

PROPOSED ETHICAL GUIDELINES FOR COUNCILLOR CONDUCT IN RELATION TO OTHER COUNCILLOR'S WARDS

EXECUTIVE SUMMARY

Current Council Policies do not address the appropriate conduct of Councillors in relation to wards, or constituents in wards, other than the one they represent. The question of what constitutes appropriate conduct has become more significant because of the changes in ward boundaries to be effective 2017 October 16.

On 2016 July 25, Council unanimously approved Notice of Motion NM2016-17, which resolves that "Council request that the Ethics [Advisor] be directed to develop a code of conduct for Councillors, setting out restrictions and obligations on Councillors in relation to activities in communities that are not currently in their ward boundaries".

This Report provides background and explanation for the Ethical Guidelines for Councillor Conduct in Relation to Other Councillor's Wards, set out in the Attachment.

ETHICS ADVISOR'S RECOMMENDATION

1. That Council consider and adopt the Ethical Guidelines for Councillor Conduct in Relation to Other Councillor's Wards, set out in the Attachment 1;
2. That Council direct the Ethics Advisor to revise and update the Ethical Guidelines following the 2017 October 16 election.

PREVIOUS COUNCIL DIRECTION / POLICY

The Ethical Conduct Policy for Members of Council (CC042, Effective 2013 July 01) provides information on standards for Council Member conduct. The Ethical Conduct Policy notes by way of background the general legislative duties of Council Members 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" ("Legislated Responsibilities, Policy p. 3). It sets out the fiduciary duty of council members to "Act in the best interests of the City of Calgary and the public" ("Fiduciary Duty, Policy p. 4).

The Ethical Conduct Policy does not directly address the duties and obligations of Councillors in relation to the representation of their own wards. It also does not set out any express restrictions on the work or activities of Councillors in wards, or for constituents in wards, other than the one they represent.

The *Municipal Government Act* RSA 2000, c. M-26, sets out the General Duties of Councillors (s. 153), but does not address Councillors' duties in relation to wards, perhaps because the division of a municipality into wards is at the discretion of municipal council (s. 148).

Calgary was divided into wards as a consequence of a 1969 plebiscite. Calgary has had 14 wards since 1977 (Bylaw 66/77), with the boundaries of those wards being periodically adjusted to avoid population imbalances between wards. Adjustments reflect predicted patterns of population growth and city expansion. On 2016 May 16 Council gave first reading to Bylaw 25M2016 which amends ward boundaries effective Election Day, 2017 October 16.

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The Members of Council and Election Campaigns Policy (CC041, Effective 2013 January 28) establishes guidelines in relation to the use of Internet Resources, City and Elected Officials' Staff and City Resources for the purpose of election campaigns. It does not discuss or provide guidance in relation to election campaign activities in wards not currently represented by the Councillor.

On 2016 July 25, Council unanimously approved Notice of Motion NM2016-17, which resolves that "Council request that the Ethics [Advisor] be directed to develop a code of conduct for Councillors, setting out restrictions and obligations on Councillors in relation to activities in communities that are not currently in their ward boundaries". The preamble to the Notice of Motion noted the importance of ensuring that "service to all communities by Councillors is equitable and effective" and of ensuring "fair and ethical conduct is maintained" when campaigning. It directed the Ethics Advisor to "solicit input from Councillors and the Mayor"

During discussion of the Notice of Motion at Council, Councillors emphasized the importance of creating clear and flexible guidelines that have taken into account input from Councillors and the Mayor.

BACKGROUND

Why Ethical Guidelines are required

As noted, Calgary City Councillors do not currently have any explicit guidelines governing their conduct in relation to wards, and to constituents in wards, other than the one they represent.

Calgary Council is in this respect different from Toronto City Council. Toronto adopted a Protocol governing Councillor Involvement in Other Wards proposed by the Integrity Commissioner on 2010 January 28. The Toronto Protocol permits a Councillor to provide assistance on the request of a constituent in another ward but only in limited circumstances. The outside Councillor must ensure that the requestor has first sought assistance from the representing Councillor. If the requestor has done so, then the outside Councillor should nonetheless decline to assist the requestor if there "is no good reason for the requestor to seek his or her help" (Toronto Protocol, Clause 3). If the outside Councillor does provide assistance than he or she should inform the representing Councillor that he or she is doing so, absent "exceptional circumstances". If the representing Councillor at that point indicates a willingness to assist the requestor, then the member should discuss that willingness with the requestor, determine whether assistance continues to be appropriate, and advise the representing Councillor of that. The protocol clarifies that it "in no way inhibits the entitlement of outside members to become involved in issues that have broader or city-wide implications or that arise out of the outside member's specific responsibilities... However, in such cases, courtesy requires the outside member to inform the ward member of an intention to become involved".

