

INTEGRITY COMMISSIONER RECOMMENDATIONS ON AMENDMENTS TO RULES 2, 3 AND 14 OF THE CODE OF CONDUCT FOR MEMBERS OF COUNCIL**Recommendation**

The Integrity Commissioner recommends:

1. That the recommendations as set out in Attachment 1 of this report be considered by the Members of the Task Force with a view to updating the Code of Conduct for Members of Council.

Contribution to Sustainability

The Integrity Commissioner recommendations contribute to the City of Vaughan's commitment to the accountability provisions of the *Municipal Act*, 2001, Part V.1

Economic Impact

There is no economic impact associated with this report.

Communications Plan

N/A

Purpose

To provide the Code of Conduct Review Task Force with recommended amendments to Rules 2, 3, and 14 of the Code of Conduct for Members of Council (the "Code").

Background - Analysis and Options

At the February 28, 2017 Code of Conduct Review Task Force meeting, Members requested that the Integrity Commissioner bring back recommendations on amendments to Rules 2, 3 and 14 of the Code of Conduct for Members of Council.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the following priority set forth in the Term of Council Service Excellence Strategy Map (2014-2018):

- Continue to advance a culture of excellence in governance.

Regional Implications

No regional implications

Conclusion

The City policies and/or rules of the Code cannot develop an exhaustive list of what actions are allowable or not for the purposes of adherence to the Rules of the Code. It is a recognized principle of accountability regimes that the ethical decision-making is left up to the individual Member of Council who must balance the needs of the community against the key principles contained in Rule 1 of the Code, to determine the most appropriate actions.

The recommendations contained in this report will give greater clarity to Members of Council on what they should consider in order to comply with the Rules of the Code.

Attachments

1. Integrity Commissioner's comments and recommended Amendments to the Code of Conduct.

Report prepared by:

Suzanne Craig, Integrity Commissioner

Respectfully submitted,

Suzanne Craig

RECOMMENDED AMMENDMENTS

Rule 2. Gifts and Benefits:

From time to time, Members of Council have participated in, organized or sponsored specific events in the community.

Members of Council fulfil a representative role in their community and have multi-faceted roles. In particular, they are governors of the City, making decisions on behalf of the residents *and* they are leaders in their community through various forms of public engagement and support for community organizations and community development activities.

Community support and fundraising in the City of Vaughan, like all Ontario municipalities must strike a balance between accommodating a valuable social function and the potential or perceived risk to Members' integrity and the perception that donations are being given to curry favour to extend special consideration, treatment or advantage in future dealings with the City. In order to enhance transparency and avoid any real or perceived personal gain, it is the responsibility of individual Members of Council to take a principle view of Code and apply the key principles to their proposed actions. The City policies and/or rules of the Code cannot develop an exhaustive list of what is allowable or not for the purposes of the Code, but rather ethical decision-making is left up to the individual Member of Council to balance the needs of the community against the key principles contained in Rule 1 of the Code, to determine if the actions they are considering are of the highest ethical ideals and will bear the closest public scrutiny.

The role of the Integrity Commissioner is not to determine how a Member best serves his or her community, what format of communication should be used and in what activities he or she should participate. The role of the Commissioner is to apply the Code to the day to day situations of Members through a textual and intentional application of the rules.

What Councillor organized/sponsored activities are allowable under the Code:

Generally, Members of Council have asked how best to determine whether a proposed action is "in or out" of the Code rules. The general position of Members of Council is that the role of an elected official is so broad that it can't be defined and their actions in the community are led by requests from their residents for them to "do what they were elected to do".

What do other jurisdictions do?

1. Examples of Member organized community events:

A member of Council may hold an annual KidSkate Program where a corporate business sponsor pays for skates and helmets for children to use, on loan, during the winter months. The event includes the name of the Member of Council.

A Member of Council promotes Earth Day in his/her ward by holding an Earth Day Art Contest for elementary schools in his/her ward, offering a prize of a day at the zoo for the class that wins the contest. The payment of the day at the zoo is made by a corporate sponsor. The event includes the name of the Member of Council.

In both of the above member organized community events, the receipt of corporate donations are deemed to be gifts under the municipality's Code of Conduct for Members of Council. The Members of Council is required to complete a declaration to the Integrity Commissioner, complete requisite tax forms and comply with the rules of the existing Lobbyist Registrar.

2. The existence of a Members' Community Events policy for which a Member of Council must get Council approval to hold their community event. The policy sets a monetary limit for the donations that a Member of Council can receive for any one of their community events.

The rationale for the municipality's decision to create a Members' Community Events policy was that in particularly ethnically diverse wards or wards with a large number of new Canadians, the Members' community events help build a sense of community especially for those groups that do not have access to major outreach. The Members of Council have given reasonable explanations for the need to hold Member organized community events and these justifications have distinguished their community sponsored activities from activities that are perceived to be attempts at self-promotion or attempts to curry favour with particular segments of the community with a view to obtaining their support at election time.

