authority to provide consultation, advice and direction to Council and to implement Council approved policy. Accordingly, staff establish the appropriate administrative policies, systems, structures and internal controls to implement the goals and objectives of Council, and to manage implementation within the resources at their disposal.

The Council should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power, or their personal opinions.

(a) The Whole Council, for example:

- (i) exercises the authority delegated by the provincial legislature to the municipality and does not possess authority separate to that derived from provincial statute;
- (ii) is the legislative arm of the municipality and makes laws, determines property taxation levels, allocates expenditures and holds civic staff accountable by providing them with direction, assigning resources and monitoring policy decisions as implemented by staff;
- (iii) must have a quorum in order to vote to amend or enact by-laws;
- (iv) in a Committee-of-the-Whole meets as a general Committee to discuss and vote on which recommendations shall be forwarded to Council for subsequent decision;
- (v) may not amend or pass any by-law where Council meets as a Committee-of-the-Whole;

- (vi) may sub-delegate administrative authority where the delegation does not entail a power to determine or adjudicate rights; make policy; or take legislative action;
- (vii) receives all reports of all Standing Committees and other designated bodies for their acceptance, amendment, deferral or referral as the Council deems appropriate;
- (viii) holds regular and special meetings of Council in open session; a Committee-of-the-Whole meeting in open or closed session for legal, personnel or property matters of a sensitive nature; and
- (ix) follows the procedures it establishes in the Council Procedural By-law.

(b) The Mayor, for example:

- (i) sees that the laws for the government of the Corporation are duly executed and obeyed;
- (ii) oversees the conduct of the subordinate officers in the government and administration and sees that all proven negligence, carelessness and violation of duty are dealt with;
- (iii) communicates information and recommendations to the Council from time to time that will tend to the improvement of the government;
- (iv) presides at all meetings of Council and ensures that all proceedings and conduct are enacted in accordance with the Procedural By-law;
- (v) is the Chair of the Policy and Finance Committee and is by right of office a member of all other Committees of Council and entitled to vote as a member;
- (vi) may summon a special meeting of the Council within a specified time period, as well as when requested to do so in writing by a majority of members;
- (vii) represents the views and interest of the City, its residents and taxpayers at a variety of official, public, ceremonial and intergovernmental events; and
- (viii) signs all By-laws and may sign debentures and promissory notes on behalf of the municipality.

(c) Councillors Generally, for example:

- (i) represent the views of the public and exercise judgement to make decisions on behalf of them;
- (ii) respond to resident inquiries or refer such inquiries to appropriate staff or other organizations and generally provide assistance to constituents;

- (iii) participate in Council meetings and undertake the activities within the authority, operations and procedures of Council as outlined in (a) above;
- (iv) choose among alternatives and reconcile conflict among competing priorities;
- (v) stay informed and keep up to-date;
- (vi) in Council, correct deficiencies in the system; and
- (vii) in Council, determine the overall system and structure of the Corporation.

(d) Standing Committees as a Whole, for example:

- (i) recommend policy and program development and advice, service targets, priorities and budget requirements of the respective departments to Council;
- (ii) explain the requirements, purpose and rationale of respective department programs;
- (iii) request reports as required to aid in their decisions on recommendations to Council;
- (iv) report and make recommendations to Council on policy matters referred to them;
- (v) provide access to public communication and deputation on matters within their purview;
- (vi) participate in joint meetings of Standing Committees as required;
- (vii) examine all accounts connected with discharging its duties or under its supervision in accordance with the Procedural By-law, the Purchasing By-law and other by-laws; and
- (viii) monitor and recommend on the budgets of agencies, boards and commissions reporting for that purpose through the respective Standing Committee.

