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Committee 16-024 (LS16022)
CM: October 26, 2016

Bill No. 288

THE CITY OF HAMILTON

BY-LAW NO. 16-288

To Establish and Govern the Office of Integrity Commissioner and Provide for the Resolution of Allegations of Contravention of the Code of Conduct by Members of Council

WHEREAS Council desires to help ensure that Members of Council conform to ethical standards of behaviour in carrying out their duties, and are held to account for adherence to the Code of Conduct for Members of Council, and other applicable procedures, rules and policies governing their ethical behaviour;

AND WHEREAS section 223.3 of the *Municipal Act*, 2001 authorizes the City to appoint an Integrity Commissioner to perform in an independent manner functions assigned by the Council with respect to responsibilities and powers referred to in the first paragraph of this Preamble;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act*, 2001 authorize the City Council to pass by-laws necessary or desirable for municipal purposes in the public interest, and in particular, paragraph 10(2).2 of that *Act* authorizes the enactment of by-laws respecting the accountability and transparency of the municipality, and its operations;

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

Definitions

1. In this By-law:
 - (a) **“City”** means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;
 - (b) **“Code of Conduct”** means the Code of Conduct for Members of Council, as enacted by the Council, and, where relevant to a Complaint, the Code of Conduct in the form in which it existed at the time of the event or events giving rise to the Complaint;
 - (c) **“Complaint”** includes a request by City Council, a Member of Council, a City employee, a City resident, or a person who has business, institutional or other premises in the City, that the Integrity Commissioner conduct an inquiry, or that

other appropriate action be taken, with respect to conduct or an event or series of events alleged to involve contravention by one or more Members of Council of the Code of Conduct, or of any other procedures, rules or policies governing the ethical behaviour of Members of Council;

- (d) **“Complainant”** means a person who makes a Complaint;
- (e) **“Council”** means the Council of the City of Hamilton;
- (f) **“Integrity Commissioner”** means the individual appointed as such by the Council, and holding such office under this By-law;
- (g) **“Member”** means a Member of the Council;
- (h) **“Municipal Act”** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- (i) **“Municipal Freedom of Information and Protection of Privacy Act**, means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended; and
- (j) **“Public Inquiries Act”** means the *Public Inquiries Act*, R.S.O. 1990, c. P.41, as amended.

Term of Appointment of Integrity Commissioner

- 2. Council’s appointment of an Integrity Commissioner pursuant to the *Municipal Act, 2001* and this By-law, shall be for a fixed term, such term to be established by Council at the time of such appointment.
- 3. Where no Integrity Commissioner currently holds office, Council may appoint an individual to be its Integrity Commissioner, or Interim Integrity Commissioner, to carry out one or more of the duties established by the Council by by-law, including, but not limited to, providing advice to individual Members of Council, proceeding with an inquiry in respect of a Complaint, or any other duties specified by the Council by by-law.
- 4. Without limiting Council’s authority to appoint an individual as its Integrity Commissioner, the Integrity Commissioner may be:
 - (1) a full or part-time City employee;
 - (2) retained by Council on a term contract based on “fee for service”;

- (3) cross-appointed by Council together with one or more other municipal councils, as the Integrity Commissioner for the municipalities making the cross-appointment; or
 - (4) assigned by Council to perform one or more functions authorized under Part V.1 of the Municipal Act, provided that those functions are and remain compatible with the Integrity Commissioner's functions under this By-law and other applicable law.
5.
 - (1) The Integrity Commissioner shall complete any inquiry begun during her or his term of office, despite the expiry of that term, and this By-law shall continue to apply, with necessary modifications, to that inquiry.
 - (2) If the Integrity Commissioner is unable or unwilling to complete an inquiry, the Integrity commissioner next appointed shall complete the inquiry.
 - (3) If the Integrity Commissioner has not begun an inquiry into a Complaint made during his or her term, the Integrity Commissioner next appointed may commence and conduct an inquiry.
 6. The Integrity Commissioner shall be paid such remuneration and expenses as are determined, or directed to be determined, by the Council.
 7. The appointment of an Integrity Commissioner may be terminated by Council for cause, before the expiration of her or his term of office.

Role of Integrity Commissioner

8. The role of the Integrity Commissioner is to help ensure that Members Council perform their functions in accordance with the Code of Conduct, and other applicable procedures, rules and policies governing ethical behaviour.

