



AGENDA

MISSISSAUGA APPEAL TRIBUNAL BUSINESS MEETING

THE CORPORATION OF THE CITY OF MISSISSAUGA

MONDAY, MARCH 4, 2013 – 8 A.M.

COMMITTEE ROOM A

SECOND FLOOR, CIVIC CENTRE

300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1

www.mississauga.ca

Members

Lynda Ross, Citizen Member (CHAIR)

Rafiq Rokerya, Citizen Member (VICE-CHAIR)

Roderick Chung, Citizen Member

Luc Laverrière, Citizen Member

Leonard Lyn, Citizen Member

CONTACT PERSON: Julie Lavertu, Tribunal Coordinator, Mississauga Appeal Tribunal
Office of the City Clerk, Telephone: 905-615-3200, ext. 5471; Fax: 905-615-4181

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CALL TO ORDER

DECLARATIONS OF DIRECT (OR INDIRECT) PECUNIARY INTEREST

APPROVAL OF AGENDA

PRESENTATIONS/ DEPUTATIONS

MATTERS TO BE CONSIDERED

1. Mississauga Appeal Tribunal's Rules of Practice and Procedure

Mary Ellen Bench, City Solicitor, and Crystal Greer, Director of Legislative Services and City Clerk, will discuss the Mississauga Appeal Tribunal's Rules of Practice and Procedure.

2. City of Mississauga's Respectful Workplace Corporate Policy and Procedure 01-03-04

Mary Ellen Bench, City Solicitor, will discuss the City of Mississauga's Respectful Workplace Corporate Policy and Procedure 01-03-04 and its application to Citizen Members of committees.

3. The Role of Counsel to the Mississauga Appeal Tribunal

Mary Ellen Bench, City Solicitor, will discuss the role of Counsel to the Mississauga Appeal Tribunal.

4. Local Board Codes of Conduct and Complaint Protocol

Mary Ellen Bench, City Solicitor, and Crystal Greer, Director of Legislative Services and City Clerk, will discuss the Local Board Codes of Conduct and complaint protocol.

A Corporate Report dated February 8, 2013 from the Integrity Commissioner to the Chair and Members of the Governance Committee entitled "Local Board Codes of Conduct and Complaint Protocol" is attached for information.

OTHER BUSINESS

DATE OF NEXT MEETING

ADJOURNMENT

MAR 04 2013



MISSISSAUGA APPEAL TRIBUNAL


RULES OF PRACTICE AND PROCEDURE

INTRODUCTION

The City of Mississauga Appeal Tribunal is an all-citizens tribunal established to conduct hearings of appeals under the City of Mississauga's Licensing By-laws and Animal Care and Control By-law. The conduct of such hearings will be in accordance with these Rules of Practice and Procedure.

ENACTED AND ADOPTED this 21st day of September, 2010.


Chair


Tribunal Coordinator

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RULE 1: APPLICATION AND DEFINITIONS**1.01 Definitions**

- (1) In these Rules, unless the context requires otherwise,

"Animal Care and Control By-law" means By-law 98-04, as amended.

"Agent" means, in respect of an appeal, counsel or any other person authorized to represent one of the parties to the hearing, including the City and the Appellant.

"Appeal" means an appeal to the Tribunal.

"Appellant" means an applicant or Licensee that has filed a notice of appeal requesting an appeal hearing before the Tribunal.

"Council" means the Council of the Corporation of the City of Mississauga.

"Chair" means the Chair of the Tribunal.

"File" means to send to the Tribunal Coordinator and requires that the material is either deemed to be or has actually been received by the Tribunal Coordinator.

"Hearing" means the hearing of an Appeal made to the Tribunal.

"In person proceeding" means an oral hearing at which the parties or their counsel or agents attend in person before the Tribunal.

"Licensee" means the holder of a license issued pursuant to the provisions of the City of Mississauga's Licensing By-laws, as amended.

"Licensing By-law" means one of the City of Mississauga's licensing by-laws being the Adult Entertainment Establishment Licensing By-law 507-05, Business Licensing By-law 1-06, Public Vehicle Licensing By-law 420-04, Tow Truck Licensing By-law 521-04, Vehicle Licensing By-law 520-04, Vendors By-law 522-04, Ice Cream Truck Vendors By-law 523-04, Fireworks By-law 340-01 or Residential Rental Accommodation Licensing By-law 172-10.

"Licensing Decision" means the decision of the License Manager or the Manager of Animal Services with respect to a license under one of the City's Licensing By-laws, or muzzle order under the Animal Care and Control By-law.

"Licence Manager" means the Manager of the Compliance and Licensing Enforcement Unit or the Manager of Mobile Licensing of the City's Enforcement Division and includes his or her designates.

"Manager of Animal Services" means the Manager of the Animal Services section of the City of Mississauga and shall include his or her designates.

"Meeting" means a business Meeting of the Tribunal and shall not include the hearing of an Appeal.

"Member(s)" means the person(s) appointed by Council to be a member(s) of the Tribunal for a specified term.

"Notice of Decision" means a written Licensing Decision issued to an applicant/Licensee.

"Party(ies)" includes the applicant or Licensee who have been served with a decision of the License Manager or Manager of Animal Services, and the City of Mississauga.

"Rules" means the Rules of Practice and Procedure of the Tribunal.

"Tribunal" means the Mississauga Appeal Tribunal.

"Tribunal Coordinator" means the member of City staff who has been assigned to perform the administrative tasks required by the Tribunal, on behalf of the office of the City Clerk.

1.02 General

- (1) These Rules apply to all proceedings before the Tribunal.
- (2) These Rules apply subject to the *Statutory Powers Procedure Act* and any other legislation governing the Tribunal.
- (3) The Tribunal may, at any time, as it deems necessary, dispense with compliance with any Rule, save and except those prescribed as mandatory by the *Statutory Powers Procedure Act* and any other legislation governing the Tribunal.
- (4) If these Rules do not provide for a matter of procedure that arises during a Meeting of the Tribunal as a whole or during a Hearing, the practice shall be determined by the Tribunal as a whole at a Meeting or the Tribunal at the Hearing.
- (5) These Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.
- (6) Substantial compliance with requirements respecting the contents of forms, notices or documents under these Rules is sufficient.

- (7) The Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of a Party.

RULE 2: TRIBUNAL MEETINGS AND CHAIR**2.01 Meetings**

- (1) The Tribunal shall hold its inaugural Meeting as a Tribunal of the whole on a date and time to be determined by the City Clerk following the appointment by Council of the Tribunal Members for the current term.
- (2) The Tribunal shall meet as a Tribunal of the whole at the request of the Chair, and the Chair shall summon a Meeting of the Tribunal of the whole when requested to do so in writing by a majority of the Members.
- (3) When the Chair is absent from the City, or is absent through illness, or refuses to act, or when the office of the Chair is vacant, a Meeting of the Tribunal as a Tribunal of the whole may be summoned by the Tribunal Coordinator on 24 hours' notice when requested to do so in writing by a majority of the Members.
- (4) Meetings of the Tribunal shall be held at City Hall or such other location, as the Tribunal deems advisable.
- (5) A majority of the Members constitutes a quorum at Meetings of the Tribunal as a whole.

