

Minute No. 437

Report – Governance Committee of Council – May 2, 2018

**Item No. 1 Councillors' Ward Allowance Policy Amendment (CWA) –
Councillor Code of Conduct to apply to Executive Assistants**

COUNCIL DECISION:

Council concurred in the recommendation of the Governance Committee of Council, as amended, and adopted the following:

1. That the Councillors' Ward Allowance (CWA) Policy Fund be amended by replacing it with the attached revisions specifying that the new Code of Conduct for Members of Council apply to Councillors' Assistants.
2. That the Mayor's Office Expense Policy be:
 - A. Amended to ensure it meets the February 22, 2018 decision of Council to specify that the new Code of Conduct for Members of Council apply to Mayor's Office Staff;
 - B. Posted on the City of Winnipeg website so it is available to all citizens;
3. That the City Auditor be directed to undertake an annual audit of the Mayor's Office Expense Policy, similar to that undertaken for the Councillor's Ward Allowance Policy.
4. That the above occur at the May 2018 Council Meeting, to ensure compliance with the February 2018 decision of Council within the 90 day timeline adopted by Council.
5. That the Proper Officers of the City of Winnipeg do all things necessary to implement the intent of the foregoing.

Report – Governance Committee of Council – May 2, 2018

DECISION MAKING HISTORY:

Moved by Councillor Sharma,

That the recommendation of the Governance Committee be adopted.

In amendment,

Moved by His Worship Mayor Bowman,

Seconded by Councillor Sharma,

That Item No. 1 of the Report of the Governance Committee of Council, dated May 2, 2018, be amended by deleting recommendation 2.C and by adding an additional recommendation as follows:

“That the City Auditor be directed to undertake an annual audit of the Mayor’s Office Expense Policy, similar to that undertaken for the Councillor’s Ward Allowance Policy.”

The motion moved by His Worship Mayor Bowman and seconded by Councillor Sharma was put and declared carried.

The motion for the adoption of the item, as amended, was put and declared carried.

Councillor Eadie asked to be recorded as having voted against the above motion, in accordance with Rule 47(7) of The Procedure By-law No. 50/2007.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 13, 2018, the Executive Policy Committee concurred in the recommendation of the Governance Committee of Council, with the following amendment\

- Delete 2. C. in its entirety, and replace it with the following new 2. C.:

“2. C. Amended to require for an external auditor to prepare an annual audit of the Mayor’s Office expenditures.”

and submitted the matter to Council.

Report – Governance Committee of Council – May 2, 2018

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 15, 2018, the Executive Policy Committee laid over the matter for 30 days.

COMMITTEE RECOMMENDATION:

On May 2, 2018, the Governance Committee of Council passed the following resolution:

WHEREAS at its meeting of February 22, 2018, Council adopted Recommendation No. 3 of Item No. 1 of the Report of the Governance Committee of Council dated January 23, 2018 as follows:

- “3. That Council amend The Councillors’ Ward Allowance Fund Policy within 90 days to require that Councillors’ Executive Assistants comply with the provisions of the Code of Conduct for Members of Council (Attachment #2 – Code of Conduct for Members of Council) and that the employment contracts for Executive Assistants require such compliance.”

AND WHEREAS the current Councillors’ Ward Allowance Fund Policy (CWA) at <http://winnipeg.ca/council/pdfs/CWApolicy.pdf> specifies that Councillors’ Assistants will be governed by the Councillors’ Secretariat Code of Conduct adopted by Council;

AND WHEREAS the CWA Policy Fund requires changes to the Councillors’ Assistants section of the policy (page 11) to specify use of the Members of Council Code of Conduct, as well as changes to Appendix C (to specify the new Members of Council Code of Conduct) and Appendix D (amendment to Councillors’ Assistants contracts) to implement the intent of Council above;

AND WHEREAS at its meeting of February 22, 2018, Council also adopted Recommendation No. 4 of Item No. 1 of the Report of the Governance Committee of Council dated January 23, 2018 as follows:

- “4. That the Mayor take the necessary steps within 90 days to ensure that the staff who work in the Mayor’s Office be required to comply with the provisions of the Code of Conduct for Members of Council (Attachment #2 – Code of Conduct for Members of Council).”

