



INTEGRITY COMMISSIONER'S REPORT FOR ACTION

Report on Outstanding Requests for Investigation and Guidance about the Toronto Parking Authority, the Emery Village BIA and the Code of Conduct

Date: June 10, 2019

To: City Council

From: Valerie Jepson, Integrity Commissioner

Wards: All

SUMMARY

The Integrity Commissioner has jurisdiction to conduct inquiries at the request of City Council and local boards (restricted definition) pursuant to the authorities in the *City of Toronto Act, 2006* and Chapter 3 of the Toronto Municipal Code.

This Report for Action transmits to City Council the Integrity Commissioner's report about an investigation conducted at the requests of City Council and the Toronto Parking Authority (TPA) Board regarding the TPA's potential acquisition of land at Arrow Road and Finch. These requests were made in July 2017. The Integrity Commissioner makes no finding of a contravention of the applicable codes of conduct but makes other recommendations for reform.

The Integrity Commissioner's investigation report also responds to a July 2018 request from City Council to clarify the meaning of "friend" in Article VIII in the *Code of Conduct for Members of Council*.

This Report for Action also reports back to City Council about another request made in July 2017 with respect to possible code of conduct amendments to protect board members when dissenting or engaging in whistleblowing activities.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. City Council direct the City Manager, in consultation with the Integrity Commissioner, to provide advice and recommendations to City Council about best practices, possible protocols or amendments to the *Code of Conduct for Members of Council* to improve and clarify the obligations of members of Council serving on local boards

when the local board is considering a matter of specific interest to the member because it is a project or initiative located within the member's ward.

2. City Council amend the *Code of Conduct for Members of Council*, the *Code of Conduct of Members of Local Boards (Restricted Definition)* and the *Code of Conduct of Members Adjudicative Boards* in accordance with Attachment 2.

FINANCIAL IMPACT

This report has no financial impact.

DECISION HISTORY

This report and the attached investigation report respond to City Council's requests made at the July 4, 5, 6, 7, 2017 meeting in paragraphs 16 and 17 of Item Number AU9.12. (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU9.12>)

The attached investigation report also responds to City Council's request made at the June 26, 27, 28 and 29, 2018 meeting in paragraph 2 of Item Number CC43.6. (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.CC43.6>)

COMMENTS

Investigation Report - Overview

The attached investigation report provides the outcome of an investigation requested by City Council into whether any member of the boards of the Toronto Parking Authority ("TPA") or the Emery Village Business Improvement Area ("EV BIA") contravened the applicable code of conduct in relation to events outlined in a June 22, 2017 report from the Auditor General regarding the TPA's potential acquisition of land at Finch Avenue West and Arrow Road (the "Land"). The report also provides the outcome of an investigation requested by the TPA Board.

One of the reasons that the TPA was taking steps to acquire the Land in 2015 and 2016 was to advance the long-standing objective of Councillor Giorgio Mammoliti and the EV BIA Board to develop a public space featuring a monumental flagpole in the Emery Village area. Prior to 2015, Councillor Mammoliti and the EV BIA had twice before attempted to persuade the TPA to acquire the Land for this purpose on the basis that it would also be useful for parking.

Senior staff at the TPA became convinced of the Land's potential value in Fall 2015, attributing this to the progress of the Finch West LRT. At the same time, Councillor Mammoliti and representatives of the EV BIA were advocating with City staff to incorporate the flagpole project into the City's priorities for public realm improvements that would accompany the construction of the Finch West LRT. These latter efforts resulted in a March 2016 direction from City Council to the TPA Board to acquire the Land. The Council direction created significant momentum and sent a signal to the Board that it was a priority.

Examining the above circumstances required understanding the history of the monumental flagpole project, which dates back to at least 2002. The pages of the investigation report describe where the idea came from, how the EVBIA became involved and the efforts undertaken by the EVBIA and Councillor Mammoliti over the years to advance the project.

The circumstances described in the Auditor General's report called for a closer review of Councillor Mammoliti's relationship with the owner of the Land, the consultant hired by the EVBIA to help with the project and the TPA's sign consultant. The investigation uncovered other individuals and companies that were involved at earlier stages of the project and who had an association to Councillor Mammoliti. The purpose of these aspects of the investigation was to determine whether Councillor Mammoliti had personal or business connections that could give rise to a contravention of Article VIII (Improper Use of Influence) of the *Code of Conduct for Members of Council*. I make no such finding.

The Auditor General's report and the TPA's request for an inquiry also required review of Councillor Mammoliti and Councillor John Filion's conduct toward staff. I examined whether either councillor contravened Articles XII (Conduct Respecting Staff) and XIV (Discreditable Conduct), respectively. I make no such findings. However, the evidence is clear that City and TPA staff were under a high amount of pressure, which was characterized by those affected as part of the ordinary course of business.

The Auditor General's report called for an examination of how a decision made at the *in-camera* portion of the May 26, 2016 TPA Board meeting was disclosed to the EVBIA Board and whether any board member was responsible for this disclosure. The investigation established that the information was officially and formally disclosed to the EVBIA by the TPA by letter and, accordingly, I make no finding that anyone disclosed confidential information in contravention of Article V (Confidential Information) of the *Code of Conduct for Members of Local Boards (Restricted Definition)*.

