

**APPENDIX B**



**CODE OF CONDUCT FOR MEMBERS OF  
 ADJUDICATIVE BOARDS  
 CITY OF TORONTO**

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~~Note: This document is a modified version of the “Code of Conduct for Members of Council” for members of adjudicative boards that are local boards (restricted definition).~~

There is a separate version of the Code of Conduct for members of City Council and for local boards (restricted definition) that are not adjudicative boards.

## **AUTHORITY**

### **Consolidated Code of Conduct for Members of Council, including:**

#### *Historic*

- (1) “Code of Conduct for Members of Council Inclusive of Lobbyist Provisions” adopted, as amended, by City Council on September 28 and 29, 1999 (Clause 2 of Report 5 of the Administration Committee) and as amended by:
  - (a) “Amendments to Code of Conduct for Members of Council” approved by City Council on September 25, 26 and 27, 2006 (Clause 26 of Report 7 of the Policy and Finance Committee) that under Council action (2) came into force on February 8, 2007 following City Council’s approval on February 5, 6, 7 and 8, 2007 of the appeal mechanisms and legal support program in CC2.5 “Amendments to the Code of Conduct Complaint Protocol under Members Code of Conduct”; and
  - (b) “Report on Congruence between Lobbying By-law and Obligations under Members Code of Conduct” approved by Council on April 28 and 29, 2008 (EX 19.7, motions 1 and

#### *Current*

- (2) This Code of Conduct for Members of Adjudicative Boards was amended and adopted by City Council on July 15, 16 and 17, 2008 (2008 EX22.6, as amended by Council and amended by Council on July 6 and 7, 2010.

~~(2)(3)~~ [Will be updated if changes made.]

## **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. In particular, the public is entitled to expect the highest standards of conduct from members of Council and the citizen members who are appointed to local boards by Council to act on its behalf. In turn, adherence to these standards will protect and maintain the City of Toronto’s reputation and integrity.

~~To these ends, during its first term as a unified City, the City of Toronto, as one of several initiatives, adopted a Code of Conduct for Members of Council. Although the title refers to Members of Council, it was also binding on citizen members of local boards. Subsection 157(1) of the City of Toronto Act, 2006 now requires the City to establish codes of conduct for members of Council and of certain local~~

~~boards of the City. In response to this requirement, the City has revised and updated the original Code of Conduct and developed two separate versions for local boards. Each This~~ Code of Conduct for Members of Adjudicative Boards is intended to supplement and be compatible with the laws governing the conduct of members.

**This Code of Conduct is based on the following principles:**

- Members of adjudicative boards shall serve and be seen to serve on these boards in a conscientious and diligent manner;
- Members of adjudicative boards shall be committed to performing their functions with integrity, and shall avoid the improper use of the influence of their office and conflicts of interest, both apparent and real;
- Members of adjudicative boards 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;
- Members of adjudicative boards shall seek to serve the City's and the public's interest by upholding both the letter and the spirit of applicable laws of the Federal Parliament and Ontario Legislature, and the laws and policies of Council and the adjudicative board of which they are a member; and
- Members of adjudicative boards have a legal obligation under the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms* to observe the principles of fairness, access, and equity, and to avoid discriminatory practices.

**I. DEFINITIONS**

In the *Code of Conduct*:

~~(a) the following terms shall have the meanings indicated:~~

~~(b)~~

~~(c)~~(a) "adjudicative board" means a tribunal that is a local board;

"Council" means the Council of the City of Toronto;

"local board" means a local board as defined in section 156 of the *City of Toronto Act, 2006*; and

"member" means a member of an adjudicative board.

~~(d)~~(b) the terms "child", "parent" and "spouse" have the same meanings as in the *Municipal Conflict of Interest Act*.

~~“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;~~

~~“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; and~~

~~“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.~~

## II. APPLICATION

This Code of Conduct applies to members of adjudicative boards of the City of Toronto.

