

Councillor Conduct in Other Wards Policy

RECOMMENDATION(S):

That the Priorities and Finance Committee recommends that Council adopt the Councillor Conduct in Other Wards Policy, set out in Attachment 1.

RECOMMENDATION OF THE PRIORITIES AND FINANCE COMMITTEE, 2020 DECEMBER 01:

No recommendation from the Committee.

Excerpt from the Minutes of the 2020 December 01 Priorities and Finance Committee:

“Pursuant to Section 134(a) of Procedure Bylaw 35M2017 Councillor Carra requested that the Lost Motion be forwarded to the 2020 December 14 Combined Meeting of Council.”

“**Moved by** Councillor Carra

That with respect to Report PFC2020-1378, the following be approved:

That the Priorities and Finance Committee recommend that Council approve the Councillor Conduct in Other Wards Policy, set out in Attachment 1.

ROLL CALL VOTE:

For: (4) Mayor Nenshi, Councillor Carra, Councillor Woolley, and Councillor Farrell

Against: Councillor Chu, Councillor Davison, Councillor Gondek, Councillor Sutherland,
(6) Councillor Colley-Urquhart, and Councillor Farkas

MOTION DEFEATED”

HIGHLIGHTS

- The Councillor Conduct in Other Wards Policy (the Policy) aims to provide clear and flexible rules governing Councillor conduct that respect and balance overarching principles regarding City governance and ward representation.
- The Policy benefits Calgarians, because it provides clarity as to the appropriate conduct of Councillors in relation to wards, or constituents in wards, other than the one they represent.
- In 2016 Council unanimously approved Notice of Motion NM2016-17, which requested that the Ethics Advisor develop a code of conduct to address activities of Councillors in communities that are not currently in their ward boundaries, in particular due to ward boundary changes for the upcoming election. The Proposed Ethical Guidelines for Councillor Conduct in Relation to Other Councillor’s Wards (Guidelines) was adopted by Council in September 2016.
- The Guidelines expired with the last election on October 16, 2017.

Councillor Conduct in Other Wards Policy

- In 2018, Council adopted the Code of Conduct for Elected Officials Bylaw (26M2018) (Code of Conduct Bylaw). The Code of Conduct Bylaw and the *Municipal Government Act*, RSA 2000, c. M-26 do not consider or direct the duties and obligations of Councillors in relation to wards.
- Strategic Alignment to Council's Citizen Priorities: A well-run city

DISCUSSION

Greater clarity was sought, in the lead-up to the 2017 General Election about activities and involvement of Councillors in relation to other wards, in particular due to changes in ward boundaries. The Guidelines developed were applicable between September 2016 when the Guidelines were approved and the time of the election in October 2017. Some provisions only applied until the *campaign period* as defined in the Code of Conduct Bylaw as "the period commencing the first of June immediately preceding a general election and ending on the day of the general election" (s. 3(a)).

Councillors owe fiduciary duties to act in the best interests of the City. They must govern in the interests of the municipality as a whole. At the same time, the existence of wards creates a system of local representation within Council. That a Councillor ought not to sacrifice the interests of the City as a whole to those of his or her ward does not diminish the importance of the Councillor's representation of the interests of his or her ward, generally and in relation to the Calgarians who live within the ward. Further, a Councillor must be given the ability to discharge that representative duty without improper interference from another Councillor, or without the residents of the ward seeking to undermine the Councillor's pursuit of the ward's interests by pitting one Councillor against another.

Those concerns are heightened during a ward boundary change simply by virtue of the fact that many Calgary communities now have both a current Councillor, and a Councillor who may be seeking to represent their interests in the future.

A Policy must, therefore, draw an appropriate line between allowing a Councillor to represent the interests of the City, including those of Calgarians in other wards, while also allowing a Councillor to represent effectively the interests of the ward they currently represent. The place that line ought to be is likely different for a pre-election year where there has been a significant ward boundary change.

Proposed Policy

Scope

In the event that there are future boundary changes, and for greater clarity and efficiency, it is proposed that this Policy is applicable during the *campaign period* as defined in the *Local Authorities Election Act*, RSA 2000, c L-21, which is currently for the period of January 1 to December 31 in the year in which an election is held (s. 147.1(1)(b)). The effect of this would be that this Policy would not need to be re-introduced to Council for approval in relation to future elections.

Summary of Each Policy

Councillor Conduct in Other Wards Policy

The objective and rationale for the Policy is the same as the Guidelines and is below.

Public Events

There is no prohibition on attending a public event in another Councillor's ward. Many public events in a ward address matters that have citywide impact, such as development of city infrastructure, transit or bike paths. This may even be true of ostensibly ward-specific developments. Other public events are simply events open to the public, such as the Calgary Stampede, the theatre, or a football or hockey game.

