

Document 9

Proposed amendments to the Code of Conduct for Citizen Members of the Built Heritage Sub-Committee

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

BY-LAW NO. 2018 – 401 (as amended by By-law 2021-12)

A by-law of the City of Ottawa to establish a code of conduct for citizen members of the Built Heritage Sub-Committee.

WHEREAS the mandate of the City of Ottawa's Built Heritage Sub-Committee (BHSC), as a municipal heritage committee, is to advise and assist Council on matters relating to Parts IV and V of the *Ontario Heritage Act, 1990*, and such other heritage matters as Council may specify by by-law or as specified in the City's Official Plan. BHSC reports through the Planning Committee to City Council; however, it may also report to another Standing Committee where appropriate, depending on the issue.

AND WHEREAS the Sub-Committee has a membership comprised of four Members of Council and three citizen members, having appropriate experience, that are appointed to the Sub-Committee by Council. Efforts are made to engage with local heritage experts, including Heritage Ottawa, to identify and recruit highly qualified individuals sensitive to Ottawa's unique built heritage context.

AND WHEREAS this Code recognizes that in the same manner as Members of Council, citizen members appointed to a Committee of Council have an obligation to uphold the ethical standards of an elected official when acting in their official capacities. BHSC can influence municipal policy by way of making recommendations to Committee or Council and therefore, the same principles of accountability and transparency should apply to citizen members.

AND WHEREAS decisions of citizen members of the Sub-Committee should be made with an open mind and concern for the public good and not personal benefit, and without giving preferential treatment to family, friends and supporters. Citizen members should perform their role on BHSC as a neutral entity regardless of property classification, employment or affiliation with any community association or local group;

AND WHEREAS this document is a modified version of the Code of Conduct for Members of Council;

THEREFORE 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 a Committee of Council.
- (2) The following federal, provincial legislation may govern the conduct of members of a Committee of Council:
 - (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 *Provincial Offences Act*;
 - (f) the *Ontario Human Rights Code*;
 - (g) the *Criminal Code of Canada*; and
 - (h) the by-laws and policies of Council as adopted and amended from time to time.
- (3) The *Ontario Heritage Act, 1990* and the City of Ottawa's Official Plan set out the role of a municipal heritage committee.

APPLICATION

2. This Code of Conduct applies to citizen members of the Built Heritage Sub-Committee when acting in their official capacity. Members of Council who sit on the Built Heritage Sub-Committee are subject to the *Code of Conduct for Members of Council*.

DEFINITIONS

3. In this by-law,

the terms “child”, “controlling interest,” “elector,” “interest in common with electors generally,” “parent,” “senior officer” and “spouse” have the same meanings as in the *Municipal Conflict of Interest Act*:

“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;

“controlling interest” means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;

“elector” means a person entitled to vote at a municipal election in the municipality;

“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*;

“interest in common with electors generally” means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part;

“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;

“senior officer” means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office;

“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) Citizen members of the Built Heritage Sub-Committee (“citizen members”) are committed to performing their functions with integrity, accountability and transparency.
- (2) Citizen members are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an appointed member of a Committee of Council.
- (3) Citizen members recognize that the public has a right to open government and transparent decision-making.
- (4) Citizen members 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) Citizen members shall avoid the improper use of the influence of their appointment to a Committee of Council and shall avoid conflicts of interest, both apparent and real.
- (6) Citizen members 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) By way of their appointment, citizen members of the Built Heritage Sub-Committee may acquire confidential information from a variety of different sources. Confidential information includes information in the possession of, or received in confidence by the City, that the City is either prohibited from disclosing, or is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”). A citizen member

shall not use information that is obtained in his or her capacity as a member of the Built Heritage Sub-Committee and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest.

- (2) In accordance with the rules under MFIPPA and the *Procedure By-law*, citizen members shall not:
 - (a) Where a matter has been discussed in camera, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting (Subsection 42 (1) of the *Procedure By-law*); and
 - (b) Disclose or release by any means to any member of the public, any confidential information acquired by virtue of their appointment, in either oral or written form, except when required by law or authorized by Council to do so.

CONDUCT AT SUB-COMMITTEE MEETINGS

6.

- (1) Citizen members of the Built Heritage Sub-Committee shall conduct themselves with decorum at all Sub-Committee meetings in accordance with the provisions of the *Procedure By-law* (Section 42) being:
- (2) No citizen member shall:
 - (a) Speak disrespectfully of the Reigning Sovereign or the Lieutenant-Governor of any province, or of a Member of Council, a fellow member of the Built Heritage Sub-Committee or staff;
 - (b) Use offensive words or unparliamentary language;
 - (c) Speak on any subject other than the subject in debate;
 - (d) Where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting;
 - (e) Disobey the Rules of Procedure, or a decision of the Sub-Committee Chair or of the Sub-Committee on questions of order or practice or upon the interpretation of the Rules of Procedure.

