



**City of Hamilton**  
**GOVERNANCE REVIEW SUB-COMMITTEE**  
**AGENDA**

**Meeting #:** 20-003  
**Date:** December 2, 2020  
**Time:** 1:00 p.m.  
**Location:** Due to the COVID-19 and the Closure of City Hall - ROOM 264

All electronic meetings can be viewed at:

City of Hamilton's Website:  
<https://www.hamilton.ca/council-committee/council-committee-meetings/meetings-and-agendas>

City's Youtube Channel:  
<https://www.youtube.com/user/InsideCityofHamilton>

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

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1. **APPROVAL OF AGENDA**  
(Added Items, if applicable, will be noted with \*)
2. **DECLARATIONS OF INTEREST**
3. **APPROVAL OF MINUTES OF PREVIOUS MEETING**
  - 3.1. October 13, 2020
4. **COMMUNICATIONS**
5. **DELEGATION REQUESTS**
6. **CONSENT ITEMS**
7. **PUBLIC HEARINGS / WRITTEN DELEGATIONS / VIRTUAL DELEGATIONS**
8. **STAFF PRESENTATIONS**

**9. DISCUSSION ITEMS**

- 9.1. Integrity Commissioner Work Plan (FCS20016(a)) (City Wide) (Outstanding Business List Item)

**10. MOTIONS**

**11. NOTICES OF MOTION**

**12. GENERAL INFORMATION / OTHER BUSINESS**

**13. PRIVATE AND CONFIDENTIAL**

**14. ADJOURNMENT**



# Hamilton

## GOVERNANCE REVIEW SUB-COMMITTEE

### MINUTES 20-002

Tuesday, October 13, 2020

1:00 pm

Council Chambers

Hamilton City Hall

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**Present:** Councillors T. Whitehead (Chair), M. Wilson (Vice-Chair), M. Pearson, B. Clark, and L. Ferguson

**Absent:** A. VanderBeek – City Business

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**THE FOLLOWING ITEMS WERE REFERRED TO THE AUDIT, FINANCE & ADMINISTRATION COMMITTEE FOR CONSIDERATION:**

**1. 2022 Council and Committee Calendar (Item 10.1)**

**(Wilson/Ferguson)**

That the 2022 Council and Committee Calendar be approved, as presented.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

- YES - Councillor Maureen Wilson
- YES - Chair Terry Whitehead
- NOT PRESENT - Councillor Arlene VanderBeek
- YES - Councillor Lloyd Ferguson
- YES - Councillor Maria Pearson
- YES - Councillor Brad Clark

**2. Recording of Closed Session Meetings (FCS20090 / LS20027) (City Wide) (Item 10.2)**

**(Ferguson/Pearson)**

That Report FCS20090 / LS20027, respecting Recording of Closed Session Meetings, be received.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

- YES - Councillor Maureen Wilson
- YES - Chair Terry Whitehead
- NOT PRESENT - Councillor Arlene VanderBeek
- YES - Councillor Lloyd Ferguson
- YES - Councillor Maria Pearson
- YES - Councillor Brad Clark

**FOR INFORMATION:**

**(a) CHANGES TO THE AGENDA (Item 2)**

The Committee Clerk advised that there were no changes to the agenda.

**(Pearson/Clark)**

That the October 13, 2020 Agenda of the Governance Review Sub-Committee be approved, as presented.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

YES - Councillor Maureen Wilson  
YES - Chair Terry Whitehead  
NOT PRESENT - Councillor Arlene VanderBeek  
YES - Councillor Lloyd Ferguson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(b) DECLARATIONS OF INTEREST (Item 3)**

There were no declarations of interest.

**(c) APPROVAL OF MINUTES (Item 4)**

**(i) February 12, 2020 (Item 4.1)**

**(Pearson/Clark)**

That the Minutes of the February 12, 2020 meeting of the Governance Review Sub-Committee be approved, as presented.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

YES - Councillor Maureen Wilson  
YES - Chair Terry Whitehead  
NOT PRESENT - Councillor Arlene VanderBeek  
YES - Councillor Lloyd Ferguson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(d) DISCUSSION ITEMS (Item 10)**

**(i) Recording of Closed Session Meetings (FCS20090 / LS20027) (City Wide) (Item 10.2)**

**(Clark/Wilson)**

That legal staff be directed to investigate as to whether a member of Council in Ontario has been subpoenaed regarding Closed Session Meetings and report back to the Governance Review Sub-Committee.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