2.02 Tribunal Chair

- (1) At its inaugural Meeting the Tribunal shall elect one of its Members as Chair for the current term, or until a successor is appointed.
- (2) When the Chair of the Tribunal is absent through illness or otherwise, the Tribunal may appoint another Member as Acting Chair.
- (3) If the Chair of the Tribunal resigns as a Member of the Tribunal or resigns as the Chair of the Tribunal, the Tribunal shall appoint another Member as Chair for the balance of the current term, or until a successor is appointed.

2.03 Duties of the Chair

- (1) The Chair shall preside at every Hearing and Meeting of the Tribunal and may vote.
- (2) The Chair shall call the Hearing or Meeting to order.
- (3) The Chair shall put motions brought by any Party or Member to a vote of the Tribunal.

- (4) The Chair shall enforce the observance of order and decorum during Meetings and Hearings.
- (5) The Chair is the liaison between the Members and the Tribunal Coordinator on matters of policy and process.
- (6) The Chair shall administer the oath of each witness at a Hearing.

2.04 Minutes of Tribunal Meetings

- (1) The Tribunal Coordinator shall prepare Minutes of the Meetings of the Tribunal
- (2) The Tribunal shall review and adopt the Minutes of its previous Meeting at its next Meeting.
- (3) Tribunal Members, including the Chair, may vote on all motions and other questions submitted at a Tribunal Meeting.
- (4) In the case of a tie vote, the motion or question shall be deemed to have been lost.

2.05 Quorum for Meetings

- (1) A majority of the Members must be present to achieve quorum for a Meeting.
- (2) If no quorum is present 30 minutes after the time appointed for the commencement of the Meeting, the Tribunal Coordinator shall re-schedule the Meeting.
- (3) Notwithstanding clause (1) of this Section, when the number of Members who refrain from participating in debate of a matter, or voting by reason of having declared an interest according to the provisions of the *Municipal Conflict of Interest Act, R.S.O. 1990, c.M.50*, leaves a remaining number of Members that does not make quorum, the remaining Members will be deemed to constitute quorum, provided that not less than two (2) Members to remain present to continue the Meeting.

RULE 3: NOTICE REQUESTING AN APPEAL**3.01 Notice Requesting an Appeal**

- (1) An Appeal to the Tribunal by a Party who has received a Notice of Decision must be made by sending a Notice of Appeal in the form of a letter to the Office of the City Clerk within the time prescribed by the Notice of Decision and the applicable City By-law.
- (2) The Notice of Appeal shall be transmitted to the Office of the City Clerk before close of business on the last day for appeals:
 - (a) by personal delivery,
 - (b) by regular or registered mail,
 - (c) by courier, or
 - (d) by facsimile.
- (3) The Notice of Appeal shall include:
 - (a) a copy of the Notice of Decision appealed from;
 - (b) a statement setting out the grounds for the Appeal;
 - (c) the name, telephone number, and address for service of the Appellant and Agent, if represented by an Agent; and
 - (d) a non-refundable Appeal fee prescribed in the applicable By-law made payable to the City of Mississauga.
- (4) The Notice of Appeal in (1) shall be sent by one of the methods described above to:

Mississauga Appeal Tribunal Coordinator
The Corporation of the City Of Mississauga,
Office of the City Clerk,
2nd Floor, Civic Centre,
300 City Centre Dr.
Mississauga Ont., L5B 3C1
Fax: (905) 615-4181

- (5) If a Notice of Appeal is received after the appeal deadline the Tribunal Coordinator shall refuse the Notice of Appeal and shall advise the sender by registered mail that:

- (a) the appeal is denied based on the late filing, and
- (b) the Licensing Decision under appeal is final and binding.

3.02 Where Notice of Appeal is Incomplete

- (1) Where a Notice of Appeal is not substantially in accordance with Rule 3.01, the Tribunal Coordinator shall send a letter to the Appellant, or the Appellant's Agent, if represented, within 20 days of receipt of the Notice of Appeal stating the additional information required by the Tribunal Coordinator in order to complete the Notice of Appeal substantially in accordance with paragraph 3.01.
- (2) The information requested in paragraph (1) shall be sent to the Tribunal Coordinator within 20 days of the date of the Tribunal Coordinator's letter, at the address listed in paragraph 3.01 (4), failing which the Notice of Appeal is deemed to be abandoned and the Licensing Decision is final and binding.

3.03 Where Notice of Appeal is Complete

- (1) Where an Appellant has completed a Notice of Appeal in substantial accordance with paragraph 3.01 the Tribunal Coordinator, in consultation with the Parties, shall appoint a time and place for the Hearing of the Appeal.

3.04 Withdrawal of Appeal Prior to Hearing

- (1) An Appeal may be withdrawn prior to the Hearing Date scheduled for the hearing of that Appeal by filing a letter of withdrawal with the Office of the City Clerk as set out in Rule 3.01.

RULE 4: NOTICE OF HEARING**4.01 Notice of Hearing**

- (1) The Tribunal Coordinator shall provide a Notice of Hearing at least fifteen (15) days prior to the Hearing to the following:
 - (a) the Appellant,
 - (b) the Tribunal Members,
 - (c) the City Solicitor,
 - (d) Counsel to the Tribunal,
 - (e) the Licensing Manager,
 - (f) the Manager of Animal Services,
 - (g) the Manager of Prosecutions, and
 - (h) any other Party to the hearing not listed above.
- (2) A Notice of Hearing shall include:
 - (a) a statement of the statutory authority to hold a Hearing and the time, place and purpose of the Hearing; and
 - (b) a statement that if the Appellant, or his or her Agent, does not attend at the Hearing, the Tribunal may proceed in the Appellant's absence and the Appellant will not be entitled to any further notice in the proceeding.
- (3) The Tribunal shall have a standard Hearing date bi-monthly for the hearing of appeals on a basis to be determined by the Tribunal. If no appeals are scheduled one (1) month prior to a standard Hearing date, the Hearing is cancelled and notification via email or telephone is provided by the Tribunal Coordinator to the following:
 - (a) the Tribunal Members,
 - (b) the City Solicitor,
 - (c) Counsel to the Tribunal,
 - (d) the Licensing Manager,

- (e) the Manager of Animal Services, and
 - (f) the Manager of Prosecutions.
- (4) If the Tribunal Coordinator receives a withdrawal of appeal prior to the Hearing date, notice of cancellation of the Hearing shall be sent to all persons who received Notice of the Hearing.

4.02 Effect of Non-Attendance at a Hearing

- (1) Where Notice of a Hearing has been given to a Party in accordance with these Rules and the Party does not attend at the Hearing, the Tribunal may proceed in the absence of the Party and the Party is not entitled to any further notice in the proceeding.

