

Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

ANNUAL REPORT

OFFICE of the INTEGRITY COMMISSIONER

The City of Edmonton

Council Code of Conduct Bylaw 18483

(“Code of Conduct” or “Code”)

For the period September 3, 2019 to
September 3, 2020 (“Reporting Period”)

INTEGRITY OFFICE

On September 5, 2018, Edmonton City Council appointed Jamie Pytel as the City's Integrity Commissioner and Brent Rathgeber as the Ethics Advisor. These positions form an independent Integrity Office which is focused on supporting Council Members to maintain the high level of integrity that they and the public have come to expect. The Integrity Commissioner is charged with investigating all complaints that are covered by the *Council Code of Conduct*. The Ethics Advisor provides confidential legal advice to Councillors regarding *the Code* and individual ethics. The Ethics Advisor also provides educational programs and materials to Council Members and their staff upon request. In January of 2020, the Ethics Advisor and the Integrity Commissioner met with a number of Council Members and their staff to further explain the roles of the Ethics Advisor and the Integrity Commissioner, and to answer questions regarding the *Code* and how it is administered.

This report is issued pursuant to the City of Edmonton's *Integrity Commissioner Bylaw 18567*, which requires the Integrity Commissioner to report to Council at least once annually. The report is to include:

- (a) A summary of the activities undertaken by the Integrity Commissioner during the past year;
- (b) An analysis of any trends or general observations that can be drawn from the complaints received and investigations conducted in the past year; and
- (c) Any other matters the Integrity Commissioner deems relevant.

The annual budget for the Integrity Office is \$150,000.00. The total expenditures for the Integrity Office for the Reporting Period was \$132,473.57. The total expenditures for the previous Reporting Period was \$132,164.01. The office is on track to be within the annual budget for this year.

INTEGRITY COMMISSIONER ACTIVITIES

Complaints and Enquiries

In the Reporting Period, the Integrity Commissioner received 20 complaints and enquiries from the general public, 12 of which resulted in an investigation. All investigations were completed within the 90-day timeframe provided in the *Code*.

Complaints and enquiries summary:

1st Reporting Period (Sept 2018 to Sept 2019): 16

- 6 investigations
- No violations of the *Code* found

2ND Reporting Period (Sept 2019 to Sept 2020): 20

- 1 complaint of discrimination accepted, but complaint withdrawn during investigation in favor of informal resolution;
- 1 complaint of discrimination accepted, but allegations found to be unsubstantiated¹;
- 1 complaint of a Council member blocking and deleting on social media, accepted but no finding of a violation of the *Code*;
- 9 complaints accepted with multiple findings of *Code* violations for conduct that was disrespectful, lacking in decorum and for posting misleading information about Council decisions on social media.

The balance of the complaints received in the Reporting Period that were **not investigated**, included:

- Complaints outside the Integrity Commissioner’s jurisdiction (i.e. dealing with an internal City of Edmonton employment dispute);
- Complaints with deficient information, such as not providing identifying information and contact information of the Complainant;
- A complaint that was already resolved informally by a Councillor’s office to the satisfaction of the Integrity Commissioner and not warranting further investigation;
- A complaint about an issue that had already been decided in a prior investigation (i.e. about a Councillor blocking and deleting members of the public on social media).

Arising out of some of the *Code of Conduct* complaints and enquiries, the Integrity Commissioner provided the following commentary and interpretations:

1. Who can make a complaint? Complaints do not need to be made by members of Council, but can be made by members of the public. Complainants can be an organization and not just an individual. Complainants do not need to be the person

¹ Note, that “unsubstantiated” means there was not enough information, on a balance of probabilities, to make a finding of a breach of the *Code*.

against whom the alleged conduct is directed, but can be those who witness the alleged conduct.

2. Outside of Council chambers activity by a member of Council, including activity on social media, is covered by the Code when it is about the Council Member's role on Council, other members of Council, or the business of the City. Decorum of Council Members is expected at all times, not just in the Council chamber.
3. Freedom of expression, in some instances, is limited by the *Code* requirements. For instance, when expressing an opinion about the work of Council, especially publicly or on social media, it is imperative that those statements are based on facts that are true and not misleading. Then the Council Member is free to express their political views as strongly and passionately as they so choose. A line is drawn between attacking an idea versus making a personal attack. The former is acceptable, the latter is not. All of this is done in the context that **Council must act as a Council** and once decisions are made by Council they must be respected. A Council Member is free to state why they voted for or against a particular motion, but the *Code* requires that the Council Member show respect for the majority decision even if they voted against it. It is also an overall *Code* requirement that interactions and communications by Council Members be respectful. This is mandated by the regulations that accompany the *Municipal Government Act*.
4. Social Media Policy. For Council's awareness, Councils in other jurisdictions across Canada are implementing Social Media Policies with respect to Councillor Members' activities on social media. In some instances, this is done as the other jurisdictions do not have a code that explicitly covers activity on social media as does the City of Edmonton's *Code*.

