

New Employee Code of Conduct, Theft and Fraud Policy and Whistleblower Policy

Date	January 15, 2020
To	Executive Committee
From	Citizen Experience, Innovation & Performance
Service Area	Office of the City Clerk
Item #	EX20-2

RECOMMENDATION

That the Executive Committee recommend that City Council:

1. Direct the City Solicitor to amend Bylaw 2002-57, being *The Regina Code of Conduct and Disclosure Bylaw* so that:
 - (a) the code of conduct and disclosure rules in the Bylaw will no longer apply to any City employees as these rules will be replaced with a corporate policy approved by the City Manager;
 - (b) with the exception of the City Manager, City Clerk and City Solicitor, the process in the Bylaw for disclosing conflicts of interest and dealing with violations will no longer apply to City employees but will be governed by the corporate policy;
 - (c) the City Manager, City Clerk and City Solicitor will be subject to the code of conduct and disclosure rules in the new corporate policy but the process for dealing with disclosures of conflicts of interest and violations by these three positions will still be in the Bylaw and will include the following:
 - (i) the City Manager will review and provide direction on disclosures made by the City Clerk and City Solicitor as well as deal with complaints with respect to these positions, although any disciplinary action involving termination would be decided by the Executive Committee;
 - (ii) the Mayor will review and provide direction on disclosures made by the City Manager;
 - (iii) the Executive Committee will retain the authority to deal with any complaints

with respect to the City Manager including taking any disciplinary action for violations;

- (d) the code of conduct and disclosure rules and process for dealing with disclosures and violations in the Bylaw will continue to apply to non-council members on boards and committees established by Council;
 - (e) the references to the former legislation, *The Urban Municipality Act, 1984* will be updated to reflect the equivalent *Cities Act* provisions and other outdated references will be updated, including attaching the disclosure of land holdings form which is filled out by non-council members on those boards and committees specifically outlined in the Bylaw.
- 2. Approve the repeal of the “Employment of Relatives Policy” that was approved in 1990 as it will be replaced with a section on employment of relatives in the new corporate policy approved by the City Manager.
 - 3. Direct the City Solicitor to amend Bylaw 2003-70, being *The City Manager’s Bylaw* to expressly authorize the City Manager to establish an employee code of conduct under the powers, duties and function of the City Manager to coincide with the City Manager’s general authority over employees.
 - 4. Approve the repeal of the “Employment of Relatives Policy” and the amendments outlined in recommendations 1 and 3 to come into force on March 1, 2020.
 - 5. Approve these recommendations at its January 29, 2020 meeting.

ISSUE

The City’s current employee code of conduct has not been updated in a number of years. The code is contained in Bylaw 2002-57, *The Regina Code of Conduct and Disclosure Bylaw*. It is recommended that the employee code of conduct provisions be modernized and moved from a Bylaw to a corporate policy to be approved by the City Manager, as the City Manager is responsible for disciplining employees under the code. Further, corporate policies are easier to update and can provide more explanation, guidance and examples than a bylaw.

Some Council members have requested an update on the City’s Theft and Fraud Policy and Whistleblower Policy. The City Manager and the Executive Director, Financial Strategy and Sustainability, have approved these new policies and are in the process of implementing them. This report also provides information on these policies.

IMPACTS

Policy/Strategic Impact

Reviewing and implementing new employee policies is in alignment with the 2018-2021 Strategic Plan objectives of Enhancing Employee Performance and Embed One City – One Team Principle.

There are no financial, environmental, risk/legal or other implications or considerations.

OTHER OPTIONS

Council could decide to leave the current code in the current Bylaw 2002-57, being *The Regina Code of Conduct and Disclosure Bylaw*, instead of updating it and moving it to a corporate policy.

This would leave gaps in some areas, such as social media, as the current code does not speak to this. Keeping the current code in a bylaw would also mean that it would lack the more detailed explanation of each principle and examples and would be more difficult to update.

COMMUNICATIONS

The Director, People and Organizational Culture has discussed all three policies with the City's unions and associations and has developed an implementation and educational plan for employees. It is recommended that the Bylaw amendments and repeal of the Employment of Relatives Policy come into effect March 1, 2020 with education sessions commencing in March 2020. Education will continue throughout 2020 until all employees have received training and will be continuous thereafter as refresher training and as orientation for new employees.

DISCUSSION

Under *The Cities Act*, Cities are required to establish employee codes of conduct and the City has done this through *The Regina Code of Conduct and Disclosure Bylaw*, Bylaw No. 2002-57. This Bylaw was passed in 2002 and establishes a code of conduct for employees and non-council members appointed to Council committees, boards and commissions.

Because the code of conduct is in the form of a Bylaw, it lacks some of the detail one would normally see in a modern corporate policy such as guiding principles and examples. Council members are **not** covered under this Bylaw but instead are covered by the conflict of interest sections in *The Cities Act* and *The Code of Ethics Bylaw*.

