

Presented To: City Council

Presented: Tuesday, Sep 25, 2018

Report Date Tuesday, Sep 04, 2018

Type: Managers' Reports

Request for Decision

Adoption of Code of Conduct and Complaint Protocol

Resolution

THAT the City of Greater Sudbury approves the Code of Conduct for Members of Council and Members of Local Boards and the Complaint Protocol for the Code of Conduct as set out in the report of the General Manager, Corporate Services, entitled Adoption of Code of Conduct and Complaint Protocol, presented at the City Council meeting on September 25, 2018;

AND THAT the necessary by-laws be prepared.

Relationship to the Strategic Plan / Health Impact Assessment

This report moves forward the following priorities under the Responsive, Fiscally Prudent, Open Governance pillar in the Corporate Strategic Plan:

A. Focus on openness, transparency and accountability in everything we do.

D. Emphasize the relationship between governance, community engagement and information, in support of better decision-making.

Report Summary

This report recommends that Council adopt each of the Code of Conduct for Members of Council and Members of Local Boards and the Complaint Protocol, in the form or substantially in the form attached to this report.

Financial Implications

There are no direct financial implications to having a Code of Conduct or Complaint Protocol. Complaints will be directed to the Integrity Commissioner for investigation. The budget for the Integrity Commissioner will be funded from the reserve for various (professional services) for 2018 and will be included in the base budget for 2019.

Signed By

Report Prepared By

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Division Review

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Financial Implications

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Background

Legislative changes in recent years have enhanced accountability and transparency requirements for municipalities. Bill 68 has taken a further step in this direction by requiring that municipalities establish Codes of Conduct for Members of the Council of the municipality and of its Local Boards. In conjunction with this requirement, is the duty imposed to appoint an Integrity Commissioner who reports to council and who is responsible, with respect to Council and Local Boards, for:

- the application of the Code of Conduct for Members;
- the application of any procedures, rules and policies governing the ethical behaviour of Members;
- the application of provisions of the *Municipal Conflict of Interest Act* to Members;
- requests from Members for advice respecting a Member's obligations under the Code of Conduct;
- requests from Members of Council and of Local Boards for advice respecting their obligations under a procedure, rule or policy governing the ethical behaviour of Members;
- requests from Members of Council and of Local Boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*; and
- educating Members, the municipality and the public about the municipality's Code of Conduct for Members of Council and of Local Boards and about the *Municipal Conflict of Interest Act*.

These legislative changes were reported to Council at the January 23, 2018 City Council meeting. At that meeting, Council approved the selection process for an Integrity Commissioner, and at its meeting of July 10, 2018, appointed Robert Swayze, the successful proponent in the procurement process. Mr. Swayze's role as Integrity Commissioner begins December 1, 2018, coinciding with the new term of Council.

At the January meeting, Council also passed the following resolution, as part of resolution CC2018-21:

“AND THAT staff are directed to develop a new code of conduct applicable to members of City Council and local boards, including a complaint protocol, and establish the office of the Integrity Commissioner, all as described in the report of the General Manager, Corporate Services entitled Implementation of an Integrity Commissioner presented at the City Council Meeting on January 23, 2018.”

Process in Developing Code

In developing the draft Code of Conduct and Complaint Protocol, staff reviewed those documents in effect in a number of municipalities, including: Hamilton, Mississauga, Sault Ste. Marie, Barrie, London, Kingston, Ottawa, Guelph, Port Hope and Toronto.

There were many commonalities between the Codes of Conduct and the Complaint Protocols of the various municipalities. The draft combined Code of Conduct and Complaint Protocol attached to this Report draws on the legislative requirements, concepts found in existing codes and the experience of the Integrity Commissioner who provided valuable input.

Code of Conduct - Application

The *Municipal Act, 2001* provides that the Code of Conduct is to apply to Members of Council, including the Mayor, and to Members of Local Boards. There are, however, a small number of local boards, such as the Library Board, the Police Service Board and the committee of management (at Pioneer Manor) which the Act has excluded from the application of the Code of Conduct.

Role of a Code of Conduct

A Code of Conduct is intended to supplement both legislative requirements as well as other City policies and procedures regarding ethical behavior.

Legislative guidelines regarding ethical behavior are found, for example, in the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, *Municipal Freedom of Information and Protection of Privacy Act*, the *Municipal Elections Act*, the *Ontario Human Rights Code*, the *Criminal Code*, the *Occupational Health and Safety Act*, the *Public Enquiries Act*.

City policies and procedures affecting ethical behavior impacting members of council and referenced in the Code include: the Workplace Violence, Harassment and Discrimination Prevention Policy and Program; the Council Expense Policy; the Policy on the Use of Municipal Resources in Elections and the Procedure By-law. This is not a comprehensive list of such policies.

