

To: Corporate Services Committee

From: Tracy Adams, Commissioner,
Corporate Services Department

Report Number: CORP-19-24

Date of Report: February 20, 2019

Date of Meeting: February 25, 2019

Subject: Bill 68 Implementation Matters

File: A-2100

1.0 Purpose

The purpose of this report is to address the delivery of Integrity Commissioner Services for the City of Oshawa, seek Council's approval of a Pregnancy and Parental Leave for Members of Council Policy and outline how the City satisfies the requirement to establish a policy regarding "the relationship between Members of Council and the officers and employees of the municipality" in keeping with the Bill 68 amendments to the Municipal Act ("Act") which come into effect March 1, 2019.

2.0 Recommendation

That the Corporate Services Committee recommend to City Council:

1. That Council reconsider Parts 3, 4 and 5 of CORP-18-21, approved by Council on April 30, 2018 to provide that:
 - a) The Manager, Purchasing Services be authorized to execute the required documents to piggy-back on the Region of Durham's contract for Integrity Commissioner Services, to include investigation and advisory work, effective on the date of the contract's execution and in accordance with the Purchasing By-Law; and,
 - b) That staff report back with a recommended procedure and form for Members of Council and directors of the Downtown Oshawa Business Improvement Area (B.I.A.) Board of Management ("B.I.A. Board") to access Integrity Commissioner advisory services; and,
 - c) 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.

2. 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; and,
3. That the draft Pregnancy and Parental Leave for Members of Council Policy, included in Report CORP-19-24 as Attachment 5 be approved as presented.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

- City Solicitor (Interim)
- Executive Director, Human Resources
- Durham Region
- Durham Region area municipalities
- Town of Oakville

4.1 Procurement of Integrity Commissioner Services

Effective March 1, 2019, Bill 68 amendments to the Act require municipalities to provide integrity commissioner services, comprising of:

- Investigations of public complaints of alleged breaches of the Council Code of Conduct (“Code”) and Municipal Conflict of Interest Act (“M.C.I.A.”) by Members of Council and directors of the B.I.A. Board;
- Integrity Commissioner advice to Members of Council and directors of the B.I.A. Board regarding the Code and M.C.I.A.; and,
- Education related to the Code for Members of Council, directors of the B.I.A. Board and the public.

On April 30, 2018, Council adopted the recommendations of CORP-18-21 (Amendments to the Code of Conduct and Integrity Commissioner Services) related to the procurement of Integrity Commissioner Services, providing for two separate contracts for Integrity Commissioner services: one related to investigative services and one related to advisory services (see Parts 3, 4 and 5 of CORP-18-21 in bold, appended to this report as Attachment 1). The view of staff at the time was that an Integrity Commissioner that provides advice should not be in a position to investigate complaints, as any prior relationship might impair or be perceived by the public to affect his or her objectivity. Further, it was felt that Members of Council or B.I.A. Board directors may avoid seeking advice or be overly cautious in conveying relevant information to the Integrity Commissioner if that Integrity Commissioner were also to investigate a complaint.

Since this time, municipalities across the Province have evolved their understanding of the Integrity Commissioner regime in the Act, with the prevailing approach of contacting one Integrity Commissioner to provide both investigative and advisory services.

Locally, Durham Region and all area municipalities have contracted one Integrity Commissioner to provide both investigative and advisory services. On December 1, 2018 Guy Giorno, the City's Integrity Commissioner for investigative services 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 (appended to this report as Attachment 2). In addition, to more closely align with the intent of the Act, a single contract for Integrity Commissioner services:

- Promotes consistent interpretation of rules, advice and education;
- Promotes consistent understanding of local issues raised in the course of the Integrity Commissioner's interactions with Members of Council, B.I.A. Board directors and the public;
- Allows the Integrity Commissioner to identify advice and educational opportunities for improved compliance arising from a complaint;
- Where the Integrity Commissioner makes recommendations to amend the Code or procedures, amendments will be more consistent and be viewed from the perspective of both investigator and advisor; and,
- Is more likely to be cost-effective.

