

Review of Codes of Conduct for Members of Council, Local Boards and Adjudicative Boards

Date: June 8, 2022
To: City Council
From: Jonathan Batty, Integrity Commissioner
Wards: All

SUMMARY

The Integrity Commissioner provides advice to Council on policies dealing with ethics and integrity under the City of Toronto Act, 2006 and Chapter 3 of the Toronto Municipal Code.

As requested by Council, the Integrity Commissioner has reviewed the City's existing Codes of Conduct and recommends some substantive and housekeeping changes to ensure they are up to date and continue to reflect the highest ethical standards.

The Integrity Commissioner also recommends that Council adopt a process to permit the Integrity Commissioner to regularly review the Codes of Conduct and report directly to Council with any recommended changes.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. City Council repeal the current Codes of Conduct effective August 1, 2022 and replace them with the updated Codes of Conduct attached as Appendix 1, 2 and 3 to this report.
2. City Council amend City of Toronto Municipal Code Chapter 3, Accountability Officers, to permit the Integrity Commissioner to report directly to City Council with any recommended updates to the City's Codes of Conduct once per Council term.

FINANCIAL IMPACT

The proposed actions can be completed within the approved 2022 operating budget.

DECISION HISTORY

At its March 30, 2021 meeting, Executive Committee adopted a report from the Integrity Commissioner recommending a report back to City Council on a review and update of the City's Codes of Conduct.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX22.8>

At its April 7, 2021 meeting, City Council adopted the report from the Integrity Commissioner recommending a report back on a review and update of the City's Codes of Conduct.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX22.8>

COMMENTS

Introduction

City Council must adopt a code of conduct for itself and the members of its local boards (restricted definition), as required by section 157(1) of the City of Toronto Act, 2006 and Ontario Regulation 58/18.

Council adopted three Codes of Conduct in 2008, the:

- Code of Conduct for Members of Council
- Code of Conduct for Members of Local Boards (Restricted Definition)
- Code of Conduct for Members of Adjudicative Boards

The underlying principles in these Codes of Conduct are identical. However, three separate codes were adopted with specific rules to account for the different roles and responsibilities of these members.

The Codes of Conduct are an integral part of the City's accountability framework. They reflect the City of Toronto's commitment to the highest standards of ethical conduct. This commitment is important to maintain the integrity of the City's government and to uphold its reputation.

The City's Codes of Conduct have served Toronto well and, when first adopted, set a precedent in Ontario. However, since they were first adopted 2008, Council has not comprehensively reviewed and updated them.

At the request of Council, I have reviewed the Codes of Conduct and am recommending a number of housekeeping and substantive amendments. If adopted, Council will ensure the Codes of Conduct are up to date and continue to reflect the highest ethical standards in government.

I have drafted new Codes of Conduct that incorporate these housekeeping and substantive changes and have appended them for Council's review and approval:

- **Appendix 1:** Code of Conduct for Members of Council
- **Appendix 2:** Code of Conduct for Members of Local Boards (Restricted Definition)
- **Appendix 3:** Code of Conduct for Members of Adjudicative Boards

The rationale behind these changes, and a process to regularly review and update the Codes of Conduct, is described below. In order to allow members to familiarize themselves with these updated Codes of Conduct, I also recommend they take effect August 1, 2022.

Housekeeping Amendments

The Codes of Conduct need to be revised to:

- Use gender neutral language.
- Reflect current laws and legal requirements.
- Clearly differentiate between what is a rule and what is commentary.
- Use plainer and clearer language.
- Use headings and numbered paragraphs to help readers navigate and cite requirements.
- Be consistent with each other, where possible.

I also specifically recommend that the Preambles to the Codes of Conduct be streamlined to focus on the ethical principles that inform the work of members. A general and historic narrative is no longer required.

