

Authority: Item 6, General Issues Committee
16-024 (LS16022)

CM: October 26, 2016

Bill No. 290

CITY OF HAMILTON

BY-LAW NO. 16-290

Council Code of Conduct

CONSOLIDATION

This By-law is a consolidated version and includes amendments made by those amending by-laws listed on the following page. This consolidation is prepared for purposes of convenience only and is not the official or legal version of the By-law. For accurate reference to the By-law, certified copies should be obtained through the City Clerk's Office.

CITY OF HAMILTON

CONSOLIDATED BY-LAW NO. 16-290

Incorporating amendments made by:

By-law Number

Effective Date

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16-024 (LS16022)

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CITY OF HAMILTON

BY-LAW NO. 16-290

Council Code of Conduct

WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes;

AND WHEREAS subsection 223.2(1) of the *Municipal Act, 2001* authorizes the City of Hamilton to establish a code of conduct for members of its Council;

NOW THEREFORE the Council of the City of Hamilton enacts the following Council Code of Conduct:

CODE OF CONDUCT FOR MEMBERS OF COUNCIL

PREAMBLE

Purpose:

A legislated Code of Conduct helps to ensure that the Members of Council share a common basis for acceptable conduct. The Code of Conduct is not intended to replace personal ethics. The Code of Conduct:

- is designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate.
- serves to ensure public confidence that the City's elected representatives operate from a base of integrity, transparency, justice and courtesy.
- is administered by the City's Integrity Commissioner, appointed by Council by its By-law No. 16-288, who reports to Council and who is responsible for performing in an independent manner assigned functions with respect to the application of the Code of Conduct, and of procedures, rules and responsibilities of the City governing the ethical behaviour of Members of Council.

Statutory Provisions Regulating Conduct:

The Code of Conduct operates along with, and as a supplement to, in addition to other By-laws of the Council, statues of the Provincial Legislature, and of the Parliament of Canada, that govern the conduct of Members of Council, including:

- the *Municipal Act, 2001*;
- the *Municipal Conflict of Interest Act*;
- the *Municipal Elections Act, 1996*;
- the *Municipal Freedom of Information and Protection of Privacy Act*;
- the *Ontario Human Rights Code*;
- the *Criminal Code (Canada)*.

SECTION 1: DEFINITIONS

1. (a) “**charity**” means a registered charity as defined in the *Income Tax Act* (Canada) or successor legislation, which has a registration number issued by the Canada Revenue Agency, or successor agency;

(b) “**City**” means the City of Hamilton, either in the sense of the geographic area of the municipality or in the sense of the identity of the municipal corporation, as the context requires;

(c) “**community organization**” means a non-profit group of persons organized for the advancement of a civic, cultural, social, health, philanthropic or recreational purpose within the City of Hamilton;

(d) “**confidential information**” includes but is not limited to information:

- (i) in the possession of the City that the City:
 - is prohibited from disclosing;
 - is required to refuse to disclose; or
 - has exercised its discretion to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*¹ or any other law; and

¹ Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature and information that is personal, and permits the restriction or prohibition of disclosure of information that is subject to solicitor-client privilege.

² Section 239 of the *Municipal Act, 2001* permits information concerning the following matters to be considered in an in-camera meeting: the security of the property of the City; personal matters about an identifiable individual, including City employees; a proposed or pending acquisition or disposition of land by the City; labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the City; advice that is subject to

- (ii) concerning matters that are considered in an in-camera meeting under section 239 of the *Municipal Act, 2001*²;
- (e) “**Council**” means the Council of the City of Hamilton;
- (f) “**family member**” means a **child, parent** or **spouse** of the Member, which terms have the same meanings as given to them in the *Municipal Conflict of Interest Act*, as follows:
 - “**child**” means a child born within or outside marriage and includes an adopted child and a person whom the parent has demonstrated a settled intention to treat as a child of his or her family;
 - “**parent**” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; and
 - “**spouse**” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.
- (g) “**gift or benefit**” includes any real or personal property, money or other thing or consideration, given, donated, transferred or otherwise conveyed to a person, unless the giver, donor, transferor or conveying person receives payment or other consideration of goods or property, of equal or greater value to the value of what was so provided;
- (h) “**in camera**” means the conduct of a meeting or part of a meeting, of Council or a Committee of Council, which is closed to the public as permitted under section 239 of the *Municipal Act, 2001*;
- (i) “**lobbyist**” means a person registered, or required to be registered, as a lobbyist, by or under By-law No. 14-244, To Establish and Maintain a Lobbyist Registry; and
- (j) “**Member**”, unless the context otherwise indicates, means a Member of the Council of the City of Hamilton.

solicitor-client privilege, including communications necessary for that purpose; a matter in respect of which Council may hold a closed meeting under another Act; a matter relating to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*; or the education or training of the Members of Council.

