

To: Corporate Services Committee

From: Tracy Adams, Commissioner,
Corporate Services Department

Report Number: CORP-20-10

Date of Report: February 26, 2020

Date of Meeting: March 2, 2020

Subject: Procedures, Forms and Updated Code of Conduct related to
Integrity Commissioner Services

File: A-2120

1.0 Purpose

The purpose of this report is to respond to the following direction from Council on March 18, 2019 regarding access to Integrity Commissioner Services and complaint procedures related to the Code of Conduct for Members of Council of The Corporation of the City of Oshawa and for the Board of Management of the Oshawa Central Business District Improvement Area (“Code of Conduct” or “Code”), and the Municipal Conflict of Interest Act, R.S.O. 1990, c. M. 50 (“M.C.I.A.”) complaints as a result of Bill 68 amendments to the Municipal Act, 2001, S.O. 2001, c. 25 (“Municipal Act, 2001”):

“That staff report back with a recommended procedure and form for Members of Council and Directors of the Downtown Oshawa Business Improvement Area Board of Management (“B.I.A. Board”) to access Integrity Commissioner advisory services; and,

That staff report back with a recommended public complaint procedure and form regarding alleged contraventions of the Municipal Conflict of Interest Act by Members of Council and Directors of the B.I.A. Board; and,

That staff report back with any recommended amendments to the Council Code of Conduct (By-law 51-2015, as amended) as a result of Bill 68 amendments to the Municipal Act, or for housekeeping purposes.”

2.0 Recommendation

That the Corporate Services Committee recommend to City Council:

That based on Report CORP-20-10 dated February 26, 2020 concerning procedures, forms and updated Code of Conduct related to Integrity Commissioner Services, Council pass a by-law in the form of Attachment 1 to further amend the Oshawa Council Code of Conduct, By-law 51-2015, as amended.

3.0 Executive Summary

Not applicable to this report.

4.0 Input From Other Sources

- Region of Durham
- Legal Services
- Integrity Commissioner

5.0 Analysis

Bill 68 amended the Municipal Act, 2001 effective March 1, 2019 to require municipalities to establish Codes of Conduct for its Members of Council and certain local boards. In the City's case, the relevant local board is the Board of Management of the Oshawa Central Business District Improvement Area ("D.O.B.O.M.").

Effective March 1, 2019, Bill 68 also required the City to appoint an Integrity Commissioner responsible for investigating complaints of alleged breaches of and providing advice on the Code of Conduct and other procedures, rules and policies governing the ethical behavior of Members of Council and Directors of the D.O.B.O.M., including the M.C.I.A. Any advice given by the Integrity Commissioner must be made in writing.

At its meeting of April 30, 2018, Council approved piggy-backing onto the Region of Durham's contract with Guy Giorno for Integrity Commissioner Services, specifically related to investigation work. On December 1, 2018 Guy Giorno provided a memorandum to the City Clerk outlining his opinion that a single contact for Integrity Commissioner services was envisioned in the Act and that there are no inherent conflicts in the exercise of both investigative and advisory services by the same Integrity Commissioner. On March 18, 2019, Council approved a single contact for Integrity Commissioner Services with Guy Giorno for both investigation and advisory work related to Code of Conduct and M.C.I.A.

In order to better reflect the agreement with the Integrity Commissioner and provide the procedures and forms as directed by Council on March 18, 2019, it is recommended that By-law 51-2015, as amended be further amended by a by-law in the form of Attachment 1 to this report.

The amendments include additional information associated with the role and duties of the Integrity Commissioner; schedules detailing procedures related to investigating complaints

under the Code and/or applying for an inquiry under the M.C.I.A. as well as a schedule detailing procedures to seek specific advice from the Integrity Commissioner for Members of Oshawa City Council and Directors of the D.O.B.O.M. Attachment 2 to this report is the current consolidated version of By-law 51-2015 which identifies the sections amended in Attachment 1. Attachment 3 to this report is the draft proposed consolidated version of By-law 51-2015 as amended.

The D.O.B.O.M. has been advised of the recommended updates to the Code of Conduct, as well as the proposed procedures and forms related to launching a complaint under the Code of Conduct or inquiry under the Municipal Conflict of Interest Act and accessing advice from the Integrity Commissioner.

5.1 Code of Conduct By-law

The Integrity Commissioner has a number of duties set out under Bill 68 including the provision of advice to Members of Council and Members of the D.O.B.O.M. with respect to their obligations under the Code of Conduct and other, procedures, rules or policies governing the ethical behaviour of Members and their obligations under the M.C.I.A.

In order to detail the duties, expectations and procedures related to the Integrity Commissioner, several new sections are recommended to be added to the Code. In addition, the changes reflect the requirement for the Integrity Commissioner to provide annual public reports to Council, pursuant to the existing agreement. The proposed by-law amendments are generally consistent with the Regional Code of Conduct By-law 09-2019, as amended (Attachment 4).

5.2 Procedures for Complaints and Applications for Inquiry

The process and required forms to file a Code of Conduct complaint are provided in the Complaint Procedure set out in Schedule A. The process and forms required to request an inquiry related to a contravention of the M.C.I.A. are provided in the Application for Inquiry Procedure, set out in Schedule B. For the purposes of both procedures, the term “Member” is considered to include either a Member of Council or Director of the D.O.B.O.M. The statutory process for filing a Code of Conduct complaint is different than the process for filing an application for inquiry under the M.C.I.A. The procedure and forms for both a Code complaint and an M.C.I.A. application for inquiry are consistent with those adopted by the Council of the Regional Municipality of Durham; however, in order to ensure clarity and to differentiate between the two separate process, distinct procedures and forms have been developed for each process.

5.2.1 Code of Conduct Complaints

For complaints related to the Code of Conduct, the Complaint Procedure provides for both an informal complaint directly to the Member and a formal complaint process through the Integrity Commissioner. If satisfactory resolution is not received from the informal complaint process, the formal process may be commenced.

If a person has reasonable grounds to believe a contravention of the Code has taken place and wishes to commence a formal investigation, they shall make their complaint in writing

using the prescribed form including the person's (Complainant's) name, date of the complaint, the name of the Member, an explanation of the alleged contravention and any witnesses in support of the allegation. The complaint must be submitted no later than six months from the date on which the Complainant became aware of the alleged contravention.

Upon review of a complaint or at any point during the investigation, the Integrity Commissioner may refuse to continue with an investigation if the complaint is frivolous, vexatious, not made in good faith or if there are insufficient grounds. This decision would be communicated in writing to both the Complainant and Member. If the complaint falls outside the jurisdiction of the Integrity Commissioner, the Integrity Commissioner shall advise the Complainant in writing with direction to proceed in another appropriate manner.

Following investigation by the Integrity Commissioner regarding the alleged contravention of the Code of Conduct, a report will be provided to Council with the findings. The report may advise that there has been no contravention, that a contravention occurred but the Member took measures to prevent it, that a contravention occurred but was inadvertent, or that a breach has taken place. If a breach of the Code has occurred, the Integrity Commissioner's report shall also include a recommendation regarding a penalty to be imposed pursuant to the Municipal Act, 2001, specifically either a reprimand or suspension of remuneration for up to 90 days.

At its meeting of December 16, 2019, Council adopted a process that Code of Conduct investigative reports received from the Integrity Commissioner be placed on the appropriate City Council agenda for direction from Council and also placed on the City's website on the Accountability and Transparency webpage, as applicable.

5.2.2 Application for Inquiry Concerning Alleged Contraventions of the M.C.I.A.

If a person (Complainant) has reasonable grounds to believe a contravention of the M.C.I.A. has taken place, they shall make their request for inquiry in writing using the prescribed form including their name, the name of the Member, an explanation as to why there may be a contravention and any evidence to support the allegation. In addition, a statutory declaration as required by Section 223.4.1 (6) of the Municipal Act, 2001 must accompany the application, signed by a Commissioner of Oaths. A complaint concerning an alleged contravention of the M.C.I.A. must be made no later than six weeks after the complainant becomes aware of the alleged contravention.

The Integrity Commissioner will provide updates to the City Clerk on the status of the inquiry, and must complete the inquiry 180 days after receiving the application. Upon completion of the inquiry, the Integrity Commissioner may apply to a judge for determination as to whether the Member has contravened a section of the M.C.I.A. If an application to a judge will not be made, the Integrity Commissioner must notify the Complainant in writing. After having decided whether or not to apply to a judge, the Integrity Commissioner must publish written reasons for the decision.

At its meeting of December 16, 2019, Council adopted a process to place Municipal Conflict of Interest Act investigative reports received from the Integrity Commissioner in the

in Information Packages and placed on the City's website on the Accountability and Transparency webpage

5.2.3 Complaints/Application for Inquiry in an Election Year

During the year of a regular election, if the Integrity Commissioner has not completed with an investigation or inquiry before Nomination Day as set out in Section 31 the Municipal Elections Act, 1996, S.O. 1996, c. 23, Sched. ("Municipal Elections Act, 1996"), they shall terminate the investigation or inquiry on that day. If the investigation or inquiry is terminated, the Integrity Commissioner may not commence another inquiry regarding the same matter less than six weeks after Voting Day as set out Section 5 in the Municipal Elections Act, 1996.

Between Nomination Day and Voting Day in the year of a regular election, the Integrity Commissioner shall not accept any complaints or requests for inquiry respecting a contravention of the Code of Conduct or M.C.I.A., and shall not report to Council on if a Member has contravened the Code of Conduct or M.C.I.A. In addition, Council will not consider whether to impose penalties on a Member during this time.

5.3 Advice Procedure

The Integrity Commissioner will provide advice to Members of Council and Directors of the D.O.B.O.M. concerning their obligations under the Code of Conduct, their obligations under the M.C.I.A., and their obligations under any procedure, rule or policy of the municipality that governs the ethical behaviour of Members. For the purposes of the procedure, the term "Member" is considered to include either a Member of Council or Director of the D.O.B.O.M.

The complete process for a Member to request advice from the Integrity Commissioner is outlined in the Advice Procedure, set out in Schedule C. The request for advice must be made in writing by emailing the Integrity Commissioner and must include the date, if any, by which the Member requires the advice. If the request for advice falls outside the jurisdiction of the Integrity Commissioner, the Integrity Commissioner shall advise the Member in writing with direction to proceed in another appropriate manner.

Advice provided by the Integrity Commissioner may be released with the Member's written consent; however, if the Member releases part of the advice provided, then the Integrity Commissioner may release all or part of the advice without requiring consent from the Member.

6.0 Financial Implications

If the Integrity Commissioner is providing advice to Members or when they determine that a formal investigation is warranted, an hourly rate of \$239 is payable by the City or D.O.B.O.M., as applicable. The prices in this contract are fixed, and the contract expires in 2021. The 2020 Council approved budget for Integrity Services is \$20,000.

In addition, where the Integrity Commissioner finds that a Member of Council has not contravened the M.C.I.A. or the Code of Conduct, the Member is covered under the City's Indemnification By-law 127-2015.

7.0 Relationship to the Oshawa Strategic Plan

This report supports Strategic Goal 4.2 Accountable Leadership.



Mary Medeiros, City Clerk,
City Clerk Services



Tracy Adams, Commissioner,
Corporate Services Department



**By-law -2020
of The Corporation of the City of Oshawa**

being a by-law to further amend By-law 51-2015 as amended, Oshawa Council Code of Conduct.

Whereas Council of The Corporation of the City of Oshawa considers it appropriate to amend By-law 51-2015, Oshawa Council Code of Conduct;

It Is Hereby Enacted as a by-law of The Corporation of the City of Oshawa by its Council as follows:

1. That By-law 51-2015, as amended be further amended as follows:
 - a) By deleting the words "Oshawa Council" from the short title referenced in Section 2;
 - b) By adding the following definitions under Section 3 in alphabetical order and re-lettering the sections:

"Applicant" means an elector or any person demonstrably acting in the public interest who has applied in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act;

"Committee" means a Standing Committee, Committee of the Whole or another body established by City Council (or the Board of Management of the Oshawa Central Business District Improvement Area, as applicable) wholly comprised of Members;

"Complainant" means any person who believes that a Member is in contravention of the Code of Conduct and submits a formal complaint to the Integrity Commissioner;
 - c) By moving the definition of "Sexual Harassment" in Section 3 I.1 and adding it to the definition of "Harassment" in Section 3 (e.2) ii);
 - d) By replacing the words "Oshawa Council Code of Conduct" in Section 3c) with the words "Code of Conduct for Members of the Council of the Corporation of the City of Oshawa and for the Board of Management of the Oshawa Central Business District Improvement Area";
 - e) By adding the words 'or "Members"' in Section 3i) after the word "Member";

- f) By adding the words “as defined in Section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*” after the word “individual” in Section 3(l)
- g) By adding the words “in the execution of any of the duties of their office” after the word “Member” in Section 6;
- h) By adding the words “the procedural rules adopted by the DOBOM” after the words “Code of Conduct” in Section 9;
- i) By adding the following Sections after Section 26 and renumbering the remaining sections:
 - “27. No Member shall disclose a matter, the substance of the matter and information pertaining to the matter that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential unless authorized by the Council or Board of the OCBDIA or other legislation to be released, generally or subject to conditions and are such complied with.
 - 28. No member shall disclose the content of any matter referred to in Section 27 or the subject matter of deliberations, at a meeting closed to the public, only after the Council or Committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public.
 - 29. No Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information (including but not limited to):
 - (a) Information concerning litigation, negotiation or personnel matters;
 - (b) Information that the publication of which may infringe on the rights of any person (e.g. the source of a complaint where the identity of the person making the complaint is given in confidence);
 - (c) Price schedules in any contract, tender or proposal document while it remains a confidential document;
 - (d) Information deemed to be “personal information” as defined by the *Municipal Freedom of Information and Protection of Privacy Act*; and
 - (e) Any other information or statistical data required by law not to be released.”;

j) By adding the following after Section 31 as numbered below:

“Integrity Commissioner

35. The Integrity Commissioner shall be responsible for performing in an independent manner, the following functions assigned with respect to:
- (a) The application of the Code of Conduct;
 - (b) The application of any procedures, rules and policies of the City and local boards governing the ethical behavior of Members; and
 - (c) The maintenance of custody and control of the Integrity Commissioner’s complaint and inquiry files and on completion of their term of appointment, to transfer any open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council.
36. In addition to the responsibilities set out in Section 35, the Integrity Commissioner shall also provide:
- (a) Information to Members as to their duties and obligations under the Code of Conduct;
 - (b) Information to Members with respect to compliance with the requirements of the *Municipal Conflict of Interest Act* including declaring a conflict of interest and not using any influence where a matter is being considered by an officer or employee of the City;
 - (c) Advice to individual Members regarding specific situations as they relate to the application of the Code of Conduct;
 - (d) Advice to individual Members regarding their obligations under the *Municipal Conflict of Interest Act*;
 - (e) Advice to Members on other policies and procedures that relate to the ethical behavior of members;
 - (f) Information to the public regarding the Code of Conduct and the obligations of Members under the Code of Conduct and *Municipal Conflict of Interest Act*; and,
 - (g) An annual report to Council on the activities of the Integrity Commissioner.
37. Without limiting the generality of Section 36, the Integrity Commissioner may determine, on a case-by-case basis, whether or not to undertake an investigation on whether a Member has contravened the Code of Conduct or Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. The Integrity Commissioner shall be entitled to summarily dismiss a complaint filed in accordance with the Complaint Procedure on the basis that it is, in the opinion of the Integrity Commissioner, an abuse of process or is frivolous or vexatious.

