

January 30, 2017

To: His Worship the Mayor
And Members of City Council

Re: Implementation of Code of Ethics Bylaw

RECOMMENDATION

**RECOMMENDATION OF THE EXECUTIVE COMMITTEE
- JANUARY 18, 2017**

1. That the City Solicitor be instructed to prepare a code of ethics bylaw, respecting Council members, that meets the following requirements:
 - a) includes the mandatory code of ethics required pursuant to *The Cities Regulations*;
 - b) sets out a process for dealing with violations of the code of ethics bylaw as well as sanctions for violations of the bylaw as outlined in this report;
 - c) creates the independent position of an integrity commissioner to do the following:
 - (i) provide an advisory function to members on questions of compliance with the code of ethics bylaw;
 - (ii) assess, investigate and conduct inquiries as to whether a member has contravened the code of ethics bylaw;
 - (iii) determine and report to Council as to whether a member has violated the code of ethics bylaw;
 - (iv) make recommendations on appropriate sanctions where there is a violation;
2. That the Administration be authorized to manage the 2017 costs of the integrity commissioner from existing resources and that a budget request of \$50,000 be made through the 2018 budget process for the purposes of funding the services of an integrity commissioner.
3. That the City Solicitor, subject to the concurrence of the City Clerk, be authorized to negotiate and engage the services of an integrity commissioner or commissioners, as outlined in this report, for a period of up to four years on either a retainer basis, on an *ad hoc* interim basis or jointly with other municipalities.

4. That the City Clerk be authorized to execute any necessary agreement with the integrity commissioner or commissioners in a form approved by the City Solicitor.

EXECUTIVE COMMITTEE - JANUARY 18, 2017

The Committee adopted a resolution to concur in the recommendation contained in the report after adding an additional recommendation as follows:

5. That this report be forwarded to the January 30, 2017 meeting of City Council.

Mayor Michael Fougere, Councillors: Bob Hawkins (Chairperson), Sharron Bryce, Lori Bresciani, John Findura, Jason Mancinelli, Joel Murray, Mike O'Donnell, Andrew Stevens and Barbara Young were present during consideration of this report by the Executive Committee.

The Executive Committee, at its meeting held on January 18, 2017, considered the following report from the Administration:

EXECUTIVE COMMITTEE - DECEMBER 14, 2016

The Committee adopted a resolution to concur in the recommendations contained in the report after amending recommendation #1 to defer consideration of including citizen members of council committees and boards (section 1(b), (e) and (f)), as provided as an option in the provincial regulations, to a future meeting.

Mayor Michael Fougere, Councillors: Barbara Young (Chairperson), Lori Bresciani, John Findura, Bob Hawkins, Joel Murray, Mike O'Donnell and Andrew Stevens were present during consideration of this report by the Executive Committee.

The Executive Committee, at the **PRIVATE** session of its meeting held on December 14, 2016, considered the following report from the Administration:

RECOMMENDATION

1. That the City Solicitor be instructed to prepare a code of ethics bylaw, respecting Council members, that meets the following requirements:
 - (a) includes the mandatory code of ethics required pursuant to *The Cities Regulations*;
 - (b) sets out a process for dealing with violations of the code of ethics bylaw as well as sanctions for violations of the bylaw as outlined in this report;

(c) creates the independent position of an integrity commissioner to do the following:

- (i) provide an advisory function to members on questions of compliance with the code of ethics bylaw;
 - (ii) assess, investigate and conduct inquiries as to whether a member has contravened the code of ethics bylaw;
 - (iii) determine and report to Council as to whether a member has violated the code of ethics bylaw;
 - (iv) make recommendations on appropriate sanctions where there is a violation;
2. That the Administration be authorized to manage the 2017 costs of the integrity commissioner from existing resources and that a budget request of \$50,000 be made through the 2018 budget process for the purposes of funding the services of an integrity commissioner.
 3. That the City Solicitor, subject to the concurrence of the City Clerk, be authorized to negotiate and engage the services of an integrity commissioner or commissioners as outlined in this report for a period of up to four years on either a retainer basis, on an *ad hoc* interim basis or jointly with other municipalities.
 4. That the City Clerk be authorized to execute any necessary agreement with the integrity commissioner or commissioners in a form approved by the City Solicitor.
 5. That this report be forwarded to the January 18, 2017 meeting of Executive Committee.

