

CORPORATE POLICY AND PROCEDURE



POLICY	Code of Conduct for Council and Local Boards
CATEGORY	Corporate
AUTHORITY	City Clerk's Office
RELATED POLICIES	Use of Corporate Resources During an Election
APPROVED BY	City Council
EFFECTIVE DATE	February 25, 2013
REVISION DATE	December 17, 2018

1. Policy Statement

A written Code of Conduct for Council and Local Boards (the Code) helps to ensure that the members of Guelph City Council (Council) and Local Boards of the City of Guelph (the City) share a common basis for acceptable conduct. The Code is designed to provide a set of rules on ethical conduct and a supplement to the legislative parameters within which the members must operate. These standards serve to enhance public confidence that Guelph's elected and appointed representatives operate from a base of integrity, justice and courtesy.

The key principles that underline the Code are as follows:

- All members shall serve and be seen to serve their constituents in a conscientious and diligent manner.
- All members should be committed to performing their functions with integrity.
- All members shall be committed to avoiding the improper use of the influence of their office.
- All members shall be committed to avoiding and declaring conflicts of interest, both real and apparent.
- All members shall perform their duties while in office in a manner that promotes public confidence and will bear close public scrutiny.
- All 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.

2. Purpose

Members hold positions of privilege. Therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community and regard for the integrity of the Corporation.

The purpose of the Code is to:

- protect the public interest;
- encourage high ethical standards among members of Council and local boards;
- provide a universal understanding of the fundamental rights, privileges, and obligations of members of Council and local boards; and
- provide a means for members of Council and local boards to obtain information on contemplated conduct in circumstances where they are uncertain as to the ethical appropriateness of that conduct.

3. Application

The Code applies to every member. The Code shall be applied to members of local boards, who are not members of Council, with necessary modifications applied at the discretion of the Integrity Commissioner.

4. Definitions

“members” means the Mayor, members of Council, and members of all local boards as defined in Section 223.1 of the Municipal Act.

“confidential information” means the following:

- a) Any information in the possession of, or received in confidence by the City, that the City is prohibited from disclosing, or has decided to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act, or any other law.
- b) Information of a corporate, commercial, scientific or technical nature received in confidence from third parties, including, but not limited to:
 - i) personal information;
 - ii) information that is subject to solicitor-client privilege;
 - iii) information that concerns any confidential matters pertaining to personnel labour relations, litigation, property acquisition, the security of the property of the municipality or a local board; and
 - iv) any other information lawfully determined by the Council or the local board to be confidential, or required to remain or be kept confidential by legislation or order.
- c) A matter, the substance of a matter, the debate on a matter, and information pertaining to a matter, that has been debated or discussed at a meeting closed to the public, unless the matter is subsequently discussed in open or is authorized to be released by Council, the local board or otherwise by law.
- d) Reports of consultants, draft documents and internal communications, which, if disclosed may prejudice the reputation of the City, its officers and employees, or its effective operation.

- e) Information, the publication of which may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence).

“Integrity Commissioner” means the person appointed by Council in accordance with Section 223.3 of the Municipal Act, 2001 and who is responsible for performing in an independent manner the functions assigned by the City with respect to the application of the Code and Municipal Conflict of Interest Act (MCIA) for members.

5. Gifts and Benefits

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of their duties of office, unless permitted by the exceptions listed below. For these purposes, a fee, advance, gift, or personal benefit provided with the member’s knowledge to a member’s spouse, child or parent, or to a member’s staff that is connected directly or indirectly to the performance of the member’s duties, is deemed to be a gift to that member.

The following are recognized as exceptions:

- a) compensation authorized by by-law;
- b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c) a political contribution otherwise reported by law;
- d) services provided without compensation by persons volunteering their time;
- e) a suitable memento of a function honouring the member;
- f) food, lodging, transportation and entertainment provided by provincial, regional or local governments, or political subdivisions of them, by the federal government or a foreign country;
- g) 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 attendance at events sponsored by the same entity is infrequent;
- h) communication to the offices of a member, including subscriptions to newspapers and periodicals.

In the case of categories (b), (e), (f), (g) and (h), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the City Clerk.

