

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 Framework¹.

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

¹ 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