SUBJECT: Code of Conduct for Employees Policy and Whistleblower By-Law (HUR09012) (City Wide)

RECOMMENDATION:

(a) That the Code of Conduct for Employees Policy (Appendix A) be approved and implemented (replaces existing policy);

(b) That the proposed Whistleblower By-law be passed (Appendix B);

(c) That the City of Hamilton, Conflict of Interest Policy, Code of Conduct for Employees Policy, and Candidacy for Political Office Policy be repealed (all existing); and

(d) That item G be removed from the Audit and Administration Committee outstanding business list.

Chris Murray
City Manager
EXECUTIVE SUMMARY:

This report recommends that the revised Code of Conduct for Employees Policy be approved and implemented. As part of the ongoing review and updating of all Human Resources policies, work has been completed to integrate the existing Conflict of Interest, Candidacy for Political Office, and the Code of Conduct for Employees policies.

In addition, this report recommends that the proposed Whistleblower By-law be passed. At the November 18, 2008 meeting of Audit & Administration Committee, Legal Services staff was directed to draft a Whistle-blowing Protection By-law based on a staff review of whistle-blowing protection in other jurisdictions and to forward a proposed By-law covering elected positions and staff for the consideration of Council. Staff from Legal Services, Human Resources and Audit Services collaborated on the development of a proposed Whistleblower By-law which protects employees who make a qualifying disclosure. Staff are recommending passage of the proposed Whistleblower By-law which offers protection for employees who report incidents of serious wrong doing. The proposed Whistleblower By-law is a positive step toward supporting employee morale within a culture of high performance. The proposed By-law does not provide for disclosures of serious wrongdoing made by Council members, nor does it give Council members protection from reprisal. It recognizes that such disclosures should be referred to the Integrity Commissioner for possible investigation under the Integrity Commissioner By-law, without precluding investigation or alternative action under the proposed By-law, for example to protect the City’s funds or assets.

BACKGROUND:

Governance of large municipal corporations is complex and requires high levels of performance among its employees. The City of Hamilton has acknowledged and accepted the importance of values and goals through its commitment to our mission, vision, values, strategic themes and focus areas statements. To enable employees to achieve this high performance aligned with our values and focus areas, the City, in its service to its citizens, must encourage a culture which produces high morale and effective performance.

Developing and supporting an appropriate Code of Conduct for Employees Policy will identify and promote the City’s values to employees and to all stakeholders. Employees are supported when their employer clearly outlines corporate expectations and sets standards for appropriate behaviours and actions. As employees understand their responsibilities and obligations, they can make decisions and take actions aligned with the corporate expectations and values. This Policy also outlines restrictions and unacceptable behaviour in specific areas such as community board activity, political activity, gifts and hospitality, intellectual
property, public duty, etc. It supports employees’ desire to understand possible, real or perceived conflicts of interest.

Overall, the City of Hamilton assumes that employees endeavour to do the right thing. All large organizations and public sector bodies face the risk of some things going wrong. Encouraging a culture of openness and the promotion of “right doing” will assist greatly in discouraging poor decisions or unlawful behaviour. Most public sector employers have versions of codes of conduct or fraud prevention policies. These are periodically revised to include recent considerations. Several organizations’ policies have been examined in the development of the Code of Conduct for Employees Policy and the proposed Whistleblower By-law. Those researched include the Cities of Ottawa, Thunder Bay, Toronto, Windsor and the Regions of Niagara, Peel, Waterloo and York, as well as leading corporations known to have excellent human resource policies.

The overall goal of a whistleblower policy or by-law is to protect employees who make a qualifying disclosure that exposes serious wrongdoing from reprisals. There are some existing protections against reprisals. There are a number of statutes which already protect persons who disclose or report wrongdoing, including the Criminal Code. The Federal Government has made it a criminal offence to retaliate against an employee who reports a belief of a criminal wrongdoing by his or her employer. Enacting a municipal-level Whistleblower By-law provides additional protection and effective procedures to allow employees to report wrongdoings.

**ANALYSIS/RATIONALE:**

The proposed Whistleblower By-law recognizes that it is in the public interest to maintain and enhance public confidence in the City and its employees. The By-law does this by providing employees, who make qualifying disclosures of serious wrongdoing with respect to City operations, with protection from reprisals; in addition, the By-law provides for the appropriate investigation or alternative action. This proposed By-law meets three requirements for effective whistleblowing legislation:

1. it protects the public interest by providing a process to deal with serious wrongdoings;
2. it protects the informant from reprisal;
3. it protects the public and the City from trivial, frivolous or vexatious disclosures.

The reporting process is for employees to make a disclosure of a serious wrongdoing to their supervisor or manager, head of the department or designate, or the Director of Audit Services. The proposed By-law contains the high-level investigation/alternative action steps to be taken by the Director of Audit Services. It does not deal with reports of wrongdoing from the public.
The proposed By-law designates the Director of Audit Services to receive all complaints of serious wrongdoing, and gives him/her authority to undertake investigations/alternative actions to ensure that public and City interests are protected. As part of the investigation/alternative action process, the Director of Audit Services may appoint another employee; or in consultation with the City Manager, an external individual or organization as the investigator.