38. Without limiting the generality of Sections 35 to 42, all determinations of the Integrity Commissioner under the Code of Conduct shall be made in their own absolute discretion and shall be final and binding.
39. 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.
40. The Integrity Commissioner shall report to Council respecting each complaint given to the Integrity Commissioner. The Integrity Commissioner and her or his delegates shall have the powers and be subject to the duties prescribed by Sections 223.3 to 223.8, inclusive, of the *Municipal Act, 2001* and by other applicable law.
42. The City of Oshawa and/or the DOBOM shall ensure that reports received from the Integrity Commissioner by the municipality or DOBOM as the case may be are made available to the public.

Complaints Pursuant to the Code of Conduct

43. All complaints pursuant to the Code of Conduct shall be filed in accordance with the Complaints Procedure as set out in Schedule A of this By-law.

Application for Inquiry – Alleged Contravention of the Municipal Conflict of Interest Act

44. All requests for inquiry concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* shall be filed in accordance with the Application for Inquiry Procedure as set out in Schedule B of this By-law.
45. An elector or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.
46. The application must set out the reasons for believing that a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application (or within the time period starting six weeks before nomination day and ending on voting day in the year of a regular election).
47. The Integrity Commissioner must complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated.

48. Upon completion of an inquiry, the Integrity Commissioner may apply to a judge for a determination as to whether the Member has contravened Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

Advice

49. All requests for advice pursuant to the Code of Conduct shall be filed in accordance with the Advice Procedure as set out in Schedule C of this By-law.
50. Requests by a Member must be in writing.
51. Advice given by the Integrity Commissioner to Member shall be provided in writing.”;
- k) By deleting the words “Administration and” in the Section Heading “Non-Compliance with this Code of Conduct – Administration and Sanctions”;
- l) By deleting the following Sections and renumbering the remaining sections:
- “32. A person who believes that a Member has contravened any provision of this Code of Conduct may give to the Integrity Commissioner the person’s complaint in writing which shall set out the particulars of the alleged contravention.
33. An Integrity Commissioner may refuse to investigate a complaint if, in the opinion of the Integrity Commissioner, a complaint is frivolous, vexatious or an abuse of process. An Integrity Commissioner shall report to Council respecting each complaint given to the Integrity Commissioner. The Integrity Commissioner and her or his delegates shall have the powers and be subject to the duties prescribed by sections 223.3 to 223.8, inclusive, of the *Municipal Act, 2001* and by other applicable law.”
- m) By moving the following Sections from the heading “Non-Compliance with this Code of Conduct - Administration and Sanctions” and adding to the heading “Integrity Commissioner” as Section 41:
- “33A Notwithstanding anything in this by-law:
- (a) If an Integrity Commissioner has not completed an inquiry before nomination day for a regular election, the Integrity Commissioner shall terminate the inquiry on that day. If an inquiry is terminated, the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, the person or made the complaint or the Member whose conduct is the subject matter of the complaint makes a written request to the Integrity Commissioner that the inquiry be commenced, provided that no inquiry respecting a former Member may be commenced.

- (b) Between nomination day and voting day in a regular election, no person may submit a complaint respecting an alleged contravention of the Code of Conduct, the Integrity Commissioner shall not report to the Council or the Board of DOBOM, as applicable, about whether a Member has contravened the Code of Conduct and neither the Council nor the Board of DOBOM, as applicable, may consider whether to impose penalties.”
- n) By adding a new heading and Sections after the Section titled “Non-Compliance with this Code of Conduct – Administration and Sanctions” as follows:

“Annual Reports of the Integrity Commissioner

- 54. The Integrity Commissioner shall submit an annual report to Council which will include information on the nature and volume of activity for the past year and provide examples, while maintaining the anonymity of the persons involved, in respect of the advice provided and the nature of complaints received and responded to.
- 55. The annual report of the Integrity Commissioner shall be provided to Council for information purposes and shall be a public document.”
- o) By replacing the word “Councillors” with the word “ Members” in the Heading “Statutes Regulating the Conduct of Councillors”;
- p) By adding the following Sections under the Heading “Statutes regulating the Conduct of Members” and renumbering the remaining sections:

“58. Members acknowledge that in addition to this Code of Conduct, the following legislation may also govern the conduct of Members:

- (a) The *Municipal Act, 2001*, S.O. 2001 C. 25
 - (b) The *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50.
 - (c) The *Municipal Elections Act*, 1996 S.O. 1996 c. 32
 - (d) The *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990 c. M. 56;
 - (e) The *Occupational Health and Safety Act*, R.S.O. 1990 c.0.1
 - (f) The *Human Rights Code*, R.S.O. 1990, c.H.19
 - (g) The *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched.
 - (h) The *Criminal Code*, R.S.C. 1985, c. C-46; and,
59. The City’s Procedure By-law (or the procedural rules of order adopted by the D.O.B.O.M.) and the City’s Accountability and Transparency Policy may also govern the conduct of Members.

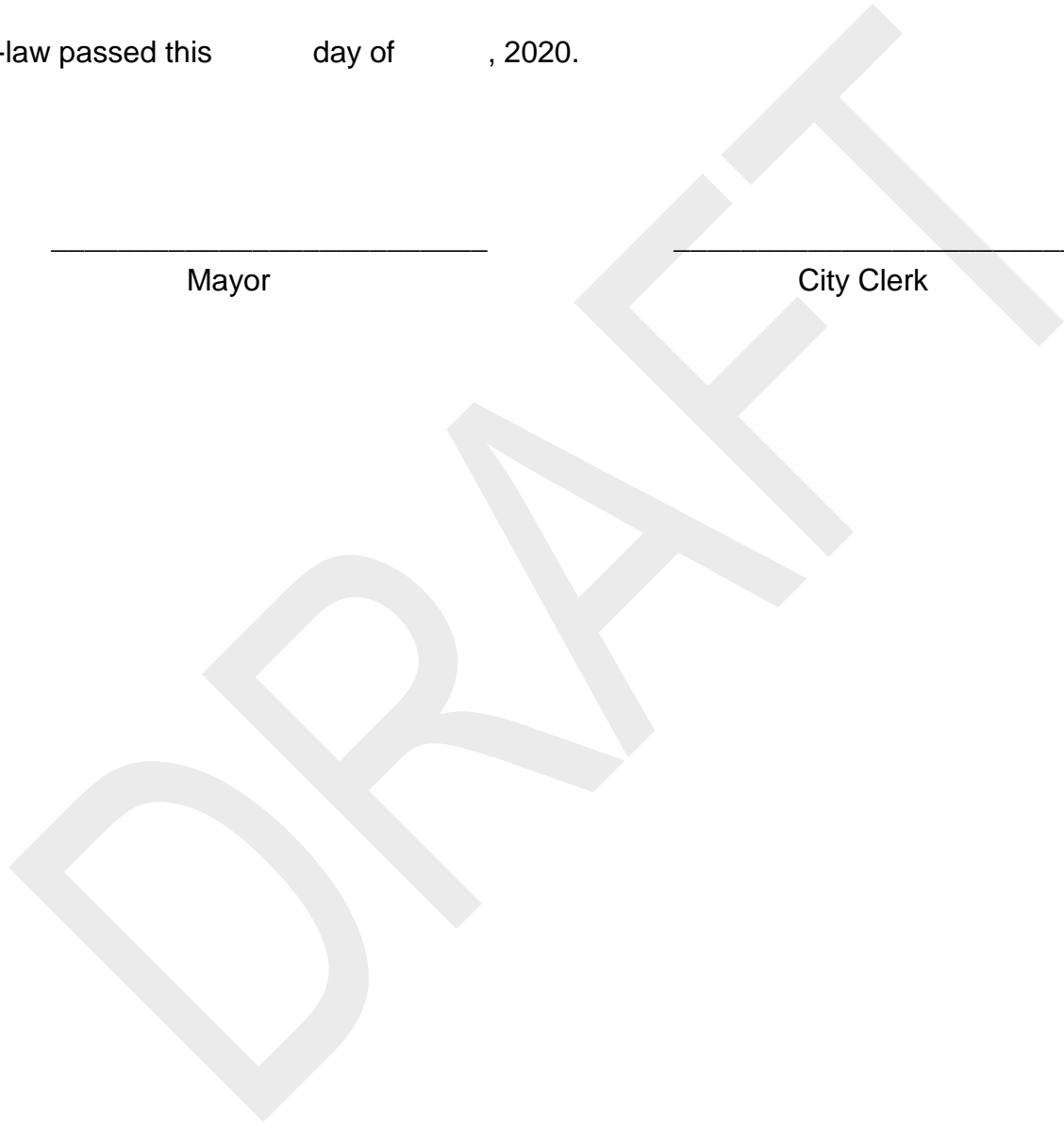
60. Any references to statute, regulation, by-law or legislation shall be deemed to be a reference to the statute, regulation, by-law or legislation as amended, consolidated, replaced or superseded.”;

- q) By adding Schedule A “Complaints Procedure”;
- r) By adding Schedule B “Inquiry Procedure”;
- s) By adding Schedule C “Advice Procedure”.

By-law passed this day of , 2020.

Mayor

City Clerk



Purpose

The purpose of this procedure is to provide a process for persons to make complaints concerning a member of Council or Directors of the Board of Management for the Oshawa Central Business District Improvement Area regarding alleged contraventions of the Code of Conduct.

For the purposes of this procedure, the term “member” shall include both Members of Council and Directors of the Board of Management of the Oshawa Central Business District Improvement Area.

Complaints under the Code of Conduct

A - Informal Complaints

1. Any person who believes that a member is in contravention of the City of Oshawa’s Code of Conduct may address their concerns in the following manner:
 - a) advise the member that their behaviour or activity contravenes the Code of Conduct;
 - b) encourage the member to stop the prohibited behaviour or activity;
 - c) if applicable, confirm to the member their satisfaction or dissatisfaction with the member’s response to the concern identified; and
 - d) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.
2. If any person is not satisfied with the response received through the aforementioned informal process, the person may proceed with a formal complaint through the Integrity Commissioner as outlined under the heading of Formal Complaints in this procedure.

B - Formal Complaints

Filing the Complaint

1. Any person who has reasonable grounds to believe that a member has contravened the Code of Conduct may address their concerns through the formal complaint process set out below:
 - a) all formal complaints (“Complaints”) must be made in writing using the City’s Complaints Form (see Form “A”) and shall be dated and signed by the person making the Complaint (the “Complainant”);

- b) the Complaint must include an explanation as to why the issue raised may be a contravention of the Code of Conduct and any evidence in support of the allegation must be included with the Complaints Form;
 - c) any witnesses in support of the allegation must be identified on the Complaint Form;
 - d) the Complaint Form must include the name of the member alleged to have breached the Code of Conduct, the specific provision(s) of the Code of Conduct allegedly contravened, the date, time and location of the alleged contravention(s) and any other information as required on the Complaint Form;
 - e) the Complaint shall be filed with the Integrity Commissioner who will determine whether the matter is, on its face, a Complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or policies; and
 - f) the Complaint must be submitted to the Integrity Commissioner no later than six (6) months from the date on which the Complainant became aware of the alleged contravention, and no action will be taken on a Complaint received after this deadline.
2. The Integrity Commissioner will advise the City Clerk when a Complaint is received, assign a file number to the Complaint and provide updates to the Clerk on the status of the Complaint.
 3. The Integrity Commissioner may request additional information from the Complainant in order to properly assess the Complaint.
 4. A Complainant may at any time abandon a Complaint.