The disclosure statement must indicate:

- a) the nature of the gift or benefit;
- b) its source and date of receipt;
- c) the circumstances under which it was given or received;

- d) its estimated value;
- e) what the recipient intends to do with the gift; and
- f) whether any gift will at any point be left with the City.

Any disclosure statements will be a matter of public record.

Except in the case of category (f), a member may not accept a gift or benefit worth in excess of \$500 or gifts or benefits from one source during a calendar year worth in excess of \$500. No member shall seek or obtain by reason of their office any personal privilege or advantage with respect to City services not otherwise available to the general public and not consequent to their official duties.

6. Confidentiality

No member shall disclose, release, or publish, by any means to any person or to the public, any confidential information acquired by virtue of their office, except when required or authorized by Council or by by-law to do so. No member shall use confidential information for their own personal or private gain or benefit or for the personal or private gain or benefit of any other person or body.

7. Use of Corporate Resources

No member shall, for personal purposes or profit, make use of any City facilities, services or property other than for purposes connected with the discharge of City duties or associated community activities, unless such use is permitted by one of the following exceptions:

- a) reasonable and incidental personal use of equipment such as computers, cell phones, smart phones, telephones, tablets, printers, scanners, copiers, e-mail, file storage, voicemail, or any other equipment or technology owned by the City, where the City incurs no additional costs relating to such use, and the use is of limited duration and frequency; and
- b) use of City property and facilities where such use is universally known to be available to other residents upon request and on equal terms.

No member shall obtain financial gain from the use of City-developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the City.

No member shall use information gained in the execution of their duties that is not available to the general public for any purposes other than their official duties.

The Municipal Elections Act, the Election Finance Act and the Canada Elections Act establish regulations relating the use of City resources during elections. Members should review the City of Guelph Use of Corporate Resources During an Election policy for specific rules and regulations that apply during municipal, provincial and federal elections.

8. Conduct Respecting Current and Prospective Employment

No member shall allow the prospect of their future employment by a person or entity to adversely affect the performance of their duties to the City.

9. Business Relations

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City. A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

10. Conduct

As a representative of the City, every member has the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, a member of staff, or a member of the public. A member shall not speak in a manner that is discriminatory to any individual based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.

11. Influence on Staff

Individual members of Council do not have the authority of the whole of Council. Only Council as a whole has the authority to set policy or direct staff, including, but not limited to:

- a) budget approvals;
- b) governance processes; and
- c) staff work plans.

Council directs the business of the City and passes by-laws, or resolutions as appropriate, for decisions adopted by Council. Council has delegated responsibility to the Chief Administrative Officer (CAO) for the administration of the affairs of the City in accordance with decisions adopted by Council. This means that under the direction of the CAO, staff have the responsibility and the authority to provide consultation, advice, and direction to Council and to implement Council approved policy.

Members shall be respectful of the fact that staff work for the City as a corporate body and are charged with making recommendations that reflect their professional expertise, without undue influence from any individual member or group of members. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation of staff and all members shall show respect for the professional capacities of staff.

Accordingly, staff establish administrative policies, systems, structures and internal controls necessary to implement the goals and objectives of Council. Council should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power or their personal opinions. No member shall compel any staff member to engage in activities that are contrary to the directions of Council or the policies of the City. No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. No member shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

12. Improper Use of Influence

No member shall use the influence of their office for any purpose other than for the exercise of their official duties.

Examples of prohibited conduct are the use of one's status as a member to improperly influence the decision of another person to the private advantage of oneself, or one's relatives, staff members, and associates, businesses or otherwise. This includes attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's influence within Council in return for present actions or inaction.

For the purposes of this provision:

"private advantage" does not include a matter:

- a) that is of general application;
- b) that affects a member, their relatives, staff members, and associates, businesses or otherwise as one of a broad class of persons; or
- c) that concerns the remuneration or benefits of a member.

Members should not advocate on behalf of any person at a hearing of an adjudicative board (as listed on the City's website) and should not contact any member of such a board regarding any application before it.

13. Complaints Alleging Violation of the Code of Conduct or the Municipal Conflict of Interest Act

When a member of Council or local board, an employee of the City or a member of the public has reasonable grounds to believe that a member has breached the Code, a complaint may be submitted to the Integrity Commissioner who will process it in accordance with the Integrity Commissioner Complaint Protocol attached as Appendix 1.

