

CODE OF CONDUCT FOR MEMBERS OF COUNCIL CITY OF TORONTO

Authority: Adopted, as amended, by City Council at its meeting on September 28 and 29, 1999 – Clause 2 of Report 5 of the Administration Committee titled “Code of Conduct for Members of Council Inclusive of Lobbyist Provisions”.

Notes: (1) **Re: Section XII of the Code of Conduct – Applicability to Agencies, Boards, Commissions and Other Bodies**

City Council, at its meeting on September 28 and 29, 1999, in addition to adopting a Code of Conduct also directed that the Code of Conduct apply to Council and all other appointments to City agencies, boards and commissions, subject to any necessary (legal) modification, as described in Section XII of the Code of Conduct, including the Toronto Police Services Board and Boards of Directors of City-controlled corporations.

(2) **Re: Section XIII of the Code of Conduct – Compliance with the Code of Conduct**

City Council, at its meeting on November 27, 28 and 29, 2002, adopted a Complaint Protocol for the Code of Conduct consisting of both an informal and formal complaint procedure.

The formal portion of the Complaint Procedure requires that a complaint be made in writing setting out the grounds for the belief and the contravention alleged and each complaint should include a supporting affidavit that sets out the evidence in support of the complaint. Staff of the City Clerk’s division of the City of Toronto, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.

(3) **Municipal Act References**

In the Code of Conduct and its Appendices, the Municipal Act references are to the Municipal Act, R.S.O. 1990., as amended, which has now been repealed. In the future the references will be updated to refer to the applicable sections in the Municipal Act, 2001.

**CODE OF CONDUCT FOR MEMBERS OF COUNCIL
CITY OF TORONTO, as amended by Council September 28 and 29,1999**

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:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- 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;
- 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
- 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:

- the *Municipal Act*, and the Council Procedural By-law passed under section 55 of that Act;
- the *Municipal Conflict of Interest Act*;
- the *Municipal Elections Act, 1996*; and
- 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:

- compensation authorized by law;
- such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol, custom, or social obligations;
- a political contribution otherwise reported by law;
- services provided without compensation by persons volunteering their time;
- suitable memento of a function honouring the member;
- 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;
- food and beverages consumed at banquets, receptions or similar events; and
- 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 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.

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:

- items under litigation, negotiation, or personnel matters;
- information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- price schedules in contract tender or Request For Proposal submissions if so specified;
- information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- 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:

- “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;
- “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;
- “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
- “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:

- 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?
- Does the contact person do business or seek to do business with the City?
- 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?
- Is the contact person a provincially or federally registered lobbyist employer or a client of a registered lobbyist? (Refer to the respective Web Sites)
- Is the contact person a provincially or federally registered lobbyist or lobbying firm?
- 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:

(Refer to Note (1) on cover page of Code of Conduct)

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:

(Refer to Note (2) on cover page of 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.

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:

- exercises the authority delegated by the provincial legislature to the municipality and does not possess authority separate to that derived from provincial statute;
- 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;
- must have a quorum in order to vote to amend or enact by-laws;
- 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;
- may not amend or pass any by-law where Council meets as a Committee-of-the-Whole;
- may sub-delegate administrative authority where the delegation does not entail a power to determine or adjudicate rights; make policy; or take legislative action;
- receives all reports of all Standing Committees and other designated bodies for their acceptance, amendment, deferral or referral as the Council deems appropriate;
- 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
- follows the procedures it establishes in the Council Procedural By-law.

(b) THE MAYOR, for example:

- sees that the laws for the government of the Corporation are duly executed and obeyed;
- 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;
- communicates information and recommendations to the Council from time to time that will tend to the improvement of the government;
- presides at all meetings of Council and ensures that all proceedings and conduct are enacted in accordance with the Procedural By-law;
- 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;
- 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;
- represents the views and interest of the City, its residents and taxpayers at a variety of official, public, ceremonial and intergovernmental events; and
- signs all By-laws and may sign debentures and promissory notes on behalf of the municipality.

(c) COUNCILLORS GENERALLY, for example:

- represent the views of the public and exercise judgement to make decisions on behalf of them;
- respond to resident inquiries or refer such inquiries to appropriate staff or other organizations and generally provide assistance to constituents;
- participate in Council meetings and undertake the activities within the authority, operations and procedures of Council as outlined in (a) above;
- choose among alternatives and reconcile conflict among competing priorities;
- stay informed and keep up to-date;
- in Council, correct deficiencies in the system; and
- in Council, determine the overall system and structure of the Corporation.

(d) STANDING COMMITTEES AS A WHOLE, for example:

- recommend policy and program development and advice, service targets, priorities and budget requirements of the respective departments to Council;
- explain the requirements, purpose and rationale of respective department programs;
- request reports as required to aid in their decisions on recommendations to Council;
- report and make recommendations to Council on policy matters referred to them;
- provide access to public communication and deputation on matters within their purview;
- participate in joint meetings of Standing Committees as required;

- 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
- 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:**

- review, identify and prepare agenda items and priorities with Department Heads and Clerk's Secretariat as assigned;
- ensure program policies and priorities are established by the Committee;
- are often called upon at Council to answer questions on Committee recommendations;
- conduct meetings, provide direction, ensure fair and open discussion of agenda items in accordance with established procedures (Procedural By-law);
- may call special meetings of the Standing Committee when the Chair or members feel it is necessary to do so;
- participate in and may chair, joint meetings of Standing Committees;
- shall be ineligible for membership on the Policy and Finance Committee; and
- 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:**

- perform as part of a Board, most of the same roles as Standing Committees;
- 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;
- provide specialized advice and expertise to aid in decision-making; and
- 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:**

- provide timely and useful advice to Council and its Committees;
- carry out specific directives, motions and policies approved or delegated to them by the Council;
- follow the intent of Council directions;
- alert Council to legal limitations of proposals, or changes in legislation, or unintended impacts of decisions;

- administer the organization and are responsible for day-to-day tasks in operations management;
- recommend policies, programs and budgets to Standing Committees and Council;
- respond to public inquiries and advise on Council approved policies;
- use allocated resources appropriately;
- stay informed and up to-date;
- undertake research and review and report on findings;
- evaluate staff assigned and correct any performance as required; and
- encourage the development of staff under their supervision.

APPENDIX 1
(Revised)

From Clause 2 of Report No. 5 of the Administration Committee as amended and adopted by City Council at its Meeting held on September 28 and 29, 1999, as revised to July, 2001

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.

(ii) "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.

(iii) 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.

(iv) 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. § 27-15A(6) of Municipal Code Chapter 27, Council Procedures, (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.

(ii) 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.

(iii) 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.

- (ii) Holding incompatible offices or employment; and

- (iii) 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: Municipal Code Chapter 27, Council Procedures, passed under s. 55 of the *Municipal Act*, Article V Order and Decorum and Conduct of Members, §§ 27-14 to 27-16; §27-120 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.

- (iv) 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.

- (v) 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.

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

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

APPENDIX 2
(Revised)

From Clause 2 of Report No. 5 of the Administration Committee as amended and adopted by City Council at its meeting held on September 28 and 29, 1999, as revised to July, 2001

**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 or same-sex partner 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 {40-70 percent in 2001} 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: Municipal Code Chapter 27, Council Procedures

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]. Municipal Code Chapter 27, Council Procedures, 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* [§§ 27-14 to 27-16, and § 27-120]

Article V of Chapter 27 deals with order and decorum and conduct of Members at meetings. Sections 27-15B and 27-16 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, same-sex partners 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].