Committee of the Whole
REPORT 09-030

9:30 a.m.
November 9, 2009
Albion Room
Hamilton Convention Centre

Present:
Mayor F. Eisenberger
Deputy Mayor T. Jackson

Also Present:
C. Murray, City Manager
R. Rossini, General Manager, Finance and Corporate Services
T. McCabe, General Manager, Planning and Economic Development
J.A. Priel, General Manager, Community Services
J. Kay, General Manager, HES, Fire Chief
P. Barkwell, City Solicitor
E. Richardson, Medical Officer of Health
M. Gallagher, Co-ordinator, Council and Committee of the Whole/Budgets

COMMITTEE OF THE WHOLE PRESENTS REPORT 09-030 AND RESPECTFULLY RECOMMENDS:

1. Graffiti Eradication Efforts (PED09291) (City Wide) (Item 4.2)

That Report PED09291 respecting Graffiti Eradication Efforts, be received.
2. **Gaby Kalapos, GTA Clean Air Council respecting The 2009 Inter-Governmental Declaration on Clean Air (Item 6.1)**

That the presentation by Gaby Kalapos, GTA Clean Air Council respecting The 2009 Inter-Governmental Declaration on Clean Air be received.

3. **Tyler MacLeod, Chair, Hamilton Economic Summit respecting follow up to the 2009 Hamilton Economic Summit and plans for 2010 (Item 6.2)**

That the presentation by Tyler MacLeod, Chair, Hamilton Economic Summit respecting follow up to the 2009 Hamilton Economic Summit and plans for 2010, be received.

4. **Relocation of Coyotes in the City of Hamilton (PED09281) (Item 8.1)**

That Report PED09281 respecting Relocation of Coyotes in the City of Hamilton, be received.

5. **Backflow Prevention By-law - Follow up report (PW09087a) (Item 8.2(a))**

That Report PW09087(a) respecting Backflow Prevention By-law - Follow up report, be received.

6. **Backflow Prevention Program (PW09087) (Item 8.2(b))**

   (a) That Report PW09087 respecting Backflow Prevention Program be referred to the Public Works Committee;

   (b) That staff canvass members of council prior to the item being placed on the agenda to allow ample time for consultation with constituents who are most affected by this program.

7. **Code of Conduct for Members of Council (LS09016) (city Wide) (Item 8.3)**

That Appendix “H” to the City of Hamilton’s Procedural By-law 03-301 respecting Code of Conduct for Members of Council, attached hereto as Appendix “A” be approved as amended with the deletions of Subsections 4.5(1) (d), (e) and (f).
8. **Status Update on the Implementation of O.Reg 429/07 Accessibility Standards for Customer Service, pursuant to the Accessibility for Ontarians with Disabilities Act, 2005 (AODA) (FCS09101) (City Wide) (Item 8.4)**

(a) That report FCS09101 regarding the Implementation of O. Reg 429/07 Accessibility Standards for Customer Service, be received for information;

(b) That AMO’s position on the Initial Proposed Built Environment Standard be endorsed and that a copy of this report be forwarded to AMO and the Minister of Community and Social Services.

9. **H1N1 Assessment Centres (BOH09030) (City Wide) (Item 8.5)**

(a) That Public Health Services be directed to act as the lead agency for the pH1N1 assessment and treatment centres;

(b) That all eligible costs associated with assessment centres be submitted by Public Health Services for 100% funding by the Ministry of Health and Long Term Care.

(c) That Public Health Services be advised that Council has approved a vote of confidence for all their hard work and for the many long hours and excellent service which has been provided to the community in response to the H1N1 Pandemic.

10. **City of Hamilton v Attorney General of Canada, et al, Ontario Superior court Action No. C-383/04 (LS04021(b) (City Wide) (Item 11.3)**

(a) That report LS04012(b) respecting City of Hamilton v Attorney General of Canada, et al, Ontario Superior Court Action No. C-383/04 be received;

(b) That Report LS04021(b) remain confidential

**FOR THE INFORMATION OF COUNCIL:**

**Announcement - Pan Am Games**

The Mayor thanked Members of Council, staff and members of the Provincial and Local Advisory Team for their work on the Pam Am Games bid.

Special thanks was extended to Dr. Gene Sutton with a suggestion that her contribution be memorialized in one of the facilities.

Council – November 11, 2009
(a) CHANGES TO THE AGENDA

Private and Confidential matter noted as Item 11.2 respecting United Brotherhood of Carpenters and Joiners of America Local 18 was withdrawn from the Agenda

Added report respecting H1N1 Assessment Clinics noted as Item 8.5

The agenda was adopted as amended.

(b) DECLARATIONS OF INTEREST

Councillor McHattie declared an interest in Item 9 as his wife works as a Doctor at the H1N1 assessment centres.

(c) ADOPTION OF MINUTES

(i) October 13, 2009 (Item 3.1)

The Minutes of October 13, 2009 were adopted as presented.

(ii) October 27, 2009 (Item 3.2)

The Minutes of October 27, 2009 were adopted as presented.

