The Accountability and Transparency Sub-Committee presents Report 08-005 and respectfully recommends:

1. That the revised Code of Conduct (Schedule H), attached to this report as Appendix A, be approved.

2. That By-law 03-301, as amended, the Procedural By-law, be revised by deleting the existing Code of Conduct (Schedule H) and replacing it with the revised Code of Conduct (Schedule H), as noted in Recommendation 1, above and that the amending by-law, attached to this report as Appendix B, be approved.
3. That By-law 08-154, a by-law to establish the Office of the Integrity Commissioner, be amended by adding the following new subsection 7(g) after subsection 7(f):

7(g) In accordance with subsection 4.6 of the Code of Conduct, review disclosure statements filed by members of Council with respect to gifts or benefits exceeding $200, making a determination and/or giving direction as required.

4. That the following request, respecting a revision to Part V.1, “Accountability and Transparency”, of the Municipal Act, 2001 with regard to the provision of financial disclosure statements by members of Council, be endorsed by Council, and forwarded to the Province of Ontario, for their action;

That Part V.1, “Accountability and Transparency”, of the Municipal Act, 2001 be amended to permit a municipality which appoints an Integrity Commissioner to provide for financial disclosure statements from members of Council, similar to the provision for financial disclosure statements from members of the Legislative Assembly under sections 20 to 22 of the Members’ Integrity Act, 1994. This would include providing for: the filing of a private disclosure statement with the Integrity Commissioner containing information about assets, liabilities, income, benefits and interests in private companies; and the preparation of a public disclosure statement by the Integrity Commissioner.

5. That a Selection Committee composed of Mayor Eisenberger, Joanna Chapman, Ted Charuk and David Broom be appointed to interview the candidates for the position of Integrity Commissioner.

6. That staff from the Clerks and Human Resources Departments be directed to arrange and facilitate the interviews.

FOR THE INFORMATION OF COUNCIL:

The meeting was called to order at 4:01 pm by Mayor Eisenberger.

(a) CHANGES TO THE AGENDA

Peter Barkwell advised that the Committee would need to meet in Closed Session, to consider Item 5.4 on today’s Agenda.

The Agenda, as amended, was approved by Committee.
(c) DECLARATIONS OF INTEREST (Item 3)

There were none declared.

(d) Minutes of October 9, 2008

The Minutes of October 9, 2008, were adopted, as presented.

(e) Draft Code of Conduct (Item 5.1)

Lisa Pasternak ran through the changes which had been made to the document, following the direction from Committee at the last meeting. The following points were highlighted:

Item 4.5
changes to the details respecting the acceptance of gifts were outlined.

On a Motion (Duvall/Chapman), Committee approved the revised wording in Section 4.5

Item 5.2
the amount for gifts does include golf tournaments, sports tickets, and similar items, changes were directed by Committee

Item 5.3
changes to the details respecting disclosure of In-camera meetings were discussed.

On a Motion (O’Connor/Broom), Committee approved the revised wording in Section 5.3

Item 7.2
changes respecting the use of City facilities during Election campaigns, were explained by Peter Barkwell. The Committee agreed that further changes be made, to reflect their position on this matter

On a Motion (O’Connor/Broom), Committee approved their revised wording in Section 7.2

Item 14.1
the use of the verb “shall” was discussed, and Committee agreed that the verb be kept as is.
Item 15.1
Committee discussed the matter of adherence to Council policies and procedures. Kevin Christenson said that Clerks is currently reviewing the entire Procedural By-law. Peter Barkwell explained that it would not be appropriate to have complaints made to the Integrity Commissioner respecting rules in the Procedural by-law.

On a Motion (Charuk/O’Connor), Committee approved their revised wording in Section 15.1

Item 16.3, (c)
Committee discussed the change to the timeframe to respond to the Integrity Commissioner, and agreed it should be "within 15 days, or longer if the Integrity Commissioner wishes"

On a Motion (Broom/Chapman), Committee approved the revised wording in Section 16.3 (c)

Item 18.4
Committee agreed with this section respecting the prohibition on Councillors having supervisory authority over family members.

On a Motion (O’Connor/Duvall), Committee approved the revised wording in Section 18.4

Committee then approved the revised Code of Conduct, as amended as noted above.

