

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

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PREAMBLE

In serving the public, a member of an adjudicative board (a “member”) is expected to meet the highest standards of conduct to maintain and foster the City of Toronto’s reputation and integrity.

As required by section 157(1) of the *City of Toronto Act, 2006*, Council has adopted this Code of Conduct for Members of Adjudicative Boards recognizing the following principles apply to the interpretation of its provisions and their role:

- Members should serve in a conscientious and diligent manner.
- Members should act with integrity and avoid real and apparent conflicts of interest and the improper use of the influence of their office.
- Members should perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.
- Members should serve the City and the public interest by upholding both the letter and the spirit of applicable federal and provincial laws of Canada, the bylaws and policies of Council and the policies and procedures of the board on which they serve.
- Members 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.

1. DEFINITIONS

1.0 In the Code of Conduct:

- a) “adjudicative board” means a tribunal that is a local board.
- b) “Council” means the Council of the City of Toronto.
- c) “local board” means a local board as defined in section 156 of the *City of Toronto Act, 2006*.
- d) the terms “child”, “parent” and “spouse” have similar meanings as in the *Municipal Conflict of Interest Act*.
 - 1. “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 their family;

2. “parent” means a person who has demonstrated a settled intention to treat a child as a member of their family; and,
 3. “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.
- e) “confidential information” means information in the possession of, or received in confidence by an adjudicative board that the adjudicative board is: prohibited from disclosing or using for a purpose other than the purpose for which it was received; required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act*; 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.
- f) a “lobbyist” is an individual, corporation, other person, or a partnership or organization governed by the City’s Lobbying By-law (the Toronto Municipal Code Chapter 140, Lobbying, inclusive of the Lobbyist Code of Conduct) that:
1. is lobbying or causing the lobbying of any public office holder at the City, a local board (restricted definition) or the board of health;
 2. 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,
 3. is maintaining an active lobbyist registration with the City even though not having a current active subject matter registered with the lobbyist registry.

2. APPLICATION

- 2.0 This Code of Conduct applies to members of the following adjudicative boards of the City of Toronto:
- a) Administrative Penalty Tribunal
 - b) Committee of Adjustment
 - c) Committee of Revision
 - d) Compliance Audit Committee
 - e) Dangerous Dog Review Tribunal

- f) Property Standards Committee
- g) Rooming House Licensing Commissioner/Deputy Commissioner
- h) Sign Variance Committee
- i) Toronto Local Appeal Body
- j) Toronto Licensing Tribunal

2.1 Members of Council are bound by the Code of Conduct for Members of Council. However, when a Member of Council is acting in their 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.

3. STATUTORY PROVISIONS REGULATING CONDUCT

3.0 This Code of Conduct operates together with:

- a) the *City of Toronto Act, 2006*;
- b) Chapter 27, Council Procedures, of the Toronto Municipal Code (the Council Procedures By-law) passed under section 189 of the *City of Toronto Act, 2006*;
- c) the *Municipal Conflict of Interest Act*;
- d) the *Municipal Freedom of Information and Protection of Privacy Act*;
- e) the *Statutory Powers Procedure Act*;
- f) the Ontario *Human Rights Code*;
- g) the *Securities Act*; and,
- h) the *Criminal Code*.

4. GIFTS AND BENEFITS

Rules

4.0 A member must not accept fees, advances, gifts or personal benefits that are connected directly or indirectly with the performance of their duties of office, unless permitted by the exceptions listed below.

- 4.1 Fees, advances, gifts or personal benefits provided to a member’s spouse, child, or parent, or to a person on a member’s staff that are connected directly or indirectly to the performance of that member’s duties are deemed to be a gift to that member if they are accepted with the member’s knowledge.
- 4.2 If a member is permitted by an exception to accept a gift, a member is required to remove themselves from a hearing on the basis of a conflict of interest or perception of bias as a result of receiving that gift or benefit.

Permitted Exceptions and Other Conditions

Exceptions

- 4.3 Subject to the other conditions noted below, a member may accept the following gifts or benefits:

Exception	Qualifying Requirement
1. Permitted Compensation	Compensation authorized by law.
2. Gifts from an Event Honouring a Member	A suitable memento of a function honouring the member.
3. Sponsored Travel and Related Expenses	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.
4. Food and Beverages at Events	Food and beverages consumed at banquets, receptions or similar events, if: <ul style="list-style-type: none"> a) attendance serves a legitimate business purpose of the adjudicative board on which the member serves; b) the person extending the invitation or a representative of the organization is in attendance; and, c) the value is reasonable and the invitations infrequent.

