

CITY OF EDMONTON COUNCIL CODE OF CONDUCT SUB-COMMITTEE

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Jamie Pytel
Integrity Commissioner

Brent Rathgeber, KC
Ethics Advisor

Councillor Code of Conduct

This meeting is to discuss what has worked well in the past 4 years since the Council Code of Conduct was passed, and what could be improved.

What follows is the beginnings of a list of items to discuss and get feedback from the Sub-Committee in the coming weeks and months. Thereafter, we will propose updates to the Code based on those discussions.

We look forward to receiving the Sub-Committee's comments and perspectives.

Interactions with COE Employees

Current Code Provision	For Consideration
<p>Part C, Section 4 “Councillors will...respect the role of City employees to provide neutral and objective information without undue influence and interference.”</p> <p>Part E “Councillors must conduct themselves with decorum at all times when interacting with City employees; must not use harassing, offensive, discriminatory, disrespectful, or unparliamentary language about City employees.”</p>	<p>Some Codes of Conduct go further in their protection of City staff. Possible additional language:</p> <ul style="list-style-type: none">• Councillors will not involve themselves in matters of Administration which fall within the jurisdiction of the City Manager; use or attempt to use their authority to influence, intimidate, threaten, command or coerce any City Employee with respect to them carrying out their duties.• Councillors will respect that City Employees are required to make recommendations that reflect their expertise and a corporate perspective.• Any feedback about individual Administration performance will only be given privately to the City Manager, bearing in mind that Council has one employee reporting to them, the City Manager.

Interactions with COE Employees (cont.)

IC commentary: Council should consider increasing protections for staff. For clarity, this would not preclude Councillors from making public statements such as “I think we can do more regarding snow removal” versus “Employee Jane Doe is doing a terrible job at...”

Ethics Advisors commentary: The words “offensive, disrespectful and unparliamentary” in this provision are undefined and undefinable.

Possible deletions from the Code

Current Code Provision re Communications	Justification for possible deletion
<p>Part A, 1 b) While carrying out their duties, Councillors must consider all decisions and issues thoughtfully, consistently, impartially, and fairly by considering all relevant facts, opinion, and perspectives.</p>	<p>IC commentary: Requiring Councillors to act impartially is challenging in an environment that is also political, where people are elected on a certain mandate. This concept sometimes gets confused with the conflict of interest principles.</p> <p>Should it be the IC's role to investigate whether Councillors are being thoughtful, consistent, impartial and fair in carrying out their duties? Should the IC be required to determine if Councillors considered all relevant facts, opinions and perspectives?</p> <p>Ethics Advisor commentary: "consistently" "impartially" and "relevant" are vague terms.</p>

Part D: Adherence to Rules

Current Code Provision	Commentary
<p>Part D, 1. “Councillors will comply with the procedural rules for meetings established by Council.”</p>	<p>This provision has created confusion and frustration. The IC has not investigated whether Council members followed, for instance, the Procedures Bylaw. Whoever is chairing the meeting should ensure this Bylaw is adhered to. Given the confusion, the IC is contemplating proposing amendments to the Code.</p>

Part D: Adherence to Rules (cont.)

Current Code Provision	Commentary
<p>Part D, 2. Councillors will comply with all applicable laws and Council approved policies, and will support City employees and Councillor’s employees to the same [sic] on behalf of the City.”</p>	<p>Requiring Councillors to comply with Council approved policies is probably fine, but this may depend on the Policy. However, the IC currently does not make determination of whether law have been broken (such as the Municipal Government Act) and is prohibited from accepting such complaints. It is only after conviction by a court or a regulator for breaking a law or regulation, that a Code complaint may be considered.</p> <p>IC is looking for feedback on this provision and possibly making this clearer in the Code.</p>

Provisions requiring clarity

Current Code Provision	Recommended update in red font
<p>Part B, 1 d) “Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead Council or the public about any matter.”</p>	<p>“Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead Council or the public about any matter relating to the decisions of Council or the business of the City of Edmonton.”</p> <p>IC: The current language is too broad. Complaints are received for instance about Councillors commenting on social media about news events, etc.</p>

Provisions to be moved

Current Code Provision	Commentary
<p>Part A, 1 “While carrying out their duties, Councillors must act in the best interests of the City as a whole.”</p>	<p>IC: This is a good foundational principle that may be best suited for the Preamble of the Code and not as a requirement. It is currently being used as a catch-all by Complainants.</p> <p>The original reason may be the desire for Councillors to not take a ward-specific approach. If that was the purpose, consideration should still be given to whether it should be a Code requirement or merely a foundational statement.</p>

Cross-ward Councillor Activity

Current Code Provision	Commentary
<p>Part B, 3 “If a Councillor becomes aware of or receives an inquiry that is a ward-specific constituency issue relating to another Councillor’s ward, the Councillor will refer the matter to the ward Councillor or request that the person contact the ward Councillor, or alternatively, the Mayor.”</p>	<p>This clause is interpreted and applied in different ways by Councillors. Some feel that no other Councillor should cross the border into their constituency, some feel this is a way for some Councillors to pass constituent enquiries to other Councillors. Some receive a great number of enquiries given their location within the City and have difficulty keeping up with them.</p> <p>IC perspective: This provision is an outlier and not found in other Codes. How would this work leading up to an election if a Councillor wishes to campaign City-wide to become Mayor? Consider deleting this section.</p> <p>Ethics Advisor: The Councillor should be able to work the file if the ward Councillor agrees. The ward Councillor should have a right of 1st refusal.</p>

