

PROPOSED TERMS OF REFERENCE FOR THE ETHICS ADVISOR

Preamble

- The Terms of Reference for the Ethics Advisor reflect the key concepts and principles set out in the Report to Council, and should be interpreted with reference to those key concepts and principles.

Advisory Role

- Providing advice to a Council member on that Council member's personal conduct where requested to do so by that Council member;
- Maintaining confidentiality and privilege of all communications between the Council member and Ethics Advisor where advising on matters of a Council member's personal conduct.
- Providing General Opinions to Council on matters related to Council member conduct where requested to do so by Council or where the Ethics Advisor views such an opinion as necessary to provide clarification and guidance to Council members on matters of ethical conduct; and
- Providing Interpretation Bulletins to Council on the application to Council member conduct of legislation, Council By-Laws or Council Policy, where requested to do so by Council or where the Ethics Advisor views such a Bulletin as necessary to provide clarification and guidance to Council members on matters of ethical conduct.

Policy Role

- Assist in recommending revisions or additions to Council policies and by-laws where appropriate to establish and promote ethical conduct standards for Council members.

Education and Reporting Role

- Reporting to Council on a regular basis to educate Council members and Calgarians about the ethical duties of Council members.
- Maintaining a website and posting on it General Advice and Interpretation Bulletins, and other materials to educate Calgarians about ethical conduct by Council members.
- Publishing an annual report to provide Council and Calgarians with information about the activities of the Ethics Advisor and Integrity Commissioner during the preceding year.

PROPOSED TERMS OF REFERENCE FOR THE INTEGRITY COMMISSIONER

Preamble

- The Terms of Reference for the Integrity Commissioner reflect the key concepts and principles set out in the Report to Council, and should be interpreted with reference to those key concepts and principles.

Investigative Role

- Receiving and reviewing complaints concerning the conduct of a member of Council made in written form and containing the name of the complainant.
- Following the Procedure Protocol to ensure that complaints are fully and fairly investigated.
- Determining whether a complaint may be most effectively resolved through a process conducted by the Ethics Advisor and, if so, referring the complaint to the Ethics Advisor.
- Maintaining the identity of the complainant in confidence except where the Integrity Commissioner is of the opinion that the member of Council whose conduct is to be investigated cannot fully answer allegations made against the member without knowing the identity of the complainant.
- Determining and taking the most effective and appropriate steps to investigate a complaint including, where the Integrity Commissioner considers it necessary, the engagement of third party assistance.
- Referring the complaint, with the consent of the complainant, to other appropriate authorities when at any point in the investigation the Integrity Commissioner is of the view that it is appropriate to do so.
- Referring criminal allegations to the Calgary Police Service. The complainant's identity will be revealed only with the complainant's consent.

Policy Role

- Assist in recommending revisions or additions to Council policies and by-laws where appropriate to establish and promote ethical conduct standards for Council members.

Adjudicative and Reporting Role

- Concluding, after taking into account all of the facts established by the investigation, whether the impugned conduct of the member was in violation of any ethical duty the member owed to Council, the City, the public or any individual.
- Filing with the City Clerk on a strictly confidential basis for delivery to Council a report on any substantiated complaint including any recommendation for sanctions or corrective measures.

- Maintaining a website and posting on it all reports delivered to and received by Council, unless the report remains confidential.
- Publishing an annual report to provide Council and Calgarians with information about the activities of the Ethics Advisor and Integrity Commissioner during the preceding year.

PROPOSED PROCEDURE PROTOCOL

Introduction

This protocol prescribes:

- (a) how an individual who has witnessed conduct by a member of the City Council (“member”), or by such member’s staff, which is believed to be in contravention of the Ethical Conduct Policy for Members of Council (“Code of Conduct”) or any other policy governing conduct of members of Council, may report such conduct to the Integrity Commissioner for the City of Calgary (“the Commissioner”);
- (b) how the Commissioner shall respond to such reports;
- (c) how the Commissioner shall investigate allegations made in such reports, and
- (d) how the Commissioner shall report the results of the investigation to City Council.

Protocol

Reporting

1. Any person (“the reporter”) who has witnessed conduct by a member or staff which he or she believes to be in contravention of the Code of Conduct may make a report in writing setting out all pertinent information in the reporter’s knowledge and request that the Commissioner investigate the conduct.
2. Reports to the Commissioner shall be made through the City of Calgary Whistle Blower Program or delivered personally or by a postal or courier service to:

Integrity Commissioner
Integrity and Ethics Office
P.O. Box 2100, Station M, #8001A
Calgary, AB T2P 2M5.

Initial assessment

3. The Commissioner shall determine whether the conduct described in the report is within the Commissioner’s authority to investigate and whether the information given in the report provides reasonable grounds for believing that a violation of the Code of Conduct may have occurred.
4. If the Commissioner, on receipt of the report, or at any time thereafter, is of the opinion that
 - a. the conduct is not within the Commissioner's authority to investigate, or

- b. the referral of the matter to the Commissioner is frivolous, vexatious or not made in good faith, or
- c. the investigation is, or might be, hampered or the member might be prejudiced by insufficiency of information identifying the reporter,

the Commissioner shall advise the reporter in writing, setting out reasons, and close the file.