(d) MINUTES OF ADVISORY COMMITTEES

The following Minutes were received:

Advisory Committee for Persons with Disabilities Minutes of September 8, 2009

(e) Graffiti Eradication Efforts (PED09291) (City Wide)

Members of Committee raised the following issues:

- Graffiti removal on the highway side of noise walls and if the Ministry of Transportation has any position on removing the graffiti as it is unsafe for homeowners to be undertaking the removal themselves.

  Staff advised that they are currently working on a new Graffiti By-law which will address retaining walls. They have regular liaison meetings with the MTO and will have the issue addressed at that level.

- Victim assistance program which can provide assistance to citizens who continually have to clean their properties in problem areas.

Council – November 11, 2009
- Do Utility Companies have action plans for graffiti removal
- Program to offer citizens on ways to clean up the graffiti - products to use to help remove graffiti – and not cause damage to property
- Have an outlet to provide advice and counsel to help facilitate the process of cleaning up.
- Protocol – check list for staff – proactive approach particularly on public property for graffiti removal
- Education program in schools – funding and pilot testing – is this still part of the strategy or could it be? – staff will investigate further and explore the Alberta Model.

(f) **Gaby Kalapos, GTA Clean Air Council respecting The 2009 Inter-Governmental Declaration on Clean Air**

Gaby Kalapos provided a power point presentation to Committee.

Highlights included:
- Goals of the GTA-CAC
- Taking Action on Energy use Reduction
- Taking Actions on Green Procurement Policy
- Taking Action on promoting Active Transportation
- Taking Actions on Promoting Renewable energy
- Actions on Green Development
- New Technologies
- Transportation Demand Management
- Promotion of Local Food
- Phasing Out Disposable Water Bottles

Staff will further address a green procurement policy in the review of the City’s Purchasing Policy. Staff directed to include how other municipalities are addressing this issue in their review.

(g) **Tyler MacLeod, Chair, Hamilton Economic Summit respecting follow up to the 2009 Hamilton Economic Summit and plans for 2010**

Tyler MacLeod addressed Committee and provided the following highlights:

- proceedings report held from the Second Annual Economic Summit
- City of Change event that invited students and youth to offer their ideas on the Hamilton of tomorrow
- The need for Action
- Making Hamilton a Magnet for Next Generation Talent
- Launching several new initiatives to stimulate private sector jobs as well as foster a city-wide spirit of entrepreneurship
- business development and employer outreach efforts
Comments from council included:

- Enjoyable day to participate in proceedings round table discussions especially.
- momentum from participants in moving city’s issues forward
- how do people remain engaged in the process?
- suggest focusing on one or two issues alone and go back to people through the year and clearly have a plan in place to draw on their expertise
- priority setting of projects/initiatives – is there anything we should be thinking about heading into the 2010 budget?
- page 8 of Youth survey – where should growth occur? – 70% said we should redevelop our brownfield sites before expanding further
- expanding employment base – future prosperity – encourage summit focus on action items to help this along
- suggest having the chair of ED&P to participate on the Advisory Committee

(h) **Code of Conduct for Members of Council (LS09016) (city Wide) (Item 8.3)**

Councillors Clark, McHattie, Merulla opposed to the amendment

(i) **H1N1 Assessment Centres (BOH09030) (City Wide) (Item 8.5)**

Councillor Clark opposed to recommendations (a) and (b) of Item 9.

(j) **Prioritized Transit Service Level Improvements – Referral to Staff for a report to Committee:**

Whereas, the Federal Gas Tax fund has never been used for transit improvements in Hamilton, despite the federal governments’ direction that municipalities with a population of larger than 500,000 cannot spend the funds on the roads (note that Hamilton’s population was just below half a million as per the Census figures when the Federal Gas tax fund rules were established), and;

Whereas, $3M of the Provincial Gas Tax funding has been allocated to capital expenditures (versus operating funding), despite this source of funding being the only source of operating funding available for transit service level improvements, and;

Whereas, HSR does not currently have any funding for new transit service, and;
Whereas, $3M in operational funding to facilitate new transit service (throughout the City as per the Transit Steering Committee’s list of priority locations such as Rymal Road, Heritage Green etc.) could be identified by back-filling the Provincial Gas tax capital expenditures with Federal Gas tax capital funding.

Therefore be it resolved,

That staff be directed to report back on:

(a) Transit service level improvements that would be prioritized with the transfer of $3M (or a lesser amount) in funds from the Federal Gas Tax to the Provincial Gas Tax fund;

(b) An implementation strategy for carrying out this transfer, including an understanding on the impact of the current Federal Gas Tax priority allocations.

(k) Status Update on the Implementation of O.Reg 429/07 Accessibility Standards for Customer Service, pursuant to the Accessibility for Ontarians with Disabilities Act, 2005 (AODA) (FCS09101) (City Wide) (Item 8.4)

Staff were requested to report back on financial, staffing and legal implications by the end of the year and bring forward, for Council’s consideration, final recommendations for the implementation of the customer service standard and related policies.

