



City of Hamilton
GENERAL ISSUES COMMITTEE
AGENDA

Meeting #: 22-003
Date: January 17, 2022
Time: 9:30 a.m.
Location: Due to the COVID-19 and the Closure of City Hall (CC)

All electronic meetings can be viewed at:

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

City's YouTube Channel:
<https://www.youtube.com/user/InsideCityofHamilton> or Cable 14

Stephanie Paparella, Legislative Coordinator (905) 546-2424 ext. 3993

1. CEREMONIAL ACTIVITIES
2. APPROVAL OF AGENDA
(Added Items, if applicable, will be noted with *)
3. DECLARATIONS OF INTEREST
4. APPROVAL OF MINUTES OF PREVIOUS MEETING
5. COMMUNICATIONS
6. DELEGATION REQUESTS
7. CONSENT ITEMS
8. STAFF PRESENTATIONS
 - 8.1. Code Conduct for Boards and Committees - Integrity Commissioner Work Plan (FCS21081(a)) (City Wide)

9. PUBLIC HEARINGS / DELEGATIONS

- 9.1. Rebecca Banky (Chair) and Cameron Kroetsch, LGBTQ Advisory Committee, respecting Changes to the Code of Conduct for Advisory Committees

10. DISCUSSION ITEMS

11. MOTIONS

12. NOTICES OF MOTION


13. GENERAL INFORMATION / OTHER BUSINESS

14. PRIVATE AND CONFIDENTIAL

15. ADJOURNMENT



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
City Clerk's Office

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	January 17, 2022
SUBJECT/REPORT NO:	Code of Conduct for Boards and Committees - Integrity Commissioner Work Plan (FCS21081(a)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Andrea Holland (905) 546-2424 Ext. 5409
SUBMITTED BY:	Andrea Holland City Clerk, Office of the City Clerk
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the By-law "Code of Conduct for Local Boards", contained in Appendix "A" attached to Report FCS21081(a), which has been prepared in a form satisfactory to the City Solicitor, be passed;
- (b) That, subject to the approval of Recommendation (a) of Report FCS21081(a), all entities listed in Appendix "B" attached to Report FCS21081(a) replace their current Code of Conduct with the Code of Conduct for Local Boards, attached as Appendix "A" to Report FCS21081(a);
- (c) That, subject to the approval of Recommendation (a) of Report FCS21081(a), the Code of Conduct for Local Boards, attached as Appendix "A" to Report FCS21081(a), apply to all entities created in the future which meet the definition of "Local Board" within the Code of Conduct for Local Boards;
- (d) That, subject to the approval of Recommendation (a) of Report FCS21081(a), the draft By-Law "To Amend By-law 21-021, a By-law to Govern the Proceedings of Council and Committees of Council", attached as Appendix "C" to Report FCS21081(a), which has been prepared in a form satisfactory to the City Solicitor, be passed;
- (e) That, subject to the approval of Recommendation (a) of Report FCS21081(a), the City Clerk be authorized and directed to delete Appendix "G" of the Advisory

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**SUBJECT: Code of Conduct for Boards and Committees - Integrity Commissioner
Work Plan (FCS21081(a)) (City Wide) - Page 2 of 5**

Committee Procedural Handbook and make the necessary edits in the Handbook to reflect the new Code of Conduct for Local Boards; and,

- (f) That, subject to the approval of Recommendation (a) of Report FCS21081(a), the City Clerk be directed to develop and deliver a training program, with the Integrity Commissioner, for all current Members of the entities listed in Appendix "B" attached to Report FCS21081(a) on the new Code of Conduct for Local Boards.

EXECUTIVE SUMMARY – N/A

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Work conducted by the Integrity Commissioner is currently budgeted in account 300400.

Staffing: The preparation and delivery of the training program with the Integrity Commissioner will be completed using existing staffing compliment.

Legal: n/a

HISTORICAL BACKGROUND

At the Council meeting on October 13, 2021; Council approved the following motion:

- (a) That the City Clerk be directed to circulate the draft Code of Conduct, attached as Appendix A to all entities listed in Appendix B, established by Council and whose membership is appointed by Council;
- (b) That the City Clerk coordinate all feedback on the draft Code of Conduct, and it be directed to the Integrity Commissioner; and
- (c) That the City Clerk arrange for a Special General Issues Committee meeting for the Integrity Commissioner to present the feedback received and the draft Code of Conduct, attached as Appendix A.

In October 2021, Clerks staff circulated an email to all staff liaisons for circulation to council appointed committee members with the following information as per Council's direction:

- The draft Code of Conduct for their review and feedback;

SUBJECT: Code of Conduct for Boards and Committees - Integrity Commissioner Work Plan (FCS21081(a)) (City Wide) - Page 3 of 5

- [GIC October 6, 2021 - agenda](#)
 - [Code of Conduct for Boards and Committees - Integrity Commissioner Work Plan \(FCS21081\) \(City Wide\)](#)
 - [Appendix A - Draft Code of Conduct](#)
- All members were asked to comment and direct any questions directly to Principles Integrity, the Integrity Commissioner, through their contact information **by November 30, 2021**;
 - Principles Integrity would be presenting the draft code of conduct and all feedback received (any comments will be anonymized), at a Special GIC meeting;
 - At this meeting, committee would be deliberating the draft code of conduct and any members of the public would be provided the opportunity to register to delegate at the meeting. This date would be provided to all appointees once it was scheduled.

On or about November 3, 2021 Clerks staff circulated an email to all staff liaisons for circulation to council appointed committee members confirming that the Special GIC meeting had been scheduled for January 17, 2022; their opportunity to provide correspondence to Committee; a link to the Request to Speak to Committee of Council Form and the original email with all of the materials; contact information for the Integrity Commissioner and that they still had until the end of November to provide their feedback.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Under the *Municipal Act, 2001*, as amended, municipalities are required to establish codes of conduct for Local Boards:

Code of conduct

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards.