DISCRIMINATION AND HARASSMENT

7. All citizen members of the Built Heritage Sub-Committee have a duty to treat members of the public, one another, Members of Council and staff 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 and, where applicable, the City's *Violence and Harassment in the Workplace Policy*.

IMPROPER USE OF INFLUENCE

8.

- (1) As an appointed member of a Committee of Council, citizen members of the Built Heritage Sub-Committee are expected to perform the duties of their appointment with integrity, accountability and transparency. Citizen members 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.
- (2) In the same manner, and as outlined in the *Provincial Offences Act – Conflict of Interest Policy*, citizen members of the Built Heritage Sub-Committee shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the *Provincial Offences Act*.

USE OF MUNICIPAL PROPERTY AND RESOURCES

9.

- (1) In order to fulfill their roles as appointed members of a Committee of Council, citizen members have access to municipal resources such as property, equipment, services, staff and supplies. No citizen member shall use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, or expenses permitted under the Participation Expense Policy) for activities other than purposes connected with the discharge of Sub-Committee duties or City business.

- (2) No citizen member shall obtain financial gain from the use or sale of City-developed intellectual property, computer programs, technological innovations, or other patent, trademark, copyright held by the City.
- (3) With respect to expenses, falsifying of receipts or signatures by a citizen member is a serious breach of this Code of Conduct and the *Criminal Code of Canada* and could lead to prosecution.

CONDUCT RESPECTING STAFF

10.

- (1) The *Municipal Act, 2001* sets out the roles of Members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer, Auditor General and the Integrity Commissioner. The *Ontario Heritage Act, 1990*, as well as the City's Official Plan, set out the role of municipal heritage committee.
- (2) The Built Heritage Sub-Committee is expected to advise and assist Council on matters relating to Parts IV and V of the *Ontario Heritage Act, 1990*, and such other heritage matters as Council may specify by by-law or as specified in the City's Official Plan.
- (3) Municipal staff is expected to:
 - (a) implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
 - (b) undertake research and provide advice to council on the policies and programs of the municipality; and
 - (c) carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the municipality.
- (4) City Council as a whole has the authority to approve budget, policy, governance and other such matters. Under the direction of the City Manager, city staff, and the staff of the Offices of the Auditor General and the Integrity Commissioner, serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council.

- (5) Citizen members of the Built Heritage Sub-Committee shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from an individual Member of Council or citizen member, or a group consisting of Members of Council and/or citizen members.
- (6) Citizen members of the Built Heritage Sub-Committee should not:
 - (a) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
 - (b) Compel 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 staff member with the intent of interfering in staff's duties.

CONFLICT OF INTEREST

11.

- (1) In addition to the provisions stated in Part I of this By-law with respect to conflict of interest, improper use of influence and preferential treatment, a citizen member of the Built Heritage Sub-Committee shall not:
 - (a) Engage in any business or transaction or have a financial or personal interest that is incompatible with the discharge of his or her official duties;
 - (b) Place herself or himself in a position where s/he is under obligation to any person who might benefit from special consideration or favour on their part or who might seek in any way preferential treatment;
 - (c) Accord, in the performance of his or her official duties, preferential treatment to relatives or to organizations in which s/he or his or her relatives have an interest, financial or otherwise;
 - (d) Deal with an application to the City for a grant, award, contract or other benefit involving his or her spouse, live-in partner, child or parent;
 - (e) Place herself or himself in a position where s/he could derive any direct or indirect benefit or interest from any matter about which s/he can influence decisions; and

- (f) Benefit from the use of information acquired during the course of his or her official duties which is not generally available to the public.
- (2) For the purposes of this Code, a citizen member has an indirect pecuniary interest in any matter in which the Built Heritage Sub-Committee is concerned, if,
- (a) the citizen member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body that has a pecuniary interest in the matter; or
 - (b) the citizen member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.
- (3) For the purposes of this By-law, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.
- (4) The following protocol shall apply to citizen members of the Built Heritage Sub-Committee:
- (a) Where a citizen member of the Built Heritage Sub-Committee, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Built Heritage Sub-Committee at which the matter is the subject of consideration, the member,
 - (i) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
 - (ii) shall not take part in the discussion of, or vote on any question in respect of the matter; and
 - (iii) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question or recommendation.
 - (b) Where the meeting referred to in Subsection (a) is not open to the public, in addition to complying with the requirements of that subsection, the citizen member shall forthwith leave the meeting or

the part of the meeting during which the matter is under consideration.