YES - Councillor Maureen Wilson  
YES - Chair Terry Whitehead  
NOT PRESENT - Councillor Arlene VanderBeek  
YES - Councillor Lloyd Ferguson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(e) GENERAL INFORMATION/OTHER BUSINESS (Item 13)**

**(i) Changes to the Outstanding Business List (Item 13.1):**

**(Pearson/Ferguson)**

That the following amendment to the Outstanding Business List, be approved:

**(a) Item to be Removed:**

Recording of In Camera Sessions (Referred from the January 22, 2020 Meeting of Council)  
Added: February 12, 2020 at Governance Review Sub-Committee - Item 11.2  
Completed: October 13, 2020 at Governance Review Sub-Committee - Item 10.2  
OBL Item: 20-C

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

YES - Councillor Maureen Wilson  
YES - Chair Terry Whitehead  
NOT PRESENT - Councillor Arlene VanderBeek  
YES - Councillor Lloyd Ferguson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(f) ADJOURNMENT (Item 15)**

**(Pearson/Ferguson)**

That, there being no further business, the Governance Review Sub-Committee meeting be adjourned at 2:26 p.m.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

YES - Councillor Maureen Wilson  
YES - Chair Terry Whitehead  
NOT PRESENT - Councillor Arlene VanderBeek  
YES - Councillor Lloyd Ferguson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

Respectfully submitted,

Councillor T. Whitehead, Chair  
Governance Review Sub-Committee

Angela McRae  
Legislative Coordinator  
Office of the City Clerk



**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
**City Clerk's Office**

<b>TO:</b>	Members of Governance Committee
<b>COMMITTEE DATE:</b>	December 2, 2020
<b>SUBJECT/REPORT NO:</b>	Integrity Commissioner Work Plan (FCS20016(a)) (City Wide) <b>(Outstanding Business List Item)</b>
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Andrea Holland (905) 546-2424 Ext. 5409
<b>SUBMITTED BY:</b>	Andrea Holland City Clerk, Office of the City Clerk
<b>SIGNATURE:</b>	

### RECOMMENDATION(S)

That the Integrity Commissioner's Work Plan outlined in Appendix A be approved;

That the City Clerk be directed to manage the delivery of the Integrity Commissioner's Work Plan as outlined in Appendix A; and

That completed Work Plan items outlined in Appendix A be presented to General Issues Committee for discussion.

### EXECUTIVE SUMMARY

At the February 26, 2020 meeting of Council, Principles Integrity were appointed as the City of Hamilton's Integrity Commissioner.

At the General Issues Committee meeting,

"staff were directed to report back to GIC with recommendations for implementing a code of conduct, applicable to the Council-appointed-citizen members of independent external boards and agencies, including addressing the use of discriminatory language or actions, and the receiving of gifts or benefits by citizen board/agency members as well as the inclusion of a confidentiality agreement and remedies available to Council to address breaches of conduct and confidentiality such as Council's right to recall"

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Integrity Commissioner Ethical Review (1111) (City Wide) - Page 2 of 3**

The Integrity Commissioner's work plan is attached in Appendix A for Committee's discussion. The staff direction above has been added to the work plan in order to ensure consistency of codes of conduct for all areas of the governance framework.

**Alternatives for Consideration –Not Applicable****FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: All financial costs associated with this work plan will be funded through IC-Lobbyist Registrar (Account Number 300400), as per Council approval on February 26, 2020.

Staffing: N/A

Legal: Legal staff will participate in the staff review of policies or codes prior to presentation to Committee for consideration.

**HISTORICAL BACKGROUND N/A****POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

*Bill 68, the Modernizing Ontario's Municipal Legislation Act, 2017*, which received Royal Assent on May 30, 2017, expanded the responsibilities of the Integrity Commissioners and required that all municipal governments provide access to an Integrity Commissioner and either appoint its own Integrity Commissioner or make provisions that the services of an Integrity Commissioner be provided by another municipality by March 1, 2019.

The *Municipal Act, 2001*, as amended, Part V.1 Accountability and Transparency, section 223.2 to 223.12 (Appendix 'A') outlines the requirements for City Council "to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality". Council has expressed their intent to retain their own Integrity Commissioner and Lobbyist Registrar and to not provide that service through another municipality.

