

being a by-law to establish a Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and for local boards.

Whereas subsection 223.2(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality;

It is hereby enacted as a by-law of The Corporation of the City of Oshawa by its Council as follows:

1. This by-law establishes a Code of Conduct for Members of the Council of The Corporation of the City of Oshawa and for local boards.
2. The short title of this by-law is “Code of Conduct”.

Definitions

3. In this by-law:
 - (a) “Applicant” means an elector or any person demonstrably acting in the public interest who has applied in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act;
 - (b) “child” means a child born within or outside marriage and includes an adopted child and a person whom a Member has demonstrated a settled intention to treat as a child of her or his family;
 - (c) “City” means The Corporation of the City of Oshawa;
 - (d) “Code of Conduct” means the Code of Conduct for Members of the Council of the Corporation of the City of Oshawa and for local boards established by this by-law;

- (e) "Committee" means a Standing Committee, Committee of the Whole or another body established by City Council (or local boards, as applicable) wholly comprised of Members;
- (f) "Complainant" means any person who believes that a Member is in contravention of the Code of Conduct and submits a formal complaint to the Integrity Commissioner;
- (g) "confidential information" includes:
 - i) any information in the possession of, or received in confidence by, the City that the City is prohibited from disclosing, or has decided to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*, or any other law;
 - ii) information of a corporate, commercial, scientific or technical nature received in confidence from third parties;
 - iii) personal information;
 - iv) information that is subject to solicitor-client privilege;
 - v) information that concerns any confidential matters pertaining to personnel, labour relations, legal proceedings, property acquisition or disposition, or the security of the property of the City or a local board;
 - vi) a matter, the substance of a matter, and information pertaining to a matter, that has been included on an agenda or that has been debated or discussed at a meeting of Council or one of its Standing Committees or of a local board that is closed to the public; and
 - vii) any other information lawfully determined by the Council to be confidential, or required to remain or be kept confidential by legislation or order.
- (h) "Council" means the Council of The Corporation of the City of Oshawa;

- (i) Deleted (172-2022);
- (j) "Harassment" includes:
 - i) any comment, conduct, action or gesture that is unwelcome or that ought reasonably to be known to be unwelcome that could affect a person's dignity or a person's psychological or physical health; and
 - ii) Sexual Harassment, which includes any comment, conduct, action or gesture of a sexual nature or respecting sexual orientation, gender identity or gender expression that is unwelcome or that ought reasonably to be known to be unwelcome including:
 - a. a sexual advance, solicitation or request for a sexual favour;
 - b. a reprisal or threat related to the rejection of a sexual advance, solicitation or request for a sexual favour where the reprisal or threat is influenced or made by a person in a position to confer or deny a benefit to the person who rejects the sexual advance, solicitation or request for a sexual favour;
 - c. a comment, joke, innuendo or taunt about a person's body, attire, personal life or social life;
 - d. a practical joke of a sexual nature or respecting sexual orientation, gender identity or gender expression which could cause awkwardness or embarrassment;
 - e. a display or distribution by any media of pornographic images or other material of a sexual nature;
 - f. leering or other gestures of a sexual nature;
 - g. unwelcome physical contact including touching, patting or pinching;
 - h. an expression of gender bias including expressions that are discriminatory, degrading or derogatory; and
 - i. sexual assault;
- (k) "information" includes a record or document, whether in printed form, on film, by electronic means or otherwise;

- (l) "Integrity Commissioner" means each person or persons from time to time appointed pursuant to section 223.3 of the *Municipal Act, 2001*;
- (m) "lobbyist" means a person that communicates with a Member for the purpose of influencing or attempting to influence the Member respecting an issue that is or may be pending before Council or one of its Standing Committees;
- (n) "Member" or "Members" means each member of the Council and each Director of the local board, as applicable;
- (o) "parent" means a person who has demonstrated a settled intention to treat a child as a part of her or his family whether or not that person is the natural parent of the child;
- (p) "person" includes a corporation, partnership, association and any other entity as the context allows;
- (q) "personal information" includes recorded information about an identifiable individual as defined in Section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (r) "spouse" means a person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

Principles upon which This Code of Conduct is Based

4. Improving the quality of municipal administration and governance can best be achieved by encouraging high standards of conduct on the part of all municipal officials. In particular, the public is entitled to expect the highest standards of conduct from the Members whom they elect to local government and who are appointed as Directors of the local board. In turn, adherence to these standards will protect and maintain the City's reputation and integrity.