(e) Standing Committee Chairs, for example:

- (i) review, identify and prepare agenda items and priorities with Department Heads and Clerk's Secretariat as assigned;
- (ii) ensure program policies and priorities are established by the Committee;
- (iii) are often called upon at Council to answer questions on Committee recommendations;
- (iv) conduct meetings, provide direction, ensure fair and open discussion of agenda items

in accordance with established procedures (Procedural By-law);

- (v) may call special meetings of the Standing Committee when the Chair or members feel it is necessary to do so;
- (vi) participate in and may chair, joint meetings of Standing Committees;
- (vii) shall be ineligible for membership on the Policy and Finance Committee; and
- (viii) ensure that matters within the mandate of the Policy and Finance Committee are forwarded there for appropriate action.

(f) Council Members on Agencies, Boards and Commissions, generally:

- (i) perform as part of a Board, most of the same roles as Standing Committees;
- (ii) balance their role as the custodian of the City's tax dollars and representative of Council policies, with that of their fiduciary and other duties as a Board member;
- (iii) provide specialized advice and expertise to aid in decision-making; and
- (iv) provide an essential link between the body and Council such that Council positions can be conveyed to the body and vice-versa.

(g) Staff of the City, for example:

- (i) provide timely and useful advice to Council and its Committees;
- (ii) carry out specific directives, motions and policies approved or delegated to them by the Council;
- (iii) follow the intent of Council directions;
- (iv) alert Council to legal limitations of proposals, or changes in legislation, or unintended impacts of decisions;
- (v) administer the organization and are responsible for day-to-day tasks in operations management;
- (vi) recommend policies, programs and budgets to Standing Committees and Council;
- (vii) respond to public inquiries and advise on Council approved policies;
- (viii) use allocated resources appropriately;
- (ix) stay informed and up to-date;

- (x) undertake research and review and report on findings;
  - (xi) evaluate staff assigned and correct any performance as required; and
  - (xii) encourage the development of staff under their supervision.
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## Appendix 1

### Descriptive Categories of Conduct across Acts

Certain aspects of member conduct are referred to in more than one Act. In order to assist Council members in understanding and referencing the requirements across these Acts, descriptive categories of conduct have been developed as presented below. References are made to the Acts that regulate them as summarized in Appendix 2.

(1) General:

- (i) General standard of conduct of members of Council; and
- (ii) Declaration of conflict of interest.

No member of Council should engage in any financial or other activity, which would tend to impair the member's independence of judgement or decision, or that is incompatible with the proper discharge of his or her official duties in the public interest. No member should use his or her office to seek to influence a decision, made or to be made by another person, so as to further the member's personal interest or improperly to further another person's personal interest.

When a member is called upon by official duties to deal with any matter in which the member has a direct or indirect personal pecuniary interest, the member must declare that interest and refrain from any discussion or voting on the matter.

References: The *Municipal Act*, s.94 (1) declaration of office of member of council, etc. and s. 100 investigation by judge of charges of malfeasance. The *Municipal Conflict of Interest Act*, s. 2 indirect pecuniary interest; s. 3 interest of certain relatives deemed that of member; s. 4, where s. 5 does not apply; and s. 5 when present at meeting at which matter considered.

(2) Specific Types of Prohibited Conduct:

(a) Breach of Trust Conduct:

- (i) Breach of (public) trust; and, fraud.

A member of Council as a public official is held to a higher standard than is a private person for the same activity. A breach of trust occurs when there is an abuse of the public trust by an act (including an omission) done to further or promote private ends or to obtain, directly or indirectly, a

benefit. Fraud involves intentional deception, where one individual obtains an advantage over another by false suggestions or suppression of the truth.

References: The *Criminal Code*, s. 122 breach of trust by public officer (this section has been applied in cases where the facts did not support a charge of municipal corruption under s. 123). The *Municipal Act*, s. 94(1) declaration of office of member of Council, etc. and s. 100 investigation by judge of charges of malfeasance.

(i) “Influence Peddling”:

- Undue influence upon Council; and
- Offering and acceptance of extra benefits and gifts.