The Hamilton Advisory Committee/Task Force Code of Conduct (the “Current Code of Conduct”) is included as Appendix I of By-law 21-021, a By-law to Govern the Proceedings of Council and Committees of Council. Staff are recommending that Appendix I be deleted and the new Code of Conduct for Local Boards, attached as Appendix “A” to Report FCS21081(A), become a stand-alone By-Law as it is not related to meeting procedures.

The Current Code of Conduct is included as Appendix “G” of the Advisory Committee Procedural Handbook (the “Handbook”). Staff are recommending that Appendix “G” be

**SUBJECT: Code of Conduct for Boards and Committees - Integrity Commissioner
Work Plan (FCS21081(a)) (City Wide) - Page 4 of 5**

deleted from the Handbook and the necessary edits be made to reflect the new Code of Conduct for Local Boards.

The Procedural By-law is also being amended to reflect the new process for declaring interests.

RELEVANT CONSULTATION

As per Council direction, the Draft Code of Conduct for Local Boards was circulated to all members identified in Appendix “B” of Report FCS21081 in October of 2021 and feedback was gathered by the Integrity Commissioner.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Staff are recommending that the draft By-law, “Code of Conduct for Local Boards” contained in Appendix “A” of Report FCS21081(A) be approved and enacted and that it be applied to all ‘Local Boards’ including ‘Adjudicative Boards’ which function as Tribunals (“Tribunals”) as listed in Appendix “B” of this report, together with any entities created in the future which meet the definition of ‘Local Board’ contained within the Code of Conduct for Local Boards. While Tribunals are governed by the *Statutory Powers and Procedures Act* together with any enabling legislation, and while some of the Tribunals listed in Appendix “B” have adopted their own Code of Conduct, for consistency staff are recommending all citizens appointed by Council to Local Boards including Tribunals be held to the same Code of Conduct.

The listing of entities to which the Code of Conduct for Local Boards would apply, has been limited to Local Boards including Tribunals that have been created by, are governed by, and whose Member are appointed by Council.

ALTERNATIVES FOR CONSIDERATION – N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Our People and Performance

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

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” –Draft By-law, “Code of Conduct for Local Boards”

**SUBJECT: Code of Conduct for Boards and Committees - Integrity Commissioner
Work Plan (FCS21081(a)) (City Wide) - Page 5 of 5**

Appendix "B" – Citizen Member Local Boards and Adjudicative Boards

Appendix "C" – Draft By-Law to Amend By-law 21-021, a By-law to Govern the Proceedings of Council and Committees of Council

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Appendix "A" to Report FSC21081(a)

Page 1 of 10

Authority: Item,
Report (FSC21081(a))
CM:
Ward: City Wide

Bill No.

CITY OF HAMILTON

BY-LAW NO.

To ESTABLISH A CODE OF CONDUCT FOR LOCAL BOARDS

WHEREAS sections 8, 9 and 10 of the *Municipal Act*, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes; and

WHEREAS subsection 223.2(1) of the *Municipal Act*, 2001 requires the City of Hamilton to establish a code of conduct for members of its local boards;

NOW THEREFORE the Council of the City of Hamilton enacts the following Code of Conduct for Local Boards:

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. The Code of Conduct for Local Boards shall be as set forth in Schedule 1 to this By-law.
2. This By-law comes into force on the day it is passed.

PASSED this _____, 2022.

Fred Eisenberger
Mayor

Andrea Holland
City Clerk

Schedule 1

CITY OF HAMILTON
CODE OF CONDUCT FOR LOCAL BOARDS

Part 1

General Introduction, Framework, and Interpretation
Guiding Principles

- 1: Avoidance of Conflicts of Interest
- 2: Gifts, Benefits and Hospitality
- 3: Confidential Information
- 4: Use of City Resources
- 5: Election Campaigns
- 6: Improper Use of Influence
- 7: Business Relations
- 8: Member Conduct
- 9: Media Communications
- 10: Respect for the Town By-laws and Policies
- 11: Respectful Workplace
- 12: Conduct Respecting Staff
- 13: Reprisals and Obstructing
- 14: Acting on Advice of Integrity Commissioner

Part 2

Adjudicative Boards

- 15: Additional Requirements for Members of Adjudicative Boards
- 16: Communications with Parties
- 17: Independent Nature of Adjudicative Tribunals

Part 3

Complaint Protocol
Consequences of Failure to Adhere to Code of Conduct

Part 1

General Introduction, Framework, and Interpretation

This document is a Code of Conduct for members of Local Boards, both adjudicative and non-adjudicative. Local Boards, sometimes referred to as committees or tribunals, are as defined in s.223.1 of the *Municipal Act* and as identified by the municipality.

This Code of Conduct is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein. Commentary in this Code is illustrative and not exhaustive.

Members shall seek to serve the public interest by upholding both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and by City Council. The provisions of this Code are intended to be applied in concert with existing legislation and go beyond the minimum standards of behaviour set out in current federal and provincial statutes.

Guiding Principles

Members shall act with honesty and integrity, serving in a diligent manner, and performing their duties in a manner which promotes public confidence.

Members are expected to perform their duties as a member of the Local Board and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

Members shall serve the public in a conscientious and diligent manner.

Members should be committed to performing their functions with integrity, impartiality and transparency.

Members shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

There is a benefit to municipalities when Members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.

Definitions:

“Adjudicative Board” means a Local Board that functions as a tribunal

“Council” means the Council of the City of Hamilton

“Family” includes “child”, “parent” and “spouse” as those terms are defined in the *Municipal Conflict of Interest Act*, and also includes

- step-child and grand-child;
- siblings and step-siblings;

Appendix “A” to Report FSC21081(a)

Page 4 of 10

- aunt/uncle, and niece/nephew
- in-laws, including mother/father, sister/brother, daughter/son
- any person who lives with the Member on a permanent basis.