The Administration has conducted a review of various employee codes of conduct used in other municipalities and has developed a new employee code of conduct in the form of a corporate policy. This report requests that bylaw amendments be made to remove employees from the application of Bylaw 2002-57 and expressly provide authority to the City Manager to establish an employee code of conduct. This authority would be included in *The City Manager's Bylaw*, Bylaw 2003-70.

Code of Conduct

The current *Regina Code of Conduct and Disclosure Bylaw*, Bylaw No. 2002-57, contains provisions relating to engaging in outside employment or business interests, conflicts of interest, political involvement, gifts and use of City property or information for private benefit or profit.

The following sets out the areas covered in the new Employee Code of Conduct Policy (the Code) and provides a comparison to what exists in the current Bylaw:

- **Conflicts of interest** – The new Code differs from the Bylaw in that there is a large section on conflicts of interest which includes more detail on what a conflict of interest is as well as examples. Many provisions in the existing Bylaw are covered in this section. It includes prohibitions on employees using their position with the City to further their own

private interests or the interests of business associates or relatives. Employees are required to disclose in writing any situations where a conflict of interest is present or may arise. Where conflicts are disclosed, management can ensure steps are taken to remove the employee from the situation. In addition to the general duty to disclose conflicts of interest, employees in certain positions are also required to fill out and provide a financial disclosure form on any business interests they, their spouse or minor children have in any property, corporations or partnerships that may involve the City. The current Bylaw has a similar provision, but it only requires disclosure of interests in land.

- **Interactions with others** – This is a new section in the Code that requires employees to act in a respectful manner towards the public and fellow employees. It also includes rules around employees' behaviour in their private lives, especially in the area of social media. This last aspect is new and is an emerging area that needs to be covered under the policy. Where an employee can be identified as a City employee in their social media, they must be careful as to how their social media accounts reflect on the City's image, other employees and the accuracy of information conveyed. This section includes the restriction that only authorized employees may speak on behalf of the City in a public forum.
- **Theft and Fraud** – This section in the new Code requires employees to comply with the *Criminal Code* as well as the City's Theft and Fraud Policy, that the City Manager and Executive Director of Financial Strategy and Sustainability have recently approved. The new Code does not provide any detail on theft and fraud as there is no reason to duplicate these provisions in both policies.
- **Management of information** – This section of the new Code is short and advises employees that they need to comply with *The Local Authority Freedom of Information and Protection of Privacy Act*. A comprehensive review of this area is not set out in the new Code as there are a number of existing corporate policies in this area and the Office of the City Clerk provides ongoing training to employees in this area.
- **Outside employment / business interests** – Both the existing Bylaw and the new Code contain restrictions on employees engaging in outside employment or business. The general policy is the same in the new Code as it was in the Bylaw but the Code provides more detail of what is and is not allowed. The new Code restricts employees from engaging in outside employment or a business undertaking outside of their position with the City if this activity would interfere with the employee's duties with the City or could cause a conflict of interest or perceived conflict of interest. The new Code also requires employees whose outside employment or business interests could interfere with their duties or potentially be in a conflict to disclose this to their department head and to seek prior approval. The new provisions outline a process the employee should follow to obtain approval including the criteria the City would consider in granting the approval.
- **Gifts** – Both the existing Bylaw and the new Code contain restrictions on employees accepting gifts. The Bylaw does not allow an employee to accept a gift or benefit from any person directly or indirectly involved with the City unless the gift is a normal exchange of hospitality among persons doing business; it is exchanged as part of a protocol; or is a normal contribution for or award or prize made to persons participating in charitable, professional or public functions.

The new draft Code contains more detail on what is acceptable, and it sets out some monetary limits (\$25 or under) under which employees can accept a gift without disclosing it and without seeking approval if certain requirements are met. The requirements are as follows:

- it is in the context of a business meeting or interaction, or in the context of a recognized charitable event or is ceremonial in nature;
- it is an infrequent occurrence;
- it legitimately serves a business purpose;
- it is appropriate to the business responsibilities of the individual employee; and
- the gift or hospitality is not an attempt to seek special favours or advantages from the employee or the City.

Acceptance of gifts of monetary amounts between \$25-\$100 must meet these same requirements but also require disclosure to and approval from management. In addition, the new Code allows some management and professional staff, as part of their business responsibilities for the City, to participate in hospitality events that may involve a higher monetary value than the guidelines above. However, these staff must be expressly authorized to participate in these events as part of their job and the event must serve a legitimate business purpose and meet the requirements in the policy with respect to hospitality, travel, accommodations and entertainment.

- **Employment of Relatives and Personal Relationships in the Workplace** – The Bylaw does not contain any provisions on this as employment of relatives was dealt with in a separate Council approved “Employment of Relatives” policy. It is recommended that the Council approved policy be repealed, and that this area be dealt with under the new Code. Under the new Code, the general rule is that a spouse, child or parent of a current City employee or City elected official would not be considered for employment or changes in employment if placement would create a direct or indirect reporting relationship between the employee’s spouse, child or parent and the employee.