Responsibilities of the Integrity Commissioner

9. The Integrity Commissioner shall:
 - (1) prepare written materials for distribution to, and use by, Members of Council regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of Members of Council, under the Code of Conduct and any other procedures, rules and policies governing their behaviour;
 - (2) prepare written materials and content for the City's website for distribution to, and use by, the public, to aid in their understanding of the role of the Integrity Commissioner and ethical obligations and responsibilities of Members of Council

- under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;
- (3) at least once each Council term, deliver an oral presentation to Members of Council regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of Members of Council under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour;
 - (4) upon request, provide advice to one or more individual Members of Council regarding the Member's ethical obligations and responsibilities under the Code of Conduct, and any other procedures, rules or policies governing ethical behaviour;
 - (5) provide advice and recommendations to Council regarding amendments to the Code of Conduct, and any other procedures, rules or policies governing ethical behaviour; and
 - (6) prepare and deliver an annual report to Council containing a summary of the activities of the Integrity Commissioner during the calendar year.

Informal Complaint Procedure

10. Anyone who has witnessed or identified behaviour or activity by a Member which they believe is in contravention of the Code of Conduct, may wish to address such activity or behaviour themselves as follows:
 - (1) advise the Member that the behaviour or activity contravenes the Code of Conduct;
 - (2) encourage the Member to stop the prohibited behaviour or activity;
 - (3) keep a written record of the incident(s), including dates, times, locations, other persons present, and any other relevant information;
 - (4) tell someone else (for example a senior staff member or an officer of the City) about their concerns, any comments to the Member, and the response of the Member;
 - (5) if applicable, confirm to the Member their satisfaction with the response of the Member, or, if applicable, their dissatisfaction with the response; and
 - (6) consider pursuing the matter further in accordance with the formal complaint procedure outlined in this By-law, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

Making a Formal Complaint regarding a Member of Council

11. (1) Any person who comes within the description, or is a member of a group coming within the description, of those referred to in the definition of "Complaint" in this By-law, may make a Complaint to the Integrity Commissioner;
 - (2) Council may make, or refer, a Complaint directly to the Integrity Commissioner;
 - (3) The Complainant shall make the Complaint in writing, containing the information known or alleged by the Complainant required to provide the content referred to in Appendix "A" to this By-law, but a Complaint need not be in the form of an affidavit;
 - (4) A Complaint is made to the Integrity Commissioner by filing the Complaint form, completed in accordance with subsection 11(3), and naming and signed by, the Complainant, with the City Clerk, and the Clerk shall forward the Complaint, without added comment, to the Integrity Commissioner.
 - (5) A Complainant may file the completed and signed Complaint form in a sealed envelope, in the office of the City Clerk, and the Clerk shall forward it, unopened, to the Integrity Commissioner.
 - (6)(a) A Complainant shall pay to the City Clerk a refundable fee in the amount of \$100.00 upon the filing of a Complaint.
 - (b) The fee payable under paragraph 11(6)(a) shall be refunded to the Complainant when the Integrity Commissioner files their report, except where a Complaint is found to be frivolous, vexatious, or not made in good faith the fee shall not be refunded.
 - (c) Where a Complaint has been stayed, a Complainant may withdraw their Complaint and receive a refund of the fee.
 - (7) A Complaint shall not be made available to the public except as may be required and authorized under the *Municipal Freedom of Information and Protection of Privacy Act*, the provisions of this By-law or any other applicable law.
12. Upon receiving a Complaint filed in accordance with this By-law, the Integrity Commissioner shall notify the Member whose conduct or alleged conduct is complained of, of the fact and nature of the Complaint, and may provide a copy or partial copy of the written form of Complaint, to the Member.

