

August 13, 2012

Chair and Members
Finance and Administrative Services Committee

Re: Voluntary Disclosure of Pecuniary Interests

Recommendation: That the City Clerk be directed to bring forward a by-law to implement the attached amendment to the Code of Conduct for Members of Municipal Council and Members of Council be encouraged to provide the voluntary information to the City Clerk for retention in the City Clerk's Office.

Background: At the July 24 and 25, 2012 meeting of Municipal Council, I enquired as to the possibility of Council members voluntarily disclosing potential conflicts of interest as described by the *Municipal Conflict of Interest Act* (MCIA). At that meeting, it was suggested I bring my request to the next Finance and Administrative Services Committee. This document outlines the recommended changes I am proposing to the Code of Conduct for Members of Municipal Council, in order to provide a process for up front voluntary disclosure of potential conflicts of interest. This would complement the current process for disclosures of pecuniary interest at Council and Committee meetings.

Public confidence and trust in elected officials is the corner stone of good governance. Up front disclosure by municipal councillors of potential conflicts of interest assists by demonstrating accountable and open conduct; the appearance of a conflict of interest in the absence of factual data can be as detrimental to public confidence as an actual conflict. Municipal lawyer Stephen D'Agostino notes, "The *Municipal Conflict of Interest Act* places a significant burden and risk upon local representatives. The standard of care in the *Act* is greater than that placed on elected representatives at the federal and provincial levels." He further notes that, "When considering whether a potential conflict exists, it must be remembered that the conflict may pertain to the councillor's spouse, same-sex partner, child, or parent and still require a declaration since their interest is deemed to be the interest of the councillor...As a result, councillors have a strategic obligation and may have a legal one to ensure that they have an understanding of the affairs of their parents, children, and partners as they are defined in the *Act*." The disclosure policy amendment being proposed represents full disclosure derived using the *MCIA* as the guideline. It is important to recognize that the *MCIA* is a minimum standard (O'Connor & Rust-D'Eye) and this policy does not negate a member of Councils' obligations under any Act pertaining to the conduct of a member of Council. It is also recognized that the policy is voluntary as there are no provisions in the *MCIA* with respect to up front voluntary disclosure.

Respectfully submitted,

Joni Baechler
Councillor Ward 5

Reference Material

The *Municipal Conflict of Interest Act R.S.O. 1990, Chapter M.50* states the following with respect to pecuniary interest (excerpts from: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m50_e.htm)

Indirect pecuniary interest

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body,
that has a pecuniary interest in the matter; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

Definitions

1. In this Act,

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family; (“enfant”)

“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; (“père ou mère”)

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. M.50, s. 1; 1997, c. 25, Sched. E, s. 7; 1997, c. 31, s. 156 (1); 1999, c. 6, s. 41 (1); 2002, c. 17, Sched. F, Table; 2005, c. 5, s. 45 (1, 2); 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 32, Sched. D, s. 10; 2007, c. 8, s. 219.

“controlling interest” means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding; (“intérêts majoritaires”)

Duty of Member

When present at meeting at which matter considered

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting

- (2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

When absent from meeting at which matter considered

- (3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1). R.S.O. 1990, c. M.50, s. 5 (3).

Where s. 5 does not apply

4. Section 5 does not apply to a pecuniary interest in any matter that a member may have,
- (a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
 - (b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
 - (c) by reason of the member purchasing or owning a debenture of the municipality or local board;
 - (d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;
 - (e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;
 - (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;
 - (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
 - (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;
 - (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
 - (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
 - (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1).