

# CODE OF CONDUCT FOR MEMBERS OF COUNCIL WITH COMMENTARY

## A. PREAMBLE

Members of Council for the City of Winnipeg recognize that they hold office for the benefit of the public and that their conduct must adhere to the highest ethical standards, exceeding the minimum obligations required by law.

A written Code of Conduct demonstrates that Members of Council share a common understanding of the ethical obligations which are essential to the fair and effective operation of government.

Members of Council first instituted a Code of Conduct in 1994. This Code of Conduct stems from the principles set out in that Code.

Although the Preamble cannot support a stand-alone contravention of the Code of Conduct, together with the Key Principles listed below, it provides a helpful framework within which to review the actions of Members of Council.

To further assist Members of Council and members of the public in understanding and interpreting the Code of Conduct, the Code of Conduct document shall be made available in a version which includes commentary provided by the Integrity Commissioner.

That commentary, which will be updated from time to time by the Integrity Commissioner, does not form part of the Code of Conduct itself.

## B. APPLICATION AND INTERPRETATION

1. This Code of Conduct (“Code”) applies to all Members of Council, including the Mayor (“Members”).
2. It is intended that this Code operate together with and supplemental to the statutes, By-laws and policies which govern the conduct of Members, including but not limited to:
  - *The City of Winnipeg Charter*
  - *The Municipal Council Conflict of Interest Act (“MCCIA”)*
  - *The Human Rights Code of Manitoba*
  - *The Freedom of Information and Protection of Privacy Act*
  - *The Criminal Code of Canada*
  - *City of Winnipeg Policies, By-laws and Procedures*
  - *Codes of Conduct for City Boards or Commissions*
3. Members are responsible to be familiar with the requirements of the By-laws, policies, procedures and legislation which govern their conduct together with the provisions of this Code.
4. This Code is to be given a broad and liberal interpretation in accordance with the Key Principles set out herein and applied in a reasonable and pragmatic manner.

5. Members should seek the advice of the Integrity Commissioner in determining how this Code is to be interpreted and applied.

## **C. DEFINITIONS**

“**Appendix A**” means the Advice Procedures for Members of Council, attached to and forming part of the Code.

“**Appendix B**” means the Complaint Procedures, attached to and forming part of the Code.

“**Campaign Period**” means:

- (a) in a general election begins on May 1 in the year of the election and ends on the start of the new term of Council as defined in Section 18(1) of The City of Winnipeg Charter; and
- (b) in an election to fill a vacancy, begins on the day when the senior election officer receives the direction from the City Clerk to hold the election and ends on the start of the term as defined in section 18(2) of *The City of Winnipeg Charter*.

“**City**” means the City of Winnipeg.

“**Code**” means the Code of Conduct for Members of Council.

“**Council**” means Winnipeg City Council.

“**Duties of Office**” are the duties and activities that relate to the position of the Member, namely participation in activities relating to the proceedings and work of Council and activities undertaken in representing the City or the Member's ward or constituents but do not include:

- activities related to the private interests of the Member;
- a Member's election-related activities; and
- activities including fundraising activities designed, in the context of a federal, provincial or municipal election, or any other local election, to support or oppose a political party or an individual candidate.

“**Dependant**” means:

- (a) the spouse of a Member,
  - (b) the common law partner of a Member, and
  - (c) any child, natural or adopted, of the Member,
- who resides with the Member.

“**Election**” means an election for Winnipeg City Council, whether a general election or an election to fill a vacancy (a by-election).

“**General Election**” means an election of the Mayor and Councillors for all wards required to be held in October in every fourth year.

“**Member**” means a member of Council whether the Mayor or a Councillor.

“**Private Interest**” includes any personal benefit, whether or not pecuniary, but does not include an interest:

- (a) in matters of general application;
- (b) in matters that affect a Member as one of a broad class of the public;
- (c) that concerns the remuneration and benefits of the Member as a Member of Council; or
- (d) that is trivial.

“**Staff**” means City staff and the Member's own staff, regardless of how the individual is paid and includes a student, intern or volunteer.

## **D. KEY PRINCIPLES**

1. The public interest is best served when Members:
  - perform their duties of office honestly and with integrity, impartiality and transparency, putting the public interest before private and self-interest;
  - conduct themselves in such a way as to promote respect for Council and municipal government;
  - serve their constituents and the City in a conscientious and diligent manner and approach decision making with an open mind; and
  - perform their duties of office and manage their private interests in a manner that promotes public confidence and trust in the political process.

### *Commentary*

- *“An ethical approach to democratic politics is one where political actors are expected to make principled decisions based on mutual respect. If they put personal gain or the interests of political friends ahead of the public interest, they have acted unethically by abusing the trust placed in them.”*

*Honest Politics Now, Ed. Greene and Shugarman, 2017, James Lorimer & Company Ltd., Toronto, p.38*

2. The Key Principles form a helpful framework within which to review the actions of Members of Council.

Like the Preamble, however, they do not identify a stand-alone set of obligations the alleged violation of which can be the subject of a complaint.

## **E. RULES OF CONDUCT**

### **1. Confidential Information**

- a. Members must not disclose and shall only use confidential information as required for their duties of office.

**Confidential information** is information which is otherwise not available to the general public, including information contained in the agenda for or discussed at an *in camera*

meeting held pursuant to the City's *In Camera By-law*, and information in the possession of or received in confidence by the City that the City is either prohibited from disclosing, is required to refuse to disclose, or may refuse to disclose pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*.

- b. Members must not intentionally access or attempt to access confidential information which is in the custody of the City unless it is necessary for the performance of their duties of office.

***Commentary***

- *While they are working on behalf of the City, Members will have access to and become knowledgeable of information that is not available to the public. The purpose of this rule is to ensure that such information continues to be used solely for its intended purpose and is not divulged to the public except as allowed by law.*

## **2. Conflict of Interest**

- a. Members must not act in situations in which they have a real or apparent conflict of interest, whether during a meeting of Council or Committee of Council or at any other time while performing their duties of office.