“Local Board” means a Local Board as defined in s.223.1 of the *Municipal Act*, or s. 1 of the *Municipal Conflict of Interest Act*, and includes citizen advisory committees and other bodies established by Council whose members are appointed by Council;

“Member” means a member of a City of Hamilton Local Board;

“Staff” includes employees, seasonal and contract workers, and volunteers of the City of Hamilton and/or of a City of Hamilton Local Board;

Rule 1: Avoidance of Conflicts of Interest

In this Rule:

1. A disqualifying interest is an interest in a matter regarding which a reasonable person fully informed of the facts and circumstances would conclude that the Member could not participate impartially in the decision-making process related to the matter either because to do so would not be in compliance with the *Municipal Conflict of Interest Act*, or, because the Member’s relationship to persons or bodies involved in the matter or affected by the decision is so close, a reasonable person would conclude that the Member could not effectively carry out their public duty with impartiality.

2. A non-disqualifying interest is an interest in a matter that, by virtue of the relationship between the Member and other persons or bodies associated with the matter, is of such a nature that a reasonable person fully informed of the facts and circumstances would conclude that the Member could still participate impartially in the decision-making processes related to the matter only so long as:

The Member fully discloses the interest so as to provide transparency about the relationship; and

The Member states why the interest does not prevent the Member from making an impartial decision on the matter.

3. Members shall not participate in the decision-making processes associated with their role or position when they have a disqualifying interest in a matter. Participation includes attempting to influence an outcome, whether the decision to be made is to be made by the Local Board or a member of staff with delegated authority or operational responsibility.

4. Members may participate in the decision-making process related to a matter in which they have a non-disqualifying interest provided they file at their earliest opportunity a Transparency Disclosure in a form and manner established by the City Clerk acting in consultation with the Integrity Commissioner.

5. Members shall avoid participating in or influencing a proceeding when the member, or another person with whom the member has a close personal or professional relationship,

Appendix “A” to Report FSC21081(a)**Page 5 of 10**

has a financial or other private interest that may be affected by the proceeding or its outcome.

6. Members shall not appear before their Local Board on their own behalf or as a representative on behalf of any party.

7. Members shall not contract with the Local Board for the sale, rental or purchase of supplies, services, material or equipment, and shall not engage in the management of a business or otherwise profit directly or indirectly from a business that relies on an approval from the Local Board.

Commentary

Members of BIAs will frequently have an interest in common with other members of the BIA in matters that come before the Board, and as such would be exempted from the obligation to declare a disqualifying interest. Care should be taken however to recognize the existence of a disqualifying interest when the Member stands to gain or otherwise benefit in a manner that can be differentiated from others in the BIA. For example, while all members of the BIA would similarly benefit from the holding of a festival, any BIA member who supplies goods or services to the festival at a profit or loss would have a disqualifying interest in the event. The display of merchandise or the promotion of services at an event would not amount to a disqualifying interest.

Where a Member contributes to an event ‘at cost’, a disqualifying interest would not arise.

Rule 2: Gifts, Benefits and Hospitality

No Member shall accept any fee, gift or benefit that is connected, directly or indirectly, with the performance of the Member’s duties, except as permitted by one or more of the exceptions listed below:

- compensation authorized by law;
- such gifts or benefits that can be considered incidental mementos or tokens of appreciation

Rule 3: Confidential Information

Confidential information includes any discussion that takes place between members of the Local Board when it is in a closed meeting; and includes information in the possession of, or received in confidence by, that the board or 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”).

No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law, or authorized to do so by the Local Board or, if applicable, by Council.

Appendix “A” to Report FSC21081(a)**Page 6 of 10**

No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation, either directly or indirectly.

Rule 4: Use of City Resources

No Member should use municipal equipment , or permit the use of Local Board or City land, facilities, equipment, supplies, services, staff or other resources (for example, Local Board or City-owned materials, websites, Local Board and City transportation delivery services,) for activities other than the business of the Local Board or the City; nor should any member obtain personal financial gain from the use or sale of Local Board or City-developed information, intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the Local Board or City.

Rule 5: Election Campaigns

No member, while identifying themselves as a member of a Local Board, shall undertake any election campaign or election-related activities or work on, fund-raise, endorse or otherwise contribute to the election campaign of any person running in the municipal election for the municipality where the member serves on the Local Board.

Rule 6: Improper Use of Influence

No member shall use the influence of his or her position for any purpose other than the duties as a member of the Local Board.

Rule 7: Business Relations

No member shall allow the prospect of future employment by a person or entity to affect the performance of his/her duties as a member of the Local Board.

Rule 8: Member Conduct

Members shall conduct themselves with decorum at all times.

Members shall maintain proper control over meetings demonstrating respect for everyone who is involved in the meeting.

Members are expected to attend all meetings of the Local Board. If a member misses more than three consecutive (3) meetings during their term, the Chair, after hearing and considering any explanation provided by the member, may ask the member to resign, or request that Council remove the member.

Commentary

Members recognize the importance of cooperation and shall endeavour to create an atmosphere that is conducive to solving the issues before the Board, listening to various points of view and using respectful language and behaviour in relation to all those in attendance.

Rule 9: Media Communications

Members shall accurately communicate recommendations and proceedings of their Local Board.

If a member is contacted directly by the media, the member should refer the media to the Chair, or in the absence of the Chair, to the Vice-Chair.

Commentary

A Member may state that they did not support a decision, or voted against the decision, however a Member must refrain from making disparaging comments about other Members or staff, or about the Board's processes and decisions, in doing so.

When communicating with the media, a Member should at all times refrain from speculating or reflecting upon the motives of other Members in respect of their actions on the Board.