As a result, this report recommends Council reconsider Parts 3, 4 and 5 of CORP-18-21, approved by Council on April 30, 2018 to provide that the Manager, Purchasing Services be authorized to execute the required documents to piggy-back on the Region of Durham's contract for Integrity Commissioner Services, to include investigation and advisory work, effective on the date of the contract's execution and in accordance with the Purchasing By-Law.

4.2 Supporting Procedures, Forms and Required Amendments to the Code

It is recommended that staff prepare and report back with recommended procedures and forms for:

- Members of Council and directors of the Downtown Oshawa Business Improvement Area (B.I.A.) Board of Management ("B.I.A. Board") to access Integrity Commissioner advisory services. A procedure and form will support consistent service levels and ensure information required to support the Integrity Commissioner's advice is captured in writing; and,
- Public complaints regarding alleged contraventions of the M.C.I.A. by Members of Council and directors of the B.I.A. Board. A procedure will support a consistent intake process for complaints related to the M.C.I.A., and a form will incorporate a statutory declaration required by the Act.

To the extent possible, procedures will mirror the approach taken by Durham Region. Until such time a procedure and form are approved by Council and after March 1, 2019, access to Integrity Commissioner advisory services by Members of Council and directors of the B.I.A. Board will on an ad-hoc basis through contact in writing with the Integrity Commissioner. Similarly, until such time a procedure and form are approved by Council and after March 1, 2019, public complaints regarding alleged contraventions of the M.C.I.A. by Members of Council and directors of the B.I.A. Board will be dealt with on an ad-hoc basis through contact in writing with the Integrity Commissioner. The complaint must be accompanied by a statutory declaration as set out in the Act. Contact information for the Integrity Commissioner is available on the City's website at <https://www.oshawa.ca/city-hall/city-council-governance.asp>, or by contacting City Clerk Services.

It is also recommended that staff report back with any recommended amendments to the Code, (appended as Attachment 3) as a result of Bill 68 amendments to the Municipal Act, or for housekeeping purposes.

4.3 Policy regarding “relationship between Members of Council and the officers and employees of the municipality”

The Act requires a policy regarding the “relationship between Members of Council and the officers and employees of the municipality”. Sections 11 to 15 of the Code addresses the relationship between Members of Council and the officers and employees of the municipality:

- “Section 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 Downtown Oshawa Board of Management 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.
- Section 12. No Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
- Section 13. Each Member shall show respect for staff, and for their professional capacities and responsibilities.
- Section 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.
- Section 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.”

In addition to the Code, the Employee Code of Conduct provides that “employees must be and appear to be, both personally impartial and free of undue political influence in the discharge of their official duties” and sets out guidelines for employees when engaging in political activities. Additionally, the Use of Corporate Resources for Election Purposes Policy (Appended as Attachment 4) provides that use of any City resource for an election-related purpose, by a Member of Council, candidate, third party advertiser or staff, is prohibited.

While Council may direct staff to develop a stand-alone policy on the relationship between Members of Council and the officers and employees of the municipality, the provisions of the Code and policy statements included in other City policies satisfy the Act’s requirement.

4.4 Pregnancy and Parental Leave Policy

Bill 68 amended the Act to provide that a Member of Council’s seat does not become vacant where the Member is “absent for 20 consecutive weeks or less if the absence is a result of the Member’s pregnancy, the birth of the Member’s child or the adoption of a child by the Member”. The Act was also amended to require Council to adopt a pregnancy and parental leave policy and appended as Attachment 5 is a draft Pregnancy and Parental Leave Policy (“Policy”). The Policy provides that Council supports a Member of Council’s right to pregnancy and/or parental leave in keeping with the following principles:

- A Member is elected to represent his or her constituents;
- A Member’s pregnancy and/or parental leave does not require Council approval and his or her office cannot be declared vacant as a result of the leave;
- A Member will continue to receive all communications entitled to them as a Member Council from the City as if the Member were not on leave; and,
- A Member shall continue to receive all remuneration, reimbursements and benefits that all Members of Council are afforded.