- A conflict of interest exists when a Member exercises their duties of office and at the same time knows that in the performance of those duties there is the opportunity to further their private interests.
- A **real conflict of interest** exists when a Member has knowledge of a private interest that is sufficient to influence the exercise of their duties of office.
- An **apparent conflict of interest** exists when there is a reasonable perception, which a reasonably well-informed person could properly have, that the Member's ability to perform any official duty or function must be influenced by their private interest.

- b. A Member is presumed not to have a private interest in any appointment to serve in their official capacity on any commission, board or agency, or in matters arising in relation to that commission, board or agency.

- c. A Member who has a conflict of interest with respect to any matter must refrain from influencing the matter and from discussing or voting on any decision with respect to the matter.

- d. Should a conflict of interest, real or apparent, arise with respect to a matter that will be discussed or determined at a meeting of Council or a Committee of Council, the Member must:

- disclose the general nature of the Member's interest, and
- withdraw from the meeting without voting or participating in the discussion.

- e. Where a Member does not disclose a private interest under Rule 2.d. because they are not in attendance at the meeting at which the matter arose, the Member must disclose the general nature of their interest at the next meeting of the same body before which the matter arose.

f. Where, by reason of withdrawal from a meeting because of non-pecuniary interests, there would be fewer Members remaining than are needed to meet quorum, those Members who have withdrawn by reason of a non-pecuniary interest must disclose their interest, but may still vote in respect of the matter.

**Commentary**

- *“Conflict of interest in the public sector is the clash of a private interest with a public duty.”*  
*The Law of Government Ethics, 2<sup>nd</sup> Ed., G Levine, 2015, Thomson Reuters Canada, p.9*
- *In the public sector, a conflict of interest occurs “when an elected or appointed public official attempts to promote a private interest for him - or herself, or for some other person(s), that results, or appears to result, in interference in the impartial discharge of one’s duties or a gain or advantage by virtue of his or her position ... Where there is a conflict between public and private interests, the public should always prevail.”*  
*Honest Politics Now, supra, pp.70-71*
- *“Conflict of interest rules attempt “to prevent personal financial gain from public office .... But the rules have gradually begun to increase in scope to include the granting of favours to friends and associates.*  
*Honest Politics Now, supra, p.80*
- *This Rule expands the ethical obligations that are imposed on Members under the Municipal Council Conflict of Interest Act (“MCCIA”).*
- *The difference between the MCCIA and the Code of Conduct is that, under the MCCIA, conflicts of interest are limited to pecuniary or financial interests, either direct or indirect.*
- *In contrast, the Code of Conduct does not limit “conflict of interest” to pecuniary benefits.*
- *Non-pecuniary conflicts of interest may arise from relationships, non-financial benefits or conflicting loyalties because of a person having multiple roles in the community. As Justice Cunningham said in the Mississauga Inquiry Report:*  
  
*“Councillors (and staff) are not to use their office to promote private interests, whether their own or those of friends or relatives. They must be unbiased in the exercise of their duties. That is not only the common law but the commonsense standard by which the conduct of Municipal representatives ought to be judged.”*  
  
*The Honourable J. Douglas Cunningham, Report of the Mississauga Judicial Inquiry/Updating the Ethical Infrastructure, Mississauga Judicial Inquiry (2011) online: <www.mississaugainquiry.ca>*
- *A conflict of interest, therefore, can occur, in addition to pecuniary interests, because of past or present personal relationships that influence someone’s judgment through emotion, loyalty or lack of proper perspective.*
- *Generally, a non-pecuniary interest that creates a conflict for the purposes of this Code will involve:*
  - a) *a relationship between a Member and another person that is particularly close, for example, a “dependent” as defined in Section C of the Code, a former spouse or partner, another person from the Member’s extended family with whom the Member has a close personal relationship or another person living in the same household;*
  - b) *other relationships that are particularly close, such as friendships and business relationships. A close relationship is defined by: the nature of the friendship or business relationship; the frequency of the contact; and the duration of the friendship or relationship; an affiliation between the Member and an organization, sporting body, club, corporation, or association, that is particularly close including but not limited to active participation in the management or administration of the entity and other activities. For example, where the Member sits as a director on the board of an entity.*
- *It is important to understand that having the interest is not the problem; what matters is what one does about it.*

- *If a member declares a conflict of interest and does not take part in decision making or discussion, then there will likely be no ethical transgression.*

*Honest Politics Now, supra, p.240*

- *The process which is set out in the Code of Conduct to be followed when a Member has a conflict of interest is consistent with the process required by the MCCIA.*
- *Private interests as the Code indicates, are personal to Members of Council and are to be distinguished from political interests.*
- *As the Supreme Court of Canada stated, in a democracy the role played by municipal councillors is both political and legislative.*

*Old St. Boniface Residents Association Inc. v Winnipeg (City) [199] SCR 1170*

- *The fact that a Member's position aligns with the position of, for example, an advocacy group, does not of itself create a private interest within the meaning of the Conflict of Interest rule in the Code.*
- *Conflict of interest considerations are also distinct from allegations of bias.*
- *Allegations of bias are not within the purview of the Integrity Commissioner. If a member of the public believes the Council has made a decision which is tainted by bias in the sense of having been made by a Member(s) with a closed mind, the remedy is to seek judicial review of the decision through the Courts.*
- *There are significant sanctions for a breach of the MCCIA including the potential for the loss of office on application to the Court. Alleged breaches of the MCCIA are not dealt with by the Integrity Commissioner.*
- *No court application is needed, however, to complain about a breach of the Code. A breach of the Code of Conduct is addressed by filing a Complaint with the Integrity Commissioner.*
- *Note as well the Advisory Bulletin published by the Integrity Commissioner entitled "Conflicts of Interest – Exceptions to the General Framework"*

*[https://www.winnipeg.ca/council/integritycommissioner/pdfs/AdvisoryBulletin-20210510-Conflicts\\_of\\_Interest.pdf](https://www.winnipeg.ca/council/integritycommissioner/pdfs/AdvisoryBulletin-20210510-Conflicts_of_Interest.pdf)*

### **3. Fundraising**

Members must not solicit funds from any person or organization if doing so would constitute an improper use of the influence of their office.