RULE 5: PRE-HEARING CONFERENCE**5.01 Request for Pre-Hearing Conference**

- (1) The Tribunal may, at the request of a Party or on its own initiative, direct that a pre-hearing conference be held in any proceeding and that the Parties participate in the conference.

5.02 Purpose of and Procedure of Pre-Hearing Conference

- (1) The purpose of the pre-hearing conference will be to:
 - (a) exchange information between the parties, including disclosure of particulars, physical or documentary evidence, lists of witness(es) and witness statements;
 - (b) narrow or simplify any issues of law or fact;
 - (c) identify agreed upon facts, evidence or law;
 - (d) provide notice of any preliminary motions;
 - (e) establish dates by which any steps in the proceeding are to be started or completed;
 - (f) determine the estimated duration of the hearing;
 - (g) determine any other matter that may assist in the just and expeditious disposition of the proceeding; and
 - (h) mediate or settle any or all outstanding issues in dispute.
- (2) A pre-hearing conference may be conducted in person, in writing, or by telephone conference call at the discretion of the Tribunal or as may be agreed upon by the Parties;
- (3) The Tribunal Chair may designate any member of the Tribunal to preside at the pre-hearing conference.
- (4) Quorum for a pre-hearing conference may be reduced to one member of the Tribunal at the discretion of the Tribunal Chair.
- (5) If a Member of the Tribunal presides at a pre-hearing conference, that Member shall not be a Member of the panel Hearing the proceeding related to such pre-hearing conference unless all parties consent thereto in writing or on the record.

- (6) At the conclusion of the pre-hearing conference the Parties or their Agents may sign a memorandum setting out the results of the pre-hearing conference and a copy of the signed memorandum shall be placed before the Tribunal presiding at the Hearing.
- (7) No information shall be provided or made available to the Tribunal presiding at the Hearing with respect to any statement made at a pre-hearing conference except as disclosed in the memorandum referred to above.
- (8) A Party may be represented by an Agent at the pre-hearing conference and where the Party is not in attendance at the conference, such Agent shall ensure that the Party is available, either by telephone or other means.

RULE 6: SERVING AND FILING DOCUMENTS**6.01 Documents Filed with Tribunal**

- (1) If a Party intends to make use of any written or documentary evidence at the Hearing, that Party is required to serve one copy of the documents on all other parties no later than ten (10) days before the Hearing date and shall file eight (8) copies of the documents with the Tribunal Coordinator no later than ten (10) days before the Hearing date.
- (2) Every written document in a proceeding shall be on either 8 ½ by 11 inch or 8 ½ by 14 inch paper and the text shall be printed, typed, written or reproduced legibly with spaces between the lines, or in such alternate format as may be directed by the Tribunal in order to accommodate the needs of a Party to the Hearing.
- (3) For the purposes of paragraph 6.01 (1), "document" includes a sound recording, videotape, file, photograph, map, plan survey, and any information recorded or stored by any means, and any expert reports to be relied upon and a copy of the curriculum vitae of the authors of any such expert reports.

6.02 Serving documents

- (1) "Service" means the effective delivery of the documentation to any Party or to the Party's Agent.
- (2) Service is deemed to be effective when delivered:
 - (a) personally to the Party, or the Party's Agent, if represented; or
 - (b) by regular or registered mail on the seventh day after the day of mailing;
or
 - (c) by facsimile transmission, on the same day as the transmission, if the document consists of sixteen (16) pages or less inclusive of the cover page. A document of more than 16 pages may be served by facsimile transmission if the Party receiving the transmission gives prior consent; or
 - (d) by courier, including Priority Post, on the second full day after the document was given to the courier by the Party serving.
- (3) In the case of subsection (2) paragraphs (b) and (d) service by regular or registered mail or courier is effective if it is sent to the last known address, unless the Party to whom the notice is to be given establishes that he or she, acting in good faith and through absence, accident, illness or other causes beyond his/her control, failed to receive the notice until a later date or at all.

- (4) Documents delivered after 4:30 p.m. shall be deemed to have been delivered on the next day that is not a holiday.
- (5) A Party who serves or files a document shall include with it a statement of the Party's address, telephone number and the name of the proceeding to which the document relates.
- (6) This Rule 6.02 regarding deeming of receipt date for facsimile transmission does not apply to the filing of the notice of appeal, which must be filed pursuant to Rule 3.

6.03 Filing Documents

- (1) Documents may be filed with the Tribunal Coordinator by any of the methods of service set out in Rule 6.02.
- (2) Where a document is filed, the date of the receipt stamp on the document shall be deemed to be the date of the filing, unless the Tribunal orders otherwise.
- (3) No Party may file a document by way of facsimile transmission that is more than sixteen (16) pages long unless prior consent for such service was obtained from the Tribunal Coordinator.
- (4) Any Party filing documents must file, with the documents, a statement indicating who has been served and what documents have been served.
- (5) Documents must be filed with the Tribunal Coordinator at:

Mississauga Appeal Tribunal Coordinator
The Corporation of the City Of Mississauga,
Office of the City Clerk,
2nd Floor, Civic Centre
300 City Centre Dr.
Mississauga Ont., L5B 3C1

6.04 Failure to Serve and File Documents

- (1) If a Party fails to serve and file a document pursuant to this Rule, the Party may not refer to the document in evidence at the Hearing without the consent of the Tribunal which may be given on terms and conditions as the Tribunal considers just.
- (2) Where the Tribunal Coordinator has no record of the receipt of a document alleged to have been filed, the document shall be deemed not to have been filed, unless the Tribunal orders otherwise.

RULE 7: TIME**7.01 Computation**

- (1) In the computation of time under these Rules, unless the context requires otherwise:
 - (a) "days" means calendar days;
 - (b) where there is a reference to a number of days between two events, they shall be counted excluding the day on which the first event happens and including the day on which the second event happens;
 - (c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and
 - (d) service of a document made after 4:30 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- (2) Under these rules, "holiday" means:
 - (a) any Saturday or Sunday;
 - (b) New Year's Day;
 - (c) Family Day;
 - (d) Good Friday;
 - (e) Easter Monday;
 - (f) Victoria Day;
 - (g) Canada Day;
 - (h) Civic Holiday;
 - (i) Labour Day;
 - (j) Thanksgiving Day;
 - (k) Remembrance Day;
 - (l) Christmas Day;
 - (m) Boxing Day; and

- (n) Any day on which the staff administrative offices of the City are closed.

7.02 Extension or Abridgement of Time

- (1) The Tribunal may, upon motion by any Party or upon motion by the Tribunal, extend or abridge the time prescribed by these Rules or make an order on such terms, if any, that the Tribunal deems necessary.
- (2) The Tribunal may exercise its discretion under subrule (1) before or after the expiration of the time prescribed.

RULE 8: MOTIONS**8.01 Motions**

The Tribunal may hold a motion upon the request of a Party or, if in its own discretion, it deems a motion advisable for the following purposes:

- (a) to give directions concerning Tribunal procedures; and
- (b) for any other purpose which the Tribunal feels is necessary to carry out its functions.

