

DEC 15 2014

ITEM:

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CITY CLERK'S DEPARTMENT

**PROPOSED COUNCIL POLICY ON THE CODE OF CONDUCT FOR CITIZEN MEMBERS
APPOINTED TO COUNCIL ESTABLISHED BOARDS, COMMISSIONS AND COMMITTEES**

EXECUTIVE SUMMARY

This report presents a proposed Council policy on the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees*.

ADMINISTRATION RECOMMENDATION(S)

That the Legislative Governance Task Force:

1. Consider Attachment 4, a proposed Council policy on the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees*, along with Attachment 5, Confidential Results of Stakeholder Engagement, and if it is determined that further work is required, direct Administration to return to the Legislative Governance Task Force with a revised Council policy by the end of Q1 (2015); or
2. Recommend that Council approve the proposed Council policy on the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees*; and
3. Direct that Attachment 5 remain confidential pursuant to Sections 24(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act* until December 2029.

**RECOMMENDATION OF THE LEGISLATIVE GOVERNANCE TASK FORCE, DATED 2014
DECEMBER 09:**

That Council:

1. Approve the proposed Council policy on the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees*; and
2. Direct that Attachment 5 remain confidential pursuant to Sections 24(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act* until December 2029.

Excerpt from the Minutes of the Regular Meeting of the Legislative Governance Task Force
Held 2014 December 09:

"And further, that Report LGT2014-0932 be forwarded to the 2014 December 15 Regular Meeting of Council as an item of Urgent Business.

CARRIED"

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2014 September 02 Meeting of the Legislative Governance Task Force (LGTF), the LGTF approved the Administration Recommendation contained in Report LGT2014-0700, after amendment, as follows:

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"1. Provide direction with respect to the scope of a Council Policy on a Code of Conduct for Citizen Members of Boards, Commissions and Committees, and further, that the City Clerk circulate all Members of Council for their input on the Draft Council Policy on a Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees, and also, the draft Disclosure Policy for Members of Council, for a report to the Legislative Governance Task Force no later than 2014 December".

At the 2014 May 26 Regular Meeting of Council, Council approved the LGTF 2014 – 2017 Work Plan, which included a report proposing a new *Citizen Member Code of Conduct*.

BACKGROUND

The City of Calgary Council appoints citizen members to 43 Boards, Commissions and Committees (BCCs). Currently, the conduct expected of these citizen members when serving on BCCs is not provided in a uniform Council policy. While The City of Calgary does have a Council policy on the *Conflict of Interest: Citizen Appointees (CC006)*, this Council policy is limited to only the criteria required for the annual advertisement for citizen members to various BCCs (Attachment 1). Alternatively, the conduct of Members of Council is guided by four Council policies:

- *Disclosure Policy for Members of Council (CC044);*
- *Ethical Conduct Policy for Members of Council (CC042);*
- *Gifts and Benefits Policy for Members of Council (CC043); and*
- *Transparency and Accountability Policy (CC039).*

Members of Council are also guided by the Administration policy on *Workplace Violence (GN-040)* and by the *Respectful Workplace Policy (HR-LR-001(B))*.

Similarly, the conduct of City Administration is governed by the following Council and Administration policies:

- *Transparency and Accountability Policy (CC039);*
- *Code of Conduct (HR-LR-005(A));*
- *Conflict of Interest (HR-LR-004(B));*
- *Respectful Workplace Policy (HR-LR-001(B)); and*
- *Workplace Violence (GN-040).*

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Adherence to a Council policy can only be required of those BCCs established by Council and over which Council has governance authority. The City Clerk's Office reviewed the governing authorities of the 43 BCCs with Council appointed citizen members, identifying BCCs established by Council, BCCs established by external bodies, and further noting which BCCs fall into the category of corporations, Quasi-Judicial Boards, and Wholly-Owned Subsidiaries. The classification of BCCs and the potential applicability of a proposed Council policy are detailed in Attachment 2.

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With respect to applicability of the proposed Council policy, corporations, Wholly-Owned Subsidiaries, and Quasi-Judicial Boards have been excluded for the following reasons. First, the powers and duties of directors of corporations are defined in the *Business Corporations Act* (Act) RSA 2000, c B-9. Subsection 122(1) of the Act provides that every director and officer of a corporation in exercising the director's or officer's powers and discharging the director's or officer's duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation, and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Furthermore, subsection 122(2) of the Act provides that every director or officer of a corporation shall comply with the Act, the regulations, articles, bylaws and any unanimous shareholder agreement; and, subsection 122(3) provides that subject to section 146(7) of the Act, no provision in a contract, the articles, the bylaws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves the director or officer from liability for a breach of that duty. Also, in reviewing a sample of Wholly-Owned Subsidiaries, which fall under the responsibility of the Corporate Secretariat, it was noted that a number have established internal policies guiding the conduct of their directors.

Second, with respect to Quasi-Judicial Boards, their establishment and functions are set out in the *Municipal Government Act* RSA 2000, c M-26 as well as in The City of Calgary Bylaws. As per Bylaw 25M2010, as amended, being a bylaw of The City of Calgary to establish Assessment Review Boards, the General Chairman may establish rules, procedures and policies for the administration of the Assessment Review Boards. In line with the provisions of Bylaw 25M2010, as amended, the Assessment Review Boards have established policies and procedural rules, applicable to all appointed members, stipulating the obligations and duties, as well as provisions regarding bias, conflict of interest, and member conduct. Similarly, the Subdivision and Development Appeal Board has an established code of conduct policy, providing behavioural guidance to members in areas related to bias and conflict of interest, maintaining confidentiality, conduct during board meetings, and prohibition of accepting gifts and benefits.