CONCLUSION

The purpose of this report is to ensure that City Council is meeting the new legislative requirement to have a code of ethics bylaw. *The Cities Act* was amended to require Council to adopt a code of ethics bylaw that applies to members of Council and sets out a process for dealing with violations of the bylaw. Currently, the City does not have a code of ethics bylaw for Council members.

This proposed code of ethics bylaw:

- incorporates the mandatory minimum code of ethics set out in *The Cities Regulations*;
- provides for a process for investigating and adjudicating complaints which uses an integrity commissioner; and
- provides for possible sanctions for violations of the code.

The provincial regulations which set out the minimum code of ethics were passed on October 26,

2016 and gave the City 120 days to adopt the Bylaw; therefore it must be enacted prior to February 23, 2017.

BACKGROUND

In the fall of 2015 the Government of Saskatchewan made amendments to *The Cities Act*, *The Municipalities Act*, *The Northern Municipalities Act*, *The Planning and Development Act, 2007* and *The Ombudsman Act, 2012* with respect to municipal procedure, conflicts of interest, and provincial oversight. These legislative requirements were enacted as a direct result of the findings and recommendations of the Inquiry Officer in the Inspection and Inquiry into the R.M. of Sherwood No. 159. This Inquiry found serious conflicts of interest and violations of public trust by the reeve of the R.M. of Sherwood in connection with a land proposal. The Inquiry made a number of recommendations relating to conflict of interest and municipal governance and included a recommendation for a model code of ethics.

The majority of the legislative changes resulting from the Inquiry came into force on November 19, 2015 with the exception of the required code of ethics and oath of office which came into force on October 26, 2016 when regulations setting out the new code of ethics and oath of office were passed. Reports CM15-12 (November 23, 2015) and CR15-151 (December 21, 2015) addressed required amendments to the procedure bylaw and public disclosure form. The adoption of a code of ethics bylaw, which must be adopted before February 23, 2017, is the last item remaining to be completed by the City in order to meet all of the new requirements.

DISCUSSION

The following outlines the Administration's recommendations for the various elements of the proposed code of ethics bylaw.

Mandatory Minimum Code of Ethics

The Cities Act and *The Cities Regulations* require that every City have a code of ethics bylaw that includes the prescribed minimum code of ethics sections from *The Cities Regulations*. These mandatory minimum requirements are set out in Appendix A to this report for information. As these are mandatory requirements, Council has no ability to change the substance of these requirements. The new code of ethics bylaw will include these requirements with some very minor wording and formatting changes in order to put them into bylaw form.

Integrity Commissioner

The legislation requires that the code of ethics bylaw set out a process for dealing with violations of the code of ethics. This is an area where Council has the ability to decide on the process as there is no mandatory process provided for in the legislation. There is no requirement that a city have an integrity commissioner.

The Administration has reviewed a number of code of conduct policies and bylaws used by municipalities across Canada. This review reveals that integrity commissioners are used widely in Ontario in order to investigate and adjudicate council code of conduct violations. Integrity commissioners are not common in western Canada but have been appointed by the R.M. of Sherwood and the City of Calgary for this same purpose.

The Administration has also specifically looked at a recent code of conduct review that was completed by the Saskatoon Municipal Review Commission in February of 2016. This Commission is an independent body which reports directly to Saskatoon Council on matters relating to council remuneration, code of conduct and municipal elections and whose members are selected based on their relevant qualifications. The Commission was specifically tasked with looking at the new legislation provisions and making recommendations with respect to a code of ethics bylaw. While Saskatoon's Council has received this Saskatoon Municipal Review Commission report, Saskatoon's Administration has not yet provided its recommendations on the report.

The Saskatoon Commission Report recommends that an integrity commissioner be used to investigate code of ethics and conduct complaints. This Commission report comments on the issues that arise where a Council adjudicates code complaints and determines the extent of sanctions **without** any input or advice from an independent body such as an integrity commissioner. These issues include:

- that it is difficult for Council members to investigate and render an impartial judgement on their fellow members whom they work closely with;
- that the temptation to reject complaints is strong when an integrity commissioner is not in place as the hiring of an investigator on a case by case basis creates delays in justice, is expensive and the Council may feel that they can deal with the issue without these complications;
- that the public may distrust the process as they may not feel that it is independent or transparent.

