

Review of Council Code of Conduct Bylaw – Update**Report Purpose**

To provide information on the ongoing work to update the Council Code of Conduct Bylaw and to seek Council direction on next steps.

Recommendation

THAT a revised due date of April 2024 for the preparation of proposed bylaws directed by Council Motion 2023/ 127 be approved; and

THAT the proposed bylaws include authority for the proposed Council Code of Conduct Complaint Board to impose appropriate sanctions, along with the authority to receive complaints and evaluate, investigate, and determine whether a breach has occurred.

Our Strategic Goals

Governance Requirement

N/A

Report

The Code of Conduct Bylaw 27-2018 was passed by Council on June 19, 2018. The *Municipal Government Act* requires that Council establish a code of conduct governing the conduct of councillors, and that the code of conduct must apply to all councillors equally.

As required under section 32(a) of Bylaw 27-2018, a review must be completed at the beginning of each term of Council. The Governance Advisory Committee undertook this review throughout 2022 and 2023 and provided a report, with recommendations, to Council on May 2, 2023. Council supported those recommendations and directed Administration to:

1. Take steps to establish an independent council committee to receive, evaluate and investigate Code of Conduct Complaints; and
2. Prepare amendments to the current Code of Conduct to:
 - Allow complaints from members of the public;
 - Add a provision to clarify that the formal process will only be pursued if a Councillor believes in good faith that the informal process would not be sufficient;
 - Add a provision to address prioritization of attending Council meetings over other meetings and events, when possible;
 - Add a provision to allow for escalation of sanctions if a Councillor does not comply with Council's direction; and
 - Implement the role of an independent council committee to receive, evaluate, and investigate complaints.

As Administration has undertaken work to draft new bylaws, further information has been discovered that requires additional input and direction from Council. As an interim step, this report provides an outline of how the independent council committee would function in practice and provides additional information for discussion and decision by Council.

Independent Council Committee (Board)

The proposed Council Code of Conduct Complaint Board (the "Board") would act as a tribunal with a mandate to receive complaints about breaches of the Council Code of Conduct, evaluate and investigate those complaints. This would also include the authority to determine whether a breach has occurred. The Board would be made up of five public members, with a focus on members with education, skills and experience in areas of administrative justice, mediation, human resources and public service. The Board would meet quarterly (or as needed to address more urgent complaints) and would sit in panels of three members to adjudicate.

Complaint Process

The following provides a high-level outline of how complaints would be dealt with.

1. Complaints would be received by Legislative and Legal Services and forwarded to the Chair for initial consideration.

To promote efficiency and cost effectiveness, complaints would be initially assessed on a monthly basis. Administration recommends providing the Chair the authority to do an initial review of the complaints to determine whether a complaint should proceed to an assessment by the Board. Reasons complaints could be dismissed on this initial review by the Chair would include if the complaints are:

- not about a current Councillor,
- handled by other legislation,
- not related to the Code of Conduct,
- trivial or vexatious, or
- related to something that has previously been addressed.

The Chair would be responsible to provide a quarterly report to the Board listing any complaints that have been dismissed on the initial assessment and providing the rationale. Any member of the Board could then request that a complaint that had been dismissed be brought to the Board for a further assessment.

The Chair would also determine whether there is a need to deal with a specific complaint urgently rather than quarterly, based upon the nature of the complaint or to ensure procedural fairness. If a matter is urgent, the Chair could call a Formal Assessment and Hearing as soon as is practical.

2. Formal Assessment and Hearing

A panel made up of three Board members would conduct a formal assessment and hearing of a complaint, provided it was not dismissed on the initial assessment. This process will include providing appropriate notice of the hearing to the parties involved, processes for disclosure of information and written responses, oral presentations and questions from the Board.

At any time during the formal assessment and hearing, the Panel can determine that a third-party investigator be hired to conduct an independent investigation and prepare a report for the Board's consideration. If this occurs, the hearing will be postponed until all parties have had a chance to review the investigator's report.

The Board will decide on whether there was a breach of the Code of Conduct and will provide oral reasons for their decision, and may provide written reasons, as well.