8.02 Procedure to bring a motion

- (1) Where a Party intends to bring a motion, the Party shall request a time and date for the hearing of the motion from the Tribunal Coordinator.
- (2) A Party bringing a motion shall then file a Notice of Motion with the Tribunal Coordinator and serve the Notice of Motion on every other Party at least 5 days before the date for which the motion is scheduled to be heard.
- (3) The Notice of Motion shall be in writing and shall:
 - (a) contain the decision or order sought, the reasons for bringing the motion and state the documentary or other evidence to be relied upon in support of the motion;
 - (b) be accompanied by any documents that may support the motion.
- (4) A Party who wishes to respond to the motion may file with the Tribunal Coordinator and serve on all Parties, at least two (2) days before the date for which the Hearing is scheduled, a summary of their responding position and any supporting material to be relied upon.
- (5) The Tribunal may hold a motion by way of an oral or written hearing.

RULE 9: ADJOURNMENTS**9.01 Adjournments**

- (1) A Hearing may be adjourned at the discretion of the Tribunal upon its own motion or upon the motion of a Party where that Party satisfies the Tribunal that the adjournment is required to permit an adequate Hearing to be held.
- (2) In deciding whether to grant an adjournment, the Tribunal may consider one or more of the following factors:
 - (a) the sufficiency of the reasons advanced for the request to adjourn;
 - (b) the timeliness of the request;
 - (c) the resources of the Tribunal;
 - (d) the prejudice to the parties;
 - (e) whether any adjournments have been granted previously;
 - (f) the consent of the parties;
 - (g) any other relevant factor.
- (3) The Tribunal may grant adjournments on such terms and conditions as it considers advisable.
- (4) Any Parties seeking an adjournment shall seek the consent of the opposing Party or Parties before bringing a motion before the Tribunal.
- (5) If consent is obtained pursuant to subsection (4) above, the Party seeking the adjournment shall contact the Tribunal Coordinator and provide evidence in writing of the request for an adjournment, the reasons for the request and the consent of the other Party or parties. The Tribunal Coordinator shall then provide the request to the Tribunal who will decide whether or not to grant the adjournment. If the Tribunal declines to grant the adjournment, the Party may seek a hearing of the request under subsection (6).
- (6) If the Party seeking an adjournment is unable to obtain the consent of the other Party or Parties, the Party seeking the adjournment may:
 - (a) by way of Notice of Motion request an adjournment at the hearing; and

- (b) file with the Tribunal Coordinator at least five (5) days before the date for which the Hearing is scheduled, any affidavit or other supporting material to be relied upon.
- (7) The Tribunal may, in its discretion, refuse an adjournment even though the parties consent.

RULE 10: DISCLOSURE**10.01 Disclosure**

- (1) "document" includes a sound recording, videotape, file, photograph, map, plan survey, and any information recorded or stored by any means.
- (2) At any stage of the proceeding before completion of the Hearing, the Tribunal may make orders for:
 - (a) the exchange of documents;
 - (b) the oral or written examination of a Party;
 - (c) the exchange of witness statements and reports of expert witnesses;
 - (d) the provision of particulars;
 - (e) a Party to provide a list disclosing all relevant documents and things in the possession or control of the Party;
 - (f) to provide a Party with an opportunity to view documents; or
 - (g) any other form of disclosure relative to the subject matter.
- (3) Subsection (2) does not authorize the making of an order requiring disclosure of privileged information.
- (4) Members of the Tribunal holding a Hearing shall not have taken part, before the Hearing, in any communication directly or indirectly in relation to the subject-matter of the Hearing, with any person, or with any Party or Representative of the Party, except upon notice to and with opportunity for all Parties to participate, but the Tribunal may seek legal advice from Counsel to the Tribunal and, in such case, the nature of the advice should be made known to the Parties in order that they may make submissions as to the law.

10.02 Failure to Disclose

- (1) If a Party fails to comply with an order of the Tribunal, or this Rule, the Party may not refer to the document or thing or introduce the document or thing in evidence at the Hearing without the consent of the Tribunal which may be on terms and conditions as the Tribunal considers just.

10.03 Order for witness statements

- (1) The Tribunal may order a Party to the Hearing to provide to every other Party and file with the Tribunal Coordinator, witness statements or summary of the evidence witnesses will give.
- (2) If a Party fails to provide a witness statement or a summary of the evidence a witness will give in accordance with Rule 10.03 (1), the Party may not call the person as a witness without the consent of the Tribunal which may be on such terms and conditions as the Tribunal considers just.
- (3) A Party may not call a witness to testify to matters not disclosed in the witness statement or summary of evidence without the consent of the Tribunal which may be on such terms and conditions as the Tribunal considers just.

10.04 Expert Witness

- (1) A Party that intends to call an expert witness at the Hearing shall provide to every other Party and file with the Tribunal Coordinator a written report signed by the expert containing the name, address and qualifications of the expert and the substance of the expert's proposed evidence including a list of all the documents to which the expert will refer.
- (2) If a Party fails to comply with the provisions of Rule 10.04 (1), the Party may not call the expert witness without consent of the Tribunal which may be on such terms and conditions as the Tribunal considers just.

RULE 11: WITNESSES**11.01 Administration of Oaths**

- (1) A Member of the Tribunal has the power to administer oaths and affirmations for the purpose of any of its proceedings.

11.02 Rights of parties to examine witnesses at Hearings

- (1) A Party to a proceeding may, at a Hearing:
 - (a) call and examine witnesses and present evidence and submissions; and
 - (b) conduct cross-examinations of witnesses at the Hearing to the extent reasonably required for a full and fair disclosure of all matters relevant to the issues in the Hearing.

11.03 Rights of Witnesses to an Agent

- (1) A witness at a Hearing is entitled to be advised by an adviser as to his or her rights but such adviser may take no other part in the Hearing without leave of the Tribunal.
- (2) Where a Hearing or portion thereof is closed to the public, the Agent for a witness is not entitled to be present except when that witness is giving evidence.

11.04 Summons to Witness

- (1) The Tribunal may issue a summons to a witness on its own initiative or upon request of a Party.
- (2) The Tribunal may require any person, including a Party, by summons:
 - (a) to give evidence on oath or affirmation at a Hearing; and
 - (b) to produce in evidence at a Hearing documents and things specified in the summons or by the Tribunal;relevant to the subject matter of the proceeding and admissible at a Hearing.
- (3) A summons issued under subsection (1) shall be in the form prescribed by the *Statutory Powers Procedure Act* (in English or French) and, shall be signed by the Chair of the Tribunal.
- (4) The summons shall be served personally on the person summoned by the Party who requested the summons.

- (5) The person summoned shall receive the same fees or allowances for attending at or otherwise participating in the Hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice, and payment to such fees is the responsibility of the Party who requested the summons.
- (6) In the event that a warrant is issued by a judge of the Ontario Superior Court of Justice the procedures outlined in the *Statutory Powers Procedure Act* apply.
- (7) The Party requesting the summons from the Tribunal shall ensure that it is served within a minimum of five (5) days before the date the witness' attendance is required.