AND WHEREAS the application of a Code of Conduct to Mayor’s Office staff is specified in the Mayor’s Office Expense Policy;

Report – Governance Committee of Council – May 2, 2018

DECISION MAKING HISTORY (continued):

COMMITTEE RECOMMENDATION (continued):

THEREFORE BE IT RESOLVED:

AND WHEREAS the Mayor's Office Expense Policy was emailed to Council members on December 30, 2016, but is not available for public viewing on the City's website, nor has it been adopted by Council;

AND WHEREAS it is important for all such policies to be open and transparent so citizens can understand how funds are being managed by all Elected Officials, including the Mayor's Office;

1. That the CWA Policy Fund be amended by replacing it with the attached revisions specifying that the new Code of Conduct for Members of Council apply to Councillors' Assistants;
2. That the Mayor's Office Expense Policy be:
 - A. Amended to ensure it meets the February 22, 2018 decision of Council to specify that the new Code of Conduct for Members of Council apply to Mayor's Office Staff;
 - B. Posted on the City of Winnipeg website so it is available to all citizens;
 - C. Adopted by Council, in the same way as the CWA Policy.
3. That the above occur at the May 2018 Council Meeting, to ensure compliance with the February 2018 decision of Council within the 90 day timeline adopted by Council.
4. That the Proper Officers of the City of Winnipeg do all things necessary to implement the intent of the foregoing.

and submitted the matter to Executive Policy Committee and Council.



THE COUNCILLORS' WARD ALLOWANCE (CWA) FUND POLICY

Adopted by Council September 28, 2011
(amended June 25, 2014, December 10, 2014, October 28, 2015, October 26, 2016, June 21, 2017,
October 25, 2017, **May 24, 2018**)

COUNCILLOR'S ASSISTANTS

Councillors' Assistants	
<p>Eligible expense</p> <ul style="list-style-type: none"> • Councillors may engage staff to assist them on a full-time or part-time basis • Staff employed are considered political appointments and are not employees of the City of Winnipeg • Councillor's Assistants will be governed by the Councillors' Secretariat Code of Conduct Code of Conduct for Members of Council attached as Schedule A to By-law No. 19/2018 (See Appendix C for Code of Conduct adopted by City Council on April 26, 2018) • All assistants must be retained under the terms of the employment contract (Appendix D) • Appointments cannot extend beyond the term of the Councillor • All assistants shall be employed pursuant to the CWA policy and shall execute the employment contract prior to commencement of employment • The employment contract will be between the Councillor and the assistant. Neither the employment contract nor the CWA policy shall in any sense be construed so as to create the relationship of employer and employee between the City of Winnipeg and the assistant. • Access to the Councillor's office shall be by access card and limited to regular office hours. Access on weekends will be by arrangement with the City Clerk • A severance allowance of one week's pay per year of service, up to a maximum of eight weeks pay will be provided as required. 	<p>Ineligible expense</p> <ul style="list-style-type: none"> • Individuals holding elected political office shall not be eligible for employment as a Councillor's assistant • Councillors cannot employ a relative (husband or wife, including common law spouse, child parent, brother, sister (including foster and step), parent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law; nephew or niece • An assistant cannot be any person employed or contracted by the City of Winnipeg • An assistant involved in litigation with the City of Winnipeg must advise the Councillor and the matter must be brought forward to the Governance Committee • An Assistant cannot perform political duties, including attending meetings of boards or commissions to which the Councillor has been appointed by Council • An assistant shall not be eligible for appointment by Council to boards, commissions or committees

COUNCILLOR'S ASSISTANT AGREEMENT

THIS AGREEMENT made in duplicate the _____ day of _____, A.D. 20__ .

BETWEEN:

COUNCILLOR _____,
(hereinafter called "the Councillor"),

OF THE FIRST PART,

- and -

(hereinafter called "the Assistant"),

OF THE SECOND PART.

WHEREAS the Councillor is desirous of retaining the services of the Assistant for the position of Councillor's Assistant.

AND WHEREAS the Assistant has agreed to perform the duties and responsibilities of this position;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements hereinafter contained, the parties agree as follows:

1. Subject to the terms and conditions of this Agreement, the Councillor hereby engages the Assistant, on a contract basis, to perform the duties hereinafter set for a period of one (1) year from _____ to _____ or unless earlier terminated in accordance with the provisions of this Agreement.
2. Subject to the terms and conditions of this Agreement, the term of this Agreement may be extended for a further period of one (1) year but in no event beyond the Councillor's term of office on terms and conditions mutually agreed to by the parties.
3. The Assistant agrees to undertake the duties and the responsibilities assigned to him/her from time to time as the Councillor's Assistant.
4. For work and services to be performed by the Assistant, the Councillor shall pay him/her the sum of \$ _____ bi-weekly.
5. Benefits as identified on the attached Schedule of Benefits, including vacation pay and other benefits as required by *The Employment Standards Act*, including health benefits which are payable after six months of service in accordance with the terms and conditions of the relevant group insurance policy.

