

Integrity and Ethics Office Report to
Priorities and Finance Committee
2020 July 14

ISC: UNRESTRICTED
PFC2020-0827

Proposed Amendments to the Code of Conduct for Elected Officials (Bylaw Number 26M2018)

EXECUTIVE SUMMARY

The Integrity and Ethics Office is required, in accordance with its Terms of Reference, to assist in recommending revisions or additions to Council policies and bylaws where appropriate. Further, section 8 of the Code of Conduct for Elected Officials (Bylaw Number 26M2018) (“Bylaw”) instructs the Integrity and Ethics Office to review the Bylaw annually.

This report proposes amendments to the Code of Conduct for Elected Officials to provide greater clarity and update several sections, and draws Council’s attention to updated City of Calgary policies for acknowledgment.

RECOMMENDATION:

That the Priorities and Finance Committee recommend that Council give three readings to the proposed bylaw (Attachment 1) to amend the Code of Conduct for Elected Officials (Bylaw 26M2018), which incorporates by reference the *Respectful Workplace Policy* (HR-LR-001) and *Workplace Violence Policy* (GN-040) as updated by City Administration on 3 March and 7 April, 2020, respectively.

PREVIOUS COUNCIL DIRECTION / POLICY

Council adopted Bylaw 26M2018 at the 2018 May 28 Regular Meeting of Council.

BACKGROUND

Council appointed the current Ethics Advisor in 2019 April. Since that time, the Ethics Advisor has reviewed the Code of Conduct for Elected Officials to ensure it remains current and aligns with best practices.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The Integrity and Ethics Office recommends the following amendments to the Bylaw:

1) Aligning the Bylaw with compliance obligations under the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (“FOIP Act”).

Councillors have various disclosure obligations that are important for the purpose of public accountability. However, in certain circumstances such disclosures implicate the personal privacy of third parties. In particular, two provisions in the Bylaw, and three policies have disclosure obligations:

- S. 30 of the Bylaw, as proposed to be amended here, regarding the visitor registry;
- S. 35 of the Bylaw, regarding disclosure of gifts and personal benefits;
- *The Disclosure Policy for Members of Council* CC044, regarding personal financial interests (s. 18(h));
- *Councillors’ Expenses/Allowance Policy* PAC006 regarding public reporting of Councillor expenses (s. 18(i));

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- *The Guidelines for Fundraising by Members of Council* PFC2017-0426 (s. 6.1) (although note these are guidance only and the governing provision is s. 34(b) of the Bylaw, and as proposed to be amended).

It is proposed that section 18.1 is added after section 18 as follows:

D.1 – Disclosure of Third Party Personal Information

18.1 (1) *Personal Information* may be used only for the purpose for which it was collected, or consistent with that purpose, and to the extent necessary to enable *Members* to discharge the duties of their office in the best interests of The City and in a reasonable manner. Disclosure of *Personal Information* may occur only in the following circumstances

(a) the disclosure would not be an unreasonable invasion of a third party's personal privacy;

(b) if the *Personal Information* is information of a type routinely disclosed in a business or professional context, the disclosure is limited to business contact information, and does not reveal other *Personal Information* about the individual or *Personal Information* about another individual; or

(c) if the disclosure otherwise complies with the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25.

(2) A *Member* who is uncertain about the procedure for disclosure should seek advice from the Office of the Councillors. A *Member* who is uncertain whether a disclosure creates a risk of violating this Bylaw, or is otherwise of a confidential nature, should seek written advice from the *Ethics Advisor*.

With this provision, the goal is to synthesize to one provision the balance to be struck between protection of personal privacy under the FOIP Act and Member disclosure obligations. Amendment of some of the above policies may be required to comply with this provision. However, this amendment will operate as authoritative instructions to Council regarding their disclosure obligations, and supersede any non-compliant disclosure advice in related Council policies. It is hoped that this makes disclosure simpler and easier for the Office of the Councillors and Mayor's Office to comply with. The Ethics Advisor will work with the Office of the Councillors in operationalizing this provision. While Councillor disclosure questions will primarily be fielded by the Office of the Councillors where of a procedural nature, if a Councillor is uncertain whether disclosure might create a risk of violating the Bylaw, or there are specific concerns of a confidential nature, advice should be sought from the Ethics Advisor.

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2) Clarifying the scope of disclosing meetings with Members of Council.

It is proposed that s. 30 is deleted and replaced as follows:

Current provision:	Proposed replacement provision:
<p>Subject to a visitor's consent, which the visitor must be encouraged to provide, a <i>Member</i> must disclose quarterly a list of persons with whom they or their staff have met in their offices, excluding media and <i>City</i> employees.</p>	<p>30. A <i>Member</i> must disclose quarterly a list of persons with whom they or their staff have meetings, regardless of location and including remotely, but excluding media, <i>City</i> employees and <i>Immediate Family</i>. Disclosure of such persons names is not required in the following circumstances:</p> <ul style="list-style-type: none">(1) If the meeting is of a size and nature that the names of many of those participating is unknown; or(2) If the act of disclosure would violate s. 18.1 of this Bylaw concerning protection of third party personal privacy. <p>In such cases, only the fact the meeting took place is required.</p> <ul style="list-style-type: none">(3) A <i>Member</i> who is uncertain about the procedure for disclosure should seek advice from the Office of the Councillors. A <i>Member</i> who is uncertain whether a disclosure creates a risk of violating this Bylaw, or is otherwise of a confidential nature, should seek written advice from the <i>Ethics Advisor</i>.

The proposed amendment serves three purposes.

First, the amendment adds an exclusion to disclosing visits from immediate family members. This is because such visits are usually of a personal and private nature. Further, "immediate family" is a defined term in the Bylaw (s. 3(k)) limiting the individuals who may benefit from the exclusion.