11.05 Abuse of Processes

- (1) The Tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.
- (2) The Tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.
- (3) The Tribunal may exclude from a Hearing anyone, other than a person licensed under the Law Society Act, appearing on behalf of a Party or as an adviser to a witness if it finds that such person is not competent to properly represent or to advise the Party or witness or does not understand and comply at the Hearing with the duties and responsibilities of an advocate or adviser.

RULE 12: EVIDENCE**12.01 Admissible Evidence at a Hearing**

- (1) Subject to subsections (2) and (3) below, the Tribunal, in its discretion, may admit as evidence at a Hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court:
 - (a) any oral testimony; and
 - (b) any document or other thing;relevant to the subject matter of the Hearing and may act on such evidence, but the Tribunal may exclude anything unduly repetitious.
- (2) Nothing is admissible in evidence at a Hearing:
 - (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible by the statute under which the proceeding arises or any other statute.
- (3) Nothing in subsection (1) overrides the provisions of any *Act* expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding before the Tribunal.
- (4) Where the Tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a Hearing.
- (5) Where a document has been filed in evidence at a Hearing, the Tribunal may, or the person producing it or entitled to it may with leave of the Tribunal, cause the document to be photocopied and the Tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a Member of the Tribunal.
- (6) A document purporting to be a copy of a document filed in evidence at a Hearing, certified to be a copy thereof by a Member of the Tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document.

RULE 13: HEARINGS**13.01 Hearings**

- (1) A Hearing shall be open to the public except where the Tribunal is of the opinion that:
 - (a) matters involving the public security may be disclosed; or
 - (b) intimate financial or personal or other matters may be disclosed at the Hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that Hearings be open to the public;

in which case the Tribunal may hold the Hearing, or portion thereof, in the absence of the public.

13.02 Right to Counsel

- (1) A Party to a proceeding may be represented by an Agent.

13.03 Location

- (1) Hearings shall be held at the City of Mississauga Civic Centre, 300 City Centre Dr. Mississauga ON L5B 3C1 unless otherwise specified in the Notice of Hearing.

13.04 Agenda

- (1) The Tribunal Coordinator shall compile an Agenda for each Hearing, to be distributed to all persons who received a Notice of Hearing, which shall include:
 - (a) a copy of the Notice of Decision appealed from;
 - (b) the Notice of Appeal and any accompanying documentation.

13.05 Disposition of proceeding without a Hearing

- (1) If the Parties consent, the proceeding may be disposed of by a decision of the Tribunal given without a Hearing.

13.06 Recording of a Hearing

- (1) No person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by

electronic means or otherwise at a Hearing before the Tribunal that is open to the public, without the Tribunal's consent.

- (2) With the consent of the Tribunal, any Party may arrange for the attendance of a qualified verbatim reporter at his or her own expense for the purpose of recording all or part of the testimony and submissions during a Hearing. In considering whether to provide its consent, the Tribunal will consider, among other matters, whether to permit a record of only part of the Hearing would result in prejudice to a party.
- (3) If a Party orders a transcript or partial transcript, the Party must notify the Tribunal, and the other parties to the Hearing, that it has done so, and the Tribunal shall receive a copy free of charge, if the Tribunal requests a copy. The Party must furnish the copy of the transcript to the Tribunal within three days of the date of the Party's receipt of the transcript.
- (4) The Tribunal may at its own expense and, on notice to the Parties, order a transcript or partial transcript from the qualified verbatim reporter without furnishing a copy of the transcript to the Parties, however, in any such case the Tribunal will advise the Parties that it has ordered the transcript and where the Tribunal orders a partial transcript the Tribunal shall notify the Parties as to the part of the transcript the Tribunal has ordered.

RULE 14: HEARING PROCEDURES**14.01 Quorum and Voting**

- (1) A minimum of three Members must be present to achieve quorum for a Hearing.
- (2) If no quorum is present within 30 minutes of the scheduled start time, all Hearings are rescheduled for the next standard Hearing date, and a fresh Notice of Hearing will be sent as if it were the first Notice of Hearing.
- (3) Notwithstanding clause (1) of this Section, when the number of Members who recuse themselves by reason of having declared an interest according to Section 14.03, leaves a remaining number of Members that does not make quorum, the remaining Members will be deemed to constitute quorum, provided that not less than two (2) Members remain present to continue the Hearing.
- (4) If constituted quorum for a Hearing is two (2) Members, a unanimous decision of the Tribunal is required.
- (5) Tribunal Members, including the Chair, may vote on all motions and other questions submitted at the Hearing.
- (6) In the case of a tie vote, the motion or question shall be deemed to have been lost.

14.02 Opening Procedures

- (1) The Chair shall call the Hearing to order and read an opening statement outlining the procedure and format of the Tribunal Hearing process.
- (2) The Chair will read out the proceedings listed on the Agenda.

14.03 Statements

- (1) The Chair will entertain any statements from Tribunal Members at this time.
- (2) Where a Tribunal Member has any pecuniary interest, direct or indirect, in any proceeding that is before the Tribunal, the Tribunal Member,
 - (a) shall, prior to any consideration of the Appeal, disclose the interest and the general nature thereof;
 - (b) shall recuse him or herself from the Hearing of that Appeal; and
 - (c) shall not attempt in any way whether before, during or after the Hearing to influence the decision of the Tribunal.

14.04 Motions

- (1) The Tribunal will hear motions regarding any proceeding listed on the Agenda.
- (2) The Tribunal will hear motions for adjournment requests prior to the commencement of any Hearing.
- (3) If a Party brings a motion regarding a proceeding not listed on the Agenda, the Tribunal may decide to hear the motion at that time or order that it be brought at a later date.

14.05 Hearing of Appeals

- (1) Subject to any motions previously adopted by the Tribunal, the Chair will indicate that the Tribunal will now hear the first Appeal on the Agenda.

14.06 Parties to an Appeal

- (1) The Chair requests that the Parties to an Appeal to identify themselves, including any witnesses who intend to give evidence on behalf of either Party to the Appeal.

14.07 Order of Presentation

- (1) The City may make an opening statement.
- (2) The Appellant may make an opening statement.
- (3) The City is requested to present the Licensing Decision and related evidence and witnesses.
- (4) The Appellant may cross-examine each of the City's witnesses and the City may re-examine those witnesses.
- (5) The Tribunal Members may ask questions of any witness, through the Chair.

14.08 Presentation of the Appeal

- (1) The Appellant is requested to present evidence which may include witnesses with respect to the Appeal of the Licensing Decision.
- (2) The Tribunal will allow the Appellant to complete their presentation before asking any questions, unless clarification is required before the presentation is completed.
- (3) The Tribunal may, through the Chair, ask questions of the Appellant or any of his or her witnesses to clarify any evidence presented.

- (4) The City may cross - examine the Appellant or his or her witnesses and the Appellant may re-examine those witnesses.