Complaints Outside Jurisdiction

1. If the Complaint received by the Integrity Commissioner does not relate to a noncompliance with the Code of Conduct, it will be deemed not to be a Complaint and the Integrity Commissioner shall advise the Complainant in writing as follows:
 - a. Criminal Matter — if the Complaint is an allegation of a criminal nature consistent with the Criminal Code, R.S.C. 1985, c. C-46, the Complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
 - b. Municipal Freedom of Information and Protection of Privacy — if the Complaint is more appropriately addressed under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, the Complainant shall be referred to the Clerk to have the matter reviewed under that statute; or

- c. Other Matters – if the matter is covered by other policies or legislation, the Complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

Refusal to Conduct an Investigation/Discontinuance of Investigation

If upon review of a Complaint, or at any time during an investigation, the Integrity Commissioner is of the opinion that the Complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation or shall discontinue the investigation and shall communicate this position in writing to the Complainant and the member identified in the Complaint Form. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate or after an investigation is discontinued.

Opportunity for Resolution

If at any time, following the receipt of a Complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the Complainant and the member agree, efforts may be made to achieve an informal resolution. The formal Complaint will be held in abeyance during such time.

Investigation

1. If the Integrity Commissioner determines that a formal investigation is required, he or she shall:
 - a. provide a copy of the Complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within ten (10) days;
 - b. provide a copy of the response provided by the member to the Complainant with a request for a written reply within ten (10) days;
 - c. have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality that the Integrity Commissioner believes to be necessary for an investigation; and
 - d. make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation, if any, encountered during the investigation.
2. The Integrity Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, S.O. 2009, c. 33, Sched. 6, in which case those sections apply to the investigation.

Co-operation

A Member shall co-operate in every way possible with the Integrity Commissioner in any investigation of a Complaint and the enforcement of the Code of Conduct.

Suspension of Investigation

The Integrity Commissioner will cease the investigation if:

- a) a Complainant abandons the request for an investigation, in which case the Integrity Commissioner shall report to Council as set out in Section 9; or
- b) the Integrity Commissioner determines that there are reasonable grounds to believe that there has been a contravention of any other statute or of the Criminal Code, in which case the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge(s) have been finally disposed of, and shall report the suspension to Council.

Report and Recommendation

1. The Integrity Commissioner shall report to the Complainant and the member on the results of his or her review within sixty (60) days of receiving a complete Complaint Form/Affidavit upon completion of an investigation. If the investigation process requires more than sixty (60) days, the Integrity Commissioner shall provide an interim report to the Complainant and member indicating when the complete report may be available.
2. If during the investigation process, the Complaint is withdrawn, sustained or resolved, the Integrity Commissioner shall report to Council outlining the findings, the terms of any resolution and any recommended action within thirty (30) days.
3. If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred but the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in its report to Council.
4. If upon completion of the investigation, the Integrity Commissioner finds that a breach of the Code of Conduct has occurred, the Integrity Commissioner shall report his or her findings to Council including a recommendation as to the imposition of a penalty as set out in subsection 223.4(5) of the Municipal Act, 2001 S.O. 2001, c. 25, namely either:
 - a) a reprimand; or
 - b) a suspension of remuneration paid to the member for a period of up to ninety (90) days.

5. Code of Conduct investigative reports received from the Integrity Commissioner will be placed on the appropriate City Council agenda as direction from Council is required and will be placed on the City's website on the Accountability and Transparency webpage, as applicable.
6. The report from the Integrity Commissioner shall only disclose such information that in the Integrity Commissioner's opinion is required for the purposes of the report.

No Complaints or Reports Prior to Election

1. If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, as set out in Section 31 of the Municipal Elections Act, 1996, the Integrity Commissioner shall terminate the inquiry on that day.
2. If an inquiry is terminated the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, as set out in Section 5 of the Municipal Elections Act, 1996, the person or entity who made the request or the Member whose conduct is the subject matter of the request, makes a written request to the Integrity Commissioner that the inquiry be commenced. No inquiry respecting a former Member may be commenced.
3. Between Nomination Day and Voting Day in a regular election:
 - a) There shall be no requests for an inquiry, and the Integrity Commissioner shall not accept any requests for an inquiry, respecting whether a Member has contravened the Code of Conduct.
 - b) The Integrity Commissioner shall not report to Council on whether a Member has contravened the Code of Conduct or the Municipal Conflict of Interest Act; and
 - c) Council shall not consider whether to impose penalties on a Member.

No Appeal of Integrity Commissioner's Decision

There is no appeal of the decision of the Integrity Commissioner.

Confidentiality

The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the City or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act 2001.

Delegation

The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.



Complainant Information

Name: _____

Mailing Address: _____

Phone Number: _____

Email address: _____

Complaint Details

I, *(insert full name)* _____ of *(insert City/Town of residence)* _____ in the Province of Ontario have personal knowledge of the facts as set out in this complaint form because *(insert reasons – e.g. I work for...; I attended a meeting at which..., etc.):*

and believe that (check one)

a Member of the Council of the City of Oshawa

a Director of the Board of Management of the Central Oshawa Business District Improvement Area

namely: *(insert Member/Director name)* _____ has contravened section(s) *(insert section)* _____ of the Code of Conduct for Members of the Council of the City of Oshawa and the Board of Management of the Oshawa Central Business District Improvement Area as set out in By-law 51-2015, as amended. The particulars of which are as follows:

Please set out the statement of facts in consecutively numbered paragraphs. If more room is required, please attach additional pages, numbered accordingly. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this form.

Please see reverse for additional information and signature section.

Please read before signing:

If the Integrity Commissioner launches an inquiry into a complaint, then the content of this form, including the complainant's identity, will typically be shared with the Member/Director who is the subject of the complaint. Also, at the end of the inquiry, the Integrity Commissioner may issue a public report that includes information about the complaint, including possibly the identities of the parties involved. Only sign this complaint form if you understand and accept the potential disclosure of your identity and the information you provide.

By signing below, I, *(insert name)* _____ understand the above and request that this matter be reviewed by the City of Oshawa's Integrity Commissioner.

Signature of Complainant

Date

Purpose

The purpose of this procedure is to provide a process for persons to apply for an inquiry concerning alleged contraventions of the Municipal Conflict of Interest Act R.S.O. 1990 c. M. 50 concerning a member of Council or Directors of the Board of Management of the Oshawa Central Business District Improvement Area.

For the purposes of this procedure, the term “member” shall include both Members of Council and Directors of the Board of Management for the Oshawa Central Business District Improvement Area.

Request for Inquiry under the Municipal Conflict of Interest Act

A - Process for the Request

1. An elector, or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act using the process set out below:
 - a) all requests for an inquiry may be made in writing using the City's Application for Inquiry Form (see Form “B”) and dated and signed by the person making the inquiry (the “Applicant”);
 - b) the Inquiry Form must include the name of the member alleged to have breached the Municipal Conflict of Interest Act;
 - c) the Application for Inquiry shall be filed with the Integrity Commissioner who may conduct any such inquiries he/she considers necessary; and
 - d) the Inquiry must be submitted to the Integrity Commissioner no later than six (6) weeks from the date in which the applicant became aware of the alleged contravention, unless both of the following are satisfied:
 - i) The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, and ending on voting day in a regular election, as set out in section 5 of that Act.
 - ii) The applicant applies to the Commissioner within six weeks after the day after voting day in a regular election.

2. The Integrity Commissioner will provide notice to the City Clerk of the fact that an Application for Inquiry has been received, including the assigned file number, and provide updates to the Clerk on the status of any Inquiry. The notice and any updates must not breach the confidentiality of the identities of the Applicant and the Respondent or the confidentiality of the nature and content of the Application.
3. In accordance with the *Municipal Act, 2001*, the Integrity Commissioner may request additional information from the applicant, the municipality, or may conduct a public meeting as he/she believes necessary to investigate the inquiry.

B - Completion of the Investigation

1. The Integrity Commissioner shall complete the inquiry within 180 days after receiving the completed application.
2. Upon completion of the inquiry, the Integrity Commissioner may apply to a judge for determination as to whether the member has contravened a section of the M.C.I.A. If an application to a judge will not be made, the Commissioner must notify the complainant in writing.
3. After having decided whether or not to apply to a judge, the Integrity Commissioner must publish written reasons for the decision.
4. Municipal Conflict of Interest Act investigative reports received from the Integrity Commissioner shall be included in Information Packages and placed on the City's website on the Accountability and Transparency webpage as direction from Council is not required.

Confidentiality

The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the City or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act 2001.

Delegation

The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.



**Application for Inquiry into Alleged Contravention of the
Municipal Conflict of Interest Act, R.S.O. 1990, c. M. 50 (“M.C.I.A.”)**

Applicant Information

Applicant Name: _____

Mailing Address: _____

Phone Number: _____

Email address: _____

Applicant is (check one):

- an elector in the City of Oshawa
- an individual demonstrably acting in the public interest
- a corporation (including a municipality) demonstrably acting in the public interest

If the applicant is a Corporation, please identify the authorized representative for the purposes of this application: _____

Allegation Details

I believe that (check one)

- a Member of the Council of the City of Oshawa
- a Director of the Board of Management of the Central Oshawa Business District Improvement Area

Name of the Member/Director who is the subject of the allegation: _____

Please note: You must complete a separate form for each member who is the subject of an allegation.

The Applicant alleges that the Member/Director contravened the following sections of the Municipal Conflict of Interest Act (check all that apply):

- Section 5
- Section 5.1
- Section 5.2

Questions about the collection of the personal information on this form should be submitted to the Integrity Commissioner directly by contacting Guy Giorno at IntegrityCommissioner@fasken.com

The following are the Applicant's reasons for believing that the Member/Director has contravened the above section(s) of the Municipal Conflict of Interest Act:

Please set out the statement of facts in consecutively numbered paragraphs. If more room is required, please attach additional pages, numbered accordingly. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this form.

Please read before signing:

If the Integrity Commissioner launches an inquiry into an allegation then the content of this form, including the Applicant's identity, will typically be shared with the Member/Director who is the subject of the allegation. Also, information on this form and information obtained during the inquiry, including possibly the identities of the parties involved, might be disclosed in the Integrity Commissioner's published reasons at the end of the inquiry and might be disclosed in an application to the Superior Court. Only sign this application form if you understand and accept the potential for disclosure of your identity and the information you provide.

By signing below, I, *(insert name)* _____ understand the above and apply to the Integrity Commissioner for an inquiry to be carried out concerning the alleged contravention.

Signature of Applicant (or representative if Applicant is a corporation)

Date

Note: The statutory declaration on the next page is a mandatory part of the application, required by the *Municipal Act, 2001*. It must be declared before a person authorized to take declarations in Ontario (including any Ontario lawyer).

Questions about the collection of the personal information on this form should be submitted to the Integrity Commissioner directly by contacting Guy Giorno at IntegrityCommissioner@fasken.com

DECLARATION
Required by subsection 223.4.1(6) of the *Municipal Act*

I, _____ (insert full name), of _____ (city, town, etc.)

of _____ (specify municipality), _____

(add province/country if outside Ontario/Canada) solemnly declare that:

(Choose one of the following by placing your initials in the respective box below)

I am the Applicant.

The Applicant is a corporation and I am its authorized representative.

(Choose one by placing your initials in the respective box below)

I attest to the fact that the Applicant became aware of the Member/Director's alleged contravention of the *Municipal Conflict of Interest Act* not more than six weeks before today.

[In a municipal election year:] I attest to the fact that the Applicant became aware of the Member/Director's alleged contravention of the *Municipal Conflict of Interest Act* within the period of time starting six weeks before Nomination Day, and ending on voting day.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the _____ (city/town) of _____ (specify municipality) this

_____ day of _____, 20____

Commissioner of oaths, etc.

Applicant or Representative

Purpose

The purpose of this procedure is to provide a process for Members of Council or Directors of the Board of Management of the Oshawa Central Business District Improvement Area to access advice from the Integrity Commissioner for the City of Oshawa.

For the purposes of this procedure, the term “member” shall include both Members of Council and Directors of the Board of Management of the Oshawa Central Business District Improvement Area.

Process

Submission of Request for Advice

1. Any Council or local board member who wishes to obtain advice from the City of Oshawa’s Integrity Commissioner must request the advice in writing by emailing the Integrity Commissioner at: integritycommissioner@fasken.com.
2. Requests for Advice must specify the date, if any, by which the member requires the advice. The Integrity Commissioner will endeavor to respond to all Requests for Advice by the date requested.
3. The Integrity Commissioner will provide advice to a member as it pertains to:
 - a. The member’s obligations under the code of conduct
 - b. The member’s obligations under a procedure, rule or policy of the municipality or of the local board as the case may be, governing the ethical behavior of members
 - c. The member’s obligations under the Municipal Conflict of Interest Act.
4. The Integrity Commissioner will provide notice to the City Clerk of the fact of a Request for Advice, including the assigned file number. The notice will identify the Member but must not breach the confidentiality of the nature or content of the Request.

Response of Integrity Commissioner to Request for Advice Outside Jurisdiction

If the request for advice received by the Integrity Commissioner does not relate to the Code of Conduct, the Municipal Conflict of Interest Act sections 5, 5(1) or 5(2), or a procedure, rule or policy governing the ethical behavior of members; it is not within the Integrity Commissioner’s mandate and the Integrity Commissioner shall inform the member in writing. Further, in specific cases, the Integrity Commissioner shall:

- a. Criminal Matter — if the request for advice is with respect to a matter that is of a criminal nature under the Criminal Code, R.S.C. 1985, c. C-46, the

member shall be informed that issues of a criminal nature should be directed to the appropriate police service or raised with independent legal counsel;

- b. Municipal Freedom of Information and Protection of Privacy — if the request for advice relates to the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990, c. M. 56, the member shall be informed that freedom of information requests may be made to the City Clerk; or
- c. Other Matters – if the matter is covered by other policies or legislation, the member may be informed that the issue may be addressed in another manner or through another process, as appropriate.