Employees who become involved in a spousal relationship, significant social relationship, or who become related over the course of their employment may continue as employees if no direct reporting or indirect reporting relationship exists between such employees. If there is a direct or indirect reporting relationship between the two employees, the City will attempt to find a suitable job to transfer one of the affected employees.

- **Political, community and outside activities** – The policy in this area is similar in both the Bylaw and new Code. Political, community, and outside activities are generally permitted as long as they are not done on work time and do not cause a conflict of interest with the employee’s duties or could be seen to cause a conflict of interest with the employee’s duties. Further, to ensure public trust in the City, employees are required to be personally impartial and free from undue political influence in the exercise of their duties. The new Code provides much more detail on what constitutes political activities and sets out rules regarding municipal elections and taking leaves of absence where employees wish to run for office.
- **Process for dealing with disclosures and violations** – Under the new Code, violations and employee disclosures are required to be reported to department heads, the People and Organizational Culture Department or another designated position (if a

specific position has been designated). Once disclosed, department heads or the People and Organizational Culture Department would consult with the Office of the City Solicitor if needed as to what action to take with respect to the disclosure or violation. The disclosures are required to be made in writing and the City is required to document the disclosure and the action taken.

The process for dealing with disclosures and violations in the new Code is slightly different for the City Manager, City Solicitor and City Clerk as these positions are appointed directly by City Council. Disclosures required to be made by the City Clerk and City Solicitor are to be provided to the City Manager and then adjudicated by the City Manager. Disclosures required to be made by the City Manager under this Code are required to be made to the Mayor for review and adjudication.

Any violations of the Code by the City Clerk or City Solicitor are to be dealt with by the City Manager with the exception of taking disciplinary action in the form of termination which would have to be dealt with by the Executive Committee and Council. Any violations of the Code by the City Manager are dealt with by Executive Committee and Council.

A draft of the new Employee Code of Conduct is attached as Schedule "A" for information.

In addition to removing employees from Bylaw 2002-57, it is recommended that legislative and other references in Bylaw 2002-57 be updated as this bylaw will still apply to non-council members on boards and committees. In this regard, it is also recommended that the disclosure of land holdings form that is currently required under the Bylaw to be filled out by non-council members be attached to the bylaw.

Theft and Fraud Policy

The Theft and Fraud Policy approved by the City Manager and the Executive Director, Financial Strategy and Sustainability, identifies a contact person or persons for reporting theft and fraud. The Policy also sets out the process for investigating theft and fraud, provides examples of theft and fraud and generally places an onus on employees to report theft, fraud and suspicious activity. The Policy maintains the confidentiality of employees reporting theft and fraud by including clear sections prohibiting reprisals or retaliation against employees who in good faith report theft or fraud.

Whistleblower Policy

The Whistleblower Policy provides a mechanism for employees to report wrongdoing related to the City in a confidential manner where there is fear of reprisal. Unless there is a fear of reprisal, employees should use established mechanisms to report wrongdoing. Complaints regarding Council decisions or policies are outside of the scope of the Policy and complaints about Council members would be directed to the Integrity Commissioner or the Ombudsman in the case of Council member conflicts of interest.

Under the Policy, complaints of wrongdoing are required to be reported to the City Manager who will determine the best approach to move forward to independently and objectively investigate the complaint. Employees may report wrongdoing through a confidential e-mail address, confidential mailbox or confidential telephone number established for such reporting. The Policy prohibits anyone from taking any action in reprisal against an employee making a report of wrongdoing.

The City Manager will review all reports promptly and appoint a designate for each report. The designate may be a third party independent investigator or City staff, when appropriate. If upon initial assessment it appears that the concern raised could materially affect the financial position of the City, the integrity of the City's system of internal controls, or the City's exposure to liability, the designate shall advise the City Manager, City Solicitor, and Executive Director, Financial Strategy and Sustainability.

The designate appointed by the City Manager to investigate will document the results of each investigation in a confidential report. The designate will report the particulars of all completed investigations to the City Manager, with a copy to the City Solicitor. Where underlying causes of wrongdoing can be identified, the City Manager will assign responsibility to ensure steps are taken to address them and mitigate the risk of further occurrences.

If a report of wrongdoing concerns the City Manager or a member of the City Manager's office, the employee shall submit a report to the City Solicitor and the City Solicitor shall appoint a designate for the purposes of investigation of that report and will oversee the investigation and results.

DECISION HISTORY

No previous decision has been made with respect to the new Employee Code of Conduct.

The recommendations contained within this report require City Council approval.

Respectfully Submitted,



Louise Folk
Executive Director
Citizen Experience, Innovation & Performance

Respectfully Submitted,



Chris Holden
City Manager

Prepared by: Jana-Marie Odling, Legal Counsel

ATTACHMENTS

The City of Regina Code of Conduct final november 2019
Disclosure of Business Interests (003)