#### **Commentary**

- *As has often been pointed out about fundraising activity:*

*“the problem with using one’s influence, even for a good cause, is that such a request can be received in many different ways. The recipient may wish to do business with the City, lobby the City, or be appointed by the City. Alternatively, the individual may work for the City or appear as an advocate for other citizens. The recipient may have made a deputation before committees or community councils. The recipient could take such a request as a way to gain an advantage by making a donation. Alternatively, [...] recipients could feel uncomfortable for declining to donate.”*

*Former Integrity Commissioner for the City of Toronto - Janet Leiper: Report Regarding Conduct of Then Councillor Rob Ford, 2010, p.12*

- *Members must ensure that their fundraising efforts are done in a way that is transparent and that does not create a conflict of interest for them.*
- *Given the variety of circumstances in which fundraising activity may be carried out, Members are advised to seek advice on a pro-active basis from the Integrity Commissioner when considering undertaking such activity.*

## 4. Gifts and Benefits

### Acceptability

- a. Members must not solicit or accept any gift or personal benefit that would, to a reasonable, well-informed person, create the appearance that the donor is seeking to influence the Member or gain the favour of the Member.
- b. For these purposes, a gift or benefit provided with the Member's knowledge to a Member's dependant or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member.
- c. For clarification, it is generally not a violation of Rule 4.a. to accept the following:
  - i. compensation authorized by law;
  - ii. gifts or benefits received as an incident of accepted protocol or normal expression of courtesy;
  - iii. a political contribution otherwise authorized and reported in accordance with the law;
  - iv. services provided without compensation by persons volunteering their time;
  - v. admission to charitable or community organized events, widely-attended events such as conventions or conferences, or training and education programs, provided that:
    1. admission is offered by the entity responsible for organizing and presenting the event;
    2. admission is unsolicited by the Member; and
    3. the Member is attending or participating in their official capacity;
  - vi. food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or their political subdivisions or by the government of a foreign country, as long as these benefits are received by the Member during the performance of their duties of office; and
  - vii. sponsorships and donations for community events organized or run by a Member or a third party on behalf of a Member.
- d. Except for political contributions allowable by law, Members must never accept gifts or benefits provided by a registered lobbyist, or their lobbyist client or employer. It is generally not a violation of this Rule to accept light refreshments given in the context of an interaction with a lobbyist where the Member is not able to obtain refreshments at their own cost.
- e. Where a Member or their dependant or their staff is offered or given a gift that is not acceptable, the Member should refuse it or, at the earliest opportunity, return it to the donor without making any personal use of it.

### Disclosure Requirements

- f. Members must provide the Integrity Commissioner with a quarterly Disclosure Statement identifying the receipt of any gift or benefit connected to the performance of the Member's duties

of office, with the exception of gifts falling under 4.c.i., iii., or iv., or a gift or benefit valued at less than \$50.00. The Disclosure Statement must identify the following:

- i. the nature of the gift or benefit;
  - ii. its source and date of receipt;
  - iii. the circumstances under which the gift was given or received;
  - iv. the gift's estimated value; and
  - v. what the recipient intends to do with the gift.
- g. Disclosure Statements provided under this rule will be a matter of public record.

**Commentary**

- *This rule prohibits Members of Council from receiving any gift or benefit which is connected to the performance of their duties as a Member of Council, with some limited exceptions.*
- *Under the Code, Members are not allowed to accept any gift or benefit that might reasonably be seen to have been given to influence them.*
- *If the person or entity offering the gift or benefit is seeking or is likely in the future to seek the Member's support in the exercise of a duty or function of the Member's office, then the Member must refuse it. This applies to gifts from all organizations, including non-profit and charitable organizations.*
- *Members are prohibited from accepting gifts and benefits directly and indirectly. This means that gifts that do not pass the acceptability test cannot be accepted by the Member's staff on the Member's behalf or in the Member's stead.*
- *This rule is intended to reassure the public that Members are not receiving gifts from people or businesses who might be trying to influence them, whether or not that is the donor's actual intention.*
- *The Code lists a number of circumstances in which acceptance of a gift will generally **not** be considered a violation of Rule 4.a (see Rule 4.c.i.-vii.). Included in this is where such gifts or benefits are "received as a normal expression of courtesy or protocol".*
- *Items of token value, such as pins, pens, notepads, key chains or baseball caps would generally not reasonably be seen to have been given to influence a Member and would therefore usually be acceptable. However, each gift must be assessed on the surrounding circumstances in existence at the time. Depending on a Member's role and whether the gift is being offered by someone whose interests could be affected by a decision the Member may be called upon to make, it may still be inadvisable to accept an article, for example, that clearly advertises a particular donor.*
- *Members are always cautioned to seek advice from the Integrity Commissioner to provide guidance on specific situations.*
- *Note that the threshold for disclosure of gifts under the Code is lower than the threshold for the disclosure which is required by The Municipal Conflict of Interest Act. This provides for enhanced transparency to the public about any gifts and benefits a Member has accepted.*
- *Disclosure of gifts also serves an educational purpose by giving the Integrity Commissioner an opportunity to have a discussion with the Member as to whether the gift ought to have been accepted.*

## 5. Use of Influence

- a. Members must not use the influence of their office for purposes other than for the proper exercise of their duties of office.