5. Key statements of principle that underlie this Code of Conduct are as follows:
- (a) Members must serve and be seen to serve their constituents in a conscientious and diligent manner;
 - (b) Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest;
 - (c) Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;
 - (d) Members must recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible; and
 - (e) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Council.

Application of this Code

6. This Code of Conduct applies to each Member in the execution of any of the duties of their office.

Compliance with Declaration of Office

7. Each Member shall act in accordance with her or his declaration of office or terms of appointment, as applicable.

Adherence to Council Policies and Procedures

8. Each Member shall observe and comply with every provision of this Code of Conduct as well as with all other policies and procedures adopted or established by Council affecting the Member. This Code of Conduct shall prevail to the extent of any inconsistency between this Code of Conduct and any of the aforementioned policies or procedures.

Conduct at Meetings

9. Each Member shall conduct herself or himself properly and in a civil manner at Council, Committee and other meetings, and in accordance with the provisions of the Procedure By-law 111-2017 as from time to time amended, this Code of Conduct, the procedural rules adopted by the local board and other applicable law.

Conduct Respecting Others

10. Each Member has the duty and responsibility to treat members of the public, each other Member and staff appropriately and without abuse, bullying or intimidation, and to ensure that the City's work environment is free from discrimination and Harassment. Without limitation, a Member shall not:
 - (a) use indecent, abusive or insulting words or expressions toward any other Member, any member of staff or any member of the public;
 - (b) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability; or
 - (c) engage in any Harassment of any other Member, any member of staff or any member of the public.

Conduct Respecting Staff

11. Under the direction of the senior City administration, and in accordance with the decisions of Council, City staff are required to serve the municipal corporation as a whole and staff of the local board are required to serve it. Each Member shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any Member.
12. No Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
13. Each Member shall show respect for staff, and for their professional capacities and responsibilities.

14. No Member shall compel any member of staff to engage in partisan political activities or subject any member of staff to threat or discrimination for refusing to engage in any such activity.
15. No Member shall use or attempt to further her or his authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that person's duties, including the duty to disclose improper activity.

Gifts and Benefits

16. For the purposes of this Code of Conduct, a gift or benefit provided, with the Member's knowledge, to the Member's spouse, child or parent, that is connected directly or indirectly to the performance of the Member's duties, is deemed to be a gift or benefit to that Member.
17. No Member shall accept a fee, advance, gift or personal benefit that is related directly or indirectly with the performance of her or his duties of office, unless permitted under one or more of the following exceptions:
 - (a) compensation authorized by law;
 - (b) a gift or benefit of the kind that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation;
 - (c) a political contribution otherwise authorized and reported as required by law, in the case of a Member running for office;
 - (d) services provided without compensation by a person volunteering her or his time;
 - (e) a suitable memento of a function honouring the Member;
 - (f) food, lodging, transportation or entertainment lawfully provided by any Provincial, regional or local government or board or political subdivisions of any of them, by the Federal government, a foreign government, or by those

organizing a conference, seminar or event where the Member is speaking or attending in an official capacity;

- (g) food and beverages consumed at a banquet, reception or similar event, if:
 - i) attendance by the Member is for a legitimate City purpose;
 - ii) the person extending the invitation, or a representative of the organization holding the event, is in attendance; and
 - iii) the value is reasonable;
 - (h) communications to the office of a Member, including subscriptions to newspapers and periodicals; and
 - (i) a sponsorship or donation for a community event organized or run by a Member, or a third party on behalf of a Member, subject to the limitations set out in any applicable Council policy or this Code of Conduct.
18. Except for exception 17(c) (political contributions allowable by law), these exceptions do not apply where a gift or benefit is provided by a lobbyist or a lobbyist's client or employer.
19. In the case of any of the exceptions 17(b), 17(e), 17(f), 17(h) and 17(i), if the value of the gift or benefit exceeds \$300.00, or if the total value of gifts or benefits received from any one source during the course of a calendar year exceeds \$300.00, the Member shall file, within 30 days of receipt of the gift or benefit, or of reaching the annual limit, a disclosure statement with the Clerk of the City. The disclosure statement must set out:
- (a) the nature of every gift or benefit received;
 - (b) its source and date of receipt;
 - (c) the circumstances under which it was given and received;
 - (d) its estimated value;