The Code of Conduct is intended to assist Members of Council and of Local Boards by setting guidelines for acceptable conduct in the individual performance of their official duties. It promotes public confidence that the City's elected officials operate from a basis of integrity, transparency, justice and courtesy. It is a requirement of the Code that Members will respect the City's policies and procedures governing ethical behavior.

To assist Members in fulfilling their duties, the Code provides that a Member may at any time, seek advice from the Integrity Commissioner on questions within his jurisdiction and may rely on the advice provided. Requests and responses will be in writing to assist in documenting the particulars.

Code – Subject Matter

Regulation 55/18 made under the *Municipal Act, 2001*, prescribes minimum subject matter for a Code of Conduct for Members of Council and its local boards. The required topics to be addressed are:

- (a) gifts, benefits and hospitality;
- (b) respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be;
- (c) confidential information; and
- (d) use of property of the municipality or of the local board as the case may be.

These mandatory topics have been addressed in the draft Code of Conduct, along with additional topics, with a view to assisting both the Members and the public to understanding the

standards of behaviour. As noted in the Code, the behaviour of Members during the course of meetings of Council will continue to be governed by the City's Procedure By-law.

Complaint Protocol

The Code is enforced by the Integrity Commissioner. In accordance with the *Municipal Act*, the Integrity Commissioner may investigate complaints filed by members of the public regarding behavior governed by the Code or City policies, procedures or rules addressing ethical behavior; but may only investigate allegations under the *Municipal Conflict of Interest Act* (the "MCIA") which are filed by electors or persons demonstrably acting in the public interest.

Written complaints will be submitted directly to the Integrity Commissioner, by mail, fax, e-mail or courier. The City's website will set out the contact information for the Integrity Commissioner to assist the public. Time constraints exist for filing of complaints.

The Integrity Commissioner will undertake a preliminary screening and investigate only complaints which are within his jurisdiction. No investigation will be conducted if the complaint does not relate to a contravention of the Code of Conduct, a corporate policy governing ethical behavior or a contravention of the *Municipal Conflict of Interest Act*. The Integrity Commissioner will also refuse to investigate if he determines that the complaint is frivolous, vexatious, not made in good faith, or would not constitute a contravention. Complainants will be advised in writing if the complaint is not being investigated, and provided with a reason for that decision.

Where the Integrity Commissioner has determined that it is in order to investigate the complaint, the person who is the subject of the complaint will be provided with a copy of the complaint and provided an opportunity to respond. The investigative powers of the Integrity Commissioner include the right of access to City workplaces, records, files and other property.

Before the final report on an investigation is released, the Integrity Commissioner will provide the Member affected an opportunity to provide comment on the findings and any proposed sanctions. The Integrity Commissioner will generally attend at Council to present any report with findings of fault.

In the event that the Integrity Commissioner is of the opinion that the Member has contravened the Code or the Integrity Commissioner has the authority to recommend that Council impose:

- (a) a reprimand; or
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council or Member of a Local Board, as the case may be, for a period of up to 90 days.

While the Integrity Commissioner recommends sanctions the decision on this matter rests with Council, although there are some circumstances in which a Local Board may impose a sanction.

It should be noted that between nomination day and six weeks after voting day, no complaints may be accepted, investigated or reported on by the Integrity Commissioner and Council will not hear any reports on investigations.

Confidentiality guidelines governing the Integrity Commissioner, the investigations and reports are set out in the *Municipal Act, 2001*.

Next Steps

The attached Code of Conduct and Complaint Protocol are being presented to Council for consideration. If approved, a by-law adopting the Code of Conduct and Complaint Protocol in the form or in a form incorporating any direction from Council, will be presented at the November 20, 2018 meeting of Council, to be effective December 1, 2018.

A presentation by the Integrity Commissioner will be scheduled in 2019 for the new Council, to assist Members in better understanding the Code, the processes set out in the Complaint Protocol, and the processes for seeking advice from the Integrity Commissioner on matters of ethical conduct.

Summary

The *Municipal Act 2001*, requires every municipal council to adopt a Code of Conduct for Members of Council and of Local Boards. After review of municipal practices, the Code of Conduct and Complaint Protocol attached has been developed consistent with Council's direction of January 23, 2018, and is presented for consideration by Council.

REFERENCES

Report presented to City Council on January 23, 2018 entitled "Implementation of an Integrity Commissioner":

<http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&lang=en&id=1234&itemid=14236>

Council Resolution CC2018-21 dated January 23, 2018 regarding the Implementation of an Integrity Commissioner:

<http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=1234&itemid=rec>

Report presented to City Council on July 10, 2018 entitled "Appointment of Integrity Commissioner":

<http://agendasonline.greatersudbury.ca/?pg=agenda&action=navigator&lang=en&id=1244&itemid=14624>

Council Resolution CC2018-210 dated July 10, 2018 regarding Appointment of Integrity Commissioner:

<http://agendasonline.greatersudbury.ca/?pg=agenda&action=navigator&id=1244&itemid=rec>