

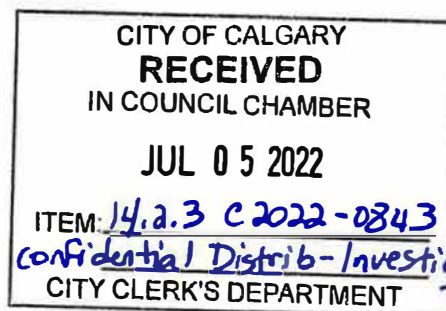


Integrity Commissioner

From: Integrity Commissioner

Re: Councillor Gian-Carlo Carra

June 20, 2022



Report of Findings and Sanction Recommendation

The Complaint

On September 8, 2021, a complaint was sent to former Integrity Commissioner Whittaker regarding Councillor Carra.¹ The complainant alleged that Councilor Carra had an interest in a property at 66 New Street SE in Inglewood, Calgary Alberta, ("Inglewood property") which he failed to disclose as required by the *Municipal Government Act*, ("MGA"), the *Code of Conduct for Elected Officials Bylaw 26M2018* (the "Code" or the "Code of Conduct") and the *Disclosure Policy for Council Members* ("Disclosure Policy"). The complainant expressed concern that this information would not be available to voters before the October 2021 election. She alleged she had repeatedly tried to contact Councilor on this matter but received no response.

In particular, the complainant stated: Councillor Carra's Disclosure of Interest Statement on file publicly indicated that he has no interest in any real estate [In Inglewood] directly or through his spouse and it appears that he does. This is a clear misrepresentation to Calgarians. His failure to respond to the inquiries was inappropriate and a breach of his obligations to his constituents and highlights a clear conflict of interest on his part. The City Taxes on the property are outstanding, and the question was raised as to whether he had influenced the forfeiture process. She questioned why the City of Calgary was not pursuing payment of the outstanding taxes.²

In a second complaint letter dated October 28, 2021, from the complainant's legal counsel to the former Integrity Commissioner, the allegations in the complaint were narrowed and stated as follows:

1. Councillor Carra was in breach of the *Code of Conduct* Section 26 by failing to disclose his and his spouses' interest in 66 New Street SE.
2. Councillor Carra was in breach of section 36 for failing to declare his pecuniary interest in the property and for not abstaining from voting on certain questions before Council relating to his interest therein and then benefits he would be

¹ The identity of the complainant is protected pursuant to sections 67 and 68 of the *Code of Conduct* and pursuant to the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"). The names of other individuals and/or business entities will be withheld herein pursuant to FOIPPA.

receiving based on the outcome of those votes and otherwise complying with section 172 of the Municipal Government Act.

3. Councillor Carra was in breach of section 40 of the *Code* by the mere nature of his position as councillor and presenting to officials and boards in connection with a specific development in which he had an economic interest.

Jurisdiction

Section 63 of the *Code of Conduct* provides:

63. The *Integrity Commissioner* has authority to investigate and adjudicate any allegation that a *Member* has violated this Bylaw or City policy governing *Member* conduct.

Section 18 of the *Code* lists some of the policies, procedures and other enactments that a Council Member must follow, including the *Municipal Government Act* RSA 2000 c. M-26, (the "*MGA*") and the *Disclosure Policy for Members of Council* CCO44, 2014 November 04, (the "*Disclosure Policy*").

Section 7 of the *Disclosure Policy* states:

7. Each Member of Council shall complete a *Member of Council Disclosure Statement* setting out the Real Estate and Financial Holdings of the Member of Council, and to the knowledge of the Member of Council, their Family.

The *Disclosure Policy* defines "Family" at section 6 a:

6.a. "Family" means a Member of Council's spouse or adult interdependent partner, and any dependent children.