Sections 223.9 of the Act authorizes a municipality to establish and maintain a Lobbyist Registry which is a publicly accessible accountability and transparency tool that records and regulates the activities of those persons who lobby public office holders.

Section 223.11 authorizes a municipality to appoint a Lobbyist Registrar who is responsible for performing, in an independent manner, the functions assigned to it by the municipality with respect to its Lobbyist Registry.

Section 270.2.1 mandates a policy of "the relationship between members of council and the officers and employees of the municipality." Currently, Council and Administration are



**SUBJECT: Integrity Commissioner Ethical Review (1111) (City Wide) - Page 3 of 3**

without a separate Council-Staff Relationship Policy as per the *Municipal Act 2001*, as amended. This is addressed as part of the Integrity Commissioner's Work Plan.

**RELEVANT CONSULTATION N/A**

**ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

In January 2020, Council approved "Trust and Confidence in City Governance" as one of the Council Term Priorities. The work outlined within the Work Plan attached in Appendix A supports Council Term Priorities, the statement of work outlined within the RFP and the staff direction approved by Council.

**ALTERNATIVES FOR CONSIDERATION**

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix 'A' – Integrity Commissioner Work Plan



December 2, 2020

Governance Committee  
City of Hamilton

### Ethical Framework Program of Review

Principles *Integrity* is pleased to submit the following proposal for a program of review for the City of Hamilton's Ethical Framework<sup>1</sup>.

#### Background

The purpose of this report is to seek Council's endorsement of a process for the review of council policies that form part of the city of Hamilton's ethical framework.

In particular this report recommends a pathway for Councillor's review or development of:

- Council Code of Conduct
- Council/Staff Relations Policy
- Protocols for review and/or investigation of complaints, and reporting on complaints
- Members' roles and responsibilities including with respect to appointments to, and sitting on, external bodies and separate entities such as municipal corporations
- Advisory Committee/Task Force Governance Issues, and Codes of Conduct (Local Boards)
- Such Other issues of integrity or governance that Council wishes to assign

The objective is to provide Council with a framework that reflects best practices that have developed in the dozen years since the City of Hamilton adopted a Code of Conduct, being one of the first Ontario municipalities to do so.

This work is timely. The recommendations of the Collingwood Judicial Inquiry on Transparency and the Public Interest were released on November 2nd. That report helps to inform best practices on the contents of codes of conduct, the roles of elected and appointed officials, as well as other important considerations relating to transparency and accountability in municipal government.

As Council is aware, a judicial review application is pending in response to a recent Council decision that arose from a complaint Council filed with the Integrity Commissioner in which allegations of non-compliance were raised about the Chair of an advisory committee. One of the matters at issue in the application is the applicability of code of conduct provisions affecting the city's advisory committees. A review of components of

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<sup>1</sup> Though the ethical framework includes the City's Lobbyist Registry By-law, that by-law is not being proposed for review until the bulk of the work plan identified in this report has been concluded.

the City's ethical framework will hold in abeyance the issues in contention in the judicial review pending the hearing of the matter, which is anticipated to occur in June 2021. The bulk of the work identified above can proceed immediately.

### Principles of Our Proposed Approach

#### *Primacy of Council*

Council's role is to set the vision and direction for the City, adopt the policies that guide and govern the municipality, assign the resources to achieve Council's objectives, and ensure fiscal and fiduciary oversight is in place.

The role of Council's Committees, and its staff, is to make recommendations to Council, recognizing that Council is the decision-maker. Committees also serve as the primary forums for stakeholder input, and the assessment of data, expertise and lived experiences, so that recommendations to Council can be fully researched and informed.

Ultimately, Council will make a decision based on the recommendations it receives and other inputs it considers. At the end of the day Council must make a decision which weighs a variety of factors in order to arrive at a resolution which, in its view, best serves community interests.

#### *Pragmatism and Sustainability*

Compliance with regulation should not be considered the sole objective of an ethical framework. Rather, a system that supports the Members of Council in discharging their duty to serve the public interest, *while* not breaching ethical standards, should be the appropriate target in setting an ethical framework.

As such the protocols which guide complaints and investigations, which support the appropriate levels of procedural fairness, and which accommodate public input at the right places, should be adaptive, flexible, and as minimally prescriptive as possible. Using the principles of procedural fairness as a touchstone, and respect for the statutory and conventional roles of councillors, procedural rules that support the ethical framework should be focused on meaningfully serving the public interest and not just step-wise compliance.

