

Authority: Item 7, Committee of the Whole
09-030 (LS09016)
CM: November 11, 2009

Bill No. 012

CITY OF HAMILTON

BY-LAW NO. 10-012

**TO AMEND BY-LAW NO. 03-301
GOVERNING THE PROCEEDINGS OF COUNCIL
AND COMMITTEES OF COUNCIL**

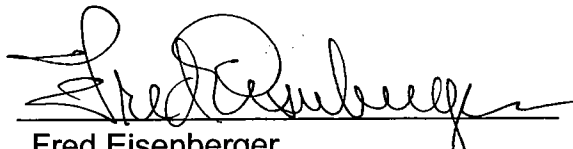
WHEREAS the Council of the City of Hamilton enacted by-law 03-301 being a By-law to Govern the Proceedings of Council and Committees of Council, on October 29, 2003, pursuant to section 238, of the Ontario Municipal Act, 2001, c. 24;

AND WHEREAS the Council of the City of Hamilton, in adopting item 7 of Report 09-30 of the Committee of the Whole, at its meeting held on the 11th day of November 2009, recommended that Procedural By-law 03-301 be amended as hereinafter provided;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Appendix H, Code of Conduct for Members of Council, be deleted in its entirety, and replaced with the revised Appendix H, Code of Conduct for Members of Council, attached hereto as Schedule A.
2. In all other respects By-law 03-301 remains unchanged.
3. This by-law shall come into force and take effect on the date of its passing and enactment.

PASSED this 27th day of January, 2010.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk

SCHEDULE "A" TO BY-LAW NO. 10-012

Appendix H

CODE OF CONDUCT FOR MEMBERS OF COUNCIL

PREAMBLE

Purpose:

A written Code of Conduct helps to ensure that the members of Council share a common basis for acceptable conduct. The Code of Conduct is not intended to replace personal ethics. The Code of Conduct:

- is designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate.
- serves to enhance public confidence that the City's elected representatives operate from a base of integrity, transparency, justice and courtesy.
- forms a part of the City's Procedural By-law No. 03-301, as amended.
- is enforced by the Integrity Commission under the City's Integrity Commissioner By-law No. 08-154, as amended.

Statutory Provisions Regulating Conduct:

In addition, the Code of Conduct operates along with and as a supplement to the existing five statutes that govern the conduct of members of Council:

- the *Municipal Act, 2001*
- the *Municipal Conflict of Interest Act*
- the *Municipal Elections Act, 1996*
- the *Municipal Freedom of Information and Protection of Privacy Act*
- the *Criminal Code (Canada)*

SECTION 1 - DEFINITIONS

1.1 In this Code of Conduct:

- (a) "benefit" means anything (other than a gift) given that confers an advantage, including but not limited to discounted or free services, food or beverages for immediate consumption, activities or event tickets, unless payment in any form, including the exchange of goods or services, of equal or greater value is received by the individual or entity giving the benefit;

SCHEDULE "A" TO BY-LAW NO. 10-012

- (b) "charity" means a registered charity as defined in the *Income Tax Act* (Canada) or successor legislation, which has a registration number issued by the Canada Revenue Agency, or successor agency;
- (c) "City" means the City of Hamilton, either in the sense of the geographic area of the municipality or in the sense of the identity of the municipal corporation, as the context requires;
- (d) "community organization" means a non-profit group of persons organized for the advancement of a civic, cultural, social, health, philanthropic or recreational purpose within the City of Hamilton;
- (e) "confidential information" includes but is not limited to information:
 - i) in the possession of the City that the City is either prohibited from disclosing, is required to refuse to disclose or exercises its discretion to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act*¹ or other legislation; and
 - ii) concerning matters that are considered in an in-camera meeting under section 239 of the *Municipal Act, 2001*².
- (f) "Council" means the Council of the City of Hamilton;
- (g) "family member" means:
 - i) spouse, including but not limited to common-law spouse and same-sex partner;
 - ii) child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew;
 - iii) mother-in-law, father-in-law, sister-in-law and brother-in-law;
 - iv) step-mother, step-father, step-sister, step-brother and step-child; and

¹ Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature and information that is personal, and permits the restriction or prohibition of disclosure of information that is subject to solicitor-client privilege.