A member of Council demands, accepts or offers or agrees to accept a loan, reward or other economic benefit for their vote, assistance in having a proposal adopted or defeated, or performing or omitting to perform an official act. These actions must relate to a member’s responsibilities respecting voting on resolutions or performing official acts.

References: The *Criminal Code*, s. 123(1) municipal corruption. The *Municipal Act* s. 94(1) Declaration of office of member of Council, etc.

(i) Secret commissions.

A member of Council, as an agent for the municipal corporation, “corruptly” demands, accepts or offers or agrees to accept from any person, a benefit as consideration for doing or not doing anything in relation to the business of the municipal corporation. The term “corruptly” means secretly, or without timely and adequate disclosure of the benefit to the municipal corporation.

Reference: The *Criminal Code*, s. 426 secret commissions.

(i) Misuse of information.

This conduct includes the:

- (i) use of insider information for a personal benefit;
- (ii) disclosure of confidential information; and
- (iii) disclosure of personal information and other contravention of the *Municipal Freedom of Information and Protection of Privacy Act*.

References: The *Criminal Code*, s. 122 breach of trust by public officer. The *Municipal Freedom of Information and Protection of Privacy Act*, s. 48 offences. Council Procedural By-law clause 15.1(f), (authority per s. 55 of the *Municipal Act*).



(b) City Property or Funds:

(i) False return on public funds.

A member of Council entrusted with public revenues knowingly provides a false statement of any sum or balance of money entrusted to, or controlled by, the member.

Reference: The *Criminal Code*, s. 399 false return by public officer.

(i) Refusal to deliver municipal property.

A member refuses or fails to deliver municipal property held by the member to a person who is authorized to demand it and does demand it.

Reference: The *Criminal Code*, s. 337 public servant refusing to deliver property.

(i) Voting illegally on financial matters.

Members are required to take action or to refrain from taking action in connection with certain financial matters respecting sinking funds and temporary loans.

Reference: The *Municipal Act*, s. 175(1) liability of members for diversion of sinking fund; s. 175(3) disqualification; s. 176 statement of treasurer as to amount required for sinking fund; s. 177 penalty where council neglects to levy for sinking fund; s. 187(10) penalty for excess borrowings; and, s. 187(11) penalty for misapplication of revenues by Council.

(c) Eligibility or Requirements of Office:

(i) Non-compliance with the requirements of office or absence from meetings.

A member fails to make the prescribed declaration of office within the prescribed time.

The member is absent from Council meetings for three successive months without a Council resolution authorizing the absence.

Reference: The *Municipal Act*, clauses 38(b) and (c) vacancies; and, s. 95(1) declaration of office.

(i) Holding incompatible offices or employment; and

(ii) Loss of citizenship or residency.

A member can be disqualified from holding office if the member accepts an incompatible office or employment, if the member loses his or her Canadian citizenship, or if the member ceases to meet certain residency or ownership requirements.

Reference: The *Municipal Act*, s. 37(1) persons disqualified from being members of Council.

- (i) Conduct unbecoming;
- (ii) Defamatory statements (libel and slander).

Procedural sanctions apply to improper conduct at committee or Council meetings. Statements made by a member in his or her public capacity at a meeting of Council or one of its committees are subject to a qualified “privilege” from defamation actions. This privilege does not extend to words spoken or written maliciously. The statement must also be relevant to the issue before Council.

References: The Council Procedural By-law passed under s. 55 of the *Municipal Act*, Part V Order and Decorum and Conduct of Members, s. 14-16; s. 115 Improper conduct at meetings. Court decisions on the defence of qualified privilege in defamation actions.

(d) Municipal Elections:

- (i) Interfering with ballots;
- (ii) Furnishing false information to election officers; and
- (iii) Procuring votes.

Reference: The *Municipal Elections Act, 1996*, s. 89 offences.

- (i) Bribery or another “corrupt” practice.

A “corrupt practice” includes an offence under section 89 of the *Municipal Elections Act, 1996*, that a judge finds was “knowingly” committed.