The current adjudicative boards are as follows:

- Administrative Penalty Tribunal;
- Committee of Adjustment;
- Committee of Revision;
- Property Standards Committee / Fence Viewers;
- Rooming House Licensing Commissioner;
- Sign Variance Committee;
- Toronto Licensing Tribunal; and,
- Toronto Local Appeal Body.

Members of Council are bound by the *Code of Conduct for Members of Council*. However, when a Member of Council is acting in her or his capacity as a member of an adjudicative board, the Member of Council is also bound by the provisions of this Code that are specific to the requirements of an adjudicative board.

## III. STATUTORY PROVISIONS REGULATING CONDUCT

This *Code of Conduct* operates along with and as a supplement to the existing statutes governing the conduct of members of adjudicative boards. The following provincial and federal legislation ~~that~~ governs the conduct of members ~~of adjudicative boards includes, but is not limited to the following:~~

- the *City of Toronto Act, 2006* and, where applicable, Chapter 27, Council Procedures, of the Municipal Code (the Council Procedures By-law) passed under section 189 of that Act;
- the *Municipal Conflict of Interest Act*;
- the *Municipal Freedom of Information and Protection of Privacy Act*; ~~and~~
- the *Statutory Powers Procedure Act*;
- ~~the~~ *Ontario Human Rights Code*;

- the Securities Act, and,
- the Criminal Code of Canada.

~~The Criminal Code of Canada also governs the conduct of members.~~

#### IV. GIFTS AND BENEFITS

##### **Caution – Hearing Limitations**

*While this Article permits a member to receive certain specified gifts and benefits, as a member of an adjudicative body, the members should always keep in mind that they may be required to remove themselves from a hearing on the basis of a conflict of interest or perception of bias as a result of a gift or benefit.*

No member shall accept a fee, advance, gift or personal benefit ("gifts or benefits") that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions listed below.

For these purposes, ~~a fee or advance paid to, or a gift or benefit~~ any gifts or benefits provided with the member's knowledge to a member's spouse, child, or parent, or to a member's staff that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift or benefit to that member.

The following are recognized as exceptions:

(a) compensation authorized by law;

~~(a)(b)~~ a suitable memento of a function honouring the member;

~~(d) a political contribution otherwise reported by law, in the case of members running for office;~~

~~(b)(c)~~ 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, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity; and.

~~(e)(d)~~ food and beverages consumed at banquets, receptions or similar events, if:

1. attendance serves a legitimate business purpose of the adjudicative board on which the member serves;
2. the person extending the invitation or a representative of the organization is in attendance; and
3. the value is reasonable and the invitations infrequent; and

~~(g) communications that are educational or training materials received from professional associations related to similar tribunals.~~

These exceptions ~~other than category (c) (political contributions allowable by law),~~ do not apply where such gifts or benefits are provided by lobbyists or their clients or employers (as defined or described in Municipal Code Chapter 140, Lobbying). ~~For these purposes, a lobbyist is an individual, organization or business that:~~

~~[i] is lobbying or causing the lobbying of any public office holder at the City, a local board (restricted definition) or the board of health;~~

~~[ii] the member knows is intending to lobby, having submitted or intending to submit a registration to the Lobbyist Registrar for approval to communicate on a subject matter; or~~

~~[iii] is maintaining an active lobbyist registration with the City even though not having a current active subject matter registered with the lobbyist registry.~~

In the case of categories (b), ~~(c)~~, and (d) if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner.

The disclosure statement must indicate:

1. the nature of the gift or benefit;
2. its source and date of receipt;
3. the circumstances under which it was given or received;
4. its estimated value;
5. what the recipient intends to do with any gift; and
6. whether any gift will at any point be left with the City or the adjudicative board.

Any disclosure statement will be a matter of public record.

On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or remit the value of any gift or benefit already consumed to the City or adjudicative board.