The failure of an employee to comply with the proposed By-law may result in discipline up to and including dismissal. The failure of a member of Council to comply may result in a complaint, inquiry and penalty under the Integrity Commissioner By-law.

Employees who make a qualifying disclosure under the proposed By-law will be provided with protection from reprisal. To be a “qualifying disclosure”:

- The employee must identify him/herself.
- The employee must have reasonable grounds to believe there has been or is about to occur a serious wrongdoing by an employee or member of Council.
- The employee must make the complaint in good faith.
- The employee must make the complaint to his/her supervisor or manager, Department Head, or the Director of Audit Services. If the report is made directly to the employee’s supervisor/manager or Head of Department, then the disclosure must be submitted immediately to the Director of Audit Services.

Serious wronging is defined in the proposed By-law and involves breaches of laws or by-laws, harm or dangers to the environment or to the health and safety of persons, misuse of City funds or assets, noncompliance with Code of Conduct for Employees Policy that results or is likely to result in financial gain for the employee, or a reprisal against an employee who has made a qualifying disclosure.

A reprisal may be a threat or action to dismiss, suspend, demote, discipline, harass or deny a benefit to an employee who makes a qualifying report under the proposed By-law. The obligations not to carry out a reprisal and to ensure employees are made aware of the proposed By-law apply to every employee or member of Council with supervisory or management responsibilities.

It places additional obligations on staff and members of Council, to preserve relevant records, co-operate with and not obstruct investigations. The proposed By-Law will come into force six months following its passage so as to allow time for the required communication to employees.

The proposed By-law does not provide for disclosures of serious wrongdoing made by Council members, nor does it give Council members protection from reprisal.
The collective role of Council is set out in Section 224 of the Municipal Act, 2001 and includes representing the public, considering the well-being and interests of the municipality, ensuring the accountability and transparency of the operations of the municipality and maintaining the financial integrity of the municipality. Individually, members of Council must act in good faith, carrying out their duties in the public interest, an obligation which is set out in detail in the Council Code of Conduct. Accordingly, provision has already been made for a Council member's responsibility to address wrongdoing. Further, as elected officials, members of Council are not subject to reprisal as employees may be. Reprimand or suspension of pay can only be imposed by the Integrity Commissioner acting in accordance with the Integrity Commissioner By-law and dismissal, only by the voters at election time or under legislation such as the Municipal Conflict of Interest Act.

The proposed By-law does provide for disclosures of serious wrongdoing made by employees about Council members. This ensures that all operations of the municipality are included. The proposed By-law recognizes that such disclosures should be referred to the Integrity Commissioner for possible investigation under the Integrity Commissioner By-law, without precluding investigation or alternative action under the proposed By-law, for example to protect the City's funds or assets.

A communication plan has been drafted for the Code of Conduct for Employees Policy and the proposed Whistleblower By-law to roll out the key messages to all City staff. New employees will be required to sign off on the Code of Conduct for Employee Policy prior to, or on first day of employment, or following orientation with supervisor, that he or she has read and agrees to abide by it. Support will be given to all those in management roles to fully understand their responsibilities regarding cascading communications to existing employees. Human Resources will communicate the amended policy and the proposed By-law with the executive of all Unions. To facilitate ease of understanding and interpretation of the proposed Whistleblower By-law, an accompanying Questions and Answers sheet will be developed and maintained.

**ALTERNATIVES FOR CONSIDERATION:**

There is no practical alternative to implementing and maintaining a comprehensive Code of Conduct for Employees Policy.

The proposed Whistleblower By-law provides protection from reprisals for employees who make qualifying disclosures. There is currently no existing policy that provides this protection.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**
Staﬃng implications – it is not anticipated any further staﬀ would be required.

Legal implications – Legal liability could ensue if acts of wrongdoing or omission are not reported and dealt with in an appropriate manner.

There are no ﬁnancial implications.

**POLICIES AFFECTING PROPOSAL:**

The existing Code of Conduct for Employees, Conﬂict of Interest Policy, and Candidacy for Political Ofﬁce Policy will be removed from eNet and replaced with the updated Code of Conduct for Employees Policy and Whistleblower By-law. After proposed By-law is passed, the Fraud Policy & Protocol will be updated to state that in the event of a conﬂict, the By-law takes precedence over any such conﬂict as it applies to employees. At this time, the Fraud Policy & Protocol will not be repealed as scope includes employees at agencies, boards, and commissions over which Council has authority.

**RELEVANT CONSULTATION:**

Policy Review Group, City-Wide Representation
Corporate Services Department, Legal Services
City Manager’s Ofﬁce, Audit Services

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- Community Well-Being is enhanced. ☑ Yes ☐ No
- Environmental Well-Being is enhanced. ☑ Yes ☐ No
- Economic Well-Being is enhanced. ☑ Yes ☐ No

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No
**Code of Conduct for Employees Policy**

**POLICY STATEMENT**

The residents and businesses of the City of Hamilton are entitled to have fair, ethical and accountable local government administration. Accordingly, the City of Hamilton has high expectations of its employees for integrity and ethical conduct in their service to the community.

The City recognizes that employees strive to perform their duties in a manner that maintains and enhances public confidence and trust in the integrity, objectivity and impartiality of the City, understanding that trust and mutual respect are the cornerstones of any relationship between the public and its municipal government.