(l) NOTICES OF MOTION

Councillor Clark presented the following Notice of Motion:

Establishment of a Pan Am Games Infrastructure Committee

Whereas the Toronto Pan Am Games Bid has been approved with the City of Hamilton receiving a new stadium, and a velodrome and McMaster receiving a new Olympic pool;

Whereas the City of Hamilton has committed 50 million for Capital and 10 Million for land

Whereas, there is a history of international games exceeding their approved budgets

Be it resolved,
That the council create a Pan am Games Infrastructure committee with Councillor Ferguson appointed as Chair to ensure construction is on budget and on time.

(m) **PRIVATE AND CONFIDENTIAL**

Committee moved into closed session on the following sections of the city’s procedural by-law:

Subsection (e) and (f) as the subject matters pertain to litigation and the receiving of solicitor-client advice

11.3 City of Hamilton v Attorney General of Canada, et al, Ontario Superior court Action No. C-383/04 (LS04021(b) (City Wide)

Committee reconvened in Open Session.

(i) **Closed Session Minutes of October 13, 2009 (Item 11.1)**

The Closed Session Minutes of October 13, 2009 were adopted as presented.

(ii) **City of Hamilton v Attorney General of Canada, et al, Ontario Superior court Action No. C-383/04 (LS04021(b) (City Wide) (Item 11.3)**

MOTION CARRIED ON A STANDING RECORDED VOTE:

Yeas: Clark, Collins, Duvall, Ferguson, Jackson, Morelli, Pastua, Mitchell, Pearson, Powers
Total: 10

Nays: Bratina, McHattie, Merulla, Whitehead, Eisenberger
Total: 5

Absent: McCarthy
Total: 1

(n) **OUTSTANDING BUSINESS LIST**

The following items were removed from the Committee of the Whole Outstanding Business List:

Item Q Amendments to Appendix “H” - Code of Conduct for Members of Council

Item M Red Hill Valley Parkway Environmental Assessment Process Status of the lawsuit against the Federal Government

Council – November 11, 2009
There being no further business, the meeting adjourned at 1:15 p.m.

Respectfully submitted,

Mayor F. Eisenberger

M. Gallagher, Co-ordinator
Council/Committee of the Whole
November 9, 2009
PREAMBLE

Purpose:

A written Code of Conduct helps to ensure that the members of Council share a common basis for acceptable conduct. The Code of Conduct is not intended to replace personal ethics. The Code of Conduct:

- is designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate.

- serves to enhance public confidence that the City’s elected representatives operate from a base of integrity, transparency, justice and courtesy.

- forms a part of the City’s Procedural By-law No. 03-301, as amended.

- is enforced by the Integrity Commission under the City’s Integrity Commissioner By-law No. 08-154, as amended.

Statutory Provisions Regulating Conduct:

In addition, the Code of Conduct operates along with and as a supplement to the existing five statutes that govern the conduct of members of Council:

• the Municipal Act, 2001
• the Municipal Conflict of Interest Act
• the Municipal Elections Act, 1996
• the Municipal Freedom of Information and Protection of Privacy Act
• the Criminal Code (Canada)

SECTION 1 - DEFINITIONS

1.1 In this Code of Conduct:

(a) “benefit” means anything (other than a gift) given that confers an advantage, including but not limited to discounted or free services, food or beverages for immediate consumption, activities or event tickets, unless payment in any form, including the exchange of goods or services, of equal or greater value is received by the individual or entity giving the benefit;
(b) “charity” means a registered charity as defined in the *Income Tax Act (Canada)* or successor legislation, which has a registration number issued by the Canada Revenue Agency, or successor agency;

(c) “City” means the City of Hamilton, either in the sense of the geographic area of the municipality or in the sense of the identity of the municipal corporation, as the context requires;

(d) “community organization” means a non-profit group of persons organized for the advancement of a civic, cultural, social, health, philanthropic or recreational purpose within the City of Hamilton;

(e) “confidential information” includes but is not limited to information:

i) in the possession of the City that the City is either prohibited from disclosing, is required to refuse to disclose or exercises its discretion to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act*¹ or other legislation; and

ii) concerning matters that are considered in an in-camera meeting under section 239 of the *Municipal Act, 2001*².

(f) “Council” means the Council of the City of Hamilton;

(g) “family member” means:

i) spouse, including but not limited to common-law spouse and same-sex partner;

ii) child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew:

iii) mother-in-law, father-in-law, sister-in-law and brother-in-law;

iv) step-mother, step-father, step-sister, step-brother and step-child; and

¹ Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature and information that is personal, and permits the restriction or prohibition of disclosure of information that is subject to solicitor-client privilege.