Except in the case of categories (a) and (c) a member may not accept a gift or benefit worth in excess of \$500 or gifts and benefits from one source during a calendar year worth in excess of \$500.

## V. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

Members shall not 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 to do so by the adjudicative board or, if applicable, by Council.

Members shall not use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.

Members shall not access or attempt to gain access to confidential information in the custody of the local board or City unless it is particularly necessary for the performance of their duties and not prohibited by the local board or Council policy.

Confidential information includes but is not limited to information in the possession of, or received in confidence by an adjudicative board that the adjudicative board is: either prohibited from disclosing or using for a purpose other than the purpose for which it was received; ~~or is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* (often referred to as "MFIPPA");~~ restricted from using or disclosing under the *Criminal Code*; restricted from using or disclosing under the *Securities Act*; restricted from using or disclosing due to contractual obligations or policies of the adjudicative board or City Council. ~~or other legislation such as the board's procedure by law or the *Statutory Powers Procedure Act*.~~

~~Generally, the *Municipal Freedom of Information and Protection of Privacy Act* 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 *City of Toronto Act, 2006* 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 to do so by the adjudicative board or, if applicable, by Council.~~

~~Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation, either directly or indirectly.~~

Under the City's Procedures By-law (passed under section 189 of the *City of Toronto Act, 2006*), or similar provisions of the adjudicative board's procedure by-law and subject to applicable legislation governing the procedures of the adjudicative board, a matter that has been discussed at an in-camera (closed) meeting ~~remains~~constitutes confidential information. No member shall disclose the content of any such matter or the substance of deliberations of the in-camera meeting until the adjudicative board, or if applicable, Council or one of its committees discusses the information at a meeting that is open to the public or releases the information to the public.

As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of property or assets of the adjudicative board or City.

The following are additional examples of the types of confidential information ~~that to which the obligations in this Article apply a member 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;
- purchasing strategies, including timing, establishment of criteria, budget considerations;
- commercially-sensitive information received under the condition of confidentiality;
- information deemed to be "inside information" under the Criminal Code;
- 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).

~~Members should not access or attempt to gain access to confidential information in the custody of the adjudicative board or City unless it is necessary for the performance of their duties and not prohibited by the adjudicative board or Council policy.~~

In the case of an adjudicative board which is subject to the *Statutory Powers Procedure Act*, that Act requires that an oral hearing be open to the public except where the tribunal is of the opinion that:

- matters involving public security may be disclosed; or
- intimate financial matters or personal matters may be disclosed at the hearing of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle of hearings being open to the public, when the interests of the public and persons affected are considered.



## **VI. COMMUNICATIONS WITH ADJUDICATIVE BOARDS**

Written communication to an adjudicative board shall take place only through the board administrator, and shall be copied to all parties or their representatives as appropriate. Oral communications with the adjudicative board about a current proceeding shall take place only in the presence of or with the consent of all parties.

Where a party is represented by a representative, all communication between the adjudicative board and the party shall be through the representative, with the exception of notices of hearing, which shall be served upon all parties known to the adjudicative board as appropriate. The adjudicative board shall not be copied on correspondence and documents exchanged by parties, unless the board administrator has given prior approval to such copying.

## **VII. MEDIA COMMUNICATIONS**

The Chair shall serve as the media contact for the entire adjudicative board where such contact is appropriate. Should the media contact a member directly, the member shall refer the enquiry to the Chair or, in the absence of the Chair, to the Chair's designate. The Chair may identify another member as the media contact for a specific issue.

## **VIII. USE OF BOARD AND CITY PROPERTY, SERVICES AND OTHER RESOURCES**

No member should use, or permit the use of local board or City land, facilities, equipment, supplies, services, staff or other resources (for example, adjudicative board or City-owned materials, websites, local board and City transportation delivery services, and any members expense budgets) for activities other than the business of the adjudicative board or the City; nor should any member obtain personal financial gain from the use or sale of adjudicative board or 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 adjudicative board or City.