City employees owe a duty of loyalty and commitment to the City as a condition of accepting employment with the City of Hamilton. In serving the public interest they are entrusted with access to a wide range of information, resources and responsibilities. The City expects its employees to operate with a sense of honesty and accountability in accordance with the values and goals established in the Mission, Vision and Values of the City.

**PURPOSE**

The City of Hamilton’s work is diverse, multi-faceted and complex. Consequently, City employees must be independent, impartial and responsible to the public in carrying out their duties. By signing the Code of Conduct for Employees, employees acknowledge and accept responsibility to act and behave in a manner that is consistent with the expectations prescribed in this Policy. Employees collectively benefit from an overall atmosphere of high ethical conduct that flows from this commitment.

While it is not possible to cover every possible conflict of interest situation that might arise, this Policy outlines the City’s expectations regarding real and apparent conflicts of interest between an employee’s personal interests and the best interests of the City of Hamilton. If employees have questions or are unclear whether they have a conflict of interest, they are encouraged to discuss the situation with their supervisors or managers.

**SCOPE**

This Policy applies to all City employees, including but not limited to regular, temporary and contract employees, and to volunteers, students and interns (collectively called “Employees”).

This Policy is intended to supplement any other requirements imposed by applicable legislation, standards of professional practice, or any other requirements imposed by relevant City entities or departments.

**DEFINITIONS**

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.
Confidential Information

includes but is not limited to information 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 under the Municipal Freedom of Information and Protection of Privacy Act, Personal Health Information Protection Act or other legislation, and information concerning matters that are considered in an in-camera meeting under section 239 of the Municipal Act, 2001.

Conflict of Interest

A conflict of interest is a situation in which an employee has personal or private interests that may compete with the public interests of the City of Hamilton. Such competing interests can make it difficult to fulfill his or her duties impartially. A conflict of interest can create an appearance of impropriety or a perception of bias that can undermine confidence in the person and in the City of Hamilton generally. A conflict exists even if no unethical or improper act results from it. A conflict of interest can either be an apparent conflict or a real conflict.

Apparent Conflict: An apparent conflict of interest exists where an informed and reasonable person reviewing the matter and having thought the matter through could conclude that a conflict of interest exists.

Real Conflict: A real conflict of interest exists where a personal interest exists and that interest:

1. is known to the employee; and
2. has a connection to the employee’s duties that is sufficient to influence the exercise of those duties.

Family Member

means:
(a) spouse, including but not limited to common-law spouse and same-sex partner
(b) child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew
(c) mother-in-law, father-in-law, sister-in-law and brother-in-law
(d) step-mother, step-father, step-sister, step-brother and step-child, and
(e) child, mother or father in a relationship where the role of parent has been assumed.

Personal Interest: A personal interest includes a right, entitlement, or legal share in something and involves any situation where the employee is likely to secure some benefit or loss, or advantage or disadvantage. A personal interest includes but is not limited to financial interests and can be a direct interest or an indirect interest.

A personal interest does not include an interest:
(a) that is of general application to residents, businesses, or employees of the City; or
(b) where the interest is so remote or insignificant in its nature that a decision affecting the interest cannot reasonably be regarded as likely to influence the employee.
### Fraud

Per the Fraud Policy & Protocol, fraud includes any array of acts characterized by intentional deception. Dishonest, illegal or fraudulent activities include, but are not limited to:

- Forgery or alteration of documents (cheques, promissory notes, time sheets, independent contractor agreements, purchase orders, etc.);
- Misrepresentation of information by an individual;
- Misrepresentation of information on documents;
- Misappropriation of funds, securities supplies or any other asset;
- Unauthorized use disappearance, or destruction of City property, equipment, materials or records;
- Impropieties in the handling or reporting of money transactions;
- Authorization or receipt of payments for goods not received or services not performed;
- Authorization or receipt of payment for hours not worked;
- Any inappropriate expense claim made, which is unrelated to City business or the employee's job responsibilities.
- Any apparent violation of Federal, Provincial or local laws.

### Interests

**Direct Interests:** Direct interests are those interests in which the employee has an apparent significant social relationship or financial relationship and with respect to which the employee may gain benefits or losses, advantages or disadvantages.

**Indirect Interests:** Indirect interests are those interests in which the employee, by virtue of a significant social relationship or a financial relationship, may reasonably be seen to gain benefits or losses, disadvantages or disadvantages, even though the employee may never have a direct interest.

### Relationships

**Financial Relationship:** A financial relationship is one in which:

(a) the employee or his or her agent,
   
   - is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public;
   - has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public; or,
   - is a member of a body that potentially has a financial interest in matters within the scope of the employee’s duties or responsibilities.

(b) The employee is a partner of a person, or is, in addition to the employee's position at the City, in the employment of another person or body.

**Significant Social Relationship:** A significant social relationship includes personal relationships, such as family and emotional relationships, and memberships in volunteer and professional organizations.

### TERMS & CONDITIONS

**General**

The following terms and conditions apply to this Policy:

All employees are responsible and accountable for using good judgment in the exercise of their duties and must carry out those duties in accordance with the following provisions. Employees are required to report all conflicts of interest that may come to their attention to the City Manager, their General Manager or equivalent (hereafter “General Manager”), director, manager, or supervisor.
Corporate Human Resources Policy
Work Environment

Appendix A

Content Updated: 2009-10-08

Approval: YEAR-MM-DD

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Personal Interests

No employee in the course of his or her duties shall seek to advance a personal interest, whether or not it is detrimental to the City.