It is recommended that Council approve a process which would use the services of an independent integrity commissioner to assess, investigate and adjudicate complaints of violations of the code of ethics with recommendations as to sanctions or corrective actions. In addition to these functions, it is recommended that the integrity commissioner also provide written and oral advice to members at their request regarding situations covered under the code of ethics. This will provide an avenue for members to get proactive advice on an ongoing basis so the members can ensure they are in compliance before they take certain actions.

This report recommends that the City Solicitor, subject to the concurrence of the City Clerk, be authorized to negotiate and engage the services of an integrity commissioner. It is recommended that this engagement be for a period of up to four years. Because it is difficult to gauge the market

interest for this type of service, it is recommended that the City Solicitor have flexibility in engaging these services, including the ability to consider partnering with other municipalities. It is difficult to assess the number of complaints so it may make more sense and be more economical for one or more municipalities to share an integrity commissioner.

If an integrity commissioner is not used, the other possible enforcement mechanism includes dealing with violations through a Committee of Council. This is the mechanism currently used by the City of Saskatoon for their Council members. Under this process the following occurs:

- complaints are received by the City Clerk or a member of Council and then are forwarded to Executive Committee and the accused member;
- in a private meeting, without the accused member present, Executive Committee would then decide whether to investigate the complaint or not, including whether to appoint an *ad hoc* investigator to review the complaint;
- If investigated, a report would be prepared on the investigation and provided to Executive Committee;
- If after receipt of the report the Executive Committee believes that the member violated a provision of the code it would advise the member and give them an opportunity to make oral or written submissions to Executive Committee;
- If the Executive Committee concludes that there is a violation it would make recommendations to City Council as to the sanctions and the accused member would be given notice of this.

While the above is an option that could be used, it has many disadvantages. As already discussed, members do not like policing themselves, and the public may not see this as an independent and transparent process. Therefore, the Administration recommends using an integrity commissioner as it is considered to be best practice.

Process for Dealing with Violations of the Code and Possible Sanctions

The following is the recommended process for dealing with complaints of a violation of the code of ethics that uses the services of an integrity commissioner and is proposed for the code of ethics bylaw:

Formal complaint

- The integrity commissioner would receive all formal complaints directly. A complaint form could be developed and attached to the Bylaw.
- A complaint that a member has violated the code of ethics bylaw would be required to be provided in writing by an identifiable person and would have to set out the grounds and all information related to the complaint.

Initial Assessment of Complaint

- The integrity commissioner would make an initial assessment of the complaint to

determine if it is, on its face, a complaint related to the code of ethics bylaw or if it more properly should be forwarded on to another forum if there is another forum. For example, possible *Criminal Code* violations would be pursued with the police instead.

- The integrity commissioner would not review complaints of violations of the conflict of interest and public disclosure requirements of *The Cities Act* **by Council members** as the process and sanctions for these violations is set out in Part VIII of *The Cities Act* as disqualification is a possible sanction and a court process is involved.

Frivolous complaints

- If the integrity commissioner finds that a complaint is frivolous or vexatious, or there are insufficient grounds for an investigation, he or she will not conduct an investigation or will terminate an investigation if one has been commenced.

Investigation

- If the integrity commissioner finds that a complaint is within his or her jurisdiction and is not rejected because it is frivolous or there are insufficient grounds, the integrity commissioner will investigate the complaint.
- Where a complaint is investigated, the integrity commissioner will serve the complaint and supporting material on the member who is the subject of the complaint with a request that a written response by way of affidavit or otherwise be filed within 10 business days. This response will then in turn be served on the complainant with a request for a written reply within 10 business days.
- The integrity commissioner may speak to anyone relevant to the complaint and may enter any municipal work location.
- The integrity commissioner would not issue a report finding a violation unless the member has had notice of the proposed finding and recommended sanction and an opportunity in person or in writing to comment on the finding and sanction.
- The integrity commissioner is required to report to the complainant and the member no later than 90 days after receipt of the complaint.