Reference: The *Municipal Elections Act, 1996*, s. 90(1) corrupt practices – certain offences knowingly committed; s. 90(2) and (3) corrupt practices - bribery.

- (i) Non-compliance with requirements respecting election campaign finance matters (expenses, contributions, and records).

Reference: The *Municipal Elections Act, 1996*, s. 92(2) election campaign finance offences, individuals; s. 92(3) additional penalty; s. 92(5) offences by candidate.

- (i) Non-compliance with any other provision of the *Municipal Elections Act, 1996*.

Reference: The *Municipal Elections Act, 1996*, s. 94 general offence.

## Summary of Each Act Governing the Conduct Of Municipal Members of Council

Four pieces of Provincial legislation govern the conduct of members of Council as follow:

- (i) the *Municipal Act*, and the Council Procedural By-law passed under section 55 of the *Municipal Act*;
- (ii) the *Municipal Conflict of Interest Act*;
- (iii) the *Municipal Elections Act, 1996*; and
- (iv) the *Municipal Freedom of Information and Protection of Privacy Act*.

Federally, the *Criminal Code* of Canada governs the conduct of members of Council.

### Part I: The *Municipal Act, R.S.O. 1990* (“MA”)

Canadian municipalities are often described as “creatures of statute” as they have no separate constitutional existence. Their powers are limited to what is set out in Provincial legislation. The *Municipal Act* is the general Provincial Act under which municipal corporations are created and which sets out the general powers, duties and responsibilities of municipalities. The *Municipal Act* includes provisions that specifically regulate the conduct of members of Council.

#### Conduct:

- (1) General standard of conduct of members – declaration of office [MA s. 94(1)]:

Every member of Council, before entering on the duties of office, made a declaration of office in which the member solemnly promised to conduct him or herself as follows:

- (a) to truly, faithfully and impartially, to the best of the member’s knowledge and ability, execute the office of Councillor or Mayor of the City of Toronto;
- (b) to have not received, nor to receive, any payment or reward, or promise thereof, for the exercise of any partiality or malversation\* or other undue execution of such office; and
- (c) to disclose any pecuniary interest, direct or indirect as required by and in accordance with the *Municipal Conflict of Interest Act*.

\*“Malversation”: Corrupt behaviour in position of trust; corrupt administration of public money, etc.;

Related provision: Investigation by judge of malfeasance – If Council passes a resolution requesting a judge of the Ontario Court (General Division) to investigate any matter relating to a supposed malfeasance, breach of trust or other misconduct on the part of a member of the council, the judge shall make the inquiry and with all convenient speed, report to Council

the result of the inquiry and the evidence taken [MA s. 100(1)].

- (2) Non-compliance with *Municipal Act* requirements re office or absence from meetings – *Penalty, seat declared vacant* [MA s. 38(b) and (c), s.95 (1)]

The seat of a member of Council becomes vacant if the member:

- (a) neglects or refuses to accept office, or to make the prescribed declaration noted above, within the prescribed time [MA s. 38(b)]; or
- (b) is absent from Council meetings for three successive months unless authorized to do so by a Council resolution [MA s. 38(c)].

Related provision: A member who is in default of making the prescribed declaration is also deemed to have resigned [MA s. 95(1)].

- (3) Holding incompatible offices or employment; loss of citizenship or residency – *Penalty, disqualification from holding office* [MA s. 37]

A member, under the *Municipal Act* and other legislation, can become disqualified from holding office. Cases of disqualification based on a member's conduct include the following:

- (a) if the member becomes a judge, a Member of Parliament ("MP"), a Member of Provincial Parliament ("MPP") or a Senator;
  - (b) if the member accepts employment with the City or its local boards (subject to certain exceptions) that is not under a leave of absence;
  - (c) if the member accepts employment as a Crown employee at the level of a deputy minister or at a level as prescribed in regulations under the *Public Services Act*;
  - (d) if the member ceases to be a Canadian citizen; and
  - (e) if the member ceases to be a resident in the City, the owner or tenant of land in the City or the spouse of an owner or tenant in the City [MA s. 37(1) and (2)].
- (4) Voting illegally respecting financial matters – *Penalties, disqualification from office for two years, personally liable for amounts diverted* [MA ss. 175, 176, 177 and 187]

There are provisions that require members to take action or to refrain from taking action in connection with certain financial matters respecting sinking funds and temporary loans.