Examples of advancing a personal interest include but are not limited to:

1. Influencing or attempting to influence the City to contract with a person, partnership or corporation for any purpose in which the employee has a personal interest, or for which the employee has received or reasonably anticipates receiving some profit, payment, or compensation.

2. Soliciting or accepting from any person or corporation any profit, commissions or other payments or favours in the way of price or other advantages, such as loans or services, when:

   (a) the person or corporation has had, has, or may reasonably be expected to have, any business, commerce or trade dealings with the City; or
   (b) the person or corporation is seeking any decision, act, advice, comment, endorsement or anything whatsoever from the City, its employees or City Council;

3. Soliciting or accepting any share of profits, commissions or other payments or favours in the way of price or other advantages, such as loans or services, in exchange for referral of third parties to any City employee for the purpose of securing or continuing business with the City.

Community Board Activity

No employee shall accept an appointment to the Board of a community agency or association that deals with matters related to the activities of the City, without the written permission of his or her General Manager or designate. Written permission of the General Manager or designate is not required if the employee is appointed to the Board of the agency or association by the City to represent the City's interests.

Any City employee serving on a community board shall take all reasonable actions to avoid any real conflict or apparent conflict between Board activity and the City's interests. Where a real or apparent conflict exists, the employee shall declare the conflict and shall not take part in, or be present for, any Board discussion or decision about the issue raising the conflict of interest. If the conflict of interest is significant, the employee shall resign from the board.

Political Activity

To ensure public trust in the City of Hamilton, employees must be, and appear to be, both personally impartial and free from undue political influence in the exercise of their duties.

Employees engaged in political activities must take care to separate personal political activities from their position of employment with the City.

Employees who are politically involved in Municipal, Provincial, or Federal levels of government must make it clearly understood that they
Employees who are running for elected office at the municipal level must abide by the respective legislation governing such elections. This includes abiding by s. 30 of the Municipal Elections Act, 1996 which requires that employees request and obtain an unpaid leave of absence beginning as of the day the employee is nominated and ending on voting day; and deems employees who are elected to office to have resigned from employment immediately before making their declaration of office.

Any employee who is politically involved shall ensure that such involvement does not interfere with his or her ability to perform his or her corporate duties objectively. Employees should not engage in any political activity during working hours, or utilize City assets resources or property. Employees shall not identify themselves as City employees when engaged in political activity (e.g. employees shall not wear clothing with the City of Hamilton logo while canvassing for a candidate). Notices, posters or similar material in support of a particular candidate or political party are not to be displayed or distributed by employees at City work sites or on City property. An employee’s decision to support a candidate or political party financially remains a personal decision.

Every employee shall safeguard confidential information and shall not release confidential information to anyone other than the persons who are authorized to receive such information. The following information must not be used or disclosed:

1. except in accordance with the Municipal Freedom of Information and Protection of Privacy Act:
   - personal information about an employee (name, address, payroll or benefits information)
   - items under litigation
   - labour relations matters
   - information that constitutes the proprietary information of a third party, individual or group
   - information that might reasonably be regarding as having been disclosed to the employee in confidence,
   - information that is of a sensitive nature, or
   - information that imparts to the person in possession of such information an advantage not available to the public generally.

2. except in accordance with the Personal Health Information Protection Act, identifying information about an individual in oral or recorded form, if the information:
   - relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family;
   - relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual;
   - is a plan of service within the meaning the Long-Term Care Act, 1994 for the individual;
Employees Doing Business With the City

No employee shall knowingly approve or attempt to influence the approval of any license, permit, contract, agreement or other document on behalf of the City for his or her own personal use, or for the use of an individual with whom the employee has a financial or social relationship. This is in accordance with the City’s Purchasing Policy.

Financial Integrity

Every employee who maintains the City’s accounting records shall do so with the utmost integrity, reflecting accurately and punctually all transactions, assets and liabilities of the City. All business records, expense accounts, invoices, vouchers, bills, payroll and employee records and other reports are to be prepared with care and honesty. False or misleading entries, other false or misleading information, or omissions of entries in the records or reports of the City, or any unrecorded bank accounts, are strictly prohibited.

No employee shall undertake any fraudulent activities. This includes misrepresenting information on documents, authorizing payment for goods and services not received, unauthorized use, destruction, or disappearance of City assets and information, and forgery or alteration of documents. Further details can be found in the Fraud & Protocol Policy.

No employee shall establish or maintain secret or unrecorded cash funds or other assets of the City for any purpose or conceal any transaction from the City’s internal or external auditors.

No employee shall use City funds for any personal use at any time.

Gifts & Hospitality

An employee may not solicit or accept any gift, benefit, money, discount, favours, gift certificate, gift card or other assistance from any person or business which has or desires to have a contract with the City to supply goods or services, unless the gift, benefit, money, discount, favours, gift certificate, gift card or assistance is available to all members of the public or is available on a discounted basis to all City employees e.g. discounted cell phone package or automobile insurance.