For all Codes of Conduct, the housekeeping changes in the new version of all Codes of Conduct:

- Remove the Historic Authority section and shorten the Preamble.
- Adopt gender neutral language.
- Adopt a plain language format with:
 - Concise Article titles (e.g. "Disclosure of Confidential Information" becomes "Confidential Information").

- Headings that differentiate between rules, process requirements and commentary.
- Arabic numerals and numbered paragraphs.
- Clear language and active voice.
- Adopt required legislative updates:
 - Update the definition of “child” to comply with the current provision in the Municipal Conflict of Interest Act as originally intended by Council.
 - Update the list of confidential information to comply with the current list in the City of Toronto Act, 2006 as originally intended by Council.
- Clarify that confidential information must not be shared with any unauthorized person.
- Move all definitions into the definitions section.
- More clearly describe the exceptions to the rule prohibiting the receipt of gifts and benefits and the process for submitting disclosure forms.
- Re-number existing provisions if substantive amendments are adopted.

For the Code of Conduct for Members of Council, the housekeeping changes in the gifts and benefits provisions also clarify that members may only receive volunteer services at community events.

For the Code of Conduct for Members of Local Boards (Restricted Definition) and the Code of Conduct for Members of Adjudicative Boards, the housekeeping changes:

- Combine the “Outside Activities” and “Business Relations” rules into one provision.
- Eliminate the definition of “member” as it is redundant.
- Consistently order the articles dealing with who the Code of Conduct applies to, and what laws apply to them.

For the Code of Conduct for Members of Adjudicative Boards, the housekeeping changes:

- Update the list of adjudicative boards to include the Compliance Audit Committee.
- Include the definition of “local board.”

- Move the “caution” about:
 - recusing oneself for having received a gift or benefit from a party to a hearing into the rule under that article; and,
 - dealing with lobbyists into the commentary under that article.

Substantive Amendments

I also recommend that the conflict of interest rule and the discreditable conduct rule in all three Codes of Conduct be strengthened and that a new rule be adopted to define how members of Council can support charitable fundraising activities.

Conflict of Interest

Toronto’s accountability framework is founded upon the recommendations from Justice Bellamy’s two judicial inquiries that examined the financial maladministration in city government following the amalgamation of the City of Toronto in 1998.

In her report in 2005, Justice Bellamy recommended Council adopt a Code of Conduct with comprehensive conflict of interest requirements. She specifically recommended¹:

Rules about conflicts of interest and apparent conflicts of interest should form part of the City’s codes of conduct.

When Council adopted the current Codes of Conduct, it adopted this principle into their Preambles, which state members:

[S]hould be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real.

However, the rules that Council adopted did not go so far as to include apparent conflicts of interest. The current “improper use of influence rule” in the Codes of Conduct is limited to real conflicts of interest. These are situations where a member does, or does not do, something in carrying out their official duties that is for an actual private advantage.

In her report, Justice Bellamy explained what apparent conflicts are and why they are important to address²:

An apparent conflict of interest exists when someone could reasonably conclude that a conflict of interest exists. In other words, it is a matter of public perception. Public perceptions of the ethics of public servants are critically important. If the public perceives, even wrongly, that public servants are unethical, democratic institutions will suffer from the erosion of public confidence.

¹ Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report (2005), The Honourable Madam Justice Denise E. Bellamy, Commissioner, Volume 1: [Facts and Findings](#), p. 417.

² Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report (2005), The Honourable Madam Justice Denise E. Bellamy, Commissioner, [Volume 2: Good Government](#), pp. 39-40.

When considered by Council in adopting the Codes of Conduct 2008, there was some question whether Council had jurisdiction to adopt a comprehensive conflict of interest rule. That question has now been answered.

Two subsequent judicial inquiries that examined the conduct of members of Council in other municipalities have found that Codes of Conduct can and should include a rule addressing apparent conflicts of interest:

- Justice Cunningham noted the following in 2011³: “Optics are important. In other words, members of a municipal council must conduct themselves in such a way as to avoid any *reasonable apprehension* that their personal interest could in anyway influence their elected responsibility.”
- Justice Marrocco specifically recommended in 2021 that it should be mandatory for municipalities to include in their codes of conduct rules dealing with real, apparent, and potential conflicts of interest⁴.