Councillors' Assistant Agreement (continued)

6. Subject to *The Employment Standards Act*, the Assistant is not entitled to be paid for time missed due to illness, injury or any other reason.
7. The Assistant is entitled to return to employment as the Councillor's Assistant upon recovery from an illness or injury so long as the Assistant is capable of performing the duties and responsibilities of the Councillor's Assistant, on the understanding that:
 - (a) the Assistant shall provide, upon the Councillor's request, medical evidence satisfactory to the Councillor demonstrating that the Assistant is capable of performing the duties and responsibilities of the Councillor's Assistant. At the option of the Councillor, said medical evidence shall include an examination by a physician of the Councillor's choosing.
 - (b) the Assistant is not entitled to return to employment following an illness or injury if this Agreement has terminated or if the Assistant's engagement has terminated for some other reason prior to his/her recovery from the illness or injury.
8. All information obtained by the Assistant in the performance of his/her duties as Councillor's Assistant shall be kept confidential except as reasonably required in the course of his/her duties and responsibilities as Councillor's Assistant.
9. The Assistant shall abide by Code of Conduct for Councillors' Assistants and Special Project Personnel adopted from time to time by the Governance Committee of Council **as well as to the Code of Conduct for Members of Council, attached as Schedule A to the Members of Council Code of Conduct By-law No. 19/2018.**
10. The Assistant shall advise the Councillor of any involvement in litigation with The City of Winnipeg or any business or other personal/private interest which could represent a conflict of interest, and the Councillor shall disclose this information to the Governance Committee of Council. The Councillor and the Assistant shall avoid any situations that may result in either a real or perceived conflict of interest.
11. At the termination of this Agreement, for whatever cause or no cause at all, the Assistant shall turn over to the Councillor, all records and books of account and all property that may belong to the Councillor or The City of Winnipeg.
12. The Assistant's engagement hereunder may be terminated:
 - (a) by the Councillor at any time without compensation for cause, in which event the Assistant shall only receive all monies due and owing or accruing due to him/her pursuant to this Agreement as ascertained up to the date of termination;
 - (b) by either party without cause upon two (2) weeks' written notice, in which event the Assistant shall only receive all monies due and owing or accruing due to him/her pursuant to this Agreement as ascertained up to the date of termination;

Councillor's Assistant Agreement (continued)

- (c) in the event that the Councillor retires or otherwise ceases to act as Councillor, and the Assistant shall only be paid all amounts due and owing or accruing due to him /her as of the date the Councillor retires or otherwise ceases to act as Councillor.
- 13. In the event of the death of the Assistant, all amounts due and owing or accruing due to him/her as of the date of such death shall only be paid.
- 14. For greater certainty, the termination of an Assistant's engagement pursuant to 12 (b), 12 (c) and 13 shall not limit or detract from any insurance or other benefits under this Agreement to which the Assistant may be entitled as of the date of the termination.
- 15. Any notice required by this Agreement to be given shall be deemed to be satisfactory if sent by registered mail. Notice shall be deemed to have been received three (3) days after the mailing of such notice. The mailing addresses for the purpose of such notices shall be as follows:

On the Assistant:

Winnipeg, MB _____
SIN _____

On the Councillor

Councillors' Office
The City of Winnipeg
Council Building, 510 Main Street
Winnipeg, Manitoba R3B 1B9

- 16. This Agreement, and the section(s) of the Councillors' Ward Allowance (CWA) policy requirements applicable to Councillors' Assistants, constitute and express the whole agreement of the parties hereto with reference to the engagement of the Assistant by the Councillor and with reference to any of the matters or things herein provided for, or herein before discussed or mentioned with reference to such engagement, all promises, representations and undertakings relative thereto being merged herein. The Councillor shall make a copy of the Councillors' Ward Allowance (CWA) policy requirements available to the Assistant.
- 17. This Agreement shall not be assigned.
- 18. The Councillor and the Assistant acknowledge that The City of Winnipeg is not involved in any manner whatsoever in the engagement of the Assistant and has no responsibility to either party in their performance of this Agreement.
- 19. This Agreement shall be construed, performed and enforced according to the laws of the Province of Manitoba.
- 20. Time shall be of the essence of this Agreement.

CODE OF CONDUCT

COUNCILLORS' ASSISTANTS AND SPECIAL PROJECT PERSONNEL

1. Councillors' Assistants and special project personnel must observe the highest standards of conduct in the performance of their duties, regardless of personal considerations. Their conduct in their official affairs must be above reproach at all times.
2. Councillors' Assistants and special project personnel shall not be accorded any special consideration, treatment, privilege or advantage beyond that which is available to all individual citizens.
3. Councillors' Assistants and special project personnel shall attire themselves in a professional manner in accordance with the workplace environment.
4. Councillors' Assistants and special project personnel may at times be in a privileged informational position and as such:
 - Shall not disclose confidential information concerning the property, government or affairs of the City without proper authorization from their supervising Councillor,
 - Shall be ineligible to bid or lease in regards to City projects or City-owned land or materials,
 - Shall not accept any gift, commission, reward, advantage or benefit of value from any person, firm or corporation which is interested directly or indirectly in any manner in business dealings with the City,
 - Shall not participate in any appearances relating to their involvement in private interests before Committees of Council, City Council, or before any Board, Commission or other Agency established by the Council, where such appearance could represent a conflict of interest.
5. Councillors' Assistants and special project personnel shall not use or permit the use of city-owned vehicles, equipment, material or property for their personal convenience or profit.
6. Councillors' Assistants and special project personnel shall not benefit from the use of any information acquired in the course of their duties which is not available to the public.
7. Councillors' Assistants and special project personnel shall conduct themselves in a professional and courteous manner in their day-to-day workings with other personnel including staff. Should any form of conflict arise, such conflict should first be addressed by the respective Councillors and furthered to the Speaker for adjudication if not resolved.
8. Councillors' Assistants will comply with the provisions of the Code of Conduct for Members of Council attached as Schedule A to the Members of Council Code of Conduct By-law No. 19/2018.