² Section 239 of the *Municipal Act, 2001* permits information concerning the following matters to be considered in an in-camera meeting: the security of the property of the City; personal matters about an identifiable individual, including City employees; a proposed or pending acquisition or disposition of land by the City; labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the City; advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a matter in respect of which Council may hold a closed meeting under another Act; a matter relating to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*; or the education or training of the members of Council.

SCHEDULE "A" TO BY-LAW NO. 10-012

- v) child, mother or father in a relationship where the role of parent has been assumed;
- (h) "gift" means any real or personal property given, including but not limited to artwork, clothing, money, gift certificates or gift cards, unless payment in any form, including the exchange of goods or services, of equal or greater value is received by the individual or entity giving the gift;
- (i) "in camera" means the conduct of a meeting or part of a meeting, of Council or a Committee of Council, which is closed to the public as permitted under section 239 of the *Municipal Act, 2001*; and
- (j) "lobbyist" means a person who is registered as a lobbyist in the City's Voluntary Lobbyist Registry.

SECTION 2 - GENERAL

2.1 The key statements of principle that underlie the Code of Conduct are as follows:

- (a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- (b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- (c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- (d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.

SECTION 3 - APPLICATION

3.1 This Code of Conduct applies to all members of Council including the Mayor.

SECTION 4 - GIFTS AND BENEFITS

- 4.1** No member of Council shall accept a fee, advance, gift or benefit that is connected directly or indirectly with the performance of their duties in office, unless permitted by the exceptions listed in subsection 4.3.
- 4.2** For the purposes of subsection 4.1, a fee or advance paid to or a gift or benefit given with the member of Council's knowledge to their family member or to their staff that is connected

SCHEDULE "A" TO BY-LAW NO. 10-012

directly or indirectly to the performance of their duties in office is deemed to be a gift or benefit to that member of Council.

4.3 The following are exceptions to subsection 4.1:

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the duties of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law;
- (d) admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the entity responsible for organizing and presenting the event and unsolicited by the member of Council, if attending or participating in their official capacity, including:
 - (i) participation in an event as a speaker or panel participant by presenting information related to City matters;
 - (ii) performance of a ceremonial function appropriate to the member of Council's office;
 - (iii) attendance at an event that is appropriate to the official capacity of the member of Council;
- (e) admission to a charity or community organization event offered by the charity or community organization for whose benefit the event is being held and unsolicited by the member of Council;
- (f) admission to a training or education program, including meals and refreshments furnished to all attendees, if such training or education is related to the member of Council's duties in office and in the interest of the City;
- (g) services provided without compensation by persons volunteering their time;
- (h) a suitable memento of a function honouring the member of Council;
- (i) food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or by political subdivisions of them or by a foreign government within a foreign country;
- (j) food and beverages consumed at banquets, receptions or similar events, if:
 - (i) attendance serves a legitimate business purpose;
 - (ii) the person extending the invitation or a representative of the organization is in attendance; and

SCHEDULE "A" TO BY-LAW NO. 10-012

(iii) the value is reasonable and the invitations infrequent;

(k) communication to the office of a member of Council including subscriptions to newspapers and periodicals.

4.4 Except for paragraph (c), the exceptions listed in subsection 4.3 do not apply to lobbyists. Lobbyists are not permitted to give a gift or benefit under this section unless it is a political contribution permitted by law.

4.5(1) In the case of paragraphs (b), (h), (i), (j) and (k) of subsection 4.3, if the value of the gift or benefit exceeds \$200, or if the total value received from any one source during the course of a calendar year exceeds \$200, the member of Council shall within 30 days of receipt of the gift or benefit or of reaching the annual limit, file a disclosure statement with the City Clerk. The disclosure statement must indicate:

(a) the nature of the gift or benefit;

(b) its source and date of receipt;

(c) the circumstances under which it was given or received;

(2) Any disclosure statement made under subsection paragraph 4.5(1) will be a matter of public record.

