

**Ethics Advisor, Ethics and Integrity Office, Report to
Priorities & Finance Committee
2018 March 06**

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PFC2018-0063
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Municipal Government Act Regulation on a Code of Conduct for Elected Officials

EXECUTIVE SUMMARY

This Report provides the Priorities and Finance Committee with my opinion as Ethics Advisor regarding the extent to which the *Ethical Conduct Policy* (CP2017-03; Effective Date 2017 July 24) and the *Integrity Commissioner Complaints Policy* (CP2016-08; Effective Date 2016 December 19) comply with the Code of Conduct for Elected Officials Regulation, AR2000/2017 ("Regulation"). It also seeks advice and direction from the Priorities and Finance Committee with respect to the steps to be taken to ensure compliance with the Code of Conduct for Elected Officials Regulation.

In my opinion, the current *Ethical Conduct Policy* and the *Integrity Commissioner Complaints Policy* together address the majority of the Code of Conduct for Elected Officials Regulation requirements. The Council policies will need to be consolidated and enacted as a bylaw, and I recommend that they be re-organized to make their compliance with the Regulation transparent.

There are, however, three areas where the current *Ethical Conduct Policy* does not address the requirements of the Regulation. These are: "communicating on behalf of the municipality"; "orientation and other training attendance" and "the process to be used to determine how sanctions are imposed if a complaint is determined to be valid". The Ethics and Integrity Office requires direction from the Priorities and Finance Committee and Council on how these matter ought to be addressed. The Priorities and Finance Committee and Council have a range of alternatives for how they can do so, some of which are set out below.

ETHICS AND INTEGRITY OFFICE RECOMMENDATION:

That the Priorities and Finance Committee recommend that Council:

1. Direct the Ethics and Integrity Office to consolidate the *Ethical Conduct Policy* and the *Integrity Commissioner Complaints Policy* into a single document to be enacted as a bylaw;
2. Direct the Ethics and Integrity Office to draft the bylaw so as to make its compliance with the Code of Conduct for Elected Officials Regulation transparent;
3. Direct the Ethics and Integrity Office to update the Context and Commentary document to be provided to Council for information;
4. Advise the Ethics and Integrity Office on how to address matters identified in the Regulation but not sufficiently addressed by Council policy; and
5. Direct the Ethics and Integrity Office to bring the draft bylaw and updated Context and Commentary to PFC and to Council by no later than 2018 June 30.

RECOMMENDATION OF THE PRIORITIES AND FINANCE COMMITTEE, DATED 2018 MARCH 06:

That the Ethics Advisor's Recommendations contained in Report PFC2018-0063 be approved.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2017 July 24 Council approved the *Ethical Conduct Policy* (CP2017-03; Effective Date 2017 July 24). It also received for information the Context and Commentary to *the Ethical Conduct*

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Policy created by the Integrity and Ethics Office. It directed the City Clerk to consolidate the *Ethical Conduct Policy* and the Context and Commentary, and to post the consolidation in the Council Policy Library.

On 2016 December 19 Council approved the *Integrity Commissioner Complaints Policy* (CP2016-08; effective date 2016 December 19) which it modestly revised in July 2017.

The *Ethical Conduct Policy* replaced prior council policies, and in particular the *Ethical Conduct Policy for Members of Council* (CC042, effective 2013 July 01); the *Gifts and Benefits Policy for Members of Council* (CC043; effective 2013 January 28); and the *Members of Council and Election Campaign Policy* (CC041; effective 2013 January 28)

BACKGROUND

On 2017 October 26 Section 146.1 of the *Municipal Government Act* RSA 2000 c M-26 came into force, along with Alberta Regulation 200/2017, the Code of Conduct for Elected Officials Regulation. At the same time, Alberta Municipal Affairs published an Implementation Fact Sheet regarding the code of conduct bylaw requirements, providing some background information about what the requirements in the Regulation mean.

Section 146.1 requires Council to establish by bylaw a code of conduct governing the conduct of councillors. The code must apply to all councillors equally (subsection 2) but cannot result in a councillor being disqualified or removed from office for a breach of the code (subsection 4).