Other Conditions

Gifts from Lobbyists

- 4.4 A member may not receive any gifts from a lobbyist or the employer or client of a lobbyist.

Gifts over \$500

- 4.5 A member may only accept gifts or benefits with a total value greater than \$500 from any one source during a calendar year if they are:

- a) Permitted Compensation (Exception 1); or,
- b) Sponsored Travel and Related Expenses (Exception 3).

All other gifts or benefits with a total value greater than \$500 from any one source during a calendar year are prohibited.

Disclosure of Gifts exceeding \$300

- 4.6 A disclosure statement must be filed with the Integrity Commissioner if a member accepts gifts or benefits that exceed \$300 from any one source in a calendar year that are:

- a) Gifts from an Event Honouring a Member (Exception 2);
- b) Sponsored Travel and Related Expenses (Exception 3); or,
- c) Food and Beverages at Events (Exception 4).

- 4.7 Within 30 days of the receipt of gifts or benefits under 4.6 that exceed \$300 from any one source in a calendar year, a member must file a disclosure statement with the Integrity Commissioner that sets out:

- a) the nature of the gift or benefit;
- b) its source and date of receipt;
- c) the circumstances under which it was given or received;
- d) its estimated value;
- e) what the recipient intends to do with any gift; and,
- f) whether any gift will at any point be donated to the City or the adjudicative board.

- 4.8 The disclosure statement will be a matter of public record.
- 4.9 On receiving a disclosure statement, the Integrity Commissioner must review whether it raises a question of whether there is a conflict between a private interest and the public duty of a member. If that is the case, the Integrity Commissioner must ask that member to justify receipt of the gift or benefit.
- 4.10 If the Integrity Commissioner decides that the member's explanation does not justify the receipt of the gift as being appropriate, the Integrity Commissioner must advise the member. The Integrity Commissioner may require 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.

5.0 CONFIDENTIAL INFORMATION

Rules

- 5.0 A member must not:
- a) disclose or release to any unauthorized person, including a 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 the adjudicative board or Council to do so;
 - b) use confidential information for personal or private gain, or for the gain of relatives or any person or corporation;
 - c) disclose the content of any matter that has been discussed at a closed meeting under the Council Procedures By-law, or similar provisions of the adjudicative board's procedure by-law and subject to applicable legislation governing the procedures of the adjudicative board, because it constitutes confidential information. No member shall disclose the content of any such matter or the substance of deliberations of the closed 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; or,
 - d) access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by the local board or Council policy.

Commentary

- 5.1 Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of confidential information received from third

parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

- 5.2 Improper use of confidential information for personal or private gain includes a member, directly or indirectly, benefiting or aiding others to benefit from knowledge respecting bidding on the sale of adjudicative board or City property or assets.
- 5.3 Section 190(2) of the *City of Toronto Act, 2006* sets out a list of information that is to be treated as confidential. When the Code of Conduct refers to “confidential information” that a member must keep confidential, it is referring to that list. The list includes information about:
- a) the security of the property of the City or local board;
 - b) personal matters about an identifiable individual, including a city employee or a local board employee;
 - c) a proposed or pending acquisition or disposition of land by the City or local board;
 - d) labour relations or employee negotiations;
 - e) litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board;
 - f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - g) a matter in respect of which the city council, board, committee or other body may hold a closed meeting under another Act;
 - h) information explicitly supplied in confidence to the City or local board by Canada, a province or territory or a Crown agency of any of them;
 - i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the City or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - j) a trade secret or scientific, technical, commercial or financial information that belongs to the City or local board and has monetary value or potential monetary value; or,

- k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the City or local board.

5.4 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:

- a) matters involving public security may be disclosed; or,
- b) 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.

6. COMMUNICATIONS WITH ADJUDICATIVE BOARDS

Rule

6.0 A member must not knowingly communicate with parties or their representatives, regarding a matter before the adjudicative board, other than through the formal oral and written procedures adopted by the adjudicative board.

