

APPENDIX “B”

THE CORPORATION OF THE CITY OF LONDON CODE OF CONDUCT FOR MEMBERS OF COUNCIL COMPLAINT PROTOCOL

AUTHORITY

Section 223.3 of the *Municipal Act, 2001* authorizes a municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the powers and duties assigned by the municipality with respect to the application of the code of conduct for members of council.

Sections 223.4 of the *Municipal Act, 2001* provides that an Integrity Commissioner has certain powers duties and protections.

The Code of Conduct for Members of Council was adopted by Council by By-law No. A.-6957-158 on April 30, 2013.

This Complaint Protocol was adopted by Council by [cite by-law and date].

PART A: INFORMAL COMPLAINT PROCEDURE

Any person or a representative of an organization who has identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the *Code of Conduct for Members of Council* (the “Code”) may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that the behaviour or activity contravenes the Code;
- (2) encourage the member to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) if applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and
- (5) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

All persons and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

PART B: FORMAL COMPLAINT PROCEDURE:

Integrity Commissioner Requests for Inquiries - Section 1

1. (1) A request for an investigation of a complaint that a member has contravened the Code (the “complaint”) shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier and shall be in writing.
- (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code. For example, the complaint should include the name of the alleged violator, the provision of the Code allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.

- (4) For any complaint received from and after July 1 in any municipal election year, the Integrity Commissioner shall stay any investigation required by such complaint until the date after the inaugural meeting of the new Municipal Council and until then, shall keep such complaint confidential.

Initial Classification by Integrity Commissioner - Section 2

2. (1) Upon receipt of the complaint, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or other Council Policies as described in subsection (2).
- (2) If the complaint is not, on its face, a complaint with respect to non-compliance with the Code or the complaint is covered by other legislation or a complaint procedure under another Council Policy, the Integrity Commissioner shall advise the complainant in writing as follows:
- (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
 - (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred for review to the City Clerk;
 - (d) if the complaint on its face, is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure;
 - (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate; and
 - (f) if the Integrity Commissioner receives a complaint during a municipal election year respecting a member who is seeking re-election and he is of the opinion that it is politically motivated, he may stay the investigation until after the new Municipal Council takes office or dismiss it if he concludes it is specious.
- (3) The Integrity Commissioner may report to Municipal Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.
- (4) The Integrity Commissioner shall report semi - annually to Municipal Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation - Sections 3 – 8

3. (1) If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- (2) Other than in exceptional circumstances, the Integrity Commissioner will not report to Municipal Council on any complaint described in subsection (1) except as part of a semi- annual or other periodic report.
4. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and in so doing, at any time may attempt to settle the complaint.

- (2) Upon receipt of a formal complaint pursuant to the Code, and where the Integrity Commissioner determines that the complaint meets the criteria to be investigated, the Integrity Commissioner may elect to conduct an informal investigation, which may include mediation, or alternatively to exercise the powers of a Commission under Parts I and II of the *Public Inquiries Act*, as contemplated by subsection 223.4(2) of the Act.
 - (3) When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.
5. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
- (a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days; and
 - (b) serve a copy of the response provided upon the complaint with a request for a written reply within ten days.
- (2) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act*, and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.
 - (3) The Integrity Commissioner shall not issue a report finding a violation of the Code on the part of any member unless the member has had reasonable notice of the basis for the proposed finding and any recommended penalty and an opportunity either in person or in writing to comment on the proposed finding and any recommended penalty.
 - (4) The Integrity Commissioner may make interim reports to Municipal Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during an investigation.
6. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the making of the complaint.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Municipal Council outlining the findings, the terms of any settlement or recommended penalty. The City Clerk shall process the report for the next meeting of Municipal Council.
 - (3) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behavior or activity does not continue.
 - (4) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Municipal Council except as part of a semi-annual or other periodic report.
7. If the Integrity Commissioner determines that there has been no contravention of the Code or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

Municipal Council Review – Section 8

- 8. (1) Municipal Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- (2) In responding to the report, Municipal Council may vary a recommendation that impose a penalty, subject to section 223.4, subsection (5) of the *Municipal Act*, but shall not refer the recommendation other than back to the Integrity Commissioner.

- (3) Upon receipt of recommendations from the Integrity Commissioner, Municipal Council may, in circumstances where the Integrity Commissioner has determined there has been a violation of the Code imposes either of two penalties:
 - (a) a reprimand; or
 - (b) suspension of the remuneration paid to the member in respect of his/her services as a Member of Council or a local board, as the case may be, for a period of up to 90 days.

Confidentiality – Section 9

9.
 - (1) A complaint will be processed in compliance with the confidentiality requirements in sections 223.5 and 223.6 of the *Municipal Act*, which are summarized in the following subsections.
 - (2) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding.
 - (3) All reports from the Integrity Commissioner to Council will be made available to the public.
 - (4) Any references by the Integrity Commissioner in a semi-annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.
 - (5) The Integrity Commissioner in a report to Council on whether a member has violated the Code shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.