No employees shall accept any gifts, hospitality, and invitations to special events which exceed $100 in value. An employee may accept a nominal gift or hospitality with a value of $25, or under (for example, lunch, dinner, coffee, a business portfolio, a plant) provided that:

1. it is in the context of a business meeting or interaction, or in the context of a recognized charitable event; and
Influencing the Employment Process

No employee shall personally make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate any family member, friends, or business associates.

No employee shall attempt to interfere with the employment process or influence any City employee to hire, transfer, promote, demote, discipline or terminate any family member, friends or business associates (see Employment of Relatives Policy).

Insider Information

No employee shall access, use or transmit confidential or privileged information available only to City employees to obtain personal or financial gain, or for the personal or financial gain of any other individual, partnership or company, whether directly or indirectly, or for any other purpose except as required by law.

Outside Business & Financial Activity

No employee participating in any outside business or financial activity shall do so during work hours, or use the City’s facilities or property including but not limited to vehicles, equipment, tools, photocopiers, stationery, telephones or cell phones, computers, etc., for the benefit or purpose of such business or activity.

Outside Employment

Employees shall not take outside employment, including self-employment, if such employment:

- Causes a real or apparent conflict of interest; or
- Is performed in such a way as to appear to be an official act of or to represent the City; or
- Interferes with regular duties in any way, or involves the use of City premises, resources or equipment including but not limited to City email, telephones, cell phones, or supplies.

Where it appears that a conflict of interest might arise in accepting
### Intellectual Property

outside employment, employees must notify their supervisor in writing of the nature of such outside employment prior and receive written permission prior to the acceptance of such employment. (See Reporting a Conflict of Interest, below).

The intellectual property rights in any work produced by an employee in the course of employment at the City are the exclusive property of the City, unless there is a written agreement stating otherwise between the City and the employee.

No employee shall sell, transfer, or in any way authorize the use of any intellectual property, including copyrighted property such as literary or artistic works, patented inventions or processes, technological innovations, computer programs, data bases, and trademarks, belonging to the City, without express authority from the City.

The City forbids software piracy, defined as using any unlicensed copy of a software package that has not been purchased for City purposes. It includes taking a copy of a licensed software package for one's own use or passing a copy on to another person for their use (See the Computer & Technology Acceptable Use Policy).

Upon termination of employment, an employee shall promptly deliver to the City any and all property, technology, data, manuals, notes, records, plans, or other documents, including any such documents stored on any video or software related medium, held by the employee concerning the City’s services and programs, know-how, developments, and equipment. This includes property made or prepared by the employee and relating in any way to the affairs of the City. With permission, employees may retain samples of their work if such work is in the public domain. However, this paragraph shall not apply to any original research or to any articles or papers for which the employee is an author or co-author, for which the employee shall retain all intellectual property rights.

### Public Duty

Some positions in the organization are more subject than others to conflicts of interest. General Managers, Directors, Managers and employees who give professional advice or assistance, or participate in enforcement and/or inspection activities, shall take every reasonable action not to place themselves in conflict of interest situations, or exhibit behaviour or commit acts which could bring disrepute to the City or undermine the City’s reputation.

Since public criticism can also undermine the City’s reputation, employees are expected to refrain from public criticism of the City or of other City employees through all venues including social networking. This does not remove employees’ rights as citizens to comment generally on matters of public interest, but in exercising this right, City employees must not identify themselves as such or purport to be speaking on behalf of the City.

### Public Engagements

No employee shall charge or accept a fee for taking part in a public speaking engagement such as a public radio/television broadcast, web site broadcast or conference to which he or she was invited as a direct result of his or her position as an employee.
Appendix A
HUR09012

Corporate Human Resources Policy

Work Environment

Supersedes Policy: Code of Conduct
(1995 June 6)

Approval: YEAR-MM-DD

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<th>Publications</th>
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<tr>
<td>Any fee received for a speaking engagement during normal working hours, or at any time where the employee is representing the City, shall be turned over to the City, unless the value of the fee does not exceed expenses (incurred for such speaking engagement) which are not reimbursed by the City.</td>
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Accepting a nominal gift for a speaking engagement such as a pen or other souvenir, with a value of $25, or under, is not a violation of this Policy. Accepting free admission from the seminar or conference organizers for the balance of the seminar or conference is not a violation of this Policy.

Employees may charge or accept a fee for speaking engagements during time off work (e.g. vacation time) providing such employees are not representing or purporting to represent the City.

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<th>Purchase or Lease of Real Property</th>
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<td>No employee of the City shall directly or indirectly purchase or lease real property from or to the City, nor shall an employee have any direct or indirect interest in a company which purchases or leases real property from or to the City, unless this interest has been fully disclosed to the appropriate approving authority and unless the purchase or lease of the real property is done through a public process.</td>
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<th>Use of City Property</th>
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<td>No employee shall use the City’s property, funds, equipment, tools, supplies or services for any personal uses whatsoever. Limited use of City telephones and cell phones, without incurring long distance or other charges, and limited personal use of a City computer in accordance with the <a href="#">Computer Technology Acceptable Use Policy</a>, is acceptable.</td>
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<th>Witness Fees</th>
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<td>No employee shall charge or accept a witness fee for taking part in a court, tribunal, or other adjudicative process to which he or she was requested to attend as a direct result of his or her position as an employee.</td>
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Any witness fee received shall be turned over to the City, unless the
Reporting a Conflict of Interest

value of the fee does not exceed expenses (incurred for such attendance as a witness) which are not reimbursed by the City.