- (e) what the recipient has done or intends to do with any gift; and
 - (f) whether any gift will at some point be provided to the City.
- 20. The City Clerk shall cause each disclosure statement to be published as part of an agenda for an open meeting of Council.
 - 21. Council shall decide whether to refer a disclosure statement to an Integrity Commissioner.
 - 22. If Council decides to refer a disclosure statement to an Integrity Commissioner, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, constitute a contravention of this Code of Conduct or create a conflict between a private interest and the public duty or responsibilities of the Member. In the event that the Integrity Commissioner makes such a determination, she or he shall call upon the Member to justify receipt of the gift or benefit.
 - 23. If the Integrity Commissioner determines that receipt of any gift or benefit was inappropriate, she or he may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, forfeit the gift or remit to the City the value of any gift or benefit already consumed.
 - 24. Except in the case of exceptions 17(a), 17(c), 17(f) and 17(i), no Member shall accept a gift or benefit worth in excess of \$500.00, or gifts or benefits from one source during a calendar year which together are worth in excess of \$500.00.

Confidential Information

- 25. No Member shall disclose, release or publish by any means to any person or to the public any confidential information of the City or of the local board, whether or not acquired by virtue of her or his office, except when required or authorized by Council or of the local board, as applicable, or otherwise by law to do so.
- 26. No Member shall use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person.

27. No Member shall disclose a matter, the substance of the matter and information pertaining to the matter that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential unless authorized by the Council or the local board or other legislation to be released, generally or subject to conditions and are such complied with.
28. No member shall disclose the content of any matter referred to in Section 27 or the subject matter of deliberations, at a meeting closed to the public, only after the Council or Committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public.
29. No Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information (including but not limited to):
 - (a) Information concerning litigation, negotiation or personnel matters;
 - (b) Information that the publication of which may infringe on the rights of any person (e.g. the source of a complaint where the identity of the person making the complaint is given in confidence);
 - (c) Price schedules in any contract, tender or proposal document while it remains a confidential document;
 - (d) Information deemed to be “personal information” as defined by the Municipal Freedom of Information and Protection of Privacy Act; and
 - (e) Any other information or statistical data required by law not to be released.
30. No Member shall obtain access, or attempt to gain access, to confidential information except to the extent that such access is necessary for the performance of her or his duties, such confidential information is provided to Council or to the local board, as applicable, as a whole, and such access is not prohibited by Council or by the local board, as applicable, or otherwise by law.

Use of City Property, Services and Other Resources

31. No Member shall use, or permit the use of, City land, facilities, equipment, supplies, services, staff or other resource, including any City-owned information, website,

Council transportation delivery service or funds allocated for Member's expenses, for any purpose or activity other than for the lawful business of the City.

32. No Member shall seek or acquire any personal financial gain from the use or sale of confidential information, or of any City-owned intellectual property including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copyrighted, of which property remains exclusively that of the City.

No Improper Use of Influence

33. No Member shall use the influence of her or his office for any purpose other than for the lawful exercise of her or his official duties and for City purposes. Without limitation, no Member shall:
- (a) use her or his office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage or that of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise;
 - (b) attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties; or
 - (c) hold out the prospect or promise of future advantage through the Member's supposed influence within Council or the local board, as applicable, in return for any action or inaction.
34. For the purposes of section 33, "private advantage" does not include:
- (a) a matter that is of general application;
 - (b) a matter that affects a Member, her or his parents/children or spouse, staff members, friends or associates, business or otherwise as one of a broad class of persons;
 - (c) a matter that concerns the remuneration or benefits of a Member; or

- (d) a request by a Member that Council or the local board, as applicable, grant a lawful exemption.