The 2010 Toronto Protocol flows from a 2005 September 12 Report issued by then Integrity Commissioner David Mullan. Integrity Commissioner Mullan recommended the adoption of a protocol because in his view there was no general prohibition that ought to apply to a Council Member being involved in issues from another Councillor's ward. He noted the importance of

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avoiding the “unhealthy spectre of each ward as the personal fiefdom of the Councillor for that Ward” (Mullan Report, p. 2).

Toronto also has a Staff Protocol governing staff responses to Councillors requesting assistance on matters arising from another Council Member’s ward (“Involvement of Members in Other Members’ Ward Matters”, 2005 February 1-3). The Staff Protocol requires the representing Councillor to be informed of inquiries and concerns from outside Council Members, and to be advised of the responses being provided by City staff.

The Toronto Protocols and Reports provide somewhat limited assistance in relation to the matters and concerns now raised by Calgary Council. Most significantly, the Toronto Protocol does not arise from or relate to a change in ward boundaries. It therefore does not address issues related to campaign activities in another Councillor’s ward. It does not address the increase in requests and for participation in activities likely to arise from communities not currently represented by a Councillor, but which due to ward boundary changes that Councillor may seek to represent in the upcoming election.

In addition, the 2010 Toronto Protocol directs Councillors only to become involved where there is “no good reason” for a requestor to be seeking outside help. It does not, however, provide any indication as to what would or would not constitute a good reason.

The current circumstances of Calgary, and the Notice of Motion approved by Council, suggest that greater clarity about activities by outside Councillors would be useful, at least until the 2017 October 16 election. There has been one complaint raised about a Councillor’s conduct. That complaint was resolved informally after being referred to the Ethics Advisor by the Integrity Commissioner. The fact of the complaint reinforces the perception that guidance is necessary.

That being said, the Guidelines appropriate for the time prior to the election are unlikely to be appropriate after the election. This Report therefore recommends that Council direct the Ethics Advisor to reassess and resubmit the Guidelines for approval following the 2017 October 16 election.

What should guidelines do?

As noted, the Ethical Conduct Policy and the *Municipal Government Act* make it clear that Councillors govern in the interests of the municipality as a whole; a Councillor could not properly discharge his or her duties if focused only on the interests or concerns of the ward he or she represents. As noted by former Integrity Commissioner Mullan, a Councillor’s ward ought not to become or be viewed as a personal fiefdom.

At the same time, a ward-based system of government 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

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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.

Ethical Guidelines 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 he or she currently represents.

As noted, the place that line ought to be is likely to be different for a pre-election year where there has been a significant ward boundary change.

Proposed Guidelines

Scope

To reflect the fact that it deals with a new and unusual circumstance, the scope of the guidelines is temporally constrained. Certain provisions will apply only until the beginning of the election blackout on 2017 May 31. The Guidelines as a whole will expire 2017 October 16.

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, such as a meeting on a development like Calgary Next. 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 Guidelines provide that a Councillor may attend public events in another councillor's ward. However, if the event is local or ward-specific in focus, he or she must inform the Councillor responsible for the ward that he or she will be attending. There are also some

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guidelines 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 he or she should seek advice from the Ethics Advisor.

The rules relating to attendance at public events expires on 2017 May 31 with the commencement of the blackout period.

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, he or she 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.

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 Guidelines provide 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 he or she 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 Guidelines provide 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

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activities (particularly, Members of Council and Election Campaigns, Policy CC041). 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 2017 May 31 the outside Councillor must inform the representing Councillor of the campaign activities being undertaken.

Communication

As is clear from the Toronto Protocol, 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.

The Guidelines generally follow the Toronto Protocol. 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.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

See above.

Stakeholder Engagement, Research and Communication

A draft of the basic approach to the Guidelines was circulated to Council Members, the City Solicitor and the City Clerk for comment. Feedback was received from four Councillors. A draft of this Report and the Attachment was also circulated to Council Members, the City Solicitor and the City Clerk for comment. Further feedback was received from two Councillors and the City Solicitor's Office. This Report and the attached Guidelines incorporate that feedback.

Strategic Alignment

The Ethical Guidelines have been identified through consideration of current Council policies, governing legislation and the principles underlying those policies and legislation.

Social, Environmental, Economic (External)

Not applicable

Financial Capacity

Not applicable

Risk Assessment

Not applicable

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OTHER COUNCILLOR'S WARDS**

REASON(S) FOR RECOMMENDATION(S):

The Ethical Guidelines aim to provide clear and flexible guidelines governing Councillor conduct, that respect and balance overarching principles regarding City governance and ward representation.

ATTACHMENT

1. Proposed Ethical Guidelines for Councillor Conduct in Relation to Other Councillor's Wards