- 5. The Commissioner may request further information from the reporter before determining whether or not there are reasonable grounds for believing that a violation of the Code of Conduct may have occurred.
- 6. If the Commissioner is of the opinion that there are no reasonable grounds for believing that a violation of the Code of Conduct may have occurred the Commissioner shall advise the reporter in writing and close the file.

Complaints about members' staff

- 7. When the report concerns the conduct of a member's staff, other than staff of the Office of the Mayor, and the file is not closed pursuant to the preceding paragraph, the Commissioner shall advise the reporter that the report is being referred to the Council member concerned. The Commissioner shall refer the report to the Council member concerned and shall take no further action except as directed by the Council member.
- 8. When the report concerns the conduct of staff in the Office of the Mayor, and the file is not closed pursuant to the preceding paragraph, the Commissioner shall advise the reporter that the report is being referred to the City Auditor.

Referral to the Ethics Advisor

- 9. When the Commissioner is of the opinion that there are reasonable grounds for believing that a violation of the Code of Conduct may have occurred the Commissioner shall determine whether the circumstances of the report require a formal investigation or whether the issues involved can be more promptly and efficiently resolved informally by the Ethics Advisor. In the latter case the Commissioner shall refer the report to the Ethics Advisor, who will take steps, in consultation with the reporter and the member, to resolve the issue informally.
- 10. If any concerned party is unwilling to participate in an informal process to resolve the complaint, or if the Ethics Advisor at any time concludes that an informal resolution is not possible, the Ethics Advisor shall return the file to the Commissioner to commence a formal investigation. The Ethics Advisor will indicate to the Commissioner only that the

matter could not be resolved by the Ethics Advisor, and will not provide the Commissioner with any reports or assessment on the issue.

Investigation

11. A formal investigation shall be commenced by the Commissioner serving personally or by e-mail the member whose conduct is in question ("the member") with the report and any supporting material together with notice of intention to conduct an investigation.
12. The member shall have 10 days, subject to the Commissioner's discretion to extend the timeline, from the date of service of notice of intention to conduct an investigation to deliver to the Commissioner a written response to the report together with any submissions which the member chooses to make.
13. The Commissioner shall provide the reporter with a copy of the response and submissions received from the member on a strictly confidential basis, and request a reply in writing within 10 days, subject to the Commissioner's discretion to extend the timeline.
14. The Commissioner may request any person whose evidence is necessary to the investigation to provide it in an affidavit.
15. The Commissioner may review all books, financial records, electronic data, processing records, reports, files and any other papers, things or property belonging to or used by the City of Calgary and enter any relevant City of Calgary work location which the Commissioner deems necessary for the purpose of the investigation.

Adjudication and reporting

16. Within 90 days of receiving a report and reviewing all of the information the Commissioner determines is pertinent to the investigation, if the violation alleged in the report is substantiated in whole or in part then:
 - a. The Commissioner shall advise the City Clerk that he is prepared to provide the report to Council at the in camera portion of a Council meeting.
 - b. The City Clerk will ask the Mayor to include a report from the Integrity and Ethics Office on the in camera portion of the agenda for the next regular or combined Council meeting at which consideration of the report can be accommodated.
 - c. No less than 24 hours nor more than 48 hours prior to the start of the Council meeting at which the report is to be considered, the Commissioner will provide a copy of the report, on a strictly confidential basis, to the member or members about whom the complaint was made.

- d. All other Council members shall receive the report on a strictly confidential basis at the time the report is discussed in camera.
- 17. If after reviewing all pertinent information the Commissioner determines that no violation of the Code of Conduct occurred, the Commissioner shall advise the reporter and the member of the decision and shall not disclose the fact of the investigation in an annual report, or otherwise, except in the form and context of statistics.
- 18. If the Commissioner determines that although a contravention of the Code of Conduct occurred the member took all reasonable steps to prevent it, or that it was trivial or committed through inadvertence or a genuine error of judgment, the Commissioner shall so state in his or her decision and shall recommend that no sanction be imposed.

General

- 19. In the period 90 days prior to the date of a Municipal election, the Commissioner may suspend any investigation underway or decline to commence an investigation.
- 20. The Commissioner may reject any report received (a) more than 180 days after the date of the reported incident, or (b) more than 180 days after the reporter became aware of the incident, or (c) after the date of a municipal election which intervenes between the reported event and the date the report is received by the Commissioner.
- 21. The Commissioner may reject any report concerning conduct by a Council member during the period of a municipal election which in the opinion of the Commissioner is conduct outside of the legislated duties of Council members.
- 22. Any person who has not provided the Commissioner with his or her name, current address and phone number shall not be entitled to receive any notice or other communication from the Commissioner notwithstanding any contrary requirement in this Protocol.
- 23. If any provision of this Protocol conflicts with any provision in any other Policy concerning the conduct of Council members the provision of this Protocol shall prevail.