(f) Draft Amending By-law which replaces the existing Code of Conduct, Appendix H, in the Procedural By-law and Draft amending by-law law which adds the 4.6 duty of the Integrity Commissioner respecting gifts/benefits to the Integrity Commissioner By-law (Item 5.2)

Committee discussed the item, noting that the revised by-law adds the duty of the Integrity Commissioner respecting gifts/benefits to the Integrity Commissioner By-law. On a Motion, Committee approved the staff proposal.

(g) Proposed Motion to the Province respecting members of Council providing disclosure statements (Item 5.3)

Committee discussed the item, and approved the staff proposal.
(h) **Update on Appointment of Integrity Commissioner (Item 5.4)**

On a Motion (O’Connor/Broom) Committee moved into Closed Session at 4:45 pm to consider a matter pursuant to Section 239 of the Municipal Act, 2001, respecting the following:

Personal matters about an identifiable individual, including municipal or local board employees, and advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

On a Motion (Whitehead/Duvall) Committee reconvened in Open Session at 5:10 pm.

Mayor Eisenberger reported that the Committee had met in Closed Session, to consider matters relating to the appointment of the Integrity Commissioner.

Committee approved two Motions respecting this matter.

(j) **Outstanding Items from Outstanding business List (Item 6)**

There was no discussion of the Outstanding Business List.

(k) **Date for Next Meeting (Item 7.1)**

It was agreed that the next meeting would not take place until at least February, 2009, due to the budget process.

(l) **Adjournment**

On a Motion (O’Connor/Broom) Committee adjourned at 5.15 pm.

Respectfully submitted,
Mayor Eisenberger, Chair

Alexandra Rawlings
Co-ordinator, City Clerk’s Department
November 25, 2008
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) “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;

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

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

(d) “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

v) child, mother or father in a relationship where the role of parent has been assumed;

(e) “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 by the Municipal Act, 2001; and

(f) “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;

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

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

   (f) 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;

   (g) 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;

(h) 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 make a gift or provide a benefit under this section unless it is a political contribution permitted by law.

4.5 In the case of paragraphs (b), (d), (e), (f), (g) and (h) of subsection 4.3, a member of Council may not accept a gift or benefit worth in excess of $300 or gifts and benefits from one source during a calendar year worth in excess of $300.

4.6(1) In the case of paragraphs (b), (e), (f), (g), and (h) 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 Integrity Commissioner. 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;

(d) its estimated value;

(e) what the recipient intends to do with any gift; and

(f) whether any gift will at any point be left with the City.

(2) Any disclosure statement made under subsection paragraph 4.6(1) will be a matter of public record.

(3) On receiving a disclosure statement, the Integrity Commissioner shall review it to ascertain whether the receipt of the gift or benefit might, in their opinion, create a conflict between a private interest and the public duty of the member of Council. In the event that the Integrity Commissioner makes that preliminary determination, they shall call upon the member of Council to justify receipt of the gift or benefit.

(4) Should the Integrity Commissioner determine that a gift or benefit was inappropriate, they may direct the member of Council to:

(a) return the gift or benefit;

(b) reimburse the donor for the value of any gift or benefit already consumed;

(c) forfeit the gift or benefit; or
(d) remit the value of any gift or benefit already consumed to the City.

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 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:

(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.

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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*. 
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.
CITY OF HAMILTON

BY-LAW NO. __________

To Amend By-law No. 03-301, a By-law to Govern the Proceedings of Council and Committees of Council, and By-law No. 08-154, a By-law to Establish the Office of Integrity Commissioner.

WHEREAS Council enacted a by-law to govern the proceedings of Council and Committees of Council, being City of Hamilton By-law No. 03-301, and a by-law to establish the Office of Integrity Commissioner, being City of Hamilton By-law No. 08-154;

AND WHEREAS this By-law provides for the amendment of By-law No. 03-301 and By-law No. 08-154, both as amended;

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

1. By-law No. 03-301 is amended by deleting Appendix “H” and replacing it with the new Appendix “H”, entitled “Code of Conduct for Members of Council”, attached as Schedule 1 to this By-law.

2. By-law No. 08-154 is amended by adding the following new subsection 7(g) after subsection 7(f):

7(g) In accordance with subsection 4.6 of the Code of Conduct, review disclosure statements filed by members of Council with respect to gifts or benefits exceeding $200, making a determination and/or giving direction as required.

2. This By-law comes into force on the day it is passed.

PASSED this __________ day of __________, 200.