Response in Writing

The Integrity Commissioner will respond to all requests for advice in writing, to the member who made the request for advice.

Release of Advice

Advice provided by the Integrity Commissioner may be released with the member's written consent.

If a member releases part of the advice provided by the Integrity Commissioner, then the Integrity Commissioner may release part or all of the advice without requiring consent from the member.

Advice is Binding

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.

Confidentiality

The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the City or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act, 2001.

Delegation

The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.



being a by-law to establish a Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and of the Board of Management for the Oshawa Central Business District Improvement Area.

WHEREAS subsection 223.2(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality;

IT IS HEREBY ENACTED as a by-law of The Corporation of the City of Oshawa by its Council as follows:

1. This by-law establishes a Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and of the Board of Management for the Oshawa Central Business District Improvement Area.
2. The short title of this by-law is "Oshawa Council Code of Conduct".

DEFINITIONS

3. In this by-law:

- (a) "child" means a child born within or outside marriage and includes an adopted child and a person whom a Member has demonstrated a settled intention to treat as a child of her or his family;
- (b) "City" means The Corporation of the City of Oshawa;
- (c) "Code of Conduct" means the Oshawa Council Code of Conduct established by this by-law;
- (d) "confidential information" includes:

- i) any information in the possession of, or received in confidence by, the City that the City is prohibited from disclosing, or has decided to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*, or any other law;
- ii) information of a corporate, commercial, scientific or technical nature received in confidence from third parties;
- iii) personal information;
- iv) information that is subject to solicitor-client privilege;
- v) information that concerns any confidential matters pertaining to personnel, labour relations, legal proceedings, property acquisition or disposition, or the security of the property of the City or a local board;
- vi) a matter, the substance of a matter, and information pertaining to a matter, that has been included on an agenda or that has been debated or discussed at a meeting of Council or one of its Standing Committees or of DOBOM that is closed to the public; and
- vii) any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order.

(e) "Council" means the Council of The Corporation of the City of Oshawa;

(e.1) "DOBOM" means the Board of Management for the Oshawa Central Business District Improvement Area;

(e.2) "Harassment" includes

- i) any comment, conduct, action or gesture that is unwelcome or that ought reasonably to be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health; and
- ii) Sexual Harassment;

(f) "information" includes a record or document, whether in printed form, on film, by electronic means or otherwise;

- (g) "Integrity Commissioner" means each person or persons from time to time appointed pursuant to section 223.3 of the *Municipal Act, 2001*;
- (h) "lobbyist" means a person that communicates with a Member for the purpose of influencing or attempting to influence the Member respecting an issue that is or may be pending before Council or one of its Standing Committees;
- (i) "Member" means each member of the Council and each Director of DOBOM, as applicable;
- (j) "parent" means a person who has demonstrated a settled intention to treat a child as a part of her or his family whether or not that person is the natural parent of the child;
- (k) "person" includes a corporation, partnership, association and any other entity as the context allows;
- (l) "personal information" includes recorded information about an identifiable individual;
- (l.1) "Sexual Harassment" includes any comment, conduct, action or gesture of a sexual nature or respecting sexual orientation, gender identity or gender expression that is unwelcome or that ought reasonably to be known to be unwelcome including:
 - i) a sexual advance, solicitation or request for a sexual favour;
 - ii) a reprisal or threat related to the rejection of a sexual advance, solicitation or request for a sexual favour where the reprisal or threat is influenced or made by a person in a position to confer or deny a benefit to the person who rejects the sexual advance, solicitation or request for a sexual favour;
 - iii) a comment, joke, innuendo or taunt about a person's body, attire, personal life or social life;
 - iv) a practical joke of a sexual nature or respecting sexual orientation, gender identity or gender expression which could cause awkwardness or embarrassment;
 - v) a display or distribution by any media of pornographic images or other material of a sexual nature;
 - vi) leering or other gestures of a sexual nature;

- vii) unwelcome physical contact including touching, patting or pinching;
- viii) an expression of gender bias including expressions that are discriminatory, degrading or derogatory; and
- ix) sexual assault.

(m) "spouse" means a person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

PRINCIPLES UPON WHICH THIS CODE OF CONDUCT IS BASED

4. Improving the quality of municipal administration and governance can best be achieved by encouraging high standards of conduct on the part of all municipal officials. In particular, the public is entitled to expect the highest standards of conduct from the Members whom they elect to local government and who are appointed as Directors of DOBOM. In turn, adherence to these standards will protect and maintain the City's reputation and integrity.
5. Key statements of principle that underlie this Code of Conduct are as follows:
 - (a) Members must serve and be seen to serve their constituents in a conscientious and diligent manner;
 - (b) Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest;
 - (c) Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;
 - (d) Members must recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible; and
 - (e) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Council.

APPLICATION OF THIS CODE

6. This Code of Conduct applies to each Member.

COMPLIANCE WITH DECLARATION OF OFFICE

7. Each Member shall act in accordance with her or his declaration of office or terms of appointment, as applicable.

ADHERENCE TO COUNCIL POLICIES AND PROCEDURES

8. Each Member shall observe and comply with every provision of this Code of Conduct as well as with all other policies and procedures adopted or established by Council affecting the Member. This Code of Conduct shall prevail to the extent of any inconsistency between this Code of Conduct and any of the aforementioned policies or procedures.

CONDUCT AT MEETINGS

9. Each Member shall conduct herself or himself properly and in a civil manner at Council, Committee and other meetings, and in accordance with the provisions of the Procedural By-law 111-2017 as from time to time amended, this Code of Conduct, and other applicable law.

CONDUCT RESPECTING OTHERS

10. Each Member has the duty and responsibility to treat members of the public, each other Member and staff appropriately and without abuse, bullying or intimidation, and to ensure that the City's work environment is free from discrimination and Harassment. Without limitation, a Member shall not:

- (a) use indecent, abusive or insulting words or expressions toward any other Member, any member of staff or any member of the public;
- (b) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability; or
- (c) engage in any Harassment of any other Member, any member of staff or any member of the public.

CONDUCT RESPECTING STAFF

11. Under the direction of the senior City administration, and in accordance with the decisions of Council, City staff are required to serve the municipal corporation as a whole and staff of DOBOM are required to serve it. Each Member shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any Member.
12. No Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
13. Each Member shall show respect for staff, and for their professional capacities and responsibilities.
14. No Member shall compel any member of staff to engage in partisan political activities or subject any member of staff to threat or discrimination for refusing to engage in any such activity.
15. No Member shall use or attempt to further her or his authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that person's duties, including the duty to disclose improper activity.

GIFTS AND BENEFITS

16. For the purposes of this Code of Conduct, a gift or benefit provided, with the Member's knowledge, to the Member's spouse, child or parent, 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.
17. No Member shall accept a fee, advance, gift or personal benefit that is related directly or indirectly with the performance of her or his duties of office, unless permitted under one or more of the following exceptions:
 - (a) compensation authorized by law;
 - (b) a gift or benefit of the kind that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation;

- (c) a political contribution otherwise authorized and reported as required by law, in the case of a Member running for office;
- (d) services provided without compensation by a person volunteering her or his time;
- (e) a suitable memento of a function honouring the Member;
- (f) food, lodging, transportation or entertainment lawfully provided by any Provincial, regional or local government or board or political subdivisions of any of them, by the Federal government, a foreign government, or by those organizing a conference, seminar or event where the Member is speaking or attending in an official capacity;
- (g) food and beverages consumed at a banquet, reception or similar event, if:
 - i) attendance by the Member is for a legitimate City purpose;
 - ii) the person extending the invitation, or a representative of the organization holding the event, is in attendance; and
 - iii) the value is reasonable;
- (h) communications to the office of a Member, including subscriptions to newspapers and periodicals; and
- (i) a sponsorship or donation for a community event organized or run by a Member, or a third party on behalf of a Member, subject to the limitations set out in any applicable Council policy or this Code of Conduct.

18. Except for exception 17(c) (political contributions allowable by law), these exceptions do not apply where a gift or benefit is provided by a lobbyist or a lobbyist's client or employer.

19. In the case of any of the exceptions 17(b), 17(e), 17(f), 17(h) and 17(i), if the value of the gift or benefit exceeds \$300.00, or if the total value of gifts or benefits received from any one source during the course of a calendar year exceeds \$300.00, the Member shall file, within 30 days of receipt of the gift or benefit, or of reaching the annual limit, a disclosure statement with the Clerk of the City. The disclosure statement must set out:

- (a) the nature of every gift or benefit received;

- (b) its source and date of receipt;
- (c) the circumstances under which it was given and received;
- (d) its estimated value;
- (e) what the recipient has done or intends to do with any gift; and
- (f) whether any gift will at some point be provided to the City.

20. The City Clerk shall cause each disclosure statement to be published as part of an agenda for an open meeting of Council.

21. Council shall decide whether to refer a disclosure statement to an Integrity Commissioner.

22. If Council decides to refer a disclosure statement to an Integrity Commissioner, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, constitute a contravention of this Code of Conduct or create a conflict between a private interest and the public duty or responsibilities of the Member. In the event that the Integrity Commissioner makes such a determination, she or he shall call upon the Member to justify receipt of the gift or benefit.

23. If the Integrity Commissioner determines that receipt of any gift or benefit was inappropriate, she or he may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, forfeit the gift or remit to the City the value of any gift or benefit already consumed.

24. Except in the case of exceptions 17(a), 17(c), 17(f) and 17(i), no Member shall accept a gift or benefit worth in excess of \$500.00, or gifts or benefits from one source during a calendar year which together are worth in excess of \$500.00.

CONFIDENTIAL INFORMATION

25. No Member shall disclose, release or publish by any means to any person or to the public any confidential information of the City or of DOBOM, whether or not acquired by virtue of her or his office, except when required or authorized by Council or of the Board of DOBOM, as applicable, or otherwise by law to do so.

26. No Member shall use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person.

27. No Member shall obtain access, or attempt to gain access, to confidential information except to the extent that such access is necessary for the performance of her or his duties, such confidential information is provided to Council or to the Board of DOBOM, as applicable, as a whole, and such access is not prohibited by Council or by the Board of DOBOM, as applicable, or otherwise by law.

USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

28. No Member shall use, or permit the use of, City land, facilities, equipment, supplies, services, staff or other resource, including any City-owned information, website, Council transportation delivery service or funds allocated for Member's expenses, for any purpose or activity other than for the lawful business of the City.

29. No Member shall seek or acquire any personal financial gain from the use or sale of confidential information, or of any City-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copyrighted, of which property remains exclusively that of the City.

NO IMPROPER USE OF INFLUENCE

30. No Member shall use the influence of her or his office for any purpose other than for the lawful exercise of her or his official duties and for City purposes. Without limitation, no Member shall:

- (a) use her or his office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage or that of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise;
- (b) attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties; or
- (c) hold out the prospect or promise of future advantage through the Member's supposed influence within Council or the Board of DOBOM, as applicable, in return for any action or inaction.

31. For the purposes of section 30, “private advantage” does not include:

- (a) a matter that is of general application;
- (b) a matter that affects a Member, her or his parents/children or spouse, staff members, friends or associates, business or otherwise as one of a broad class of persons;
- (c) a matter that concerns the remuneration or benefits of a Member; or
- (d) a request by a Member that Council or the Board of DOBOM, as applicable, grant a lawful exemption.

NON-COMPLIANCE WITH THIS CODE OF CONDUCT – ADMINISTRATION AND SANCTIONS

32. A person who believes that a Member has contravened any provision of this Code of Conduct may give to the Integrity Commissioner the person’s complaint in writing which shall set out the particulars of the alleged contravention.

33. An Integrity Commissioner may refuse to investigate a complaint if, in the opinion of the Integrity Commissioner, a complaint is frivolous, vexatious or an abuse of process. An Integrity Commissioner shall report to Council respecting each complaint given to the Integrity Commissioner. The Integrity Commissioner and her or his delegates shall have the powers and be subject to the duties prescribed by sections 223.3 to 223.8, inclusive, of the *Municipal Act, 2001* and by other applicable law.

33A Notwithstanding anything in this by-law:

- (a) If an Integrity Commissioner has not completed an inquiry before nomination day for a regular election, the Integrity Commissioner shall terminate the inquiry on that day. If an inquiry is terminated, the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, the person or made the complaint or the Member whose conduct is the subject matter of the complaint makes a written request to the Integrity Commissioner that the inquiry be commenced, provided that no inquiry respecting a former Member may be commenced.
- (b) Between nomination day and voting day in a regular election, no person may submit a complaint respecting an alleged contravention of the Code of Conduct, the Integrity Commissioner shall not report to the Council or the Board of DOBOM, as applicable,

about whether a Member has contravened the Code of Conduct and neither the Council nor the Board of DOBOM, as applicable, may consider whether to impose penalties.

34. Upon receipt of a report from an Integrity Commissioner that, in the Integrity Commissioner's opinion, a Member has contravened this Code of Conduct, Council or the Board of DOBOM, as applicable, shall decide whether to impose either of the penalties prescribed by subsection 223.4(5) of the Municipal Act, 2001 as follows:

- (a) a reprimand; or
- (b) suspension of the remuneration paid to the Member in respect of her or his services as a Member for a period of up to 90 days.