Members who engage in social media should recognize that the rules around decorum and respect apply regardless of the communications medium used. Because social media posts attract participation by others, Members hosting such sites or accounts should consider articulating and posting their own policy of addressing how frequently they will monitor the site for the purpose of identifying and removing disparaging, abusive or hateful comments.

Rule 10: Respect for the Town By-laws and Policies

Members shall adhere to and encourage public respect for the Local Board, the municipality and its by-laws, policies and procedures.

Commentary

A Member must not encourage disobedience of a City by-law in responding to a member of the public, as this undermines confidence in the City and in the Rule of Law.

Rule 11: Respectful Workplace

Members are governed by the workplace harassment and workplace violence policies in place for staff, recognizing that integrity commissioner is responsible for the administration and investigation of complaints.

All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

Rule 12: Conduct Respecting Staff

Members shall be respectful of the role of staff to advise based on political neutrality.

Members shall respect the professionalism of staff, and not exert undue influence on staff.

Appendix “A” to Report FSC21081(a)**Page 8 of 10**

No Member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff, and all Members shall show respect for the professional capacities of the staff of the City.

Commentary

It is inappropriate for a Member to attempt to influence staff to circumvent normal processes in a matter, or overlook deficiencies in a file or application. It is also inappropriate for Members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the City Manager.

Rule 13: Reprisals and Obstructing

It is a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of their responsibilities, or to engage in any activity in retaliation against any person because they made a complaint to or otherwise communicated with the Integrity Commissioner.

Rule 14: Acting on Advice of Integrity Commissioner

Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.

Members seeking clarification of any part of this *Code* should consult with the Integrity Commissioner.

Part 2**ADDITIONAL REQUIREMENTS APPLICABLE TO MEMBERS OF ADJUDICATIVE LOCAL BOARDS**

Rule 15: In addition to the provisions applicable to Members of Non-adjudicative Local Boards, the following additional requirements are applicable with respect to the referenced rule:

Rule 2: Gifts, Benefits and Hospitality

Members should recuse themselves from any hearing, to avoid any perception of bias or conflict of interest which may arise as a result of a gift, benefit or hospitality which the Member may have received, from any of the parties or participants potentially affected by the decision of the Local Board.

Rule 5: Election Campaigns

Members of Adjudicative Local Boards are prohibited from fundraising for, endorsing, or otherwise contributing to the election campaign of any person running for a seat on Council.

Rule 9: Media Communications

Members of adjudicative boards should generally not comment to the media in relation to any decision made by the board or the rationale behind such decision. On the rare occasion when a comment may be appropriate, only the Chair shall serve as a media contact and all enquiries shall be referred to them.

Rule 16: Communications with Parties

Written communication to an adjudicative board shall take place only through the Secretary of the board or the appropriate municipal staff assigned to such board, and shall be copied to all parties or their representatives as appropriate. Oral communications with the adjudicative board about current proceedings shall take place only in the presence of or with the consent of all parties.

Where a party is represented by a representative, all communication between the adjudicative board and the party shall be through the representative, with the exception of notices of hearing, which shall be served upon all parties and their representatives known to the adjudicative board as appropriate.

Rule 17: Independent Nature of Adjudicative Boards

The Chairs of adjudicative boards should ensure that the actions of any member, as well as Council members and staff attending adjudicative board meetings, are consistent with the arm’s-length, quasi-judicial nature of the adjudicative board. Any actions compromising this position should be immediately dealt with by the Chair or panel chair.

An adjudicative board is required by the applicable laws to operate at arm’s-length from and independently of Council. Members should therefore not request members of Council to intervene on applications considered by the adjudicative board. Members should refrain from seeking advice on their roles and responsibilities from Council members. In clarifying their roles and responsibilities, members should seek advice from appropriate staff.

Part 3**COMPLAINT PROTOCOL**

The Complaint Protocol contained in the Council Code of Conduct applies with necessary modifications to complaints regarding members of Local Boards.

CONSEQUENCES OF FAILURE TO ADHERE TO CODE OF CONDUCT

Members who are found by the Integrity Commissioner to have failed to comply with the Code of Conduct for Local Boards may be subject to the following sanctions:

- (a) a reprimand; or
- (b) suspension of remuneration paid to the member in respect of his or her services as a member of the Local Board (if any).

Appendix “A” to Report FSC21081(a)

Page 10 of 10

Members may also be subject to such other remedial actions recommended by the Integrity Commissioner that directly flow from the action or behaviour of the member of the Local Board.

Members are subject to removal from the Local Board, or removal as Chair of the Local Board, by Council.

Appendix “B” to Report FCS21081(a)
Page 1 of 3

Name
Development Charges Stakeholders Sub-Committee
HMRF/HWRF Pension Administration
Physician Recruitment and Retention Steering Committee
Expanding Housing and Support Services for Women and Transgender Community Sub-Committee
Wentworth Lodge Heritage Trust Fund Sub-Committee
Advisory Committee for Persons with Disabilities
Business Improvement Area (BIA) Advisory Committee
Business Improvement Area Boards: <ul style="list-style-type: none"> • Ancaster Village BIA; • Barton Village BIA; • Concession Street BIA; • Downtown Dundas BIA; • Downtown Hamilton BIA; • International Village BIA; • King West BIA; • Locke Street BIA; • Main West Esplanade BIA; • Ottawa Street BIA; • Westdale Village BIA
Capital Projects Work In-Progress Review Sub-Committee
Cleanliness and Security in the Downtown Core Task Force
Agriculture and Rural Affairs Advisory Committee
Cross-Melville District Heritage Committee (Dundas)
Hamilton Municipal Heritage Committee