The definition of "Real Estate" includes:

d.1. Real Property

The *Member of Council Disclosure Statement* must be provided by a specific deadline as set out in section 9.2.1 as follows:

9.2.1 Members of Council shall submit the *Member of Council Disclosure Statement* to the Manager, Office of the Councilors, and in the case of the mayor, to the Chief of Staff, Office of the Mayor no later than thirty (30) days following:

- i. A by-election or general election; or
- ii. Any change to the information contained in the current *Member of Council Disclosure Statement*.

Section 26 of the *Code of Conduct* states:

26. A *Member* must disclose their real estate and financial holdings in accordance with the *Disclosure Policy for Members of Council*.

I therefore have jurisdiction to investigate and adjudicate a complaint that a Council Member failed to disclose real estate or financial holdings required to be disclosed under the *MGA*, *Disclosure Policy* and the *Code of Conduct*.

Pursuant to section 72 of the *Code*, I performed the initial assessment of the complaint, to determine whether the conduct described in the report was within my authority to investigate and whether the information given in the complaint provided reasonable grounds for believing that a violation of the *Code* or City policy had occurred.

Investigation

Notice of Investigation

Following my assessment, I determined that there was sufficient evidence to investigate two allegations, and served Councillor Carra with a 'Formal Notice of Investigation' on March 25, 2022, setting out the allegations as follows:

1. Alleged failure to disclose real estate and financial holdings, namely his interest in 66 New Street, Calgary Alberta in his 2017 and 2021 'Member of Council Disclosure Statements', in accordance with the *Disclosure Policy for Members of Council CC044* (the "*Policy*").
2. Alleged failure to file a change in information pursuant to section 9.2.11 of the *Policy* to include the real estate interest.

Pursuant to my screening function under the *Code*, I dismissed allegations 2 and 3 of the above complaint that Councillor Carra represented himself before council, officials, and boards, contrary to Section 172 of the *MGA*. In the Notice of Investigation, I wrote the following:

First, the Councillor obtained a legal opinion and sought the advice of the ethics advisor regarding his ability to make representations at boards and committees or to participate on City Council regarding related issues. When he was advised of the risk of the appearance of a conflict, he stepped back from advocating for AVPA [Airport Vicinity Protection Regulation] matters³. Furthermore, the Councillor as a citizen and resident of Calgary, was entitled to represent himself and/or his spouse and to participate in permit applications or appeals therefrom, just as any other citizen was entitled to do regarding their property. There were no reasonable grounds to believe that this was a breach of the *Code*.

The complainant alleged the councillor had participated in meetings regarding the "Guideline for Great Communities", which I found did not constitute misconduct. The Guide applies to the whole City of Calgary and contains a broad vision, planning, policies, and guidelines for the entire City. If I accepted this complaint for investigation, everyone on

³ Alberta Regulation 92/1988

Council who had a pecuniary interest in real estate in Calgary would have had to abstain from participating in the process. I dismissed this aspect of the complaint.

The principles upon which I based these dismissals are set out in section 172 (3) of the *MGA* and the Alberta Municipal Affairs document entitled “Pecuniary Interest for Municipal Councillors”.⁴

Section 172 (3) of the *MGA* states:

If the matter with respect to which the councillor has a pecuniary interest is a question which, under this Act or another enactment, the councillor as a taxpayer, an elector, or an owner has a right to be heard by council,

- (a) It is not necessary for the councillor to leave the room, and
- (b) the councillor may exercise a right to be heard in the same manner as a person who is not a councillor.

The “Pecuniary Interest for Municipal Councillors” document is a guide the Alberta Government made available to municipal Council Members. It describes a pecuniary interest as an interest in a matter that could ‘monetarily’ affect the councillor, his family member or employee(s). One of the exceptions to pecuniary interest in the *MGA* and explained in the document is an interest “that is held in common with the majority of the electors or, if the matter affects only part of the municipality, with the majority of electors in that part”. The document goes on to explain that:

If the matter is one which you, as an elector or property owner, have a right to be heard by council (for example, a land use bylaw amendment, lane or street closure, etc.), you are to disclose your interest and abstain, but you may remain in the room to be heard by council in the same manner as any person who is not a member of council.⁵

In my opinion, allegations 2 and 3 of the second complaint letter fall under this exception.