Integrity Commissioner

- 35. The Integrity Commissioner shall be responsible for performing in an independent manner, the following functions assigned with respect to:
 - (a) The application of the Code of Conduct;
 - (b) The application of any procedures, rules and policies of the City and local boards governing the ethical behavior of Members; and
 - (c) The maintenance of custody and control of the Integrity Commissioner's complaint and inquiry files and on completion of their term of appointment, to transfer any open files relating to ongoing matters to the incoming Integrity Commissioner appointed by Council.
- 36. In addition to the responsibilities set out in Section 35, the Integrity Commissioner shall also provide:
 - (a) Information to Members as to their duties and obligations under the Code of Conduct;
 - (b) Information to Members with respect to compliance with the requirements of the *Municipal Conflict of Interest Act* including declaring a conflict of interest and not using any influence where a matter is being considered by an officer or employee of the City;
 - (c) Advice to individual Members regarding specific situations as they relate to the application of the Code of Conduct;
 - (d) Advice to individual Members regarding their obligations under the *Municipal Conflict of Interest Act*;
 - (e) Advice to Members on other policies and procedures that relate to the ethical behavior of members;

- (f) Information to the public regarding the Code of Conduct and the obligations of Members under the Code of Conduct and *Municipal Conflict of Interest Act*; and,
 - (g) An annual report to Council on the activities of the Integrity Commissioner.
37. Without limiting the generality of Section 36, the Integrity Commissioner may determine, on a case-by-case basis, whether or not to undertake an investigation on whether a Member has contravened the Code of Conduct or Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. The Integrity Commissioner shall be entitled to summarily dismiss a complaint filed in accordance with the Complaint Procedure on the basis that it is, in the opinion of the Integrity Commissioner, an abuse of process or is frivolous or vexatious.
38. Without limiting the generality of Sections 35 to 42, all determinations of the Integrity Commissioner under the Code of Conduct shall be made in their own absolute discretion and shall be final and binding.
39. Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.
40. The Integrity Commissioner shall report to Council respecting each complaint given to the Integrity Commissioner. The Integrity Commissioner and her or his delegates shall have the powers and be subject to the duties prescribed by Sections 223.3 to 223.8, inclusive, of the *Municipal Act, 2001* and by other applicable law.
41. Notwithstanding anything in this By-law:
- (a) If the Integrity Commissioner has not completed an inquiry before nomination day for a regular election, the Integrity Commissioner shall terminate the inquiry on that day. 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, the person or made the complaint or the Member whose conduct is the subject matter of the complaint makes a written

request to the Integrity Commissioner that the inquiry be commenced, provided that no inquiry respecting a former Member may be commenced.

- (b) Between nomination day and voting day in a regular election, no person may submit a complaint respecting an alleged contravention of the Code of Conduct, the Integrity Commissioner shall not report to the Council or the local board, as applicable, about whether a Member has contravened the Code of Conduct and neither the Council nor the local board, as applicable, may consider whether to impose penalties.

- 42. The City of Oshawa and/or the local board shall ensure that reports received from the Integrity Commissioner by the municipality or the local board as the case may be are made available to the public.

Complaints Pursuant to the Code of Conduct

- 43. All complaints pursuant to the Code of Conduct shall be filed in accordance with the Complaints Procedure as set out in Schedule A of this By-law.

Application for Inquiry – Alleged Contravention of the *Municipal Conflict of Interest Act*

- 44. All requests for inquiry concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* shall be filed in accordance with the Application for Inquiry Procedure as set out in Schedule B of this By-law.
- 45. An elector or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.
- 46. The application must set out the reasons for believing that a Member has contravened Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application (or within the time period starting six weeks before nomination day and ending on voting day in the year of a regular election).

47. The Integrity Commissioner must complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated.
48. Upon completion of an inquiry, the Integrity Commissioner may apply to a judge for a determination as to whether the Member has contravened Sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

Advice

49. All requests for advice pursuant to the Code of Conduct shall be filed in accordance with the Advice Procedure as set out in Schedule C of this By-law.
50. Requests by a Member must be in writing.
51. Advice given by the Integrity Commissioner to Member shall be provided in writing.

Non-Compliance with this Code of Conduct –Sanctions

52. Upon receipt of a report from an Integrity Commissioner that, in the Integrity Commissioner's opinion, a Member has contravened this Code of Conduct, Council or the local board, as applicable, shall decide whether to impose either of the penalties prescribed by subsection 223.4(5) of the Municipal Act, 2001 as follows:
 - (a) a reprimand; or
 - (b) suspension of the remuneration paid to the Member in respect of her or his services as a Member for a period of up to 90 days.
53. An Integrity Commissioner may also recommend that Council or the local board, as applicable, take one or more of the following actions:
 - (a) removal from membership on a committee or local board;
 - (b) removal as chair or as vice-chair of a committee or local board;
 - (c) repayment or reimbursement of monies received;
 - (d) return of property or reimbursement of its value;
 - (e) request a public apology to Council, the complainant, or both; or

- (f) any other or additional action deemed by Council to be appropriate, and which is within its power to take.