Appendix “B” to Report FCS21081(a)
Page 2 of 3

Name
Rental Housing Sub-Committee
Glanbrook Landfill Co-ordinating Committee
Hamilton Utilities Corporation Joint Advisory Committee
Mayor’s Intelligent Community Sub-Committee
Heritage Permit Review Sub-Committee
Hess Village Pedestrian Mall Authority
Advisory Committee for Immigrants and Refugees
Committee Against Racism
Hamilton Aboriginal Advisory Committee
Hamilton Women and Gender Equity Committee
Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee (LGBTQ)
Mundialization Committee
Food Advisory Committee
Hamilton Veterans Committee
Housing and Homelessness Advisory Committee
Seniors Advisory Committee
Arts Advisory Commission
Hamilton Cycling Committee
Keep Hamilton Clean and Green Committee
Waste Management Advisory Committee

Appendix “B” to Report FCS21081(a)
Page 3 of 3

Name
Hamilton Future Fund Board of Governors
Committee of Adjustment
Fence Viewers
Knowles Bequest Trust
Property Standards Committee
Community Benefits Protocol Advisory Committee
Election Compliance Audit Committee
Mayor’s Task Force on Economic Recovery

Appendix “C” to Report FSC21081(a)

Page 1 of 3

Authority: Item,
Report (FSC21081(a))
CM:
Ward: City Wide

Bill No.

CITY OF HAMILTON

BY-LAW NO.

**To Amend By-law No. 21-021, A BY-LAW TO GOVERN THE PROCEEDINGS OF
COUNCIL AND COMMITTEES OF COUNCIL**

WHEREAS Council enacted a Code of Conduct for Local Boards; and

WHEREAS to provide clarity and ease of reference, Council for the City of Hamilton has determined that it is desirable to amend By-Law 21-021; by amending sections 3.15 and 5.16, by amending section (g) of Appendix “H”, by deleting Appendix I – Hamilton Advisory Committee/Task Force Code of Conduct, and by amending section 3 of Appendix “J”;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. The amendments in this By-law include any necessary indexing, grammatical, numbering and lettering changes.
2. That Section 3.15 of By-law No. 21-021, be deleted in its entirety and the following be substituted:

3.15 Declarations of Interest
 - (1) In this Section:
 - (a) An “Interest” means a ‘disqualifying interest’ or a ‘non-disqualifying interest’ as such terms are defined within the Council approved Code of Conduct to which the member is bound.
 - (2) Where a member has declared an Interest at a meeting in accordance with a Council approved Code of Conduct to which the member is bound, the member, shall file a written statement with the Clerk.
 - (3) Where a member, has disclosed an Interest and filed a written statement with the Clerk, as required by subsection 3.15(2), the Clerk, shall:
 - (a) file the written statement by the member in the Declarations of Interest Registry;

Appendix “C” to Report FSC21081(a)**Page 2 of 3**

- (b) record the Interest in the minutes of the meeting;
- (c) file a record of the Interest recorded in the minutes of the meeting in the Declarations of Interest Registry; and
- (d) make the Declarations of Interest Registry available for public inspection.

3. That Section 5.16 of By-law No. 21-021, be deleted in its entirety and the following be substituted:

5.16 Declarations of Interest

- (1) In this Section:

(a) An “Interest” means a ‘disqualifying interest’ or a ‘non-disqualifying interest’ as such terms are defined within the Council approved Code of Conduct to which the member is bound.

(2) Where a member has declared an Interest at a meeting in accordance with a Council approved Code of Conduct to which the member is bound, the member, shall file a written statement with the Clerk.

(3) Where a member, has disclosed an Interest and filed a written statement with the Clerk, as required by subsection 5.16(2), the Clerk, shall:

- (a) file the written statement by the member in the Declarations of Interest Registry;
- (b) record the Interest in the minutes of the meeting;
- (c) file a record of the Interest recorded in the minutes of the meeting in the Declarations of Interest Registry; and
- (d) make the Declarations of Interest Registry available for public inspection.

4. Section (g) of Appendix H “Criteria for the Creation of Advisory Committees or Task Forces” is hereby deleted in its entirety and replaced with the following:

(g) Appointees shall seek to serve the public interest in accordance with the Council approved Code of Conduct for Local Boards.

5. Appendix I “Hamilton Advisory Committee/Task Force Code of Conduct” is hereby deleted.

6. Section 3 of Appendix “J” “Hearing Procedures for Development Charge Complaints- Section 20” is hereby deleted in its entirety and replaced with the following:

Appendix "C" to Report FSC21081(a)
Page 3 of 3

3. Interests

(1) In this Section:

(a) An "Interest" means a 'disqualifying interest' or a 'non-disqualifying interest' as such terms are defined within the Council approved Code of Conduct to which the member is bound.

(4) Where a member has declared an Interest at a meeting in accordance with a Council approved Code of Conduct to which the member is bound, the member, shall file a written statement with the Clerk.

(5) Where a member, has disclosed an Interest and filed a written statement with the Clerk, as required by section 3(2), the Clerk, shall:

(a) file the written statement by the member in the Declarations of Interest Registry;

(b) record the Interest in the minutes of the meeting;

(c) file a record of the Interest recorded in the minutes of the meeting in the Declarations of Interest Registry; and

(d) make the Declarations of Interest Registry available for public inspection.

7. This By-law comes into force on the day it is passed.

PASSED this _____ , 2022.