Since making the decision to dismiss these aspects of the complaint, further information was provided to me confirming that in 2016, Councillor Carra sought advice regarding whether he had a pecuniary interest under section 172 of the *MGA* for the purposes of the *AVPA* issues before Council, that he then advised Council of his interest in the Inglewood property and abstained from voting on the Council decisions related to the matter. Counsel for the complainant conceded that this issue was a ‘red herring’ but maintained the argument that the participation in discussions in Council about the “Guide for Great Communities” was a violation of the *Disclosure Policy*. As noted above I dismissed this allegation in the initial assessment of the complaint based on the principal

⁴ Publication by Municipal Affairs Alberta, dated April 2017

⁵ Pecuniary Interest for Municipal Councillors at p 3

that the Guide was a matter of interest to all electors and property owners in the Inglewood community and Calgarians at large.

Investigative Steps

Councillor Carra provided his Reply to the complaint on April 1, 2022, as he was required to do under section 82 of the *Code*.

The Complainant was provided with a copy of the Reply and given an opportunity to provide a response, pursuant to section 83 of the *Code*, which he did.

Following the initial replies and responses to the investigation, I made further inquiries of Councillor Carra, and received additional information from him.⁶ However I do note that certain documents the Councillor advised that he had, or that I requested, were not provided as they could not be located by Councillor Carra or his staff.

The complainant, through her counsel, was given the opportunity to respond to the additional information received and did so.

I have considered all of the evidence and submissions both parties provided in the course of my investigation in making the findings of fact below, which I have listed in chronological order. The Findings of Fact are based on the civil standard of proof of the balance of probabilities.

Findings of Fact

1. Councillor Carra was first elected to City Council in 2010 and re-elected in 2013.
2. Councillor Carra confirmed to me that in 2015, he and his wife, agreed to purchase the property at 66 New Street Inglewood, (the "property") from (name withheld) and made a down payment of \$300,000.00. There was no written agreement or document of any kind setting out the terms of the transaction at that time.⁷
3. Also in 2015, two property owners in Inglewood requested Councillor Carra's assistance in obtaining exemptions from the AVPA rules for development purposes. He assisted them with resolving these issues.
4. On February 24, 2016, Councillor Carra filed a Notice of Motion with the City Clerk for Council to consider engaging stakeholders regarding a proposed amendment to exempt specific lands from the AVPA, to send an amendment request to the Minister of Municipal Affairs, and to consult with the public and affected stakeholders about lifting the AVPA restrictions in Inglewood.

