

Document 8

Proposed amendments to the Code of Conduct for Members of Local Boards

Proposed amendments are noted below in ~~striketroughs~~ and underlined additions. Where new Subsections have been added, the following sections have been re-numbered accordingly.

BY-LAW NO. 2018 – 399 (as amended by By-law 2021-11)

A by-law of the City of Ottawa to establish a code of conduct for members of local boards.

The Council of the City of Ottawa enacts as follows:

PART I

STATUTORY PROVISIONS REGULATING CONDUCT

1.

- (1) This Code of Conduct is a complement to the existing legislation governing the conduct of members of local boards.
- (2) The following federal, provincial legislation governs the conduct of members of local boards:
 - (a) the *Municipal Act, 2001*;
 - (b) the *Municipal Conflict of Interest Act*;
 - (c) the *Municipal Elections Act, 1996*;
 - (d) the *Municipal Freedom of Information and Protection of Privacy Act*;
 - (e) the *Ontario Human Rights Code*;
 - (f) the *Criminal Code of Canada*; and
 - (g) the by-laws and policies of the local board as adopted and amended from time to time.

APPLICATION

2.

- (1) This Code of Conduct applies to members of the City of Ottawa's local boards, including adjudicative boards.
 - (a) Sections 15 and 16 in Part II apply only to members of adjudicative boards.

- (2) Members of Council are bound by the *Code of Conduct for Members of Council*.

DEFINITIONS

3. In this by-law,

“adjudicative board” means a local board as defined in Section 223.1 of the *Municipal Act, 2001* which has the statutory power or right to make a decision;

“local board” means a local board as defined in Section 223.1 of the *Municipal Act, 2001*;

“Integrity Commissioner” means the Integrity Commissioner appointed by the City who is responsible for performing in an independent manner all of the functions described in Subsection 223.3(1) of the *Municipal Act, 2001*;

“member” means a member of an adjudicative board or local board;

the terms “child”, “parent” and “spouse” have the same meanings as in the *Municipal Conflict of Interest Act*:

- (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) “parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;
- (c) “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

PART II

GENERAL INTEGRITY

4.
 - (1) Members of local boards are committed to performing their functions with integrity, accountability and transparency.

- (2) Members of local boards are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position.
- (3) Members of local boards recognize that the public has a right to open government and transparent decision-making.
- (4) Members of local boards shall at all times serve and be seen to serve the interests of the City in a conscientious and diligent manner and shall approach decision-making with an open mind.
- (5) Members of local boards shall avoid the improper use of the influence of their position and shall avoid conflicts of interest, both apparent and real.
- (6) Members of local boards shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.

CONFIDENTIAL INFORMATION

5.

- (1) Members of local boards may acquire confidential information from a variety of different sources in the course of their work. Confidential information includes information in the possession of, or received in confidence by the local board, that the local board is either prohibited from disclosing, or is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA").
- (2) Members of local boards shall not use information that is obtained in their capacity as a member, and that is not available to the general public, to further or seek to further the member's private interest or to further or seek to further another person's private interest.

CONDUCT AT LOCAL BOARD MEETINGS

6. Members of local boards shall conduct themselves with decorum at all local board meetings in accordance with the provisions of the local board's procedure by-law (as required under Section 238 of the *Municipal Act, 2001*).

DISCRIMINATION AND HARASSMENT

7. All members of local boards have a duty to treat members of the public, one another and staff of the local board with respect and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies as well as any other applicable board policy on the matter.

IMPROPER USE OF INFLUENCE

8. Members of local boards are expected to perform their duties of office with integrity, accountability and transparency. Members of local boards should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.

USE OF BOARD PROPERTY AND RESOURCES

- 9.
- (1) In order to fulfill their roles as appointed officials, members of local boards have access to board resources such as property, equipment, services, staff and supplies. No member of a local board shall use, or permit the use of such resources for activities other than purposes connected with the discharge of local board duties.
 - (2) No member shall obtain financial gain from the use or sale of board-developed intellectual property, computer programs, technological innovations, or other patent, trademark, copyright held by the board.