Fred Eisenberger
Mayor

Andrea Holland
City Clerk

City of Hamilton Local Board Code of Conduct

General Issues Committee
January 17, 2022

Principles *Integrity*

Jeffrey A. Abrams & Janice Atwood

Integrity Commissioner for the
City of Hamilton

Why we are here today

- Recommend the adoption of a Code of Conduct for the City's Local Boards (boards, advisory committees, task forces...)
- Provide an Overview of the Local Board Code of Conduct
- Respond to the Committee's Questions

Code of Conduct for Local Boards

- Code Guidance is an Important Aspect of Good Governance
- Local Board Codes of Conduct, and Access to an Integrity Commissioner, is Required under *Municipal Act*
- Local Boards: Established by Council, Serving a City Interest, Membership appointed by Council (some exceptions)
 - Adjudicative
 - Non-Adjudicative, includes Advisory

Purpose of a Local Board Code of Conduct

- Provides Basis for Guidance to Committee/Board Members
- Provides Framework for Ethical Accountability
- Helps Ensure the Primacy of Council

Access to Advice, Training

- *Municipal Conflict of Interest Act (MCIA)*
- Education and training on Code & MCIA
- Access to Integrity Commissioner
- Confidential, binding advice
- Independent review of complaints

Comments on Draft Code

- Beyond mandatory minimum requirements
- Reflects typical Local Board Code
- Feedback:
 - Minor edits
 - Clarifications

Code as a Guide

- A Code of Conduct is a Policy Document (“Code’ in a sense is a misnomer)
- As a Policy - to be given Broad Liberal Interpretation
- Code acts as a Guide for Members
- Purpose is to Support Ability of Local Boards to Support Council’s Needs



Specific Questions from Feedback

- Members ability to advocate on an issue
- Cannot appear before own body
- When advocating, should not hold out status as member of body
- Questions pertaining to body should be referred: to City staff or to Chair as appropriate
- Complaint Protocol

Questions

9

Presentation - Special General Issues Committee

January 17, 2022

Rebecca Banky, Cameron Kroetsch

LGBTQ Advisory Committee

Recommendations

That the Integrity Commissioner make the following changes and take into consideration the following suggestions with respect to the draft Code of Conduct for Advisory Committees (that it distributed to Advisory Committees).

The changes and suggestions have been grouped into the following categories -

- **General** - Applies to the whole document or applies broadly to the Advisory Committee itself
- **Definitions** - Something is unclear and should be defined or redefined to ensure that continuous interpretation of the Code of Conduct is not required
- **Responsibility** - The Code of Conduct identifies something that is either outside the scope of the reasonable responsibilities for a member of an Advisory Committee (or that should be)
- **Training** - Examples that illustrate that in order for a given section of the Code of Conduct to be enacted, further training would be required

General

1. Advisory Committees should not be classified as "local boards" as outlined both in the draft of the Code of Conduct and Appendix "B" to Report FCS21081. The implications of this classification will subject volunteers, who are not remunerated for their work, to everything outlined in the *Municipal Act*. Instead, they should be classified as "Advisory Committees" and a separate Code of Conduct should be developed for them that is subject to the City's Procedural By-law.

The general wording in the Code of Conduct suggests a homogeneity among

the bodies deemed "local boards". It is not the case that Advisory Committees, writ large, can be adequately compared with the other types of Committees, Sub-committees, Boards, Agencies, and Tribunals that are defined under the umbrella term "local board". It is necessary, whether or not Advisory Committees are ultimately defined as local boards, that any Code of Conduct consider their unique nature, position, and responsibilities.

2. The commentary in the Code of Conduct is too broad in that it purports to be "illustrative" and "not exhaustive". The vague or "not exhaustive" nature of the current Code of Conduct has been the source of confusion, misunderstanding, and harm. Continuing this practice will make it unnecessarily difficult for members of Advisory Committees to adhere to the Code of Conduct.

All of the applicable rules, regulations, and penalties should be clearly spelled out in this document in an exhaustive manner that removes the need for continuous interpretation and evaluation.

3. Members of Advisory Committees do not have access to the same legal resources as elected officials (e.g. the advice of the City Solicitor). As a result, it is unreasonable to suggest that members of Advisory Committees "[uphold] both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and by City Council."

It is further unreasonable to ask that members of Advisory Committees be required to understand what is required within the breadth of the statement, "The provisions of this Code are intended to be applied in concert with existing legislation and go beyond the minimum standards of behaviour set out in current federal and provincial statutes."

4. A Code of Conduct does not stand alone. It is necessarily understood in the context of the City's Procedural By-law, the Advisory Committee Handbook, and the Code of Conduct for City Council (or other bodies). It's important that before the Code of Conduct is enacted that these other documents are also reviewed and updated, especially the Advisory Committee Handbook. Revising these documents independently will create additional undue confusion and potential harm.

Traditionally, the work of Advisory Committees has been done somewhat

- informally. The changes to the Code of Conduct suggest an environment of increased formality and adherence to a broader set of laws and legislation that are not contemplated in the Advisory Committee Handbook. This imbalance must be remedied before these changes are considered.
5. It is not reasonable to suggest that Advisory Committees should be subject to the *Municipal Conflict of Interest Act*. Advisory Committees do not make decisions of a nature that would subject them to this legislation, in our opinion. Decisions that would create any potential conflict of interest are mitigated through a process of recommendation that first goes to a Standing Committee and ultimately to City Council. Downloading those responsibilities to individual volunteer members of Advisory Committees does not seem appropriate.
 6. It is disingenuous to state that Advisory Committees are subject to a "decision ... to be made ... by a member of staff with delegated authority or operational responsibility". This language completely elides the foundational relationship between Advisory Committees and City Council. It doesn't make sense that staff would have delegated authority over a body that makes recommendations to City Council. There are neither illustrative nor exhaustive examples in this document that would clarify that in any meaningful way. The current wording inappropriately creates hierarchies where none currently exist and should be made much clearer to avoid potential confusion.
 7. The clause "Members shall not appear before the Local Board or committee on their own behalf or as a representative on behalf of any party" (and the clause following it) elides the experiences, and rights to participation, of members of Two Spirit and LGBTQIA+ communities. It is often the case that members of the LGBTQ Advisory Committee (LGBTQAC) are also active in their communities and may, at times, need to come forward to ask for funds or other assistance on behalf of an organization that they are part of. This is often the case when considering past support for events related to the Trans Day of Remembrance (TDOR) or run by The AIDS Network or Pride Hamilton.