In addition, if filed with the Integrity Commissioner on or after March 1, 2019, an application to the Integrity Commissioner to inquire into an alleged contravention of Sections 5, 5.1 or 5.2 of the MCIA may be made by an elector (as defined in Section 1 of the MCIA) or by a person demonstrably acting in the public interest, in accordance with the Integrity Commissioner Complaint Protocol attached as Appendix 1.

The Integrity Commissioner will advise the City Clerk, with as much notice as possible, before preparing a report to Council so that the City Clerk may schedule items on a Council agenda accordingly and provide related meeting information to the Integrity Commissioner accordingly.

Appendix 1

Integrity Commissioner Complaint Protocol

1. Application

This process applies to members of Council and its local boards as defined in Section 223.1 of the Municipal Act.

2. Integrity Commissioner

The City of Guelph Integrity Commissioner shall be responsible for the provision of the following services, as identified in the Municipal Act:

1. Application of the Code, as well as any other ethical rules, procedures and policies, for members.
2. Application of sections 5, 5.1 and 5.2 of the MCIA, for members.

3. Procedure for Making a Code of Conduct Complaint

1. All complaints or requests for inquiries of alleged breaches of the Code shall be submitted to the Integrity Commissioner in the form provided in Appendix 2.
2. All complaints or requests for inquiries must clearly include:
 - i) the member to whom the complaint relates;
 - ii) the nature of the alleged contravention;
 - iii) the specific provision(s) of the Code allegedly contravened;
 - iv) names of any witnesses to the alleged contravention; and
 - v) written material in support of the alleged contravention.
3. Upon receipt of a complaint or request for enquiry, the Integrity Commissioner shall first determine if it is within their jurisdiction and whether there is a procedure under other legislation or City policy to deal with the complaint. If it is determined that other procedures apply, the Integrity Commissioner shall refer the complainant to the appropriate person or agency to follow that process.

Where it has been determined that a complaint should be dealt with under another process, it will no longer be considered or dealt with by the Integrity Commissioner and the time limits described in the other processes will apply accordingly.

4. Upon receipt of a complaint or request to conduct an enquiry within their jurisdiction, and if the Integrity Commissioner deems the complaint or request to have merit, the Integrity Commissioner may deliver a preliminary report to an open meeting of Council which may include the following:
 - i) The opinion of the Integrity Commissioner as to whether the enquiry is appropriate and whether it can be conducted within the law applicable to such an enquiry;
 - ii) An indication as to whether it is the Integrity Commissioner's intention to conduct the enquiry under the Public Inquiries Act;
 - iii) A preliminary indication of the members of staff and/or consultants needed to assist the Integrity Commissioner;
 - iv) An estimated cost of the enquiry; and
 - v) Where appropriate, the Integrity Commissioner may recommend that the alleged infraction be reported to the police and that the enquiry be suspended until the police investigation is completed.
5. The Integrity Commissioner's report on a complaint shall be placed on an agenda for consideration at a public meeting of Council, in accordance with the Procedural By-law, as determined by the City Clerk in consultation with the Integrity Commissioner.
6. If the Integrity Commissioner is of the opinion that a complaint or request to conduct an enquiry is frivolous, vexatious, not made in good faith or that there are insufficient grounds for an enquiry, the Integrity Commissioner shall not prepare a preliminary report to Council and shall not conduct an enquiry.

4. Procedure for Making a Municipal Conflict of Interest Act Complaint

1. If filed with the Integrity Commissioner on or after March 1, 2019, an application to the Integrity Commissioner to inquire into an alleged contravention of section 5, 5.1 or 5.2 of the MCIA may be made by an elector (as defined in section 1 of the MCIA) or by a person demonstrably acting in the public interest, as follows:
 - i) All complaints or requests for inquiries of alleged contraventions of the MCIA shall be submitted to the Integrity Commissioner in the form provided in Appendix 3.
 - ii) Complaints may only be filed by individuals and may not be filed by groups, organization or corporations.
2. All complaints shall include:
 - i) an explanation, with specific reference to sections of the MCIA, as to why the issue raised is alleged to be a contravention of the MCIA;
 - ii) any evidence in support of the allegation;
 - iii) any witnesses in support of the allegation must be identified; and