Annual Reports of the Integrity Commissioner

- 54. The Integrity Commissioner shall submit an annual report to Council which will include information on the nature and volume of activity for the past year and provide examples, while maintaining the anonymity of the persons involved, in respect of the advice provided and the nature of complaints received and responded to.
- 55. The annual report of the Integrity Commissioner shall be provided to Council for information purposes and shall be a public document.

No Reprisal or Obstruction in the Application or Enforcement of this Code

- 56. Each Member must respect the integrity of the Code of Conduct and inquiries and investigations conducted under it and shall co-operate in every way possible in securing compliance with its application and enforcement. Any reprisal or threat of reprisal against a complainant or any other person for lodging a complaint or for providing relevant information to the Integrity Commissioner or any other person is prohibited.
- 57. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner, or any other City official involved in applying or furthering the objectives or requirements of this Code of Conduct, in the carrying out of such responsibilities, or pursuing any such objective.

Statutes Regulating the Conduct of Members

- 58. Members acknowledge that in addition to this Code of Conduct, the following legislation may also govern the conduct of Members:
 - (a) The *Municipal Act, 2001*, S.O. 2001 C. 25
 - (b) The *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50.
 - (c) The *Municipal Elections Act*, 1996 S.O. 1996 c. 32
 - (d) The *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990 c. M. 56;

- (e) The *Occupational Health and Safety Act*, R.S.O. 1990 c.0.1
- (f) The *Human Rights Code*, R.S.O. 1990, c.H.19
- (g) The *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched. 6
- (h) The *Criminal Code*, R.S.C. 1985, c. C-46; and,

- 59. The City's Procedure By-law (or the procedural rules of order adopted by the local board) and the City's Accountability and Transparency Policy may also govern the conduct of Members.
- 60. Any references to statute, regulation, by-law or legislation shall be deemed to be a reference to the statute, regulation, by-law or legislation as amended, consolidated, replaced or superseded.
- 61. In the case of any inconsistency between this Code of Conduct and a Federal or Provincial statute or regulation, the statute or regulation shall prevail to the extent of the inconsistency.

Schedule A "Complaints Procedure" (Attached)
Schedule B "Inquiry Procedure" (Attached)
Schedule C "Advice Procedure" (Attached)

By-law 51-2015 passed the nineteenth day of May, 2015.
By-law 44-2018 passed the thirteenth day of April, 2018.
By-law 36-2020 passed the twenty-seventh of day April, 2020.
By-law 172-2022 passed the sixth day of December, 2022.

Schedule A of By-law 36-2020

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 local board 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 local board.

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 non-compliance 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.



Form A – Complaint Form For Complaints filed under the Code of Conduct

Complainant Information

Name: _____

Mailing Address: _____

Phone Number: _____

Email address: _____

Complaint Details

I, *(insert full name)* _____ of *(insert City/Town of residence)* _____ in the Province of Ontario have personal knowledge of the facts as set out in this complaint form because *(insert reasons – e.g. I work for...; I attended a meeting at which..., etc.):*

and believe that (check one)

☐ a Member of the Council of the City of Oshawa

☐ a Director of the local board

namely: *(insert Member/Director name)* _____ has contravened section(s) *(insert section)* _____ of the Code of Conduct for Members of the Council of the City of Oshawa and Local Boards as set out in By-law 51-2015, as amended. The particulars of which are as follows:

Please set out the statement of facts in consecutively numbered paragraphs. If more room is required, please attach additional pages, numbered accordingly. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this form.

Please see reverse for additional information and signature section.

Questions about the collection of the personal information on this form should be submitted to the Integrity Commissioner directly.

Please read before signing:

If the Integrity Commissioner launches an inquiry into a complaint, then the content of this form, including the complainant's identity, will typically be shared with the Member/Director who is the subject of the complaint. Also, at the end of the inquiry, the Integrity Commissioner may issue a public report that includes information about the complaint, including possibly the identities of the parties involved. Only sign this complaint form if you understand and accept the potential disclosure of your identity and the information you provide.

