

MEMO / NOTE DE SERVICE

To / Destinataire Members of Council

From / Expéditeur David White, City Solicitor and Interim City Clerk
Karen Shepherd, Integrity Commissioner

Subject / Objet Voluntary Contributions from Developers Date: January 5, 2024

This memorandum provides City Council guidance on the solicitation of voluntary contributions from developers during the planning process, further to a direction from the Planning and Housing Committee at its meeting of November 29, 2023.

Background

During consideration of [Item 8.1 – Councillor Menard Motion – Memorandum of Understanding with Katasa Group](#) at the Planning and Housing Committee meeting of November 29, 2023, a discussion arose with respect to the solicitation and receipt of voluntary contributions from developers and what the City could legally enter into under the *Planning Act*, as well as what was permitted under the Code of Conduct for Members of Council. As such, the Committee directed Integrity Commissioner and the Interim City Clerk to provide guidance to Members of Council on the provision of voluntary contributions. The Committee deferred Item 8.1 to the January 17, 2024, PHC meeting.

Legal Considerations

Staff can advise that a contribution agreement between the City and a developer, entered into voluntarily, is within the City's legal power, though the City has no statutory or legal authority to impose such a requirement as condition of Council's approval of the planning application. Staff note that as the Planning and Housing Committee was considering the voluntary contribution after having previously approved the development application, the approval of the development application was not conditional on the approval of the voluntary contribution.

Application of the Code of Conduct for Members

The Integrity Commissioner is of the view that a determination on whether it is permissible for Members to negotiate voluntary contributions from developers is a policy matter, and therefore outside of the Integrity Commissioner's jurisdiction.

The Integrity Commissioner is responsible for assisting Members in conducting themselves in accordance with the ethical standards set out in the Code of Conduct for Members of Council ("the Code"). As Members are aware, the Code requires Members avoid the improper use of influence of their office and sets out the expectation that Members perform their functions with integrity, accountability, and transparency.

General Adherence to Code Values

Should a Member enter into discussions with a developer about a voluntary contribution, the Integrity Commissioner recommends that the Member clearly communicate to the developer that any such contribution is completely voluntary. Members must not misrepresent the voluntary nature of the contribution in any way.

When Members seek consideration of voluntary contributions from developers, the Code continues to apply. If anyone believes that, in seeking a contribution, or in undertaking any other action, a Member has contravened the Code, they may file a complaint with the Integrity Commissioner.

Transparency Mitigates Real and/or Perceived Impropriety

The Integrity Commissioner is of the opinion that Committee and Council consideration of voluntary contributions provides vital transparency to the matter, which, in turn, mitigates the risk of real or perceived impropriety in connection with a developer's provision of a voluntary contribution.

However, if discussions about voluntary contributions occur in a context in which the decision will not rise for Committee and Council consideration, concerns may arise regarding Members' improper use of influence – in general, and in respect of lobbying relationships. The Integrity Commissioner strongly recommends Members seek advice in such a scenario.

Seek Advice as Needed

The practices and broad principles described in this memorandum are intended to assist Members properly use their influence on behalf of constituents and avoid the improper use of the influence of their office. With that said, each situation is unique, and this memorandum does not replace the Integrity Commissioner's advice/opinion with respect to any specific scenario. Furthermore, this memorandum does not preclude Integrity Commissioner investigation of any complaint received in relation to this matter.

Members are encouraged to reach out to the Integrity Commissioner should they have questions about their Code responsibilities in relation to this matter broadly, and/or, going forward, as specific situations arise: integrity@ottawa.ca.