SECTION 5 - CONFIDENTIALITY

5.1 No member of Council shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

5.2 No member of Council shall use confidential information for financial or other gain, or for the financial or other gain of a family member or any person or corporation. For example, no member of Council should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

5.3 No member of Council shall disclose the content of a matter that has been discussed at or the substance of deliberations of an in-camera meeting, except for content that has been authorized by Council or a Committee of Council to be released to the public.

5.4 Examples of the types of content that a member of Council must keep confidential under this section include but are not limited to:

(a) items under litigation, negotiation, or personnel matters;

(b) information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);

SCHEDULE "A" TO BY-LAW NO. 10-012

- (c) price schedules in contract tender or Request For Proposal submissions if so specified;
- (d) information deemed to be personal information under the *Municipal Freedom of Information and Protection of Privacy Act*;
- (e) statistical data required by law not to be released (e.g. certain census or assessment data).

5.5 Members of Council shall not access or attempt to gain access to confidential information in the possession of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

SECTION 6 - USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

6.1 No member of Council shall use or permit the use of City land, facilities, equipment, supplies, services, City employees or other resources (for example, City-owned materials, websites, Council transportation delivery services or Councillor global budgets) for activities other than the business of the City.

6.2 No member of Council shall obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings or drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

SECTION 7 - ELECTION CAMPAIGN WORK

7.1 Members of Council are required to comply with the *Municipal Elections Act, 1996*.

7.2 No member of Council shall use the facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities, except on the same basis (including paying a fee if any) as such resources are normally made available to members of public.

7.3 No member of Council shall use their newsletter or their website linked through the City's website for any election campaign or campaign-related activities.

7.4 No member of Council shall use the services of City employees for any election campaign or campaign-related activities during hours in which those City employees receive any compensation from the City.

SECTION 8 - CONDUCT AT COUNCIL AND COMMITTEE

8.1 Members of Council shall conduct themselves with decorum at Council and Committees of Council in accordance with the provisions of the Procedural By-law.

8.2 Under its Accountability and Transparency Policy, the City supports ensuring accountability and transparency in all its actions. Accordingly, in addition to disclosing a pecuniary interest under the *Municipal Conflict of Interest Act*, members of Council shall disclose non-pecuniary

SCHEDULE "A" TO BY-LAW NO. 10-012

interests they have in a matter, either on their own behalf or while acting for, by, with or through another, prior to consideration of that matter at Council or a Committee of Council.

- 8.3** Examples of types of non-pecuniary interests in a matter to be disclosed under subsection 8.2 include but are not limited to:
- (a) a member of Council being a director or senior officer of an entity, whether or not appointed by Council;
 - (b) a member of Council's family member being a director or senior officer of an entity;
 - (c) a member of Council or their family member holding a licence or other permission issued by the City.
- 8.4** Subsection 8.2 does not apply to a non-pecuniary interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member of Council.

SECTION 9 - REPRESENTING THE CITY

9.1 Members of Council shall make every effort to participate diligently in the activities of the agencies, boards, and commissions to which they are appointed.

SECTION 10 - IMPROPER USE OF INFLUENCE

- 10.1** No member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.
- 10.2** Examples of types of prohibited conduct under this section include but are not limited to:
- (a) the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's family members, City employees, friends, or associates, business or otherwise, including attempts to secure preferential treatment beyond activities in which members of Council normally engage on behalf of their constituents as part of their official duties;
 - (b) the holding out of the prospect or promise of future advantage through a member of Council's supposed influence within Council in return for present actions or inaction.
- 10.3** For the purposes of this section "private advantage" does not include a matter that:
- (a) is of general application;
 - (b) affects a member of Council, their family members, City employees, friends, or associates, business or otherwise, as one of a broad class of persons; or
 - (c) that concerns the remuneration or benefits of a member of Council.

SCHEDULE "A" TO BY-LAW NO. 10-012

SECTION 11 - BUSINESS RELATIONS

- 11.1** No member of Council shall act as a paid agent before Council, its Committees, or an agency, board or commission of the City except in compliance with the *Municipal Conflict of Interest Act*.
- 11.2** No member of Council shall refer a third party to a person, partnership, or corporation in exchange for financial or other gain.