Council report

- Where the complaint is sustained in whole or in part, the integrity commissioner would be required to report to Council the findings and the terms of settlement or recommended corrective action.
- Where the integrity commissioner finds that a violation occurred although the member took all reasonable measures to prevent it or that a contravention occurred that was trivial or committed through inadvertence the integrity commissioner shall state this in the report and shall not recommend any penalty.
- Where the complaint is dismissed, the integrity commissioner shall not report to Council.
- When Council is provided with the integrity commissioner's report on a complaint, Council will be required to consider and respond to the report within 90 days after the

report is provided to Council. The integrity commissioner will determine whether a violation has occurred and then will make recommendations to Council as to sanctions and possible corrective action.

Sanctions

- Upon receipt of the report of the integrity commissioner, Council may, in circumstances where the integrity commissioner has determined there has been a violation of the code, impose the corrective action recommended by the integrity commissioner or another sanction allowed by law. Sanctions may include but are not limited to: a reprimand, requiring that the member apologize to those impacted; educational training; repayment of funds or gifts received; removal of the member from Council committees or other bodies; and dismissal of the member from a position of Chairperson of a Committee.

Reprisals and obstruction

- The bylaw would prohibit anyone from obstructing the integrity commissioner or threatening reprisal against a complainant. Destruction or deleting of documents would also be prohibited.

Confidentiality

- Complaints would be processed in confidence. All reports from the integrity commissioner would be made available to the public while maintaining confidentiality regarding personal information.

Reliance on Advice of Integrity Commissioner

- Prior to taking action, members can seek advice from the integrity commissioner on:
 - potential violations of the code of ethics by a member of Council.
- Where a member discloses all known facts to the integrity commissioner and as long as those facts remain unchanged, the member may rely on written advice provided by the integrity commissioner and the integrity commissioner is bound by the advice given in the event he or she is asked to investigate a complaint. This only applies where advice is sought prior to the member taking action.

The above process outlined is very similar to the processes used in a number of Ontario municipalities as well as the R.M. of Sherwood.

Provisions will need to be added to the code of ethics bylaw to provide for an interim process in case complaints are received prior to an integrity commissioner being appointed. The interim process would include complaints being provided to the City Solicitor and the City Clerk. The City Solicitor and the City Clerk would make an initial assessment of whether to investigate the complaint based on jurisdiction and whether or not there are sufficient grounds or it is not frivolous. Then, if investigated they would hire an *ad hoc* integrity commissioner to investigate and make recommendations as to whether a violation has occurred and what sanctions should be applied. Council would then decide on sanctions in accordance with the process outlined above.

Additional Code Requirements

While the proposed bylaw meets legislative requirements, ideally code of ethics or code of conduct bylaws would also cover additional areas such as gifts and benefits; councillor expenses; use of City assets and services; improper use of influence; employment of Council relatives; and actions during election periods. These types of provisions are included in the Ontario codes reviewed as well as the R.M. of Sherwood Code and Saskatoon's current and proposed Code. Because of the tight time frame for enacting the code of ethics bylaw, the Administration will bring forward a report later in 2017 so that Council can consider adding these additional requirements.

RECOMMENDATION IMPLICATIONS

Financial Implications

It is estimated that there could be a cost of up to \$50,000 in 2017. This amount was not included in the 2017 budget due to the timing of the legislation. Administration will make every effort to manage these costs from within existing resources. A budget request of \$50,000 will be made through the 2018 budget process for an amount to be included in the future budget of the Office of the City Clerk. This amount is expected to be an ongoing yearly cost in the future.

Environmental Implications

None related to this report.

Policy and/or Strategic Implications

Implementation of a new code of ethics bylaw is required by legislation. Using an independent integrity commissioner to assess, investigate and adjudicate complaints of violations of the code of ethics is considered to be a best practise and adds an important layer of transparency and accountability.

Other Implications

None related to this report.

Accessibility Implications

None related to this report.

COMMUNICATIONS

This report will be considered at a Public Executive Committee meeting so that the public has an opportunity to provide feedback on the proposed process for dealing with violations of the new code of ethics bylaw. A further report will be brought forward later to more fully review other additional code of conduct areas such as gifts and benefits; councillor expenses; use of City assets and services; improper use of influence; employment of Council relatives; and actions during election periods.

DELEGATED AUTHORITY

The recommendations in this report require City Council approval.

Respectfully submitted,

EXECUTIVE COMMITTEE

A handwritten signature in black ink, appearing to be 'J. Nicol', written in a cursive style.

Jim Nicol, Secretary