

ADDITIONAL ADVICE ON A PROPOSED COUNCIL POLICY ON FUNDRAISING TO BENEFIT A THIRD PARTY

EXECUTIVE SUMMARY

On 2017 April 18, the Priorities and Finance Committee (“PFC”) directed Corporate Administration to undertake further revisions and consultation before adopting a proposed Council policy governing *Fundraising to Benefit a Third Party*. The purpose of that policy was to provide Members of Council with consistent guidance and procedures related to their participation in activities intended to fundraise for communities, non-profit organizations and charities. In light of the discussions at the 2017 April 18 PFC Meeting, and discussion with the Ethics Advisor, this Report recommends a modified approach. Specifically, it recommends that fundraising by Members of Council be undertaken on a case-by-case basis after full disclosure to, and written advice from, the Ethics Advisor.

The reason for this advice is, first, that on 2016 December 19 Council had directed the Ethics Advisor, the City Clerk and the City Solicitor to revise and consolidate the Council policies governing Member conduct. Those revisions are underway, and it makes sense for formal direction to be incorporated into those policies rather than in a new stand-alone policy.

In addition, the circumstances of fundraising are at once subject to some overarching general principles (e.g., preventing misuse of public office) and highly fact-specific. Addressing this matter through a policy risks not capturing the general principles and not providing useful direction in specific cases. By having the matter dealt with under the current *Ethical Conduct Policy for Members of Council* (CC042) which contains the applicable general principles, and advice from the Ethics Advisor, this problem can be avoided. Other municipalities, such as Ottawa, have dealt with the fundraising issue in a similar way.

ETHICS ADVISOR’S RECOMMENDATION(S)

That the Priorities and Finance Committee recommend that Council:

1. Require that Members of Council only engage in fundraising activities only after they have disclosed all material facts related to those activities and the beneficiary to the Ethics Advisor, and obtained the Ethics Advisor’s written approval;
2. Accept the Guidelines on Fundraising by Members of Council (Attachment 1); and
3. Adopt proposed amendments to the *Gifts and Benefits Policy for Members of Council* (Attachment 2).

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2017 April 18 Regular Meeting, PFC considered Report PFC2017-0180, and referred the proposed Council policy on *Fundraising to Benefit a Third Party* to Administration for further consultation with Members of Council with direction to return to the 2017 May 02 Regular Meeting of PFC.

At the 2016 December 19 Meeting of Council, Council directed the Ethics Advisor, the City Clerk and the City Solicitor to revise and consolidate the policies governing Member conduct.

Additional Council direction is also detailed in Attachment 3.

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BACKGROUND

Attachment 3 outlines the background with respect to the development of the proposed Council policy on *Fundraising to Benefit a Third Party*.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

On 2017 April 18, in considering the proposed Council policy on *Fundraising to Benefit a Third Party*, PFC directed that the Council policy be further examined to overcome some of the potential gaps that would be created should Council adopt the policy as proposed. On further consultation between the Ethics Advisor and the City Clerk's Office, it is recommended that Council not adopt a separate Council policy governing fundraising to benefit a third party.

A Member of Council ("Member") could potentially fundraise for a third party in a wide variety of ways, of greater or lesser propriety. The Member could host a public event at which it is possible for attendees to make donations to charities within the Member's Ward. The Member could send an e-mail to individuals who supported his or her election campaign suggesting that they might also want to donate money to a charity associated with the City, such as the library. Or the Member could suggest to a person with whom he or she meets, that the person might want to donate funds to a third party. In each of these cases, whether the conduct is acceptable depends on whether the Member has, or would reasonably be seen to have, misused his or her office for an ancillary purpose, and whether the fundraising activities create an improper relationship between the Member and the donor, or between the Member and the beneficiary, or would reasonably be seen to have done so. But how those principles play out – whether the fundraising is in fact appropriate for the Member to participate in – depends on the specifics of the Member's participation, the nature of the recipient organization, the Member's relationship with that organization, and the donor's relationship to the Member and to the City.

Given those specific contexts, coupled with the applicable general principles, it is difficult to craft a policy that does not either unduly restrict or permit fundraising by Members, and that captures how the governing principles should play out in a particular case.

