Integrity and Ethics Office

ETHICAL CONDUCT POLICY – CONTEXT AND COMMENTARY

Introduction

[1] The Ethical Conduct Policy sets out rules governing the ethical duties of Members of Council ("Members"). This document provides background information to put those rules in context - for example, with respect to the legislation or common law doctrines that underlie those rules. It also provides interpretive guidance about how Members should approach the rules and to assist them to fulfil their responsibilities ethically.

[2] Only the Ethical Conduct Policy ("Policy") has been approved by Council. This document contains information and advice prepared by the Integrity and Ethics Office. It is intended to provide Members and the public with additional information with respect to the application and interpretation of the Policy. In the case of a conflict or inconsistency between this document and the Policy, the Policy governs.

General Obligations

Rules 4.1.1-4.1.3

[1] Numerous City of Calgary ("The City") policies and provincial enactments impose specific duties and obligations on Members. A Member has a legal obligation to fulfill those duties, and an ethical obligation to do so diligently and in good faith.

[2] Section 153 of the *Municipal Government Act* imposes general duties on Members:

> "Councillors have the following duties:
>
> (a) to consider the welfare and interests of the municipality as a whole and to bring to council's attention anything that would promote the welfare or interests of the municipality;
>
> (b) to participate generally in developing and evaluating the policies and programs of the municipality;
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> (c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by the council;
>
> (d) to obtain information about the operation or administration of the municipality from the chief administrative officer or a person designated by the chief administrative officer;

(e) to keep in confidence matters discussed in private at a council or council committee meeting until discussed at a meeting held in public;

(f) to perform any other duty or function imposed on councillors by this or any other enactment or by the council."

Bill 20, the *Municipal Government Amendment Act, 2015*, which has not yet been proclaimed in force, adds clause (e.1) requiring councillors "to adhere to the code of conduct established by council". Bill 21, the *Modernized Municipal Government Act, 2016*, which has not yet been proclaimed in force, adds clause (a.1) requiring councillors "to promote an integrated and strategic approach to intermunicipal land use planning and service delivery with neighbouring municipalities". The Government of Alberta's website indicates that these amendments will be proclaimed in force prior to the October, 2017 elections.

[3] Members owe fiduciary duties to The City as a whole. A fiduciary duty means "that one party has a duty to act in the best interests of the other party" (*Hodgkinson v. Simms* [1994] 3 SCR 377). A fiduciary must not abuse "their position to gain personal benefit" (*Peoples Department Stores Inc. (Trustee of) v. Wise* 2004 SCC 68 at para. 35). When a fiduciary prefers ~~**his or her**~~ **their** personal interests to those of the beneficiary, the fiduciary risks violating ~~**his or her**~~ **their** legal duties. As such, a Member who gives him or herself a benefit at The City's expense risks violating ~~**his or her**~~ **their** legal duties as a fiduciary, and being held liable for that violation.

[4] The City has identified the essential qualities of the organization: Character, Competence, Commitment and Collaboration. Character means behaving in the right way; Competence means doing things the right way; Commitment means dedication to the greater public good; and Collaboration means working together for a common purpose. The duties of Members under this Policy reflect and contribute to Council's role in accomplishing those qualities at The City.

[5] Sections 183 and 184 of the *Municipal Government Act* impose duties on Members with respect to voting. They require that a Member vote at any meeting attended by that Member (s. 183(1)), require that the Member abstain from voting if the Member was absent from all of a public hearing (184(a)), and permit the Member to abstain if the Member was absent for part of the public hearing (184(b)). Section 172(1)(b) requires a Member to abstain from voting if he or she has a pecuniary interest in a matter. Section 174(f) disqualifies a Member from Council if he or she does not vote on a matter when required to do so.

[6] Section 174(d) of the *Municipal Government Act* disqualifies a Member from sitting on Council if the Member misses all regular Council meetings for eight weeks in a row, unless Council authorizes that absence (s. 174(2)).

[7] In identifying whether a particular course of action raises an ethical issue or creates a legal risk a Member should assess:

(a) Is it lawful?

(b) Is it consistent with City policies, including this one?

(c) Does it have the potential to give me, my family or my friends a personal or financial benefit?

(d) How would it look to a reasonable Calgarian, fully-informed of all the circumstances?

If the answer to any of these questions is uncertain or concerning, the Member should seek advice from the Ethics Advisor.

Rules 4.1.4-4.1.5

[1] Section 174(e) of the *Municipal Government Act* disqualifies a Member from sitting on Council if the Member is convicted of certain offences under the *Criminal Code*.

[2] Generally speaking, a Member's personal life and choices are not governed by this Policy. However, the nature of the work that Members do is such that the line between the personal and the professional can be difficult to see. A Member may be held accountable for conduct that, while possibly described as personal, would nonetheless undermine a reasonable Calgarian's confidence in City governance.