35. An Integrity Commissioner may also recommend that Council or the Board of DOBOM, as applicable, take one or more of the following actions:

- (a) removal from membership on a committee or local board;
- (b) removal as chair or as vice-chair of a committee or local board;
- (c) repayment or reimbursement of monies received;
- (d) return of property or reimbursement of its value;
- (e) request a public apology to Council, the complainant, or both; or
- (f) any other or additional action deemed by Council to be appropriate, and which is within its power to take.

NO REPRISAL OR OBSTRUCTION IN THE APPLICATION OR ENFORCEMENT OF THIS CODE

36. Each Member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it and shall co-operate in every way possible in securing compliance with its application and enforcement. Any reprisal or threat of reprisal against a complainant or any other person for lodging a complaint or for providing relevant information to the Integrity Commissioner or any other person is prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner, or any other City

official involved in applying or furthering the objectives or requirements of this Code of Conduct, in the carrying out of such responsibilities, or pursuing any such objective.

STATUTES REGULATING THE CONDUCT OF COUNCILLORS

37. In the case of any inconsistency between this Code of Conduct and a Federal or Provincial statute or regulation, the statute or regulation shall prevail to the extent of the inconsistency.

By-law passed this nineteenth day of May, 2015.

Original signed by:

Mayor

City Clerk

being a by-law to establish a Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and for the Board of Management of the Oshawa Central Business District Improvement Area.

Whereas subsection 223.2(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality;

It is hereby enacted as a by-law of The Corporation of the City of Oshawa by its Council as follows:

1. This by-law establishes a Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and for the Board of Management of the Oshawa Central Business District Improvement Area.
2. The short title of this by-law is "Oshawa Council Code of Conduct".

Definitions

3. In this by-law:
 - (a) "Applicant" means an elector or any person demonstrably acting in the public interest who has applied in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act;
 - (b) "child" means a child born within or outside marriage and includes an adopted child and a person whom a Member has demonstrated a settled intention to treat as a child of her or his family;
 - (c) "City" means The Corporation of the City of Oshawa;

- (d) "Code of Conduct" means the ~~Oshawa Council Code of Conduct~~ Code of Conduct for Members of the Council of the Corporation of the City of Oshawa and for the Board of Management of the Oshawa Central Business District Improvement Area established by this by-law;
- (e) "Committee" means a Standing Committee, Committee of the Whole or another body established by City Council (or the Board of Management for the Oshawa Central Business District Improvement Area, as applicable) wholly comprised of Members;
- (f) "Complainant" means any person who believes that a Member is in contravention of the Code of Conduct and submits a formal complaint to the Integrity Commissioner;
- (g) "confidential information" includes:
- i) any information in the possession of, or received in confidence by, the City that the City is prohibited from disclosing, or has decided to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*, or any other law;
 - ii) information of a corporate, commercial, scientific or technical nature received in confidence from third parties;
 - iii) personal information;
 - iv) information that is subject to solicitor-client privilege;
 - v) information that concerns any confidential matters pertaining to personnel, labour relations, legal proceedings, property acquisition or disposition, or the security of the property of the City or a local board;
 - vi) a matter, the substance of a matter, and information pertaining to a matter, that has been included on an agenda or that has been debated or discussed at a meeting of Council or one of its Standing Committees or of DOBOM that is closed to the public; and

- vii) any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order.
- (h) "Council" means the Council of The Corporation of the City of Oshawa;
- (i) "DOBOM" means the Board of Management for the Oshawa Central Business District Improvement Area;
- (j) "Harassment" includes:
 - i) any comment, conduct, action or gesture that is unwelcome or that ought reasonably to be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health; and
 - ii) Sexual Harassment, which includes any comment, conduct, action or gesture of a sexual nature or respecting sexual orientation, gender identity or gender expression that is unwelcome or that ought reasonably to be known to be unwelcome including:
 - a. a sexual advance, solicitation or request for a sexual favour;
 - b. a reprisal or threat related to the rejection of a sexual advance, solicitation or request for a sexual favour where the reprisal or threat is influenced or made by a person in a position to confer or deny a benefit to the person who rejects the sexual advance, solicitation or request for a sexual favour;
 - c. a comment, joke, innuendo or taunt about a person's body, attire, personal life or social life;
 - d. a practical joke of a sexual nature or respecting sexual orientation, gender identity or gender expression which could cause awkwardness or embarrassment;
 - e. a display or distribution by any media of pornographic images or other material of a sexual nature;
 - f. leering or other gestures of a sexual nature;
 - g. unwelcome physical contact including touching, patting or pinching;
 - h. an expression of gender bias including expressions that are discriminatory, degrading or derogatory; and

i. sexual assault;

- (k) "information" includes a record or document, whether in printed form, on film, by electronic means or otherwise;
- (l) "Integrity Commissioner" means each person or persons from time to time appointed pursuant to section 223.3 of the *Municipal Act, 2001*;
- (m) "lobbyist" means a person that communicates with a Member for the purpose of influencing or attempting to influence the Member respecting an issue that is or may be pending before Council or one of its Standing Committees;
- (n) "Member" or "Members" means each member of the Council and each Director of the DOBOM, as applicable;
- (o) "parent" means a person who has demonstrated a settled intention to treat a child as a part of her or his family whether or not that person is the natural parent of the child;
- (p) "person" includes a corporation, partnership, association and any other entity as the context allows;
- (q) "personal information" includes recorded information about an identifiable individual as defined in Section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (r) "spouse" means a person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

Principles upon which This Code of Conduct is Based

4. Improving the quality of municipal administration and governance can best be achieved by encouraging high standards of conduct on the part of all municipal officials. In particular, the public is entitled to expect the highest standards of conduct from the Members whom they elect to local government and who are appointed as Directors of the DOBOM. In turn, adherence to these standards will protect and maintain the City's reputation and integrity.

5. Key statements of principle that underlie this Code of Conduct are as follows:
- (a) Members must serve and be seen to serve their constituents in a conscientious and diligent manner;
 - (b) Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest;
 - (c) Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;
 - (d) Members must recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible; and
 - (e) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Council.

Application of this Code

6. This Code of Conduct applies to each Member **in the execution of any of the duties of their office.**

Compliance with Declaration of Office

7. Each Member shall act in accordance with her or his declaration of office or terms of appointment, as applicable.

Adherence to Council Policies and Procedures

8. Each Member shall observe and comply with every provision of this Code of Conduct as well as with all other policies and procedures adopted or established by Council affecting the Member. This Code of Conduct shall prevail to the extent of any inconsistency between this Code of Conduct and any of the aforementioned policies or procedures.

Conduct at Meetings

9. Each Member shall conduct herself or himself properly and in a civil manner at Council, Committee and other meetings, and in accordance with the provisions of the Procedure~~a~~ By-law 111-2017 as from time to time amended, this Code of Conduct, **the procedural rules adopted by the DOBOM** and other applicable law.

Conduct Respecting Others

10. Each Member has the duty and responsibility to treat members of the public, each other Member and staff appropriately and without abuse, bullying or intimidation, and to ensure that the City's work environment is free from discrimination and Harassment. Without limitation, a Member shall not:
 - (a) use indecent, abusive or insulting words or expressions toward any other Member, any member of staff or any member of the public;
 - (b) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability; or
 - (c) engage in any Harassment of any other Member, any member of staff or any member of the public.

Conduct Respecting Staff

11. Under the direction of the senior City administration, and in accordance with the decisions of Council, City staff are required to serve the municipal corporation as a whole and staff of the DOBOM are required to serve it. Each Member shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any Member.
12. No Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
13. Each Member shall show respect for staff, and for their professional capacities and responsibilities.

14. No Member shall compel any member of staff to engage in partisan political activities or subject any member of staff to threat or discrimination for refusing to engage in any such activity.
15. No Member shall use or attempt to further her or his authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that person's duties, including the duty to disclose improper activity.

Gifts and Benefits

16. For the purposes of this Code of Conduct, a gift or benefit provided, with the Member's knowledge, to the Member's spouse, child or parent, 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.
17. No Member shall accept a fee, advance, gift or personal benefit that is related directly or indirectly with the performance of her or his duties of office, unless permitted under one or more of the following exceptions:
 - (a) compensation authorized by law;
 - (b) a gift or benefit of the kind that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation;
 - (c) a political contribution otherwise authorized and reported as required by law, in the case of a Member running for office;
 - (d) services provided without compensation by a person volunteering her or his time;
 - (e) a suitable memento of a function honouring the Member;
 - (f) food, lodging, transportation or entertainment lawfully provided by any Provincial, regional or local government or board or political subdivisions of any of them, by the Federal government, a foreign government, or by those organizing a conference, seminar or event where the Member is speaking or attending in an official capacity;

- (g) food and beverages consumed at a banquet, reception or similar event, if:
 - i) attendance by the Member is for a legitimate City purpose;
 - ii) the person extending the invitation, or a representative of the organization holding the event, is in attendance; and
 - iii) the value is reasonable;
 - (h) communications to the office of a Member, including subscriptions to newspapers and periodicals; and
 - (i) a sponsorship or donation for a community event organized or run by a Member, or a third party on behalf of a Member, subject to the limitations set out in any applicable Council policy or this Code of Conduct.
18. Except for exception 17(c) (political contributions allowable by law), these exceptions do not apply where a gift or benefit is provided by a lobbyist or a lobbyist's client or employer.
19. In the case of any of the exceptions 17(b), 17(e), 17(f), 17(h) and 17(i), if the value of the gift or benefit exceeds \$300.00, or if the total value of gifts or benefits received from any one source during the course of a calendar year exceeds \$300.00, the Member shall file, within 30 days of receipt of the gift or benefit, or of reaching the annual limit, a disclosure statement with the Clerk of the City. The disclosure statement must set out:
- (a) the nature of every gift or benefit received;
 - (b) its source and date of receipt;
 - (c) the circumstances under which it was given and received;
 - (d) its estimated value;
 - (e) what the recipient has done or intends to do with any gift; and
 - (f) whether any gift will at some point be provided to the City.

20. The City Clerk shall cause each disclosure statement to be published as part of an agenda for an open meeting of Council.
21. Council shall decide whether to refer a disclosure statement to an Integrity Commissioner.
22. If Council decides to refer a disclosure statement to an Integrity Commissioner, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, constitute a contravention of this Code of Conduct or create a conflict between a private interest and the public duty or responsibilities of the Member. In the event that the Integrity Commissioner makes such a determination, she or he shall call upon the Member to justify receipt of the gift or benefit.
23. If the Integrity Commissioner determines that receipt of any gift or benefit was inappropriate, she or he may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, forfeit the gift or remit to the City the value of any gift or benefit already consumed.
24. Except in the case of exceptions 17(a), 17(c), 17(f) and 17(i), no Member shall accept a gift or benefit worth in excess of \$500.00, or gifts or benefits from one source during a calendar year which together are worth in excess of \$500.00.

Confidential Information

25. No Member shall disclose, release or publish by any means to any person or to the public any confidential information of the City or of the DOBOM, whether or not acquired by virtue of her or his office, except when required or authorized by Council or of the DOBOM, as applicable, or otherwise by law to do so.
26. No Member shall use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person.
27. No Member shall disclose a matter, the substance of the matter and information pertaining to the matter that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential unless authorized by the Council or the DOBOM or other legislation to be released, generally or subject to conditions and are such complied with.

28. No member shall disclose the content of any matter referred to in Section 27 or the subject matter of deliberations, at a meeting closed to the public, only after the Council or Committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public.
29. No Member shall, without lawful authority, disclose or make personal use of -any of the following types of Confidential Information (including but not limited to):
- (a) Information concerning litigation, negotiation or personnel matters;
 - (b) Information that the publication of which may infringe on the rights of any person (e.g. the source of a complaint where the identity of the person making the complaint is given in confidence);
 - (c) Price schedules in any contract, tender or proposal document while it remains a confidential document;
 - (d) Information deemed to be “personal information” as defined by the Municipal Freedom of Information and Protection of Privacy Act; and
 - (e) Any other information or statistical data required by law not to be released.
30. No Member shall obtain access, or attempt to gain access, to confidential information except to the extent that such access is necessary for the performance of her or his duties, such confidential information is provided to Council or to the DOBOM, as applicable, as a whole, and such access is not prohibited by Council or by the DOBOM, as applicable, or otherwise by law.

Use of City Property, Services and Other Resources

31. No Member shall use, or permit the use of, City land, facilities, equipment, supplies, services, staff or other resource, including any City-owned information, website, Council transportation delivery service or funds allocated for Member’s expenses, for any purpose or activity other than for the lawful business of the City.
32. No Member shall seek or acquire any personal financial gain from the use or sale of confidential information, or of any City-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copyrighted, of which property remains exclusively that of the City.

No Improper Use of Influence

33. No Member shall use the influence of her or his office for any purpose other than for the lawful exercise of her or his official duties and for City purposes. Without limitation, no Member shall:
- (a) use her or his office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage or that of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise;
 - (b) attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties; or
 - (c) hold out the prospect or promise of future advantage through the Member's supposed influence within Council or the DOBOM, as applicable, in return for any action or inaction.
34. For the purposes of section 33, "private advantage" does not include:
- (a) a matter that is of general application;
 - (b) a matter that affects a Member, her or his parents/children or spouse, staff members, friends or associates, business or otherwise as one of a broad class of persons;
 - (c) a matter that concerns the remuneration or benefits of a Member; or
 - (d) a request by a Member that Council or the DOBOM , as applicable, grant a lawful exemption.

Integrity Commissioner

35. The Integrity Commissioner shall be responsible for performing in an independent manner, the following functions assigned with respect to:
- (a) The application of the Code of Conduct;
 - (b) The application of any procedures, rules and policies of the City and local boards governing the ethical behavior of Members; and

(c) The maintenance of custody and control of the Integrity Commissioner's complaint and inquiry files and on completion of their term of appointment, to transfer any open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council.