² Section 239 of the *Municipal Act, 2001* permits information concerning the following matters to be considered in an in-camera meeting: the security of the property of the City; personal matters about an identifiable individual, including City employees; a proposed or pending acquisition or disposition of land by the City; labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the City; advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a matter in respect of which Council may hold a closed meeting under another Act; a matter relating to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*; or the education or training of the members of Council.
v) child, mother or father in a relationship where the role of parent has been assumed;

(h) “gift” means any real or personal property given, including but not limited to artwork, clothing, money, gift certificates or gift cards, unless payment in any form, including the exchange of goods or services, of equal or greater value is received by the individual or entity giving the gift;

(i) “in camera” means the conduct of a meeting or part of a meeting, of Council or a Committee of Council, which is closed to the public as permitted under section 239 of the Municipal Act, 2001; and

(j) “lobbyist” means a person who is registered as a lobbyist in the City’s Voluntary Lobbyist Registry.

SECTION 2 - GENERAL

2.1 The key statements of principle that underlie the Code of Conduct are as follows:

(a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;

(b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;

(c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and

(d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.

SECTION 3 - APPLICATION

3.1 This Code of Conduct applies to all members of Council including the Mayor.

SECTION 4 - GIFTS AND BENEFITS

4.1 No member of Council shall accept a fee, advance, gift or benefit that is connected directly or indirectly with the performance of their duties in office, unless permitted by the exceptions listed in subsection 4.3.

4.2 For the purposes of subsection 4.1, a fee or advance paid to or a gift or benefit given with the member of Council’s knowledge to their family member or to their staff that is connected directly or indirectly to the performance of their duties in office is deemed to be a gift or benefit to that member of Council.
4.3 The following are exceptions to subsection 4.1:

(a) compensation authorized by law;

(b) such gifts or benefits that normally accompany the duties of office and are received as an incident of protocol or social obligation;

(c) a political contribution otherwise reported by law;

(d) admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the entity responsible for organizing and presenting the event and unsolicited by the member of Council, if attending or participating in their official capacity, including:

   (i) participation in an event as a speaker or panel participant by presenting information related to City matters;

   (ii) performance of a ceremonial function appropriate to the member of Council’s office;

   (iii) attendance at an event that is appropriate to the official capacity of the member of Council;

(e) admission to a charity or community organization event offered by the charity or community organization for whose benefit the event is being held and unsolicited by the member of Council;

(f) admission to a training or education program, including meals and refreshments furnished to all attendees, if such training or education is related to the member of Council’s duties in office and in the interest of the City;

(g) services provided without compensation by persons volunteering their time;

(h) a suitable memento of a function honouring the member of Council;

(i) food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or by political subdivisions of them or by a foreign government within a foreign country;

(j) food and beverages consumed at banquets, receptions or similar events, if:

   (i) attendance serves a legitimate business purpose;

   (ii) the person extending the invitation or a representative of the organization is in attendance; and

   (iii) the value is reasonable and the invitations infrequent;

(k) communication to the office of a member of Council including subscriptions to newspapers and periodicals.
4.4 Except for paragraph (c), the exceptions listed in subsection 4.3 do not apply to lobbyists. Lobbyists are not permitted to give a gift or benefit under this section unless it is a political contribution permitted by law.

4.5(1) In the case of paragraphs (b), (h), (i), (j) and (k) of subsection 4.3, if the value of the gift or benefit exceeds $200, or if the total value received from any one source during the course of a calendar year exceeds $200, the member of Council shall within 30 days of receipt of the gift or benefit or of reaching the annual limit, file a disclosure statement with the City Clerk. The disclosure statement must indicate:

(a) the nature of the gift or benefit;
(b) its source and date of receipt;
(c) the circumstances under which it was given or received;

(2) Any disclosure statement made under subsection paragraph 4.5(1) will be a matter of public record.

SECTION 5 - CONFIDENTIALITY

5.1 No member of Council shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

5.2 No member of Council shall use confidential information for financial or other gain, or for the financial or other gain of a family member or any person or corporation. For example, no member of Council should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

5.3 No member of Council shall disclose the content of a matter that has been discussed at or the substance of deliberations of an in-camera meeting, except for content that has been authorized by Council or a Committee of Council to be released to the public.

5.4 Examples of the types of content that a member of Council must keep confidential under this section include but are not limited to:

(a) items under litigation, negotiation, or personnel matters;
(b) information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
(c) price schedules in contract tender or Request For Proposal submissions if so specified;
(d) information deemed to be personal information under the Municipal Freedom of Information and Protection of Privacy Act;
(e) statistical data required by law not to be released (e.g. certain census or assessment data).

5.5 Members of Council shall not access or attempt to gain access to confidential information in the possession of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

SECTION 6 - USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

6.1 No member of Council shall use or permit the use of City land, facilities, equipment, supplies, services, City employees or other resources (for example, City-owned materials, websites, Council transportation delivery services or Councillor global budgets) for activities other than the business of the City.

6.2 No member of Council shall obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings or drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

SECTION 7 - ELECTION CAMPAIGN WORK

7.1 Members of Council are required to comply with the Municipal Elections Act, 1996.

7.2 No member of Council shall use the facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities, except on the same basis (including paying a fee if any) as such resources are normally made available to members of public.

7.3 No member of Council shall use their newsletter or their website linked through the City’s website for any election campaign or campaign-related activities.