SECTION 2: KEY STATEMENTS OF GENERAL PRINCIPLE UNDERLYING THE CODE

2. The key statements of principle that underlie the Code of Conduct are as follows:
- (1) every Member shall serve, and be seen to serve, his or her constituents in a conscientious and diligent manner;
 - (2) every Member shall be committed to performing his or her functions with integrity and to avoiding the improper use of the influence of his or her office, and conflicts of interest, both apparent and real;
 - (3) every Member shall perform his or her duties in office and arrange his or her private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
 - (4) Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.

SECTION 3: APPLICATION OF THE CODE

3. This Code of Conduct applies to all Members of Council, including the Mayor.

SECTION 4: GIFTS AND BENEFITS

4. (1) No Member shall accept a fee, advance, gift or benefit, that is connected, directly or indirectly, with the performance of the Member's duties or responsibilities of or in office, except as permitted by one or more of the exceptions listed in subsection 4(3).
- (2) For the purposes of subsection 4(1), a fee, advance, gift or benefit, provided with the knowledge of the Member, to a family member of the Member, to a member of staff of the Member, to any other person related to the Member, or to any other person, corporation or body with whom or which the Member is associated, that is connected, directly or indirectly, to the fact or performance of the Member's duties or responsibilities of or in office, is deemed to be a gift or benefit to the Member.
- (3) The following are exceptions to subsection 4(1):
- (a) compensation authorized by law;

- (b) such gifts or benefits that normally accompany the duties of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law;
- (d) admission to a widely-attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the entity responsible for organizing and presenting the event and unsolicited by the Member, if attending or participating in his or her official capacity, including:
 - (i) participation in an event as a speaker or panel participant by presenting information related to City matters;
 - (ii) performance of a ceremonial function appropriate to the Member's office;
 - (iii) attendance at an event that is appropriate to the official capacity of the Member;
- (e) admission to a charity or community organization for whose benefit the event is being held, and unsolicited by the Member of Council;
- (f) admission to a training or education program, including meals and refreshments furnished to all attendees, if such training or education is related to the Member of Council's duties in office and in the interests of the City;
- (g) services provided without compensation by persons volunteering their time;
- (h) a suitable memento of a function honouring the Member;
- (i) food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or by political subdivisions of them or by a government of a foreign country;
- (j) food and beverages consumed at banquets, receptions or similar events, if:
 - (i) attendance serves a legitimate business purpose;
 - (ii) the person extending the invitation or a representative of the organization is in attendance; and

- (iii) the value is reasonable and the invitations infrequent;
 - (k) communications to the office of a Member of Council, including subscriptions to newspapers and periodicals.
- (4) Except for paragraph 4(3)(c), the exceptions listed in subsection 4(3) do not apply to a lobbyist. No lobbyist shall give or provide or be permitted to give or provide, a gift or benefit under this section, except a political contribution authorized by law.
- (5) In the case of one or more fees, advances, gifts or benefits referred to or included in any of paragraphs 4(3)(b), (h), (i), (j) or (k), if the value thereof, or if the total value of any one or more such fees, advances, gifts or benefits, provided to or received by, a Member from any one source during the course of a calendar year, exceeds \$200, the Member shall, within 30 days of such provision or receipt, or of reaching or exceeding such amount, file a disclosure statement with the City Clerk. The disclosure statement shall indicate:
 - (a) the nature of every such fee, advance, gift and benefit;
 - (b) its source and date of provision and/or receipt; and
 - (c) the circumstances under which it was provided and/or received.
- (6) Every disclosure statement filed or required to be filed under subsection 4(5) shall be a matter of public record, and duly made available to the public.

SECTION 5: CONFIDENTIALITY

- 5. (1) No Member of Council shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of his or her office, in either oral or written form, except when required by law or authorized by Council to do so.
- (2) No Member of Council shall use confidential information for financial or other gain, or for the financial or other gain of a family member or any person or corporation. For example, no Member of Council should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.
- (3) No Member of Council shall disclose the content of a matter that has been discussed at, or is or has been, the substance of deliberations of or at, an

in camera meeting, except for content that has been authorized by Council, or a Committee of Council, or otherwise by law, to be released to the public.

- (4) Under this section, every Member shall, unless otherwise authorized or required by law, maintain confidentiality over, and not disclose, the following forms and types of information and documents :
 - (a) items under litigation, negotiation, or personnel matters;
 - (b) information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
 - (c) price schedules in contract, tender or Request For Proposal documents submitted to, or received by, the City on a confidential basis, which have not been adopted, or authorized for disclosure, by the City;
 - (d) information deemed to be personal information under the *Municipal Freedom of Information and Protection of Privacy Act*;
 - (e) statistical data required by law not to be released (e.g. certain census or assessment data).
- (5) No Member of Council shall access or attempt to gain access to, confidential information in the possession of the City unless it is necessary for the performance of his or her duties and not prohibited by Council policy.