Informal Resolution and Restoration

Current Code Provision	Recommended Amendment
<p>“If the Integrity Commissioner determines that informal resolution may be possible, they may, with written consent of both the complainant and respondent Councillor(s), refer the complaint to the Ethics Advisor or another third party for resolution.”</p>	<p>“Wherever possible, the Integrity Commissioner will take a restorative approach when dealing with complaints.</p> <p>If the Integrity Commissioner determines that informal resolution may be possible, they may recommend:</p> <ul style="list-style-type: none">○ Direct communications between the Complainant and the Respondent○ Facilitated discussions, as agreed upon by the parties○ Mediation by an independent mediator, as agreed upon by the parties.” <p>Ethics Advisor: I could not do a formal mediation if complainant was a Councillor.</p>

Confidentiality

Consider adding more clarity around how investigations will be kept confidential, particularly if complaints are made by City employees.

Current State	To be considered
<p>The Code currently says investigations will be handled in a confidential manner.</p> <p>The IC is only required to identify the Complainant if the Respondent Councillor could not fairly defend themselves without knowing the identity of the Complainant.</p> <p>The Code Complaint Form contains a notice that the content of the Complaint Form may be disclosed to the Respondent Councillor and the information will be collected, used and disclosed according to FOIP.</p>	<p>Should more be done to explain the limitations and risks to complainants should a Councillor identify or publicize the identity of a Complainant?</p> <p>Should the Code be more explicit that the Respondent Councillor must not identify the Complainant?</p> <p>Should we add language that the IC may find a complaint to be made in bad faith if the Complainant widely publishes the fact that they have made a complaint before the Respondent Councillor has been afforded due process?</p>

90-day suspension period

The Code currently says complaints received within 90 days prior to a municipal election may be suspended until after election day. In the last election, Council agreed that any investigations should be suspended.

Advantages of 90-day suspension

- Minimizes the chance complaint process is used inappropriately to influence election outcomes
- Eliminates practical issues of trying to complete investigations and schedule a sanction hearing in the busy period leading up to an election
- Reduces fairness concerns, as a Councillor does not have time to at least launch a judicial review of a negative sanction hearing before the election

Disadvantages of 90-suspension

- Councillors may act as though the Code no longer applies during the election period
- Negative feedback from the general public that the Code is not operational during this period
- Accumulation of suspended / dated investigations to be completed post-election
- If complaint is leaked, Respondent Councillor may want resolution before the election, which may be challenging
- Uncertain whether investigation should proceed post-election if Councillor is not re-elected. Unappealing to spend funds investigating a Councillor who is no longer on Council, but possible breach happened while in office.

Sanction Considerations

Current Code Provision	Proposed Amendment
<p>“When imposing a sanction, including deciding whether to release the details of the sanction to the public, Council must consider all of the following:</p> <ul style="list-style-type: none">a) the severity or consequences of the contravention;b) the consequences of the contravention ;c) the principles and intent of this code of conduct;d) the public interest; ande) whether the counselor has previously contravened this code of conduct. <p>Nothing in this bylaw requires Council to impose a sanction for every substantiated complaint. Contraventions that were inadvertent or made in good faith may result in no sanction being imposed.”</p>	<p>“When imposing a sanction, including deciding whether to release the details of the sanction to the public, Council will consider the following:</p> <ul style="list-style-type: none">(a) The nature, extent and gravity of the contravention;(b) The consequences and impact of the contravention;(c) Whether the Councillor has previously contravened this Code(d) The principles and intent of this Code;(e) The presence of any legitimate mitigating circumstances(f) The need to deter future contraventions(g) The public interest, including the need to promote the public’s confidence in the integrity of Council. <p>After considering these factors, Council may determine that although there was a breach of this Code, no sanction is warranted.”</p>

Clarify frivolous, vexatious and bad faith

Current state	Proposed additional language
<p>The Code allows the IC to dismiss complaints deemed to be frivolous, vexatious, or made in bad faith. The IC is considering proposing language to clarify when complaints may fall under these categories.</p>	<p>“When determining if a Complaint is frivolous, vexatious or made in bad faith, the Integrity Commissioner accepts that complaints are made in a political environment and are not automatically deemed to be in bad faith if they appear to be made for political purposes or if they are found to be unsubstantiated.</p> <p>Examples of a “vexatious” complaint include:</p> <ul style="list-style-type: none">Issue has already been investigated or decided and is merely a repeat of an earlier complaintThe complaint has no reasonable prospect of being successfulThe complaint is brought for an improper purpose (i.e. obviously to harass)

Common Complaints Dismissed by IC

For awareness, below are common constituent complaints that are dismissed.

Note, when complaints are dismissed, judgement is used around whether to inform the Councillor. IC avoids having her office used as conduit for communicating with Council members or causing issues to be artificially escalated because they are coming from the ICO.

Type of Complaint	Reason for dismissal
Complaints about the level of service by Councillors or responsiveness to Constituents' enquiries.	Dismissed as it is not in the IC's jurisdiction to investigate a Councillor's performance; however, the IC encourages the constituent to contact the Councillor's office (or other COE department as applicable) and assures constituents that Councillors receive a great many enquiries and communications.

We welcome questions, feedback, direction and candid discussion with respect to these and any other issues of interest to the Subcommittee.