The Code of Conduct for Elected Officials Regulation requires that a code of conduct include the following topics:

- (a) representing the municipality;
- (b) communicating on behalf of the municipality;
- (c) respecting the decision-making process;
- (d) adherence to policies, procedures and bylaws;
- (e) respectful interactions with councillors, staff, the public and others;
- (f) confidential information;
- (g) conflicts of interest;
- (h) improper use of influence;
- (i) use of municipal assets and services;
- (j) orientation and other training attendance (Section 1).

It further requires that the code of conduct establish a complaint system, including “the process to be used to determine how sanctions are imposed if a complaint is determined to be valid” (Section 2(d)). The sanctions that may be imposed include “any of the following”:

- (a) a letter of reprimand addressed to the councillor;
- (b) requesting the councillor to issue a letter of apology;
- (c) publication of a letter of reprimand or request for apology and the councillor’s response;

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- (d) a requirement to attend training;
- (e) suspension or removal of the appointment of a councillor as the chief elected official under section 150(2) of the Act [**Note: this sanction is not applicable because Calgary's mayor is directly elected by Calgarians pursuant to s. 150(1)**];
- (f) suspension or removal of the appointment of a councillor as the deputy chief elected official or acting chief elected official under section 152 of the Act;
- (g) suspension or removal of the chief elected official's presiding duties under section 154 of the Act;
- (h) suspension or removal from some or all council committees and bodies to which council has the right to appoint members;
- (i) reduction or suspension of remuneration as defined in section 275.1 of the Act corresponding to a reduction in duties, excluding allowances for attendance at council meetings (Section 5)

The code of conduct bylaw must be established by 2018 July 23.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Introduction

In my opinion, the *Ethical Conduct Policy* and the *Integrity Commissioner Complaints Policy* comply substantially but not entirely with the Code of Conduct for Elected Officials Regulation. This section sets out each requirement of the Regulation, and identifies whether the compliance of current council policies is good, sufficient or deficient. Good compliance means no amendment is required; sufficient compliance requires only some clarity in drafting to make the compliance clear; deficient compliance requires amendment and the direction of the Priorities and Finance Committee and Council as to how that matter ought to be addressed in the new bylaw.

This section will assess compliance with the Regulation, and then set out the requests for direction from the Priorities and Finance Committee and Council.

Compliance Assessment

The Regulation requires a code to address "representing the municipality". The Implementation Fact Sheet states that this is intended to "build and inspire public trust and confidence in local government by upholding high standards and ideals". This topic is dealt with by Rule 4.1 of the *Ethical Conduct Policy*, which sets out the "General Obligations" of Members of Council, including the general duties of Members to fulfill their legal and ethical obligations in good faith, to comply with law, and to be independent and impartial. **Good compliance.**

The Regulation requires a code to address "communicating on behalf of the municipality". The Implementation Fact Sheet states that this is intended to "promote public confidence by respecting the process established by council for communicating with the public on behalf of council or the municipality". The *Ethical Conduct Policy* and the *Integrity Commissioner Complaints Policy* do not address this issue. The *Ethical Conduct Policy* has provisions requiring respectful communication (Rule 4.1.5), Rules regarding how Members of Council work with City employees (Rules 4.1.10 and 4.1.11) and a Rule requiring the protection of confidential information (Rule 4.2). None of those rules really speak, however, to the issue of

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communicating with the public on behalf of the municipality. I have not identified a current process for a Member communicating with the public on behalf of council or the municipality.