The draft Policy provides that where a Member will be absent due to a pregnancy and/or parental leave, the Member shall provide, preferably in advance of the leave, written notice to the City Clerk, indicating expected start and end dates and any changes regarding end date.

The Act specifically provides that the leave be taken “consecutively,” meaning that the leave cannot be broken up. The implication of taking a leave is that Members would be absent from their legislative duties (e.g., attending meetings, participating in the discussion and voting on matters of business before Council and Standing Committee). If a Member were to return prior to the end of their leave date and participate in their legislative duties, the assumption is that they have ended their leave.

Members on leave will continue to receive any communications entitled to them as if they were not on leave (e.g., meeting agendas and other City business communications). They continue to receive all their remuneration, reimbursements and benefits that all Members of Council are afforded. Apart from being excused from their legislative role, the Act does not address the balance of a Member's responsibilities (e.g., the extent to which the Member participates in constituent and community affairs).

Once the City Clerk is in receipt of the Member's written notice of their leave, Council may make appointments to fill any vacancies which occur as a result of the leave (for example, Deputy Mayor, Chair or Vice Chair of a Standing Committee, or Council representative on an Advisory Committee).

Council's current practice is to appoint each Member to two Standing Committees. As a result, where a Member is on leave, absences on two Standing Committees will occur for the period of time the Member is on leave. The Procedure By-law (By-law 111-2017, as amended) provides that a quorum of Council and Standing Committee constitutes a majority of Members, including any vacancies. As a result, the quorum requirements for Council and Standing Committee do not change while the Member is on leave.

Members on leave should be conscious of their obligations under the Municipal Conflict of Interest Act on matters considered in their absence, which includes the requirement under Subsection 5(3) to disclose any pecuniary interests at the first Standing Committee or Council meeting to which they return and complete the written pecuniary interest declaration form.

Where the Member is a Regional and City Councillor and their leave is greater than one month, Council has the ability to appoint any Member of Council to act (participate in discussion and vote on matters) in their place for meetings of Regional Council, Regional Standing Committees or other Regionally-appointed bodies in keeping with Subsection 267(1) of the Act.

The Act's pregnancy and parental leave regime is new and staff will provide further clarification to Council as the legislation is put into practice across the province.

5.0 Financial Implications

It is recommended that the City take advantage of the Integrity Commissioner contract with Durham Region for both investigative and advisory services.

An annual retainer of \$900 is paid by Durham Region only, until 2021. Should the City wish to continue the contract beyond 2021, the City will pay a retainer fee of \$239 annually.

Should the Integrity Commissioner determine that a formal investigation is warranted or when giving advice, an hourly rate of \$239 is payable by the City or the B.I.A. Board, as applicable. The contract expires in 2021 and prices are fixed.

\$20,000 was approved in the 2019 City Clerk Services operating budget for Integrity Commissioner services.

6.0 Relationship to the Oshawa Strategic Plan

This report supports Strategic Goal 4.2 (Accountable Leadership) by ensuring responsiveness and transparency, ensuring accountability to citizens and effective City management.



Andrew Brouwer, City Clerk,
City Clerk Services



Tracy Adams, Commissioner,
Corporate Services Department

Attachments

CORP 18-21
Approved by Council on April 30, 2018

1. That Council adopt a by-law to amend By-law 51-2015, a by-law to establish a Code of Conduct for Members of Council, in the form of amending by-law comprising Attachment 2 to Report CORP-18-21;
2. That the City Clerk, in consultation with the City Solicitor, be delegated authority to appoint an Integrity Commissioner;
3. **That the Manager, Purchasing Services be authorized to execute the required documents to piggy-back on the Region of Durham's contract for Integrity Commissioner Services, specifically related to investigation work, effective on the date of the contract's execution and in accordance with the Purchasing By-Law;**
4. **That staff report back on a recommended framework for the delivery and administration of Integrity Commissioner advisory services for Members of Council and directors of the Downtown Oshawa Business Improvement Area (B.I.A.) Board of Management ("B.I.A. Board") prior to the 2019 budget deliberations;**
5. **That, following Council approval of the framework in Part 4 of the recommendation, the Manager, Purchasing Services be authorized to secure Integrity Commissioner services specifically related to advisory services effective on the date of the contract's execution and in accordance with the Purchasing By-Law; and,**
6. That City Clerk Services provide an overview of the amendments to the Council Code of Conduct and Integrity Commissioner services applicable at a meeting of the Downtown Oshawa Business Improvement Area Board of Management for their information.