- iv) a statutory declaration attesting to the fact that the applicant became aware of the alleged contravention not more than six weeks before the date of application.
3. The Integrity Commissioner shall undertake an initial review of a complaint that has been filed and shall determine whether the matter relates to non-compliance with the MCIA. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the complaint or application if it is not alleging such a contravention or if the complaint relates to the following matters:
 - i) Criminal Matter – if the complaint relates to an allegation of a criminal nature consistent with the Criminal Code, the complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service.
 - ii) Municipal Freedom of Information and Protection of Privacy – if the complaint relates to a matter under the Municipal Freedom of Information and Protection of Privacy Act, the complainant shall be referred to the City Clerk.
 - iii) Municipal Elections Act – if the complaint relates to the enforcement of the Municipal Elections Act, the complainant shall be referred to the Compliance Audit Process if the matter relates to campaign finances or to such other avenues of investigation as dictated by the Municipal Elections Act.
4. If the Integrity Commissioner determines that they do not have jurisdiction to investigate the complaint, the Integrity Commissioner shall advise the complainant in writing accordingly.
5. Upon receipt of a request to conduct an enquiry within their jurisdiction under the MCIA, and if the Integrity Commissioner deems the request to have merit, the Integrity Commissioner may hold a public meeting to discuss the enquiry and may deliver a preliminary report which may include the following:
 - i) the opinion of the Integrity Commissioner as to whether the enquiry is appropriate and whether it can be conducted within the law applicable to such an enquiry;
 - ii) an indication as to whether it is the Integrity Commissioner’s intention to conduct the enquiry under the Public Inquiries Act;
 - iii) a preliminary indication of the members of staff and/or consultants needed to assist the Integrity Commissioner;
 - iv) an estimated cost of the enquiry;
 - v) the estimated time required to complete the enquiry and prepare a final report; and

- vi) where appropriate, the Integrity Commissioner may recommend that the alleged infraction be reported to the police and that the enquiry be suspended until the police investigation is completed.
- 6. If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious, not made in good faith or that there are insufficient grounds for an enquiry, the Integrity Commissioner shall not prepare a preliminary report to Council and shall not conduct an enquiry. The Integrity Commissioner shall advise the complainant in writing of the decision and reasons for not undertaking an investigation.
- 7. Before finalizing a report to Council which recommends sanctions, the Integrity Commissioner shall provide the member with the basis for their findings and any sanctions that may be recommended. The member shall have the opportunity to comment further, either in writing, verbally or, if approved by the Integrity Commissioner, in person, to the Integrity Commissioner on the proposed findings and sanctions.
- 8. Upon conclusion of an investigation of an alleged MCIA contravention, the Integrity Commissioner may, if they consider it appropriate, apply to a judge under section 8 of the MCIA for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of the MCIA.
- 9. Upon completion of an investigation, the Integrity Commissioner shall:
 - i) advise the applicant whether they will be making an application to a judge; and
 - ii) publish written reasons for the decision.

5. Procedure for Obtaining Advice

- 1. A request for information from the Integrity Commissioner by a member or the public must be made in writing.
- 2. All advice provided by the Integrity Commissioner to a member, shall be confirmed in writing. No solicitor/client relationship will exist in the giving of such advice.
- 3. Where the Integrity Commissioner learns of a violation of the Code through the request for advice from a member, they are required to report such a violation to Council.
- 4. The Integrity Commissioner may decline to give advice if they determine it will put them in conflict with their duty to Council as a whole.

6. Confidentiality

1. The Integrity Commissioner shall carry out all enquiries in a manner which will ensure that the individual to whom the complaint relates is treated fairly and all complaints shall be treated as confidential to the extent possible and in accordance with the Municipal Act.
2. All records of investigations shall be kept confidential and access limited according to the discretion of the Integrity Commissioner.

