

PROPOSED DISCLOSURE POLICY FOR MEMBERS OF COUNCIL

EXECUTIVE SUMMARY

This report provides a proposed *Disclosure Policy for Members of Council* with respect to real estate and financial holdings.

ADMINISTRATION RECOMMENDATION(S)

That the Legislative Governance Task Force:

1. Receive for information the results of stakeholder engagement (Attachment 1);
2. Reconsider the Legislative Governance Task Force decision, approved at the 2013 May 23 Meeting of the Legislative Governance Task Force, that the disclosure be due on the first of December each year;
3. Reconsider the Legislative Governance Task Force decision, approved at the 2013 May 23 Meeting of the Legislative Governance Task Force, to allow for exact property addresses to be available to Administration under various privacy provisions under the *Freedom of Information and Protection of Privacy Act*; and
4. Direct that Attachment 1 remain confidential pursuant to Sections 24(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act* until October 2029.

That the Legislative Governance Task Force recommend that Council:

1. Adopt the proposed *Disclosure Policy for Members of Council*; and
2. Direct that Attachment 1 remain confidential pursuant to Sections 24(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act* until October 2029.

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2014 September 22 Regular Meeting of Council, Council approved the Legislative Governance Task Force (LGTF) 2014 Q3 Work Plan Progress Report.

At the 2014 September 02 Meeting of the LGTF, the LGTF approved the Administration Recommendation contained in Report LGT2014-0700, after amendment, as follows:

"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.

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At the 2014 March 06 Meeting of the LGTF, the LGTF approved a deferral of a report proposing a *Disclosure Policy for Members of Council* to a future meeting of the LGTF to allow the City Clerk's Office to engage all stakeholders, and conduct further consultations with LGTF Members.

At the 2013 May 23 Meeting of the LGTF, in dealing with Report LGT2013-0484, LGTF considered several key questions with respect to the scope of a Disclosure Policy – Real Estate Registry for Members of Council. These key questions, as amended, and an excerpt from the 2013 May 23 Meeting Minutes are detailed in Attachment 2.

At the 2013 April 22 Regular Meeting of Council, Administration was directed to pursue Option 4 in Report PFC2013-0367, with the caveat that the Real Estate Registry apply to holdings within the municipal boundaries of the City of Calgary. Option 4 reads “[a] fourth option could be to direct Administration to draft a disclosure policy to be adopted by Council, including real estate holdings and possibly other assets and interests”.

At the 2000 November 27 Regular Meeting of Council, Council adopted Recommendations contained in Executive Report C2000-72, which stated that “Council recommend that the practice of keeping a Real Estate Registry be discontinued”.

On 1975 May 26, Council passed a Motion “[t]hat the Real Estate Registry requirements for elected people on City of Calgary Council be extended to include land interest within the Province of Alberta.”

On 1972 September 25, Council passed the following Motion:

- (i) “That a Real Estate Registry be established in The City Clerk's Office in which each member of Council and each Commissioner and Department Head and all supervisory employees of the City shall be required to disclose any interest in real estate within The City of Calgary.

The Commissioners ruled that for the purpose of the Real Estate Registry the definition of “Supervisory Personnel” shall mean only “Management/Exempt Personnel.

- (ii) That the Registry of Real Estate to be held by The City Clerk be made available for inspection only upon receipt of written application and further that this Registry not be printed and or made available for sale to anyone.”

BACKGROUND

In 1972, The City of Calgary Council established a Real Estate Registry in the City Clerk's Office that applied to both Members of Council and Management/Exempt Personnel. In 1975, Council extended the requirements for real estate disclosure to include land interests within the Province of Alberta. In 2000, Council adopted Recommendations found in the Executive Report to Council C2000-72, ending the practice of keeping a Real Estate Registry. The conclusion section of the Executive Report to Council C2000-72, reads as follows:

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"The Real Estate Registry has become almost impossible to administer, and the legality of forcing employees to disclose real estate interests, is questionable. The Registry's function, and the need to maintain the type of information contained therein, is unclear. Additions to the Registry are sporadic and inconsistent, making it outdated and incomplete, which in turn undermines its usefulness. Furthermore, the disclosure and pecuniary interest sections of the Municipal Government Act make the Registry legally questionable. The practise of keeping a Real Estate Registry should be discontinued".

Report PFC2013-0367 noted that in 2013 January, the Office of the Mayor and the City Clerk's Office discussed ethics and Council's disclosure of assets and interests in light of priority Z12: "implement new ethical guidelines for members of Council, potentially including a real estate and lobbyist registry and a commitment to campaign finance reform" contained in Council's Fiscal Plan for Calgary 2012-2014. At the 2013 April 22 Regular Meeting of Council, Administration was directed to draft a disclosure policy to be adopted by Council, including real estate holdings and possibly other assets and interests, with the caveat that the Real Estate Registry apply to holdings within the municipal boundaries of The City of Calgary.