Memorandum

To: Andrew Brower
City Clerk
City of Oshawa

From: Guy Giorno
Integrity Commissioner

Date: December 1, 2018

Re: Applications Related to *Municipal Conflict of Interest Act*

Having become aware of comments on this subject in an April report to City Council, I thought it might be useful to provide my views, as Integrity Commissioner, on what ought to occur if I receive an application under subsection 223.4.1(2) of the *Municipal Act* in respect of a matter on which I have already provided advice to a member under subsection 223.3(2.2).¹

My position is that in this circumstance (absent additional factors that might lead to a different result) I should not and would not recuse myself from considering the application. In my opinion, the legislation contemplates that an integrity commissioner would consider the application.

As you know, while a proceeding must be fair, what constitutes procedural fairness depends on a number of factors including the nature of legislative scheme and the interests being determined. An integrity commissioner does not determine rights or obligations under the *Municipal Conflict of Interest Act*. More particularly, an integrity commissioner does not determine whether a member or former member has contravened the MCIA. Any determination would be made by a judge of the Superior Court. All an integrity commissioner decides is whether the commissioner considers it appropriate for the commissioner to apply to a judge under section 8 of the MCIA. If the integrity commissioner applies then the application will be considered by the Superior Court. If the integrity commissioner does not apply then the applicant retains the right to make a section 8 MCIA application directly to the Court.

While the integrity commissioner plays an important role in this process, the commissioner is making no determination of rights – not even a preliminary determination. All that the commissioner is deciding is whether the commissioner will make a section 8 MCIA application.

¹ For ease of understanding, throughout this memo I refer to provisions of the *Municipal Act* and *Municipal Conflict of Interest Act* as they will read effective March 1, 2019.

Given the statutory process and the nature of an integrity commissioner's legislated responsibilities, I believe it is fair (in this circumstance) for an integrity commissioner to have previously provided advice to the member and to take that advice into consideration.

Moreover, I believe this is precisely what the legislation contemplates.

As you know, one of the legislative changes requires that members' requests for advice and integrity commissioners' responses to requests for advice be made in writing. Apart from the obvious benefits associated with a written record of advice, I believe one reason for this change was the expectation that this advice would play a role in subsequent MCIA applications.²

Exceptions to the statutory confidentiality provisions expressly permit an integrity commissioner to use previous written advice in:

- The integrity commissioner's written reasons for the decision to apply or not to apply to the Superior Court under section 8 of the MCIA: clause 223.5(2.3)(c)
- The integrity commissioner's section 8 MCIA application: clause 233.5(2.3)(b)

The *Municipal Act* clearly contemplates that an integrity commissioner who provides written advice to a member might subsequently be required to consider an application under subsection 223.4.1(2). It also clearly contemplates that the integrity commissioner might subsequently apply under section 8 of the MCIA.

In fact, the legislative scheme actually poses a challenge to the alternative approach of involving two different integrity commissioners. If the first commissioner provides advice to a member under subsection 223.3(2.2) and the second commissioner considers the related application under subsection 223.4.1(2) of the *Municipal Act* then the first commissioner is not permitted to share with the second commissioner the written advice. (None of the exceptions that would permit disclosure applies to sharing between the two commissioners.) This is problematic, among other reasons, because clause 9(2)(b) of the MCIA contemplates that the written advice would be before the judge on the section 8 MCIA application, and there would be no way to get it there.

In summary, I believe the Act clearly contemplates that an integrity commissioner who gave written advice to a member might subsequently consider a subsection 223.4.1(2) application that relates to the previous advice.

I would be please to discuss.

² I refer here to both applications to integrity commissioner under subsection 223.4.1(2) of the *Municipal Act* and applications by integrity commissioners to the Superior Court under section 8 of the MCIA.