⁶ Councillor's correspondence with Integrity Commissioner attached as Appendix 2

⁷ Councillor email dated April 2, 2022

5. On March 07, 2016, at the City Council meeting, prior to the debate about the Notice of Motion, Councillor Carra disclosed his interest in the Inglewood property, stated words to the effect that he did not have a pecuniary interest, as his interest was held in common with the majority of electors in that community, and stated he was planning to build a house. Council voted in favor of the Motion.
6. On May 16, 2016, a complaint was submitted to then Integrity Commissioner Sulatyky, that Councilor Carra had failed to disclose his interest in the Inglewood property before Council and failed to consult with the community. The complaint was dismissed.
7. On May 30, 2016, then Ethics Advisor Wooley advised Councillor Carra that he had a 'financial interest' in the Inglewood property.
8. On or about June 16, 2016, after being advised by the Ethics Advisor of the potential conflict or appearance of conflict related to the AVPA matter, Councillor Carra reported his interest in the Inglewood property publicly and recused himself from voting in City Council meetings related to the AVPA matter. The matter was turned over to then Mayor Nenshi to address going forward.
9. On June 21, 2017, former Mayor Naheed Nenshi authored a letter stating that Councillor Carra was the owner of the Inglewood property.
10. On October 16, 2017, Councillor Carra was re-elected as Ward 9 Councillor.
11. In June 2020, the Carras paid an additional sum of \$36,000.00 towards the purchase of the Inglewood property.
12. On December 12, 2020, Councillor Carra's wife entered into a Real Estate Purchase Contract to buy the Inglewood property.
13. On January 12, 2021, Councillor Carra's wife filed a caveat against title to the Inglewood property, pursuant to a promissory note for \$336,000.00.
14. On April 16, 2021, the Complainant sent correspondence to Councillor Carra detailing the information she had with respect to the Inglewood property and requested he answer the following questions:
 - a. 1. Do you have an interest in 66 New Street SE either directly or indirectly (including your wife, (name withheld))?
 - b. Will Approval of the proposed Guidebook for Great Communities, which you have stated publicly that you support, benefit the proposed redevelopment of this property?
15. On May 4, 2021, the complainant sent a further email to Councillor Carra requesting a response to her email dated April 16, 2021. She conceded that one of the emails was acknowledged by the Ward office, , but no response was given to her questions.
16. On May 12, 2021, Councilor Carra filed an updated Member of Council Disclosure Statement which listed an interest in a Bridgeland property, but which made no mention of the Inglewood property.

17. On September 8, 2021, the complainant filed a report (complaint) with former Integrity Commissioner Whittaker, who exercised her discretion pursuant to section 73 of the *Code*, to suspend the matter pending the October 2021 election.
18. On October 18, 2021, Councillor Carra was re-elected as Ward 9 Councillor.
19. On November 10, 2021, Councillor Carra filed a Council Member Disclosure Statement as required by the *Disclosure Policy* following elections, which included “an interest in 66 New Street SE in Inglewood”. This was the first time Councillor Carra included the Inglewood property in any disclosure statement pursuant to the *Code* or the *Disclosure Policy*.
20. On April 2, 2022, Councillor Carra acknowledged that he did not disclose what he called ‘his wife’s interest’ in the Inglewood property as early as he should have, that it was a clerical oversight, and that he was willing to accept any censure that was appropriate. He further stated that on April 4, 2022, he and his wife entered into a loan agreement to purchase the Inglewood property. He stated that “At this point I will clearly have to indicate this on my Disclosure Form”.
21. On May 10, 2022, Councillor Carra advised me by email that his wife was now the owner on title to the Inglewood property.
22. Councillor Carra denied having received the emails the complainant sent him in April and May 2021. I note they were addressed to Councillor Carra and sent to the following email address: ward09@calgary.ca which is his constituency office email address. I note that one of the emails received a simple acknowledgment of receipt with nothing further. I find on the balance of probabilities that the emails were received by the constituency office.
23. Councillor Carra provided a further reply to the allegations on April 23, 2022. He acknowledged that he should have updated his Council Member Disclosure Form in June 2020 and December 2020 to include the Inglewood Property.

Analysis

I will now consider the *Disclosure Policy* and the *Code of Conduct* as they apply to the Findings of Fact.

Allegation 1

It is my opinion that when the Carras made a down payment of \$300,000.00 towards the Inglewood property in June 2015, Council Carra had crystallized a financial interest in the Inglewood property, or at the very least, a financial holding related to the Inglewood property, within the meaning of the section 7 of the *Disclosure Policy* and section 26 of the *Code*.

I accept that Councillor Carra was under the impression at the time, that since there was no instrument, contract or other written record of the interest, and the Carras had paid the funds

to a management company which continued to hold title to the property, that he did not have a financial interest in the Inglewood property, for the purposes of the City's *Disclosure Policy* and *Code of Conduct*.

However, on March 07, 2016, when he advised City Council of his ownership interest, and on May 30, 2016, when the Ethics Advisor advised Councillor Carra that he had a financial interest in the Inglewood property, his disclosure statement should have been updated within 30 days. It was not.

