



CITY OF HAMILTON
CITY MANAGER'S OFFICE
Legal Services Division

TO:	Chair and members of General Issues Committee
COMMITTEE DATE:	October 19, 2016
SUBJECT/REPORT NO:	Amendments to Integrity Commissioners By-law and Council Code of Conduct Recommended by the Integrity Commissioner (LS16022) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Janice Atwood-Petkovski x 4636
SUBMITTED BY:	Janice Atwood-Petkovski x 4636 City Solicitor, Legal Services Division
SIGNATURE:	

RECOMMENDATION

- (a) That By-law 08-154, the Integrity Commissioner By-law, be repealed and replaced with the by-law attached as Appendix "A" to Report LS16022, which addresses the following:
- (i) deletes the requirements for an Affidavit from the Complainant;
 - (ii) eliminates the \$100.00 fee;
 - (iii) deletes the penalty provisions, which will be included in the Code of Conduct; and,
 - (iv) incorporates appropriate housekeeping amendments, including renumbering for clarity and consistency; and,
- (b) That the by-law, attached as Appendix "B" to Report LS16022, being a by-law to amend Procedure By-law 14-300, by deleting and replacing Appendix "H" to Procedure By-law 14-300, the Code of Conduct for Members of Council, be enacted.

EXECUTIVE SUMMARY

On March 30, 2016 Council received and referred the recommendations of the Integrity Commissioner, contained in his Second Periodic Report Council, dated March 14, 2016, that Council request its City Solicitor, in consultation with the Integrity Commissioner, to review the Council Code of Conduct, in particular:

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- The requirement that complainants be required to submit an affidavit as opposed to simply in writing
- The requirement that complainants pay a \$100 fee
- Council's delegation of its power to impose penalties
- The requirement on the Integrity Commissioner to submit reports to individual Members of Council, where the report is provided to Council by the Clerk in any event.

At GIC April 6, 2016 a delegation from members of the Columbian community requested amendments to the Council Code of Conduct and authority of the Integrity Commissioner, which were referred to Governance Review Sub-Committee. The Integrity Commissioner and City Solicitor reviewed both the Integrity Commissioner By-law and the Council Code of Conduct. The above-noted matters have been considered in this review of the Integrity Commissioner By-law and Council Code of Conduct.

Highlights of Key Changes:

The key substantive changes recommended to the Integrity Commissioner By-law and the Council Code of Conduct are as follows:

Integrity Commissioner By-law:

- The requirement for complaints to be in the form of a sworn affidavit should be changed so that complaints may be made in writing directly to the Integrity Commissioner.
 - It is the experience of the Integrity Commissioner that the Affidavit requirement is onerous and does not add any greater value to initiating an investigation. Requiring complaint to be in writing achieves the same level of certainty and reliability.
- The \$100 refundable filing fee should be deleted.
 - It is the observation of the integrity Commissioner that the filing fee acts as a deterrent to complainants, and thus may hinder the perception of transparency and oversight.
- A provision has been added to encourage complainants to pursue informal resolution where possible.
- Provisions dealing with penalties for contravention by a member of Council should be deleted from the integrity Commissioner By-law and included in the Members Code of Conduct, it should be clarified that upon a report and recommendation by the Integrity Commissioner, Council may impose a

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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.

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reprimand or a penalty of up to 90 days suspension of remuneration along with any other actions within Council's powers.

- It is the Integrity Commissioner's opinion that the Municipal Act contemplates that the Integrity Commissioner's role is to investigate and report with recommendations, whereas it is the role of Council to impose the penalty: The Municipal Act, s.223.3(5) provides: "the municipality may impose either of the following penalties on a Member of Council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct".
- A provision has been added identifying additional consequences which the Integrity Commissioner may recommend that Council impose.

Council Code of Conduct:

- Provisions specifying Council's authority to reprimand or impose penalties upon the recommendation of the Integrity Commissioner should be set out in the Code of Conduct rather than the Integrity Commissioner By-law. For clarity, a provision will be included to reflect that changes are not retroactive.
- Definitions should be revised to reflect the Lobbyist Registry, as well as changing "family member" to reflect the Municipal Conflict of Interest Act.
- The 'Gifts and Benefits' provisions (s.4) should be amended to clarify that the exceptions regarding gift/benefits do not apply to a lobbyist under the Lobbyist By-law.
- Provisions prohibiting harassment by Members of Council should be expanded to include prohibitions against violence and against discriminatory behaviour.

In addition, a number of housekeeping amendments will be implemented, to add clarity (by changing "they" and "their" to specific pronouns as appropriate; aligning consistent numbering and formatting).

Alternatives for Consideration – *Not Applicable*

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: N/A

Staffing: N/A

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Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

- please see Executive Summary above

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

N/A

ANALYSIS AND RATIONALE FOR RECOMMENDATION

(Include Performance Measurement/Benchmarking Data if applicable)

N/A

ALTERNATIVES FOR CONSIDERATION

(Include Financial, Staffing, Legal and Policy Implications and Pros and Cons for each alternative)

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN – N/A

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report LS16022 – Integrity Commissioner By-law

Appendix “B” to Report LS16022 - Amending By-law to Appendix “H” of the Procedure By-law 14-300 – Code of Conduct for Members of Council