36. In addition to the responsibilities set out in Section 35, the Integrity Commissioner shall also provide:

(a) Information to Members as to their duties and obligations under the Code of Conduct;

(b) Information to Members with respect to compliance with the requirements of the *Municipal Conflict of Interest Act* including declaring a conflict of interest and not using any influence where a matter is being considered by an officer or employee of the City;

(c) Advice to individual Members regarding specific situations as they relate to the application of the Code of Conduct;

(d) Advice to individual Members regarding their obligations under the *Municipal Conflict of Interest Act*;

(e) Advice to Members on other policies and procedures that relate to the ethical behavior of members;

(f) Information to the public regarding the Code of Conduct and the obligations of Members under the Code of Conduct and *Municipal Conflict of Interest Act*; and,

(g) An annual report to Council on the activities of the Integrity Commissioner.

37. Without limiting the generality of Section 36, the Integrity Commissioner may determine, on a case-by-case basis, whether or not to undertake an investigation on whether a Member has contravened the Code of Conduct or Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. The Integrity Commissioner shall be entitled to summarily dismiss a complaint filed in accordance with the Complaint Procedure on

the basis that it is, in the opinion of the Integrity Commissioner, an abuse of process or is frivolous or vexatious.

38. Without limiting the generality of Sections 35 to 42, all determinations of the Integrity Commissioner under the Code of Conduct shall be made in their own absolute discretion and shall be final and binding.
39. 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.
40. The Integrity Commissioner shall report to Council respecting each complaint given to the Integrity Commissioner. The Integrity Commissioner and her or his delegates shall have the powers and be subject to the duties prescribed by Sections 223.3 to 223.8, inclusive, of the *Municipal Act, 2001* and by other applicable law.
41. Notwithstanding anything in this By-law:
 - (a) If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, the Integrity Commissioner shall terminate the inquiry on that day. If an inquiry is terminated, the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, the person or made the complaint or the Member whose conduct is the subject matter of the complaint makes a written request to the Integrity Commissioner that the inquiry be commenced, provided that no inquiry respecting a former Member may be commenced.
 - (b) Between nomination day and voting day in a regular election, no person may submit a complaint respecting an alleged contravention of the Code of Conduct, the Integrity Commissioner shall not report to the Council or the DOBOM, as applicable, about whether a Member has contravened the Code of Conduct and neither the Council nor the DOBOM, as applicable, may consider whether to impose penalties.

42. The City of Oshawa and/or the DOBOM shall ensure that reports received from the Integrity Commissioner by the municipality or the DOBOM as the case may be are made available to the public.

Complaints Pursuant to the Code of Conduct

43. All complaints pursuant to the Code of Conduct shall be filed in accordance with the Complaints Procedure as set out in Schedule A of this By-law.

Application for Inquiry – Alleged Contravention of the *Municipal Conflict of Interest Act*

44. All requests for inquiry concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* shall be filed in accordance with the Application for Inquiry Procedure as set out in Schedule B of this By-law.

45. An elector or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

46. The application must set out the reasons for believing that a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application (or within the time period starting six weeks before nomination day and ending on voting day in the year of a regular election).

47. The Integrity Commissioner must complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated.

48. Upon completion of an inquiry, the Integrity Commissioner may apply to a judge for a determination as to whether the Member has contravened Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

Advice

49. All requests for advice pursuant to the Code of Conduct shall be filed in accordance with the Advice Procedure as set out in Schedule C of this By-law.

50. Requests by a Member must be in writing.

51. Advice given by the Integrity Commissioner to Member shall be provided in writing.

Non-Compliance with this Code of Conduct – Administration and Sanctions

32. A person who believes that a Member has contravened any provision of this Code of Conduct may give to the Integrity Commissioner the person's complaint in writing which shall set out the particulars of the alleged contravention.

33. An Integrity Commissioner may refuse to investigate a complaint if, in the opinion of the Integrity Commissioner, a complaint is frivolous, vexatious or an abuse of process. An Integrity Commissioner shall report to Council respecting each complaint given to the Integrity Commissioner. The Integrity Commissioner and her or his delegates shall have the powers and be subject to the duties prescribed by sections 223.3 to 223.8, inclusive, of the *Municipal Act, 2001* and by other applicable law.

52. Upon receipt of a report from an Integrity Commissioner that, in the Integrity Commissioner's opinion, a Member has contravened this Code of Conduct, Council or the DOBOM, as applicable, shall decide whether to impose either of the penalties prescribed by subsection 223.4(5) of the *Municipal Act, 2001* as follows:

- (a) a reprimand; or
- (b) suspension of the remuneration paid to the Member in respect of her or his services as a Member for a period of up to 90 days.

53. An Integrity Commissioner may also recommend that Council or the DOBOM, as applicable, take one or more of the following actions:

- (a) removal from membership on a committee or local board;
- (b) removal as chair or as vice-chair of a committee or local board;
- (c) repayment or reimbursement of monies received;
- (d) return of property or reimbursement of its value;
- (e) request a public apology to Council, the complainant, or both; or
- (f) any other or additional action deemed by Council to be appropriate, and which is within its power to take.

Annual Reports of the Integrity Commissioner

54. The Integrity Commissioner shall submit an annual report to Council which will include information on the nature and volume of activity for the past year and provide examples, while maintaining the anonymity of the persons involved, in respect of the advice provided and the nature of complaints received and responded to.
55. The annual report of the Integrity Commissioner shall be provided to Council for information purposes and shall be a public document.

No Reprisal or Obstruction in the Application or Enforcement of this Code

56. Each Member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it and shall co-operate in every way possible in securing compliance with its application and enforcement. Any reprisal or threat of reprisal against a complainant or any other person for lodging a complaint or for providing relevant information to the Integrity Commissioner or any other person is prohibited.
57. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner, or any other City official involved in applying or furthering the objectives or requirements of this Code of Conduct, in the carrying out of such responsibilities, or pursuing any such objective.

Statutes Regulating the Conduct of Councillors Members

58. Members acknowledge that in addition to this Code of Conduct, the following legislation may also govern the conduct of Members:
- (a) The *Municipal Act, 2001*, S.O. 2001 C. 25
 - (b) The *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50.
 - (c) The *Municipal Elections Act*, 1996 S.O. 1996 c. 32
 - (d) The *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990 c. M. 56;
 - (e) The *Occupational Health and Safety Act*, R.S.O. 1990 c.0.1
 - (f) The *Human Rights Code*, R.S.O. 1990, c.H.19

(g) The *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched.

(h) The *Criminal Code*, R.S.C. 1985, c. C-46; and,

59. The City's Procedure By-law (or the procedural rules of order adopted by the DOBOM) and the City's Accountability and Transparency Policy may also govern the conduct of Members.

60. Any references to statute, regulation, by-law or legislation shall be deemed to be a reference to the statute, regulation, by-law or legislation as amended, consolidated, replaced or superseded.

61. In the case of any inconsistency between this Code of Conduct and a Federal or Provincial statute or regulation, the statute or regulation shall prevail to the extent of the inconsistency.

Schedule A "Complaints Procedure" (Attached)

Schedule B "Inquiry Procedure" (Attached)

Schedule C "Advice Procedure" (Attached)

By-law 50-2015 passed the nineteenth day of May, 2015.

By-law 44-2018 passed the thirteenth day of April, 2018

By-law xx-2020 passed the xxxx day of xxxx, 2020



The Regional Municipality of Durham

Code of Conduct By-law

By-law Number 09-2019

As Amended by By-laws:

<u>By-law Number:</u>	<u>Date Passed:</u>
15-2019	March 27, 2019
32-2019	May 29, 2019

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By-law Number 09-2019

of The Regional Municipality of Durham

Being a by-law to adopt a Code of Conduct for Members of the Council of The Regional Municipality of Durham and its local boards.

Whereas section 223.2(1) of the Municipal Act requires a municipality to establish codes of conduct for members of the council and of its local boards.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. Purpose

- 1.1 The purpose of this code is to establish clear conduct rules for members of council and local boards.

2. Principles

- 2.1 Improving the equality of Regional administration and governance can best be achieved by encouraging high standards of conduct on the part of all municipal officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government and members appointed to the Region's local boards. In turn, adherence to these standards will protect and maintain the Region's reputation and integrity.

- 2.2 Key statements of principles that underline this Code of Conduct are as follows, members shall:

- A) Serve and be seen to serve their constituents in a conscientious and diligent manner;
- B) be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest;
- C) perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny;
- D) recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible; and
- E) seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the by-laws and policies adopted by the Council.

3. Definitions

3.1 In this Code of Conduct:

- A) "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;
- B) "Code of Conduct" means the rules which govern the conduct of members established pursuant to the authority of section 223.2 of the Municipal Act, 2001, S.O. 2001, c. 25;
- C) "complaint" means a written request to investigate the conduct of any member for a possible violation of the Code of Conduct filed in accordance with the Complaint Procedure;
- D) "confidential information" means any information in the possession of, or received in confidence by, the Region that the Region is prohibited from disclosing, or has decided to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, or any other law, which includes, but is not limited to:
 - (1) information of a corporate, commercial, scientific or technical nature received in confidence from third parties;
 - (2) personal information as defined in subsection 2(1) of the Municipal Freedom of Information and Protection of Privacy Act;
 - (3) information that is subject to solicitor-client privilege;
 - (4) information that concerns any confidential matters pertaining to matters related to an identifiable individual, personal, labour relations, litigation, property acquisition, the security of the property of the municipality or a local board;
 - (5) any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order; and
(By-law 15-2019)
 - (6) any information considered by or made available to Council during a closed meeting pursuant to subsection 239(2) of the Municipal Act, 2001.
- E) "Council" means the council of The Regional Municipality of Durham;
- F) "Gift or Benefit" means anything of value including but not limited to cash or monetary equivalent, fee, object of value, service, meal, travel, accommodation or entertainment;

- G) "Harassment" includes
- any comment, conduct, action or gesture that is unwelcome or that ought reasonably be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health; and
 - Sexual Harassment.
- H) "information" means any record, document, data, material, correspondence or evidence however recorded, whether oral or in printed form, on film, by electronic means or otherwise;
- I) "Integrity Commissioner" means the Integrity Commissioner appointed by the Council pursuant to section 223.3 of the Municipal Act, 2001;
- J) "local board" means any local board established by the Region of Durham which meets the criteria outlined in the Municipal Act including but not limited to: the 9-1-1 Management Board, Development Charges Complaint Committee, Land Division Committee, and Durham Regional Transit Commission;
- K) "member" means a member of the Council or local board, unless the context otherwise requires;
- L) "parent" means a person who has demonstrated a settled intention to treat a child as a part of his or her family;
- M) "person" includes a corporation, partnership, association and any other entity, as the context allows, and expressly includes a member as well as Council;
- N) "Region" means The Regional Municipality of Durham;
- O) "sexual harassment" includes any comment, conduct, action or gesture of a sexual nature or respecting sexual orientation, gender identity or gender expression that is unwelcome or that ought reasonably to be known to be unwelcome;
- P) "spouse" means a person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage; and
- Q) "staff" means the municipal administrative staff of the Region and of its municipal corporations and local boards.

4. Application of this Code

- 4.1 This Code of Conduct applies to every member.

5. Compliance with Declaration of Office

5.1 Every member shall act in accordance with his or her declaration of office sworn or terms of appointment, as applicable.

6. Adherence to Council Policies and Procedures

6.1 Every member shall observe and comply strictly with every provision of this Code of Conduct, as well as all other policies and procedures adopted or established by Council affecting the member, whether or not acting in his or her capacity as a member.

7. Conduct at Meetings

7.1 Every member shall conduct himself or herself properly and in a civil manner at Council, committee and other meetings, and in accordance with the provisions of the Region's Council Rules of Procedure By-law, this Code of Conduct, and any other applicable law.

8. Conduct Respecting Others

8.1 Every member has the duty and responsibility to treat all members of the public, other members and all staff appropriately and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment.

8.2 A member shall not:

- A) use indecent, abusive or insulting-words or expressions toward any other member, any member of staff or any member of the public;
- B) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, creed, gender, sexual orientation or gender identification, age, colour, marital status, or disability; and
- C) engage in any Harassment of any other member, any member of staff or any member of the public.

9. Conduct Respecting Staff

9.1 Every member acknowledges that staff operate under the direction of the senior municipal administration, and in accordance with the decisions of Council, and are required to serve the Region as a whole and not the needs or desires of any individual member.

9.2 Every member shall:

- A) be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any member or faction of the Council; and

- B) show respect for staff, and for their professional capacities and responsibilities.

9.3 A member shall not:

- A) maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff;
- B) compel any member of staff to engage in partisan political activities, or subject any member of staff to threat or discrimination for refusing to engage in any such activity; and
- C) use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that staff person's duties, including the duty to disclose improper activity.

10. Gifts, Benefits, Services and Hospitality

10.1 A Gift or Benefit to a Member's Spouse, Child or Parent that is connected directly or indirectly to the performance of the Member's duties is deemed to be a Gift or Benefit to the Member if provided with the Member's knowledge or solicited by the Member.

10.2 In order to preserve the image and integrity of the Region, business gifts to Members are discouraged. The Region recognizes that moderate hospitality is an accepted courtesy of a business relationship. However, Members should not solicit or accept any gift or benefit that:

- A) is intended to influence, might influence, or could reasonably be perceived that it might influence or is intended to influence, the Member in the performance of the Member's duties as an elected official; or
- B) is intended, or could reasonably be perceived that it is intended, as a reward for any action or impending action by the Member.