It is clear that following the election in 2017, Councilor Carra was again required to provide a Member of Council Disclosure Statement within 30 days, and it should have included the Inglewood Property, but it did not.

Councillor Carra acknowledged, and I find as fact, that he should have updated his disclosure following the June 2020 payment towards the Inglewood property and the signing of the Real Estate Purchase Contract in December 2020. To this I would add the opportunity that arose following the registration of the Caveat in January 2021 on title to the property.

I find that when Councillor Carra updated the Council Member Disclosure Statement on May 12, 2021, the Inglewood property should have been included, but it was not.

I find as fact that Councillor Carra did not disclose his financial interest in the Inglewood property until he filed a Council Member Disclosure Statement on November 21, 2021, following the October 2021 municipal election. I find that he was in violation of *Disclosure Policy* and the section 26 of the *Code*. Allegation one of the Notice of Investigation has been proven.

Allegation 2

Councillor Carra had multiple opportunities to add the Inglewood property to his Council Member Disclosure Statement starting in June 2016, including following the 2017 election, after the real estate purchase contract was signed in 2020, once the caveat was registered on title in 2021, and when he updated his disclosure in May of 2021. Furthermore, upon being advised of this complaint in September 2021, regarding his interest in the Inglewood property, Councillor Carra should have immediately updated his disclosure, especially since there was an election pending. He failed to do so.

I find that Councillor Carra failed to file a change in information pursuant to section 9.2.1 (ii) of the *Disclosure Policy* to include his real estate interest in the Inglewood property on at least 5 occasions, after confirming that interest in March 2016. I find that he was in violation of the section 9.2.1 of the *Disclosure Policy* and section 26 of the *Code*. Allegation two of the Notice of Investigation has been proven.

Recommendation as to Sanction

Where I determine that a violation of the *Code* has occurred, the next steps are set out in the *Code* at Part H -Adjudication and Reporting. Section 90 provides that I must write a report to City Council and recommend a sanction. However, if I determine that the Member took all reasonable steps to prevent the violation, or if it was trivial or committed through inadvertence or a genuine error in judgment, I may state so, and recommend that no sanction be imposed.

In this instance I cannot reasonably conclude that the violation was trivial, committed through a genuine error in judgment, or inadvertence.

I could accept the initial failure to disclose the interest in 2015 as a genuine error in judgment, as the Carras made a payment to a limited company that owned the land, and I accept that Councillor Carra believed at the time this did not amount to an interest in Real Estate.

However, I cannot find on a balance of probabilities, that the ongoing failure to disclose was trivial or inadvertent after March 7, 2016, as Councillor Carra knew and stated he had a financial interest in the property on that date. Subsequently there were multiple events that would have flagged the need for disclosure of Councillor Carras' interest in the Inglewood property in accordance with the *Disclosure Policy* and *Code of Conduct*. Although Councillor Carra described the failure to disclose his interest as a 'clerical oversight', I cannot accept that it was, due to the numerous opportunities he had to disclose it.

For these reasons I recommend that a sanction be imposed.

I will now review the mitigating and aggravating factors I consider relevant to the issue of sanction.

Mitigating Factors

Councillor Carra has cooperated fully with my investigation and has answered all questions I have posed to him, although there were some documents, he was unable to produce. He has responded to the complaint and the responses from Complainant.

Councillor Carra has admitted his failure to comply with the *Disclosure Policy* and the *Code* and has apologized in his correspondence, stating he would accept whatever censure I recommend.

Councillor Carra disclosed to a public meeting of City Council on March 7, 2016, that he had an interest in the Inglewood Property and abstained from voting on the Notice of Motion related to the lifting of the AVPA restriction in Inglewood.

There is evidence that at the community consultations, Councillor Carra disclosed his interest in the Inglewood property to at least some constituents.