It will not always be possible, because of the overlapping responsibilities that are often part of the work done by members of these communities, to simply "not appear before" the LGBTQAC or ask it for assistance. If this cannot be accomplished, another process should be developed to account for this so

that individual organizations, of which there are relatively few, are not unduly harmed (similar to the provision outlined in the Code of Conduct for Business Improvement Areas).

8. There is currently no process that exists to identify "confidential information". The LGBTQAC, for instance, does not go into "closed session". If there is other information that is provided to the LGBTQAC that is considered "confidential" it would be important for there to be a process to clearly identify that information (similar to the process that City Council uses).
9. In the section entitled "Acting on Advice of the Integrity Commissioner" it appears that this information is about the Integrity Commissioner and not about a member of an Advisory Committee. If that's the case, this information should rightfully be put into a Code of Conduct for the Integrity Commissioner or better explained in relation to the responsibilities of members of Advisory Committees.

Definitions

In general the LGBTQAC felt that the terms used in this document were not very accessible, colonial in nature, legal in nature, and may alienate future members including youth or volunteers who have not undertaken a more formal education.

10. The "Guiding Principles" section of the document does not begin with a set of definitions that would describe several of the phrases used therein. Several of the phrases are unclear, subjective, or would require significant interpretation, including "honesty and integrity", "diligent manner", "public confidence", "private affairs", "bear close public scrutiny", "conscientious", "impartiality and transparency", "broad range of knowledge", and "active in their own communities".

In sum, there are an abundance of legal and other terms in this document, including those outside of this section (i.e. "reasonable person fully informed of the facts", "incidental mementos or tokens of appreciation"), that have not formed part of any training provided to Advisory Committees or definitions in the Code of Conduct.

11. The section entitled "Improper Use of Influence" is very vague in its

wording as the duties of someone on an Advisory Committee, with respect to what they can influence, have not been defined in any way. In order for members of Advisory Committees to understand how their influence may be used, it should be outlined exhaustively.

12. The section "Business Relations" does not provide context or examples. It is neither exhaustive nor illustrative.
13. The terms "decorum", "proper control", "respect", in the section entitled "Member Conduct" are subjective terms and should be properly defined in context (see comments above about other definitions for more clarity on this). While the subsection entitled "Commentary" is slightly illustrative, it does not properly define, contextually, how these terms are meant to be understood.
14. In the section entitled "Media Communications" the terms "accurately communicate recommendations and proceedings" and "disparaging comments" are not defined.

Further, these two terms do not seem to align with one another. The "Commentary" subsection suggests that speaking about "disparaging comments" would not be permitted even if those comments were accurate reflections of the proceedings of a meeting. This language seems to attempt to limit the kind of speech that is considered "accurate" in favour of avoiding commentary that would be considered critical or negative (one potential definition for the word "disparaging"). It is not the case that all of the recommendations and proceedings of an Advisory Committee could possibly be contained to such a narrow field or that it would be appropriate to attempt to limit the lawful speech of its members in order to to construct that narrowness.

15. In the section entitled "Reprisals and Obstructing" it is not clear how a member of an Advisory Committee could "obstruct the Integrity Commissioner". This should be clearly defined in context.

Responsibility

16. The Code of Conduct for Advisory Committees goes further than what

the legislation requires and further than the Code of Conduct for members of City Council.

Specifically, in the definition of "Family" it goes beyond what is prescribed in the *Municipal Conflict of Interest Act* to include "step-child and grand-child; siblings and step-siblings; aunt/uncle, and niece/nephew; in-laws, including mother/father, sister/brother, daughter/son; any person who lives with the Member on a permanent basis." If members of City Council are not held to this standard it seems unethical to hold members of Advisory Committees to it.

17. The section entitled "Election Campaigns" confers a greater responsibility on members of Advisory Committees than on members of City Council. The implication, as it's currently written, may be that members of Advisory Committees could neither participate in supporting a candidate in a municipal election nor could run in one themselves.

It is currently permissible for a member of City Council to both support other candidates in a municipal election (and there are many examples of this having happened) and be certified as a candidate in a municipal or other election, while continuing to fulfill the duties of their elected position as a City Councillor. It does not make sense that members of a lesser body, like an Advisory Committee, would be held to a higher standard than the standards imposed on members of City Council.

This section is also quite unclear and we may be misinterpreting it. It seems to suggest a situation whereby a member of an Advisory Committee would volunteer to assist a municipal campaign, for instance, to do administrative work. It would almost never be the case that someone would declare their relationship to an Advisory Committee to do that work, nor would there normally be an opportunity to do so. If this is about endorsing candidates, then it should be clearly stated. As it is currently written, it is difficult to imagine a scenario under which this would apply (other than what has been outlined above).

In other words, the "if" clause here is a scenario that would not likely

present itself outside of an endorsement. By leaving the wording as it is, it could be interpreted to mean exactly the opposite under a test of reasonability.

18. It is not appropriate for the Chair of an Advisory Committee, a volunteer, to be involved in conversation with individual members of committees about an "explanation provided", as outlined in the section entitled "Member Conduct". It is often the case that individual members of a committee will miss consecutive meetings for personal, medical, or other reasons that it would not be appropriate to disclose to the Chair of an Advisory Committee.

As stated earlier, and especially in Two Spirit and LGBTQIA+ communities, there are often overlapping duties, responsibilities, and community roles held by members of the LGBTQAC. The City of Hamilton must have a confidential process to deal with these matters that should be adjudicated by either City staff or the body that appointed these members to the LGBTQAC in the first place.

It has been the position of City Council that the application process, which often does not reveal confidential information of a personal or medical nature, is too confidential for members of the LGBTQAC to be permitted to participate in. The standard of confidentiality in this section would seem to require an even greater degree of caution, using that logic.