10.3 If the refusal of any gift or act of hospitality will strain the Region's business relationship, the Regional Chair or Chief Administrative Officer may accept it on behalf of the municipality with the appropriate acknowledgment.

10.4 Generally, the Regional Chair or Chief Administrative Officer will be the official recipient of those gifts afforded to the Region for ceremonial, symbolic, protocol or official business purposes. Members will turn over such a gift to the Regional Chair or Chief Administrative Officer. Wherever possible, ceremonial, symbolic, protocol or official business gifts should be presented at a meeting of Council.

10.5 Despite section 10.2, a Member may accept the following:

- A) a political contribution offered, accepted and reported in accordance with

applicable law;

- B) food or beverage, of reasonable value, at a banquet, reception, ceremony or similar event that the Member attends for a legitimate municipal purpose;
- C) a Gift or Benefit that is received as an incident of protocol or social obligation that normally and reasonably accompanies the responsibilities of office;
- D) a token gift such as a souvenir, memento or commemorative gift that is given in recognition of service on a committee, for speaking at an event, or for representing the Municipality at an event;
- E) a communication to the office of a Member, including a subscription to a newspaper or periodical;
- F) a service provided by a person volunteering time without compensation;
- G) food, lodging, transportation or entertainment lawfully provided by a government (federal, provincial, local or foreign) or government agency or by a not-for-profit organization whose members are governments or government agencies (examples of such a not-for-profit organization include the Canadian Association of Nuclear Host Communities and the Federation of Canadian Municipalities);
- H) food, lodging, transportation or entertainment lawfully provided by the organizer of a conference, seminar, charity fundraiser, reception, ceremony, cultural event, sporting event, business, or political event where the Member is speaking or attending in an official capacity;
- I) an invitation from and at the expense of a private third party to attend a conference, seminar, charity fundraiser, reception, ceremony, cultural event or other similar event ~~within the Municipality~~ where the proceeds raised are to support a not-for-profit or charity organization;
(By-law #32-2019)
- J) reimbursement of a reasonable expense incurred, or an honorarium received, in the performance of activities connected with a public authority, or a municipal association, agency, board or corporation, including a corporation of which the Municipality is a shareholder or member; and
- K) compensation authorized by Council or law.

10.6 This section does not preclude a Member from soliciting funds or donations in support of a charitable or philanthropic cause, organization, or charity provided that all funds or donations are provided directly by the donor(s) to the recipient organization or charity.

10.7 Members will be required to exercise their personal judgment of the provisions within this section.

11. Recommendations of Integrity Commissioner and Authority of Council

In a report on a Complaint that relates to a Gift or Benefit, in addition to the range of recommendations otherwise provided under this Code, the Integrity Commissioner may recommend, and upon consideration of the Integrity Commissioner's report the Council, in addition to its other powers under this Code, may impose, one or more of the following remedies:

- A) that the Member be directed to return the Gift or Benefit;
- B) that the Member be directed to reimburse the donor for the value of a Gift or Benefit already consumed;
- C) that the Member forfeit the Gift or Benefit to the Municipality; and
- D) that the Member be directed to remit to the Municipality the value of a Gift or Benefit already consumed.

12. Confidential Information

12.1 No member shall:

- A) disclose, release or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or the board or otherwise by law to do so;
- B) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;
- C) disclose a matter, the substance of the matter, and information pertaining to a matter, that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential, unless authorized by the Council, local board or legislation to be released, generally or subject to conditions, and such are complied with;
- D) disclose the content of any matter referred to in the preceding paragraph or the subject-matter of deliberations, at a meeting closed to the public meeting, only after the Council or committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public;
- E) without lawful authority, disclose, or make personal use of, any of the following types of confidential information:
 - (1) information concerning litigation, negotiation or personnel matters;

- (2) information the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence);
 - (3) price schedules in any contract, tender or proposal document while such remains a confidential document;
 - (4) information deemed to be "personal information" under the Municipal Freedom of Information and Protection of Privacy Act; and
 - (5) any other information or statistical data required by law not to be released; and
- F) obtain access, or attempt to gain access, to confidential information in the custody of the municipality except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council, the local board or otherwise by law.

13. Use of Regional Property, Services and Other Resources

13.1 Subject to 13.2 below, no member shall:

- A) use, or permit the use of, Regional land, facilities, equipment, supplies, services, staff or other resource, including any municipally-owned information, website, transportation delivery service or funds allocated for the member expenses of his or her office, for any purpose or activity other than the lawful business of the Region; or
- B) seek or acquire any personal financial gain from the use or sale of confidential information, or of any Regionally-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copy righted, of which property remains exclusively that of the Region.

13.2 Incidental and occasional personal, non-commercial use of email/internet and a personal communication device (i.e. blackberry) is permitted.

14. No Improper use of Influence

14.1 No member shall:

- A) use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes;
- B) use his or her office or position to influence or attempt to influence the decision of any other person, for the member's private advantage or that of the member's parent, child, spouse, staff, friend, or associates, business or otherwise;

- C) attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties; or
- D) hold out the prospect or promise of future advantage through the member's supposed influence within Council or the local board, in return for any action or inaction.

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

- A) is of general application;
- B) affects a member, his or her parents/children or spouse, staff, friends or associates, business or otherwise, as one of a broad class of persons; or
- C) concerns the remuneration or benefits of a member.

14.3 Section 14.1 does not prevent a member from requesting that Council or the local board, as applicable grant a lawful exemption.

15. No Reprisal or Obstruction in the Application or Enforcement of this Code

15.1 Every member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it, and shall cooperate in every way possible in securing compliance with its application and enforcement.

15.2 No member shall obstruct the Integrity Commissioner, his or her designate, or any other Regional official involved in applying or furthering the objectives or requirements of the Code of Conduct, in the carrying out of such responsibilities, or pursuing any such objective. No member shall undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person under the Code of Conduct.

16. Legislative Environment

16.1 Members acknowledge that in addition to this Code of Conduct, the following legislation also governs the conduct of members:

- A) Municipal Act, 2001;
- B) Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50;
- C) Municipal Elections Act;
- D) Municipal Freedom of Information and Protection of Privacy Act;
- E) Occupational Health and Safety Act, R.S.O. 1990, c. 0.1;

- F) Human Rights Code, R.S.O. 1990, c. H.19;
 - G) Criminal Code, R.S.C. 1985, c. C-46; and
 - H) The Region's Procedural By-law.
- 16.2 A member may become disqualified and lose his or her seat by operation of law, including being convicted of an offence under the Criminal Code or the Municipal Elections Act, 1996, or being found to have failed to comply with the Municipal Conflict of Interest Act, whether or not the conduct in question involves a contravention of this Code of Conduct.
- 16.3 In the case of any inconsistency between this Code of Conduct and a federal or provincial statute or regulation, the statute or regulation shall prevail.
- 16.4 All references to any statute, regulation, by-law or legislation shall be deemed to be a reference to the statute, regulation, by-law or legislation as amended, consolidated, replaced or superseded.
- 16.5 Regional Councillors also serve as Members of Council for the Townships of Brock, Scugog and Uxbridge, the Cities of Pickering and Oshawa, and the Towns of Ajax, Whitby and Clarington. Each of these municipalities have their own codes of conduct.
- 16.6 This Code applies to the activities of the Regional Chair and Members of Council and local boards while executing their responsibilities as Regional Chair, Councillors and local board members respectively. Area municipal codes of conduct apply to the activities of the Members of Council in accordance with their role as area municipal councillors.
- 16.7 Should the Region's Integrity Commissioner receive a complaint or inquiry which he/she believes is an area municipal matter, the Region's Integrity Commissioner will forward the request to the appropriate municipality's Integrity Commissioner.
- 16.8 Should an issue arise that is of joint responsibility for the Region and the area municipality, both the Integrity Commissioner for the Region and the municipality, and the Clerk of the municipality will work together to develop a process to resolve the matter and report the findings to both Regional and City/Town Council.
- 17. Integrity Commissioner**
- 17.1 The Integrity Commissioner shall be responsible for performing in an independent manner the following functions as assigned by the Region with respect to:
- A) the application of the Code of Conduct;
 - B) the application of any procedures, rules and policies of the Region

governing the ethical behaviour of members; and

- C) to maintain custody and control of the integrity commissioner's complaint and inquiry files and, on completion of their term of appointment, to transfer open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council.

17.2 In addition, to the responsibilities set out in Section 17.1, the Integrity Commissioner shall also provide:

- A) information to Council as to members' obligations under the Code of Conduct and the Complaint Procedure;
- B) information to Council with respect to compliance with the requirements of the Municipal Conflict of Interest Act including with respect to declaring a conflict of interest, and not using any influence where a matter is being considered by an officer or employee of the Region;
- C) advice to individual members regarding specific situations as they relate to the application of the Code of Conduct;
- D) advice to individual members regarding their obligations under the Municipal Conflict of Interest Act;
- E) advice to Council on other policies and procedures that relate to the ethical behavior of members;
- F) information to the public regarding the Code of Conduct and the obligations of members under the Code of Conduct and the Municipal Conflict of Interest Act; and
- G) an annual report to Council on the activities of the Integrity Commissioner.

17.3 Without limiting the generality of Section 17.1, the Integrity Commissioner may determine, on a case-by-case basis, whether to undertake an investigation or not to undertake an investigation on whether a member has contravened the Code of Conduct or sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act. The Integrity Commissioner shall be entitled to summarily dismiss a complaint filed in accordance with the Complaint Procedure on the basis that it constitutes in his or her opinion, an abuse of process or is frivolous or vexatious.

17.4 Without limiting the generality of Article 17, all determinations of the Integrity Commissioner under the Code of Conduct shall be made in his or her own absolute discretion and shall be final and binding.

17.5 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.

18. Complaints

18.1 All complaints pursuant to the Code of Conduct shall be filed in accordance with the Complaints Procedure in Appendix "A" attached hereto.

19. Inquiries

19.1 An elector or a person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.

19.2 The application must set out the reasons for believing that a member has contravened the aforementioned sections of the MCI Act and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application (Or within the period of time starting six weeks before nomination day for a regular election and ending on voting day).

19.3 The Integrity Commissioner must complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated.

19.4 Upon completion of the inquiry, the Commissioner may apply to a judge for a determination as to whether the member has contravened the aforementioned sections of the Act.

19.5 All requests for inquiry shall be filed in accordance with the Complaints Procedure in Appendix "A" attached hereto.

20. Advice

20.1 All requests for advice pursuant to the Code of Conduct shall be filed in accordance with the Advice Procedure in Appendix "B" attached hereto.

20.2 Requests by a member of Council or a local board for advice must be in writing.

20.3 Advice given by the Integrity Commissioner to a member of Council or local board shall be provided in writing.

21. Penalties

21.1 Council may, where it has received a report from its Integrity Commissioner that there has been a violation of the Code of Conduct, impose one of the following penalties on a member who has been found to be in contravention of the Code of Conduct:

A) a reprimand; or

B) suspension of the remuneration paid to the member in respect of his or her services as a member for a period of up to ninety (90) days.

22. Annual Reports

- 22.1 The Integrity Commissioner shall submit an annual report to Council which will include information on the nature and volume of activity for the past year and provide examples, while maintaining the anonymity of the persons involved, in respect of advice provided and the nature of complaints received and responded to.
- 22.2 The annual report of the Integrity Commissioner shall be provided to Council for information purposes. The report is a public document.

23. Commencement and Administration

- 23.1 This By-Law shall be administered by the Clerk.
- 23.2 This By-Law comes into force and effect on March 1, 2019.
- 23.3 The short title of this By-Law is the "Code of Conduct".

This By-law Read and Passed on the 27th day of February, 2019.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

APPENDIX “A”
REGION OF DURHAM – CODE OF CONDUCT
COMPLAINT/APPLICATION FOR INQUIRY PROCEDURE
(the “Complaint Procedure”)

1. Procedure — Informal Complaint related to the Code of Conduct

- 1.1 Any person who believes that a member is in contravention of the Region of Durham’s Code of Conduct may address their concerns in the following manner:
- A) advise the member that their behaviour or activity contravenes the Code of Conduct;
 - B) encourage the member to stop the prohibited behaviour or activity;
 - C) if applicable, confirm to the member their satisfaction or dissatisfaction with the member’s response to the concern identified; and
 - D) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.
- 1.2 If any person is not satisfied with the response received through the aforementioned informal process, the person may proceed with a formal complaint through the Integrity Commissioner as outlined in Section 2 of the Complaint Procedure.

2. Procedure — Formal Complaint related to the Code of Conduct

- 2.1 Any person who has reasonable grounds to believe that a member has contravened the Code of Conduct may address their concerns through the formal complaint process set out below:
- A) all formal complaints (“Complaints”) must be made in writing using the Region’s Complaints Form (see Schedule “A”) and shall be dated and signed by the person making the Complaint (the “Complainant”);
 - B) the Complaint must include an explanation as to why the issue raised may be a contravention of the Code of Conduct and any evidence in support of the allegation must be included with the Complaints Form;
 - C) any witnesses in support of the allegation must be identified on the Complaint Form;

- D) the Complaint Form must include the name of the member alleged to have breached the Code of Conduct, the specific provision(s) of the Code of Conduct allegedly contravened, the date, time and location of the alleged contravention(s) and any other information as required on the Complaint Form;
- E) the Complaint shall be filed with the Integrity Commissioner who will determine whether the matter is, on its face, a Complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or policies; and
- F) the Complaint must be submitted to the Integrity Commissioner no later than six (6) months from the date on which the Complainant became aware of the alleged contravention, and no action will be taken on a Complaint received after this deadline.