### **Commentary**

- *The reality of public office is that Members have influence.*
- *They have a responsibility not to use their influence to improperly benefit themselves, their friends, family or associates and must use their influence solely for purposes related to their role as a Member of Council.*
- *They must also be careful not to use their influence to improperly benefit the interests of a third party.*
- *It is acknowledged that as part of their representative duties, Members regularly participate and engage in local events and activities with constituents, including local businesses and will use social media to publicize these kinds of activities.*
- *Members also use social media to inform residents about Federal, Provincial and City programs.*
- *This rule is not intended to prohibit the activities in which Members normally engage on behalf of constituents.*
- *Aside from an obvious conflict of interest situation, i.e. where the Member has a private interest in a specific business, promoting local business is generally acceptable so long as the Member does it on an occasional basis and so long as they do not receive nor are promised anything in return.*
- *Members of the public must not be concerned with every interaction between a Member of Council and, for example, a developer. “Local governments are the primary decision-makers responsible for land use planning. Members are permitted to escalate issues within the City on behalf of developers or to make statements in favour of development interests, as long as the Member is otherwise in compliance with the Code and the clear rules of engagement in place for dealings between Members of Council and developers.”*

*Investigation Report regarding the Conduct of Councillor Mark Grimes – Office of the Integrity Commissioner City of Toronto, July 5, 2016, p.37*

- *Members of Council are not precluded from taking a position that aligns with the commercial interests of a third party. It is not improper for a Member of Council to advocate in favour of a development proponent, for example, in a Council debate as long as the Member does not have a pecuniary interest in the matter or is otherwise not in contravention of the Code or other By-laws, policies or regulations.*
- *However, a Member must avoid using his or her influence to assist a third party in activities which fall outside the formal processes which have been established by the City.*
- *As the Integrity Commissioner for the City of Toronto has reported:*

*“In the context of a planning application, there is a heightened need to avoid endorsements ... Members of Council play a significant role in the planning and development application process. They act as community facilitators and contacts for developers, residents and other stakeholders to assist with navigating the planning application process. In addition, they are administrative decision-makers when planning applications come before City Council for approval. When performing their role, Members of Council are required to take positions about various applications that come before them.*

*In consideration of the significant official role that Members of Council play in the planning application process, Members of Council must confine their support for developers or applications to the formal processes in which their participation is set out and regulated. When a Member of Council involves himself in advocacy and support of a particular developer outside of the City’s process [emphasis added] – in this case in the form of a promotional video – he not only acts in contravention of the Code, but also creates a perception that he has a stake in the interests of the developer that he may or may not actually have. This perception can be damaging to the trust and confidence that the public has in City Council’s decision-making processes as it relates to land use planning.”*

*Investigation Report regarding the Conduct of Councillor Mark Grimes – Office of the Integrity Commissioner City of Toronto, July 5, 2016, p.32*

## 6. Use of Staff, Resources and Property

Members must not use or permit the use of staff or City resources or property for purposes other than those connected with the discharge of their duties of office.

### *Commentary*

- *By virtue of their position, Members have access to a wide variety of property, equipment, services and supplies to assist them in the conduct of their duties of office. Members must not use City staff, resources, or property for any purpose other than for carrying out their duties of office.*
- *Example of prohibited conduct: using a City email address and City computer to send invitations to a Member's private event.*

## 7. Election-Related Activity

a. Members are required to follow all applicable election legislation and By-laws, including without limitation, *The City of Winnipeg Charter, The Municipal Councils and School Boards Elections Act* and all relevant City of Winnipeg By-laws.

b. Members must not use the facilities, equipment, supplies, services or other resources of the City (including Members' newsletters or websites linked through the City's website) for any election-related activities.

c. Members must not use the services of staff for election-related purposes during hours in which those staff members are in the paid employment of the City or paid by the use of City resources.

### *Commentary*

- *During an election, using one's position as a Member of Council to supplement campaign activities gives the Member an unfair advantage over non-Member candidates.*
- *To ensure that Members of Council not receive any undue benefit by virtue of being an incumbent, Members must refrain from using any City-owned resources including but not limited to cell phones, business cards, computers, civic phone numbers, City email addresses, and City logo, for election related purposes.*
- *The Integrity Commissioner does not have jurisdiction to receive or investigate complaints regarding alleged contraventions of the Municipal Councils and School Boards Elections Act, or election-related City of Winnipeg By-laws.*
- *See as well the Integrity Commissioner's Advisory Bulletin entitled "Council Members' Election-Related Activity"*

*<https://www.winnipeg.ca/council/integritycommissioner/pdfs/AdvisoryBuletinElectionRelatedActivity.pdf>*

## 8. Conduct Concerning Staff

a. Members must not directly or indirectly, request, induce, encourage, aid, or permit staff to do something which, if done by the Member, would be a breach of this Code of Conduct.

b. Members must not compel staff to engage in partisan political activities or subject them to reprisal of any kind for refusing to engage in such activities.

c. Members must not use, or attempt to use, their authority for the purpose of intimidating, coercing, or influencing staff with the intent of interfering with such staff’s duties.

d. Members must not maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff and must at all times show respect for staff’s professional capacities.