13. (1) Except as provided for in this section, the Integrity Commissioner shall not proceed with an inquiry with respect to a Complaint which is made or filed more than 180 days after the date when the event or the last of a series of events which is or are the subject-matter of the Complaint, occurred.
- (2) The Integrity Commissioner may proceed with an inquiry with respect to a Complaint which is filed after the expiry of the time limit, if the Integrity Commissioner is satisfied that
 - (a) the delay was incurred in good faith;
 - (b) it is in the public interest to proceed with an inquiry, or give consideration to whether or not to conduct an inquiry; and
 - (c) no substantial prejudice will result to any person because of the delay.
- (3) A Complainant is deemed to have known the matters referred to, on the date that the event, or series of events, occurred, unless the contrary is proven, the onus of proof of which lies upon the Complainant.
- (4) Where the Integrity Commissioner decides not to proceed with an inquiry, she or he shall notify the Complainant and the Member whose conduct is complained of, of that fact.
- (5) The Integrity Commissioner shall not file a report to the Council setting out allegations of contravention of the Code of Conduct with respect to a named Member except following a finding of contravention of the Code of Conduct by the Member, in accordance with this By-law and otherwise by law.
- (6) The Integrity Commissioner may adopt a numbering system for Complaints, reports and other information or documents which she or he handles, and advise the Council of so doing.

Inquiry into a Complaint Regarding a Member of Council

14. (1) Where the Integrity Commissioner decides to proceed with an inquiry into a Complaint regarding a Member of Council, she or he shall conduct the inquiry promptly, thoroughly, fairly, and in a manner which ensures that the Member of Council who is the subject of the Complaint is given an opportunity to know the nature of the Complaint, and to respond to the Complaint, to the Integrity Commissioner.
- (2) The Integrity Commissioner shall not disclose or confirm the name of a Complainant to the Member, except to the affected member of Council, unless relevant and necessary for the fulfillment of the responsibilities of the Integrity

Commissioner, or such information is otherwise known or available to the Member or the Council respectively.

15. Information concerning the nature of a Complaint disclosed to a Member of Council, including a partial or complete copy of a Complaint, shall be used by the Member only for the purpose of making representations respecting the Complaint, to the Integrity Commissioner, and not for any other purpose.
16. In conducting an inquiry into a Complaint regarding a Member, the Integrity Commissioner may exercise any power given to her or him under this By-law or under Part V.1 of the Municipal Act, including the power to conduct or not conduct an inquiry under the *Public Inquiries Act*.
17.
 - (1) If the Integrity Commissioner is not satisfied that a Complaint regarding a Member of Council sets out sufficient information to establish a *prima facie* contravention of the Code of Conduct or of other procedures, rules or policies governing a Member's ethical behaviour, and is unable to acquire sufficient information otherwise to establish a basis for a finding of such contravention, he or she may stay the inquiry into the Complaint.
 - (2) Before staying an inquiry, the Integrity Commissioner shall give the Complainant an opportunity to provide additional information respecting the Complaint, and assist the Complainant in understanding the requirements of the Code of Conduct relevant to the making of a proper Complaint, and the responsibilities of the Integrity Commissioner with respect to an appropriate inquiry into the Complaint.
 - (3) Where the Complainant provides additional information, the Integrity Commissioner shall consider all of the information available to him or her, and shall reassess whether or not there is sufficient information to set out a *prima facie* contravention of the Code of conduct, or of other procedures, rules or policies governing the ethical behaviour of a Member, sufficient to decide whether or not to proceed with an inquiry, and, if so, to conduct the inquiry.
 - (4) Where the Integrity Commissioner has stayed an inquiry into a Complaint and, after the stay, additional information is provided which, on its own or together with the information provided before the stay, sets out a *prima facie* contravention of the Code of conduct or other procedures, rules or policies governing a Member's ethical behaviour, the Integrity Commissioner shall lift the stay and decide whether or not to conduct or continue an inquiry.
 - (5) Where the Integrity Commissioner has stayed an inquiry under this section, and has not received the additional information requested, within a reasonable time, she or he may dismiss the complaint.