A number of municipalities in Ontario already have a conflict rule that includes apparent conflicts of interest.⁵

This standard has already been adopted in other contexts by the City of Toronto:

- The rule in the Toronto Lobbying By-law that Council adopted in 2007 requires lobbyists to “avoid the deed and appearance of impropriety.” Additionally, in 2015 the Toronto Lobbyist Registrar found that in dealing with a member of Council, a lobbyist must not place them in a real or apparent conflict of interest.
- The conflict of interest rule that Council adopted in the Toronto Public Service By-law in 2014 specifically includes apparent conflicts of interest.

For these reasons, I recommend that Council adopt a comprehensive conflict of interest rule that addresses both real and apparent conflicts of interest. Included in **Appendix 4** is a marked-up version of the current rule that shows what amendments are required.

Discreditable Conduct

In the performance of their duties, members of Council, members of local boards and members of adjudicative boards are expected to meet high ethical standards. This applies not only with respect to what they advocate for and decide, but how they interact with others.

³ [Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure](#) (2011), The Honourable J. Douglas Cunningham, Commissioner, p. 147.

⁴ [Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry](#) (2021) Associate Chief Justice Frank Marrocco, Commissioner, Recommendation 9 at page 743.

⁵ These include Mississauga, Brampton, Vaughan, London, Windsor, Kingston, Peel and Cambridge.

I recommend that the “discreditable conduct rule” in the Codes of Conduct be amended to:

- 1) clarify that the rule applies to activity that is connected with a member’s performance of their official duties and their dealings with others; and,
- 2) better define what conduct is prohibited by removing the term “appropriate,” as it is vague, but add the term “derogatory” to the list of prohibited conduct that includes the terms “abusive, bullying and intimidating.”

The current rule acknowledges the Ontario Human Rights Code applies to members and requires them to abide by the City’s Human Rights and Anti-harassment/discrimination Policy (HRAP) and Hate Activity Policy. Those policies address derogatory conduct:

- HRAP prohibits “slurs and derogatory remarks.”
- The Hate Activity Policy prohibits communicating a message that implies someone be despised, scorned, denied respect and made subject to ill-treatment on the basis of a group affiliation.

Derogatory remarks attack someone’s character, reputation or standing.

These amendments are consistent with the intent and purpose of this rule and would set a clearer threshold about what is not acceptable. Included in **Appendix 4** is a marked-up version of the current rule that shows what amendments are required.

Fundraising Activities

At present, there is no consolidated guidance on what support members of Council can provide to charitable organizations. However, this topic has been considered at different times and in different contexts. These include:

- The confidential advice this Office has provided over the years as to what members can and cannot do in various circumstances.
- An [investigation](#) in 2010 of private fundraising activity finding a member violated the Code of Conduct for Members of Council.
- The Constituency Services and Office Budget Policy which permits members of Council to use City resources to purchase tickets to, and attend, charitable events but not to make general contributions to charities.
- The Council Member-Organized Community Events Policy that prescribes when and how members can use their office’s resources to host events in their communities.

The need for a consolidated rule was highlighted in April 2020 when Toronto was first dealing with the COVID-19 pandemic. At that time, I sent an open letter to Council noting the Code of Conduct for Members of Council did not prevent members from

participating in fundraising for humanitarian and economic relief. If they chose to do so, I cautioned they needed to avoid the appearance of offering a *quid pro quo* to contributors in terms of access, preference or future consideration in matters involving the City. I also recommended that the Code of Conduct needed to be updated to account for this sort of activity.

Therefore, for reasons of certainty and transparency, I recommend that Council adopt the rule I have drafted that clearly explains what is, and is not, permitted.