**By-law 51-2015, as amended
of The Corporation of the City of Oshawa**

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
- x) 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)

Mayor

Original signed)

City Clerk



Corporate Policy

Use of Corporate Resources for Election Purposes

File: A-2140

Revision: N/A

Approval Date: March 19, 2018

Revision Date: N/A

1. Policy Statement

The Municipal Elections Act, 1996, as amended, establishes rules and regulations governing the financing of municipal election campaigns in Ontario. Section 88.8(4) prohibits a municipality from making any contribution to a candidate running in a municipal election, or any individual, corporation or trade union registering to support or oppose a candidate or question on a ballot.

The Election Finance Act, 1990, as amended, and the Canada Elections Act, 2000, as amended, establish regulations for candidates and parties running in provincial and federal elections. Section 29(1) of the Election Finance Act and Section 363(1) of the Canada Elections Act prohibit municipal corporations from contributing to any candidate, constituency association, nomination contestant, leadership contestant, or political party.

As campaign contributions may take the form of money, goods and services, any use of a corporate resource for an election-related purpose, by a member of Council, candidate, third party advertiser or staff, is prohibited.

2. Purpose

The purpose of the Use of Corporate Resources for Election Purposes Policy (the Policy) is to meet the City of Oshawa's responsibilities under the Municipal Elections Act, the Election Finance Act and the Canada Elections Act, by establishing for the benefit of candidates, current members of City Council, City staff and members of the public, the requirements and restrictions relating to campaign finances, the use of municipal resources and municipal contributions to election campaigns.

3. Application

This Policy applies to members of Council, Candidates, Third Party Advertisers, City Contractors and City employees:

- in the year of a municipal election from April 30 until Voting Day; or,
- from the day Council adopts a by-law directing a by-election until Voting Day, or
- from the date the writ is issued for a provincial or federal general election or by-election, until Voting Day.

4. Definitions

In this Policy,

“Campaign Period” means:

- In the case of a regular municipal election, the period between May 1 and Voting Day in the year of a municipal election; or,
- In the case of a municipal or schoolboard by-election, the period between the passage of a by-law authorizing a by-election and Voting Day; or
- In the case of provincial or federal election or by-election, the date the writ is issued until Voting Day.

“Campaign Activity” means any action, event, or pursuit that promotes or opposes any Candidate, or a response to any question on a ballot or referendum and includes any display, posting or distribution of Campaign Material.

“Campaign Material” means any material, regardless of format, that promotes or opposes any Candidate, or a response to any question on a ballot or referendum and includes, but is not limited to, printed literature, banners, posters, pictures, buttons, clothing, signs, magnets and vehicle decals.

“Candidate” means any individual who has filed nomination papers with the City Clerk in accordance with Section 33 of the Municipal Elections Act, 1996, S.O. 1996, c.32, or with a returning officer in accordance with Section 27.1 of the Election Act, R.S.O. 1990, c. E.6, or Part 6 of the Canada Elections Act, S.C. 2000, c. 9.

“City” means the Corporation of the City of Oshawa and includes its agencies, local boards and commissions.

“City Clerk” means the City Clerk of the City of Oshawa, or his or her designate, or a returning officer appointed under Section 7(1) of the Election Act, R.S.O. 1990, c. E.6, or Section 24(1) of the Canada Elections Act, S.C. 2000, c. 9, or his or her delegate.

“City Contractor” means any individual, company, or individual employed by a company, contracted to provide goods or services to the City.

“City Council” means the Council of the Corporation of the City of Oshawa.

“City Employee” means for the purposes of this Policy all full-time or part-time employees of the City, including the City Manager, Commissioners, Directors, Managers, Supervisors, and non-unionized staff, members of the Canadian Union of Public Employees, Locals 250, 251 and 3760, members of the International Association of Fire Fighters, Local 465 and all contract and temporary employees, students, co-op placement staff and volunteers.

“City Facility” means any land, building or other structure owned, leased, operated or otherwise controlled by the City, other than a City road, and includes City Hall, administrative offices, operation centres, libraries, community and recreation centres, parks, trails, sports fields and open space.