18. Where the Integrity Commissioner is satisfied, after considering the information contained in the Complaint, and any other relevant information, that a Complaint regarding the Member of Council is frivolous, vexatious, an abuse of process or not made in good faith, she or he shall not conduct an inquiry, or, where such becomes apparent in the course of an inquiry, she or he shall terminate the inquiry and dismiss the complaint, subject to direction otherwise by the Council by by-law.
19.
 - (1) Where the Integrity Commissioner has received a Complaint regarding a Member of Council, he or she shall, within 60 days of receiving it, and subject to this By-law, decide whether or not to conduct an inquiry, and, if so, commence the inquiry and conduct it as quickly as reasonably possible, on the civil standard of the balance of probabilities.
 - (2) Where the Integrity Commissioner decides that a Member has contravened the Code of Conduct, she or he shall, at the earliest possible time, file a report to the Council setting out the nature of the Complaint, his or her findings of fact in accordance with the civil standard on the balance of probabilities, his or her conclusions, and any recommendations the Integrity Commissioner may decide to make to the Council under the Code of Conduct as to any decision or consequences which it might decide to make or impose arising from the report or the Complaint.
 - (3) Subject to subsection 19(2), the Integrity Commissioner shall, at the earliest time possible following the making of a final decision or report terminating her or his inquiry or handling of a Complaint or dismissing the complaint, or where the jurisdiction or handling of the Complaint by the Integrity Commissioner is terminated for any other reason, notify the Complainant, the Member whose conduct was complained of, and the City Clerk, of that fact, and provide to each of them a copy of any report to Council which the Integrity Commissioner has decided to file with the Council as a matter of public record.
 - (5) Where the Integrity Commissioner has filed a report in respect of a Complaint or inquiry, with the City Clerk, the City Clerk shall place the report on the next available Council agenda as an information item.
 - (6) Subject to this By-law and the Code of Conduct, the dismissal or other termination of a complaint does not foreclose the Complainant or any other party from filing any Complaint to the Integrity Commissioner alleging any other contravention of the Code of Conduct.

Budget for the Office of the Integrity Commissioner

20.
 - (1) The Integrity Commissioner shall submit her or his proposed annual budget directly to the City Clerk.

- (2) The budget submitted shall include all anticipated costs and expenses for the operation of the office of the Integrity Commissioner for the calendar year, excepting only expenses for the conduct of an inquiry under the *Public Inquiries Act*.
- 21.
- (1) If the Integrity Commissioner is satisfied that it is necessary to exercise any of the powers under the *Public Inquiries Act* to complete an inquiry, she or he shall prepare and file, forthwith, with the City Clerk, a report to Council setting out the circumstances and reasons for the exercise of these powers.
 - (2) The report shall:
 - (a) describe the efforts which the Integrity Commissioner has made to gather necessary evidence and information, and otherwise to complete the inquiry without resorting to the exercise of powers under the *Public Inquiries Act*.
 - (b) explain why the Integrity Commissioner considers it necessary to exercise the powers under the *Public Inquiries Act*;
 - (c) set out the steps which the Integrity Commissioner anticipates taking under the *Public Inquiries Act*, and
 - (d) explain how the steps will comply.
 - (3) Where the Integrity Commissioner files a report under this section with the City Clerk, the City Clerk shall place the report on the next available Council Agenda as an information item.
 - (4) Subsequent to filing her or his report, the Integrity commissioner shall provide, forthwith, to the General Manager of Finance and Corporate Services an estimate of all anticipated costs and expenses which will be incurred in exercising the powers under the *Public Inquiries Act*.
 - (5) The Integrity Commissioner shall ensure that all reasonable steps are taken to minimize the anticipated costs and expenses without hampering the ability of the Integrity Commissioner to complete the inquiry.
 - (6) Where the Integrity Commissioner becomes aware that the costs and expenses may exceed the estimate, he or she shall provide forthwith a revised estimate to the General Manager of Finance and corporate services.
 - (7) Upon being provided with an estimate or a revised estimate, the General Manager of Finance and Corporate Services shall make provision for the payment of the estimate or revised estimate for the information of the council, and, if necessary, for the council to consider the source of funding.

Confidentiality

22. (1) The Integrity Commissioner is entitled to have access to such information belonging to or used by the City, including legal advice that has been given to Council, Standing Committees, the Board of Health or City Departments, as she or he is satisfied is necessary to conduct an inquiry.
- (2) A disclosure to the Integrity Commissioner of legal advice:
- (a) shall be deemed not to constitute a waiver of solicitor-client privilege;
 - (b) shall be used only for the purpose of conducting an inquiry and not for any other purpose; and
 - (c) shall not, in content or substance, be disclosed in any public report prepared by the Integrity Commissioner or any person acting under the instructions of the Integrity Commissioner, including a delegate of the Integrity Commissioner.
23. The Integrity Commissioner, and every person acting under the instructions of the integrity Commissioner, including a delegate of the Integrity Commissioner:
- (1) shall preserve the secrecy of all confidential documents, material and information, whether belonging to the City or not, that come into her or his possession or knowledge in the course of the performance of responsibilities as the Integrity Commissioner; and
 - (2) without limiting the obligation to preserve secrecy, shall ensure that she or he complies with, and any report which he or she prepares, complies with, the *Municipal Freedom of Information and Protection of Privacy Act*, the Council Procedure By-law regarding personal and personnel information, and all other applicable law.
24. (1) Despite any other provision of this By-law, no Complaint may be referred to the Integrity Commissioner, or filed with the City Clerk, within the period of 90 days immediately prior to a regular election held pursuant to the *Municipal Elections Act, 1996*.
- (2) The 90 days shall not be included in the calculation of the 180-day limitation period prescribed under this By-law.
25. (1) The Integrity Commissioner may, in writing, delegate her or his duties to conduct an inquiry, including the exercise of powers under the *Public Inquiries Act*, to another person.