3. Determination or Recommendation of Sanction

Once it is determined that there has been a breach of the Code of Conduct, the Board may also provide a recommended sanction. The Board may hear from the parties regarding sanctions, but this will not be an opportunity to revisit or change the findings of the Board regarding the breach. The purpose of the hearing is to hear submissions to determine an appropriate sanction that is corrective and proportional to the nature of the misconduct and its impact. This sanction could then be recommended to Council.

When the proposed revisions to the Council Code of Conduct were previously discussed, the option of delegating the authority to the Board to determine the sanction was not presented. Further research has demonstrated that this is an option available to Council.

Council could remain the deciding body that determines what, if any, sanction to apply after the Board determines that the Code of Conduct has been breached. This process would require Council to hold a sanction hearing (similar to the process followed currently) before making a determination. Alternatively, Council could delegate the responsibility to make a sanction decision to the Board. The Board would normally hold a single hearing to both determine the breach and any sanction, thus simplifying the process. The Board, could, in an appropriate case, postpone the decision on sanction to allow for presentations to be made regarding appropriate sanctions.

Informal Resolution

It is Administration's intention to include several offramps to utilize an informal resolution process throughout the revised Code of Conduct bylaw. This will ensure that if both parties are in agreement, the process can be paused, and potentially ceased, while informal resolution efforts occur.

Cost

To support this model, an annual budget will be required to support the Board (honorariums and administrative costs) as well as to provide budget for investigations and legal support, as required.

Based on expenses related to Code of Conduct complaints (2022 and 2023), an average of \$16,000 per year has been spent on investigations and legal fees. It is estimated that

\$5000 would be required to support the Board, based on the current honorarium rates and an estimated maximum meeting frequency of six times per year. An honorarium would need to be provided to the Chair to perform the initial review and prepare the quarterly report. Using the existing day rate and assuming this occurs on a monthly basis, a total of \$4000 is proposed.

Based on this model and with an understanding that costs will fluctuate based on the volume and complexity of complaints, the estimated budget to support this process is \$25,000/year.

In comparison, the jurisdictional scan conducted in 2022 showed costs ranging from \$26,000/year to have an Integrity Commissioner on retainer, to upwards of \$160,000/year to support an Integrity Office with a contracted Integrity Commissioner and Ethics Advisor.

Additional funding is not being requested for 2024, as costs to support the Board can be accommodated in existing budgets (for the first year and will be assessed based upon complaints experience moving forward).

Next Steps

Administration is seeking general Council feedback on the proposed complaint process and direction on whether the sanction decision should be delegated to the Council Code of Conduct Complaint Board, as is recommended by Administration.

Council and Committee History

May 2, 2023 Council approval: THAT Administration prepare a bylaw, for Council's consideration by the end of Q4 2023, to establish an independent council committee to receive, evaluate, and investigate Code of Conduct complaints; and

THAT Administration prepare amendments to Council Code of Conduct Bylaw 27-2018, for Council's consideration by the end of Q4 2023, to:

- Allow complaints from members of the public;
- Add a provision to clarify that the formal process will only be pursued if a Councillor believes in good faith that the informal process would not be sufficient;
- Add a provision to address prioritization of attending Council meetings over other meetings and events, when possible;
- Add a provision to allow for escalation of sanctions if a Councillor does not comply with Council's direction; and
- Implement the role of an independent council committee to receive, evaluate, and investigate complaints.

Other Impacts

Policy:

Legislative/Legal: Section 146.1 of the *Municipal Government Act* requires every council to establish a code of conduct governing the conduct of councillors.

Financial/Budget: will be accommodated within existing budget for 2024

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Interdepartmental: n/a

Master Plan/Framework: n/a

Alternatives

Two alternatives are available:

1. The Board could determine whether a breach has occurred, hold a Sanction Hearing if necessary, and recommend the sanction to Council, which would then make the final decision; or
2. Both the decision on whether a breach has occurred and the determination of the sanction could remain with Council, based upon the recommendations of the Board.

Communication Plan

A communication plan will be developed with Corporate Communications to identify key audiences and messaging when the bylaw comes forward for Council's consideration.