[3] *The Acceptable Use of City Technology Resources – Members of Council Policy* (PAC009, 2003 June 23) permits "occasional or incidental personal use of City technology resources" (Clause 4.2). It prohibits Members from using City technology for personal gain or advantage, to access pornographic or like materials, for unlawful purposes or to post "threatening, offensive, obscene, harassing, intimidating, and abusive" messages. These sorts of violations of the *Acceptable Use of City Technology Resources – Members of Council Policy* would also violate this Policy, and in particular Rule 4.1.4.

[4] Members enjoy freedom of expression. However, Members must~~, **and must be able to,**~~ exercise their governing responsibilities independently and in the best interest of The City. Abusive, bullying or intimidating speech has the potential to undermine the ability of Members and City and Council staff to discharge their responsibilities to The City and to the public.

[5] Communications by Members are also governed by the *Respectful Workplace Policy* (HR-LR-001). The *Respectful Workplace Policy* applies to "1. City of Calgary employees, including job applicants; 2. Contractors providing service for or to The City; 3. Suppliers delivering material to the City; 4. Volunteers; 5. Members of City Council; and 6. Members of the public who are accessing City Services or City operated facilities" (Clause 1.1). It requires all of those people to be "treated with respect, honesty and dignity" (Clause 3.1), which includes being "polite, courteous and respectful of others" (Clause 7.1)

[6] Members should not use social media as a platform to treat members of the public, one another or City or Council employees disrespectfully. Members should not engage in or encourage abusive, bullying or intimidating speech. These types of interactions on social media misplace the focus of the interaction on attacking individuals rather than engaging in constructive discussion or debate. Use of social media during Election Campaigns must also comply with Rules 4.6.1- 4.6.16, governing Election Activities.

Rules 4.1.6-4.1.12

[1] The purpose of these rules is to ensure that Members fulfill their fiduciary duty to act in the best interests of The City. They direct Members not to exploit their office for personal advantage or to provide benefits to third parties to which those third parties are not properly entitled.

[2] Examples of obtaining an improper personal advantage include using one's status as a Member to influence the decision of another person to the private advantage of oneself, or one's family, staff members, friends or associates, business or otherwise. Also prohibited is persuading someone to do something (or not to do something) because the Member will provide some future benefit in return.

[3] Members routinely provide preferential treatment to some Calgarians in the sense that they, and Council, provide benefits to some that are not received by everyone. A person who for example receives Council approval of a secondary suite has received such a benefit. A person who receives a cancellation of tax arrears pursuant to s. 347 of the *Municipal Government Act* has received such a benefit. A Member may provide assistance to a constituent who has a problem on a City-related matter, which benefits that constituent. So long as those preferences arise through the ordinary and lawful discharge of the Member's duties they are ethically permitted. A Member may not, however, provide preferential treatment on a basis that falls outside the discharge of ~~his or her~~ **their** duties as a Member. That would include, for example, providing preferential treatment based on a personal relationship, on the promise or prospect of a present or future advantage being provided to the Member (such as a campaign contribution) or on other grounds that relate to the Member's personal interest or circumstances, rather than the Member's official role and duties.

[4] With respect to the appropriate use of City resources, Members should also consult the *Acceptable Use of City Technology Resources – Members of Council* (PAC009, 2003 June 23) which requires that City technology resources "be used only for their intended purpose" (Clause 4.1) and prohibits the use of those resources "for outside activities without the prior agreement of the Manager, Office of the Councillors" (Clause 4.3). They should also consult Rules 4.6.12-4.6.14 which restrict the use of City resources for Election Campaigns.

[5] The rule against asking a City employee to undertake personal or private work on behalf of a Member does not prohibit a Member from asking their staff to perform personal tasks that are connected to the Member's discharge of their office. This would include, for example, asking a staff member to make appointments and to manage the Member's calendar.

Confidentiality and Information Management

Rules 4.2.1-4.2.3

[1] Section 153(d) of the *Municipal Government Act* requires Members "to keep in confidence matters discussed in private at a council or council committee meeting until discussed at a meeting held in public".

[2] Confidential Information includes but is not limited to information such as:

(i) All discussions at *in camera* meetings of Council or Council committees until that information has become public or Council has passed a resolution authorizing it to be disclosed;

(ii) Legal advice;

(iii) Items under litigation or negotiation;

(iv) Personnel matters;

(v) Information that infringes on the rights of others (for example, the identity of a whistle-blower);

(vi) Price schedules in a contract tender or request for proposal submission where those schedules are stated to be confidential;

(vii) Information related generally to the procurement of good**s** or services;

(viii) Statistical data required by law not to be released.

[3] Section 174(1)(i) of the *Municipal Government Act* disqualifies a Member from Council if he or she "uses information obtained through being on council to gain a pecuniary benefit in respect of any matter".

