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October 3, 2024

**VIA EMAIL -- [janet.pilon@hamilton.ca](mailto:janet.pilon@hamilton.ca)**

Ms. Janet Pilon  
Manager, Legislative Services/Deputy Clerk  
Office of the City Clerk  
Hamilton City Hall  
71 Main Street West  
Hamilton, Ontario L8P 4Y5

Dear Ms. Pilon:

**RE: HAMILTON IC SERVICES  
Our File No. 976-100**

You requested that I review a report to the Audit, Finance and Administration Committee titled “Review of the Council Codes of Conduct at Other Municipalities Respecting Limiting or Prohibiting the Accepting of Gifts for Elected Officials” (the “Report”) and provide my comments and recommendations on the proposed changes contained therein. Please find my discussion of the Report and its proposed changes below.

### **Summary Opinion**

I support the proposed changes to the Code of Conduct (the “Code”) for the City of Hamilton (the “City”) contained in the Report, with the following recommended changes:

1. Definitions:
  - a. Define the term “loan” in section 1 of the Code; and
  - b. Amend the definition of “gift or benefit” to read “gift or *personal* benefit”;
2. Amend s. 4(5)(e), which requires Members to disclose “the circumstances under which [the gift] was provided and/or received” on a Disclosure Form, to require that members also disclose the terms of any loan they receive;
3. Include a review mechanism in s. 4(8) so that Member Disclosure Forms are submitted directly to the Integrity Commissioner for review, who will determine whether the disclosed gift or benefit contravenes the Code;

4. Modify the Report's proposal for s. 4(7) so that the Clerk determines whether a disclosed gift has significance or historical value for the City and require that the Member transfer the gift to the Clerk for the City's Archives while the Member still holds office.

A detailed explanation of my recommendations, along with draft clauses, is included below.

### **Overview**

The Report stems from a request by Council for the Clerk to review other municipal Codes of Conduct and report to the Audit, Finance and Administration Committee with recommendations on limiting or prohibiting elected officials from accepting gifts.

### **Proposed Amendments**

The proposed amendments to the Code of Conduct in the Report are as follows:

- S. 4(1): Add "loans" and the word "personal" before the defined term "benefit" to the list of items that members are prohibited from accepting when they are connected, directly or indirectly, with the performance of their duties, except when the items falls within a list of permitted exceptions;
- S. 4(2): Add "loans" and the word "personal" before the defined term "benefit" to the list of items that are deemed to be given to a Member when they are given to a Member's family, staff, person related to the member, or a corporation or body with which the Member is associated with the Member's knowledge and when they are directly or indirectly connected to the performance of the Member's duties;
- S. 4(5): Add "loans" and the word "personal" before the defined term "benefit" to the list of gifts or benefits that constitute permitted exceptions and must be disclosed by way of a Disclosure Form to the City Clerk within 30 days if the value of a single transaction or series of transactions from a single source during a calendar year exceeds \$200;
- S. 4(5): Amend the Disclosure Form fields to include; the estimated value of the gift received, what the Member intend to do with the it, and whether the gift will be left with the City;
- S. 4(6) Implement a Gift Registry that will publish Disclosure Statements and make them accessible to the public;

- S. 4(7): Require that gifts received by Members of Council that have significance or historical value for the City be left with the Clerk for the City's Archives when the Member ceases to hold office;
- S. 4(8): Require Members to return a gift or benefit that does not comply with the Code and be provided with an explanation why the gift or benefit cannot be accepted.

## Recommendations

### 1. Definitions

#### a. Define "Loan"

I recommend including a definition of the term "loan" in section 1 of the Code and for it to read as follows:

- (i) "loan" means delivery by a person or persons and receipt by a Member of a sum of money upon agreement, express or implied, to repay the sum with or without interest.<sup>1</sup> This does not include a loan obtained in accordance with the *Municipal Elections Act*, 1996, SO 1996, c 32, Sched.;

#### b. Amend the definition of "Benefit"

Section 1(g) of the Code defines the term "gift or benefit". I recommend amending the definition to include the word "personal" before the word "benefit".