Due to a cancellation of the 2013 June 28 LGTF meeting combined with the 2013 June flood and the Municipal election, the City Clerk's Office was not able to engage all stakeholders and complete the necessary consultations with LGTF Members. At the 2014 March 06 Meeting of the LGTF, the City Clerk's Office sought, and obtained, a deferral of the report proposing a *Disclosure Policy for Members of Council* to a future meeting of the LGTF to allow for further investigation and consultation with Members of the LGTF and Members of Council. At the 2014 September 02 Meeting of the LGTF, the City Clerk's Office requested that this item be deferred to Q4 of 2014 to continue the consultation process with all Members of Council.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

In accordance with previous LGTF direction, the City Clerk's Office prepared a proposed *Disclosure Policy for Members of Council* (Attachment 3), setting out the requirements and procedures for the collection, submission and publication of real estate and financial holdings. In addition to the key questions and reports previously considered by LGTF, the following four key issues were taken into account in the preparation of this proposed Council Policy:

- 1) Alignment with existing MGA pecuniary interest requirements;
- 2) Disclosure content and the protection of personal information;
- 3) Publication; and
- 4) Procedures for addressing Council Policy breaches.

1. Alignment with Existing MGA Pecuniary Interest Requirements: Part 5, Division 6 (Sections 169-173) of the Province of Alberta *Municipal Government Act* RSA 2000, c M-26 (MGA) addresses pecuniary interest of Members of Council. As per Subsection 172(1) of the MGA, when a Member of Council has a pecuniary interest in a matter before Council, a Council Committee or any other body to which the Member of Council is appointed as a representative of Council, the Member of Council must, if present, disclose the general nature of the pecuniary interest, abstain from voting and any discussion relating to the matter, and leave the room in which the meeting is being held until discussion and voting on the matter are concluded. Members of Council may be disqualified from Council if they contravene Section 172. Section

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171 of the MGA, states that Council may pass a bylaw with respect to a statement of disclosure; however, it does not provide Council with the authority to require disclosure of real estate assets.

Given the foregoing, the proposed *Disclosure Policy for Members of Council* is not intended to supersede or replace the existing requirements of the MGA. Rather, the purpose of this proposed Council Policy is to supplement the pecuniary interest provisions of the MGA by providing the requirements for the disclosure of real estate and financial holdings, outlining the procedures for the collection, submission and publication of real estate and financial holdings, as well as provide procedures for addressing breaches of this Council Policy.

2. Disclosure Content and Protection of Personal Information: In considering Report LGT2013-0484, LGTF gave direction to Administration that "[t]he breadth of application is limited to real estate holdings of the Member of Council, his/her spouse or adult interdependent partner, and any dependent children, along [with] any companies in which they have a significant interest". In accordance with this direction, the proposed *Disclosure Policy for Members of Council* defines family as a Member of Council's spouse or adult interdependent partner and any dependent children. This definition is narrower than that the definition of a Councillor's family provided in the MGA, which includes the parents of the Councillor and the parents of the Councillor's spouse or adult interdependent partner. To date, LGTF did not yet contemplate either the breadth/scope of real estate or the breadth/scope of significant interest in companies. To ensure clarity and consistency in the content of disclosure, for the purpose of this proposed Council Policy a definition of real estate has been adopted from the *Real Estate Act*, RSA 2000 c R-5 and a definition of financial holdings has been adopted from Section 171 of the MGA. In addition, in line with the pecuniary interest provisions of the MGA, the disclosure of employers has been included in the proposed *Disclosure Policy for Members of Council*.

In accordance with LGTF's direction that Administration "ensure that the policy keeps the property information collected for the registry associated to the relevant Member of Council's family generally, rather than specific individuals", the City Clerk's Office prepared a proposed *Member of Council Disclosure Statement*, found in the Appendix of Attachment 3. This document collects the following information, with respect to each Member of Council and each member of their family, in the aggregate:

- Member of Council Name;
- Ward (except for the Mayor);
- List of all communities, within the municipal boundaries of The City of Calgary, where real estate is held;
- All financial holdings; and
- Names of employers.

The City Clerk's Office consulted with the FOIP Office, who confirmed that this approach ensures that the information collected on the *Member of Council Disclosure Statement* does not qualify as personal information.

3. Publication: In considering Report LGT2013-0484, LGTF amended Recommendation 7 directing Administration to plan for all of the information collected to be available online.

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Accordingly, it is proposed that the Manager, Office of the Councillors, and in the case of the Mayor, the Chief of Staff, Office of the Mayor publish the *Member of Council Disclosure Statement* to their respective websites no later than thirty (30) days following receipt. At the 2013 May 23 Meeting of the LGTF, Administration recommended "a disclosure due on the first of December each year, and that the documents are kept permanently". Based on further analysis, the City Clerk's Office is recommending that LGTF reconsider that the disclosure be due on the first of December each year. In the alternative, the proposed *Disclosure Policy for Members of Council* requires that Members of Council submit the *Member of Council Disclosure Statement* no later than thirty (30) days following a by-election or general election, or following any change to the information contained in the current *Member of Council Disclosure Statement*. Making a submission as a result of change, rather than on a set date, eliminates the completion of the *Member of Council Disclosure Statement* in the absence of changes and simplifies the administration of this Council Policy. With respect to the length of online publication, the proposed *Disclosure Policy for Members of Council* proposes that the *Member of Council Disclosure Statement* be removed from publication on the respective webpage twelve months from the time the Member of Council ceases to be a Member of Council. This timeframe balances the need for disclosure necessary for transparency in decision making with the protection of former Member of Council's privacy.