- (c) Where the interest of a citizen member has not been disclosed as required by subsection (a) by reason of the citizen member's absence from the meeting referred to therein, the citizen member shall disclose the interest and otherwise comply with subsection (a) at the first meeting of the Built Heritage Sub-Committee, as the case may be, attended by the citizen member after the meeting referred to in subsection (a).
- (5) The abovementioned protocol does not apply to a pecuniary interest in any matter that a citizen member may have,
- (a) as a user of any public utility service supplied to the citizen member by the City in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
 - (b) by reason of the citizen member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the City;
 - (c) by reason of the citizen member purchasing or owning a debenture of the City;
 - (d) by reason of the citizen member having made a deposit with the City, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;
 - (e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001*, relating to local improvements;
 - (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;
 - (g) by reason of the citizen member being eligible for election or appointment to fill a vacancy, office or position in the council when the council is empowered or required by any general or special Act to fill such vacancy, office or position;
 - (h) by reason only of the citizen member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the City or by reason only of the citizen member

being a member of a board, commission, or other body as an appointee of a council;

- (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the citizen member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
- (j) by reason of the citizen member having a pecuniary interest which is an interest in common with electors generally; or
- (k) by reason only of an interest of the citizen member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

CONDUCT RESPECTING LOBBYING

12.

- (1) Citizen members of the Built Heritage Sub-Committee, as members of a Committee of Council, may be approached by various individuals attempting to influence decisions before Committee and Council. While lobbying is an acceptable practice, disclosure of lobbying activities enhances the transparency and integrity of City business.
- (2) In accordance with the City's Lobbyist Registry, citizen members of the Built Heritage Sub-Committee shall review the Lobbyist Registry on a monthly basis to confirm that instances where they have been lobbied on a particular matter, including the specific matter and date, have been registered. Where lobbying activity has not been disclosed, the citizen member shall first remind the lobbyist of the requirement to disclose and, should the activity remain undisclosed, advise the Integrity Commissioner of the failure to disclose.
- (3) Further, citizen members should ensure that individuals who are lobbying them are aware of their requirement to register as required under the requirements of the Lobbyist Registry. Citizen members should not knowingly communicate with a lobbyist who is acting in violation of the requirements of the Registry. If a citizen member is or at any time becomes aware that a person is in violation of the rules related to lobbying, the citizen member should either refuse to deal with the lobbyist or, where appropriate,

either terminate the communication with the lobbyist at once or, if in the citizen member's judgment it is appropriate to continue the communication, at the end of the communication, draw that person's attention to the obligations imposed by the Registry and report the communication to the City Clerk and to the Integrity Commissioner.

- (4) Unless pre-approved by the Integrity Commissioner, the acceptance of any gift, benefit, or hospitality from lobbyists with active lobbying registrations or from their registered clients or their employees by citizen members of the Built Heritage Sub-Committee is prohibited.
- (5) The principle here is to ensure that companies and individuals who may be seeking to do business with the City do not do so by giving gifts or favours to people in a position to influence vendor approval or decision-making.

GIFTS, BENEFITS AND HOSPITALITY

13.

- (1) Through their work on the Built Heritage Sub-Committee, citizen members are expected to provide advice and assistance to Committee and Council and to do so with both impartiality and objectivity. The acceptance of a gift, benefit or hospitality can imply favouritism, bias or influence on the part of the citizen member. At times, the acceptance of a gift, benefit or hospitality occurs as part of the social protocol or community events linked to the duties of a Committee of Council.
- (2) Citizen members 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 citizen member's knowledge to a citizen member's spouse, child, or parent that is connected directly or indirectly to the performance of the citizen member's duties is deemed to be a gift to that citizen member.
- (3) To enhance transparency and accountability with respect to gifts, benefits and hospitality, citizen members will file a quarterly disclosure statement that will be added to the public Gifts Registry. Citizen members are required

to disclose all gifts, benefits, hospitality and sponsored travel received which individually exceed \$100 from one source in a calendar year.

- (4) The disclosure statement must indicate:
 - (a) The nature of the gift, benefit 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 intends to do with the gift; and
 - (f) Whether the gift will at any point will be left with the City.

- (5) In the case of requirement (f) of the disclosure statement, those gifts received by citizen members which have significance or historical value for the City of Ottawa shall be left with City Archives at the end of a citizen member's term on the Sub-Committee.