7.4 No member of Council shall use the services of City employees for any election campaign or campaign-related activities during hours in which those City employees receive any compensation from the City.

SECTION 8 - CONDUCT AT COUNCIL AND COMMITTEE

8.1 Members of Council shall conduct themselves with decorum at Council and Committees of Council in accordance with the provisions of the Procedural By-law.

8.2 Under its Accountability and Transparency Policy, the City supports ensuring accountability and transparency in all its actions. Accordingly, in addition to disclosing a pecuniary interest under the Municipal Conflict of Interest Act, members of Council shall disclose non-pecuniary interests they have in a matter, either on their own behalf or while acting for, by, with or through another, prior to consideration of that matter at Council or a Committee of Council.
8.3 Examples of types of non-pecuniary interests in a matter to be disclosed under subsection 8.2 include but are not limited to:

(a) a member of Council being a director or senior officer of an entity, whether or not appointed by Council;

(b) a member of Council’s family member being a director or senior officer of an entity;

(c) a member of Council or their family member holding a licence or other permission issued by the City.

8.4 Subsection 8.2 does not apply to a non-pecuniary interest which is so remote or insignificant in its nature that it cannot reasonably regarded as likely to influence the member of Council.

SECTION 9 - REPRESENTING THE CITY

9.1 Members of Council shall make every effort to participate diligently in the activities of the agencies, boards, and commissions to which they are appointed.

SECTION 10 - IMPROPER USE OF INFLUENCE

10.1 No member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.

10.2 Examples of types of prohibited conduct under this section include but are not limited to:

(a) the use of one’s status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one’s family members, City employees, friends, or associates, business or otherwise, including attempts to secure preferential treatment beyond activities in which members of Council normally engage on behalf of their constituents as part of their official duties;

(b) the holding out of the prospect or promise of future advantage through a member of Council’s supposed influence within Council in return for present actions or inaction.

10.3 For the purposes of this section “private advantage” does not include a matter that:

(a) is of general application;

(b) affects a member of Council, their family members, City employees, friends, or associates, business or otherwise, as one of a broad class of persons; or

(c) that concerns the remuneration or benefits of a member of Council.
SECTION 11 - BUSINESS RELATIONS

11.1 No member of Council shall act as a paid agent before Council, its Committees, or an agency, board or commission of the City except in compliance with the Municipal Conflict of Interest Act.

11.2 No member of Council shall refer a third party to a person, partnership, or corporation in exchange for financial or other gain.

SECTION 12 - CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT

12.1 No member of Council shall allow the prospect of their future employment by a person or entity to detrimentally affect the performance of their duties as a member of Council.

SECTION 13 - CONDUCT RESPECTING CITY EMPLOYEES

13.1 Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members of Council shall direct requests for action outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

13.2 Under the direction of the City Manager, City employees serve the Council as a whole, and the combined interests of all members of Council as evidenced through the decisions of Council. Accordingly:

(a) members of Council shall be respectful of the role of City employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;

(b) no member of Council shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of City employees; and

(c) members of Council shall show respect for the professional capacities of City employees.

13.3 No member of Council shall ask, request or compel City employees to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.

13.4 No member of Council shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any City employee with the intent of interfering with that employee’s duties, including the duty to disclose improper activity.
SECTION 14 - RESPECT FOR THE CITY AND ITS BY-LAWS

14.1 Members of Council shall encourage public respect for the City and its by-laws.

SECTION 15 - ADHERENCE TO COUNCIL POLICIES AND PROCEDURES

15.1 Members of Council shall observe the terms of all policies and procedures established by City Council, provided that a member of Council’s failure to observe the rules of procedure contained in the Procedural By-law is deemed not to be a contravention of this Code of Conduct.

15.2 Subsection 15.1 does not prevent a member of Council from requesting that Council grant an exemption from a policy or procedure and such an exemption may be limited as to time or scope and subject to amendment or revocation.

SECTION 16 - COMPLAINTS UNDER THE INTEGRITY COMMISSIONER BY-LAW

16.1 No member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner under the Integrity Commissioner By-law.

16.2 No member of Council shall obstruct the Integrity Commissioner in carrying out their responsibilities under the Integrity Commissioner By-law.

16.3 Examples of the types of obstruction prohibited under subsection 16.2 include but are not limited to:

(a) destroying documents including erasing electronic documents;

(b) withholding or concealing documents including electronic documents;

(c) failing to respond to the Integrity Commissioner within 15 days after a written request is given or within such longer period as the Integrity Commissioner may allow.

SECTION 17 – HARASSMENT

17.1 It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. Accordingly:

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3 Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.
(a) no member of Council shall harass another member of Council, City employees or any member of the public; and

(b) all members of Council shall:

i) treat one another, City employees and members of the public appropriately and without abuse, bullying or intimidation; and

ii) make all reasonable efforts to ensure that their work environment is free from discrimination and harassment.