CONDUCT RESPECTING STAFF

- 10.
- (1) Members shall be respectful of the role of staff of the local board, or City staff where applicable, to provide advice based on political neutrality and

objectivity and without undue influence from an individual member of the local board or group of members.

- (2) Members should not:
 - (a) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of board staff;
 - (b) Compel board staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
 - (c) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any board staff member with the intent of interfering in staff's duties.

GIFTS, BENEFITS AND HOSPITALITY

11.

- (1) Members of local boards shall not accept gifts that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved. For these purposes, a gift, benefit or hospitality provided with the member's knowledge 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 to that member.
- (2) To enhance transparency and accountability with respect to gifts, benefits, tickets to events and hospitality, members will file an annual disclosure statement that will be added to the public Gifts Registry. Members of local boards are required to disclose all gifts, benefits, hospitality, tickets to events and sponsored travel received which individually exceed \$100 from one source in a calendar year.
- (3) The disclosure statement must indicate:
 - (a) The nature of the gift, benefit, tickets to events or hospitality;
 - (b) Its source and date of receipt;
 - (c) The circumstances under which it was given or received;
 - (d) Its estimated value;
 - (e) What the recipient did with the gift; and

- (f) Whether the gift will at any point will be left with the local board or the City.
- (4) On receiving a disclosure statement, the Integrity Commissioner, shall examine it to ascertain whether the receipt of the gift, benefit, tickets to events or hospitality might, in his or her opinion, create a conflict between a private interest and the public duty of the member.
- (5) In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the Member to justify receipt of the gift or benefit.
- (6) Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the Member to return the gift or remit the value of any gift or benefit already consumed to the City.
- (7) The following are recognized as exceptions and do not require registration:
 - (a) compensation authorized by law;
 - (b) such gifts, benefits tickets to events or hospitality that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
 - (c) a political contribution otherwise reported by law, in the case of members running for office;
 - (d) services provided without compensation by persons volunteering their time;
 - (e) a suitable memento of a function honouring the member;
 - (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
 - (g) food and beverages consumed at banquets, receptions or similar events, if:
 - (i) attendance serves a legitimate business purpose;
 - (ii) the person extending the invitation or a representative of the organization is in attendance; and

- (iii) the value is reasonable and the invitations infrequent;
 - (h) communications connected with the role of a member, including subscriptions to newspapers and periodicals;
 - (i) gifts of a nominal value (e.g. baseball cap, t-shirt, flash drive, book, etc.); and
 - (j) any other gift or personal benefit, if the Integrity Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.
- (8) The Gifts Registry will be updated on an annual basis and posted on the City's website for public viewing.

ELECTION-RELATED ACTIVITY

12.

- (1) Members of local boards are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and the local board's policy regarding use of board resources during the election campaign period (as required under Section 88.18 of the *Municipal Elections Act, 1996*).
- (2) The use of board resources, both actual property and staff time, for election-related activity is strictly prohibited. The prohibition applies to both the promotion and opposition to the candidacy of a person for elected office. Election-related activity applies to campaigns for municipal, provincial and federal office.

OUTSIDE ACTIVITIES

13. Members shall not be a director or hold an executive position with any organization whose objectives and mandates are in conflict with, or may reasonably be perceived to be in conflict with, the objectives and mandates of the local board. Before taking on a new executive position, the member shall inform the Chair of the local board and the Integrity Commissioner to obtain advice about the new circumstances.

COMMUNICATIONS WITH ADJUDICATIVE BOARDS

14.

- (1) Communications with members of an adjudicative board by a party or their representative must be through the board administrator and/or during the appropriate proceeding.
- (2) Written communications to the adjudicative board shall be made through the board administrator and shall be copied to all parties or their representatives as appropriate. Oral communications with the adjudicative board shall take place during formal proceedings of the adjudicative board and in the presence of all parties.

INDEPENDENT NATURE OF ADJUDICATIVE BOARDS

15. Members of adjudicative boards operate at arms-length from and independently of City Council and the City administration. Members should maintain the board's independence and ensure their actions are consistent with the arms-length, quasi-judicial nature of an adjudicative board.

