

**Integrity and Ethics Office Report to
Combined Meet of Council
2021 May 10**

**ISC: UNRESTRICTED
C2021-0714
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**Proposed Amendments to the Code of Conduct for Elected Officials Bylaw
(26M2018)**

RECOMMENDATION(S):

That the Coordinating Committee of the Councillors' Office (CCCO) recommend that Council give three readings to the Proposed Bylaw 45M2021 to amend the Code of Conduct for Elected Official Bylaw (26M2018), outlined in Attachment 1.

HIGHLIGHTS

- The proposed amendments to the Code of Conduct for Elected Official Bylaw (26M2018) (Code of Conduct Bylaw) aim to strengthen Councillor accountability and reporter protection.
- Direction from CCCO is important to ensure fulsome consideration of the amendments proposed and for their successful implementation.
- The amendments benefit Calgarians, because it fills gaps in the governance framework supporting ethical conduct of Councillors.
- The PwC report (Attachment 2) (C2020-0877) recommended amendments to the Code of Conduct Bylaw, which were investigated by the Ethics Advisor and recommendations made in this report.
- In 2018 Council approved the Code of Conduct Bylaw and directed the Ethics Advisor to investigate how to enhance reporter protection, including but not limited to Councillors' staff. This report proposes amendments to the Code of Conduct Bylaw to address this issue.
- Strategic Alignment to Council's Citizen Priorities: A well run City

DISCUSSION

The PwC report (C2020-0877) recommended two amendments to the Code of Conduct Bylaw.

PwC Recommendation – Duty to Report

Section 64 of the Code of Conduct Bylaw identifies how a person can report conduct by a Councillor or their staff. The provision does not impose a duty to report. The PwC report recommended a duty to report should be mandatory for Councillors and their staff, including a duty to self-report. The recommendation is at page 40 of the PwC report:

Elected officials are accountable to the City and ultimately to Calgarians. In order to improve Council's integrity and strengthen accountability, elected officials and their staff should be obligated to report misconduct, including self-reporting, through the proper channels. Sanctions should be imposed against those that fail to comply.

The recommendation is that this amendment is rejected and a duty to report is not implemented in the Code of Conduct Bylaw. Codes of conduct from other municipalities

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were reviewed (Edmonton, Vancouver, Toronto, Winnipeg and Windsor). None of them include a duty to report. An integrity commissioner was also consulted for feedback.

The PwC recommendation seems based on a corporate standard to address financial impropriety within organizations. A municipal environment is different, and the Code of Conduct Bylaw reflects this difference to the extent that it is principles-based and addresses a broader array of ethical issues, including representing the City, conflicts of interest, confidential information and respectful interactions. Introducing a duty to report would place Councillors in a grey area, uncertain of whether they are doing or witnessing misconduct, and required to report nonetheless. This does not help achieve the objective of accountability and transparency served by ethical codes. The goal of strengthening accountability and transparency concerning financial matters, including expenses, are better achieved through expense policy reform. At all times, if a Councillor or their staff are uncertain whether they have committed or witnessed misconduct under the Code of Conduct Bylaw, advice can be sought from the Ethics Advisor and a complaint filed with the Integrity Commissioner.

PwC Recommendation – Orientation and Training

The PwC report made the following recommendation at page 40:

The Code of Conduct for Elected Officials Bylaw establishes rules that Councillors must follow in the discharge of their office. Requiring an annual declaration instils both the importance and reminder of expected behaviours. The City should require Councillors to execute an annual declaration that they have read, understood and complied with the Code of Conduct Bylaw.

It is recommended that the Code of Conduct Bylaw is amended to require an annual declaration for the reasons identified in the PwC report. That Councillors sign a declaration is supported by the *Local Authorities Election Forms Regulation 106/2007* nomination form, which requires that candidates sign, as part of their acceptance of their nomination, that they will read and abide by the municipality's code of conduct. The annual declaration template should be attached as an appendix to the Code of Conduct Bylaw and signed before the Ethics Advisor. It is expected that signing of the declaration will be accompanied by an annual meeting with the Ethics Advisor to discuss their obligations under the Code of Conduct Bylaw, but it is not recommended that the meeting is mandatory.

To achieve the goal of reminding Councillors of expected behaviours and instilling the importance of ethical codes, it is recommended that further and complementary amendments are made to the Code of Conduct Bylaw section J on Orientation and Training Attendance. Namely, a new provision should be added requiring that Councillors attend all meetings or training identified as mandatory by the Ethics Advisor. Further, for clarity, the language "unless doing so is not practically possible" should be removed from section J provisions where attendance is mandatory.

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Reporter Protection

In 2018, Council approved the Code of Conduct Bylaw and directed the Ethics Advisor as follows: “to investigate how to enhance reporter protection, including but not limited [to] Councillors staff and report back to PFC no later than Q4 2018”. Due to the position vacancy, this report was not prepared. Although the direction is to report to PFC, it is appropriate that any Code of Conduct Bylaw amendments are first reviewed by CCCO.

The direction to investigate how to enhance reporter protection was driven by a concern that Councillors’ staff, in particular, did not have the same reporter protection as City employees. Reporter protection has two elements: (1) confidentiality, which means to protect the identity of the reporter through anonymous complaints processes and (2) retaliation, protecting the reporter from reprisal for making a complaint.

A review of the codes of conduct of several municipalities reveals mixed approaches (Winnipeg, Windsor, Toronto, Niagara-on-the-Lake and Edmonton). Many do not protect the confidentiality of complainants. Several include general prohibitions on retaliation, which when the retaliation is by a Councillor is a code of conduct violation. The City Auditor’s Office was also consulted for feedback.

Currently, the Code of Conduct Bylaw only provides reporter protection to City employees (s. 67). Reasonable efforts will be made to maintain the confidentiality of the reporter, but it is not guaranteed (s. 68). Reporters will also be protected from retaliation through processes within the City (s. 69). The Code of Conduct Bylaw reminds that protection against reprisal cannot be effectively provided to non-employees or those that remain anonymous (s. 70). Finally, reporters must raise a concern in good faith, and failure to do so might result in disciplinary action by the City (for City employees) or an investigation by the Integrity Commissioner (for Councillors).

It is recommended that the reporter protection be extended to staff of the Office of the Councillors and Councillors’ staff (other staff). Confidentiality cannot be guaranteed for City staff, and that is also the case for other staff. While retaliation mechanisms within the City have the potential to be more consequential (e.g. disciplinary action) than for other staff, there is value in adding a provision that retaliation by Councillors is misconduct under the Code of Conduct Bylaw. This would enhance reporter protection of other staff even though it would not be guaranteed.

STAKEHOLDER ENGAGEMENT AND COMMUNICATION (EXTERNAL)

- Public Engagement was undertaken
- Public Communication or Engagement was not required
- Public/Stakeholders were informed

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Stakeholder dialogue/relations were undertaken

ATTACHMENT(S)

1. Proposed Bylaw 45M2021
2. PWC Forensic Investigation Report