



## Council Report

### For the Meeting of October 19, 2023

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**To:** Council **Date:** September 21, 2023  
**From:** Tom Zworski, City Solicitor  
**Subject:** Code of Conduct for Council Members Bylaw

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### RECOMMENDATION

That Council consider giving three readings to Bylaw No. 23-058 *Code of Conduct for Council Members Bylaw*.

### EXECUTIVE SUMMARY

On August 3, 2023, Council instructed the City Solicitor to bring forward a bylaw containing a code of conduct for Council members and provided instructions regarding the contents of this bylaw. This report introduces the proposed bylaw in accordance with Council's instructions.

The proposed bylaw includes specific expectations as to Council members' conduct (parts 2 to 4), provides for selection of an independent third-party to investigate complaints (part 5), establishes a process for the making and investigating complaints, including a process for screening of complaints, informal and summary resolution, as well as formal reporting to Council (part 6).

Council direction regarding reimbursement of legal fees incurred by a Council member pertaining to the complaint has not been included in this bylaw because, on further review, the City Solicitor recommends that any provisions related to indemnification of Council members for legal costs more appropriately should be included in the *Indemnification for Officers, Employees and Members of Council Bylaw*. Therefore, a separate bylaw to introduce appropriate amendments to add coverage for code of conduct complaints is being submitted as a companion to this report.

It is recommended that Council give three readings to Bylaw No. 23-058 *Code of Conduct for Council Members Bylaw*. The bylaw will return to Council for final adoption on October 26. Once the code of conduct bylaw is adopted, the City will initiate a process for the selection of the independent third-party investigator. The proposed bylaw allows for selection of a single investigator or establishment of a roster of qualified persons who would be assigned complaints as they are received. The selection process will follow the normal City procurement procedures, except the final decision will be made by Council with a unanimous decision.

## PURPOSE

The purpose of this report is to introduce Bylaw No. 23-058 *Code of Conduct for Council Members Bylaw* and it is recommended that Council give three reading to this bylaw.

## BACKGROUND

Bill 26, the *Municipal Affairs Statutes Amendment Act* (No. 2), 2021 came into force on June 13, 2022. This Bill amended the *Community Charter* to insert the following new sections:

### **Requirement to consider code of conduct**

- 113.1** (1) Within 6 months after its first regular council meeting following a general local election, a council must decide
- (a) whether to establish a code of conduct for council members, or
  - (b) if a code of conduct for council members has already been established, whether it should be reviewed.
- (2) Before making a decision under subsection (1), the council must
- (a) consider the prescribed principles for codes of conduct,
  - (b) consider the other prescribed matters, if any, and
  - (c) comply with the prescribed requirements, if any, including requirements respecting public notice or consultation.
- (3) If the council decides, under subsection (1), not to establish a code of conduct or review an existing code of conduct, it must make available to the public, on request, a statement respecting the reasons for its decision.

### **Reconsideration of decision respecting code of conduct**

- 113.2** (1) If a council decides, under section 113.1, not to establish a code of conduct or review an existing code of conduct, the council must reconsider that decision before January 1 of the year of the next general local election.
- (2) In a reconsideration under subsection (1), the council must
- (a) consider the prescribed principles for codes of conduct,
  - (b) consider the other prescribed matters, if any, and
  - (c) comply with the prescribed requirements, if any, including requirements respecting public notice or consultation.
- (3) If the council confirms the decision that is the subject of the reconsideration, the council must make available to the public, on request, a statement respecting its reasons for confirming the decision.

On May 4, 2023, Council directed that there be a code of conduct for Council members.