If employees have a personal interest, whether direct or indirect, that might present a conflict of interest in connection with their duties as City employees, they must report this conflict to their director, manager or supervisor in writing. The director, manager or supervisor shall notify the General Manager of the Department or designate, who, in consultation with Human Resources, shall determine whether the employee has breached or may potentially become in breach of this Policy.

If a real or apparent conflict exists, and it is duly reported, such that the employee is or may become in breach of the Policy, the General Manager or designate shall instruct the employee, in writing, to withdraw from participation in any dealings or decision-making processes relative to the issue at hand. If the employee has knowingly or willfully breached the Policy, the General Manager shall determine the appropriate disciplinary measure, in consultation with Human Resources.

A written record of the employee's declaration of the conflict of interest, the decision of the General Manager, and the written instructions to the employee with respect to the conflict of interest shall be maintained in the employee's personnel file.

RESPONSIBILITIES

The following positions and/or departments are responsible for fulfilling the responsibilities detailed in this Policy as follows:

City Manager

- overall administration of the Policy to ensure implementation and compliance
- provide guidance in interpreting the Policy
- annual review of this Policy to ensure it continues to reflect changing needs and responsibilities of the City's employees and administration

Human Resources

- distribute copy of Policy to all new employees and discuss Policy during corporate orientation
- assist managers with interpretation and application of the Policy
- ensure reference to Policy in all employment agreements that are signed off by Directors and above
- request a signature of new employees, verifying that they have seen, read and understand their responsibility under the Policy. Signed letter shall be filed with employee's personnel file in Human Resources.
- investigate violations of this Policy, subject to the application of the Whistleblower By-law, with the assistance of Audit Services and/or Hamilton Police Services if required
- prepare updates to Policy as required

General Managers

- administer the Policy and ensure compliance
- provide guidance in interpreting the Policy
- deal fairly and firmly with any confirmed violations of the Policy
### Corporate Human Resources Policy

**Work Environment**

**Policy No:** HR-01-09

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<table>
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<tr>
<th>Directors/Managers/Supervisors</th>
<th>Employees</th>
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<tr>
<td>• ensure that all employees have received a copy of the Policy and are provided with any updates</td>
<td>• subscribe with signature (as part of employment offer) prior to, or on first day of employment, or following orientation with supervisor, that he or she has read and agrees to bide by the Code of Conduct for Employees</td>
</tr>
<tr>
<td>• highlight any areas that have particular relevance, given the nature of the employee's work</td>
<td>• annually review this Policy</td>
</tr>
<tr>
<td>• consult with General Manager, Human Resources or City Manager if interpretation of the Policy is required</td>
<td>• adhere to the standards outlined in this Policy</td>
</tr>
<tr>
<td>• report any violations of the Policy to the General Manager</td>
<td>• seek clarification if unsure about any information included in this Policy.</td>
</tr>
</tbody>
</table>

### COMPLIANCE

Every employee is expected to be aware of and act in compliance with this Policy. Any employee under investigation may be suspended with or without pay or be re-assigned to other duties pending completion of the investigation, depending on the particulars of the case and the best interests of the City. Where there is a serious wrongdoing, as defined in the Whistleblower By-law, that By-law applies. Violations of this policy may result in appropriate disciplinary measures, up to and including dismissal.

### RELATED DOCUMENTS

The following policies and acts are related to Code of Conduct, and the employees must be aware and abide by these policies as well.

- Computer and Technology Acceptable Use Policy
- Employment of Relatives Policy
- Fraud Policy & Protocol
- Harassment & Discrimination Prevention Policy
- Municipal Freedom of Information Act
- Personal Health Information Protection Act
- Personal Harassment Prevention Policy
- Purchasing Policy
- Substance Abuse Prevention Policy
- Race Relations Policy
- Violence in the Workplace Prevention Policy
- Whistleblower By-law (to be passed)

### HISTORY

The following stakeholders were consulted in the creation or revisions made to this Policy:

- Legal
- Policy Review Group
- Human Resources
- SMT

This policy replaces the former policy Code of Conduct Policy dated (1995 June 6), Candidacy for Political Office; and Conflict of Interest.
CITY OF HAMILTON

BY-LAW NO. 09-XXX

WHISTLEBLOWER BY-LAW

WHEREAS Council of the City of Hamilton desires to put into place a mechanism whereby, under appropriate circumstances, employees who disclose serious wrongdoing regarding City operations are protected from reprisal and whereby, under appropriate circumstances, investigations or alternative actions are undertaken in response to such disclosures;

AND WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraphs 2, 3, 4, 5 and 8 of subsection 10(2) authorize by-laws respecting the accountability and transparency of the City and its operations, the financial management of the City, the public assets of the City, the economic, the social and environmental well-being of the City, and the protection of persons and property;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

PURPOSE AND SCOPE

1. This By-law recognizes that it is in the public interest to maintain and enhance public confidence in the City and its employees, by providing for:

   (a) the disclosure of serious wrongdoing with respect to the City’s operations by its employees;

   (b) the protection from reprisals of employees for making disclosures of serious wrongdoing when such disclosures are qualifying disclosures, including prescribing the conduct of employees with supervisory or management responsibilities and members of Council with respect to the provision of protection from reprisals; and

   (c) the appropriate investigation or alternative action in response to disclosures of serious wrongdoing is undertaken including prescribing the conduct of employees and members of Council with respect to the investigation of such disclosures.
2. The Director of Audit Services is responsible for determining if disclosures of serious wrongdoing are qualifying disclosures and for ensuring that the appropriate investigation or alternative action in response to disclosures of serious wrongdoing is undertaken in accordance with this By-law.