ACCEPTANCE OF EVENT TICKETS

- (6) The City of Ottawa is home to many types of festivals, community, cultural and sports events. The City is also the host site for many federal, provincial, National Capital Commission events. Consequently, citizen members of the Built Heritage Sub-Committee may be expected to attend or may be frequently encouraged to attend by being provided with tickets or invitations.

- (7) As with gifts, the acceptance of this kind of benefit can appear to be a means of undue influence. While the choice of venues and events they attend is entirely at the discretion of citizen members of the Built Heritage Sub-Committee, when accepting tickets as a gift or benefit, citizen members shall observe the following limits:
 - (a) To further enhance transparency all tickets of a value exceeding \$30 shall be disclosed quarterly in the Gifts Registry, along with the disposition thereof (e.g. who attended with the citizen member, or if donated, to whom or what organization);
 - (b) A limit of two tickets for up to two events from one source in a calendar year is permitted and requires disclosure;
 - (c) Accepting any tickets for subsequent events from the same source is prohibited.

- (8) On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in his or her opinion, create a conflict between a private interest and the public duty of the citizen member or in consultation with the City Archivist whether the gift has significance or historical value for the City. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the citizen member to justify receipt of the gift or benefit.
- (9) Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the citizen member to return the gift or remit the value of any gift or benefit already consumed to the City.
- (10) The following are recognized as exceptions and do not require registration:
 - (a) compensation authorized by law;
 - (b) such gifts or benefits 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) communication to a member, including subscriptions to newspapers and periodicals;

- (i) sponsorships and donations for community events organized or run by a member or a third party on behalf of a member, subject to the limitations set in the Council Expense Policy;
 - (j) gifts of a nominal value (e.g. baseball cap, t-shirt, flash drive, book, etc.); and
 - (k) 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 citizen member in the performance of his or her duties.
- (11) The Gifts Registry will be updated on a quarterly basis and posted on the City's website for public viewing.

ELECTION-RELATED ACTIVITY

14.

- (1) Citizen members of the Built Heritage Sub-Committee are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and the City's *Election-Related Resources Policy*. The use of municipal resources, both actual municipal 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 not only to any citizen member's personal campaign for office, but also other campaigns for municipal, provincial and federal office.
- (2) A citizen member shall not engage in political campaigning of any sort (municipally, provincially or federally) on behalf of the Sub-Committee or as a member of the Sub-Committee.

PART III

COMPLIANCE WITH THE CODE OF CONDUCT

15.

- (1) Citizen members of the Built Heritage Sub-Committee are expected to adhere to the provisions of the Code of Conduct. The *Municipal Act, 2001*

authorizes Council, 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 either of the following sanctions:

- (a) A reprimand.
 - (b) Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.
- (2) The Integrity Commissioner may also recommend that Council impose one of the following sanctions:
- (a) Written or verbal public apology;
 - (b) Return of property or reimbursement of its value or of monies spent;
 - (c) Removal from membership of a committee; and
 - (d) Removal as chair of a committee.
- (3) 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

16. This By-law may be referred to as the “Code of Conduct for Citizen Members of the Built Heritage Sub-Committee”.

EFFECTIVE DATE

17. 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 citizen member of the Built Heritage Sub-Committee, that appears to be in contravention of the Code of Conduct for Citizen Members of the Built Heritage Sub-Committee (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 citizen member of the Built Heritage Sub-Committee, that they believe is in contravention of the Code of Conduct for Citizen Members of the Built-Heritage Sub-Committee, 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 citizen member of the Built-Heritage Sub-Committee, 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 Built Heritage Sub-Committee may also file a complaint and/or request an investigation of any of its 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 Council 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 POLICY APPLIES

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

PERIODIC REPORTS TO COUNCIL

6. The Integrity Commissioner shall report to Council semi-annually during the first year, and annually thereafter. In his/her report to Council, he/she shall report 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 investigate 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.
 - (a) The member who is the subject of the investigation may consult with a lawyer and the costs may be expensed to the Council administration budget through the Clerk's office.
- (3) The Integrity Commissioner may make interim reports 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 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 Council.

- (5) Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to 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 Clerk shall indicate, on the next agenda of City Council, Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of 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 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 COUNCIL

15. Council shall consider and respond to the report at the next meeting of Council after the day the report is laid before it.

- (a) Council shall not consider whether to impose sanctions on a member, where the Integrity Commissioner makes a report to Council 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 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 Council will be made available to the public on ottawa.ca.