CODE OF CONDUCT FOR MEMBERS OF COUNCIL

THE FOLLOWING IS PROVIDED FOR REFERENCE ONLY:

PLEASE REFER TO SCHEDULE A TO THE MEMBERS OF COUNCIL CODE OF CONDUCT BY-LAW NO. 19/2018 FOR THE CODE OF CONDUCT ADOPTED BY CITY COUNCIL ON APRIL 26, 2018

A. PREAMBLE

Members of Council for the City of Winnipeg recognize that they hold office for the benefit of the public and that their conduct must adhere to the highest ethical standards, exceeding the minimum obligations required by law.

A written Code of Conduct demonstrates that Members of Council share a common understanding of the ethical obligations which are essential to the fair and effective operation of government.

Members of Council first instituted a Code of Conduct in 1994. This Code of Conduct stems from the principles set out in that Code.

Although the Preamble cannot support a stand-alone contravention of the Code of Conduct, together with the Key Principles listed below, it provides a helpful framework within which to review the actions of Members of Council.

To further assist Members of Council and members of the public in understanding and interpreting the Code of Conduct, the Code of Conduct document shall be made available in a version which includes commentary provided by the Integrity Commissioner.

That commentary, which will be updated from time to time by the Integrity Commissioner, does not form part of the Code of Conduct itself.

B. APPLICATION AND INTERPRETATION

1. This Code of Conduct (“Code”) applies to all Members of Council, including the Mayor (“Members”).
2. It is intended that this Code operate together with and supplemental to the statutes, By-laws and policies which govern the conduct of Members, including but not limited to:
 - *The City of Winnipeg Charter*
 - *The Municipal Council Conflict of Interest Act (“MCCIA”)*
 - *The Human Rights Code of Manitoba*
 - *The Freedom of Information and Protection of Privacy Act*
 - *The Criminal Code of Canada*
 - *City of Winnipeg Policies, By-laws and Protocols*
 - *Codes of Conduct for City Boards or Commissions*
3. Members are responsible to be familiar with the requirements of the By-laws, policies, protocols and legislation which govern their conduct together with the provisions of this Code.

4. This Code is to be given a broad and liberal interpretation in accordance with the Key Principles set out herein and applied in a reasonable and pragmatic manner.
5. Members should seek the advice of the Integrity Commissioner in determining how this Code is to be interpreted and applied.

C. DEFINITIONS

“**Appendix A**” means the Advice Protocol for Members of Council, attached to and forming part of the Code.

“**Appendix B**” means the Complaint Protocol, attached to and forming part of the Code.

“**Duties of Office**” include those activities that are reasonably related to a Member’s office, taking into consideration the different interests and the diverse profiles of their constituents as well as the Members’ different roles on committees, agencies, boards and commissions.

“**Staff**” includes Directors, Managers, Supervisors, salaried staff, hourly staff, part time staff, temporary/seasonal staff, contract staff, students, interns and volunteers.

D. KEY PRINCIPLES

The public interest is best served when Members:

- perform their duties of office honestly and with integrity, impartiality and transparency, putting the public interest before private and self-interest;
- conduct themselves in such a way as to promote respect for Council and municipal government;
- serve their constituents and the City in a conscientious and diligent manner and approach decision making with an open mind; and
- perform their duties of office and manage their private interests in a manner that promotes public confidence and trust in the political process.

E. RULES OF CONDUCT

1. Confidential Information

- a. Members must not disclose and shall only use confidential information as required for their duties of office.

Confidential information is information which is otherwise not available to the general public, including information contained in the agenda for or discussed at an *in camera* meeting held pursuant to the City’s *In Camera By-law*, and information in the possession of or received in confidence by the City that the City is either prohibited from disclosing, is required to refuse to disclose, or may refuse to disclose pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*.

- b. Members must not intentionally access or attempt to access confidential information which is in the custody of the City unless it is necessary for the performance of their duties of office.

2. Conflict of Interest

a. Members must not act in situations in which they have a real or apparent conflict of interest, whether during a meeting of Council or Committee of Council or at any other time while performing their duties of office.