“Corporate Resource” means any physical, intellectual or financial asset owned, leased or otherwise controlled by the City and includes vehicles, equipment, supplies, services and employees.

“Corporate Technology” includes computers, servers, cell phones, smart phones, telephones, tablets, printers, scanners, copiers, email, file storage, voicemail, or any other equipment or technology controlled, leased or owned by the City.

“Election” means a municipal, provincial or federal election, or by-election, held in accordance with the Municipal Elections Act, 1996, S.O. 1996, c.32, the Election Act, R.S.O. 1990, c. E.6, or the Canada Elections Act, S.C. 2000, c. 9.

“Election Activities” means any election-related session, event or activity hosted by or at the direction of the City Clerk, or a returning officer appointed under Section 7(1) of the Election Act, R.S.O. 1990, c. E.6, or Section 24(1) of the Canada Elections Act, S.C. 2000, c. 9.

“Election Sign” means a device, including its structure and other component parts, which is used or is capable of being used to promote a candidate in a federal, provincial or municipal election, including an election of a local board or commission, or to influence persons to vote for or against any candidate, question or by-law, or referendum.

“Member” means an individual elected or appointed to City Council and holding public office during a Campaign Period.

“Third Party Advertiser” means any individual, corporation or trade union registered in accordance with Section 88.6 of the Municipal Elections Act, Section 37.5 of the Election Finance Act, R.S.O. 1990, c. E.7, or Section 353 of the Canada Elections Act, S.C. 2000, c. 9.

5. Policy

5.1. General

The City shall not make contributions of money, goods or services to any Candidate or Third Party Advertiser.

5.2. Members of Council, Candidates and Third Parties

The following applies to Members of Council, Candidates, Third Party Advertisers and any individual acting on behalf of a Member, Candidate or Third Party Advertiser.

5.2.1. Use of City Facilities, Services and Property

- 1) City Facilities may not be used for any Campaign Activities.
- 2) Campaign Material may not be displayed at any City Facility.
- 3) Members, Candidates and Third Party Advertisers may not engage in Campaign Activities at any function hosted, managed or coordinated by the City, whether located at a City Facility or not.

5.2.2. Technology

- 1) Corporate Technology may not be used for any Campaign Activity.
- 2) Websites, domains and social media accounts operated or funded by the City shall not include any Campaign Material or links to any website, domain or social media account containing Campaign Material.
- 3) Notwithstanding the prohibition on links to Campaign Material from websites, domains and social media accounts controlled, operated or funded by the City, the City of Oshawa election website that lists Candidates may, subject to the approval of the City Clerk, include one link per Candidate to a website containing Campaign Material.
- 4) On the day preceding the commencement of a municipal Campaign Period, biographical information about a Member and links to personal websites and social media accounts shall be removed from any website, domain or social media account controlled, operated or funded by the City.
- 5) On the day the writ is issued for any provincial or federal Election, biographical information about any Member registered as a Candidate, and links to personal websites and social media accounts shall be removed from any website, domain or social media account controlled, operated or funded by the City.

5.2.3. Communications

- 1) Members, Candidates and Third Party Advertisers shall not include the City's logo, crest, flag, tagline and other similarly branded Corporate Resources or trademarks in any Campaign Material.
- 2) Members, Candidates or Third Party Advertisers shall not convey, in any medium developed, distributed or paid for by the City, the registration of any individual as a Candidate or any individual, corporation or trade union as a Third Party Advertiser.
- 3) On the day preceding a municipal Campaign Period, the following shall be discontinued for Members, Candidates or Third Party Advertisers where they are paid for by the City:
 - a. All forms of advertising, including within municipal publications;
 - b. The ordering of stationery.
- 4) On the day preceding a municipal Campaign Period, no printing, reproduction, mailing or other distribution of material in a quantity of more than 50 pieces per week is permitted using City Resources, irrespective of any funding available to a Member, Candidate or Third Party Advertiser.