## **IX. ELECTION CAMPAIGN WORK**

No member shall use the facilities, equipment, supplies, services or other resources of the adjudicative board or the City (including the adjudicative board's newsletters and websites linked through the adjudicative board's or City's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on the adjudicative board's or City's property unless permitted by City policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes where those persons receive compensation from the adjudicative board or the City.

## X. IMPROPER USE OF INFLUENCE

No member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the adjudicative board.

Examples of prohibited conduct are: the use of one's status as a member of an adjudicative board to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage in the carrying out of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within the adjudicative board or at the City, in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- (a) that is of general application;
- (b) that affects a member, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits of a member.

## XI. BUSINESS RELATIONS

No member shall act as a paid agent before the local board or provide goods, consulting or other services to the local board directly or through a partnership, professional or closely-held corporation.

If a member becomes aware that an entity, for which the member has a material interest, is a director, employee or agent, may offer or provide goods, consulting or other services to the local board, the member will disclose these circumstances to the Chair and seek advice from the Integrity Commissioner about the application of the *Municipal Conflict of Interest Act* and whether, in consideration of the circumstances, ongoing local board membership is in the best interests of the local board. In providing this advice, the Integrity Commissioner will consider the risk of harm to the reputation of the local board.

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

~~A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.~~

## **XII. 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 adjudicative board and to the City.

### **XII.1 OUTSIDE ACTIVITIES**

Members shall not be a director or hold an executive position with any organization whose objectives and mandates are in conflict with, or may reasonably be perceived to be in conflict with, the objectives and mandates of the local board. Before taking on a new executive position, the member shall inform the Chair and the Integrity Commissioner to obtain advice about the new circumstances.

## **XIII. CONDUCT AT MEETINGS OF ADJUDICATIVE BOARD OR PANEL**

Members shall conduct themselves with decorum at meetings of the adjudicative board and any hearing panel in accordance with the adjudicative board's procedure by-law and this Code of Conduct as well as other applicable common law and statutory requirements. Where the adjudicative board's procedure by-law does not address an issue, members should use Council's Procedures By-law as a reference.

## **XIV. CONDUCT RESPECTING STAFF**

Members shall be respectful of the role of staff of the adjudicative board and staff of the City to provide advice based on political neutrality and objectivity, and without undue influence from any individual member or faction of the adjudicative board. 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 staff.

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.

## **XV. CONDUCT RESPECTING LOBBYISTS**

### ***Caution – Hearing Limitations***

*While this Article recognizes that lobbying public office holders at the municipal level is a permissible but regulated activity, lobbying of members of adjudicative boards is severely limited by the administrative law requirements that apply to hearings by adjudicative boards and other tribunals. In general, there can be no lobbying of members in relation to*

*matters that are before or will come before the adjudicative body. The specific limitations on communications in Part VI reflect this.*

~~Lobbying of public office holders is a permissible but regulated activity in the City of Toronto. Lobbying is defined and regulated by Municipal Code Chapter 140, Lobbying (the City's lobbying by law inclusive of the Lobbyist Code of Conduct).~~

~~Members and their staff are public office holders. As a matter of general principle, as public office holders, members should be familiar with the terms of this lobbying by law inclusive of the Lobbyist Code of Conduct (Chapter 140).~~

~~Specifically, members Members should not engage knowingly in communications in respect of the list of subject matters contained in the definition of “Lobby” as set out in Chapter 140 with a person who is not registered as required by Chapter 140. Members should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.~~

~~Lobbying of public office holders is a permissible but regulated activity in the City of Toronto. Lobbying is defined and regulated by Municipal Code Chapter 140, Lobbying (the City’s lobbying by-law inclusive of the Lobbyist Code of Conduct).~~

~~Members are public office holders. As a matter of general principle, as public office holders, members should be familiar with the terms of this lobbying by-law inclusive of the Lobbyist Code of Conduct (Chapter 140).~~

~~Members should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.~~

~~Members should also not knowingly communicate with a registered lobbyist as defined in Chapter 140 with respect to a matter that is, has been, or could become the subject of a hearing by the adjudicative board, whether written or oral.~~

If a member is or at any time becomes aware that a person is a lobbyist, the member should either refuse to deal with the lobbyist or, where appropriate, terminate the communication with the lobbyist at once.