A **conflict of interest** exists when a Member exercises his or her duties of office and at the same time knows that in the performance of those duties there is the opportunity to further his or her private interests.

A **private interest** includes any personal benefit, whether pecuniary or not.

A **real conflict of interest** exists when a Member has knowledge of a private interest that is sufficient to influence the exercise of his or her duties of office.

An **apparent conflict of interest** exists when there is a reasonable perception, which a reasonably well-informed person could properly have, that the Member's ability to perform any official duty or function must be influenced by his or her private interest.

b. Interests which do not give rise to a conflict of interest include:

- interests in matters of general application;
- interests in matters that affect a Member as one of a broad class of the public;
- interests that concern the remuneration and benefits of the Member as a Member of Council; and
- interests that are trivial.

c. A Member is presumed not to have an interest in any appointment to serve in his or her official capacity on any commission, board or agency, or in matters arising in relation to that commission, board or agency.

d. A Member who has a conflict of interest with respect to any matter must refrain from influencing the matter and from discussing or voting on any decision with respect to the matter.

e. Should a conflict of interest, real or apparent, arise with respect to a matter that will be discussed or determined at a meeting of Council or a Committee of Council, the Member must:

- i. disclose the general nature of the Member's interest, and
- ii. withdraw from the meeting without voting or participating in the discussion.

f. Where a Member does not disclose an interest under Rule 2.e. because they are not in attendance at the meeting at which the matter arose, the Member must disclose the general nature of his or her interest at the next meeting of the same body before which the matter arose.

g. Where, by reason of withdrawal from a meeting because of non-pecuniary interests, there would be fewer Members remaining than are needed to meet quorum, those Members who have withdrawn by reason of a non-pecuniary interest must disclose their interest, but may still vote in respect of the matter.

3. Gifts and Benefits

Acceptability

- a. Members must not accept any gift or personal benefit that would, to a reasonable, well-informed person, create the appearance that the donor is seeking to influence the Member or gain the favour of the Member.
- b. For these purposes, a gift or benefit provided with the Member's knowledge to a Member's dependant 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.

Dependant means

- (a) the spouse of a Member,
- (b) the common-law partner of a Member, and
- (c) any child, natural or adopted, of the Member,

who resides with the Member.

- c. For clarification, it is generally not a violation of Rule 3.a. to accept the following:
 - i. compensation authorized by law;
 - ii. gifts or benefits received as an incident of accepted protocol or normal expression of courtesy;
 - iii. a political contribution otherwise authorized and reported in accordance with the law;
 - iv. services provided without compensation by persons volunteering their time;
 - v. admission to charitable or community organized events, widely-attended events such as conventions or conferences, or training and education programs, provided that:
 1. admission is offered by the entity responsible for organizing and presenting the event;
 2. admission is unsolicited by the Member; and
 3. the Member is attending or participating in his or her official capacity;
 - vi. food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or their political subdivisions or by the government of a foreign country, as long as these benefits are received by the Member during the performance of their duties of office; and
 - vii. sponsorships and donations for community events organized or run by a Member or a third party on behalf of a Member.
- d. Except for political contributions allowable by law, Members must never accept gifts or benefits provided by a registered lobbyist, or their lobbyist client or employer.

Disclosure Requirements

e. Members must provide the Integrity Commissioner with a quarterly Disclosure Statement identifying the receipt of any gift or benefit connected to the performance of the Member's duties of office, which has a value of \$50 or greater, with the exception of gifts falling under 3.c.i., iii., or iv., above. The Disclosure Statement must identify the following:

- i. the nature of the gift or benefit;
 - ii. its source and date of receipt;
 - iii. the circumstances under which the gift was given or received;
 - iv. the gift's estimated value; and
 - v. what the recipient intends to do with the gift.
- f. Disclosure Statements provided under this rule will be a matter of public record.

4. Use of Influence

Members must not use the influence of their office for purposes other than for the proper exercise of their duties of office.

5. Use of City Staff, Resources and Property

Members must not use or permit the use of their staff, City staff, or City resources or property for purposes other than those connected with the discharge of their duties of office.

6. Election-Related Activity

a. Members are required to follow all applicable election legislation and By-laws, including without limitation, *The City of Winnipeg Charter*, *The Municipal Councils and School Boards Elections Act* and all relevant City of Winnipeg By-laws.

b. Members must not use the facilities, equipment, supplies, services or other resources of the City (including Members' newsletters or websites linked through the City's website) for any election campaign or campaign-related activities.

c. Members must not use the services of City staff for election-related purposes during hours in which those staff members are in the paid employment of the City.