However, an area that is not explicitly covered by the City of Edmonton's *Code* and which issue has repeatedly arisen in the past year, is Council Members deleting or blocking commentators on the Council Member's social media pages. In the Integrity Commissioner's view, members of the public should not be blocked on Council Member's social media pages simply because they disagree with the Council Member on a topic.

Currently, Council members use their discretion when deciding whether to block or delete. Typically, a social media policy would provide consistent guidelines around when blocking or deleting is permitted, such as when the activity is threatening, harassing, discriminatory, etc. or when the page is hijacked through trolling, spamming, using bots etc. Council may consider whether these sorts of guidelines would assist them in managing their social media activity.

5. Conduct towards City Staff. One question that keeps getting raised and is worthy of highlighting relates to whether the *Code* applies to a Council Member's conduct towards City employees. The answer is yes. The *Code* says:

While carrying out their duties, Councillors must communicate respectfully with City employees. [**Code, Part A, Section 1 e**]

Councillors will obtain all necessary information about the operations and administration of the City from the City Manager using processes developed by the City Manager, and will respect the role of City employees to provide neutral and objective information without undue influence and interference. [**Code, Part C, Section 4**]

Councillors will conduct themselves with decorum at all times, including while attending meetings and interacting with City employees. [**Code, Part E, Section 1**].

Councillors must not use any harassing, offensive, discriminatory, disrespectful, or unparliamentary language about City employees. [**Code, Part E, Section 3**].

The *Code* specifically says it supplements Alberta's *Occupational Health and Safety Act* ("OH&S Act") and *Human Rights Act*. The City and Council Members have concurrent obligations under these Acts and the *Code*. For instance, the *OH&S Act* requires the City to provide a safe work environment for their employees. Safety includes providing an environment that is free from harassment, which is deemed a safety hazard. As the *Code* requires Council Members to abide by the *OH&S Act*, it is possible that a violation of *OH&S Act* would be deemed a violation of the *Code*.

While the current wording in the *Code* covers conduct towards City staff, notably some codes in other jurisdictions are even more explicit in how Council members are allowed to treat staff, with some of them including language along the lines of:

Council members must lead, establish and maintain a positive and constructive environment for City employees. Council members must refrain from abusive conduct, public comments on staff performance, and personal charges or verbal attacks upon the character or motive of City employees.

Members must deal with Administration performance concerns by communicating them to the City Manager.

In the Integrity Commissioner's view, if a Council Member has feedback with how City employees have performed their duties, that is feedback to be given privately to the City Manager.

Code Amendments

Each year, the Integrity Commissioner considers whether any amendments to the Code are warranted. This past year, there continued to be ongoing questions around how the Gifts and Benefits section of the *Code* operates, as also discussed in the Ethics Advisor section of this report (below). Council asked the Integrity Commissioner and the Ethics Advisor to consider improvements to this section of the *Code*.

In the Integrity Commissioner's view, an amendment to the *Code* that removes the requirement that admission to events be offered by the entity or its representative would be a reasonable and equitable amendment. In the Integrity Commissioner's view, the Gifts and Events section of the *Code* should be interpreted liberally to allow Council Members to fulfill the important role they hold as ambassadors of the City. As well, this provides support for profit and non-profit organizations which is important for the viability of the community and the City as a whole. By removing the current language, the impact on organizations with smaller budgets would result in increased participation and support by Council Members at these events.

The contemplated amendment would result in the following deletion from the *Code*:

g) admission to, and food and beverages consumed at, community events and widely attended events such as conventions, conferences, sporting and arts events, banquets, or training and education programs, provided that:

i) the Councillor's attendance serves a legitimate purpose associated with the Councillor's duties;

~~ii) admission is offered by the entity, or a representative or member of the entity, responsible for organizing or presenting the event;~~

iii) the admission is unsolicited by the Councillor; and

iv) the value is reasonable and the invitations infrequent.

Overall, when accepting a gift or admission to an event, it is important for Council Members to consider whether acceptance has the actual or perceived purpose of influencing the Council Member's decision-making on Council.

