

Sanction Process Complaints 2109 and 2111

June 22/23/24, 2021, City Council Meeting

Report

In June of 2018, City Council approved the *Council Code of Conduct*, which is a public document that guides the ethical conduct of members of Council. At Council's January 20, 2020, meeting, it approved the process for dealing with substantiated complaints further to the *Council Code of Conduct* (see body of the report). The Office of the City Clerk has received reports (2109 and 2111) from the Integrity Commissioner which indicate contraventions of the *Council Code of Conduct*.

Legal Implications

Under the system that Council has adopted it has delegated the decision as to whether specific conduct contravenes the *Council Code of Conduct* to the Integrity Commissioner. Council cannot overturn the decision of the Integrity Commissioner but specifically retains the decision to decide upon an appropriate sanction. In January 2020, Council approved special procedures for dealing with substantiated complaints further to the *Council Code of Conduct* to ensure fairness in the process. Given that Council will potentially be making a decision to sanction one of its own members, fairness in the process is a legal requirement. The purpose of the sanction hearing is to decide whether a sanction is warranted, and to decide on the specifics of the sanction.

The role of Council in a sanction hearing is similar to that of Council in a Statutory Public Hearing. Members of Council should refrain from making public comments about the specifics of the conduct until the hearing concludes.

Process for Dealing with Substantiated Complaints Further to the *Council Code of Conduct*

Prior to the Item Being Added to a Council Agenda

1. The Integrity Commissioner submits the substantiated complaint report to the City Clerk for inclusion on a Council meeting agenda.

2. To ensure that the Respondent Councillor is able to present a meaningful response to the Integrity Commissioner's report, the City Clerk reaches out to the Respondent Councillor to determine a reasonable timeline before adding the report to an upcoming City Council meeting agenda. Priority is given to adding the item to an existing Council meeting, when the agenda permits. If required, a Special City Council meeting will be called.
3. The Council meeting agenda, including the Integrity Commissioner's report (to the extent possible under the *Freedom of Information and Protection of Privacy Act*), is posted to the City's website at least 10 clear days before the meeting.
4. The Respondent Councillor may provide a written response to the Integrity Commissioner's report and submit the response to the City Clerk for inclusion on the meeting agenda, to the extent possible under the *Freedom of Information and Protection of Privacy Act*.

At the Meeting

1. City Council determines whether the matter should be dealt with in private in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act*.
2. The Respondent Councillor is given an opportunity to leave their regular seat so they may be joined by their legal counsel.
3. Speakers are heard from in the following order:
 - The Integrity Commissioner may provide a brief presentation on the report. Councillors, including the Respondent Councillor, may ask questions regarding the Integrity Commissioner's presentation to ensure the process was reasonable in light of the breach and to clarify the sanction recommendations in the report. The more significant the sanctions being recommended, the more Council should take this opportunity to clarify how the Integrity Commissioner reached their conclusions and develop comfort with the fairness of the recommendation.

- The Respondent Councillor may make submissions on the reasonableness of the investigation process and on what sanctions, if any, are appropriate. The Respondent Councillor has 10 minutes to speak. If the Respondent Councillor needs additional time to present a meaningful response, then Council may allow the Respondent Councillor to speak, in additional 10-minute increments. For complicated matters, the 10-minute time limit may be increased.
- If other Councillors wish to question the submissions of the Respondent Councillor, or ask clarifying questions that have arisen to the Integrity Commissioner, they are allowed to do so. Given the nature of this type of meeting, the Chair will approve any questions being asked as they are asked, and may seek legal advice on the suitability of any questions from the City Solicitor.
- There may be exceptional circumstances where, if approved by Council, interested persons who have a direct connection to the event and an interest in the sanctions may be given the option to make submissions regarding the appropriateness of the sanctions. In those circumstances, the submissions will be made and the usual 5-minute time limit for speakers applies. Councillors, including the Respondent Councillor, may question these parties.

4. Once a motion has been put forward on a sanction, the Respondent Councillor is given the opportunity to leave. If they decide not to leave, the meeting proceeds.

5. Debate on the motion proceeds as normal. The Respondent Councillor has 10 minutes to speak on the motion. If the Respondent Councillor needs additional time to present a meaningful response, then Council may allow the Respondent Councillor to speak, in additional 10-minute increments. The 10-minute time limit may be adjusted to reflect the severity of potential sanctions.

6. Once a motion is ready for vote, the Respondent Councillor is given the opportunity to leave.

7. The vote on any motion takes place in public, as required by the

Municipal Government Act. The Respondent Councillor must vote, if present.

Notes:

- For matters not addressed above, the rules set out in Bylaw 18155, Council Procedures Bylaw, apply.
- Council should deal solely with matters relating to the results of the investigation process and potential sanctions. Questions relating to the process to reach the results and recommendations are acceptable. The meeting is not an opportunity to second-guess the findings of the Integrity Commissioner (clarification from the Integrity Commissioner as to why an action violates the *Code of Conduct* is acceptable, but challenging that conclusion is not).
- In the event that a lawyer has been retained by the Respondent Councillor to provide legal advice, that person may speak on behalf of the Respondent Councillor or supplement the Respondent Councillors' arguments or answers.
- Portions of the meeting held in private, if any, will be recorded to ensure a record of the proceedings and all reasons are available in case a record is required for review by the court.

Vote on a Sanction by City Council related to Complaints 2109 and 2111

If City Council wished to pass a motion regarding a sanction as outlined in the above mentioned Investigation Reports, the following motion could be made:

That Councillor Mike Nickel be censured for the *Council Code of Conduct* violations found in the Integrity Commissioner's Investigation Reports 2109 and 2111, as set out in Attachments 1 and 2 of the June 22/23/24, 2021, Office of the City Clerk report OCC00673.

As per section 6(1) of Bylaw 18483, Council Code of Conduct, a special resolution is required to pass a motion to impose a sanction. A special resolution means at least two-thirds of all Councillors vote in favour of the motion (i.e. nine of 13 members must vote in favour).

Attachments

1. Investigation Report 2109

2. Investigation Report 2111
3. Written Response from the Respondent Councillor (Private)
4. Written Response from the Respondent Councillor (Redacted Version)

Others Reviewing this Report

- K. Fallis-Howell, Acting City Solicitor