With respect to the remaining 16 Council established BCCs identified in Attachment 2, research found that while some do have provisions for the conduct of their members within their independent governing authorities, and/or have created code of conduct policies for their members, there is little consistency among them with respect to the breadth of topics related to conduct (Attachment 3). As a number of BCCs do have code of conduct provisions and/or internal policies, this proposed Council policy could supplement those provisions and/or internal policies. Where existing provisions and/or internal policies are silent and do not address a specific code of conduct matter, and for those BCCs with no code of conduct provisions and/or internal policies, citizen members would adhere to this proposed Council policy. Lastly, where conflict exists between a Council policy and a BCC established internal code of conduct policy, the Council policy would take precedence.

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To further inform the development of this proposed Council policy, the City Clerk's Office conducted research on publically available codes of conduct in a sample of municipalities. This research found that a number of municipalities in Canada have either a Council approved code of conduct policy, or a corporate policy governing conduct of members, or Ethical Guidelines. Furthermore, research identified a number of themes common to most codes of conduct policies: conflict of interest, bias, maintaining confidentiality, gifts and benefits, conduct during meetings, use of property, election campaign work, political activity, and investigations and handling of breaches. Taking all the foregoing findings into account, the City Clerk's Office prepared a proposed Council policy on the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees* (Attachment 4). The purpose of this proposed Council policy is to establish the minimum standards of conduct and provide consistent guidance on the expectations of citizen members appointed to Council established BCCs with regard to the following: conflict of interest; confidentiality; acceptance and disclosure of gifts and benefits; conduct during meetings; use of The City of Calgary and BCC property, technology and resources; political activity and election campaign involvement; and breaches.

In addition to providing behavioural guidance, the proposed Council policy includes a Declaration, found in the Appendix of Attachment 4, which is to be completed by each citizen member no later than (30) days following their initial appointment, and following any subsequent re-appointment. To ensure fulfillment of this requirement, the City Clerk's Office would provide each new and re-appointed member with a copy of the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees* along with the Mayor's letter confirming their appointment in accordance with the *Courtesy Policy – Letters for Applicants and Members of Council-Appointed Boards, Commissions and Committees (CC033)*. Appointments to BCCs would be contingent on submitting a completed Declaration following an appointment or re-appointment to a BCC.

Stakeholder Engagement, Research and Communication

As part of stakeholder engagement, on 2014 November 04, the City Clerk's Office circulated a draft of the proposed Council Policy to all Members of Council, the City Manager, the City Solicitor, and City Auditor for feedback, if any. In addition, the City Clerk's Office engaged in consultations with the Law Department. The results of the stakeholder engagement have been compiled by the City Clerk's Office, and are provided in Attachment 5 for LGTF's consideration.

The City Clerk's Office also communicated with the Resource Staff of Council established BCCs to gain an understanding of which BCCs have internal code of conduct policies. A request was made of the BCCs to share their internal codes of conduct policies with the City Clerk's Office for review to evaluate alignment with the proposed Council policy under development. Attachment 3 notes which BCCs have an internal code of conduct policy and/or procedure.

To inform the development of the proposed Council Policy, the City Clerk's Office conducted research into BCC governance authorities, Council and Administration policies, and code of conduct policies in other municipalities.

Strategic Alignment

The proposed Council policy is aligned with the following existing Council policies:

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- ***Disclosure Policy for Members of Council (CC044)*** provides the requirements for the disclosure of real estate and financial investment holdings; procedures for the collection, submission and publication of disclosure information; and procedure for breaches of the Council policy;
- ***Ethical Conduct Policy for Members of Council (CC042)*** establishes and promotes ethical conduct standards for Members of Council in interactions with the public, all City employees, contractors, Council staff and all Members of Council. This Council Policy also outlines certain rules of conduct for Members of Council so that they may carry out their duties, powers, and functions with impartiality and dignity, recognizing that the function of Members of Council is, at all times, service to the public;
- ***Gifts and Benefits Policy for Members of Council (CC043)*** provides guidance for Members of Council on appropriate gifts and benefits to accept in acting out their duties of office, and consistent processes for the acceptance, tracking and disclosure of gifts and benefits accepted; and
- ***Transparency and Accountability Policy (CC039)*** provides that transparency, accountability and openness are essential elements of good government that enhance public trust, and can be achieved through adopting policies to guide The City of Calgary throughout the course of carrying out its duties and responsibilities.

Social, Environmental, Economic (External)

There are no social, environmental, or external economic implications as a result of this report.

Financial Capacity

Current and Future Operating Budget:

Should the proposed Council policy be adopted by Council, the City Clerk's Office Legislative Services Division will be responsible for the Council policy implementation and management.

Current and Future Capital Budget:

There are no current and future capital budget impacts as a result of this report.

Risk Assessment

In the absence of a uniform policy governing the conduct of citizen members appointed to Council established BCCs, The City of Calgary is at risk of harm to its reputation, and loss of public confidence in decision-making processes at The City of Calgary.

REASON(S) FOR RECOMMENDATION(S):

To ensure accountability, and public confidence in decision-making at The City of Calgary, citizen members appointed to Council established Boards, Commissions and Committees must be held to the same high standard of ethical conduct as Members of Council and members of City Administration.

ATTACHMENT(S)

1. Council policy on the *Conflict of Interest: Citizen Appointments (CC06)*;
2. Classification of Boards, Commissions and Committees with Citizen Appointments;

Approval(s): Gray, Sue concurs with this report. Author: Martin, Katarzyna
City Clerk's: J. Dubetz

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3. Code of Conduct Provisions within Council Approved Governing Authorities;
4. **Proposed** Council policy on the *Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees*; and
5. Confidential Results of Stakeholder Engagement.