The proposed *Disclosure Policy for Members of Council* collects and publishes a list of communities, within the municipal boundaries of The City of Calgary, where real estate is held. This approach is consistent with LGTF's previous direction, in part, to "[a]llow for exact property addresses to be shielded from public viewing, but available to Administration under various privacy provisions under the *Freedom of Information and Protection of Privacy Act*" (Attachment 2). While exact property addresses have been shielded in the proposed Council Policy, based on further assessment, the City Clerk's Office recommends that LGTF reconsider allowing for exact property addresses to be available to Administration. This recommendation is inconsistent with the amended Recommendation 6, which directs Administration to arrange for the Registry to be administered by the Manager of the Office of the Councillors and the Office of the Mayor (Attachment 2). Furthermore, as previously noted in Report LGT2013-0484, Administration recommended "that the Manager of the Office of the [Councillors] be responsible for the management of this program. Keeping the program's management separate from the City Clerk's Office emphasizes the separate roles of elected officials and City employees and is consistent with other policies recently adopted by Council. The Manager of the Office of the [Councillors] is in agreement with this recommendation".

4. Procedures for Addressing Council Policy Breaches: The MGA does not provide requirements for the specific type of disclosure proposed in the *Disclosure Policy for Members of Council*. Accordingly, there are no legislative penalties for non-compliance with the requirements for disclosure of real estate and financial holdings. On 2013 July 01, the *Ethical Conduct Policy for Members of Council* (CC042) came into effect. The City Clerk's Office recommends that breaches of the proposed *Disclosure Policy for Members of Council* be resolved as per the relevant sections of the *Ethical Conduct Policy for Members of Council*.

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Stakeholder Engagement, Research and Communication

As part of the stakeholder engagement, on 2014 September 10, the City Clerk circulated a draft of the proposed *Disclosure Policy for Members of Council* to all Members of Council, the City Manager, the City Solicitor, the Chief of Staff, the Manager of the Office of the Councillors, and the FOIP Office for feedback, if any. The results of the stakeholder engagement have been compiled by the City Clerk's Office, and are provided in Attachment 1.

With respect to research, the City Clerk's Office conducted and completed research into comparable disclosure practices in other municipalities, as well as at the provincial level, to inform the development of a potential disclosure policy for The City of Calgary. During the research stage, the City Clerk's Office engaged in consultations with the Law Department, the FOIP Office, and the Office of the Mayor. Key legislative resources consulted in the drafting of this Council Policy include: the Province of Alberta *Municipal Government Act* RSA 2000 c M-26, the Province of Alberta *Conflict of Interest Act* RSA 2000 c C-23, the Province of Alberta *Schools Act* RSA 2000 c S-3, the City of Edmonton Bylaw 15254, and The City of Calgary's previous Real Estate Registry.

Strategic Alignment

The proposed *Disclosure Policy for Members of Council* is aligned with Council's Fiscal Plan for Calgary; specifically, priority Z10: "increase transparency and accountability throughout the organization", and priority Z12: "implement new ethical guidelines for members of Council, potentially including a real estate and lobbyist registry and a commitment to campaign finance reform". In addition, the proposed Council Policy is aligned with Council's *Transparency & Accountability Policy* (CC039) and the *Ethical Conduct Policy for Members of Council* (CC042).

Social, Environmental, Economic (External)

Adopting the proposed *Disclosure Policy for Members of Council* will reinforce and underline The City of Calgary's commitment to an ethical decision-making process.

Financial Capacity

Current and Future Operating Budget:

There is currently no operating budget to administer the proposed *Disclosure Policy for Members of Council*.

Current and Future Capital Budget:

There are no capital budget implications associated with the recommendations of this report.

Risk Assessment

Collecting and publishing real estate and financial information could lead to such information being misused and posing a potential security risk to Members of Council and members of their family. This risk is mitigated by shielding exact property addresses, as well as by collecting real estate and financial holding information in the aggregate. Withholding real estate and financial information from members of the public could diminish public trust and confidence in the ability of City Council to separate personal and corporate interests.

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REASON(S) FOR RECOMMENDATION(S):

Through proactive disclosure to the public of real estate, within the municipal boundaries of The City of Calgary, and financial holdings, Members of Council will help build confidence in their ability to separate personal and corporate interests and increase transparency to the public.

ATTACHMENT(S)

1. Confidential Results of Stakeholder Engagement;
2. Amended Key Questions and Excerpt from the 2013 May 23 Meeting of the LGTF Minutes; and
3. **Proposed** *Disclosure Policy for Members of Council*.