PART III

COMPLIANCE WITH THE CODE OF CONDUCT

16.

- (1) Members of local boards are expected to adhere to the provisions of the Code of Conduct. The *Municipal Act, 2001* authorizes the local board, where it has received a report by its Integrity Commissioner that, in his or her opinion, there has been a violation of the Code of Conduct, to impose one of the following sanctions:
 - (a) A reprimand; and
 - (b) Suspension of the remuneration paid to the member in respect of his or her services as a member of a local board for a period of up to 90 days, where the member is remunerated as a member of the local board.
- (2) The Integrity Commissioner may also recommend that the local board impose one of the following sanctions:
 - (a) Removal from membership of a committee of the local board;
 - (b) Removal as chair of the local board or a committee of the local board;
 - (c) Written or verbal public apology; and

- (d) Return of property or reimbursement of its value or of monies spent;
- (3) The Integrity Commissioner may also recommend that City Council revoke the member's appointment to the local board.
- (4) The Integrity Commissioner has the final authority to recommend any of the sanctions above or other remedial action at his or her discretion.

SHORT TITLE

17. This By-law may be referred to as the "Code of Conduct for Members of Local Boards".

EFFECTIVE DATE

18. This by-law shall be effective as of March 1, 2019.

ENACTED AND PASSED this 12th day of December 2018.

CITY CLERK

MAYOR

Appendix "A"
COMPLAINT PROTOCOL

PART I
INFORMAL COMPLAINT PROCEDURE

INFORMAL COMPLAINTS

1. Any individual who identifies or witnesses behaviour or activity by a member of a local board, that appears to be in contravention of the Code of Conduct for Members of Local Boards (the "Code of Conduct") may address the prohibited behaviour or activity themselves in the following manner:

- (a) Advise the member that the behaviour or activity appears to contravene the Code of Conduct;
- (b) Encourage the member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
- (c) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
- (d) Request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the member in an attempt to resolve the issue;
- (e) If applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and
- (f) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part II, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

2. Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying behaviour or an activity that they believe violates the Code of Conduct. With the consent of both the complaining individual and the member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint. However, the informal process is

not a precondition or a prerequisite to pursuing the formal complaint procedure outlined in Part II.

PART II FORMAL COMPLAINT PROCEDURE

FORMAL COMPLAINTS

3. Any individual who identifies or witnesses behaviour or an activity by a member of a local board, that they believe is in contravention of the Code of Conduct for Members of Local Boards, may file a formal complaint in accordance with the following conditions:

- (a) All complaints shall be made in writing and shall be dated and signed by an identifiable individual.
- (b) The complaint must set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct. A supporting affidavit setting out the evidence in support of the allegation must also be included.
- (c) If the complainant is a member of the local board, their identity shall not be protected if the Integrity Commissioner finds that the complaint was not made in good faith.
- (d) City Council and the local board may also file a complaint and/or request an investigation of any of the local board membership by public motion.

FILING OF COMPLAINT AND CLASSIFICATION BY INTEGRITY COMMISSIONER

- 4.
- (1) The complaint shall be filed with the Integrity Commissioner for initial classification to determine if 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 other Council policies as described in Section 5.
 - (2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.

COMPLAINTS OUTSIDE INTEGRITY COMMISSIONER JURISDICTION

5. If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another board policy, the Integrity Commissioner shall advise the complainant in writing as follows:

CRIMINAL MATTER

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- (b) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy review.

OTHER BOARD POLICY APPLIES

- (c) If the complaint seems to fall under another board policy, the complainant shall be advised to pursue the matter under such board policy.

LACK OF JURISDICTION

- (d) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

MATTER ALREADY PENDING

- (e) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to the *Municipal Conflict of Interest Act*, a Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

ANNUAL REPORT TO COUNCIL

- 6. The Integrity Commissioner shall report to City Council annually on all complaints received and, on their disposition, (including complaints deemed not to be within the jurisdiction of the Integrity Commissioner).