Section 73 of the *Code* provides that I may exercise my discretion not to consider complaints more than 180 days old. Although I did not exercise this discretion in this instance, due to an

ongoing pattern of behavior, which continued until the November 2021 disclosure, I consider that many aspects of the complaint were old allegations, which were partially addressed by a previous Integrity Commissioner.

I consider that Councillor Carra consulted the Ethics Commissioner in 2016 and largely followed her advice about how to conduct himself in the face of a potential conflict of interest going forward.

Aggravating Factors

The purpose of the disclosure requirements of the *Disclosure Policy* and the *Code* is to provide full transparency to members of the public. Transparency is of prime importance to City Council and a key value for the electorate.

The complaint was raised with Councillor Carra prior to the October 2021 election, as a factor that constituents(s) might deem relevant to how they would vote.

Councillor Carra failed to respond to emails from the complainant in April 2021 and May 2021, regarding whether he had a financial interest in the Inglewood property.

Although he had publicly disclosed his interest to Council and to some of the electorate, ordinary citizens, who may not have been aware of these disclosures, did not have an official means to confirm this. Calgarians should have been able to rely on the Council Member Disclosure Statement and updates, as a true reflection of Councillor Carra's real estate and financial holdings in Inglewood at the time.

In my view, in the balancing of the mitigating and the aggravating factors, I conclude that this violation is of moderate severity. I find that the aggravating factors that arose during this investigation outweighed the mitigating factors such that a moderate sanction is warranted. In my opinion, the failure to respond to the request for disclosure of his interest, repeated in this complaint prior to the election, was a significant aggravating factor.

Section 92 of the *Code* lists the sanctions that may be imposed for *Code* violations including:

- (a) a letter of reprimand addressed to the *Member*;
- (b) a request that the *Member* issue an apology;
- (c) the publication of a letter of reprimand or request of apology by the *Integrity Commissioner*, and the *Member's* response;
- (d) A requirement that the *Member* attend training;
- (e) Suspension or removal of the appointment of a *Member* as the *Deputy Mayor*;
- (f) Suspension or removal of the *Mayor's* presiding duties under section 154 of the *Municipal Government Act R.S.A. 2000, c. M-26*;
- (g) Suspension or removal of the *Member* from some or all *Council* committees and bodies to which the *Member* was appointed by *Council*; or

(h) Reduction or suspension of the *Member's* remuneration as defined in section 275.1 of the *Municipal Government Act*, R.S.A. 2000, c. M-26, corresponding to a reduction in duties, excluding allowances for attendance at council meetings.

I do not view the suspension or removal of Councillor Carra under sections e) or g) of section 92 as appropriate sanctions in this case. Much of Council's work is done at the committee level and Council Carra, as a senior Council Member, is a significant contributor to the day-to-day work of the committees. His suspension would only lighten his responsibilities on Council and place an increased burden on his fellow Council Members. Councillor Carrra is not the Deputy Mayor at this time.

I question whether a financial penalty under section 92 h) is available to impose on Council Members at present, as section 275.1 of the MGA was repealed by the provincial government in 2020.

I am strongly of the view that City Council should provide a letter of reprimand to Councillor Carra for failing to comply with the *Disclosure Policy* and *Code of Conduct*, in relation to disclosure of the Inglewood property, and that the letter be made public.

I strongly recommend that Councillor Carra be required to provide a letter of apology to the Inglewood Community and the City of Calgary at large for failing to comply with the *Disclosure Policy* and *Code of Conduct*, in relation to the Inglewood property, and that the letter be made public.

I am of the opinion that Councillor Carra could benefit from training regarding the City of Calgary's record keeping policies, guidelines and requirements.

Conclusion

I recommend to City Council that a letter of reprimand be delivered to Councillor Carra and that he issue a letter of apology to Calgarians within 30 days of today's date. I recommend that both letters be published.

I request that the Integrity and Ethics Office be advised when the sanctions have been met.

This report was completed and signed by me at Calgary, Alberta on June 20, 2022.

Ellen-Anne O'Donnell
Integrity Commissioner
City of Calgary