#### **Commentary**

- *“The relationship between any municipal council and its professional public service is critical to the overall success of local government.”*

*Valerie Jepson, Integrity Commissioner for the City of Toronto: Report Regarding the Conduct of Councillor Josh Matlow, June 18, 2019 at p. 9*

- *“The municipal council as an elected body provides local sensitivity and ensures that policies fit the local political culture. The professional public service provides expertise in policy development and administration. The best policies are found at the intersection of these two interests – responsiveness to local interests tempered by rational, administrative elements.”*

*Fenn, M. & Siegel, D. (2017). The Evolving Role of City Managers and Chief Administrative Officers. IMFG Papers on Municipal Finance and Governance, No. 31. Toronto: University of Toronto, IMGF Institute on Municipal Finance and Governance*

- *No matter what type of relationship exists between staff and council, the core must be respect for one another: respect for each other’s intelligence and professionalism; respect for the public office, no matter how one might feel about the current incumbent of an office; respect for the challenges that each “side” faces; and respect for the fact that both elected representatives and municipal staff are trying to serve the best interests of their communities and their citizens.”*

*Fenn, M. & Siegel, D. (2017). The Evolving Role of City Managers and Chief Administrative Officers. IMFG Papers on Municipal Finance and Governance, No. 31. Toronto: University of Toronto, IMGF Institute on Municipal Finance and Governance*

- *Members should not try to circumvent the Code by asking or suggesting that staff do something that would be unethical for the Members to do themselves.*
- *Members must be respectful of the role of City staff to provide advice which is based on political neutrality and objectivity and without undue influence from any individual Member or faction of Council.*
- *This Rule does not prohibit a Member from expressing criticism of staff in a respectful manner, based on factual matters.*
- *Council Members must also remember that they have access to a public platform which members of the public service do not. Staff will not necessarily have a corresponding ability to respond to concerns or criticism which a Member raises in a public forum. Members of Council must, therefore, keep this in mind in order to ensure that their conduct does not constitute intimidation or humiliation of a member of staff.*
- *It is inappropriate for a Member to attempt to influence staff to circumvent normal processes in a matter, or to 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 Chief Administrative Officer.*

## **9. Respectful Conduct**

a. All Members have a duty to treat members of the public, one another, and staff with respect and without abuse, harassment, or intimidation.

**Harassment** includes:

- i. any behaviour, whether a single incident or a course of conduct, that a reasonable person should have known would be unwelcome, and that is inappropriate, demeaning, humiliating, embarrassing, or otherwise offensive, including but not limited to:
  - a. verbal or written insults, abuse or threats;
  - b. racial or ethnic slurs, including racially derogatory nicknames;
  - c. leering or other offensive gestures;
  - d. bullying; or
  - e. patronizing or condescending behaviour; and
- ii. objectionable and unwelcome sexual solicitations or advances.

b. While Members may passionately debate issues and promote ideas, they must maintain proper decorum during meetings of: Council, Committees of Council, and boards, agencies or commissions on which they serve as part of their duties of office.

**Commentary**

- *This Rule applies to a Member's conduct at all times when they are considered to be performing their duties of office.*
- *This Rule recognizes that all persons must be treated fairly - free from discrimination and personal and sexual harassment.*
- *The test for determining whether conduct constitutes "harassment" is an objective one. This means that the opinion of the complainant who alleges that the conduct, for example, was "bullying, patronizing or condescending" does not establish that harassment occurred in fact. Harassment is not proven simply because an individual takes offense at something that was said or done.*
- *This Rule is not intended to be applied in such a way as to discourage or unduly limit the clash of ideas, the presentation of contending arguments or the presentation of evidence to support those arguments, by Members. Adversarial exchanges contribute to the emergence of greater understanding of issues. There will often be heated disagreements and emotion when different perspectives clash. Conflict is likely inevitable in such debates. However, respect and civility are necessary for genuine dialogue, for shared understandings to emerge and for learning to occur.*
- *The rationale for requiring decorum in Council and Committee meetings was well stated in the Commission Report of The Honourable Madam Justice Denise E. Bellamy (Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, 2005):*  

*"Ill-mannered behaviour impedes the effectiveness of Council as a decision-making body and diminishes the stature of Council in the eyes of the public.*

*Principled criticism of others' positions is to be expected at times, but it should be delivered respectfully and civilly. Angry or abusive language and personal attacks are inappropriate at all times."*
- *This rule is not intended to replace the role performed by the Speaker or Chair of any committee, board or agency.*
- *Complaints about conduct which occurs during the course of a meeting of Council or of a committee, board or agency should be made in the first instance to the Speaker or Chair of the relevant committee, board or agency.*
- *The Integrity Commissioner will generally not accept a complaint about a Member's conduct if it has already been dealt with by the Speaker or Chair of the relevant committee, board or agency.*

## 10. Adherence to Council Policies and Procedures

Members must adhere to all By-laws, policies and procedures adopted by Council.

### *Commentary*

- *This rule does not give the Integrity Commissioner authority to review or assess the merits of a decision which has been made by Council. Challenges to decisions made by Council must be done through the Courts.*

## 11. Reprisals and Obstruction

a. It is a violation of this Code to obstruct the Integrity Commissioner in the carrying out of their duties and responsibilities.

b. No Member shall threaten or undertake any reprisal against a person who makes a complaint under this Code or against a person who provides information to the Integrity Commissioner in any investigation of such a complaint.

### *Commentary*

- *Members of Council must respect the intent of the Code of Conduct and investigations conducted under it.*
- *It is a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his or her responsibilities by, for example, destroying documents or erasing electronic communications or refusing to respond in writing to a Formal Complaint lodged pursuant to the Complaint Procedures passed by Council and attached as Appendix B to the Code.*

## F. ENFORCEMENT

### 1. Annual Meeting with Integrity Commissioner

Members shall meet with the Integrity Commissioner at least once annually in order to discuss their obligations under this Code and under other policies, By-laws or Acts which govern their ethical behaviour.

### *Commentary*

- *Meeting with the Integrity Commissioner at a minimum, on an annual basis ensures that Members regularly refresh their knowledge of their ethical requirements and demonstrates to the public that the Members are committed to acting ethically.*

### 2. Investigation of Complaints

The Integrity Commissioner may: receive and investigate complaints alleging that the Rules set out in this Code have been breached; make findings; and report to Council, in accordance with the provisions of the Complaint Procedures attached as Appendix B to the Code.