2.2 The Integrity Commissioner will advise the Regional Clerk when a Complaint is received, assign a file number to the Complaint and provide updates to the Clerk on the status of the Complaint.

2.3 The Integrity Commissioner may request additional information from the Complainant in order to properly assess the Complaint.

2.4 A Complainant may at any time abandon a Complaint.

3. Response of Integrity Commissioner of Complaint Outside Jurisdiction

3.1 If the Complaint received by the Integrity Commissioner does not relate to a non-compliance with the Code of Conduct, it will be deemed not to be a Complaint and the Integrity Commissioner shall advise the Complainant in writing as follows:

- A) Criminal Matter — if the Complaint is an allegation of a criminal nature consistent with the Criminal Code, R.S.C. 1985, c. C-46, the Complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
- B) Municipal Freedom of Information and Protection of Privacy — if the Complaint is more appropriately addressed under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, the Complainant shall be referred to the Clerk to have the matter reviewed under that statute; or
- C) Other Matters – if the matter is covered by other policies or legislation, the Complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

4. Refusal to Conduct an Investigation/Discontinuance of Investigation

- 4.1 If upon review of a Complaint, or at any time during an investigation, the Integrity Commissioner is of the opinion that the Complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation or shall discontinue the investigation and shall communicate this position in writing to the Complainant and the member identified in the Complaint Form. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate or after an investigation is discontinued.

5. Opportunity for Resolution

- 5.1 If at any time, following the receipt of a Complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the Complainant and the member agree, efforts may be made to achieve an informal resolution. The formal Complaint will be held in abeyance during such time.

6. Investigation

- 6.1 If the Integrity Commissioner determines that a formal investigation is required, he or she shall:
- A) provide a copy of the Complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within ten (10) days;
 - B) provide a copy of the response provided by the member to the Complainant with a request for a written reply within ten (10) days;
 - C) have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality that the Integrity Commissioner believes to be necessary for an investigation; and
 - D) make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation, if any, encountered during the investigation.
- 6.2 The Integrity Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, S.O. 2009, c. 33, Sched. 6, in which case those sections apply to the investigation.

7. Co-Operation

- 7.1 A Member shall co-operate in every way possible with the Integrity Commissioner in any investigation of a Complaint and the enforcement of the Code of Conduct.

8. Suspension of Investigation

8.1 The Integrity Commissioner will cease the investigation if:

- A) a Complainant abandons the request for an investigation, in which case the Integrity Commissioner shall report to Council as set out in Section 9; or
- B) the Integrity Commissioner determines that there are reasonable grounds to believe that there has been a contravention of any other statute or of the *Criminal Code*, in which case the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge(s) have been finally disposed of, and shall report the suspension to Council.

9. Report Re Recommendation

9.1 The Integrity Commissioner shall report to the Complainant and the member on the results of his or her review within sixty (60) days of receiving a complete Complaint Form/Affidavit upon completion of an investigation. If the investigation process requires more than sixty (60) days, the Integrity Commissioner shall provide an interim report to the Complainant and member indicating when the complete report may be available.

9.2 If during the investigation process, the Complaint is withdrawn, sustained or resolved, the Integrity Commissioner shall report to Council outlining the findings, the terms of any resolution and any recommended action within thirty (30) days.

9.3 If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred but the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in its report to Council.

9.4 If upon completion of the investigation, the Integrity Commissioner finds that a breach of the Code of Conduct has occurred, the Integrity Commissioner shall report his or her findings to Council including a recommendation as to the imposition of a penalty as set out in subsection 223.4(5) of the Municipal Act, 2001 S.O. 2001, c. 25, namely either:

A) a reprimand; or

B) a suspension of remuneration paid to the member for a period of up to ninety (90) days.

9.5 The report shall only disclose such information that in the Integrity Commissioner's opinion is required for the purposes of the report.

10. No Complaints or Reports Prior to Election

10.1 If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, as set out in Section 31 of the Municipal Elections Act, 1996, the Integrity Commissioner shall terminate the inquiry on that day.

10.2 If an inquiry is terminated the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, as set out in Section 5 of the Municipal Elections Act, 1996, the person or entity who made the request or the Member whose conduct is the subject matter of the request, makes a written request to the Integrity Commissioner that the inquiry be commenced. No inquiry respecting a former Member may be commenced.

10.3 Between Nomination Day and Voting Day in a regular election:

- A) There shall be no requests for an inquiry, and the Integrity Commissioner shall not accept any requests for an inquiry, respecting whether a Member has contravened the Code of Conduct.
- B) The Integrity Commissioner shall not report to Council on whether a Member has contravened the Code of Conduct or the Municipal Conflict of Interest Act; and
- C) Council shall not consider whether to impose penalties on a Member.

11. No Appeal of Integrity Commissioner's Decision

11.1 There is no appeal from the decision of the Integrity Commissioner.

12. Request for Inquiry under the Municipal Conflict of Interest Act

12.1 An elector, or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act using the process set out below:

- A) all requests for an inquiry must be made in writing using the Region's Application for Inquiry Form (see Schedule "B") and shall be dated and signed by the person making the inquiry (the "Applicant");
- B) the Inquiry must include an explanation as to why the issue raised may be a contravention of the applicable sections of the Municipal Conflict of Interest Act and any evidence in support of the allegation must be included with the Inquiry Form;
- C) the Inquiry Form must include the name of the member alleged to have breached the Municipal Conflict of Interest Act, and any other information as required on the Complaint Form;
- D) the Request for Inquiry shall be filed with the Integrity Commissioner who will

conduct any such inquiries he/she considers necessary; and

E) the Inquiry must be submitted to the Integrity Commissioner no later than six (6) weeks from the date in which the applicant became aware of the alleged contravention, unless both of the following are satisfied.

- The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, and ending on voting day in a regular election, as set out in section 5 of that Act.
- The applicant applies to the Commissioner within six weeks after the day after voting day in a regular election.

12.2 The Integrity Commissioner will advise the Regional Clerk when a Request for Inquiry is received, assign a file number to the Request and provide updates to the Clerk on the status of the Request.

12.3 The Integrity Commissioner may request additional information from the applicant, the municipality, or may conduct a public meeting as he/she believes necessary to investigate the inquiry.

12.4 The Integrity Commissioner shall complete the inquiry within 180 days after receiving the completed application.

12.5 A Complainant may at any time abandon a Complaint, provided in the judgement of the Integrity Commissioner, the matter does not warrant an application to the courts.

13. Confidentiality

13.1 The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the Region or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act, 2001.

14. Delegation

14.1 The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.



Schedule "A" - Council Code of Conduct

Formal Complaint Form

About the Applicant

Full Name _____

Address _____

Phone _____

Email _____

I, _____ (insert full name), of _____
(insert City, Town, etc. of residence) in the Province of Ontario, have personal knowledge of the facts as set out in this Complaint Form, because:

(insert reasons – e.g. I work for /I attended a meeting at which, etc.) and have reasonable and probable grounds to believe that a member of the Region of Durham Council, namely:

_____ (insert name of member) has contravened section(s)

_____ (specify section(s) of the Council Code of Conduct of the Region of Durham.) The particulars of which are as follows:

(If more room is required, please use Schedule "A" to set out the statement of facts in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this Complaint Form).

PLEASE READ BEFORE SIGNING: If the Integrity Commissioner launches an inquiry into a complaint then the content of this form, including the complainant's identity, will typically be shared with the Member who is the subject of the complaint. Also, at the end of the inquiry the Integrity Commissioner may issue a public report that includes information about the complaint, including possibly the identities of the parties involved. Only sign this complaint form if you understand and accept the potential for disclosure of your identity and the information you provide.

I request that this matter be reviewed by the Region of Durham's Integrity Commissioner.

(Signature of Complainant)

(Date)

Personal Information on this form is collected pursuant to the Municipal Freedom of Information and Protection of Privacy Act and The Regional Municipality of Durham's Council Code of Conduct and will be used to conduct an investigation on the details of the complaint. Questions about the collection of this information should be directed to the Regional Clerk, The Regional Municipality of Durham, 605 Rossland Road East, Whitby, ON L1N 6A3, 905- 668-7711.



Schedule “B” - Application for Inquiry into Alleged Contravention of Municipal Conflict of Interest Act

About the Applicant

Full Name _____

Address _____

Phone _____

Email _____

Applicant is (check one):

- an elector in the Regional Municipality of Durham
- an individual demonstrably acting in the public interest
- a corporation (including a municipality) demonstrably acting in the public interest

Where the Applicant is a corporation please identify its authorized representative for purposes of this application:

About the Allegation

Name of the Member of Council who is the subject of the allegation (complete a separate form for each Member who is the subject of an allegation):

The Applicant alleges that the Member contravened the following sections of the *Municipal Conflict of Interest Act* (check all that apply):

section 5

section 5.1

section 5.2

The following are the Applicant's reasons for believing that the Member has contravened the above section(s) of the *Municipal Conflict of Interest Act*:

(If more room is required then please attach additional sheets that set out the reasons in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. If you wish to include exhibits to support this application then please refer to the exhibits as Exhibit A, B, etc., and attach them to this form.)

PLEASE READ BEFORE SIGNING: If the Integrity Commissioner launches an inquiry into an allegation then the content of this form, including the Applicant's identity, will typically be shared with the Member who is the subject of the allegation. Also, information on this form and information obtained during the inquiry, including possibly the identities of the parties involved, might be disclosed in the Integrity Commissioner's published reasons at the end of the inquiry and might be disclosed in an application to the Superior Court. Only sign this application form if you understand and accept the potential for disclosure of your identity and the information you provide.

The Applicant applies to the Integrity Commissioner for an inquiry to be carried out concerning the alleged contravention:

Signature of Applicant
(or of representative if Applicant is a corporation)

Date

Personal Information on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and Part V.1 of the *Municipal Act* and will be used by the Integrity Commissioner to consider this application and to conduct an inquiry into it. Questions about the collection of this information should be directed to the Regional Clerk, The Regional Municipality of Durham, 605 Rossland Road East, Whitby, ON L1N 6A3, 905-668-7711.

Note: The statutory declaration on the next page is a mandatory part of the application (required by the *Municipal Act*). It must be declared before a person authorized to take declarations in Ontario (including any Ontario lawyer).

DECLARATION

Required by subsection 223.4.1(6) of the *Municipal Act*

I, _____ (insert full name), of _____ (city, town, etc.) of _____ (specify municipality), _____ (add province/country if outside Ontario/Canada) solemnly declare that:

- 1. I am the Applicant.
- 1. The Applicant is a corporation and I am its authorized representative.

(strike out the line above that does not apply and initial the striking out)

2. I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* not more than six weeks before today.

2. [In a municipal election year:] I attest to the fact that the Applicant became aware of the Member's alleged contravention of the *Municipal Conflict of Interest Act* within the period of time starting six weeks before the fourth Friday of July, and ending on voting day.

(strike out the paragraph above that does not apply and initial the striking out)

3. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the)
of this)
day of)
, 20)
) _____)
) Applicant or Representative)
A Commissioner, etc.)
)

APPENDIX “B”
REGION OF DURHAM – CODE OF CONDUCT
ADVICE PROCEDURE
(the “Advice Procedure”)

1. Procedure — Request for Advice

- 1.1 Any Council or local board member who wishes to obtain advice from the Region’s Integrity Commissioner must request the advice in writing by emailing the Integrity Commissioner at: integritycommissioner@fasken.com .
- 1.2 Requests for Advice must specify the date, if any, by which the member requires the advice. The Integrity Commissioner will endeavor to respond to all Requests for Advice by the date requested.
- 1.3 The Integrity Commissioner will provide advice to members of Council and local boards as it pertains to:
 - A) Their obligations under the code of conduct
 - B) Their obligations under a procedure, rule or policy of the municipality or of the local board as the case may be, governing the ethical behavior of members
 - C) Their obligations under the Municipal Conflict of Interest Act.
- 1.4 The Integrity Commissioner will advise the Regional Clerk when a Request for Advice is received, assign a file number to the Request and provide updates to the Clerk on the status of the Request.

2. Response of Integrity Commissioner to Request for Advice Outside Jurisdiction

- 2.1 If the request for advice received by the Integrity Commissioner does not relate to the Code of Conduct, the Municipal Conflict of Interest Act sections 5, 5(1) or 5(2), or a procedure, rule or policy governing the ethical behavior of members; it will be deemed not to be within the Integrity Commissioner’s mandate and the Integrity Commissioner shall advise the Complainant of such in writing as follows:
 - A) Criminal Matter — if the request for advice is with respect to a matter that is of a criminal nature consistent with the Criminal Code, R.S.C. 1985, c. C-46, the Council member shall be advised that the request for advice must be made through the appropriate police service or through independent legal counsel;
 - B) Municipal Freedom of Information and Protection of Privacy — if the request for advice falls under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, the Council member shall be referred to the Clerk; or

- C) Other Matters – if the matter is covered by other policies or legislation, the Council member will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

3. Response in Writing

- 3.1 The Integrity Commissioner will respond to all requests for advice in writing, to the Council member who made the request for advice.

4. Release of Advice

- 4.1 Advice provided by the Integrity Commissioner may be released with the member's written consent.
- 4.2 If a member releases part of the advice provided by the Commissioner, then the Commissioner may release part or all of the advice without requiring consent from the member.

5. Advice is Binding

- 5.1 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.

6. Confidentiality

- 6.1 The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the Region or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act, 2001.

7. Delegation

- 7.1 The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.