- (a) Sinking funds ("trust funds"):
  - (i) Vote to divert sinking funds – Money *levied* for a sinking fund (a debt account) is not to be diverted (i.e., used to pay any part of the current or other expenditures of the corporation) [MA s. 174]. If a member votes to apply money raised for a special

purpose or collected for a sinking fund the member is personally liable for the amount so applied and is disqualified from holding any municipal office for two years [MA s. 175].

- (ii) Council neglects to levy for sinking fund – If Council neglects in any year to levy the amount required to be raised for a sinking fund, each member of Council is disqualified from holding any municipal office for two years, unless the member shows that he or she made reasonable efforts to procure the levying of the amount required [MA s. 177].

Background and related provisions: A “sinking fund” is established as a means of retiring debenture debt. The by-law authorizing the issue of sinking funds debentures provides that during the term of the debenture the Council will levy a specific sum to pay the interest charges. The specific sum, with estimated interest at a rate not exceeding the statutory maximum, capitalized legally, must be sufficient to pay the principal amount of the debentures as it becomes due.

Separate debt accounts are to be kept for the interest and for the sinking fund or instalments of principal [MA s.169]. The monies required to meet these obligations form a special and prior charge on the annual revenues for the Corporation. The sinking fund is so regarded as a trust fund. An encroachment for general purposes upon the amount attributed to the fund constitutes a breach of trust, as when expenditures have been made to the extent that the balance on hand is insufficient to make these payments, there has been a violation of section 169.

The Treasurer is required to provide Council with a statement as to the amount required for any amount required for a sinking fund previous to the striking of the annual rate [MA s. 176(1)].

(b) Temporary Loans:

- (i) Knowingly votes for current borrowing that exceeds statutory limit – If Council authorizes the borrowing of or borrows a larger amount than is permitted under section 187 (25-50 percent of the uncollected balance of the estimated annual revenue), every member who knowingly votes for this is disqualified from holding any municipal office for two years [MA s.187 (10)].
- (ii) Votes for misapplication of revenues – If Council authorizes the application of any revenues of the corporation that are “charged” with the repayment of a loan for a purpose other than the repayment of the loan secured by the charge, the members who vote for the application are personally liable for the amount so applied [MA s. 187(11)].
- (iii) Misapplies revenues – Any member of Council or officer of the corporation who applies any revenues of the corporation that are “charged” with the repayment of a loan for a purpose other than the repayment of the loan secured by the charge are personally liable for the amount so applied [MA s. 187(12)].

Part II: The Council Procedural By-law (“PB”):

Passed under sections 55(2) and 102 of The *Municipal Act*.

Council is required to adopt a procedural by-law governing the calling, place and proceedings of meetings. [MA s. 55(2)] Council may also pass by-laws for governing the conduct of its members as may be deemed expedient and are not contrary to law [MA s. 102]. Council's Procedural By-law, By-law No. 23-1998, "To Govern the Proceedings of the Council and the Committees thereof", includes provisions that deal with the conduct of members at meetings of Council and its Committees.

Conduct:

Improper conduct at Committee meetings and meetings of Council – *Penalty, Member called to order, expelled from meeting* [PB ss. 14 to 16, and s. 118]

Part V of the Procedural By-law deals with order and decorum and conduct of Members at meetings. Sections 15.1 and 16 prohibit specific activities, for example, use of unparliamentary language.