SECTION 6: USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

6. (1) No Member of Council shall use, or permit the use of, City land, facilities, equipment, supplies, services, City employees or other resources, including City-owned materials, websites, Council transportation delivery services, or Councillor global budgets, for activities other than the business of the City.
- (2) No Member of Council shall obtain financial gain from the use or sale of any City-developed intellectual property, (including inventions and creative writings or drawings), computer program, technical innovation, or other item capable of being patented, in which property remains in the exclusive ownership of the City.

SECTION 7: ELECTION CAMPAIGN WORK

7. (1) No Member shall use facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities, except on the same basis (including paying a fee if any) as such resources are normally made available to members of the public.
- (2) No Member shall use her or his newsletter or website linked through the City's website, for any election campaign or campaign-related activities.
- (3) No Member shall use the services of any City employee for any election campaign or campaign-related activities during hours in which those City employees receive any compensation from the City.

SECTION 8: CONDUCT IN OFFICE, INCLUDING AT COUNCIL AND COMMITTEES

8. (1) Every Member shall conduct him or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a Member, and at meetings of Council and Committees of Council and other meetings, and in accordance with the provisions of the Procedural By-law, and other By-laws of the City, where applicable.
- (2) In this Section:
 - (a) A "disqualifying interest" is an interest in a matter regarding which a reasonable person fully informed of the facts and circumstances would conclude that the Member could not participate impartially in the decision-making process related to the matter either because to do so would not be in compliance with the *Municipal Conflict of Interest Act*, or, because the Member's relationship to persons or bodies involved in the matter or affected by the decision is so close, a reasonable person would conclude that the Member could not effectively carry out their public duty with impartiality.
 - (b) A "non-disqualifying interest" is an interest in a matter that, by virtue of the relationship between the Member and other persons or bodies associated with the matter, is of such a nature that a reasonable person fully informed of the facts and circumstances would conclude that the Member could still participate impartially in the decision-making processes related to the matter only so long as:
 - (i) the Member fully discloses the interest so as to provide transparency about the relationship; and

- (ii) the Member states why the interest does not prevent the Member from making an impartial decision on the matter.
- (3) Members shall not participate in the decision-making processes associated with their role or position when they have a disqualifying interest in a matter. Participation includes attempting to influence an outcome, whether the decision to be made is to be made by Council or a member of staff with delegated authority or operational responsibility.
- (4) Members may participate in the decision-making process related to a matter in which they have a non-disqualifying interest provided they file at their earliest opportunity a Transparency Disclosure in a form and manner established by the City Clerk acting in consultation with the Integrity Commissioner.
 - (i) Transparency Disclosures are public documents and shall be available for public viewing on the City of Hamilton's website.
 - (ii) On receipt of a proper request, the Integrity Commissioner shall determine whether an interest is a disqualifying interest or a non-disqualifying interest.
- (5) Failure by a Member to comply with one or more provisions of the Council Procedural By-law does not, in itself, constitute a contravention of this Code of Conduct, in circumstances in which it is open to the body and/or the person chairing the meeting, to take appropriate steps to call the Member to order, or otherwise deal appropriately with the contravention, and the Member complies with the decision of the body or chairperson, and otherwise with the requirements of the By-law.
- (6) This section does not prevent a Member of Council from requesting that the Council grant a specific exemption or exception from strict application of this Code of Conduct, or of any other City policy or procedure, amend this Code of Conduct, or take no action in respect of a contravention of it, and such an exception of decision may be limited as to time or scope, and subject to amendment or revocation by the Council.

SECTION 9: REPRESENTING THE CITY

- 9. (1) Every Member of Council shall make every effort to participate diligently in the activities of every agency, board, and commission to which he or is appointed, or is otherwise a member.

SECTION 10: IMPROPER USE OF INFLUENCE

10. (1) No Member of Council shall use the influence of his or her office for any purpose other than the performance of the Member's responsibilities as a Member, and other official duties.

(2) In addition to the general requirement contained in subsection 10(1):

(a) No Member shall use her or his status as a Member of Council to influence, or try to influence, improperly, any action or decision of another person or entity to the private advantage of:

- (i) the Member;
- (ii) any member of the Member's family;
- (iii) any City employee;
- (iv) any friend, or business or other associate;

or attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of constituents as part of their official duties.

(b) No Member shall hold out the prospect or promise of future advantage through or related to, the supposed influence of the Member within Council, in return for any decision, vote, action or inaction.

(3) For the purposes of this section, "private advantage" does not include a matter that:

- (a) is of general application;
- (b) affects a Member of Council, a family member, City employee, friend or associate, as one of a broad class of persons; or
- (c) concerns the remuneration or benefits of one or more Members of Council, as authorized by law.

