

**COMPLAINT PROTOCOL
FOR
MEMBERS OF COUNCIL AND OTHERS GOVERNED BY THE CODE OF CONDUCT**

Preamble: Authority

1. This Complaint Protocol is adopted by Council pursuant to the *Municipal Act, 2001 S.O. 2001* (as amended), Chapter 25, ss. 223.3 to 223.8. This Complaint Protocol will be effective as of the 8th day of May, 2012.
2. All outstanding Complaints made prior to the Effective date, will be addressed, to the extent possible, under this Complaint Protocol. All Complaints made from the Effective date onward will be addressed in accordance with these Protocols.
3. After the Effective date, complaints must be made within six (6) months of the alleged violation or no action will be taken on the Complaint.

Part A: Informal Complaint Procedure

4. Individuals (including Members of Council or local boards, City employees, and members of the public,) who identify, witness, or have information regarding the behaviour or activity by a Member of Council or of a City committee, board, agency, or commission that appears to be in contravention of the Code of Conduct for Members of Council and Local Boards (Restricted Definition) (hereinafter the "Code of Conduct") may address the prohibited behaviour or activity themselves as follows:
 - (1) Advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
 - (2) Encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
 - (3) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
 - (4) Tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member, and the response of the member;
 - (5) Request the Integrity Commissioner to assist in informal discussion of the alleged Complaint with the Member in an attempt to resolve the issue and, 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. At the earliest possible juncture, the Member whose behaviour is complained of will be advised of an inquiry to the Integrity Commissioner under the Informal Complaint Procedure, and any Complainant will also be so advised; and
 - (6) Pursue the matter in accordance with the Formal Complaint Procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or Complaint procedure.
5. Individuals are encouraged to pursue this Informal Complaint Procedure as a means of stopping and remedying any behaviour or activity that they believe violates the Code of Conduct. With the consent of both the Complaining individual and the Member, the Integrity Commissioner may

participate in any Informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a Complaint. However, it is not a precondition or a prerequisite that those complaining pursue the Informal Complaint Procedure prior to pursuing the Formal Complaint Procedure outlined in Part B.

Part B: Formal Complaint Procedure

Formal Complaints

- 6.(a) Individuals (including Members of Council or local boards, City employees, and members of the public,) who identify, witness, or have information regarding the behaviour or activity by a Member of Council or of a City committee, board, agency, and commission that appears to be in contravention of the Code of Conduct for Members of Council and Local Boards (Restricted Definition) (hereinafter the "Code of Conduct") may file a formal complaint with the required information on the prescribed Affidavit. (See Appendix 1 of this Protocol.)
- (1) All Complaints must be made on the Complaints Form/Affidavit and shall be dated and signed by an identifiable individual;
 - (2) The Complaint must include an explanation for why the issue raised may be a contravention of Code of Conduct. Evidence in support of the allegation must also be included;
 - (3) Witnesses in support of the allegation must be named on the Complaint;
 - (4) The Complaint will be disclosed to the respondent and to others who may be involved in carrying out this procedure;
 - (5) The Complaint must include the name of the Member who has allegedly violated the Code of Conduct, the provision of the Code of Conduct allegedly contravened, facts constituting the alleged violation, the names and contact information of witnesses, and contact information of the Complainant during normal business hours;
 - (6) Receipt of Formal Complaints will be acknowledged in writing.
- 6.(b) Notwithstanding the provisions of section 6(a) contained in these Protocols, City Council may, by Council resolution, direct the Integrity Commissioner to investigate any matter that is within his legislated jurisdiction and the Integrity Commissioner shall, upon receiving such resolution, commence the said investigation in accordance with the remainder of the provisions found in these Protocols.

Filing of Complaint and classification by Integrity Commissioner

- 7.(1) The Complaint shall be delivered to the City Clerk's Office and shall be sealed and marked "Confidential – To the Attention of the Integrity Commissioner". The City Clerk shall forward the Complaint to the Integrity Commissioner for initial classification to determine if 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 other Council policies as described in subsection (3).
- 7.(2) If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a proper Complaint Form/Affidavit (Appendix 1) is received.

Not A Code Of Conduct Violation

- 7.(3) If the Complaint, including the supporting Affidavit, is not, on its face, a Complaint with respect to non-compliance with the Code of Conduct or the Complaint is covered by other legislation or Complaint procedure under another Council policy, the Integrity Commissioner shall advise the Complainant in writing as follows:

Criminal Matter

- (a) If the Complaint on its face is an allegation of a criminal nature pursuant to 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 Service.

Municipal Conflict Of Interest Act

- (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.

MFIPPA

- (c) If the Complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the Complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy Review.

Other Policy Applies

- (d) If the Complaint seems to fall under another policy, the Complainant shall be advised to pursue the matter under such policy.

Lack Of Jurisdiction

- (e) If the Complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the Complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Matter Already Pending

- (f) If the Complaint is in relation to a matter which is subject to an outstanding Complaint under another process such as a court proceeding, Human Rights complaint, Grievance under a collective agreement, or similar process, the Integrity Commissioner may, in his/her sole discretion suspend any investigation pending the result of the other process.

Periodic Reports to Council

8. Integrity Commissioner shall report to Council semi-annually during the first year, and annually thereafter. In his/her Report to Council, he/she shall report on all Complaints received and on their disposition. Confidentiality shall be maintained, to the extent possible, in reporting on the disposition of Complaints.

Refusal to Conduct Investigation

9. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her 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, and where this becomes apparent in the course of an investigation, shall terminate the investigation immediately.

Opportunities for Resolution

10. Following receipt and review of a Formal Complaint, or at any time during the investigation, where 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 pursued to achieve an informal resolution of the Complaint.