14.09 Other representations; Right of Reply

- (1) After the Appellant's presentation, the Tribunal will hear from anyone else who wishes to make representations before the Tribunal pertaining to the matter.
- (2) Persons giving evidence under subsection (1) are subject to questions by the Tribunal, the Appellant or the Appellant's Agent, and the Agent for the City.
- (3) The City's Agent has the right of reply on matters which could not have been anticipated prior to hearing the Appellant's evidence.

14.10 Closing Statements

- (1) At the conclusion of all evidence presented, both Parties are entitled to make final submissions to the Tribunal.

14.11 Tribunal Decision

- (1) The Tribunal may give an oral decision or may reserve its decision.
- (2) The Tribunal may recess at any time to consider its final decision or any interim decision during the Hearing.
- (3) If the decision is reserved the Chair will advise the Appellant that the Appellant will be notified by registered mail of the Tribunal's decision.

14.12 Notice of Decision

- (1) The Tribunal Coordinator will forward notice of the Tribunal's decision within fourteen (14) days of the Hearing to all persons who received Notice of the Hearing and to everyone who appeared before the Tribunal at the Hearing.
- (2) The written decision sent in the Notice of Decision will be signed by all Members of the Tribunal that took part in the Hearing and will contain written reasons to support the decision.
- (3) The Notice of Decision shall contain a record of the proceedings, compiled by the Tribunal Coordinator, which shall include:
 - (a) list of persons present;
 - (b) list of witnesses and for whom they testified;
 - (c) any interlocutory orders made by the Tribunal; and

- (d) all documentary evidence filed with the Tribunal, subject to any limitations expressly imposed by any other *Act*.

14.13 Exceptions from Procedures

- (1) The Tribunal may grant all necessary exceptions from the procedures listed in this Rule as it considers appropriate to ensure that a fair and just Hearing is conducted.

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TAB: HUMAN RESOURCES
SECTION: EMPLOYEE CONDUCT
SUBJECT: RESPECTFUL WORKPLACE

Mississauga Appeal Tribunal

MAR 04 2013

POLICY STATEMENT

Employees, elected officials, citizen members of committees and volunteers acting on behalf of the City of Mississauga are entitled to, and are expected to contribute to, a Respectful Workplace, and no form of discrimination, harassment, or bullying will be tolerated.

PURPOSE

The City of Mississauga's objective is to ensure a climate of understanding and mutual respect for the dignity and worth of each individual. This policy:

- defines Respectful Workplace, Discrimination, Harassment, and Bullying;
- clarifies legislative requirements;
- identifies the rights and responsibilities of Employees; and outlines the Employee's course of action should a violation of this policy occur.

LEGISLATIVE AUTHORITY

This policy complies with the *Accessibility for Ontarians with Disabilities Act*, the *Ontario Human Rights Code*, and the *Occupational Health & Safety Act*. Every person who is an employee has a right to freedom from discrimination and harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (includes pregnancy), sexual orientation, age, record of offences, marital status, family status or disability.

SCOPE

All employees, elected officials, citizen members of committees, and volunteers acting on behalf of the City of Mississauga are covered by this policy.

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The City's Corporate Policy and Procedure – Human Resources – Workplace Violence should be consulted regarding issues of actual, attempted or threatened workplace violence.

Respectful Workplace Statement of Commitment

This policy is supplemented by a Respectful Workplace Statement of Commitment, which is posted at City facilities. A copy is available from Human Resources, Corporate Services Department.

Members of the general public, visitors to City facilities, and individuals conducting business with, or performing work on behalf of, the City of Mississauga are required to adhere to the Respectful Workplace Statement of Commitment. Groups which are affiliated with the City, or which appear on the City's volunteer group register, through Corporate Policy and Procedure - Community Group Support Program, while independent of the City in their operations, are required to adhere to the Respectful Workplace Statement of Commitment. If a violation occurs, the City will take any steps available, in accordance with City policies and/or by-laws and existing legislation, to ensure that a Respectful Workplace is restored and maintained.

DEFINITIONS

Employee

To simplify the language in this policy, the term "Employee" encompasses all union and non-union employees, as well as elected officials, citizen members of committees, and volunteers acting on behalf of the City of Mississauga.

Management Staff

"Management Staff" means any individual responsible for directing the work of others, including elected officials, the City Manager, commissioners, directors, managers, supervisors, team leaders, or any other person taking a leadership role, such as trainers, project leaders, facilitators, etc.

Advisor

"Advisor" means an individual who is neutral, objective and knowledgeable about human rights issues. This person will

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provide information and explain resolution options available to employees. The following positions are considered “Advisors”:

- Departmental and Corporate Human Resources Managers;
- Departmental and Corporate Human Resources Consultants;
- Organizational Effectiveness/Development Consultants.

Investigator

“Investigator” means the person(s) responsible for examining the circumstances of a complaint. Departmental and Corporate Human Resources Managers or Consultants are considered “Investigators”.

Workplace

The “Workplace” includes all locations where employees or elected officials conduct business or social activities and where their behaviour may have a subsequent impact on work relationships, environment and/or performance. Incidents that occur by way of electronic communication (e.g. unwelcome phone calls, messages on e-mail or voice mail, and the display of offensive materials) are considered to have occurred in the Workplace.

Respectful Workplace

A “Respectful Workplace” means a positive, safe and healthy Workplace that results in the preservation of equal dignity and creates a culture that supports an individual’s physical, emotional and social well-being.

Discrimination

“Discrimination” results from treating a person unequally, rather than treating the person fairly on the basis of individual merit. Discrimination can be either intentional or unintentional, and is usually based upon personal prejudices and stereotypical assumptions related to at least one of the grounds set out in the *Ontario Human Rights Code*.

Harassment

Harassment is a form of Discrimination. The *Ontario Human Rights Code* defines “Harassment” as “a course of vexatious comments or conduct that is known or ought reasonably to be known to be unwelcome.” “Vexatious” means annoying. A

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“course” of conduct means that a pattern of behaviour or more than one incident is usually required to establish Harassment. However, a single significant incident may be sufficiently offensive to be considered Harassment.

Harassment is not defined by intent, but rather by perception of the behaviour. Behaviours which constitute Harassment include, but are not limited to:

- physical actions, such as touching, leering, violence (for violence refer to Corporate Policy and Procedure – Workplace Violence);
- patronizing or condescending behaviour or language which reinforces stereotypes and undermines self-respect;
- comments, such as inappropriate jokes, psychological abuse, name-calling;
- displays of offensive materials or offensive e-mail;
- behaviours which create an environment which is hostile or offensive, or which contribute to a poisoned work environment;
- Bullying (see definition of Bullying below).

Bullying

“Bullying” is behaviour by a person or group which intimidates or demeans another person, and includes, but is not limited to:

- abuse of power;
- humiliation or embarrassment;
- persistent and unjustified criticism;
- exclusion and/or isolation;
- threats; or
- rumours/gossip.

RESPONSIBILITIES

Employee Responsibilities

Employees are expected to:

- promote and contribute to a Respectful Workplace;
- refrain from any violation of this policy;
- report incidents where violations of this policy have occurred

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to any person with leadership and/or supervisory responsibility;

- co-operate fully in any investigation.