3. All employees with supervisory or management responsibilities and who know of reprisals are responsible for ensuring that employees are protected from reprisals in accordance with this By-law.

4. This By-law is deemed to be a procedure, rule or policy governing the ethical behaviour of members of Council for the purposes of the Integrity Commissioner By-law.

DEFINITIONS

5. In this By-law:

“City” means the municipality of the City of Hamilton;

“City Manager” means the City’s City Manager;

“Council” means the Council of the City;

“Director of Audit Services” means the City’s Director of Audit Services or his/her designate;

“employee” means an employee of the City;

“good faith” means an act which is not done trivially, frivolously or for a vexatious purpose, and this definition shall be considered in determining what is bad faith under this By-law;

“reprisal” means any of the following measures taken against an employee because the employee has made a qualifying disclosure:

(a) the dismissal, suspension, demotion, discipline, harassment of an employee;

(b) the denial of a benefit of employment to an employee;

(c) any other disadvantaging of an employee;

(d) or the threat to take any of the measure in paragraphs (a) to (c) inclusive;
“serious wrongdoing” means:

(a) a contravention of the Criminal Code, federal or provincial statute or regulation, or City by-law;

(b) an act or omission that results or is likely to result in the misappropriation or misuse of City funds or assets;

(c) a contravention of the City’s Code of Conduct for Employees that results or is likely to result in profit, payment or compensation to the employee(s);

(d) an act or omission that creates or is likely to create a substantial and specific danger or harm to the life, health or safety of any person; or

(e) an act or omission that creates or is likely to create a substantial and specific danger or harm to the environment; or

(f) a reprisal; and

“supervisor/manager” means:

(a) the supervisor or manager to whom an employee normally reports; or

(b) in the case of a disclosure of serious wrongdoing involving the supervisor or manager to whom an employee normally reports, the next-above supervisor or manager in the employee’s chain of command.

PROTECTION FROM REPRISAL

Requirements with respect to a Qualifying Disclosure

6. The Director of Audit Services shall in his/her sole discretion determine whether or not a disclosure of serious wrongdoing made by an employee satisfies subsections (a) to (d) inclusive and when he/she determines that the subsections have been satisfied, the disclosure of serious wrongdoing is deemed a “qualifying disclosure” for the purposes of this By-law:

(a) the employee making the disclosure of serious wrongdoing identifies himself/herself and his/her position with the City or his/her work title;

(b) the employee making the disclosure of serious wrongdoing has reasonable grounds to believe there has been or is about to occur serious wrongdoing by one or more employees or members of Council;
(c) the employee making the disclosure of serious wrongdoing does so in good faith;

(d) the employee’s disclosure of serious wrongdoing is made to one of the following:
  - his/her supervisor/manager;
  - the head of his/her Department including the head’s designate; or
  - the Director of Audit Services,

  provided that, if the supervisor/manager or the head of Department including the head’s designate receives the disclosure of serious wrongdoing then such supervisor/manager or head of Department including designate shall submit the disclosure of serious wrongdoing immediately to the Director of Audit Services.

7. The Director of Audit Services shall send a written notice of his/her receipt of a disclosure of serious wrongdoing to the employee who made such disclosure.

Obligations with respect to a Reprisal

8. Every employee or member of Council with supervisory or management responsibilities have a positive obligation to ensure that:

   (a) an employee is not subjected to a reprisal; and

   (b) employees under his/her direction are made aware of this By-law.

9. An employee who believes he/she has been subjected to a reprisal may make a disclosure of serious wrongdoing section 6.

10. Nothing in this By-law impairs any right of an employee either at law or under any term or condition of employment or any applicable collective agreement(s).

11. The provisions of this By-law for the protection of employees are in addition to whistleblower or non-reprisal protection in any federal or provincial statute or regulation, and the provisions of this By-law shall not be construed as limiting such protections.
INVESTIGATION OR ALTERNATIVE ACTION IN RESPONSE TO A DISCLOSURE OF SERIOUS WRONGDOING

12.(1) At any time after a disclosure of serious wrongdoing is made, the Director of Audit Services shall in his/her sole discretion determine whether or not it is appropriate for him/her to undertake an investigation or alternative action with respect to such disclosure.

(2) In making his/her determination under subsection (1), the Director of Audit Services shall consider, among other things:

(a) the length of time that has elapsed since date when the subject-matter of the disclosure of serious wrongdoing is such that undertaking an investigation or alternative action would serve no useful purpose;

(b) whether or not undertaking an investigation or alternative action is appropriate given the extent to which any investigation or alternative action can be or has been undertaken by other duly authorized individuals or entities, for example by:

- the police under the Criminal Code;
- the Integrity Commissioner under the Integrity Commissioner By-law; or
- supervisory or management staff under City policies or procedures.