What does the Vaughan Code currently say about Councillor organized events:

Currently in Vaughan, community donations made to Members sponsored community events are not considered gifts or benefits if given directly to the community organizers. Only where a Member receives a monetary or in-kind contribution to a Member-organized/sponsored event (not a City-organized event) and where the value of the gift or benefit exceeds the monetary Code threshold, would there be a requirement to complete a Councillor Information Statement. The Code states in the Commentary to Rule 2.3, that:

"Official duties" or "functions" has the following meaning:

For Members of Council, it includes those activities that are reasonably related to a Member's office, taking into consideration the different interests, the diverse profiles of their wards and their different roles on Committees, agencies, boards and commissions.

Personal integrity and sound business practices require that relationships with vendors, contractors, or others doing business with the City, be such that no Member of Council is perceived as showing favoritism or bias toward the vendor, contractor or other.

Some examples of Current and Past City of Vaughan Council-Member Sponsored CommunityEvents

1. Councillor Movie Night
2. Councillor Community Concerts in the Park pre-event
3. Councillor Charitable Foundation (Director)
4. Councillor on Board of Charitable Organization(Board Member)
5. Councillor on Board of Sport Association (Director/Board Member)
6. Councillor on Ratepayer's Association Board
7. Councillor on Community Environmental Protection Group
8. Councillor on Board of Seniors' Group
9. Councillor Volunteer Member of Community Health-based Foundation
10. Councillor Honorary Chair/Member Cultural Group
11. Councillor Chestnut Roast
12. Councillor Honorary Member of Community Resident Recognition Award Event

The Integrity Commissioner makes the following recommendations:

I. Rule 2.1 (f) sets out one of the exceptions to the prohibition of a member accepting a gift or benefit.

This rule includes as one of the recognized exceptions:

(f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of the, by the Federal government or by a foreign government with a foreign country or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event: *(for greater certainty of item f, where Council has authorized or endorsed an initiative or event, this would be considered an official event.)*

Recommendation: To provide clarity for Members of Council, it is recommended that the Task Force consider including in the Code of Conduct, a definition of *official capacity* and *official event*.

Official capacity : means, in the exercise of the role directly related to the “official duties”:

Official duties : means the public duties of a Member and includes functions performed by Members necessary to demonstrate responsible and accountable government with respect to matters within the City’s jurisdiction, and which are done for the purpose of providing good government with respect to those matters.

Official event: means where Council has authorize or endorsed an event.

As with gifts, the acceptance of tickets can appear to be a means of undue influence. The Integrity Commissioner recommends that acceptance of tickets to an a community or other event is allowable, however, unless the attendance is part of the Member’s *official duties* or is at an *official event* , the acceptance is an allowable activity, but will engage the requirements of the Councillor Information Statement set out in Rule 2.1.

The Integrity Commissioner recommends that the Code be amended to clarify that Members cannot accept tickets for events, the acceptance of which is based on the understanding that the Member will “sell” tables or blocks of tickets for the event organizer or group.

II. Rule 2.1 (j) sets out an addition exception to the prohibition of a member accepting a gift or benefit.

This rules states:

(j) Sponsorships and donations for community events or initiatives organized or run by a member or a third party on behalf of a Member where Council has authorized or endorsed the event or initiative. *(for greater certainty of item j, for Member-organized community events or initiatives, Members should be transparent in their dealings with the public and should not handle any funds on behalf of ay organizations and should remain at arms length from the financial aspects of these events and initiatives.)*

Recommendation: It is recommended that the Task Force consider aligning this Rule of the Code with the language contained in the amendments to the Councillor Expense Policy provisions in relation Council authorized events.

Further, to provide greater clarity, it is recommended that the Task Force address all Member-organized or sponsored community events under Rule 2.3 of the Code.

III. Rule 2.3 (e) i. allows a Member of Council to use her or his office expense budget to run or support community events subject to the terms of the Councillor Expense Policy.

The Code of Conduct for Members of Council (the “Code”) contemplates and recognizes that Members of Council, as leaders, will be asked to help the community in group-specific matters, for which either a Member of Council has a long-standing relationship of participation or the presence of the Member will bring a level of recognition to the initiative required for its success.

Members of Council must strike a balance between an appropriate use of their office, name recognition and image (photos) directly related to helping the community versus a participation in activities which may reasonably give rise to the perception of self-promotion. The key principles found in Rule 1 of the Code provide markers that identify an appropriate use of a Member's office. Further, a careful consideration of the key principles will assist Members of Council in determining the various types of community events and activities that are carried out as part of their *official capacity*, carrying out their *official duties*, in a way that will foster and enhance respect for municipal government and respect for the members of the public.

Recommendation: It is recommended that the Task Force consider including in the Code of Conduct, a definition of *Member organized or Member sponsored community event*. It is recommended that the Rule clarify that a *Member organized or Member sponsored community event* is not a City organized community event in which the Member participates and/or lends his/her support.