Management Staff Responsibilities

Management Staff are responsible not only for their own actions, but also for dealing with the actions of staff under their supervision. Management Staff must intervene if a violation of this policy has been brought to their attention and/or has been witnessed. Appropriate steps must be taken to address and resolve the situation.

Management Staff are expected to:

- actively promote a Respectful Workplace;
- set a good example by neither engaging in, tolerating, or condoning Harassment, Discrimination or Bullying;
- keep a detailed written record of any violations;
- consult with a Human Resources Manager to address and resolve informal employee complaints, as necessary;
- maintain confidentiality;
- ensure that staff involved in the complaint/situation are aware of their responsibility to keep the issue confidential;
- co-operate with the Investigator of the complaint.

Human Resources Manager/ Human Resources Consultant Responsibilities

Human Resources Managers and Human Resources Consultants are responsible for:

- acting as Advisors to complainants;
- acting as Advisors to persons being accused;
- acting as Investigators;
- providing advice to Management Staff.

To ensure objectivity, individual Human Resources Managers and Human Resources Consultants may perform only one role with respect to any given complaint. If approached to perform more than one role, the Human Resources Manager/Consultant must advise of the role he/she has already taken, and provide the names of others who can advise or investigate.

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Organizational Effectiveness/Development Consultant Responsibilities

Organizational Effectiveness/ Organizational Development Consultants are responsible for acting as Advisors to complainants or to persons being accused. They may not act as Advisor to both the complainant and the person being accused.

Advisor Responsibilities

Advisors are responsible for providing confidential advice and information concerning this policy to any Employee who requests it. Any Employee, whether he or she is the complainant or the person being accused, may contact an Advisor. The Advisor should advise the Employee of:

- all of the complaint resolution options available;
- other avenues of recourse such as the right to file an Application (complaint) with the Ontario Human Rights Tribunal, or where appropriate, the right to file charges under the *Criminal Code*
- any time limits which may apply;
- the need to keep all issues strictly confidential.

Investigator Responsibilities

Investigators are responsible for:

- investigating complaints filed under this policy;
- examining the circumstances of a complaint;
- exercising objectivity;
- ensuring confidentiality;
- recording/maintaining appropriate documentation;
- discussing findings, conclusions and recommendations with the departmental Commissioner, Director and/or Manager, as appropriate.

COMPLAINT RESOLUTION

Employees are encouraged to attempt to resolve issues informally. However, it is the Employee's right to choose to make the complaint through a formal process. An Advisor is available to Employees for confidential advice and assistance in resolving Respectful Workplace issues. Employees will not suffer reprisals for making legitimate complaints, either informally or formally.

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This policy outlines three types of complaint resolution processes. Utilizing any one of the processes outlined does not prevent the Employee from also utilizing any of the other processes. The processes outlined are:

- Informal Internal Complaint Resolution Process
- Formal Internal Complaint Resolution Process
- External Complaint Resolution Processes

INFORMAL INTERNAL COMPLAINT RESOLUTION PROCESS

This section outlines an internal process for resolving complaints informally. Union employees should refer to the terms of their particular collective agreement. Union employees may wish to seek the assistance of the union. Management will provide assistance to an employee who chooses to approach his or her union in this regard.

Attempt to resolve the issue
on your own

Whenever possible or appropriate, the Employee should approach the person, and clearly inform him or her that the inappropriate behaviour is unwelcome and ask that it stop. Employees should inform the person(s) responsible for the behaviour that it is offensive and contrary to the City's Respectful Workplace policy.

Keep a Record

The Employee should keep a record of the incident(s) and any related discussions. The details should be noted, including when it happened, where it happened, who was involved, and any witnesses who may have seen or heard it. These notes will be required if a formal complaint is made.

Seek Assistance

If the Employee feels uncomfortable in dealing directly with the issue, or if his or her efforts to do so are unsuccessful, he or she should bring any concerns to any person with leadership and/or supervisory responsibilities. If an issue is brought to the attention of a person with leadership and/or supervisory responsibility, they should consult, confidentially, the employee's Departmental Human Resources Manager or Human Resources Consultant to assist in efforts to resolve the issue quickly and thoroughly.

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FORMAL INTERNAL COMPLAINT RESOLUTION PROCESS

This section outlines a Respectful Workplace Complaints Review Process for resolving issues internally, on a formal basis.

Union employees should refer to the terms of their particular collective agreement. If the collective agreement does not provide a formal complaint resolution process, union employees should follow the Respectful Workplace Complaints Review Process as outlined below.

Respectful Workplace Complaints Review Process

If the Employee wishes to initiate a Respectful Workplace Complaints Review, he or she must put the issue in writing, indicating that it is to be considered as a formal complaint. The written complaint may be submitted to the complainant's supervisor, manager, director, commissioner, or a Human Resources Manager.

Complaints should be made as soon as possible, but no later than 30 days from the date of the incident(s). All efforts will be made to ensure that formal complaints are resolved within 30 business days, or within a specified time as discussed with the complainant.

All complaints will be investigated in an unbiased, impartial and timely manner by the Investigator. Management Staff who receive a formal complaint must immediately forward the complaint to the complainant's Human Resources Manager.

The Investigator will arrange to meet and interview the complainant, and notes will be taken. A copy of the interview notes will be reviewed and signed by the complainant and each will retain a copy.

The Investigator will thoroughly investigate the complaint, including any necessary consultation with other Employees. The complaint will be considered in the context of existing policies,

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established procedures, and applicable legislation.

At the conclusion of the formal investigation, a report will be discussed with the complainant's Director and/or Commissioner which will include the allegations and the investigation's findings, conclusions and recommendations.

The Investigator will provide both the complainant and those alleged in the complaint with a written response.

If the complaint has not been resolved to the Employee's satisfaction, and if the Employee wishes to appeal the findings of the investigation, he or she must formally request an appeal through the Director of Human Resources, who will refer the issue to the City Manager.

EXTERNAL COMPLAINT RESOLUTION OPTIONS AND RESOURCES

This section outlines options available with respect to complaint resolution using external resources.

While not directly involved in the complaints resolution process, the City's Employee Assistance Program (EAP) is available to provide confidential support and counselling.

Ontario Human Rights Tribunal

All persons have the right to file a human rights Application directly with the Ontario Human Rights Tribunal. The Tribunal normally requires that an Application be filed at any time within twelve (12) months of the alleged Discrimination or Harassment, or the last incident thereof.

Police Complaint

Employees have the right to file complaints with the police.

CONFIDENTIALITY

All persons involved with a complaint must endeavour to ensure that the matter remains confidential. To this end, complaints shall be investigated both confidentially and objectively, with respect for the rights of all parties involved. Personal information will be disclosed only on a need-to-know basis, in accordance with the

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Municipal Freedom of Information and Protection of Privacy Act.

Those conducting the investigation of a complaint should advise all persons interviewed that they will be expected to treat the matter as confidential, and that they may be disciplined if they breach confidentiality.