A member should report any violations or attempted violation of Chapter 140 to the Lobbyist Registrar unless the member believes in good faith that the violation in communicating or attempting to communicate with the member was inadvertent or insignificant.

## **XVI. INDEPENDENT NATURE OF ADJUDICATIVE BOARDS**

The Chairs of an adjudicative board should ensure that the actions of any member, as well as Council members and staff attending adjudicative board meetings, are consistent with the arm's-length, quasi-judicial nature of the adjudicative board. Any actions compromising this position should be immediately dealt with by the Chair or panel chair.<sup>1</sup>

Members of adjudicative boards operating at arm's-length from Council should refrain from seeking advice on their roles and responsibilities from Council members. In clarifying their roles and responsibilities, members should seek

advice from appropriate legal staff or expert staff where such advisors are not otherwise involved in the case.

An adjudicative tribunal is required by the applicable laws to operate at arm's-length from and independently of Council. Members should therefore not request Community Councils or other legislative bodies to intervene on applications considered by the adjudicative board.<sup>2</sup>

## **XVII. DISCREDITABLE CONDUCT**

All members have a duty to treat members of the public, each another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their proceedings and work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies, and, if applicable, the City's *Human Rights and Anti-harassment Policy* and *Hate Activity Policy*.

## **XVIII. FAILURE TO ADHERE TO COUNCIL OR ADJUDICATIVE BOARD POLICIES AND PROCEDURES**

A number of the provisions of this *Code of Conduct* incorporate policies and procedures adopted by Council. More generally, members are required to observe the terms of all policies and procedures established by the adjudicative board and any Council policy and procedures that apply to the adjudicative board or its members.

This provision does not prevent a member from requesting that Council or the adjudicative board grant an exemption from a policy.

## **XIX. REPRISALS AND OBSTRUCTION**

Members should respect the integrity of the *Code of Conduct* and are obligated to cooperate with investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is ~~therefore~~ prohibited. It is ~~also~~ a violation of the *Code of Conduct* to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications.

## **XX. ACTING ON ADVICE OF INTEGRITY COMMISSIONER**

Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.

## **XXI. COMPLIANCE WITH THE CODE OF CONDUCT**

Subsection 160(5) of the *City of Toronto Act, 2006*, authorizes Council as well as adjudicative boards, to impose either of two penalties on a member following a

report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Conduct*.

1. A reprimand; or
- ~~4.~~ Suspension of the remuneration, if applicable, paid to the member in respect of his or her services as a member of the adjudicative board, as the case may be, for
2. a period of up to 90 days.

In the case of a member of the adjudicative board who is also a Member of Council, Council may also consider suspension of the remuneration, paid to the member in respect of his or her services as a Member of Council, for a period of up to 90 days.

### **Other Actions**

~~The Integrity Commissioner may also recommend that City~~ Council or an adjudicative board that has authority to do so, may take the following actions following a report by the Integrity Commissioner:

1. Remove ~~a~~ a member from their membership ~~of on~~ a committee, sub-committee or panel of a local board or City Council.
2. ~~2.~~ Remove ~~as~~ as Chair of a local board, or a committee or subcommittee of a local board or of Council.
3. ~~3.~~ Require the Repayment or reimbursement of moneys improperly received by the member or received by another person at the direction of the member.
4. ~~4.~~ Require the Return of a gift or benefit property or reimbursement of its value.
5. ~~5.~~ A request for an apology to the local board, Council, the complainant, or to a combination of any of them.