REFUSAL TO CONDUCT INVESTIGATION

~~7. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation.~~

7. The Integrity Commissioner may refuse to investigate a complaint or may terminate an investigation, if the Integrity Commissioner is of the opinion that:

- (a) there are no grounds or insufficient grounds for an investigation;**
- (b) the complaint is frivolous, vexatious or not made in good faith;**
or
- (c) an investigation, or continuation of an investigation, would serve no useful purpose.**

OPPORTUNITIES FOR RESOLUTION

- 8.
 - (1) Following receipt and review of a formal complaint, or at any time during the investigation, where 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 pursued to achieve an informal resolution.

- (2) The Integrity Commissioner may also decide during his investigation that complaints relating to the following matters may not be Code of Conduct issues and may more appropriately be dealt with through other channels. With the consent of the complainant, the Integrity Commissioner may refer complaints as appropriate.

INVESTIGATION

9.

- (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
 - (a) Provide the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten business days; and
 - (b) **May** provide a copy of the response, **or portions thereof**, provided to the complainant with a request for a written reply within ten business days.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (3) The Integrity Commissioner may make interim reports to the local board or to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.
- (4) If the Integrity Commissioner has not completed an investigation before Nomination Day for a regular election, as set out in the *Municipal Elections Act, 1996*, the Integrity Commissioner shall terminate the inquiry on that day.

- (a) If an investigation is terminated in accordance with Subsection 9(4), the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after Voting Day in a regular election, the complainant who made the request or the member or former member whose conduct is concerned makes a written request to the Integrity Commissioner that the investigation be commenced.
- (5) The Integrity Commissioner shall retain all records related to the complaint and investigation.

NO COMPLAINT PRIOR TO MUNICIPAL ELECTION

10. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation during the period of time starting on Nomination Day and ending on Voting Day in any year in which a regular municipal election will be held, as set out in the *Municipal Elections Act, 1996*.

RECOMMENDATION REPORT

- 11.
- (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the intake process has been completed and an investigation has been commenced. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.
 - (2) Following the completion of an investigation, the Integrity Commissioner shall provide the member with a copy of a draft report and offer the member the opportunity to provide comments within five business days.
 - (3) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to the local board and/or Council outlining the findings, the terms of any settlement and/or any recommended corrective action.

- (4) The Integrity Commissioner shall give a copy of the report to the complainant and the member whose conduct is concerned. The member shall have the right of reply when the report is considered by the local board and/or Council.
- (5) Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to the local board and/or Council the result of the investigation except as part of an annual or other periodic report.

MEMBER NOT BLAMEWORTHY

12. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*.

REPORT TO COUNCIL

13. Upon receipt of a report, the secretary of the local board or the City Clerk, as appropriate, shall indicate, on the next agenda of the local board and/or City Council, Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of the local board and/or City Council.

NO REPORTS PRIOR TO MUNICIPAL ELECTION

14. Notwithstanding any other provision of this Protocol, the Integrity Commissioner shall not make any report to the local board, Council or to any other person during the period of time starting on Nomination Day and ending on Voting Day in any year in which a regular municipal election will be held, as set out in the *Municipal Elections Act, 1996*.

DUTY OF THE LOCAL BOARD

15. The local board shall consider and respond to the report at the next meeting of the local board after the day the report is laid before it. The member who is the subject of the complaint shall have the right of reply at the meeting where the report is considered

- (a) The local board shall not consider whether to impose sanctions on a member, where the Integrity Commissioner makes a report to the local board regarding a contravention of the Code of Conduct, during the period of time starting on Nomination Day and ending on Voting Day in any year in which a regular municipal election will be held, as set out in the *Municipal Elections Act, 1996*.

PUBLIC DISCLOSURE

16.

- (1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
- (2) The Integrity Commissioner shall retain all records related to the complaint and investigation.
- (3) At the time of the Integrity Commissioner's report to the local board and/or Council, the identity of the person who is the subject of the complaint shall not be treated as confidential information if the Integrity Commissioner finds that a breach has occurred.
- (4) All reports from the Integrity Commissioner to the local board will be made available to the public on the local board's website or ottawa.ca.