Deficient Compliance

The Regulation requires a code to address “respecting the decision-making process”. The Implementation Fact Sheet states that this is intended to “support effective decision-making through the processes set out in legislation and local bylaws for making decision, including respect for the role of the chair”. The *Ethical Conduct Policy* directs Members to participate properly in the decision-making process by, for example, considering issues consistently and fairly and in light of the best interests of the city (Rule 4.1.3). It directs Members to be independent and impartial (Rule 4.1.7), to use the influence of their office only for the exercise of their official duties (Rule 4.1.6) and prohibits them from acting as an agent of a third-party before Council (Rule 4.1.9). It directly reflects the requirements of s. 153 of the *Municipal Government Act* regarding the general duties imposed on Members of Council. It does not explicitly address the issue of “respect for the role of the chair”; however, it directs Members to comply with their legal obligations (Rule 4.1.2). That would include the City’s *Procedure Bylaw 35M2017* (2017 October 23), which sets out the role of the Chair in Council (ss. 8 and 24-25), and briefly addresses the obligation for Members of Council to respond to direction from the Chair (s. 26(1)). **Sufficient compliance**

The Regulation requires a code to address “adherence to policies, procedures and bylaws”. The Implementation Fact Sheet states that this is to “promote service of the public interest and show leadership by upholding legislation, local bylaws, and policies adopted by council”. This matter is specifically addressed by Rule 4.1.2 of the *Ethical Conduct Policy* which requires compliance with all legal obligations. **Good compliance**

The Regulation requires a code to address “respectful interactions with councillors, staff, the public and others”. The Implementation Fact Sheet states that this is to “promote treatment of council members, municipal employees and others with dignity, understanding and respect”. This matter is specifically addressed by Rule 4.1.5 of the *Ethical Conduct Policy* which requires respectful communication by Members. **Good compliance.**

The Regulation requires a code to address “confidential information”, “conflicts of interest” and “Improper use of influence”. The Implementation Fact Sheet states that this is to “promote public trust by refraining from using information in a way that would be detrimental to the public interest”, to “promote public trust by refraining from exploiting the position of councillor for private reasons or that would bring discredit to the office” and to “promote the priority of municipal interests over the individual interests of councillors, and to refrain from seeking to influence decisions for personal reasons”. The Sheet emphasizes that the conflict provisions will not “diminish or change the effect of existing legislated pecuniary interest provisions”. These matters are specifically addressed by Rules 4.1.6-4.1.8 (re improper influence); Rule 4.2 (Confidentiality and Information Management); Rule 4.3 (Disclosure); Rule 4.4 (Gifts and Benefits); and Rule 4.5 (Conflicts of Interest). **Good compliance.**

The Regulation requires a code to address use of “municipal assets and services”. The Implementation Fact Sheet states that this is to “promote stewardship and public trust by refraining from the use of municipal assets or resources for personal reasons”. This matter is specifically addressed by Rules 4.1.10-4.1.12 which prohibit use of employee time or facilities for personal or other matters unrelated to the business of the City of Calgary. **Good compliance.**

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The Regulation requires a code to address “orientation and other training attendance”. The Implementation Fact Sheet states that this is intended to “promote effective leadership and personal development by accessing training opportunities”. This matter is not addressed by the *Ethical Conduct Policy* in any way. The *Council Orientation Policy* (CC034; effective 2013 May 06) sets out the responsibilities of City Administration for establishing an orientation program, but does not speak to Member attendance. **Deficient compliance.**

The Regulation requires that a code establish a complaint system with respect to who may complain, how a complaint is to be made, the process for determining the validity of a complaint and the process to be used to determine how sanctions are imposed if a complaint is determined to be valid. Currently, the complaints process is established by the *Integrity Commissioner Complaints Policy*. The *Integrity Commissioner Complaints Policy* complies with these requirements except with respect to the imposition of sanctions. Rule 4.7.1 of the *Integrity Commissioner Complaints Policy* requires the Integrity Commissioner to report *in camera* to Council when a complaint is found to be valid, but it does not speak to potential sanctions or the process for imposing them. Rule 4.7.3 does permit the Integrity Commissioner to recommend that no sanction be imposed for trivial breaches or ones for which a Member committed through inadvertence or a genuine error of judgment. This does not, however, change the substantial deficiency of the *Complaints Policy* in relation to the how and what sanctions will be imposed. **Deficient compliance**

Options and recommendations

Complying with the Regulation requires the City to enact the code of conduct as a bylaw. My first recommendation is that the Priorities and Finance Committee recommend that Council direct the Ethics and Integrity Office to draft a bylaw for adoption and, where possible, organize and draft the bylaw to make its compliance with the requirements of the Regulation transparent – for example, by using some of the Regulation language as a heading. In my view, this will be sufficient to address the one area where compliance is merely sufficient, “respecting the decision-making process”

In addition, I recommend that the Priorities and Finance Committee recommend that Council direct the Ethics and Integrity Office to update the Context and Commentary document. When the bylaw is brought to Council this can then be provided for information to Council, and direction can be sought from Council to have that document incorporated into with the newly enacted bylaw and published on the City’s website as an Annotated bylaw.