**Commentary**

- *Investigation of Complaints is an important accountability mechanism for promoting ethical conduct and was mandated by Council to be part of the Integrity Commissioner's role.*

### **3. Reliance on Advice Provided to Member by Integrity Commissioner**

- a. Members may seek advice from the Integrity Commissioner in accordance with the provisions of the Advice Procedures attached as Appendix A to the Code.
- b. 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 the facts presented by the Member to the Integrity Commissioner were accurate and complete.

**Commentary**

- *The advisory function is the Integrity Commissioner's most important role and is strengthened by this provision.*
- *Members of Council are encouraged to seek advice from the Integrity Commissioner on a proactive basis.*

### **4. Sanctions for Misconduct**

Where the Integrity Commissioner has determined there has been a violation of the Code, the Integrity Commissioner may recommend to Council that:

- i. the Member be reprimanded;
- ii. the Member be required to make a public apology;
- iii. the Member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;
- iv. the Member be removed from a committee; and/or
- v. the Mayor be requested to remove the Member from their position as Chair of a committee.

**Commentary**

- *This section gives the Integrity Commissioner discretion in recommending sanctions. It is available to the Integrity Commissioner to recommend no sanctions be imposed if, for example, the circumstances do not warrant sanctions, or if a Member has already taken steps to address his or her unethical conduct.*
- *There is currently limited legislative authority for imposing sanctions on Members of Winnipeg's City Council.*
- *Ultimately the decision whether and to what extent sanctions will be imposed must be made by Council.*
- *However, "Council should consider the integrity commissioner's recommendations very seriously and depart from them only where they are manifestly unfit."*

*Commission Report of The Honourable Madam Justice Denise E. Bellamy (Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, 2005)*

## **ADVICE PROCEDURES FOR MEMBERS OF COUNCIL**

### **Circumstances and Effect of Seeking Advice from the Integrity Commissioner**

1. Any written advice given by the Integrity Commissioner (“Commissioner”) to a Member of Council (“Member”) binds the Commissioner in any subsequent consideration of the Member’s conduct in the same matter, as long as the facts presented by the Member to the Commissioner were accurate and complete.
2. The Commissioner may, on their own initiative, reconsider advice that has been provided to a Member. The Commissioner will let the Member know that the advice is being reconsidered, but that the original advice will stand unless and until amended.
3. Advice that is general in nature will only be given informally by the Commissioner and is subject to change by the Commissioner when applied to specific facts that may not have been known at the time the general advice was provided.
4. The Commissioner will not provide advice as to whether or not the Member’s past conduct was in contravention of the Code of Conduct, but will provide information, in a general way, as to how the Member may govern himself or herself, in similar situations in the future.
5. It is inappropriate for a Member to use advice sought from the Commissioner to attack or malign the behaviour of another Member.
6. Communication between the Commissioner and a Member is confidential, subject to any disclosure required by law, except:
  - a. The fact that advice was sought may be reported by the Commissioner in a report following the investigation of a complaint;
  - b. A Member is entitled to make public, advice the Member receives from the Integrity Commissioner; and
  - c. At any time, should a portion of the advice provided by the Commissioner to a Member be made public, the Commissioner shall be at liberty to make public the entirety of the advice that was provided.
7. The Commissioner may include a summary of advice given to Members, in a general and anonymous way, in Annual Reports to Council and in commentary on the Commissioner’s website.

## **COMPLAINT PROCEDURES**

### **Part A: Informal Complaint Procedure**

1. Any individual who identifies or witnesses behaviour or activity by a Member of Council (“Member”), which includes the Mayor, that they believe contravenes the Rules of the Code of Conduct may seek to address the prohibited behaviour or activity in the following way:
  - a) contact the Member directly to advise that the behaviour or activity appears to contravene the Code of Conduct, identifying the specific provision(s) of the Code of Conduct that may have been contravened, in an attempt to settle or resolve the matter;
  - b) ask the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to settle or resolve the matter;
  - c) if applicable:
    - i) confirm to the Member that their response is satisfactory, or
    - ii) advise the Member that their response is unsatisfactory; or
  - d) consider the need to pursue the matter in accordance with the Formal Complaint Procedure set out in Part B of these Procedures, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
2. Individuals are encouraged to pursue the Informal Complaint Procedure as the first means of remedying behaviour or activity of a Member that they believe violates the Code of Conduct.
3. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal complaint resolution process. The parties involved are encouraged to take advantage of the Integrity Commissioner’s potential role as a mediator/conciliator of issues relating to a complaint.
4. The Integrity Commissioner has the discretion to withdraw from any informal complaint resolution process at any time.
5. Any participation by the Integrity Commissioner in an informal complaint resolution process will not preclude the Integrity Commissioner from undertaking a formal investigation of the same matter pursuant to the Formal Complaint Procedure set out in Part B of these Procedures.
6. The Informal Complaint Process is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure.
7. The Integrity Commissioner may include anonymized information about informal complaints in the Annual Report the Integrity Commissioner provides to Council.



## Part B: Formal Complaint Procedure

### Formal Complaints

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Rules of the Code of Conduct may file a formal complaint requesting an investigation by the Integrity Commissioner as to whether the Member has contravened the Rules of the Code of Conduct, in accordance with the following requirements:
  - a. all complaints shall be in writing on the prescribed Formal Complaint Form (attached to this Part) and shall be dated and signed by an identifiable individual; and
  - b. all complaints shall be sent directly to the Integrity Commissioner by mail, e-mail or fax to the address or number identified on the Integrity Commissioner's webpage: <http://www.winnipeg.ca/council/integritycommissioner/default.stm>.
2. The details of the complaint will be disclosed to the respondent Member, however, the name of the person complaining will only be disclosed in circumstances where fairness requires such disclosure.
3. Council may, by resolution, direct the Integrity Commissioner to investigate any matter that is within the Integrity Commissioner's jurisdiction and the Integrity Commissioner will, upon receiving such resolution, commence the investigation in accordance with the provisions of these Procedures.