Part III: The *Municipal Conflict Of Interest Act*, R.S.O. 1990 ("MCIA"):

The *Municipal Conflict of Interest Act* sets out a prescribed code of conduct for members of Council to follow when they have a "pecuniary interest, direct or indirect in any matter". This Act also applies to members of local boards as defined in the MCIA.

The purpose of the MCIA is to ensure that members of Council make decisions based on the public interest and not based on the personal economic interests of the members. The MCIA seeks to achieve this purpose by requiring any member who has a pecuniary interest in a matter to disclose that interest and to not participate in the discussion and decision on the matter. By taking these actions the member has removed the conflict of interest that would otherwise occur if the member failed to make the required disclosure or, with or without disclosure, participated in the decision-making process.

Conduct:

Specifically, a member having a pecuniary interest in a matter under the *Municipal Conflict of Interest Act* must:

- (a) disclose their interest and the general nature of that interest prior to any consideration of the matter at the meeting or, if absent from the meeting, disclose that interest at the next meeting they attend;
- (b) not take part in any vote or discussion of the matter;
- (c) not attempt to influence the vote on the matter; and
- (d) leave any "in camera" meeting (a meeting not open to the public) during which the matter is

under consideration; or

*risk the following penalties – forfeiture of office, disqualification from holding office for up to seven years, and restitution* [MCIA ss. 5, 9 and 10].

(1) Determination of Pecuniary Interest under the Act [MCIA ss. 1 to 5]:

Pecuniary interest is not defined in the *Municipal Conflict of Interest Act* but it includes any economic interest, as opposed to a philosophical, ideological or political interest, of the member. Motive, and the extent of a member's interest involved, are irrelevant to the question of whether or not there is a pecuniary interest under the MCIA. Whether or not the subject matter before Council would result in an advantage or disadvantage to the member, it is the presence of the pecuniary interest that requires a declaration in order to remove any presumption of bias.

Direct Pecuniary Interest:

In general, a direct pecuniary interest is one to which the member is directly linked without the intervention of another legal person.

Indirect Pecuniary Interest:

An indirect pecuniary interest is one involving another legal person where the person or corporation having a financial relationship with the member might experience an economic benefit or avoidance of economic loss. Thus, the direct and indirect interests of the parents, spouses and children of member, if known to the member, are deemed to also be the pecuniary interests of the member [MCIA ss. 1(definitions) and 3]. A member has an indirect pecuniary interest in a matter [MCIA ss. 1 (definitions) and 2] if:

- (a) he or she, or his or her nominee, is a shareholder, director or senior officer of a private corporation;
- (b) has a controlling interest in, or is a director, or senior officer of a public corporation; or
- (c) he or she is a member of a body that has a pecuniary interest in the matter.

Exceptions:

The MCIA contains some practical exceptions to what is a pecuniary interest for the purposes of section 5 of the MCIA. For example, a member is not required to disclose a pecuniary interest arising only by reason of an interest held in common with electors generally. This exception also applies where the member's interest is not different from that of the community in general, so that, for example, the Council decision on a planning matter would not provide a special benefit to the member. Interests are excepted which are so remote or insignificant that they cannot reasonably be regarded as likely to influence the member [MCIA ss. 1(definitions) and 4].

Determination as to whether an individual member of Council has a conflict of interest in a matter is

an issue that the member must determine with independent legal advice if necessary. The City Solicitor may be required to provide the Council as a whole with legal advice on a matter before it and is not in a position, therefore, to advise an individual member.

Part IV: The *Municipal Elections Act, 1996* (“MEA”):

The *Municipal Elections Act, 1996* regulates the holding of municipal elections. The Act includes provisions that penalize a council member who is a candidate for re-election for conduct that is held to be an offence or corrupt practice.