### 2. Include an amendment to s. 4(5)(e) for loans

The Report proposes including section 4(5)(e) which would require Members to disclose "the circumstances under which [the gift] was provided and/or received" in a field on a Disclosure Form. I recommend including a provision that Members must disclose the terms of any loan(s) they received and that it read as follows:

- (e) the circumstances under which it was provided and/or received; and
- (i) where the gift or benefit is a loan, the Member shall also disclose the terms of the loan agreement, written or oral, pursuant to which the loan was given;

### 3. Include a Review Mechanism in s. 4(8)

The Report proposes that s. 4(8) require Members to return any gift or benefit that does not comply with the Code and be provided with an explanation as to why it does not comply. I

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<sup>1</sup> *A.C. Simmonds & Sons Ltd. v. M.N.R.*, 1989 CanLII 10096 (TCC), citing *Black's Law Dictionary*, 5th (1979) ed for how it defines the term "loan".

recommend that s. 4(8) specify that the Integrity Commissioner will review gifts that are disclosed in a Disclosure Form or that are the subject of a Code of Conduct complaint. To facilitate this review, Members should file Disclosure Statements with the office of the Integrity Commissioner instead of the office of the City Clerk.

Where the Integrity Commissioner finds that receipt of the gift or benefit contravenes the Code, I recommend that the Member be required to return the gift or its monetary value to the person giving the gift. To accomplish this goal, I recommend including the following clauses (7) and (8) from the Code of Conduct for the City of Toronto, with amendments, as follows:

4. (5) In the case of one or more fees, advances, gifts, loans or personal benefits referred to or included in any of paragraphs 4(3)(b), (h), (i), (j) or (k), if the value thereof, or if the total value of any one or more such fees, advances, gifts or benefits, provided to or received by, a Member from any one source during the course of a calendar year, exceeds \$200, the Member shall, within 30 days of such provision or receipt, or of reaching or exceeding such amount, file a disclosure statement with the *Integrity Commissioner*. The disclosure statement shall indicate...

...

(7) *On receiving a disclosure statement, the Integrity Commissioner must review whether it raises a question of whether there is a conflict between a private interest and the public duty of a member. If that is the case, the Integrity Commissioner must ask that member to justify receipt of the gift or benefit.*

(8) *If the Integrity Commissioner decides that the member's explanation does not justify the receipt of the gift as being appropriate, the Integrity Commissioner must advise the Member. The Integrity Commissioner may require the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or remit the value of any gift or benefit already consumed to the City.*

#### **4. Modify the proposed s. 4(7)**

For ease of reference, I am including the Report's proposed amendment to s. 4 below:

(7) In the case of requirement (f) of the disclosure statement, those gifts received by Members of Council which have significance or historical value for the City of Hamilton shall be left with Clerk for the City's Archives when the Member ceases to hold office.

I agree with the Report that it is important for gifts that hold historical or significant value for the City of Hamilton to be left with the City. However, caselaw opining on the jurisdiction of Codes of Conduct has held that they do not apply to private citizens.<sup>2</sup> For that reason, it is important that any provision requiring members to leave gifts with the City should come into effect

<sup>2</sup> *Goyeau v Duncan*, 2021 ONMIC 16 (CanLII) at [para 8](#).

before they cease to hold office. To accomplish this goal, I recommend including the following provision:

- (9) Gifts received by Members of Council which have significance or historical value for the City of Hamilton, as determined by the Clerk, shall be deemed to have been made to the City at the time of the transfer and shall be transferred to the Clerk for the City's Archives.

I trust that you find the foregoing in order. If you have any questions, comments, or concerns, please do not hesitate to contact me.

Yours very truly,



David G. Boghosian,  
Integrity Commissioner  
and Lobbyist Registrar,  
City of Hamilton

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