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Second, s. 30 currently limits disclosure to a “visitor” a Member or their staff have “met” with “in their offices”. The proposed amendment removes the restriction to meetings in offices to better capture the variety of places Members and their staff hold meetings, including remotely. Further, the amendment refers to meetings rather than a visitor registry to better capture the objective of the provision. The goal is for Members to report, broadly, on the meetings they or their staff have, to be accountable to the public and avoid what may be reasonably perceived as a conflict of interest.

However, broadening the scope creates some uncertainty. Sometimes the meetings are more akin to events or townhalls, and visitors’ names are not known. In such a situation, there is no need to disclose the names of visitors. Sometimes it is unclear whether an interaction is a social event or meeting, which risk is greater when the meeting is held out of office. If a Member is uncertain whether to disclose a meeting, advice should be sought from the Ethics Advisor.

Finally, disclosure of meetings raises potential privacy concerns of those participating. In narrow circumstances, it may be appropriate for the names of the visitors to not be disclosed, such as when identification will reveal sensitive personal information and/or involves a constituent meeting with a Councillor in a personal capacity. If a Member thinks exclusion from disclosure is warranted on privacy grounds, an opinion should be sought from the Ethics Advisor.

3) Clarifying events at which a Member may receive a gift or benefit.

It is proposed that s. 34(b) is amended to include “benevolent events”:

Current provision: 34. A Member may receive a <i>Gift or Personal Benefit</i> if it is: ... (b) received as part of fundraising activities for a community, charitable or non-profit organization, undertaken after full disclosure to and in compliance with a written opinion from the <i>Ethics Advisor</i> ;	Proposed amended provision (amendments underlined): 34. A Member may receive a <i>Gift or Personal Benefit</i> if it is: ... (b) received as part of fundraising activities, <u>including benevolent events</u> , for a community, charitable or non-profit organization, undertaken after full disclosure to and in compliance with a written opinion from the <i>Ethics Advisor</i> ;
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The proposed amendment would broaden the scope of section 34 to include ‘benevolent events’. The purpose of the proposed amendment is to clarify that hosting an event to benefit a third party is a fundraising event, even if the event does not specifically raise funds or similar charitable output for a third party. For example, this amendment would clarify that hosting a picnic or barbeque for a community with the support of donations of food and entertainment is a fundraising activity for the purposes of s. 34(b) of the Bylaw.

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The proposed amendment serves two purposes. First, the amendment makes disclosure requirements for receipt of gifts and personal benefits consistent for all events that benefit a third party, rather than potentially being different depending on whether funds were raised for a third party through the event. A broad understanding of fundraising activities to include benevolent events serves the goals of the Bylaw to promote public trust and confidence in City governance through accountability mechanisms, including disclosure of gifts and personal benefits.

Second, the amendment clarifies that a Councillor should seek the advice of the Ethics Advisor for all events that benefit a third party to ensure it complies with the Bylaw. This is consistent with the amendments made to the fundraising policies by the former Ethics Advisor, Alice Woolley, which emphasized that Councillors are governed by the broad principles in the Bylaw combined with fact-specific advice by the Ethics Advisor (see *Additional Advice on a Proposed Council Policy on Fundraising to Benefit a Third Party* (2 May 2017)).

4) Clarifying the permissive nature of sanctions.

It is proposed that s. 92 is amended to clarify the language:

Current provision: 92. Sanctions that may be imposed for violating this Bylaw or a <i>City</i> policy governing <i>Member</i> conduct include any of the following: ...	Proposed amended provision deleting the words “any of” before the words “the following”. 92. Sanctions that may be imposed for violating this Bylaw or a <i>City</i> policy governing <i>Member</i> conduct include the following: ...
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The Bylaw lists sanctions that may be imposed. The language uses both permissive and restrictive language. This amendment seeks to amend the language of s. 92 to clarify that the list of sanctions is non-exhaustive.

5) Various minor amendments of a typographical nature.

The Integrity and Ethics Office recommends amendments to correct typographical errors and inconsistencies in the Code, including consistent referencing to defined terms, formatting and headings.

6) Incorporating new City of Calgary policies.

The Integrity and Ethics Office recommends that Council acknowledge that the Bylaw incorporates, by reference, the *Respectful Workplace Policy* (HR-LR-001) and the *Workplace Violence Policy* (GN-040). These policies were recently replaced with new versions by the City of Calgary. No amendment to the Bylaw is required. However, the Integrity and Ethics Office

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recommends that Council acknowledge that the Bylaw incorporates by reference the updated policies.

Stakeholder Engagement, Research and Communication

The Ethics Advisor sought the advice of City of Calgary staff in the Law section and the City Clerk's Office, including the Information Access and Privacy Office, Members, the Integrity Commissioner, the Office of the Councillors Manager, and conducted research (historical, legal primary and secondary, comparative) in the development of the proposed amendments.

Strategic Alignment

The proposed amendments align with One Calgary's citizen priority: *A Well Run City*.

Social, Environmental, Economic (External)

The proposed amendments to the Code of Conduct for Elected Officials will ensure Council and The City comply with their legal obligations and promote accountability and transparency in City government.

Financial Capacity

Current and Future Operating Budget:

There are no current or future operating budget impacts.

Current and Future Capital Budget:

There are no current or future capital budget impacts.

Risk Assessment

There are no risks associated with proceeding with the proposed amendments. There are risks associated with not proceeding, including reputational risks to The City or Members of Council.

REASON FOR RECOMMENDATION:

The proposed amendments provide clarity to several sections of the Code of Conduct for Elected Officials, and ensure it incorporates new or updated policies.

ATTACHMENT

1. Attachment 1 – Proposed Text of and Amendment to Code of Conduct for Elected Officials (Bylaw Number 26M2018).