SECTION 12 - CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT

- 12.1** No member of Council shall allow the prospect of their future employment by a person or entity to detrimentally affect the performance of their duties as a member of Council.

SECTION 13 - CONDUCT RESPECTING CITY EMPLOYEES

- 13.1** Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members of Council shall direct requests for action outside of Council-approved budget, process or policy, to the appropriate Standing Committee.
- 13.2** Under the direction of the City Manager, City employees serve the Council as a whole, and the combined interests of all members of Council as evidenced through the decisions of Council. Accordingly:
- (a) members of Council shall be respectful of the role of City employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;
 - (b) no member of Council shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of City employees; and
 - (c) members of Council shall show respect for the professional capacities of City employees.
- 13.3** No member of Council shall ask, request or compel City employees to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.
- 13.4** No member of Council shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any City employee with the intent of interfering with that employee's duties, including the duty to disclose improper activity.

SECTION 14 - RESPECT FOR THE CITY AND ITS BY-LAWS

- 14.1** Members of Council shall encourage public respect for the City and its By-laws.

SCHEDULE "A" TO BY-LAW NO. 10-012

SECTION 15 - ADHERENCE TO COUNCIL POLICIES AND PROCEDURES

- 15.1** Members of Council shall observe the terms of all policies and procedures established by City Council, provided that a member of Council's failure to observe the rules of procedure contained in the Procedural By-law is deemed not to be a contravention of this Code of Conduct.
- 15.2** Subsection 15.1 does not prevent a member of Council from requesting that Council grant an exemption from a policy or procedure and such an exemption may be limited as to time or scope and subject to amendment or revocation.

SECTION 16 - COMPLAINTS UNDER THE INTEGRITY COMMISSIONER BY-LAW

- 16.1** No member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner under the Integrity Commissioner By-law.
- 16.2** No member of Council shall obstruct the Integrity Commissioner in carrying out their responsibilities under the Integrity Commissioner By-law.
- 16.3** Examples of the types of obstruction prohibited under subsection 16.2 include but are not limited to:
- (a) destroying documents including erasing electronic documents;
 - (b) withholding or concealing documents including electronic documents;
 - (c) failing to respond to the Integrity Commissioner within 15 days after a written request is given or within such longer period as the Integrity Commissioner may allow.

SECTION 17 – HARASSMENT

- 17.1** It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment³. Accordingly:
- (a) no member of Council shall harass another member of Council, City employees or any member of the public; and
 - (b) all members of Council shall:
 - i) treat one another, City employees and members of the public appropriately and without abuse, bullying or intimidation; and

³ Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the *Ontario Human Rights Code*.

SCHEDULE "A" TO BY-LAW NO. 10-012

- ii) make all reasonable efforts to ensure that their work environment is free from discrimination and harassment.

SECTION 18 - EMPLOYMENT OF FAMILY MEMBERS

- 18.1** No member of Council shall attempt to influence the hiring or promotion of their family member.
- 18.2** No member of Council shall make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate their family member.
- 18.3** If a family member of a member of Council is an applicant for employment with the City or candidate for promotion or transfer, the family member will proceed through the usual selection process with no special consideration.
- 18.4** No member of Council shall act as a supervisor of their family member, or be placed in a position where they could have influence over their family member's employment.
- 18.5** No member of Council shall attempt to use a family relationship for financial or other gain.

SECTION 19 - COMPLIANCE WITH THE CODE OF CONDUCT

- 19.1** Where, under the Integrity Commissioner By-law, the Integrity Commissioner decides that a member of Council has contravened this Code of Conduct, they may, under section 19 of that By-law:
 - (a) reprimand the member of Council; or
 - (b) suspend the remuneration paid to the member of Council in respect of their services as a member of Council for period of up to 90 days.

SECTION 20 - INTERPRETATION

- 20.1** Members of Council seeking clarification of any part of this Code of Conduct may consult with the City Clerk, City Solicitor or the Integrity Commissioner.