Finally, the Vice Chair and the Chair of the TPA were more involved than other board members in the TPA's potential acquisition of the Land and appeared to have some personal connections to Councillor Mammoliti. I examined these relationships but have made no findings that they contravened the *Code of Conduct for Members of Local Boards (Restricted Definition)*. However, what was established is that the Chair and the Vice Chair (as well as most of the TPA Board members) saw it as part of their role to keep the local councillor and their Board colleague, Councillor Mammoliti, happy. The Auditor General's Report raised concerns about conflict of interest. The codes of conduct that govern the conduct of members of Council and the City's local boards do not contain a standalone obligation to avoid conflicts of interest.¹ Accordingly, the investigation that I undertook does not examine the existence of conflicts of interest.

The investigation established that for several years Councillor Mammoliti has used his influence as a councillor, member of the EVBIA Board and member of the TPA Board to

¹ Members are, however, bound to avoid pecuniary conflicts of interest under the *Municipal Conflict of Interest Act*. Until March 2019, complaints about possible *Municipal Conflict of Interest Act* contraventions could only be made to the Court.

advance the flagpole project. For instance, the evidence showed that the Councillor used information gained as a board member of the TPA to assist his advocacy with City staff to advance the project. The investigation also established that members of the TPA Board and TPA staff were deferential to the local councillor although they said that he received no special treatment because he was also a colleague on the TPA Board.

The *Code of Conduct for Members of Council* does not address how a councillor sitting on a City board should reconcile or prioritize competing interests when those interests are related to City business. How should a member of Council sitting on a City board participate in matters that come before the board when those matters impact their own ward uniquely or another City board on which they sit? How can a board member, who is also an elected member of Council, fulfill a fiduciary duty owed to a City board when they also have political responsibilities to advance ward-specific issues and interests? These conflicts of duty are not regulated by the *Code of Conduct for Members of Council* or the *Municipal Conflict of Interest Act*.

I believe it is important to clarify and address how members of Council should reconcile these competing conflicts of duty because when it is not reconciled, the independence and neutrality of the boards on which they sit are at risk of being compromised. While the circumstances in this case have come under an enormous amount of scrutiny, one could find several other examples of similar conflicts of duty across the City.

It is for these reasons that I recommend to City Council that it request a review and seek recommendations from the City Manager, in consultation with the Integrity Commissioner, to consider and develop protocols or amendments to the *Code of Conduct for Members of Council* that would clarify how a member of Council should act when a matter comes before a local board on which they sit that uniquely impacts their ward or another local board on which they sit. A protocol or amendment to the Code would not only assist members of Council but it would also provide much-needed clarity for citizen members of boards and the staff who support those boards.

As is described in more detail in the investigation report, Councillor Mammoliti refused to participate in an interview in this investigation. In consideration of his actions in this matter, I recommend that City Council immediately amend the Code of Conduct to strengthen the obligation of members of Council to participate in any inquiry that involves their actions as a member of Council.

Council consideration of the investigation report.

Members of Council are reminded that I have included only the information in the investigation report that I have determined is necessary to understand the findings. In making decisions about what information to include, I have been guided by my duties set out in sub-sections 161(1) and 162(2) of the *City of Toronto Act, 2006*. Members of Council are also reminded that City Council has assigned to the Integrity Commissioner the duty to independently conduct inquiries in response to requests and that the Integrity Commissioner is bound by the statutory framework to perform appropriately thorough investigations in an independent manner.

Article VIII – Meaning of Friend

The attached investigation report includes a relatively lengthy discussion and analysis about Article VIII. While the discussion and analysis was developed primarily for the possible application of Article VIII to the facts found in the inquiry, it is also responsive to City Council’s July 2018 request for clarification about the meaning of “friend”, one of the terms contained in Article VIII.

Paragraph 16 of AU9.12 – Whistleblowing or Dissent for Board Members

In paragraph 16 of AU9.12, City Council also requested the Integrity Commissioner to review the circumstances of this matter and any other relevant information, and, if necessary, make recommendations about possible Code of Conduct or policy amendments pertaining to the TPA Board or any local board (restricted definition) regarding whistleblower or dissenting viewpoint protections for board members.

I note that City staff made comprehensive recommendations regarding these issues as a result of the governance review conducted by an external law firm into these matters (see paragraph 5 of <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX1.2>). Specifically that,

5. City Council request the new Board of Directors of the Toronto Parking Authority, once appointed, to develop a governance and procedural policy, which addresses:
 - ...
 - c. the right for Directors to dissent;
 - d. the protection of the right for Directors to report to an accountability officer, provided they do so in good faith and for a valid reason;

These recommendations were adopted by City Council.

I endorse these recommendations and suggest that when the TPA has completed its work in response to paragraph 5, above, it be shared with and adapted as applicable with other local boards. I trust that this suggestion will be noted, and I, accordingly, make no additional formal recommendation for City Council on this issue.

CONTACT

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SIGNATURE

Valerie Jepson
Integrity Commissioner

ATTACHMENTS

Attachment 1: Report Responding to City Council's Request for an Investigation into the Conduct of the Board Members of the Toronto Parking Authority and the Emery Village Business Improvement Area (City Council Decision AU9.12)

Attachment 2: Recommended Amendments to the Codes of Conduct