Commentary

6.1 Oral communications with the adjudicative board about a current proceeding should take place only in the presence of or with the consent of all parties.

6.2 Written communication to an adjudicative board should take place only through the board administrator and should be copied to all parties or their representatives, as appropriate.

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

7. MEDIA COMMUNICATIONS

Rule

- 7.0 A member must not communicate with the media regarding a matter before the adjudicative board unless they are specifically directed or permitted to do so by the Chair of their adjudicative board.

Commentary

- 7.1 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 question 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.

8. USE OF BOARD AND CITY PROPERTY, SERVICES AND OTHER RESOURCES

Rules

- 8.0 A member must not:
- a) use or permit the use of local board or City resources for activities other than the business of the adjudicative board or the City; or,
 - b) obtain personal financial gain from the use or sale of adjudicative board or City-developed intellectual property since all such property remains exclusively that of the adjudicative board or City.

Commentary

- 8.1 City resources include local board or City land, facilities, equipment, supplies, services, staff, materials, websites, local board and City transportation delivery services and member's expense budgets.
- 8.2 Adjudicative board or City-developed intellectual property includes computer programs, technical innovations, inventions, creative writings and drawings and other items capable of being patented.

9. ELECTION CAMPAIGN WORK

Rules

- 9.0 A member must follow the provisions of the *Municipal Elections Act, 1996*.
- 9.1 A member must not:
- a) use the facilities, equipment, supplies, services or other resources of 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;
 - b) undertake campaign-related activities on the adjudicative board's or City property during regular working hours unless permitted by City policy; or,
 - c) use the services of persons for election-related purposes during hours in which those persons receive any compensation from the adjudicative board or the City.

Commentary

- 9.2 City policies permit all-candidates meetings to be held on City property, so a member is permitted to participate in such an event.

10. CONFLICTS OF INTEREST AND USE OF INFLUENCE

Rules

- 10.0 A member must not:
- a) be involved in their capacity as a member in any activity where they have a real or apparent conflict of interest;
 - b) use the influence of their office for any purpose other than for the exercise of their official duties;
 - c) use their official status to improperly influence the decision of another person to the private advantage of themselves, or their parents, children or spouse, staff members, friends, or associates, business or otherwise; or,
 - d) try to secure preferential treatment beyond activities in which members normally engage in the carrying out of their official duties.

Commentary

- 10.1 Conflicts of interest are common occurrences that need to be addressed proactively and promptly to ensure a member is acting with integrity and is seen to be doing so.
- 10.2 Conflicts of interest arise when the private interest of a member conflicts with their official duties. A private interest may include, but is not limited to, a pecuniary interest as defined by the *Municipal Conflict of Interest Act* (MCIA) or the pecuniary interests of a member’s parent, spouse or child. When considering if they have a real or apparent conflict of interest, a member needs to consider their obligations under both the Code of Conduct and the MCIA. A member may need to declare the interest and recuse themselves from voting and discussing the matter with others. For that reason, a member should consult the Integrity Commissioner for advice when such questions arise.
- 10.3 A real conflict of interest exists when what a member does, or does not do, something in carrying out their official duties that is for their actual private advantage. An apparent conflict of interest exists when, even if it is not evident that a member has done or not done something for an actual private advantage, an objective person informed of the circumstances would reasonably conclude that a member would not be able to separate their private interest from how they carry out their official duties. An apparent conflict of interest is the same as a potential conflict of interest.
- 10.4 For the purposes of 10.0 c) and 10.3, “private advantage” does not include a matter:
- a) that is of general application;
 - b) that affects a member, their 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.

11. BUSINESS RELATIONS AND OUTSIDE ACTIVITIES

Rules

- 11.0 A member must not:
- a) 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;

- b) 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; or,
- c) take on a new executive position without first informing the Chair and obtaining the advice of the Integrity Commissioner about the member's new circumstances.

Commentary

- 11.1 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.

12. CONDUCT REGARDING CURRENT AND PROSPECTIVE EMPLOYMENT

Rule

- 12.0 A member must not allow the prospect of their future employment by a person or entity to detrimentally affect the performance of their duties to the adjudicative board and to the City.

13. CONDUCT AT MEETINGS

Rule

- 13.0 A member must 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.

Commentary

- 13.1 Where the adjudicative board's procedure by-law does not address an issue, members should use the Council Procedures By-law as a reference.