Integrity Commissioner Conference

In October 2019, the Integrity Commissioner attended an Integrity Commissioner conference with other Integrity Commissioners from across Canada. The Integrity Commissioner appreciates the opportunity to take advantage of the wealth of experience of other Integrity Commissioners around the country. The topics covered included:

- councillor conduct on social media;

- perspectives from Provincial ombudsmen;
- the intersection of Codes of Conduct and lobbyist registries;
- concurrent civil or criminal proceedings during a Code investigation.

ETHICS ADVISOR'S ACTIVITIES

The Ethics Advisor continues to meet with Councilors at their request and at their convenience. The Ethics Advisor provided advice to Members of Council, always on a confidential basis. He met with Council Staff, as a group, to explain in detail the *Code* and interpretation of various sections. During the Reporting Period, the Ethics Advisor provided confidential advice to Councillors or their designated representative on more than 70 separate occasions (including supplemental advice). The advice was provided primarily orally (by telephone) or on in writing (by e-mail) depending on the Councillor's preference. On rare occasions, the advice was given during a face-to-face meeting with the Councillor and at the Councillor's request.

The Ethics Advisor assisted Councillors who were the subject of a Complaint Investigation. This assistance included statement preparation and/or attendance with the Councillor when being interviewed by the Integrity Commissioner.

Interactions with Councillors or their designated representatives were down slightly during the current reporting period as compared to the last. This is counted for almost exclusively by COVID 19 and the resulting decline in invitations to Councillors to attend events and attractions (and the questions surrounding the suitability of accepting those gifts).

Regardless, Part L of *the Code of Conduct* dealing with "Gifts and Benefits" was still the section of the *Code* generating the most inquiries. Predictably, event attendance continues to generate the most inquiries and also the most confusion. Several Councillors question the purpose of 1 (g) of Part L of the *Code*, which requires a gift of admission to, or food and beverages, at an event to be "offered by the entity or a representative or member of the entity, responsible for organizing or presenting the event."

The purpose behind this prohibition, ostensibly, is to prevent individuals or organizations from purchasing access or influence with elected officials. This prohibition infers that a sponsored ticket, a complimentary ticket or a host ticket is less likely to purchase influence than one that is paid for. This correlation is debatable and perhaps even counterintuitive and seems unintentionally inequitable when applied to the arts community and other non-profit organizations, who may lack the resources to offer complimentary tickets to the events they sponsor and promote.

If it is influence and conflict of interest that the *Code* seeks to prevent, consideration should be given to stating expressly what types of events and what types of offerors are unacceptable, as opposed to the current *Code* which sets out certain conditions which must be met before the acceptance of a gift of an event invitation is appropriate.

The rules regarding attending events might be less confounding if expressed in negative rather than in positive terms. This approach would allow the *Code* to precisely specify exactly what types of offerors and what types of gifts are not to be accepted.

Finally, the Ethics Advisor has met with the Council Services Committee on several occasions to discuss the future establishment of a Lobbyist Registry for Edmonton City Council, potential amendments to the *Code of Conduct*, (including gift and event acceptability), implementation of a Councilor Budget and Expense Policy, and the potential for establishing individual constituency or ward offices.

In summary, the Integrity Office is now two years old; most, but not all, of the bugs have been worked out. The Ethics Advisor believes that the Office and the *Code* are generally working as intended and may have even exceeded expectations. This is evidenced by the very few substantiated breaches of the *Code* since the inception of the Integrity Office. However, some fine tuning may still be required and even a well-functioning program can always be improved. As 2021 is an election year, the Ethics Advisor anticipates voluminous inquiries regarding election spending and communications and which expenses are to be paid for by the City and which are to be financed by the individual political campaigns.

As always, the Ethics Advisor finds his role challenging and rewarding. It is an honor to contribute to democracy by promoting ethical conduct by elected officials.

CLOSING COMMENTS

There appears to be more awareness in the public about the *Code* and the general public's ability to access the *Code*. The number of complaints received are not outside the normal level of activity of Canadian cities of similar population and size of this Council. However, this is a proactive office in which we strive to provide advice and information to avoid potential *Code* violations. We continue to invite feedback from and dialogue with Council about topics related to the *Code of Conduct*.

We would like to acknowledge with sincere thanks the Office of the City Clerk for providing exceptional support and assistance over these past two years.

Respectfully Submitted

Jamie Pytel
Integrity Commissioner

Brent Rathgeber
Ethics Advisor