5.2.4. Budget

- 1) From January 1 to Voting Day in the year of a municipal election, budgets allocated to Members will be restricted to 11/12ths of the approved annual budget.
- 2) Candidates newly elected to Council during a regular municipal election will be allocated a budget equal to 1/12ths of the approved budget for the month of December.
- 3) A Member or Candidate re-elected to Council during a regular municipal election will be allocated the balance remaining available as of Voting Day.

5.2.5. City Employees and Contractors

- 1) Members, Candidates and Third Party Advertisers shall not use the services of a City Employee for any Campaign Activity during regular business hours or while the City Employee is receiving compensation from the City, unless the City Employee is on a pre-approved personal paid or unpaid leave of absence, including time off in lieu of over-time, flex time, vacation or parental leave.
- 2) Members, Candidates and Third Party Advertisers shall not use the services of City Contractors for any Campaign Activities while the Contractor is directly engaged in the delivery of goods or services for which the Contractor is receiving compensation from the City.

5.3. City Employees

The following applies to City Employees:

- 1) City Employees shall not engage in any Campaign Activities in support of a Member, Candidate or Third Party Advertiser during regular business hours or while receiving compensation from the City, unless they are on a pre-approved paid or unpaid leave of absence, including time off in lieu of over-time, flex time vacation or parental leave.
- 2) City Employees shall not engage in any Campaign Activities in support of a Member, Candidate or Third Party Advertiser while wearing any City uniform, badge, crest or other item that identifies them as a City Employee.
- 3) City Employees shall not engage in any Campaign Activities while using any vehicle, City Technology, or other City Resource owned or leased by the City.
- 4) City Employees have the right to engage in political activities, including Campaign Activities; however, City Employees shall be mindful of their responsibilities under the Employee Code of Conduct. City Employees must be aware of public perception while engaging in Campaign Activities and ensure that their involvement does not create a perceived or actual conflict of interest with their official positions. Before participating in Campaign Activities, City Employees are strongly encouraged to discuss their proposed participation with their supervisor or manager to identify perceived or actual conflicts of interest that may arise.

6. Limitations

Nothing in this policy will preclude the City Clerk from performing his or her statutory duties, restrict him or her from distributing information respecting Election Activities, or undertake actions that assist residents in exercising their right to vote.

Pregnancy and Parental Leaves for Members of Council Policy

Source

Municipal Act, 2001, S.O. 2001, c. 25.

Policy

The City of Oshawa recognizes a Member of Council's right to take leave for the Member's pregnancy, the birth of the Member's child or the adoption of a child by the Member as required by and in accordance with Section 270 of the Municipal Act.

Purpose

The purpose of this policy is to provide guidance on how The City of Oshawa addresses a member's pregnancy or parental leave pursuant to section 270 of the Municipal Act.

Definitions

"Pregnancy and/or Parental Leave" – an absence of 20 consecutive weeks or less as a result of a member's pregnancy, the birth of a member's child or the adoption of a child by the member in accordance with Section 259 (1.1) of the Municipal Act.

Legislative and Administrative Authority

The Municipal Act requires Council to adopt and maintain a policy with respect to pregnancy leaves and parental leaves of Members of Council.

Policy Requirements

Council supports a Member of Council's right to pregnancy and/or parental leave in keeping with the following principles:

- a) A Member is elected to represent his or her constituents.
- b) A Member's pregnancy and/or parental leave does not require Council approval and his or her office cannot be declared vacant as a result of the leave.
- c) A Member will continue to receive all communications entitled to them as a Member of Council from the City as if the Member were not on leave.
- d) A Member shall continue to receive all remuneration, reimbursements and benefits that all Members of Council are afforded.

Procedures

Where a Member of Council will be absent due to a pregnancy and/or parental leave, the Member shall provide, preferably in advance of the leave, written notice to the City Clerk indicating expected start and end dates. The Member shall inform same of any changes regarding end date.

Roles and Responsibilities

Members of Council and officers and employees of the City are required to adhere to this policy.

Application

In accordance with Section 270 of the Municipal Act, this policy applies to Members of Council and shall only apply during the time that the Member is in office.

Inquiries

For additional information regarding this policy please contact the City Clerk.

Council Approval

March 18, 2019