As noted, there are three areas where the current Council policies do not sufficiently comply with the Regulation: communicating on behalf of Council; attendance at orientation; and the process for imposing sanctions. The following sets out some options for Council to address these deficiencies, and requests direction from PFC and Council on which (or other) options are preferred.

From an ethics perspective, there is wide scope for how the Committee and Council may properly deal with these issues. In terms of communications on behalf of Council, generally speaking a Member speaks on matters before Council, but not on “behalf” of Council *per se*. A rule might thus state that a Member is generally presumed not to speak on behalf of Council, but when they do so must represent Council’s position fairly and accurately, and pursue its interests as Council has identified them.

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In terms of attendance at orientation, it should be noted that legally Members are not required to attend orientation. Section 201.1 of the *Municipal Government Act* requires that a municipality offer orientation, but it does not require that Members attend. Section 201.1(3) does permit the Minister to make “regulations respecting orientation training”, which would presumably include this Regulation. In responding to the Regulation, three obvious alternatives are: 1) requiring all newly elected Members to attend and encouraging returning Members to attend; 2) requiring all Members to attend some sessions (e.g., the sessions provided by the City Solicitor); and 3) requiring all Members to attend all sessions. In my view any of these approaches would be ethically defensible; however, I would recommend the second as most consistent with ensuring good governance, while not wasting returning Members’ time.

In terms of sanction, three alternatives are: 1) having the Integrity Commissioner determine the appropriate sanction for a breach of the Code; 2) having the Integrity Commissioner make a recommendation to Council as to the appropriate sanction, but having the appropriate sanction determined by Council; 3) having Council determine the appropriate sanction with no recommendation by the Integrity Commissioner. In my view, any of these approaches would be ethically defensible, but the second has the advantage of leaving the authority with Council but avoiding having Council be solely responsible for sanctioning one of its members. It also permits two assessments of the appropriate outcome from different perspectives.

Stakeholder Engagement, Research and Communication

The Ethics Advisor and City legal counsel reviewed the Regulation, legislation and policies to assess policy compliance with the Regulation.

Strategic Alignment

The proposed recommendations align with Council’s priority of supporting ethical conduct by Members of Council, as evidenced by the enactment of the *Ethical Conduct Policy* and the *Integrity Commissioner Complaints Policy*, and aligns with Council’s commitment to ensuring compliance with its obligations under its governing legislation. Further, the proposed recommendations align with Council’s priority of a well-run city: “Calgary’s government is open, responsive, accountable and transparent, delivering excellent services at a fair price. We work with our government partners to ensure we have the tools we need” (*Action Plan 2015-2018*).

Social, Environmental, Economic (External)

The proposed recommendations will ensure Council complies with its legal obligations under the *Municipal Government Act* and the Code of Conduct for Elected Officials Regulation, and it will promote accountability and transparency at The City of Calgary.

Financial Capacity

Current and Future Operating Budget:

There are no current and future operating budget impacts.

Current and Future Capital Budget:

There are no current and future capital budget impacts.

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Risk Assessment

Adopting the Recommendations removes risks associated with non-compliance with the Regulation.

REASON(S) FOR RECOMMENDATION(S):

The Ethics Advisor believes that the recommendations are necessary to ensure compliance with new section 146.1 of the *Municipal Government Act* and the Regulation.

ATTACHMENT(S)

1. Attachment 1 – Code of Conduct for Elected Officials Regulation
2. Attachment 2 – Implementation Fact Sheet, Alberta Municipal Affairs
3. Attachment 3 – *Ethical Conduct Policy*
4. Attachment 4 – *Integrity Commissioner Complaints Policy*