7. Intake Procedures

The Integrity Commissioner may attempt to settle any complaint. Except where otherwise required by the Public Inquiries Act, the Integrity Commissioner shall provide a copy of the complaint received regarding an alleged violation under the Code or MCIA and supporting material to the member with a request for a written response to the allegation within ten days. Unless the complainant requests that their identity be kept confidential, the copy of the complaint sent to the respondent shall include the name of the complainant.

A copy of such response may be provided by the Integrity Commissioner to the complainant with a request for a written response within ten days.

8. Investigations

The Integrity Commissioner shall take all necessary steps within their jurisdiction to promptly investigate complaints. This may include entering any City office or building, consulting with relevant City staff and accessing any information or records described in section 223.4 (3) and (4) of the Municipal Act. The Integrity Commissioner may retain independent professional services if required.

1. The Integrity Commissioner shall make every effort to complete an investigation within 30 days and no later than 180 days after receiving the complaint.
2. If the Integrity Commissioner requires more than 30 days to complete an investigation, the Integrity Commissioner may advise the complainant and prepare an interim report to Council which includes an estimated extended time period and end date for completion as well as the reasons for the extension.
3. A complaint involving an alleged contravention that has already been thoroughly investigated will not be re-investigated unless new evidence is presented.

9. Reporting the Results of an Investigation

1. All reports from the Integrity Commissioner shall be made to an open meeting of Council. Where the enquiry relates to a local board, the report shall be submitted to both Council and the local board.
2. If the Integrity Commissioner determines that there has been no contravention, or that a contravention occurred even though the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall dismiss the complaint and may report to Council on the matter.
3. If a preliminary report was previously issued by the Integrity Commissioner, then a final report shall be submitted to an open meeting of Council and a local board as applicable.
4. The Integrity Commissioner shall give a copy of the final report to the complainant and the member whose conduct is concerned on the same day as the agenda containing the report becomes public.

10. Actions by Council as a Result of a Violation of the Code

1. In reviewing the final report, Council will determine whether it will impose any of the following penalties on a member if the Integrity Commissioner reports that it is their opinion that the member has contravened the Code:
 - i) Issue a motion of reprimand;
 - ii) Suspension of the remuneration paid to the member with respect to their services as a member for a period of up to 90 days; and
 - iii) Remove the member from committee or local board appointments.
2. Council may also make the following requests:
 - i) Request the member involved to return any gift or benefit received in contravention of the Code;
 - ii) Request that the member involved repay the value of the benefit; and
 - iii) Request an apology from the member involved.
3. All reports to Council by the Integrity Commissioner on the investigation of complaints are public documents.
4. The Integrity Commissioner shall be responsible for ensuring the above procedures are followed with respect to requests for enquiries and for conducting investigations. Council shall be responsible for determining penalties where a finding is made by the Integrity Commissioner that the Code has been contravened.

11. Protection from Retaliation

Any employee who files a complaint of a contravention of the Code or the MCIA will not be subjected to any form of penalty or reprisal provided the complaint is made:

- In good faith; and
- in the reasonable belief of the complainant that a contravention of the Code has occurred.

12. Limitation Period

The Integrity Commissioner shall not proceed with an enquiry regarding a Code complaint more than 60 days after the date when the event or series of events which are the subject matter of the complaint were discovered by the complainant. The onus of proof as to the date of discovery lies with the complainant.

Where the Integrity Commissioner decides not to proceed with the investigation of a Code complaint received more than 60 days after the date when the event or series of events occurred, the Integrity Commissioner may prepare and file a report to Council setting out that decision.

A complaint regarding an alleged contravention of the MCIA may not be made more than six weeks after the applicant became aware of the alleged contravention.

13. Complaints in Municipal Election Years

Pursuant to the Municipal Act, no application for an inquiry by the Integrity Commissioner of an alleged contravention of the Code or MCIA shall be made between Nomination Day and six weeks after Voting Day in a regular election, except as provided in section 223.4 and 223.4.1 of the Municipal Act. Furthermore, any investigation not completed prior to Nomination Day in a regular election shall be terminated by the Integrity Commissioner on that day.

The Integrity Commissioner shall not re-commence an enquiry terminated as the result of an election unless, within six weeks of Voting Day in a regular election, the person who made the original request submits a written request to the Integrity Commissioner asking that the inquiry be re-commenced.