Some ward events are, however, exclusively related to local or ward-specific matters of city governance. An event of that type would include, for example, a community association hosted town hall regarding a proposed ward-limited development, a facility renovation or a facility closing.

Issues may arise where a Councillor attends an exclusively local or ward-specific event, even if that event is public. Particularly given the change in ward-boundaries, it is possible for constituents to be unclear as to who is representing their interests. It is also possible for the outside Councillor to undermine the effectiveness and clarity of communications by the representing Councillor to ward constituents. It may also be more difficult for the representing Councillor to obtain information from ward constituents, since the constituents may speak to the outside Councillor instead of to the representing Councillor.

For that reason, the Police provides that a Councillor may attend public events in another Councillor's ward. However, if the event is local or ward-specific in focus, they must inform the Councillor responsible for the ward that they will be attending. There are provisions for outside Councillors to follow when communicating with constituents at the event. If a Councillor is uncertain as to whether an event is local or ward-specific they should seek advice from the Ethics Advisor.

The rules relating to attendance at public events expires on May 31 in an election year with the commencement of the *campaign period* defined in the Code of Conduct Bylaw.

City or Ward Governance Private Events

Councillors attend events in their wards to which the public is not invited, and at which matters of city or ward governance are discussed. Events of that type would include Community Association or Business Revitalization Zone governance meetings. If an outside Councillor attends a private event on matters related to City or ward governance it creates a material risk of constituent confusion and of undermining the representation of a ward by the representing Councillor, particularly if the representing Councillor is not in attendance at the event. The representing Councillor may not learn of constituent concerns, they may not be able to communicate effectively with constituents, and constituents may receive mixed messages from the different Councillors. These risks are more significant than those arising from a public event by virtue of the private nature of the communications that take place. Unlike public events, these risks may arise up to the point of the next election, and in relation to citywide matters, not just ward-specific matters. A Councillor's representative function includes learning about and taking into account the interests of organizations within a ward in relation to citywide matters as well as ward-specific matters.

Councillor Conduct in Other Wards Policy

It should be noted, however, that these risks do not arise for all or even many private events. Many private events do not relate to city or ward governance. For example, a private party or even a campaign fundraising event organized for the Councillor that occurs outside the boundaries of the Councillor's ward, do not raise issues of city or ward governance.

The Policy provides that an outside Councillor will not attend city or ward governance private events without the permission of the representing Councillor. A Councillor who is uncertain as to whether a private event is a city or ward governance event should seek advice from the Ethics Advisor.

Campaigning

In a Councillor's ward they may engage in activities that would not, prior to the election period, necessarily be viewed as campaigning. A representing Councillor would be expected to undertake activities such as door knocking, phone calls and mail outs as part of his or her representation of the interests of the ward. Theoretically, a Councillor could undertake such activities in an area outside of his or her own ward as part of his or her representation of the interests of the City as a whole. Doing so would, however, be unusual. It is also likely to lead to confusion on the part of the person contacted in that way. It creates a material risk of undermining the representation of a ward by the representing Councillor.

The Policy provides that an outside Councillor will only engage in such activities as part of his or her election campaign, and in accordance with all the rules governing such campaign activities, particularly the Code of Conduct Bylaw. If during the course of doing so, a constituent raises ward specific issues, the outside Councillor ought to refer those issues to the representing Councillor. In addition, prior to May 31 of the election year the outside Councillor must inform the representing Councillor of the campaign activities being undertaken.

Communication

The issue of Councillors receiving requests for assistance from constituents in other wards is not unique to Calgary nor to the change in ward boundaries. It may, however, be heightened during the period where ward boundaries are in flux, since constituents may be more likely to contact the Councillor who could be representing their community after the next election.

A Councillor receiving requests from constituents in another ward ought to direct the requestor to the representing Councillor absent a good reason for the outside Councillor to respond to the request. A good reason would involve an unexplained or unjustified refusal of the representing Councillor to assist the requestor, an undue delay for the representing Councillor's response, or something equivalent. It would not include that the constituent or outside Councillor simply did not agree with the response of the representing Councillor.

STAKEHOLDER ENGAGEMENT AND COMMUNICATION (EXTERNAL)

- Public Engagement was undertaken
- Public Communication or Engagement was not required

Councillor Conduct in Other Wards Policy

- Public/Stakeholders were informed
- Stakeholder or customer dialogue/relations were undertaken

ATTACHMENT

1. Proposed Councillor Conduct in Other Wards Policy