



City of
Peterborough

To: Members of the Committee of the Whole

From: Patricia Lester, City Solicitor & Director of Legal Services

Meeting Date: May 30, 2016

Subject: Report OCS16-003
A Report on a Code of Conduct for Council

Purpose

A report to provide information on a Code of Conduct for Council and how it may be integrated into City Council.

Recommendations

That Council approve the recommendations outlined in Report OCS16-003 dated May 30, 2016, of the City Solicitor & Director of Legal Services, as follows:

- a) That the Report be received for information; and
- b) That Council appoint a committee of Council comprised of up to five members to review a Code of Conduct.

Budget and Financial Implications

There are no budget or financial implications associated with adopting a Code of Conduct (the "Code").

If Council retains an Integrity Commissioner on an as-need basis there will be financial implications, if and when the services are called upon and based upon the terms of a retainer agreement.

Depending on the negotiated terms of the retainer agreement, there may be an annual retainer fee plus an hourly rate or simply an hourly rate. The cost can be paid out of the City's general Contingency account.

Background

At the Committee of the Whole meeting of September 21, 2015 Council directed staff to provide a report on a Code of Conduct for Council and how it may be integrated into Peterborough City Council. At the September 28, 2015 meeting of City Council, staff were also asked to provide Council with the number of municipalities that have a Council Code of Conduct.

Legislative Authority

In 2006 the Province enacted the **Municipal Statute Law Amendment Act, 2006** which made significant amendments to the **Municipal Act, 2001** ("Act"). Some of the new accountability powers given to municipalities included the ability to establish codes of conduct to govern the ethical behaviour of members of councils and local boards and establish four new accountability officers: an integrity commissioner; auditor general; lobbyist registrar; and municipal ombudsman.

Previous Councils have considered adopting a Code, including retaining outside legal counsel to draft one, but no Code has been approved to-date. At present the conduct of City Council is regulated by Provincial legislation, City by-laws and policies. The City's Procedural By-Law, deals in part with Council members conduct at meetings; improper language (written and verbal) and the questioning of the integrity of a member.

Council is also subject to corporate-wide policies for example, the Workplace Harassment and Discrimination Policy and the Workplace Violence Prevention Policy, which have been set by provincial legislation. All City employees are subject to a Code of Conduct, Policy and Procedures.

While the **Municipal Act, 2001** does not specifically define the role and responsibilities of an individual member of council (other than the head of council), the Act as a whole and the statutory, legal and practical history of municipal governance in Ontario, provides that a member of a municipal council is intended to act as one member of a collective decision-making body. The role of a municipal councillor involves and requires co-operation and orderly participation with other members.

The Act requires every municipal council to pass a procedure by-law for the governing of the calling, place and proceedings of meetings. The Act also provides in section 223.2(1) that a municipal council may establish a Code for its members and for local boards.

In section 223.3 of the Act, a municipality may appoint an Integrity Commissioner (“IC”) who reports to Council and who is responsible for performing, in an independent manner, the functions assigned by the municipality with respect to, among other things, the application of a Code. The appointment of an IC is not mandatory nor are they required to be a municipal employee.

Practices in other communities

A. Code of Conduct

Attached as Appendix “A” to this report is a Summary - Council Codes of Conduct (“Summary”). Of the 444 municipalities in the province, approximately 25% would have a Code for council and/or local boards. Virtually all of Ontario’s largest municipalities have adopted a Code.

Although the Summary lists specific conduct, typically a Code addresses standards for:

- ethical behaviour;
- interactions between Council members;
- interactions between Council members and staff, residents and other stakeholder’s; and
- appropriate use of City resources.

In addition, the key statements of principle that underline many Codes are as follows:

- (a) Members of Council shall serve and be seen to serve all constituents in a conscientious and diligent manner;
- (b) Members of Council should 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 are expected to 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 of the Federal Parliament and Ontario Legislature, and the laws and policies adopted by City Council.

B. Integrity Commissioner

A municipality may appoint an IC, either on a formal basis or on retainer. The retainer model for the ICs is used by many municipalities, the exception being the City of Toronto which employs an Integrity Commissioner on a full-time basis.

If Council wishes to enact a Code and elects to appoint an IC, then Staff believes the retainer model is the most cost-effective model. Council would need to consider the scope of the IC's mandate; a complaint, investigation and appeal protocol and the terms and costs of the retainer agreement.

Other municipalities have determined that a council on its own initiative will resolve any compliance issues. Although a Code enacted by By-Law cannot provide for a member who contravenes its terms to be found guilty of an offence (like under a Provincial statute), a Code can provide for procedures and possible sanctions where requirements are not met. This may include a reprimand or suspension of the councillor's remuneration for a period of up to 90 days, but would only be applicable if the municipality appoints an IC.

Some municipalities who have appointed an IC also use that individual for investigating closed meetings of Council. Section 239.1 of the Act, establishes a process for an individual to request an investigation into whether or not a council has complied with a closed meeting conditions. At present, the City uses Amberly Gavel Ltd., a company affiliated with the Association of Ontario Municipalities subsidiary Local Government Services Limited to conduct any closed meeting investigations. Council may wish to consider if they retain an IC whether that individual should also investigate closed meetings of council.

Bill 8 – Public Sector and MPP Accountability and Transparency Act, 2014 ("Public Sector Act")

Effective January 1, 2016 the **Public Sector Act** has provided the Ontario Ombudsman with vast oversight respecting municipalities over matters that have been strictly within the realm of municipal affairs. Where local accountability officers are appointed (i.e. an integrity commissioner; auditor general; lobbyist registrar and municipal ombudsman) the Ontario Ombudsman is allegedly only to investigate complaints within the jurisdiction of the local accountability officers after local processes have been completed. The potential impact of the **Public Sector Act** on Council's decision to appoint an IC must be considered.

Options to Consider

In reviewing what a Code may contain and to whom it may apply, Council may wish to consider the following aspects:

1. that Council consider whether or not to make its Code applicable to committees of Council and/or to certain boards of the City;
2. that Council consider whether or not the Code would be enforced and if so, would Council retain an IC or would Council itself resolve any Code compliance issues through Council as a whole;
3. that Council consider if an IC is to be retained then the scope of the IC's mandate (including whether the IC be utilized for closed meeting investigations); a complaint, investigation and appeal protocol and the terms and costs of the retainer agreement should be determined; and
4. that Council ensure there are no inconsistencies between the Code, City policies and procedures and by-laws.

Summary

Adopting a Code of Conduct and retaining the services of an IC may assist Council to ensure and maintain high standards of conduct from all government officials and will protect and enhance the City's reputation for integrity and its ability to provide transparent and accountable government to the public.

Therefore it is recommended that a committee of Council comprised of up to five members be appointed to review a Code.

Submitted by,

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Director of Legal Services

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Attachment: Appendix "A" – Summary – Council Codes of Conduct