13. At any time when the Director of Audit Services is of the opinion that an investigation or alternative action addressing a disclosure of serious wrongdoing can be or has been undertaken by other duly authorized individuals or entities, he/she shall immediately take such steps as are within his/her authority and practicable to:

(a) refer the disclosure of serious wrongdoing to the individual or entity responsible for such an investigation or alternative action;

(b) conduct his/her investigation or alternative action, if any, so as not to interfere with an investigation or alternative action undertaken by the other individual or entity.

14.(1) When the Director of Audit Services determines under subsection 12(1) that it is appropriate for him/her to undertake an investigation, the Director of Audit Services may conduct the investigation or may:

(a) appoint another employee; or
(b) in consultation with the City Manager, appoint an outside individual or entity, to conduct all or part of the investigation.
(2) The Director of Audit Services shall take all reasonable steps to ensure that:

(a) an investigation under subsection (1) complies with City policies, procedures and other requirements;

(b) the City’s financial interests are protected including that the costs and expenses of such an investigation are minimized without hampering the ability of the Direction of Audit Services or an appointee under subsection (1) from completing his/her investigation; and

(c) the City’s internal resources, including but not limited to, the Audit Services, Legal Services, Human Resources and Risk Management Services Divisions, are used.

(3) The Director of Audit Services is entitled to investigate, or authorize an investigation by an appointee under subsection (1) into:

(a) any further serious wrongdoing as disclosed by an investigation under this By-law; or

(b) an act prohibited under subsection 15(3).

15.(1) Persons, including employees or members of Council, shall co-operate in any investigations or alternative actions under this By-law, and no person shall obstruct or interfere with the Director of Audit Services or an appointee under subsection 14(1) or a person acting on behalf of or under the direction of him/her in his/her investigation or in the performance of any of his/her responsibilities under this By-law.

(2) Notwithstanding section 6, an employee who has made a qualifying disclosure is not entitled to protection from discipline, up to and including dismissal, if he/she does not comply with subsection (1).

(3) No person advised of an investigation under this By-law and knowing that a City document or thing is likely to be relevant to such an investigation shall:

(a) destroy, conceal, mutilate, falsify or otherwise alter the document or thing; or

(b) advise, instruct, propose or direct in any manner, any person to do anything mentioned in paragraph (a).
16.(1) Upon the completion of an investigation under this By-law, the Director of Audit Services shall make a report to the appropriate individual or entity as determined in the sole discretion of the Director of Audit Services and such report shall include what steps, if any, are to be undertaken in response to a report.

(2) A report made under subsection (1) which is made to a Committee of Council or Council, shall be submitted in accordance with the Municipal Act, 2001, the Municipal Freedom of Information and Protection of Privacy Act and the City’s Procedural By-law.

COMPLIANCE

17.(1) Any employee who fails to comply with this By-law may be disciplined, up to and including dismissal.

(2) The failure of a member of Council to comply with this By-law may result in a complaint, inquiry and penalty under Integrity Commissioner By-law.

LIMITATIONS ON THE APPLICATION OF THIS BY-LAW

18.(1) Nothing in this By-law is intended to limit the responsibilities of employees to continue to carry out their job duties, including responsibilities to make reports to their appropriate supervisors or managers, or to take appropriate action within the scope of their job to prevent wrongdoing or the harm which may arise from such wrongdoing.

(2) Nothing in this By-law is intended to limit the actions which may be taken by the City or the consequences for an employee when an employee has acted contrary to their job duties, in a negligent, dishonest, or vexatious manner, or contrary to this By-law.

(3) Nothing in the By-law is intended to permit employees to disregard their obligations to comply with any other by-law, statute or regulation, including the Municipal Freedom of Information and Protection of Privacy Act or any other statute or regulation governing the access to or privacy of information;

(4) Nothing in this By-law restricts the City from utilizing the rights and powers available to under the Municipal Act, 2001 or other laws, or from conducting, participating in, or calling for such other investigations or inquiries as allowed by law and considered advisable by the City.

ADMINISTRATION

19. The Director of Audit Services is responsible for:

(a) administering this By-law, including but not limited to, implementing such forms and procedures as required for the proper administration of this By-law;
(b) reporting to Council quarterly, in the aggregate, on the number, nature and outcome of disclosures of serious wrongdoing made under this By-law; and

(c) declaring any conflict of interest he/she has arising from a disclosure of serious wrongdoing or from any investigation or alternative action undertaken under this By-law, to the City Manager so that his/her obligations may be re-assigned by the City Manager.

20. The exercise of the Director of Audit Services’ authority and discretion under this By-law includes, but is not limited to, withholding, collecting, using, or disclosing information which may reveal the identity of the employee making a disclosure of serious wrongdoing as is necessary to protect the City’s interests and to avoid or limit harm to the City, the public or the employee.

CONFLICT AND COMING INTO FORCE

21. In the event of a conflict between this By-law and any other by-law (except the Integrity Commissioner By-law), procedure, rule or policy, this By-law prevails.

22. This By-law comes into force on [date 6 months from the passage of the By-law].

PASSED this day of , 2009.

_________________________________________  ___________________________________________
Fred Eisenberger                      Kevin C. Christensen
Mayor                                Clerk