In proposing this rule, I recommend that if a member supports charitable fundraising, they should not:

- 1) personally benefit from it;
- 2) pressure donors or be perceived as offering them preferential treatment;
- 3) target donors who have matters before the City; or,
- 4) receive, track or manage donations.

The proposed rule would not replace or amend the Council Member-Organized Community Events Policy or the Constituency Services and Office Budget Policy. Members would still be subject to those requirements and other City policies that may apply.

The proposed rule is found in **Appendix 1** as Article 16 (Fundraising Activities).

Reviewing and Updating the Codes of Conduct

Current Review

Toronto's Codes of Conduct have not been comprehensively reviewed by Council since they were first adopted fourteen years ago.

Following Executive Committee's adoption of my report on March 30, 2021, Council on April 7, 2022 also adopted my recommendation that I review the Codes of Conduct and report back for purposes of updating their provisions.

Before reporting back to Council, I was directed to consult with members of Council, stakeholders and the public with respect to the amendment of the Codes of Conduct. Additionally, I was directed to consult with the City Manager, the City Clerk and the City Solicitor.

I have consulted with the City Manager, the City Clerk and the City Solicitor about the substantive and housekeeping amendments to the Codes of Conduct and the Toronto Municipal Code that I am recommending. I also circulated draft provisions of the Code of Conduct for Members of Council to members and individually met with them to obtain their input.

To reach stakeholders (the members of the City's adjudicative boards and local boards, including the members of BIA boards) and the public, my Office conducted an anonymous online survey to obtain input on my recommended amendments to the Codes of Conduct as well as any other recommendations for change. My Office promoted the survey through email, social media, our website, some member's newsletters, City Strategic Communications for City staff, and direct invitations to ethics practitioners.

We had a good response rate from a variety of respondents including members of local boards (22%), City staff (55%) and members of the public (23%). The results of the survey, which are reported in **Appendix 5**, show widespread support for the proposed substantive amendments:

- 87% of participants agreed or strongly agreed with the recommendation to broaden the conflicts of interest rule to include apparent conflicts of interest;
- 86% of participants agreed or strongly agreed the recommendation to expand the discreditable conduct rule by adding a prohibition on derogatory conduct; and,
- 76% of participants agreed or strongly agreed with the recommendation to add a fundraising rule for members of Council, with 69% feeling the proposed wording did a good job of prohibiting inappropriate fundraising.

I also held an online "town hall" for members of the City's local boards and adjudicative boards to obtain their input. Additionally, I received input from people who did not want to use the survey but wished to share their perspectives directly.

The input I have received in this consultation process has helped refine this report and the updated Codes of Conduct that are appended.

Moving Forward

Fourteen years is too long to have waited to review the Codes of Conduct.

Toronto's Codes of Conduct require regular review to keep pace with legislative change and best practices and to ensure that Toronto's accountability framework maintains high standards.

To respect Council's parliamentary function and the independence of the Office of the Integrity Commissioner, policy recommendations flowing from a regular review of the Codes of Conduct should be reported directly to Council as a whole, rather than first being reported to Executive Committee. Currently, the Toronto Municipal Code does not permit this.

For this reason, I recommend that once per Council term Toronto's Integrity Commissioner should have discretion to report directly to Council with recommended changes to the Codes of Conduct. This would not limit an Integrity Commissioner from more frequently reporting to Executive Committee with recommended changes to the Codes of Conduct, if necessary, but would ensure a fair and efficient means of permitting Council to regularly and directly receive such recommendations.

CONTACT

Jonathan Batty, Integrity Commissioner, Jonathan.Batty@toronto.ca, 416-397-7770

SIGNATURE

Jonathan Batty
Integrity Commissioner

ATTACHMENTS

Appendix 1 – New Code of Conduct for Members of Council

Appendix 2 – New Code of Conduct for Members of Local Boards (Restricted Definition)

Appendix 3 – New Code of Conduct for Members of Adjudicative Boards

Appendix 4 – Substantive Amendments to Existing Articles

Appendix 5 – Survey Results