Rules 4.2.4-4.2.6

[1] The *Freedom of Information and Protection of Privacy Act* RSA 200, c. F-25 ("*FOIPP Act"*) allows people to obtain access to "any record in the custody or under the control of a public body" (s. 6(1)). There are several exceptions to this requirement. For example, a public body may refuse to disclose personal information that would unreasonably invade someone else's personal privacy (s. 17(1)), interfere with public safety (s. 18(1)(b)), undermine law enforcement (s. 20(1)(a)), harm relations between the provincial government and the City (s. 21(1)(a)(ii) or that is privileged (for example, legal advice)(s. 27(1)). The *FOIPP Act* does not permit disclosure of draft bylaws or policies, of any in camera deliberations by Council (s. 23(1)) or of information that could harm the economic interests of the City (s. 25(1)).

[2] The *FOIPP Act* requires The City to protect any personal information it collects from "unauthorized access, collection, use, disclosure or destruction". Personal information under the *FOIPP Act* means recorded information about an identifiable individual; the *FOIPP Act* further specifies what is included in personal information, which includes for example the person's age, sex, marital status, fingerprints, race, and ~~**his or her**~~ **their** "personal views or opinions".

[3] Council has Council policies that specifically govern records and information management: The *Records Management Policy for Councillors* (PAC013, 1999 April 27) and *Information Management and Computer Resources Policy – Office of the Councillors* (PAC011, 1992 February 18). These Council policies primarily govern the Office of the Councillors, but also direct Councillors to retain data "in a manner consistent with the Ethical Conduct Policy for Members of Council" (PAC011). Councillors have discretion under the *Records Management Policy* with respect to how they classify and retain documents, but Members should be aware that the *Records*

Management Policy was created in 1999 and may not reflect current requirements under the *FOIPP Act*. For that reason, the *Ethical Conduct Policy* directs Members to follow best practices with respect to the retention of records and other information.

Disclosure

Rules 4.3.1-4.3.4

[1] As set out in Rule 4.1.2, a Member's failure to comply with the *Disclosure Policy for Members of Council* (CC044, 2014 November 04) also constitutes a breach of this Policy. Members have an ethical obligation to comply with their responsibilities under the *Disclosure Policy for Members of Council* diligently and in good faith.

[2] The ability of the Office of the Councillors to fulfil its responsibility to disclose Member budgets and expenses depends on the good faith and timely provision of information by Members to the Office of the Councillors.

[3] **Rule 4.3.4 requires a Member to disclose the name of visitors with whom the Member or their staff meet in their offices. This rule cannot be drafted to apply generally to people a Member or their staff meet outside of their offices, because doing so would be impractical. If, however, a Member or their staff has a business meeting outside of the office, the Member ought to disclose the name of the person or persons in attendance at the meeting. As in Rule 4.3.4, disclosure is subject to the consent of the person with whom the Member or their staff met, but the person ought to be encouraged to consent to the disclosure.**

Gifts and Benefits

Rules 4.4.1-4.4.7

[1] Under these rules, a Member may not accept a Gift or Personal Benefit that is connected directly or indirectly with the performance of ~~**his or her**~~ **their** duties unless it falls within one of the exceptions listed in Rule 4.4.6. If a Gift or Personal Benefit is permitted as an exception it must be disclosed. In short: a Gift or Personal Benefit (as defined in the Policy) must be refused or disclosed.

[2] The Policy requires Members to determine when a Gift or Personal Benefit is for personal use, such that it falls within this Policy. They also require Members to determine when a Gift or Personal Benefit is connected with the performance of ~~**his or her**~~ **their** duties as a Member, such that it may not be solicited or accepted unless an exception applies under Rule 4.4.6, and must be disclosed. In answering these questions Members should start with the assumption that any item included in the definition of a Gift or Personal Benefit (e.g., a ticket to an event) is for personal use and is connected with the performance of ~~**his or her**~~ **their** duties as a Member. An item should be viewed as for personal use if it provides a benefit to the Member beyond the performance of the Member's duties. An item should be viewed as connected to the Member's performance of ~~**his or her**~~ **their** duties unless it is provided by someone like a family member, an old friend (i.e., someone unconnected to the

Member's role), or a date. When in doubt, the Member should seek advice from the Ethics Advisor.

[3] An example of a Gift that is an "incident of protocol or social obligation" would be a Gift provided to thank the Member for speaking at an event or conference. A Gift received as a normal or necessary incident to the Member's responsibilities as a Ward representative would include a modest Gift of thanks or acknowledgement from a constituent.

[4] The *Indemnification of Members of Council Policy* (CC010, 1977 August 22) provides that a Member may solicit donations to The City to defray costs incurred by The City to indemnify a Member for external legal fees and disbursements (Procedure, Clause 2a).