7. Conduct Concerning Staff

a. Members must not directly or indirectly, request, induce, encourage, aid, or permit City staff or their own staff to do something which, if done by the Member, would be a breach of this Code of Conduct.

b. Members must not compel City staff or their own staff to engage in partisan political activities or subject them to reprisal of any kind for refusing to engage in such activities.

c. Members must not use, or attempt to use, their authority for the purpose of intimidating, coercing, or influencing City staff or their own staff with the intent of interfering with such staff's duties.

d. Members must not maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of City staff or their own staff and must at all times show respect for staff's professional capacities.

8. Respectful Conduct

a. All Members have a duty to treat members of the public, one another, City staff and their own staff with respect and without abuse, harassment, or intimidation.

Harassment includes:

- i. any behaviour, whether a single incident or a course of conduct, that a reasonable person should have known would be unwelcome, and that is inappropriate, demeaning, humiliating, embarrassing, or otherwise offensive, including but not limited to:
 - a. verbal or written insults, abuse or threats;
 - b. racial or ethnic slurs, including racially derogatory nicknames;
 - c. leering or other offensive gestures;
 - d. bullying; or
 - e. patronizing or condescending behaviour; and
- ii. objectionable and unwelcome sexual solicitations or advances.

b. While Members may passionately debate issues and promote ideas, they must maintain proper decorum during meetings of: Council, Committees of Council, and boards, agencies or commissions on which they serve as part of their duties of office.

9. Adherence to Council Policies and Procedures

Members must adhere to all By-laws, policies and procedures adopted by Council.

10. Reprisals and Obstruction

a. It is a violation of this Code to obstruct the Integrity Commissioner in the carrying out of his or her duties and responsibilities.

b. No Member shall threaten or undertake any reprisal against a person who makes a complaint under this Code or against a person who provides information to the Integrity Commissioner in any investigation of such a complaint.

F. ENFORCEMENT

1. Annual Meeting with Integrity Commissioner

Members shall meet with the Integrity Commissioner at least once annually in order to discuss their obligations under this Code and under other policies, By-laws or Acts which govern their ethical behaviour.

2. Investigation of Complaints

The Integrity Commissioner may: receive and investigate complaints alleging that the Rules set out in this Code have been breached; make findings; and report to Council, in accordance with the provisions of the Complaint Protocol attached as Appendix B to the Code.

3. Reliance on Advice Provided to Member by Integrity Commissioner

- a. Members may seek advice from the Integrity Commissioner in accordance with the provisions of the Advice Protocol attached as Appendix A to the Code.
- b. Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as the facts presented by the Member to the Integrity Commissioner were accurate and complete.

4. Sanctions for Misconduct

Where the Integrity Commissioner has determined there has been a violation of the Code, the Integrity Commissioner may recommend to Council that:

- i. the Member be reprimanded;
- ii. the Member be required to make a public apology;
- iii. the Member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;
- iv. the Member be removed from a committee; and/or
- v. the Mayor be requested to remove the Member from his or her position as Chair of a committee.

ADVICE PROTOCOL FOR MEMBERS OF COUNCIL

Circumstances and Effect of Seeking Advice from the Integrity Commissioner

1. Any written advice given by the Integrity Commissioner (“Commissioner”) to a Member of Council (“Member”) binds the Commissioner in any subsequent consideration of the Member’s conduct in the same matter, as long as the facts presented by the Member to the Commissioner were accurate and complete.
2. The Commissioner may, on his or her own initiative, reconsider advice that has been provided to a Member. The Commissioner will let the Member know that the advice is being reconsidered, but that the original advice will stand unless and until amended.
3. Advice that is general in nature will only be given informally by the Commissioner and is subject to change by the Commissioner when applied to specific facts that may not have been known at the time the general advice was provided.
4. The Commissioner will not provide advice as to whether or not the Member’s past conduct was in contravention of the Code of Conduct, but will provide information, in a general way, as to how the Member may govern himself or herself, in similar situations in the future.
5. It is inappropriate for a Member to use advice sought from the Commissioner to attack or malign the behaviour of another Member.
6. Communication between the Commissioner and a Member is confidential, subject to any disclosure required by law, except:
 - a. The fact that advice was sought may be reported by the Commissioner in a report following the investigation of a complaint; and
 - b. At any time, should a portion of the advice provided by the Commissioner to a Member be made public, the Commissioner shall be at liberty to make public the entirety of the advice that was provided.
7. The Commissioner may include a summary of advice given to Members, in a general and anonymous way, in Annual Reports to Council and in commentary on the Commissioner’s website.