SECTION 18 - EMPLOYMENT OF FAMILY MEMBERS

18.1 No member of Council shall attempt to influence the hiring or promotion of their family member.

18.2 No member of Council shall make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate their family member.

18.3 If a family member of a member of Council is an applicant for employment with the City or candidate for promotion or transfer, the family member will proceed through the usual selection process with no special consideration.

18.4 No member of Council shall act as a supervisor of their family member, or be placed in a position where they could have influence over their family member’s employment.

18.5 No member of Council shall attempt to use a family relationship for financial or other gain.

SECTION 19 - COMPLIANCE WITH THE CODE OF CONDUCT

19.1 Where, under the Integrity Commissioner By-law, the Integrity Commissioner decides that a member of Council has contravened this Code of Conduct, they may, under section 19 of that By-law:

(a) reprimand the member of Council; or

(b) suspend the remuneration paid to the member of Council in respect of their services as a member of Council for period of up to 90 days.
SECTION 20 - INTERPRETATION

20.1 Members of Council seeking clarification of any part of this Code of Conduct may consult with the City Clerk, City Solicitor or the Integrity Commissioner.
CODE OF CONDUCT FOR MEMBERS OF COUNCIL

PREAMBLE

Purpose:

A written Code of Conduct helps to ensure that the members of Council share a common basis for acceptable conduct. The Code of Conduct is not intended to replace personal ethics. The Code of Conduct:

- is designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate.
- serves to enhance public confidence that the City’s elected representatives operate from a base of integrity, transparency, justice and courtesy.
- forms a part of the City’s Procedural By-law No. 03-301, as amended.
- is enforced by the Integrity Commission under the City’s Integrity Commissioner By-law No. 08-154, as amended.

Statutory Provisions Regulating Conduct:

In addition, the Code of Conduct operates along with and as a supplement to the existing five statutes that govern the conduct of members of Council:

- the Municipal Act, 2001
- the Municipal Conflict of Interest Act
- the Municipal Elections Act, 1996
- the Municipal Freedom of Information and Protection of Privacy Act
- the Criminal Code (Canada)

SECTION 1 - DEFINITIONS

1.1 In this Code of Conduct:

(a) “benefit” means anything (other than a gift) given that confers an advantage, including but not limited to discounted or free services, food or beverages for immediate consumption, activities or event tickets, unless payment in any form, including the exchange of goods or services, of equal or greater value is received by the individual or entity giving the benefit;
(b) “charity” means a registered charity as defined in the *Income Tax Act* (Canada) or successor legislation, which has a registration number issued by the Canada Revenue Agency, or successor agency;

(c) “City” means the City of Hamilton, either in the sense of the geographic area of the municipality or in the sense of the identity of the municipal corporation, as the context requires;

(d) “community organization” means a non-profit group of persons organized for the advancement of a civic, cultural, social, health, philanthropic or recreational purpose within the City of Hamilton;

(e) “confidential information” includes but is not limited to information:

i) in the possession of the City that the City is either prohibited from disclosing, is required to refuse to disclose or exercises its discretion to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act*\(^1\) or other legislation; and

ii) concerning matters that are considered in an in-camera meeting under section 239 of the *Municipal Act, 2001*\(^2\).

(f) “Council” means the Council of the City of Hamilton;

(g) “family member” means:

i) spouse, including but not limited to common-law spouse and same-sex partner;

ii) child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew:

iii) mother-in-law, father-in-law, sister-in-law and brother-in-law;

iv) step-mother, step-father, step-sister, step-brother and step-child; and

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\(^1\) Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature and information that is personal, and permits the restriction or prohibition of disclosure of information that is subject to solicitor-client privilege.

\(^2\) Section 239 of the *Municipal Act, 2001* permits information concerning the following matters to be considered in an in-camera meeting: the security of the property of the City; personal matters about an identifiable individual, including City employees; a proposed or pending acquisition or disposition of land by the City; labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the City; advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a matter in respect of which Council may hold a closed meeting under another Act; a matter relating to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*; or the education or training of the members of Council.
v) child, mother or father in a relationship where the role of parent has been assumed;

(h) “gift” means any real or personal property given, including but not limited to artwork, clothing, money, gift certificates or gift cards, unless payment in any form, including the exchange of goods or services, of equal or greater value is received by the individual or entity giving the gift;

(i) “in camera” means the conduct of a meeting or part of a meeting, of Council or a Committee of Council, which is closed to the public as permitted under section 239 of the *Municipal Act, 2001*; and

(j) “lobbyist” means a person who is registered as a lobbyist in the City’s Voluntary Lobbyist Registry.

**SECTION 2 - GENERAL**

2.1 The key statements of principle that underlie the Code of Conduct are as follows:

(a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;

(b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;

(c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and

(d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.

**SECTION 3 - APPLICATION**

3.1 This Code of Conduct applies to all members of Council including the Mayor.

**SECTION 4 - GIFTS AND BENEFITS**

4.1 No member of Council shall accept a fee, advance, gift or benefit that is connected directly or indirectly with the performance of their duties in office, unless permitted by the exceptions listed in subsection 4.3.