On August 3, 2023, Council passed the following motion:

That Council instruct the City Solicitor to bring forward a bylaw containing a code of conduct for Council members, and that such bylaw:

1. includes robust rules for conduct and handling of complaints;

2. does not expand on regulations already established by legislation that apply to Council members;
3. provides for an independent third party, whose role is limited to reacting to complaints rather than doing pro-active work;
4. applies to the conduct of Council members and committees of Council only;
5. allows any council member, member of staff, or city committee member to make a complaint;
6. includes a freeze on releasing investigation reports during the period beginning 90 days before general voting day;
7. provides that any complaint received regarding a Council member for a period of 90 days before the general voting day is to be rejected;
8. includes a list of potential sanctions that may be imposed by Council for breach of the code; and
9. provides that the City will pay legal fees incurred by a Council member pertaining to a complaint, unless the complaint is substantiated in whole or in part in which case said legal fees will be proportionately returned to the City

That Council request the Mayor contact other CRD municipalities to encourage and explore establishing a regional municipal government ethics commissioner.

That staff return to Council within two years of the Code of Conduct's enactment, providing a review and any recommended updates for Council's consideration.

## ISSUES & ANALYSIS

The proposed new *Code of Conduct for Council Members Bylaw* contains the following key provisions:

### 1. Application (section 3)

The bylaw applies only to Council members. It does not apply to conduct that is already governed by specific provisions of the *Community Charter*, where the conduct may lead to disqualification from holding office.

It does not apply to members' conduct in their personal life except to the extent that such conduct reasonably undermines, or has the potential to reasonably undermine, public confidence in City governance.

### 2. Rules for Council member conduct

The bylaw contains general principles regarding standards and values expected of every Council member (Part 2), as well as specific rules regarding communications and confidentiality (Part 3) and use of City assets and influence (Part 4). Part 4 also include specific provisions regarding the election activities involving incumbent Council members.

### 3. Independent third-party investigator (Part 5)

In accordance with Council direction, the bylaw provides for selection of an independent third party to investigate complaints. The third-party investigator would be selected by a unanimous vote of Council. There is also a provision (section 12) that allows, rather than appointment of a single investigator, for establishment of a roster of individuals to serve as investigators as needed.

### 4. Complaint process (Part 6)

As directed, the bylaw includes very detailed rules regarding the handling of complaints and includes a number of safeguards to ensure that the complaint process is not abused. First, complaints can only be made by a Council member, City employee, or a member of a Council-appointed committee or advisory body (section 13(1)). Complaints are made to the City Clerk, who conducts a preliminary screening (section 13(6)) to ensure that the complaint relates to the code of conduct and is not otherwise prohibited from proceeding. Once accepted, the complaint is forwarded to the investigator who has the authority to investigate it and report their conclusions to Council (sections 14(1) and 19). The investigator may summarily dismiss a complaint for a number of reasons (section 14(2)), including if it is frivolous or vexatious or would not further the purposes of the code of conduct. The investigator can also dispose of the complaint through informal resolution (section 17) with the consent of the complainant and respondent. Unless a complaint is dismissed or resolved informally, the investigator must proceed with a formal investigation (section 18). Formal investigations are expected to be concluded within 90 days (section 19(1)) but time extensions are possible. If the complaint is substantiated, a formal report is to be submitted to Council with recommendations as to appropriate sanction (sections 19(4) and 20). The final decision on imposition of any penalty for the breach of the code of conduct rests with Council (section 20). Possible sanctions are expressly identified in the bylaw (section 21).

### 5. Legal fees

Council's August 3 motion included direction regarding payment of legal fees incurred by Council members in relation to code of conduct complaints. Because the City already has a bylaw that deals with indemnification of Council members, the *Indemnification for Officers, Employees and Members of Council Bylaw*, rather than including indemnification provisions in the code of conduct bylaw, a separate amendment of the indemnification bylaw is proposed to deal with that part of Council's motion. It is addressed in more detail in a companion report that introduces Bylaw No. 23-087 *Indemnification for Officers, Employees and Members of Council Bylaw, Amendment Bylaw (No. 2)*.

## CONCLUSIONS

Bylaw No. 23-058 *Code of Conduct for Council Members Bylaw* implements Council's directions regarding the proposed code of conduct and it is recommended that Council give three readings to the proposed bylaw.

Respectfully submitted,

Tom Zworski  
City Solicitor

**Report accepted and recommended by the City Manager**