Option 1:

Member organized or Member sponsored community event: means an event that has been authorized or endorsed by Council.

Option 2:

Member organized or Member sponsored community event: means an event driven and organized by a charitable group, other organization, or residents in the community or a Ward. The use of the Member's title in the event name is allowable if requested by the group or organization or residents. However, the display of banners or the distribution of other items with the Member's image is not an allowable activity.

Members of Council must be careful not to conduct themselves in such a way that may lead to the perception of self-promotion or electioneering. As a result, the Integrity Commissioner recommends that there should either be:

- a) Commentary included in the Code that will prohibit a Member from providing gifts or donations (ie. Pizza, or other food items, or otherwise) except as part of a *Member organized or Member sponsored community event* ; OR
- b) Commentary included in the Code that requires the Member who wants to provide gifts or donations to a group, to seek approval from Council.

During the first year of the Task Force, Members concentrated their efforts on the review of the Councillor Expense Policy. There are areas that intersect between the Councillor Expense Policy and the Code of Conduct. The Integrity Commissioner recommends that the Task Force consider the alignment of the two policies in relation to the following:

- a) whether or not Members of Council should organize or sponsor community events that overlap with ongoing or new programs that have been or could be offered through City and which have a separate donation policy.
- b) whether there should be a maximum amount (whether in money or in kind) annually set for public support of Council Member-organized community events. This amount would not include monies or goods collected at any event in support of a charity or other cause if those donations go directly to the charity or cause.
- c) Given the existence of the Lobbyist Registry, whether there should be administrative content regarding acceptance of support in any form from applicants with any pending planning conversion, demolition or variance application, where the Member of Council is aware that the individual has a matter pending before Council for which a decision of the City must be made. (Lobbying provision).
- d) Lobbyists with active lobbying registrations, their registered clients or their employees shall not, directly or indirectly, offer or provide any gift, benefit or hospitality to

Members of Council or their staff. Before accepting any donation, the member of Council should confirm with the Lobbyist whether or not the donor is registered in the Lobbyist Registry. If the sponsor or donor is registered in the Lobbyist Registry, the donation must be declined

In this way, the rules of the Code of Conduct for Members of Council on accepting gifts will mirror the rules and intent of the Lobbyist Registry

- e) How will donations (cheques, in-kind) be captured for Member-organized community (Transparency provision).
- f) whether there should be a prohibition to a Member using his/her own personal funds to run or support community events (Transparency provision).
- g) whether it should be permissible for individual Members of Council to play an advisory or membership role in any organization that holds community events in the Member's Ward; and collaborate with the City of Vaughan and its agencies to hold community events.
- h) Prohibition of receipt of gifts or acceptance of invitations from individuals/companies that are participating in City procurement.

IV. Councillors' Communications:, Newsletters, Social Media:

Members of Council have explained that they need to communicate with their constituents through various media and participate in various fora to respond to the current and emerging needs of Ward residents.

In making a determination on appropriate communication tools to inform residents of events, updates and matters of note, a Member of Council must take into consideration the Key Principles set out in Rule 1 of the Code.

Council Member social media use has the potential to trigger several rules of the Code, including Rule 2 Gifts and Benefits. While a personal Facebook page or Twitter handle allows a Member to have a private profile distinct from their City of Vaughan sites, using a Member's official title, official contact information, the City of Vaughan logo or other resources of the City would engage a potential Code violation. In relation to Rule 2 Gifts and Benefits, a Member is prohibited from posting the following:

- a) content that promotes or appears to promote a third-party interest, products, services or goods;
- b) content that promotes any candidate or political party in any election at the municipal, federal or provincial level, including leadership campaigns.

However, it is recognized that Members of Council have representative duties and therefore, regularly participate in local events and activities with constituents, including local businesses. It is therefore, allowable for Members of Council to use their City of Vaughan social media to inform residents about federal, provincial and City initiatives.

Therefore, the following are allowable posts on social media:

- a) content that raises awareness of local events and activities, including if there is a visiting official from another jurisdiction or a political party, if the official is participating in the local event;
- b) content that raises awareness of federal and provincial government programs;
- c) content that publicizes the Member's attendance at a ceremony, event or activity that is otherwise permissible under the Code of Conduct;
- d) content that publicizes the member's interactions with constituents, including local businesses.

Rule 3 Confidential Information:

The Integrity Commissioner makes the following recommendations:

The Task Force consider amending the Code Rule to include the prohibition that Members of Council must not post content on social media that discloses information that was discussed or distributed *in camera* or other confidential meetings.

The Task Force consider that given the immediacy of social media and its ease of access, the Code Rule commentary should include language around Members of Council not using social media in any form during *in camera* or other confidential meetings.

Rule 14 Harassment:

The Integrity Commissioner makes the following recommendation:

The Task Force consider amending the Code Rule to require the City to forward harassment complaints against Members of Council, to the Integrity Commissioner.