That suggests that a better approach would be to have fundraising governed by the general principles set out in the *Ethical Conduct Policy for Members of Council* (now and as to be revised), but also to ensure that fundraising activities are undertaken appropriately by having Members obtain advice from the Ethics Advisor prior to doing so. Guidance such as that set out in the draft Council policy on *Fundraising to Benefit a Third Party* can be instead incorporated in guidelines, that do not govern fundraising, but provide some direction to the Ethics Advisor and to the Members as to the relevant issues and the factors that should be taken into account in deciding when and how to participate in fundraising.

Other municipalities provide precedent for this approach. For example, Ottawa's Community, Fundraising and Special Events Policy states:

"When considering whether to support a third party by organizing a fundraiser or benevolent event Members of Council shall disclose all material facts to the Integrity Commissioner and obtain a written opinion from the Integrity Commissioner approving

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the activity, which concludes that the Member does not have a conflict between his/her private interest and public duty” (Part 3, Support for Benevolent Activities and Events).

As documented in Report PFC2017-0180 (Attachment 3), the *Gifts and Benefits Policy for Members of Council* (CC043) provides that “Members of Council shall not solicit, demand or request any gift or benefit by virtue of their position” and that “[a] Member of Council must never accept a gift of money, including pre-paid credit cards.” The effect of this Council policy is that Members are not permitted to solicit or accept money in order to fund the organization of events for the benefit of Third Parties. Should Council adopt the Guidelines for Fundraising by Members of Council (Attachment 1), an amendment will be required to recognize fundraising and acceptance of Donations as an exception to the *Gifts and Benefits Policy for Members of Council* (Attachment 2). In addition, on 2016 March 14, Council adopted amendments to the Council policy on *Indemnification of Members of City Council* (CC010), which provides that “in the event that The City becomes responsible for the payment of external legal fees and disbursements for a member of Council as a result of paragraph 1, that Council member may solicit donations to The City of Calgary to defray those amounts.” In light of the discussion at the 2017 April 18 Meeting of the PFC, an amendment is proposed to the *Gifts and Benefits Policy for Members of Council* (CC043) to recognize an exception to the current provisions and bring Council policies into alignment with each other (Attachment 2).

As a consequence, this Report recommends that Council:

- require Members of Council to disclose material facts related to fundraising and/or a Third Party to the Ethics Advisor and to obtain the Ethics Advisor’s written approval prior to fundraising;
- accept the attached guidelines for the Ethics Advisor and Members of Council about the appropriate approach to fundraising for third parties (Attachment 1); and
- adopt proposed amendments to the *Gifts and Benefits Policy for Members of Council* (CC043) to allow Members to solicit and accept Donations.

Stakeholder Engagement, Research and Communication

The Ethics Advisor and the City Clerk consulted on 2017 April 19 to discuss how best to address matters raised during the 2017 April 18 PFC Meeting, and how to overcome any problems potentially created should Council adopt the proposed Council policy. The City Clerk’s Office also consulted with the Mayor’s Office on 2017 April 19.

Strategic Alignment

The proposed approach and guidelines 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)

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Considering adopting a guideline with respect to fundraising by Members is a step in promoting transparency and accountability 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.

Risk Assessment

There are no policies or procedures in place to provide guidance to Members with respect to fundraising. Consequently, uncertainty exists around managing donations and surpluses in a consistent and transparent manner. Inconsistent practices may lead to a reputational risk to Members or The City. Adopting the proposed approach and accepting the Guidelines for Fundraising by Members of Council would assist in mitigating this risk.

REASON(S) FOR RECOMMENDATION(S):

The proposed approach and guidelines address the lack of guidance provided to Members with respect to Fundraising and administering Donations for the benefit of Third Parties. Adopting the recommendations would provide Members with guidance and safeguard against potential violations.

ATTACHMENT(S)

1. Guidelines for Fundraising by Members of Council
2. Proposed amendments to the *Gifts and Benefits Policy for Members of Council* (CC043)
3. Corporate Administration Report to the Priorities and Finance Committee, PFC2017-0180