Council operates within a system of statutory and court-made laws and so its ethical framework should reference Council's and councillors' legal obligations. The principle statutory touch-points are the *Municipal Act*, the *Municipal Conflict of Interest Act*, the *Occupational Health and Safety Act*, and the *Municipal Freedom of Information and Protection of Privacy Act*.

The ethical framework should be framed in such a way, however, that places the focus on guidance rather than compliance. Though ethical policy provisions must have teeth, they should nevertheless be structured as educational and guiding documents rather than prohibitions and prescriptions.

### *The Public Interest in Transparent and Accountable Municipal Government*

As noted in the Collingwood Judicial Inquiry Report, “the importance of maintaining and enhancing a culture of integrity for Council, staff, and those who wish to deal with municipalities is fundamental to good government at the local level.”

Municipalities across the province have now adopted ethical frameworks, including codes of conduct, as a result of *Municipal Act* mandatory provisions that came into force in 2019. Many of those municipalities had codes of conduct in place prior to them becoming mandatory.

It is no longer necessary to craft codes of conduct (and related policies) from scratch. The review will take advantage of traditional and emerging code themes so that Council can focus on the provisions most important to the Hamilton context.

Public confidence in the ethical behaviour of their elected officials is the glue which sustains local democracy and it will be important for Council’s constituents to know that the Hamilton ethical framework meets, or exceeds, standards in place elsewhere.

One emerging standard involves broadening what previously was considered by some to be the limits of provisions governing the avoidance of conflicts of interest. As noted in the Collingwood Judicial Inquiry Report:

It was apparent that all Council members were aware of the *Municipal Conflict of Interest Act*. It was also apparent that it is far too easy to misconstrue the *Municipal Conflict of Interest Act* as addressing all the kinds of conflict of interest that Council members must confront. Despite its name, the *Municipal Conflict of Interest Act* does not provide a complete conflict of interest code for municipal actors. It addresses the pecuniary interests of a narrowly defined group of family members related to a Council member which are by virtue of the *Act* deemed to be pecuniary interests of the Council member. Council members are obligated to avoid all forms of conflicts of interest or, where that is not possible, to appropriately disclose and otherwise address those conflicts.

The City’s ethical framework should guide Councillors in recognizing and avoiding conflicts between their private interests and their public responsibility to act in the best interests of the City, and that guidance must go beyond mere compliance with the *Municipal Conflict of Interest Act*.

Likewise, provisions must clarify Members’ roles and responsibilities, and the limits of the exercise of their authority, to guide them in avoiding the application of undue influence.

To support public confidence in Council's commitment to its ethical framework, there must exist an accessible complaint process. Complaint protocols must prevent unnecessary barriers, but at the same time ensure that frivolous or vexatious complaints, or ones that are out of scope or jurisdiction, are resolved early. Where matters of a minor nature can be resolved satisfactorily without a public recommendation report, there should be opportunity for early disposition. The protocols in the ethical framework should also speak to the independence of the integrity commissioner and the requirement for the integrity commissioner to ensure procedural fairness, while focusing on best serving the public interest.

### *Conduct, Decorum and Respectful Behaviour*

Provisions respecting Member conduct, decorum and respectful behaviour apply with respect to members of the public, staff and each other. Adherence to rules that support proper decorum in all settings not only support effective deliberation, but they foster open exchanges of information and ideas regardless of the setting (including on social media). More than any other factor, the presence of disrespectful behaviour tends to undermine public confidence in the municipality, and Council in particular.

### Work Plan

On a schedule to be established in consultation with the City Manager and the City Clerk, the Integrity Commissioner will present the following draft documents for discussion and consideration at [General Issues Committee/Governance Committee], and generally in the following order.

1. Council Code of Conduct [Q1 2021]
2. Council/Staff Relations Policy [Q1 2021]
3. Protocols for review and/or investigation of complaints, and reporting on complaints [Q2 2021]
4. Members' roles and responsibilities including with respect to appointments to, and sitting on, external bodies and separate entities such as municipal corporations [Q2 2021]
5. Advisory Committee/Task Force Governance Issues, and Codes of Conduct (Local Boards) [Q3 2021]
6. Such other issues of integrity or governance that Council wishes to consider, including an evaluation of the Lobbyist Registry By-law.

Respectfully submitted,

Principles *Integrity*

Integrity Commissioner for the City of Hamilton