19. In the section entitled "Media Communications", it goes on to apply a retroactive force to all comments made on an individual member's social media accounts to the effect that members "should consider articulating and posting their own policy of addressing how frequently they will monitor the site for the purpose of identifying and removing disparaging, abusive or hateful comments."

This is not only a standard that members of City Council are not held to (the phrase "social media" is not even present in the current City Council Code of Conduct) but it is suggestive (i.e. "consider") rather than prescriptive. Language like this is vague and can have a chilling effect on the lawful speech of members of Advisory Committees if not carefully defined. The phrase "should consider" implies that this is

optional. This is not language that should form part of a Code of Conduct.

20. In the section entitled "Respect for the Town By-laws and Policies" there is an undue amount of responsibility placed on members of Advisory Committees who are not required to know, have not been provided access, and have not been provided with training with respect to all of the City's by-laws, policies, and procedures. It is unreasonable for individual volunteers on an Advisory Committee to be asked to undertake this responsibility. It is also not possible for a volunteer member of an Advisory Committee to be responsible for upholding the "Rule of Law". That is a very high standard and, again, language that does not appear in the Code of Conduct for City Council.

The LGBTQAC was concerned by the phrasing here that may suggest that members of Advisory Committees were required to uphold, validate, or otherwise affirm all of the City's by-laws. As a Committee representing members of marginalized, oppressed, and equity-seeking groups, it may be the advice of the Committee, or its members, to disagree with the City's by-laws or to take a contrary position to them. The advice that the Committee provides, which is in part based on the lived experience of its members, may challenge the enforcement of the City's by-laws. This is within the Committee's mandate and this form of healthy criticism should be acceptable to the City as long as it comes in the form of a recommendation.

21. In the section entitled "Conduct Respecting Staff" it is not reasonable for individual volunteers to be expected to understand the nature of the responsibility for staff to employ "political neutrality". While it is certainly important that volunteers treat staff with respect, it is up to staff to identify advice of this nature, not for volunteers to be expected to interpret when this may or may not be the case.

It is also not clear what "undue influence" is when speaking about volunteers' exertions towards staff. The "Commentary" subsection does not make any of this clear but rather introduces more terms that need defining including "normal processes" or "matters of administration". It is not clear how members of Advisory Committees

would become acquainted with these processes. Much of the language in this section is missing from the Code of Conduct for members of City Council. Again, it is unclear why there are different standards for members of "local boards" than for members of City Council.

Training

22. In the section entitled "Respectful Workplace", volunteers are required to adhere to policies that they have never seen with respect to "harassment and workplace violence" and training that they have never received with respect to applicable legislation.

It is also not clear if, by virtue of their position as volunteers, who are not remunerated by the City of Hamilton, if this applies only to their interactions during meetings, with City of Hamilton staff, with one another, or through combinations of these things. The obligation for individual members of volunteer Advisory Committees to "ensure that their environment is free from discrimination and harassment" supposes that those individuals have a degree of control over that environment which they do not. It is important to further define these terms.

In addition to these numbered recommendations, we ask that the Integrity Commissioner, or members of staff from the office of the City Clerk, directly engage with all Advisory Committees about this by attending meetings, delivering a summative presentation, and asking for direct feedback.

Background

The Integrity Commissioner, through the office of the City Clerk and the LGBTQ Advisory Committee's (LGBTQAC) Staff Liaison, distributed a draft of the changes it is proposing to the Code of Conduct for Advisory Committees.

The Integrity Commissioner asked for feedback on the draft. This is the only opportunity, and the only form through which, the LGBTQAC will have to provide this feedback.

The Chair of the LGBTQAC was the subject of an investigation by City Council, through its Integrity Commissioner, in 2020. Members of the LGBTQAC, including its Chair,

were interviewed as part of that investigation. The Committee made comments, in public, about that process, the Integrity Commissioner's ruling and Recommendation Report, and Council's decision. Some of the recommendations in this Citizen Committee Report reflect those public conversations.

The LGBTQAC had a further public discussion about the draft itself at its November 2021 meeting. The recommendations above also reflect that discussion.

Analysis / Rationale

While we appreciate being asked to respond in this manner, we do not have confidence that most Advisory Committees have received information about how they might, as a Committee, respond collectively through this process.

In fact, there were no written instructions provided outlining how an Advisory Committee, as a body, could provide feedback on this draft Code of Conduct, how an Advisory Committee might be permitted to delegate to the Special General Issues Committee meeting in January, or how, precisely, comments are supposed to be sent to the Integrity Commissioner (e.g. through a Citizen Committee Report or through other means). At present, the only formal tool available for Advisory Committees to communicate externally is through a Citizen Committee Report, which is why we have prepared our comments in this format.

It is the opinion of the LGBTQAC that the recommendations above be considered seriously and not be simply referred to a future training session for further clarification but rather that clarity be infused into the Code of Conduct itself. It is not appropriate to hold members of Advisory Committees accountable, with potential penalties enforced, simply with a promise of future training. Up to this point, the training provided to Advisory Committees in no way prepares members to adhere to either the current or draft Code of Conduct.

The training provided to Advisory Committees, given the vagueness of the Code of Conduct, would need to be exhaustive and extensive, and likely unreasonable for volunteers to undertake in good faith without significant ongoing support.

It would also potentially limit those eligible for participation as members of Advisory Committees to those applicants who already possess some or all of this training in advance. It is not clear how the City of Hamilton is meant to manage, fund, and deliver such a comprehensive training program to the hundreds of volunteers that make up

what are being defined here as "local boards". This does not appear to have been considered as part of the process to prepare this draft.

In any event, a program of training, approved along with this Code of Conduct, is necessary in order for volunteers, City Council, and the public to understand the nature and degree of responsibility required in order to participate as members of Advisory Committees.

In our opinion, it would not be possible to enact this Code of Conduct without exhaustive training and that should be taken into consideration before any part of this Code of Conduct is enacted.