COMPLAINT PROTOCOL

Part A: Informal Complaint Procedure

1. Any individual who identifies or witnesses behaviour or activity by a Member of Council (“Member”), which includes the Mayor, that they believe contravenes the Rules of the Code of Conduct may seek to address the prohibited behaviour or activity in the following way:
 - a) contact the Member directly to advise that the behaviour or activity appears to contravene the Code of Conduct, identifying the specific provision(s) of the Code of Conduct that may have been contravened, in an attempt to settle or resolve the matter;
 - b) ask the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to settle or resolve the matter;
 - c) if applicable:
 - i) confirm to the Member that his or her response is satisfactory, or
 - ii) advise the Member that his or her response is unsatisfactory; or
 - d) consider the need to pursue the matter in accordance with the Formal Complaint Procedure set out in Part B of this Protocol, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
2. Individuals are encouraged to pursue the Informal Complaint Procedure as the first means of remedying behaviour or activity of a Member that they believe violates the Code of Conduct.
3. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal complaint resolution process. The parties involved are encouraged to take advantage of the Integrity Commissioner’s potential role as a mediator/conciliator of issues relating to a complaint.
4. The Integrity Commissioner has the discretion to withdraw from any informal complaint resolution process at any time.
5. Any participation by the Integrity Commissioner in an informal complaint resolution process will not preclude the Integrity Commissioner from undertaking a formal investigation of the same matter pursuant to the Formal Complaint Procedure set out in Part B of this Protocol.
6. The Informal Complaint Process is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure.

Part B: Formal Complaint Procedure

Formal Complaints

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Rules of the Code of Conduct may file a formal complaint requesting an investigation by the Integrity Commissioner as to whether the Member has contravened the Rules of the Code of Conduct, in accordance with the following requirements:
 - a. all complaints shall be in writing on the prescribed Formal Complaint Form (attached to this Part) and shall be dated and signed by an identifiable individual; and
 - b. all complaints shall be sent directly to the Integrity Commissioner by mail, e-mail or fax to the address or number identified on the Integrity Commissioner's webpage: <http://www.winnipeg.ca/council/integritycommissioner/default.stm>.
2. The details of the complaint will be disclosed to the respondent Member, however, the name of the person complaining will only be disclosed in circumstances where fairness requires such disclosure.
3. Council may, by resolution, direct the Integrity Commissioner to investigate any matter that is within the Integrity Commissioner's jurisdiction and the Integrity Commissioner will, upon receiving such resolution, commence the investigation in accordance with the provisions of this Protocol.

Time for Filing Complaints

4. Complaints must generally be made: (a) within 60 days after the date of conduct giving rise to the complaint; or (b) within 60 days after the Complainant became aware of the conduct giving rise to the complaint. Subject to section 25 of this Part, the campaign period prior to a Municipal election will not be counted as part of the 60 days in which a complaint may be made.

The "campaign period":

- (a) in a general election
 - (i) in the case of a candidate for mayor, begins on May 1 in the year of the election and ends on the start of the new term of Council as defined in section 18 of *The City of Winnipeg Charter*; and
 - (ii) in the case of other candidates, begins on June 30 in the year of the election and ends on the start of the new term of Council as defined in section 18 of *The City of Winnipeg Charter*;
5. The Integrity Commissioner may accept a complaint filed after the expiry of the time limit set out in section 4 if the Integrity Commissioner is satisfied that:
 - a. the delay was incurred in good faith;
 - b. it is in the public interest to conduct an investigation, or give consideration to whether or not to conduct an investigation; and
 - c. no substantial prejudice will result to any person because of the delay.

Complaints Outside Integrity Commissioner's Jurisdiction

6. If the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or if the complaint relates to matters addressed by other legislation or complaint procedure under another City of Winnipeg procedure, policy or rule, the Integrity Commissioner shall advise the Complainant in writing as follows:

Criminal Matter

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code* of Canada, the Complainant shall be advised that if the Complainant wishes to pursue any such allegation, the Complainant must pursue it with the appropriate police service;

The Municipal Council Conflict of Interest Act

- (b) If the complaint on its face is regarding non-compliance with *The Municipal Council Conflict of Interest Act* as opposed to the Code of Conduct, the Complainant shall be advised to review the matter with the Complainant's own legal counsel;

Freedom of Information and Protection of Privacy Act

- (c) If the complaint is more appropriately addressed under the *Freedom of Information and Protection of Privacy Act*, the Complainant shall be advised that the matter must be referred to the City of Winnipeg Clerk to deal with under the City's access and privacy policies under the legislation;

Other Legislation or Procedure, Policy or Rule Applies

- (d) If the complaint appears to fall within the scope of other legislation or another procedure, policy or rule of the City, the Complainant shall be advised to pursue the matter under such legislation or procedure, policy or rule;

Lack of Jurisdiction

- (e) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the Complainant shall be so advised and provided with any additional referrals as the Integrity Commissioner considers appropriate; and

Matter Already Pending

- (f) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to *The Municipal Council Conflict of Interest Act*, a complaint under the Manitoba *Human Rights Code* or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in his or her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

Refusal to Conduct Investigation

7. If the Integrity Commissioner is of the opinion that:
 - a. the conduct described in the complaint is not within the Integrity Commissioner's jurisdiction to investigate; or
 - b. the complaint is frivolous, vexatious or not made in good faith; or
 - c. there are no grounds or insufficient grounds for an investigation, or that it is unlikely that the complaint will succeed;

the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation.
8. The Integrity Commissioner may request further information from the Complainant before deciding whether or not there are reasonable grounds for believing that a violation of the Code of Conduct may have occurred and an investigation is warranted.
9. In the event that the Integrity Commissioner receives multiple complaints concerning the same matter, the Commissioner may combine those complaints for the purposes of investigating and reporting to Council.
10. The Integrity Commissioner, in considering a complaint, may have regard to all of the Rules of the Code of Conduct and not simply those which the Complainant identifies as having been contravened.

