

Schedule A of By-law 51-2015 Complaint Procedure

Purpose

The purpose of this procedure is to provide a process for persons to make complaints concerning a member of Council or Directors of the Board of Management for the Oshawa Central Business District Improvement Area regarding alleged contraventions of the Code of Conduct.

For the purposes of this procedure, the term “member” shall include both Members of Council and Directors of the Board of Management of the Oshawa Central Business District Improvement Area.

Complaints under the Code of Conduct

A - Informal Complaints

1. Any person who believes that a member is in contravention of the City of Oshawa’s Code of Conduct may address their concerns in the following manner:
 - a) advise the member that their behaviour or activity contravenes the Code of Conduct;
 - b) encourage the member to stop the prohibited behaviour or activity;
 - c) if applicable, confirm to the member their satisfaction or dissatisfaction with the member’s response to the concern identified; and
 - d) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.
2. If any person is not satisfied with the response received through the aforementioned informal process, the person may proceed with a formal complaint through the Integrity Commissioner as outlined under the heading of Formal Complaints in this procedure.

B - Formal Complaints

Filing the Complaint

1. Any person who has reasonable grounds to believe that a member has contravened the Code of Conduct may address their concerns through the formal complaint process set out below:
 - a) all formal complaints (“Complaints”) must be made in writing using the City’s Complaints Form (see Form “A”) and shall be dated and signed by the person making the Complaint (the “Complainant”);

- b) the Complaint must include an explanation as to why the issue raised may be a contravention of the Code of Conduct and any evidence in support of the allegation must be included with the Complaints Form;
 - c) any witnesses in support of the allegation must be identified on the Complaint Form;
 - d) the Complaint Form must include the name of the member alleged to have breached the Code of Conduct, the specific provision(s) of the Code of Conduct allegedly contravened, the date, time and location of the alleged contravention(s) and any other information as required on the Complaint Form;
 - e) the Complaint shall be filed with the Integrity Commissioner who will determine whether the matter is, on its face, a Complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or policies; and
 - f) the Complaint must be submitted to the Integrity Commissioner no later than six (6) months from the date on which the Complainant became aware of the alleged contravention, and no action will be taken on a Complaint received after this deadline.
2. The Integrity Commissioner will advise the City Clerk when a Complaint is received, assign a file number to the Complaint and provide updates to the Clerk on the status of the Complaint.
 3. The Integrity Commissioner may request additional information from the Complainant in order to properly assess the Complaint.
 4. A Complainant may at any time abandon a Complaint.

Complaints Outside Jurisdiction

1. If the Complaint received by the Integrity Commissioner does not relate to a noncompliance with the Code of Conduct, it will be deemed not to be a Complaint and the Integrity Commissioner shall advise the Complainant in writing as follows:
 - a. Criminal Matter — if the Complaint is an allegation of a criminal nature consistent with the Criminal Code, R.S.C. 1985, c. C-46, the Complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
 - b. Municipal Freedom of Information and Protection of Privacy — if the Complaint is more appropriately addressed under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, the Complainant shall be referred to the Clerk to have the matter reviewed under that statute; or

- c. Other Matters – if the matter is covered by other policies or legislation, the Complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

Refusal to Conduct an Investigation/Discontinuance of Investigation

If upon review of a Complaint, or at any time during an investigation, the Integrity Commissioner is of the opinion that the Complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation or shall discontinue the investigation and shall communicate this position in writing to the Complainant and the member identified in the Complaint Form. The Integrity Commissioner is under no obligation to prepare a report for any matters that he or she summarily dismisses or determines not to investigate or after an investigation is discontinued.

Opportunity for Resolution

If at any time, following the receipt of a Complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the Complainant and the member agree, efforts may be made to achieve an informal resolution. The formal Complaint will be held in abeyance during such time.

Investigation

1. If the Integrity Commissioner determines that a formal investigation is required, he or she shall:
 - a. provide a copy of the Complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within ten (10) days;
 - b. provide a copy of the response provided by the member to the Complainant with a request for a written reply within ten (10) days;
 - c. have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality that the Integrity Commissioner believes to be necessary for an investigation; and
 - d. make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation, if any, encountered during the investigation.
2. The Integrity Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, S.O. 2009, c. 33, Sched. 6, in which case those sections apply to the investigation.

Co-operation

A Member shall co-operate in every way possible with the Integrity Commissioner in any investigation of a Complaint and the enforcement of the Code of Conduct.

Suspension of Investigation

The Integrity Commissioner will cease the investigation if:

- a) a Complainant abandons the request for an investigation, in which case the Integrity Commissioner shall report to Council as set out in Section 9; or
- b) the Integrity Commissioner determines that there are reasonable grounds to believe that there has been a contravention of any other statute or of the Criminal Code, in which case the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge(s) have been finally disposed of, and shall report the suspension to Council.

Report and Recommendation

- 1. The Integrity Commissioner shall report to the Complainant and the member on the results of his or her review within sixty (60) days of receiving a complete Complaint Form/Affidavit upon completion of an investigation. If the investigation process requires more than sixty (60) days, the Integrity Commissioner shall provide an interim report to the Complainant and member indicating when the complete report may be available.
- 2. If during the investigation process, the Complaint is withdrawn, sustained or resolved, the Integrity Commissioner shall report to Council outlining the findings, the terms of any resolution and any recommended action within thirty (30) days.
- 3. If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred but the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in its report to Council.
- 4. If upon completion of the investigation, the Integrity Commissioner finds that a breach of the Code of Conduct has occurred, the Integrity Commissioner shall report his or her findings to Council including a recommendation as to the imposition of a penalty as set out in subsection 223.4(5) of the Municipal Act, 2001 S.O. 2001, c. 25, namely either:
 - a) a reprimand; or
 - b) a suspension of remuneration paid to the member for a period of up to ninety (90) days.

5. Code of Conduct investigative reports received from the Integrity Commissioner will be placed on the appropriate City Council agenda as direction from Council is required and will be placed on the City's website on the Accountability and Transparency webpage, as applicable.
6. The report from the Integrity Commissioner shall only disclose such information that in the Integrity Commissioner's opinion is required for the purposes of the report.

No Complaints or Reports Prior to Election

1. If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, as set out in Section 31 of the Municipal Elections Act, 1996, the Integrity Commissioner shall terminate the inquiry on that day.
2. If an inquiry is terminated the Integrity Commissioner shall not commence another inquiry in respect of the matter unless, within six (6) weeks after voting day in a regular election, as set out in Section 5 of the Municipal Elections Act, 1996, the person or entity who made the request or the Member whose conduct is the subject matter of the request, makes a written request to the Integrity Commissioner that the inquiry be commenced. No inquiry respecting a former Member may be commenced.
3. Between Nomination Day and Voting Day in a regular election:
 - a) There shall be no requests for an inquiry, and the Integrity Commissioner shall not accept any requests for an inquiry, respecting whether a Member has contravened the Code of Conduct.
 - b) The Integrity Commissioner shall not report to Council on whether a Member has contravened the Code of Conduct or the Municipal Conflict of Interest Act; and
 - c) Council shall not consider whether to impose penalties on a Member.

No Appeal of Integrity Commissioner's Decision

There is no appeal of the decision of the Integrity Commissioner.

Confidentiality

The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the City or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act 2001.

Delegation

The Integrity Commissioner may delegate in writing to any person, other than a member, any of the Integrity Commissioner's powers and duties.