SECTION 11: CONDUCT RESPECTING CITY EMPLOYEES

11. (1) Every Member of Council, in accordance with his or her responsibilities as a Councillor; every City officer, in accordance with the terms of her or his appointment; and every City employee, in accordance with his or her employment agreement and responsibilities determined by Council; all subject to law, serve the City and are expected to act in the public interest and the interests of the City of Hamilton. Accordingly:

- (a) every Member of Council shall be respectful of the role of City officers and employees to provide service and advice based on political neutrality and objectivity, and without undue influence from any one or more Members of Council;
 - (b) no Member of Council shall maliciously, falsely, negligently, recklessly, or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more City employees; and
 - (c) every Member of Council shall show respect for the professional capacities and position of officers and employees of the City.
- (2) No Member of Council shall ask, expect or take any step to compel, any City officer or employee to engage in any partisan political activity, or be subjected to threat or discrimination for refusing to do so.
- (3) No Member shall use, or attempt to use, the Member's authority or influence for the purpose of intimidating, threatening, coercing, or otherwise improperly influencing any City employee with the intent of interfering with that employee's duties, including the duty to disclose improper activity.
- (4) It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment and workplace violence.³ Accordingly:
- (a) under this section, "harass" and "harassment" include any behaviour by a person that is directed at, or is offensive to, another person, on grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, family status or any other improper ground;
 - (b) no Member of Council shall harass or engage in acts of workplace violence towards another Member of Council, any City officer or employee, or any member of the public; and
 - (c) every Member of Council shall:

³ Harassment and Workplace Violence may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status or any other grounds under the provisions of the *Ontario Human Rights Code*.

- (i) treat other Members, City officers and employees, and members of the public, appropriately, and without bullying, abuse, intimidation or violence; and
- (ii) make all reasonable efforts to ensure that his or her work environment is free from discrimination, harassment and violence.

SECTION 12: RESPECT FOR THE CITY AND ITS BY-LAWS

12. Members of Council shall encourage public respect for the City and its By-laws.

SECTION 13: QUERIES AND COMPLAINTS UNDER THE THIS CODE OF CONDUCT

13. (1) In this section, “**Complaint**” includes a request made by the Council, a Member of Council, an officer or employee of the City, or any member of the public, as to whether or not a Member has contravened one or more of the provisions of this Code of Conduct, or requesting that the Integrity Commissioner conduct an inquiry into conduct alleged to have contravened the Code.
- (2) Council has by By-law established the office of the Integrity Commissioner to the City of Hamilton, and conferred responsibilities and powers upon such officer, pursuant to, and in addition to, the relevant provisions of the *Municipal Act* applicable to that office.
- (3) No Member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner.
- (4) No Member of Council shall obstruct the Integrity Commissioner in carrying out his or her responsibilities.
- (5) Without limiting the generality of subsection 13(4), “obstruct”, under that subsection includes:
- (a) destroying documents or records, including erasing electronic documents or records;
 - (b) withholding or concealing documents or records, including electronic documents or records; or

- (c) failing to respond to the Integrity Commissioner within 15 days after a written request is given, or within such longer period as the Integrity Commissioner may allow.

SECTIONS 14, 15, 16, 17, 18: CONSEQUENCES OF CONTRAVENTION OF THIS CODE

14. If the Integrity Commissioner concludes that, in his or her opinion, a Member has contravened the Code of Conduct, he or she may:
 - (1) impose the penalty of a reprimand upon the Member; or
 - (2) impose the penalty of suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council, for a period of up to 90 days.
15. The Integrity Commissioner shall not delegate the power to impose the penalties under section 14, but shall exercise the power personally even where an inquiry into a Complaint is conducted or reported on by a delegate of the Integrity Commissioner.
16. The Council may also, upon receiving a report from its Integrity Commissioner, take such further or other action as are within its lawful powers with respect to the subject-matter of the report and/or with respect to the Member of Council in question, including:
 - (1) removal from membership of a committee or local board;
 - (2) removal as Chair of a committee or local board;
 - (3) repayment or reimbursement of moneys received;
 - (4) return of property or reimbursement of its value; and/or
 - (5) a request of an apology to Council, the Complainant, or both.
17. In carrying out his or her responsibility under this By-law and/or the City's By-law establishing the Office of Integrity Commissioner, that officer shall consider and apply the By-law provisions in force at the time when the alleged contravention occurred.
18. This By-law, and any amendments to it from time to time, cast no doubt whatever upon, and do not apply to or affect, any previous decision of the Council or report by its previous Integrity Commissioner.

SECTION 19: INTERPRETATION

19. Any Members seeking clarification of any part of this Code of Conduct may consult with the City Clerk, the City Solicitor or the Integrity Commissioner.

PASSED this 26th day of October, 2016.

F. Eisenberger
Mayor

R. Caterini
City Clerk