Conduct:

- (1) Commits an offence under section 89 – *Penalty, fine of up to \$5000* [MEA s. 89]:

Section 89 includes offences that relate to voting and ballots, as well as the following offences:

- (a) procuring votes by inducing a person to vote when they are not entitled to or publishing a false statement of a candidates withdrawal [MEA s. 89(d) and (g)]; and
  - (b) furnishing false information to election officials [MEA s. 89(h)].
- (2) Commits a “corrupt practice” – *Penalties, a fine up to \$5000, or imprisonment for up to six months, or both, disqualification from voting for four years, forfeiture of office, and ineligibility for elected or appointed office for six years* [MEA ss. 90 and 91]:

A “corrupt practice” includes an offence under section 89 of the *Municipal Elections Act, 1996* that a judge finds was *knowingly* committed [MEA s. 90(1)] and bribery [MEA ss. 90(2), & (3)].

The penalty under s. 91 of the *Municipal Elections Act, 1996* also applies if a candidate is convicted of an offence under the *Criminal Code* (Canada) in connection with an act or omission that relates to an election to which this Act applies.

- (3) Non-compliance with expenses and contributions requirements – *Penalties, fine up to \$5000, forfeiture of office, and ineligibility for elected or appointed office until after the next regular election has taken place* [MEA s. 92(5)]:

The penalty of ineligibility for office applies to the following conduct:

- (a) incurring election expenses that exceed the maximum expenses permitted under s. 76 of the *Municipal Elections Act, 1996*; or
  - (b) filing a financial statement or auditor’s report on the candidate’s election campaign finances that is incorrect or does not otherwise comply with s. 78 of the *Municipal Elections Act, 1996* [MEA s. 92(5)].
- (4) Commits an offence of contravening any provision of the MEA, 1996 – *Penalty, fine of up to \$5000, if no other penalty is provided in the Act* [MEA s. 94]:



This “general offence” provision applies where the conduct is not already covered by one of the specific offence provisions noted above.

Part V: The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 (“MFIPPA”):

A municipal corporation and its local boards are “institutions” under the *Municipal Freedom of Information and Protection of Privacy Act*. MFIPPA provides a right of access to information under the control of an institution. MFIPPA also requires that the institution protect the privacy of an individual’s personal information existing in the institution’s records and sets out rules regarding the collection, retention, use, disclosure and disposal of personal information in the institution’s custody or control. MFIPPA does not have any special provisions that deal with access to the records of a member of Council or a member’s access to the municipal corporation’s records. However orders of the Provincial Information and Privacy Commissioner and a court decision have dealt with these matters as noted below.

A member of Council’s personal constituency records are not considered to be the records of the municipal corporation for purposes of requests for information under MFIPPA as these records are not in the “custody or control” of the municipal corporation. One of the reasons given for this decision was the fact that, except under unusual circumstances, a member of Council (other than the Mayor as head of Council) is generally not considered to be an “officer” of a municipal corporation.

Disclosure of records containing personal information by the municipal corporation to a member of Council and to Council must be in accordance with the disclosure rules under MFIPPA. For example, in orders of the Information and Privacy Commissioner, the disclosures to a member of Council of certain mailing lists, general property data information that was not a public record, and information on a zoning infraction matter, were found to be disclosures of personal information in contravention of MFIPPA. In a court decision, a Council resolution directing the disclosure of a list of names of welfare recipients was declared null and void. One of the Judge’s reasons for this decision was that a mere expression of interest and concern by a municipal Council about a particular issue did not justify the disclosure of the information. There must be evidence of sufficient need for Council to have the information. The decision related to the interpretation of a specific exception in MFIPPA, but it illustrates the general approach taken to the release of personal information.

Conduct: “Wilfully” discloses or maintains personal information in contravention of the *Municipal Freedom of Information and Protection of Privacy Act*, obstructs or misleads the Information and Privacy Commissioner, or fails to comply with an order of the Commissioner – *Penalty, fine of up to \$5000* [MFIPPA 48].