14. CONDUCT RESPECTING STAFF

Rules

14.0 A member must not:

- a) maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members must show respect for the professional capacities of staff;
- b) compel staff to engage in partisan political activities or subject them to threats or discrimination for refusing to engage in such activities; or,
- c) use, or try to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing staff with the intent of interfering with a person's duties, including the duty to disclose improper activity.

Commentary

14.1 Members must respect that staff of the adjudicative board and staff of the City to provide advice based on political neutrality and objectivity and must be permitted to do so without undue influence from any individual member or faction of the adjudicative board.

15. CONDUCT RESPECTING LOBBYISTS

Rules

15.0 A member must not:

- a) engage knowingly in communications in respect of the list of subject matters contained in the definition of “lobby” as set out in the City's Lobbying By-law with a person who is not registered as required by that By-law; or,
- b) knowingly communicate with a registered lobbyist who is acting in violation of the City's Lobbying By-law.

15.1 If a member is or at any time becomes aware that a person is in violation of the City's Lobbying By-law, the member must refuse to deal with the lobbyist or, where appropriate:

- a) terminate the communication with the lobbyist at once; or,

- b) if in the member’s judgment it is appropriate to continue the communication, at the end of the communication, draw that person’s attention to the obligations imposed by the City’s Lobbying By-law.
- 15.2 A member must report any violation or attempted violation of the City’s Lobbying By-law 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.

Commentary

- 15.3 While 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 Article 6 (Communications with Adjudicative Boards) reflect this.
- 15.4 Members are public office holders. As a matter of general principle, as public office holders, members should familiarize themselves with the terms of the City’s Lobbying By-law.

16. INDEPENDENT NATURE OF ADJUDICATIVE BOARDS

Rule

- 16.0 A member must operate at arm's-length from Council and must not seek advice on their role and responsibilities from a member of Council.
- 16.1 A member must not request Community Councils or other legislative bodies to intervene on applications considered by the adjudicative board to ensure they operate at arm's-length from and independently of Council.

Commentary

- 16.2 The Chair 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.
- 16.3 If members wish advice to clarify their roles and responsibilities, should seek advice from appropriate legal staff or expert staff where such advisors are not otherwise involved in the case.

17. DISCREDITABLE CONDUCT

Rules

17.0 In connection with their office, a member must:

- a) Not engage with others, including the public, City staff and other members, in a manner that is abusive, bullying, intimidating or derogatory.
- b) Ensure that their work environment is free from discrimination and harassment.

Commentary

17.1 The Ontario *Human Rights Code* applies to a member's activity and if applicable, the City's Human Rights and Anti-harassment/discrimination Policy and the City's Hate Activity Policy.

18. COUNCIL AND ADJUDICATIVE BOARD POLICIES AND PROCEDURES

Rule

18.0 A member must 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, unless they have first requested and been granted an exemption by Council or the adjudicative board.

19. REPRISALS AND OBSTRUCTION

Rules

19.0 A member must not take reprisal, or threaten reprisal, against anyone:

- a) who has complained to the Integrity Commissioner; or,
- b) who has provided relevant information to the Integrity Commissioner.

19.1 A member must not obstruct an investigation by the Integrity Commissioner.

Commentary

19.2 Members should respect the integrity of the Code of Conduct and investigations conducted under it.

19.3 Destruction of documents or the erasing of electronic communications is considered obstruction.

20. ACTING ON ADVICE OF INTEGRITY COMMISSIONER

20.0 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.

21. COMPLIANCE

Penalties

21.0 Section 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 finds there has been a violation of the Code of Conduct:

- a) a reprimand; or,
- b) suspension of the remuneration, if applicable, paid to the member in respect of their services as a member of the adjudicative board, as the case may be, for a period of up to 90 days.

21.1 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 their services as a Member of Council, for a period of up to 90 days.

Other Actions

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

- a) Remove a member from their membership on a committee, sub-committee or panel of a local board or City Council.
- b) Remove a Chair of a local board, or a committee or subcommittee of a local board or of Council.
- c) Require the repayment or reimbursement of moneys improperly received by the member or received by another person at the direction of the member.
- d) Require the return of a gift or benefit or reimbursement of its value.
- e) A request for an apology to the local board, Council, the complainant, or to a combination of any of them.