4.2 For the purposes of subsection 4.1, a fee or advance paid to or a gift or benefit given with the member of Council’s knowledge to their family member or to their staff that is connected directly or indirectly to the performance of their duties in office is deemed to be a gift or benefit to that member of Council.
4.3 The following are exceptions to subsection 4.1:

(a) compensation authorized by law;

(b) such gifts or benefits that normally accompany the duties of office and are received as an incident of protocol or social obligation;

(c) a political contribution otherwise reported by law;

(d) admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the entity responsible for organizing and presenting the event and unsolicited by the member of Council, if attending or participating in their official capacity, including:

   (i) participation in an event as a speaker or panel participant by presenting information related to City matters;

   (ii) performance of a ceremonial function appropriate to the member of Council’s office;

   (iii) attendance at an event that is appropriate to the official capacity of the member of Council;

(e) admission to a charity or community organization event offered by the charity or community organization for whose benefit the event is being held and unsolicited by the member of Council;

(f) admission to a training or education program, including meals and refreshments furnished to all attendees, if such training or education is related to the member of Council’s duties in office and in the interest of the City;

(g) services provided without compensation by persons volunteering their time;

(h) a suitable memento of a function honouring the member of Council;

(i) food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or by political subdivisions of them or by a foreign government within a foreign country;

(j) food and beverages consumed at banquets, receptions or similar events, if:

   (i) attendance serves a legitimate business purpose;

   (ii) the person extending the invitation or a representative of the organization is in attendance; and

   (iii) the value is reasonable and the invitations infrequent;

(k) communication to the office of a member of Council including subscriptions to newspapers and periodicals.
4.4 Except for paragraph (c), the exceptions listed in subsection 4.3 do not apply to lobbyists. Lobbyists are not permitted to give a gift or benefit under this section unless it is a political contribution permitted by law.

4.5(1) In the case of paragraphs (b), (h), (i), (j) and (k) of subsection 4.3, if the value of the gift or benefit exceeds $200, or if the total value received from any one source during the course of a calendar year exceeds $200, the member of Council shall within 30 days of receipt of the gift or benefit or of reaching the annual limit, file a disclosure statement with the City Clerk. The disclosure statement must indicate:

(a) the nature of the gift or benefit;
(b) its source and date of receipt;
(c) the circumstances under which it was given or received;

(2) Any disclosure statement made under subsection paragraph 4.5(1) will be a matter of public record.

SECTION 5 - CONFIDENTIALITY

5.1 No member of Council shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

5.2 No member of Council shall use confidential information for financial or other gain, or for the financial or other gain of a family member or any person or corporation. For example, no member of Council should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

5.3 No member of Council shall disclose the content of a matter that has been discussed at or the substance of deliberations of an in-camera meeting, except for content that has been authorized by Council or a Committee of Council to be released to the public.

5.4 Examples of the types of content that a member of Council must keep confidential under this section include but are not limited to:

(a) items under litigation, negotiation, or personnel matters;
(b) information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
(c) price schedules in contract tender or Request For Proposal submissions if so specified;
(d) information deemed to be personal information under the Municipal Freedom of Information and Protection of Privacy Act;
(e) statistical data required by law not to be released (e.g. certain census or assessment data).

5.5 Members of Council shall not access or attempt to gain access to confidential information in the possession of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

SECTION 6 - USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

6.1 No member of Council shall use or permit the use of City land, facilities, equipment, supplies, services, City employees or other resources (for example, City-owned materials, websites, Council transportation delivery services or Councillor global budgets) for activities other than the business of the City.

6.2 No member of Council shall obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings or drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

SECTION 7 - ELECTION CAMPAIGN WORK

7.1 Members of Council are required to comply with the Municipal Elections Act, 1996.

7.2 No member of Council shall use the facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities, except on the same basis (including paying a fee if any) as such resources are normally made available to members of public.

7.3 No member of Council shall use their newsletter or their website linked through the City’s website for any election campaign or campaign-related activities.

7.4 No member of Council shall use the services of City employees for any election campaign or campaign-related activities during hours in which those City employees receive any compensation from the City.

SECTION 8 - CONDUCT AT COUNCIL AND COMMITTEE

8.1 Members of Council shall conduct themselves with decorum at Council and Committees of Council in accordance with the provisions of the Procedural By-law.

8.2 Under its Accountability and Transparency Policy, the City supports ensuring accountability and transparency in all its actions. Accordingly, in addition to disclosing a pecuniary interest under the Municipal Conflict of Interest Act, members of Council shall disclose non-pecuniary interests they have in a matter, either on their own behalf or while acting for, by, with or through another, prior to consideration of that matter at Council or a Committee of Council.
8.3 Examples of types of non-pecuniary interests in a matter to be disclosed under subsection 8.2 include but are not limited to:

(a) a member of Council being a director or senior officer of an entity, whether or not appointed by Council;

(b) a member of Council’s family member being a director or senior officer of an entity;

(c) a member of Council or their family member holding a licence or other permission issued by the City.