### Time for Filing Complaints

4. Complaints must generally be made: (a) within 60 days after the date of conduct giving rise to the complaint; or (b) within 60 days after the Complainant became aware of the conduct giving rise to the complaint. Consistent with section 28 of this Part, the campaign period prior to a Municipal election will not be counted as part of the 60 days in which a complaint may be made.
5. The Integrity Commissioner may accept a complaint filed after the expiry of the time limit set out in section 4 if the Integrity Commissioner is satisfied that:
  - a. the delay was incurred in good faith;
  - b. it is in the public interest to conduct an investigation, or give consideration to whether or not to conduct an investigation; and
  - c. no substantial prejudice will result to any person because of the delay.

#### **Commentary**

- *The time limit for bringing complaints is designed to ensure that complaints are filed on a timely basis. Aside from the obvious benefit of bringing such matters to the Integrity Commissioner's attention at the earliest possible time in terms of promoting a culture of ethical behaviour, setting a time limit to file complaints ensures that the best evidence about the matter is preserved in the event an investigation is conducted.*

- Typically, where conduct which is the subject of the complaint took place at a public meeting of Council or of a Committee of Council, the Integrity Commissioner will not exercise their discretion to accept a complaint filed after the expiry of the time limit set out in section 4. Videos of these meetings are available online for an indefinite period of time. Extending the time for filing complaints about conduct which occurred at these meetings past the general 60 day limit would mean that complaints could potentially be filed about conduct after many years, making the requirement of a time limit essentially meaningless.

## **Complaints Outside Integrity Commissioner’s Jurisdiction**

6. If the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or if the complaint relates to matters addressed by other legislation or complaint procedure under another City of Winnipeg procedure, policy or rule, the Integrity Commissioner shall advise the Complainant in writing as follows:

### ***Criminal Matter***

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code* of Canada, the Complainant shall be advised that if the Complainant wishes to pursue any such allegation, the Complainant must pursue it with the appropriate police service;

### ***The Municipal Council Conflict of Interest Act***

- (b) If the complaint on its face is regarding non-compliance with *The Municipal Council Conflict of Interest Act* as opposed to the Code of Conduct, the Complainant shall be advised to review the matter with the Complainant’s own legal counsel;

### ***Freedom of Information and Protection of Privacy Act***

- (c) If the complaint is more appropriately addressed under the *Freedom of Information and Protection of Privacy Act*, the Complainant shall be advised that the matter must be referred to the City of Winnipeg Clerk to deal with under the City’s access and privacy policies under the legislation;

### ***Other Legislation or Procedure, Policy or Rule Applies***

- (d) If the complaint appears to fall within the scope of other legislation or another procedure, policy or rule of the City, the Complainant shall be advised to pursue the matter under such legislation or procedure, policy or rule;

### ***Lack of Jurisdiction***

- (e) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the Complainant shall be so advised and provided with any additional referrals as the Integrity Commissioner considers appropriate.

### ***Commentary***

- *Allegations of political bias are an example of a complaint which does not fall within the Integrity Commissioner's jurisdiction.*
- *Such allegations are distinct from allegations of conflict of interest. The latter involve allegations that a Member of Council has put their private interest before the public interest when performing their duties of office.*
- *If a member of the public believes that Council has made a decision which is tainted by bias in the sense of having been made with a closed mind, the remedy is to seek judicial review of the decision through the court system.*

### **Refusal to Conduct Investigation**

7. If the Integrity Commissioner is of the opinion that:

- a. the conduct described in the complaint is not within the Integrity Commissioner's jurisdiction to investigate;
- b. the complaint is frivolous, vexatious or not made in good faith;
- c. there are no grounds or insufficient grounds for an investigation, or that it is unlikely that the complaint will succeed; or
- d. an investigation would serve no useful purpose;

the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation.

### **Matter Already Pending**

8. To avoid incurring unnecessary costs associated with duplication, and/or to avoid inappropriately interfering with the conduct of another process, if the complaint is in relation to a matter which is subject to an outstanding complaint or pending investigation under another process, including a matter that is pending before the Courts, the Integrity Commissioner may determine that they will not conduct an investigation of the complaint and may suspend any ongoing investigation pending the result of that other process.
9. The Integrity Commissioner may request further information from the Complainant or others before deciding whether or not there are reasonable grounds for believing that a violation of the Code of Conduct may have occurred and an investigation is warranted.
10. In the event that the Integrity Commissioner receives multiple complaints concerning the same matter, the Commissioner may combine those complaints for the purposes of investigating and reporting to Council.
11. The Integrity Commissioner, in considering the allegations which are set out in a complaint, may have regard to all of the Rules of the Code of Conduct and not simply those which the Complainant identifies as having been contravened.

12. Where the Integrity Commissioner has declined to conduct an investigation, the Integrity Commissioner will provide the Member who is the subject of the complaint with both an anonymized copy of the complaint and the Integrity Commissioner's response to the Complainant.

### **Opportunities for Resolution**

13. Following receipt and review of a Formal Complaint, or at any time during an investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter informally may be successfully pursued, and both the Complainant and the Member agree, efforts may be pursued to achieve such an informal resolution.

### **Investigation**

14. If a complaint is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner will investigate the complaint as follows:
  - a. provide the Member whose conduct is in question with the details of the complaint and any supporting material determined to be relevant by the Integrity Commissioner, by mail or e-mail, together with a notice of intention to conduct an investigation.
  - b. request that the Member provide a written response to the complaint, any supporting documents or materials, and a list of relevant witnesses, within ten (10) days.
  - c. provide a copy of the Member's response to the Complainant with a request that any written reply be provided by the Complainant within ten (10) days. A copy of that reply will be provided to the Member.
15. The Integrity Commissioner may seek information from anyone relevant to the complaint and may receive such information either in person or in writing.
16. The Integrity Commissioner may review all books, financial records, electronic data, processing records, reports, files and any other papers, things or property belonging to or used by the City of Winnipeg and enter any relevant City of Winnipeg work location which the Integrity Commissioner deems necessary for the purpose of the investigation.
17. Where, during the course of an investigation, the Integrity Commissioner becomes aware of any additional complaint made by a Complainant which is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner shall, upon notice to the Member, investigate such complaint in accordance with the provisions of this Protocol.