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- (2) In making the delegation, the Integrity Commissioner shall first satisfy herself or himself that the person to whom the duties are to be delegated, is fully capable of carrying out such duties, and has no conflict of interest in so doing.
 - (3) The Integrity Commissioner may, at any time, revoke a delegation made under subsection 25(1), and carry out the delegated duties himself or herself.
 - (4) The Integrity Commissioner may, at any time, revoke a delegation made, and may make another such delegation.
26. If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other *Act* or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge, or other appropriate proceedings, have been finally disposed of, and shall report the suspension to the Council.
27. Appendix A, which is attached to this By-law, forms a part of it.
28. This By-law may be referred to as the Integrity Commissioner By-law.
29. This By-law comes into force on the day it is passed.
30. By-law No. 08-154 is repealed.

PASSED this 26th day of October, 2016.

Fred Eisenberger
Mayor

Rose Caterini
City Clerk

APPENDIX A: STATEMENT OF COMPLAINT

Please note that a Member of Council who is the subject of a Complaint under the Integrity Commissioner By-law shall be informed of the identity of the Complainant.

NAME OF COMPLAINANT:

I,(full name of individual signing and filing this Complaint on behalf of the Complainant, if different from that of the "Complainant")

of the.....(municipality of residence),

HEREBY MAKE THIS COMPLAINT AGAINST:

(Name of Member or Members of Council alleged to have contravened the Code of conduct for Members of the City Council of the City Of Hamilton)

The Complainant is (choose appropriate description of Complainant):

- acting on behalf of and pursuant to the direction of, the City Council;
- a Member of City Council;
- a City employee;
- a City resident;
- a person or body which has business, institutional or other premises in the City.

I, [or the Complainant, if different from the person filing this Complaint] have/has knowledge of the statements made in this Complaint, by reason of:

- my personal observations;
- my personal knowledge;
- my personal observations;
- documentation and/or records attached;

- other information etc.

I have reasonable and probable grounds to believe that the following Member (s) of the City Council of the City of Hamilton has/have contravened the Code of Conduct for Members of Council, as follows:

Name of Member:

Date(s) and time(s) of Contravention:

Conduct:

(set out statements of fact in consecutively numbered paragraphs in the space below or attached, with each paragraph being confined, as far as possible, to one paragraph);

If you require more space, please attach an additional page or pages, numbered consecutively, with a statement at the top of each additional page or pages that the contents form part of this Complaint);

If you wish to include documents or other exhibits to support this Complaint, please refer to them as "Exhibit A", "B", etc., and attach them to this statement of Complaint;

If you are relying on the information of others, please indicate this and identify the source of the information, by name, with contact information, if possible:

Please specify the number of additional pages attached, and any other available sources of information.

Names of any other persons who may have witnessed the contravention(s), and particulars of their contact information:

MY PERSONAL CONTACT INFORMATION:

Address:

Telephone Number;

Cellphone Number:

Email address:

Any other contact information:

This Statement of Complaint is made and filed for the purpose of making a Complaint regarding the conduct of one or more Members of the City Council of the City of Hamilton by the City's Integrity Commissioner, for his or her consideration, and for no other or improper purpose.

Personal information contained on this form is collected under the authority of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, and other legislation, and will be used for the purpose of an inquiry by the Integrity Commissioner into a Complaint regarding a Member of City Council pursuant to the Integrity Commissioner By-law of the City, and the City Council Code of Conduct. Questions about this collection may be directed to: (need to insert details of either the City Clerk or the Integrity Commissioner)