Opportunities for Resolution

11. Following receipt and review of a Formal Complaint, or at any time during an investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter informally may be successfully pursued, and both the Complainant and the Member agree, efforts may be pursued to achieve such an informal resolution.

Investigation

12. If a complaint is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner will investigate the complaint as follows:
 - a. provide the Member whose conduct is in question with the details of the complaint and any supporting material determined to be relevant by the Integrity Commissioner, by mail or e-mail, together with a notice of intention to conduct an investigation.
 - b. request that the Member provide a written response to the complaint, any supporting documents or materials, and a list of relevant witnesses, within ten (10) days.
 - c. provide a copy of the Member's response to the Complainant with a request that any written reply be provided by the Complainant within ten (10) days. A copy of that reply will be provided to the Member.
13. The Integrity Commissioner may seek information from anyone relevant to the complaint and may receive such information either in person or in writing.
14. The Integrity Commissioner may review all books, financial records, electronic data, processing records, reports, files and any other papers, things or property belonging to or used by the City of Winnipeg and enter any relevant City of Winnipeg work location which the Integrity Commissioner deems necessary for the purpose of the investigation.

15. Where, during the course of an investigation, the Integrity Commissioner becomes aware of any additional complaint which is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner shall, upon notice to the Member, investigate such complaint in accordance with the provisions of this Protocol.

Reporting

16. Where the Integrity Commissioner finds that the complaint has been sustained either in whole or in part, the Integrity Commissioner shall report to Council outlining his or her findings and any recommended corrective action or sanctions.
17. The Integrity Commissioner shall not issue a report to Council which finds a violation of the Code of Conduct on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and recommended sanction and an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding and recommended sanction. In preparing his or her report to Council, the Integrity Commissioner shall take the Member's response into consideration and shall attach a copy of the response to his or her report.
18. The Complainant will be provided with a copy of the Integrity Commissioner's report to Council when the report is placed on the agenda for the meeting at which the report will be considered.
19. The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.
20. If the Integrity Commissioner determines that there has been no breach of the Code of Conduct, he or she will advise the Member and the Complainant of that determination, and will generally, not report to Council about his or her determination, except as part of an Annual Report.

Member not Blameworthy

21. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct, or that a contravention occurred although 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 judgment made in good faith, the Integrity Commissioner may so state in a report to Council and may make appropriate recommendations.

Duty of Council

22. When Council receives a report from the Integrity Commissioner following an investigation it shall consider and act on that report forthwith.
23. A Member who is the subject of an Integrity Commissioner's report following an investigation shall be entitled to make a delegation to Council on the matter, but shall not participate in the deliberations of Council or in any vote of Council on the matter. The ability to make such delegation, however, is subject to the provisions of *The Municipal Council Conflict of Interest Act* which prohibit a Member from influencing Council in any way where the Member has a pecuniary interest in the matter.

Election Year

24. During the campaign period, with respect to complaints alleging that a Member of Council has breached the Code of Conduct, the Integrity Commissioner will:
 - a. not receive any complaints;
 - b. suspend any ongoing investigation of a previously filed complaint; and
 - c. not submit any report to Council, of findings with respect to complaints.

The "campaign period":

- (a) in a general election
 - (i) in the case of a candidate for mayor, begins on May 1 in the year of the election and ends on the start of the new term of Council as defined in section 18 of *The City of Winnipeg Charter*; and
 - (ii) in the case of other candidates, begins on June 30 in the year of the election and ends on the start of the new term of Council as defined in section 18 of *The City of Winnipeg Charter*;

25. Following the Municipal election, investigations or reports concerning the conduct of a former Member while that individual was still a Member, will only be commenced or continued at the request of Council, by resolution.

Public Disclosure

26. The Integrity Commissioner and every person acting under the Integrity Commissioner's jurisdiction shall preserve confidentiality of the investigation process, except as required by law and as required by this Protocol.
27. If the Integrity Commissioner finds that the Code of Conduct has been breached, the identity of the Member who is the subject of the complaint shall not be treated as confidential.
28. All reports from the Integrity Commissioner to Council will be made available to the public.