### **Reporting**

18. Where the Integrity Commissioner finds that the Code has been contravened either in whole or in part, the Integrity Commissioner shall provide a report to Council outlining their findings, their opinion as to how the Member has contravened the Code and any recommended corrective action or sanctions.

19. The Integrity Commissioner shall not issue a report to Council which finds a violation of the Code of Conduct on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and recommended sanction and an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding and recommended sanction. In preparing their report to Council, the Integrity Commissioner shall take the Member's response into consideration and shall attach a copy of the response to their report.
20. The Complainant will be provided with a copy of the Integrity Commissioner's report to Council when the report is placed on the agenda for the meeting at which the report will be considered.
21. The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.
22. If the Integrity Commissioner determines that there has been no breach of the Code of Conduct, the Integrity Commissioner will provide a report to the Member and the Complainant advising them of that determination, and will not report to Council about their determination, except as part of an Annual Report

### **Member not Blameworthy**

23. If the Integrity Commissioner determines that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence, or an error of judgment made in good faith, the Integrity Commissioner may so state in a report to Council and may make appropriate recommendations.

### **Duty of Council**

24. When Council receives a report from the Integrity Commissioner following an investigation it shall consider and act on that report forthwith.
25. A Member who is the subject of an Integrity Commissioner's report following an investigation shall be entitled to make a delegation to Council on the matter, but shall not participate in the deliberations of Council or in any vote of Council on the matter. The ability to make such delegation, however, is subject to the provisions of *The Municipal Council Conflict of Interest Act* which prohibit a Member from influencing Council in any way where the Member has a pecuniary interest in the matter.

#### ***Commentary***

- *The decision whether to accept the Integrity Commissioner's findings that the Code has been breached and decisions as to what sanctions, if any, should be imposed, are decisions which are ultimately made by Council.*
- *As a matter of procedural fairness, Members of Council who are the subject of a report to Council which finds they have breached the Code of Conduct, must be allowed an opportunity to speak to the matter before Council responds to the report.*

- *The ability to make a presentation to Council, however, is subject to the provisions of The Municipal Council Conflict of Interest Act which prohibit a Member from influencing Council in any way where the Member has a pecuniary conflict of interest whether direct or indirect. Accordingly, where Council is considering sanction recommendations in which the Member has a direct or indirect pecuniary interest, the Member will not be able to speak to the matter before Council.*

## **Imposition of Sanctions by Council**

26. When Council receives a report from the Integrity Commissioner which identifies that there has been a violation of the *Code*, Council may impose any or all of the following sanctions:

- i. That the Member be reprimanded;
- ii. That the Member be required to make a public apology;
- iii. That the Member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;
- iv. That the Member be removed from a committee; and
- v. That the Mayor be requested to remove the Member from their position as chair of a committee.

27. When deciding whether to impose any of the sanctions for misconduct listed in paragraph 26 above, Council must consider the following factors:

- a. The nature of the Code of Conduct contravention;
- b. The length or persistence of the Code of Conduct contravention;
- c. Whether the Member knowingly contravened the Code of Conduct;
- d. Whether the Member took steps to prevent, mitigate or remedy the Code of Conduct contravention;
- e. Whether the contravention was committed through an error of judgment made in good faith; and
- f. Whether the Member previously contravened the Code of Conduct.

### *Commentary*

- *This section assists Members in performing the adjudicative role which the Code of Conduct has assigned to them.*
- *As political actors, Council Members are expected to express their views and even their preconceptions on matters that involve public interest.*
- *However, when a matter comes before them in their capacity as decision-makers, it is important that they remind themselves of their responsibility to adjudicate fairly and with an open mind on the matter before them, taking into account the Integrity Commissioner's findings, conclusions and recommendations.*

- *Having a list of factors they must take into consideration when imposing sanctions will assist Members in making their determination in a fair, principled and consistent manner.*
- *This list of factors is the same as the list of factors which are required to be considered by Members of Council in all other municipalities in Manitoba.*

## **Election Year**

28. During the campaign period the Integrity Commissioner will:

- a. not receive any complaints alleging that a Member of Council has breached the Code of Conduct;
- b. suspend any ongoing investigation of a previously filed complaint; and
- c. not submit any report to Council, of findings with respect to such complaints.

29. Following the election, investigations or reports concerning the conduct of a former Member while that individual was still a Member, will only be commenced or continued at the request of Council, by resolution.

### ***Commentary***

- *The rationale behind these provisions is to prevent undue influence and interference in the electoral process including preventing the complaint process from being used as a political or campaign tool.*

## **Public Disclosure**

30. The Integrity Commissioner and every person acting under the Integrity Commissioner's jurisdiction shall preserve confidentiality of the investigation process, except as required by law and as required by these Procedures.

### ***Commentary***

- *"Confidentiality during an investigation is important to protect innocent respondents, as well as to de-politicize the process."*

*Robert Wechsler: City Ethics.Org – Commentary to Model Ethics Code, p.49/59*

31. If a complaint becomes a matter of public record at any time whether before, during or after the Integrity Commissioner has undertaken an investigation, the Member about whom the complaint is made is permitted to speak publicly about the complaint.

32. If the Integrity Commissioner finds that the Code of Conduct has been breached, the identity of the Member who is the subject of the complaint shall not be treated as confidential.

33. All reports from the Integrity Commissioner to Council will be made available to the public.