[5] Members seeking to solicit funds to fundraise for a community, charitable or non-profit organization must provide full disclosure to the Ethics Advisor and obtain the approval of the Ethics Advisor prior to soliciting such funds. Members should also consult the *Guidelines on Third Party Fundraising by Members of Council* (PFC2017-0426, 2017 May 02) for information as to the type of practices that should be followed when engaging in fundraising for community, charitable or non-profit organizations.

[6] The purpose of disclosing Gifts and Personal Benefits is to permit transparency. It is not to create an undue burden on a Member's staff. For that reason, a Member ought to disclose the value of a Gift or Personal Benefit if it is known or readily ascertainable, but does not need to ask Council or City employees to search to discover the value. A description or photograph of the item is sufficient in that instance. In addition, when a Member is invited to attend an event where food and beverages are served, the Member needs to disclose their attendance at the event, but does not need to itemize the food and beverages consumed.

Conflicts of Interest

Rules 4.5.1-4.5.3

[1] Sections 170-174 of the *Municipal Government Act* impose obligations on Members when they have a pecuniary interest. A Member must familiarize him or herself with the *Municipal Government Act*'s requirements, and must not rely solely on the information contained here.

[2] The basic approach of the *Municipal Government Act* is that when a Member has a pecuniary interest, the Member must disclose that interest, must not vote on the matter in which he or she has a pecuniary interest, must not participate in discussions on that matter and must leave the room while the matter is considered. A Member who violates these obligations will be disqualified from Council (See: ss. 170, 172 and 174(1)(g)-(i)).

[3] The *Municipal Government Act* defines a pecuniary interest as a matter which could "monetarily affect" the Member or the Member's family. It includes an effect on the

Member directly or, in some circumstances, an effect on a corporation or partnership in which the Member is a shareholder, director, officer or partner (See: s. 170(1)-(2)).

[4] The *Municipal Government Act* does set out some exceptions that narrow the definition of a pecuniary interest. A pecuniary interest does not arise, for example, because there is a monetary effect on a Member that arises just because a Member and ~~**his or her**~~ **their** family are electors or taxpayers in the City. It does not occur because the Member is paid to sit on Council, or to sit on another body as a representative of Council. It does not occur because the Member or the Member's family have an interest in common with the majority of electors in the City, or with the majority of electors in part of the City. It does not occur when it is "so remote or insignificant that it cannot reasonably be regarded as likely to influence" the Member (See: s. 170(3)(a)-(h) - 170(4)).

[5] Under the common law, a decision by a municipality may be voided if a fully informed member of the public could have a "reasonable apprehension" that the Member is biased. Generally speaking, courts are very reluctant to say that it is reasonable to apprehend that a Member is biased. A Member may have a clear position on a matter before Council, so long as the Member is amenable to persuasion, and the clear position does not arise from corruption (*Save Richmond Farmland Society v. Richmond (Township)* [1990] 3 S.C.R. 1213). At the same time, under the *Municipal Government Act* a Member has an obligation to vote on matters put to a vote at the meeting unless he or she has grounds for abstention, and may be disqualified if he or she improperly fails to vote (See: s. 183(1) and s. 174(f)). To ensure that the Member votes when he or she ought to do so, but that he or she does not end up voting on a matter where he or she is biased, the Member must (if practically possible) disclose personal interests in matters before Council to the Ethics Advisor, even if those personal interests are not a pecuniary interest. The Ethics Advisor will advise the Member about whether to vote, consulting with the City Solicitor where appropriate.

[6] The sorts of personal interests that could give rise to a reasonable apprehension of bias include a personal relationship with an applicant before Council – for example, a Member's best friend applying for a secondary suite.

Election Activities

Rules 4.6.1-4.6.16

[1] The *Local Authorities Election Act* imposes obligations on all candidates in a Municipal Election, including those sitting as incumbent Members. It imposes restrictions and conditions on raising funds, requires that all candidates be registered to run, imposes obligations in relation to disclosure and the management of surplus funds, and makes the candidate responsible for ensuring compliance with the *Local Authorities Election Act's* requirements. It also creates offences for unlawful interference with an election. Section 174 of the *Municipal Government Act* disqualifies a Member in the event he or she failed to meet certain requirements of the *Local Authorities Election Act*.

[2] Pursuant to s. 25 of the *Local Authorities Election Act*, Nomination Day is four weeks before election day.

[3] The Administration policy on *Conflict of Interest* (HR-LR-004(B)) governs political activity by City employees. It permits City employees to engage in political activity outside of the workplace and during non-work time. It directs City employees to be "politically neutral" in the performance of their City duties.

[4] Where Members or their staff are uncertain as to whether an activity during the Campaign Period or after Nomination Day violates this Policy they should consult with the Ethics Advisor.