By signing below, I, *(insert name)* _____ understand the above and request that this matter be reviewed by the City of Oshawa's Integrity Commissioner.

Signature of Complainant

Date

Schedule B of By-law 36-2020

Inquiry Procedure

Purpose

The purpose of this procedure is to provide a process for persons to apply for an inquiry concerning alleged contraventions of the Municipal Conflict of Interest Act R.S.O. 1990 c. M. 50 concerning a member of Council or Directors of a Local Board.

For the purposes of this procedure, the term “member” shall include both Members of Council and Directors of the local board.

Request for Inquiry under the Municipal Conflict of Interest Act

A - Process for the Request

1. An elector, or any person demonstrably acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act using the process set out below:
 - a) all requests for an inquiry may be made in writing using the City's Application for Inquiry Form (see Form “B”) and be dated and signed by the person making the inquiry (the “Applicant”);
 - b) the Inquiry Form must include the name of the member alleged to have breached the Municipal Conflict of Interest Act;
 - c) the Application for Inquiry shall be filed with the Integrity Commissioner who may conduct any such inquiries he/she considers necessary; and
 - d) the Inquiry must be submitted to the Integrity Commissioner no later than six (6) weeks from the date in which the applicant became aware of the alleged contravention, unless both of the following are satisfied:
 - i) The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, and ending on voting day in a regular election, as set out in section 5 of that Act.

- ii) The applicant applies to the Commissioner within six weeks after the day after voting day in a regular election.
2. The Integrity Commissioner will provide notice to the City Clerk of the fact that an Application for Inquiry has been received, including the assigned file number, and provide updates to the Clerk on the status of any Inquiry. The notice and any updates must not breach the confidentiality of the identities of the Applicant and the Respondent or the confidentiality of the nature and content of the Application.
3. In accordance with the Municipal Act, 2001, the Integrity Commissioner may request additional information from the applicant, the municipality, or may conduct a public meeting as he/she believes necessary to investigate the inquiry.

B - Completion of the Investigation

1. The Integrity Commissioner shall complete the inquiry within 180 days after receiving the completed application.
2. Upon completion of the inquiry, the Integrity Commissioner may apply to a judge for determination as to whether the member has contravened a section of the Municipal Conflict of Interest Act. If an application to a judge will not be made, the Commissioner must notify the complainant in writing.
3. After having decided whether or not to apply to a judge, the Integrity Commissioner must publish written reasons for the decision.
4. Municipal Conflict of Interest Act investigative reports received from the Integrity Commissioner be included in Information Packages and placed on the City's website on the Accountability and Transparency webpage as direction from Council is not required.

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.



Form B

**Application for Inquiry into Alleged Contravention of the
Municipal Conflict of Interest Act, R.S.O. 1990, c. M. 50 ("M.C.I.A.")**

Applicant Information

Applicant Name: _____

Mailing Address: _____

Phone Number: _____

Email address: _____

Applicant is (check one):

☐ an elector in the City of Oshawa

☐ an individual demonstrably acting in the public interest

☐ a corporation (including a municipality) demonstrably acting in the public interest

If the applicant is a Corporation, please identify the authorized representative for the purposes of this application: _____

Allegation Details

I believe that (check one)

☐ a Member of the Council of the City of Oshawa

☐ a Director of the local board

Name of the Member/Director who is the subject of the allegation: _____

Please note: You must complete a separate form for each member who is the subject of an allegation.

The Applicant alleges that the Member/Director contravened the following sections of the Municipal Conflict of Interest Act (check all that apply):

☐ Section 5

☐ Section 5.1

☐ Section 5.2

Questions about the collection of the personal information on this form should be submitted to the Integrity Commissioner directly.

The following are the Applicant's reasons for believing that the Member/Director has contravened the above section(s) of the Municipal Conflict of Interest Act:

Please set out the statement of facts in consecutively numbered paragraphs. If more room is required, please attach additional pages, numbered accordingly. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this form.