8.4 Subsection 8.2 does not apply to a non-pecuniary interest which is so remote or insignificant in its nature that it cannot reasonably regarded as likely to influence the member of Council.

SECTION 9 - REPRESENTING THE CITY

9.1 Members of Council shall make every effort to participate diligently in the activities of the agencies, boards, and commissions to which they are appointed.

SECTION 10 - IMPROPER USE OF INFLUENCE

10.1 No member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.

10.2 Examples of types of prohibited conduct under this section include but are not limited to:

(a) the use of one’s status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one’s family members, City employees, friends, or associates, business or otherwise, including attempts to secure preferential treatment beyond activities in which members of Council normally engage on behalf of their constituents as part of their official duties;

(b) the holding out of the prospect or promise of future advantage through a member of Council’s supposed influence within Council in return for present actions or inaction.

10.3 For the purposes of this section “private advantage” does not include a matter that:

(a) is of general application;

(b) affects a member of Council, their family members, City employees, friends, or associates, business or otherwise, as one of a broad class of persons; or

(c) that concerns the remuneration or benefits of a member of Council.
SECTION 11 - BUSINESS RELATIONS

11.1 No member of Council shall act as a paid agent before Council, its Committees, or an agency, board or commission of the City except in compliance with the Municipal Conflict of Interest Act.

11.2 No member of Council shall refer a third party to a person, partnership, or corporation in exchange for financial or other gain.

SECTION 12 - CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT

12.1 No member of Council shall allow the prospect of their future employment by a person or entity to detrimentally affect the performance of their duties as a member of Council.

SECTION 13 - CONDUCT RESPECTING CITY EMPLOYEES

13.1 Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members of Council shall direct requests for action outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

13.2 Under the direction of the City Manager, City employees serve the Council as a whole, and the combined interests of all members of Council as evidenced through the decisions of Council. Accordingly:

(a) members of Council shall be respectful of the role of City employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;

(b) no member of Council shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of City employees; and

(c) members of Council shall show respect for the professional capacities of City employees.

13.3 No member of Council shall ask, request or compel City employees to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.

13.4 No member of Council shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any City employee with the intent of interfering with that employee’s duties, including the duty to disclose improper activity.
SECTION 14 - RESPECT FOR THE CITY AND ITS BY-LAWS

14.1 Members of Council shall encourage public respect for the City and its by-laws.

SECTION 15 - ADHERENCE TO COUNCIL POLICIES AND PROCEDURES

15.1 Members of Council shall observe the terms of all policies and procedures established by City Council, provided that a member of Council’s failure to observe the rules of procedure contained in the Procedural By-law is deemed not to be a contravention of this Code of Conduct.

15.2 Subsection 15.1 does not prevent a member of Council from requesting that Council grant an exemption from a policy or procedure and such an exemption may be limited as to time or scope and subject to amendment or revocation.

SECTION 16 - COMPLAINTS UNDER THE INTEGRITY COMMISSIONER BY-LAW

16.1 No member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner under the Integrity Commissioner By-law.

16.2 No member of Council shall obstruct the Integrity Commissioner in carrying out their responsibilities under the Integrity Commissioner By-law.

16.3 Examples of the types of obstruction prohibited under subsection 16.2 include but are not limited to:

(a) destroying documents including erasing electronic documents;

(b) withholding or concealing documents including electronic documents;

(c) failing to respond to the Integrity Commissioner within 15 days after a written request is given or within such longer period as the Integrity Commissioner may allow.

SECTION 17 – HARASSMENT

17.1 It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. Accordingly:

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3 Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.
(a) no member of Council shall harass another member of Council, City employees or any member of the public; and

(b) all members of Council shall:

i) treat one another, City employees and members of the public appropriately and without abuse, bullying or intimidation; and

ii) make all reasonable efforts to ensure that their work environment is free from discrimination and harassment.

SECTION 18 - EMPLOYMENT OF FAMILY MEMBERS

18.1 No member of Council shall attempt to influence the hiring or promotion of their family member.

18.2 No member of Council shall make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate their family member.

18.3 If a family member of a member of Council is an applicant for employment with the City or candidate for promotion or transfer, the family member will proceed through the usual selection process with no special consideration.

18.4 No member of Council shall act as a supervisor of their family member, or be placed in a position where they could have influence over their family member’s employment.

18.5 No member of Council shall attempt to use a family relationship for financial or other gain.

SECTION 19 - COMPLIANCE WITH THE CODE OF CONDUCT

19.1 Where, under the Integrity Commissioner By-law, the Integrity Commissioner decides that a member of Council has contravened this Code of Conduct, they may, under section 19 of that By-law:

(a) reprimand the member of Council; or

(b) suspend the remuneration paid to the member of Council in respect of their services as a member of Council for period of up to 90 days.
SECTION 20 - INTERPRETATION

20.1 Members of Council seeking clarification of any part of this Code of Conduct may consult with the City Clerk, City Solicitor or the Integrity Commissioner.