Part VI: The *Criminal Code of Canada*, R.S.C. 1985 (“CC”):

The *Criminal Code of Canada* sets out the actions (or “non actions”) of a person that are considered criminal offences. Respecting the actions of members of a municipal Council, there are two offences that specifically apply. The first offence is that of “municipal corruption” [CC s. 123],

more commonly referred to as “influence peddling” covering bribes, loans and so on. The second offence is that of a “public servant refusing to deliver property” [CC s. 337]. The Courts have also judicially interpreted the offences of “breach of trust” and “fraud” [CC s. 122], and “secret commissions” [CC s. 426], as applying to improper conduct by a member of Council. As noted below there are also other public service offences that do not specifically refer to members of Council, but which in the future a judge may judicially interpret as being applicable.

Conduct:

Offence Specific to Members of Council:

- (1) Accepts benefits for a corrupt practice (commonly known as influence peddling) – *Penalty for offence of “municipal corruption”, imprisonment for a term not exceeding five years* [CC s. 123]

The offence of “municipal corruption” occurs when a municipal official (defined as a member of council or any municipal office holder) demands, accepts, offers or agrees to accept a loan, reward or benefit of any kind for:

- (a) the officer’s vote;
- (b) assistance in having a proposal adopted or defeated; or
- (c) performing or omitting to perform an official act.

The corrupt practice must relate to the member’s responsibilities respecting voting on resolutions and performing official acts.

Offences Previously Applied to Members of Council:

- (2) Commits fraud or a breach of trust in connection with his or her duties as a member of Council whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. *Penalty for offence of “breach of trust by public official”, imprisonment for a term not exceeding five years* [CC s. 122]:

Section 122 of the *Criminal Code* refers to an “official” and the Courts have judicially interpreted the applicable definition to include an elected member of a municipal Council. Section 122 imposes a broader liability on a public official than on a private person who was involved in the same activity. This section has been applied in the following cases, for example, where the facts did not support a charge of municipal corruption under section 123:

- (a) where a mayor misled a constituent on the value of the constituent’s land and endeavoured to procure the land for his personal profit; and
- (b) where a member of Council accepted undeclared benefits from a person, who was carrying on business with the municipality.

- (3) As an agent for the municipal corporation, corruptly demands, accepts or offers or agrees to accept from any person, a benefit as consideration for doing or not doing anything in relation to the business of the agent's principle. *Penalty for offence of "secret commissions", imprisonment for a term not exceeding five years* [CC s. 426]:

In applying this offence to the conduct of a member of Council a judge judicially interpreted the relationship between a municipal corporation and a member of Council as one of principal and agent within the meaning of those terms in the offence of "secret commissions" [CC s. 426]. As used in this section, the term "corruptly" means secretly, or without timely and adequate disclosure to the principle of the benefit.

Public Service Offences that may be Extended to Members of Council:

- (4) Refuses or fails to deliver municipal property held by the member to a person who is authorized to demand it and does demand it. *Penalty for offence of "public servant refusing to deliver property", imprisonment for a term not exceeding fourteen years* [CC s. 337]:

For this section to apply, a judge would have to find that a member of Council is "employed in the service of a municipality" within the meaning of those terms in the offence of "public servant refusing to deliver property" [CC s. 337].

- (5) Knowingly furnishes a false statement or return in connection with public monies entrusted to the member. *Penalty for offence of "false return by public officer", imprisonment for a term not exceeding five years* [CC s. 399]:

*\*Alternate penalties and disqualification:*

The penalties noted above are the specific penalties that are set out in the sections. As these penalties are not offences for which a minimum punishment is prescribed, a judge could issue an alternative order (for example, a conditional discharge) or impose alternative penalties (including fines) [CC Part XXIII, Sentencing].

If a member is sentenced to a term of imprisonment, the member is disqualified from holding office as a member of Council during the time he or she is serving the sentence [s. 37(2) of the *Municipal Act* and s. 17(3) of the *Municipal Elections Act, 1996*]. If a member of Council is convicted of an indictable offence and sentenced to imprisonment for two years or more and at the time the member holds an office under the Crown or other [Federal] public employment, the office or employment immediately becomes vacant [CC s. 750].