Please read before signing:

If the Integrity Commissioner launches an inquiry into an allegation then the content of this form, including the Applicant's identity, will typically be shared with the Member/Director who is the subject of the allegation. Also, information on this form and information obtained during the inquiry, including possibly the identities of the parties involved, might be disclosed in the Integrity Commissioner's published reasons at the end of the inquiry and might be disclosed in an application to the Superior Court. Only sign this application form if you understand and accept the potential for disclosure of your identity and the information you provide.

By signing below, I, *(insert name)* _____ understand the above and apply to the Integrity Commissioner for an inquiry to be carried out concerning the alleged contravention.

Signature of Applicant (or representative if Applicant is a corporation)

Date

Note: The statutory declaration on the next page is a mandatory part of the application, required by the *Municipal Act, 2001*. It must be declared before a person authorized to take declarations in Ontario (including any Ontario lawyer).

Questions about the collection of the personal information on this form should be submitted to the Integrity Commissioner directly.

DECLARATION
Required by subsection 223.4.1(6) of the *Municipal Act*

I, _____(insert full name), of _____(city, town, etc.)

of _____(specify municipality), _____

(add province/country if outside Ontario/Canada) solemnly declare that:

(Choose one of the following by placing your initials in the respective box below)

☐ I am the Applicant.

☐ The Applicant is a corporation and I am its authorized representative.

(Choose one by placing your initials in the respective box below)

☐ I attest to the fact that the Applicant became aware of the Member/Director's alleged contravention of the *Municipal Conflict of Interest Act* not more than six weeks before today.

☐ [In a municipal election year:] I attest to the fact that the Applicant became aware of the Member/Director's alleged contravention of the *Municipal Conflict of Interest Act* within the period of time starting six weeks before Nomination Day, and ending on voting day.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the _____(city/town) of _____(specify municipality) this

_____day of _____, 20____

Commissioner of oaths, etc.

Applicant or Representative

Schedule C of By-Law 36-2020

Advice Procedure

Purpose

The purpose of this procedure is to provide a process for Members of Council or Directors of a local board to access advice from the Integrity Commissioner for the City of Oshawa.

For the purposes of this procedure, the term “member” shall include both Members of Council and Directors of the local board.

Process

Submission of Request for Advice

1. Any Council or local board member who wishes to obtain advice from the City of Oshawa’s Integrity Commissioner must request the advice in writing by emailing the Integrity Commissioner.
2. Requests for Advice must specify the date, if any, by which the member requires the advice. The Integrity Commissioner will endeavor to respond to all Requests for Advice by the date requested.
3. The Integrity Commissioner will provide advice to members as it pertains to:
 - a. The member’s obligations under the code of conduct;
 - b. The member’s obligations under a procedure, rule or policy of the municipality or of the local board as the case may be, governing the ethical behavior of members;
 - c. The member’s obligations under the Municipal Conflict of Interest Act.
4. The Integrity Commissioner will provide notice to the City Clerk of the fact of a Request for Advice, including the assigned file number. The notice will identify the Member but must not breach the confidentiality of the nature or content of the Request.

Response of Integrity Commissioner to Request for Advice Outside Jurisdiction

If the request for advice received by the Integrity Commissioner does not relate to the Code of Conduct, the Municipal Conflict of Interest Act sections 5, 5(1) or 5(2), or a procedure, rule or policy governing the ethical behavior of members; it is not within the Integrity Commissioner’s mandate and the Integrity Commissioner shall inform the member in writing. Further, in specific cases, the Integrity Commissioner shall:

- a. Criminal Matter — if the request for advice is with respect to a matter that is of a criminal nature under the Criminal Code, R.S.C. 1985, c. C-46, the

member shall be informed that issues of a criminal nature should be directed to the appropriate police service or raised with independent legal counsel;

- b. Municipal Freedom of Information and Protection of Privacy — if the request for advice relates to the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990, c. M. 56, the member shall be informed that freedom of information requests may be made to the City Clerk; or
- c. Other Matters – if the matter is covered by other policies or legislation, the member may be informed that the issue may be addressed in another manner through another process, as appropriate.

Response in Writing

The Integrity Commissioner will respond to all requests for advice in writing, to the member who made the request for advice.

Release of Advice

Advice provided by the Integrity Commissioner may be released with the member's written consent.

If a member releases part of the advice provided by the Integrity Commissioner, then the Integrity Commissioner may release part or all of the advice without requiring consent from the member.

Advice is Binding

Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to 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.