Investigation

- 11.(1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
 - (a) Give the Complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten clear business days; and
 - (b) Give a copy of the response provided to the Complainant with a request for a written reply within ten clear business days.
 - (c) The Integrity Commissioner, upon request, may extend these time limits within his or her sole discretion.
- 11.(2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the Complaint for the purpose of investigation and potential resolution.
- 11.(3) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.

No Complaint Prior to Election

12. Notwithstanding any other provision of this Protocol, no Complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after June 30 in any year in which a regular municipal election will be held. The time elapsed between June 30 in a regular municipal election year and the Inaugural meeting shall not be included in calculation of the six (6) months referred to in section 3.

Recommendation Report

- 13.(1) The Integrity Commissioner shall report to the Complainant and the Member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the Complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date when the Report will be available.
- 13.(2) Where the Complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the Complaint is not sustained, the Integrity Commissioner shall report to Council on the result of the investigation.
- 13.(3) Pursuant to the *Municipal Act*, the Council may impose either of the following penalties on a Member if the Commissioner reports to Council that, in his or her opinion, the member has contravened the Code of Conduct:
 - (a) A reprimand; and/or
 - (b) Suspension of the remuneration paid to the member in respect of his or her services as a member of council for a period of up to 90 days.
14. If the Integrity Commissioner determines that there has been no violation of the Code of Conduct or that a violation occurred although the member took all reasonable measures to prevent it, or that a violation occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner may so state in the Report and may make appropriate recommendations pursuant to the *Municipal Act*.
15. The City Clerk shall give a copy of the Report to the Complainant and the Member whose conduct is the subject of the Report.

Report to Council

16. Upon receipt of a Report, the Clerk shall process the Report for the next meeting of Councils' Committee of the Whole.

No Reports Prior to Election

17. Notwithstanding section 13 or any other provision of this Protocol, the Integrity Commissioner shall not make any Report to Council or to any other person after the last Committee of the Whole meeting of June in any year in which a regular municipal election is to be held, until following the date of the Inaugural meeting of the next Council.

Duty of Council

18. Council shall consider and respond to the Report within 45 days after the day the Report is presented to it.

Public Disclosure

- 19.(1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve Confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this Complaint protocol.
- 19.(2) As between the parties, the identity of a Complainant and the identity of the Member or other individual who is the subject of the Complaint shall not be treated as confidential information.
- 19.(3) All reports from the Integrity Commissioner to Council will be made available to the public.
- 19.(4) Any references by the Integrity Commissioner in an annual or other periodic Report to a Complaint or an investigation shall not disclose confidential information that could identify a person concerned.
- 19.(5) The Integrity Commissioner in a report to Council on whether a Member or other individual has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

Reimbursement of Legal Expenses

- 20.(1) A Member of Council or other individual who is subject of a Code of Conduct Complaint under Part A (Informal Complaint Procedure) or Part B (Formal Complaint Procedure) under this Protocol may, at the discretion and direction of Council be reimbursed for the actual legal expense incurred for consultation with a lawyer in an amount determined by Council.
- 20.(2) A Member of Council or other individual who is the subject of an Integrity Commissioner Complaint Investigation* under this Protocol may, at the discretion and direction of Council, be reimbursed for actual and reasonable expenses incurred for consultation with a lawyer in an amount determined by Council where it is determined that there has been no contravention of the Code of Ethical Conduct by the Member.

***Note:** An Integrity Commissioner Complaint Investigation begins when the Integrity Commissioner gives notice of the same to the Member of Council or other individual who is subject of the Formal Complaint.

APPENDIX 1

COMPLAINT FORM/AFFIDAVIT

AFFIDAVIT OF _____[Full Name]

I, _____[Full Name], of the [City, Town, etc] of
_____[Municipality of residence]in the Province of Ontario

MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this Affidavit, because:

_____ *insert reasons e.g. I work for.... I attended the meeting at which...etc.+

2. I have reasonable and probable grounds to believe that a Member of Windsor City Council or of a City committee, board, agency, or commission that is subject to the Code of Conduct for Members of Council and Local Boards (Restricted Definition) (hereinafter the “Code of Conduct”),

_____ [specify name of Member], has contravened section(s)

_____ [specify section(s) of the Code of Conduct for Members of Council (the “Code of Conduct”). The particulars of which are as follows:

[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule A form and check the appropriate box below. If you wish to include exhibits to support this Complaint, please refer to the exhibits as Exhibit A-1, A-2, etc. and attach them to this Affidavit.]

3. I acknowledge that at the time of the Integrity Commissioner’s report to Council in this matter, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.

Please see the attached Schedule A.

1. This Affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

SWORN [or AFFIRMED] before me at the [City,Town, etc. of]

In the Province of Ontario on:

_____ [Day]of _____ [Month] _____ [Year]

[Signature of Commissioner]

*Please print Commissioner's Name+

A Commissioner for taking Affidavits, etc.

Code of Conduct Complaint Protocol s.2(3) Formal Complaint Procedure. Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 or the Criminal Code, R.S.C. 1985, c. C-46, and also to civil liability for defamation.

Schedule A

(Additional Information)

To the Affidavit required under section 6 of The Formal Complaint Procedure.

[If more than one page is required, please photocopy this blank page and mark each additional page as 2 of 2, 2 of 3, etc. at the top right corner.]

This is Schedule 'A' referred to in the Affidavit of:

_____ [Full Name]

Sworn [or Affirmed] before me on this _____ [Day] of

_____ [Month] _____ [Year]

A Commissioner for taking Affidavits, etc.