DISCIPLINARY ACTION Any Employee who violates this policy, and/or Management Staff who fail to take action when advised of a violation, will be subject to appropriate disciplinary action, up to and including termination of employment. Disciplinary action will also be taken if a complaint is found to have been made fraudulently and with malicious intent.

REFERENCE: AC-0010-2007 – 2007 05 23
2008 10 23 – housekeeping to reflect minor process changes by Human Rights Commission re: filing complaints.
GC-0403-2010 2010 06 09
2011 10 12 – housekeeping – Volunteer policy renamed to Community Group Support Program

LAST REVIEW DATE: April, 2007

CONTACT: For more information, contact the departmental Human Resources Representative. Employees may also contact other government agencies (such as the Employment Standards Branch of the Ministry of Labour, and the Ontario Human Rights Commission) for information on their legal rights and entitlements. For a copy of the City's Respectful Workplace Statement of Commitment, contact Human Resources, Corporate Services Department.

MAR 04 2013

ROBERT J. SWAYZE

BARRISTER & SOLICITOR

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Integrity Commissioner's Report

Governance Committee

FEB 27 2013

DATE: February 8, 2013

TO: Chair and members of the Governance Committee
Meeting Date: February 27, 2013

FROM: Robert J. Swayze
Integrity Commissioner

SUBJECT: Local Board Codes of Conduct and Complaint Protocol

- RECOMMENDATION:**
1. That the report of the Integrity Commissioner dated February 2013 including draft proposed Codes of Conduct and Complaint Protocol applicable to Local Boards of the City of Mississauga be received and that the adoption of a Code of Conduct and Complaint Protocol applicable to Local Boards of the City of Mississauga be approved in principle;
 2. That staff be directed to invite the Chairs or designates of all Mississauga Local Boards including all committees created by Council with citizen members, to a meeting with the Integrity Commissioner who will present and explain the draft documents attached to this report to the members of such boards and report back to Governance Committee with his recommendation as to final documents for adoption by Council having taken into consideration all input from such Local Board members.

PRESENT STATUS: Currently Council has adopted a Code of Conduct and a Complaints Protocol pursuant to Section 223 of the *Municipal Act* applying only

to members of Council.

BACKGROUND:

I was directed by the Governance Committee to work with staff and prepare a Code applying to all members of Local Boards as defined in Section 223.1 of the *Municipal Act* (the restricted definition). My research for the purpose of this report included reviewing a similar exercise carried out by the City of Toronto in 2008. The City decided that there needed to be a separate Code applying to Local Boards which adjudicate and a second applying to the rest of the Boards. The distinction is made because adjudicative boards are tribunals which must make decisions independently from Council and are subject to the *Statutory Powers Procedure Act*. In the City of Mississauga adjudicative boards include Committee of Adjustment, Committee of Revision, Property Standards Committee, Mississauga Appeal Tribunal, Election Campaign Finance Committee and the Heritage Advisory Committee.

I agree with the approach taken by the City of Toronto. With the assistance of staff, I have prepared the three draft documents attached to this report as appendices, which are adaptations of the Mississauga Council Code of Conduct and the Complaints Protocol to the two classifications of Local Boards, as follows:

Code of Conduct for Local Boards (non-adjudicative)–Appendix 1

Minor changes from the Council Code have been made to this draft document substituting members of local boards for members of Council in respect of most sections. Rule No. 2 – Gifts and Benefits has been retained but the only obligation on the member is to file an information report with me for gifts over \$500 when received. No quarterly report is required. Rule No. 6 – Election Campaigns has been included only if the member of the board runs for election to Council. Rule No. 3 – Councillor's Expenses has been deleted.

Code of Conduct for Adjudicative Boards – Appendix 2

This Code is also an adaptation of the Mississauga Council Code of Conduct with changes similar to Appendix 1. The following special requirements apply to Adjudicative boards:

1. Common law principles of natural justice and procedural

fairness

2. *Statutory Powers Procedure Act* and other statutes such as *Human rights Code*
3. Decisions must be made independently from Council.

Accordingly, two new sections have been added as follows:

Rule 10: Because of legal requirements applying to the conduct of hearings, this rule prescribes the manner in which communication between parties can take place.

Rule 11: This section dovetails with Rule 7 of the Council Code which prohibits certain types of contact between a Councillor and a member of an adjudicative board. It requires the board to be independent from Council.

In addition, three sections have been amended as follows:

Rule 2: I have inserted a caution regarding the acceptance of any gifts by a member of an adjudicative board because of the requirement of members to remove themselves from a hearing in the event of a perception of bias.

Rule 5: Prohibits a member of an adjudicative board from working on and fundraising for an election campaign of any person running for a seat on Council.

Rule 9: Restricts media communications which are usually inappropriate for members sitting as quasi judges and if deemed appropriate, only by the Chair.

Complaint Protocol for Local Boards – Appendix 3

This document is an adaptation of the Council Code of Conduct Complaint Protocol with few changes. It applies to all Local Boards including adjudicative boards. The one substantive change is that the informal complaint process has been limited to Boards which do not adjudicate.

COMMENTS:

I was asked by the Governance Committee to comment on the consequences of a member of Council sitting on boards or committees of organizations which are separate from Council. These comments will not apply to direct committees of Council or advisory boards whose authority is limited to advising Council.

Accepting an appointment to a board of any organization brings with it a duty to that organization. What should Councillors do to avoid conflicts with their duty as members of City Council and are there some memberships or appointments which should be refused or avoided?

For the purpose of my comments, I will categorize boards which a Councillor might be invited to join, as follows:

1. The independent boards which reserve a seat or seats for a member or members of Council or it is customary for a member of Council to be a member, such as Business Improvement Areas, Library Board, etc.,
2. Boards of charitable or not-for-profit organizations unconnected with the City but active in the community, and
3. Boards of for-profit organizations whether or not they pay directors fees.

For category 1, in my experience, there is often confusion among sitting Councillors because there may be conflicts on issues between the organization and the Council as a whole. The Councillor has been selected to represent the City on the board and must he or she attempt to predict how a majority of Council will vote and then vote accordingly on an issue before the board? What if Council has already taken a formal stand on the issue and the sitting Councillor does not agree with it?

In my view, a member of Council must always vote his or her conscience in the best interest of the City, whether voting at Council or on an independent board. The election to City Council carries with it a responsibility to put the interests of the City first and all other involvements in public life are secondary. I would not find a conflict if the Councillor sincerely felt that he or she was voting in the best interests of the City, notwithstanding a contrary stand by a majority of Council.

For category 2, the Council Code of Conduct, in Rule 1 (g) specifically permits holding a directorship in a charitable service or other not-for-profit corporation under the guidance of the Integrity Commissioner. However, the Code prohibits in Rule 1(b), "private conflicts of interest both apparent and real" which includes both

pecuniary and non-pecuniary conflicts. Members of Council who accept appointments to such boards are encouraged to consult with me if issues arise at Council such as conferring grants or other benefits on the organization, where they may have a private conflict. It may well be advisable to declare a private conflict if the Councillor feels that he or she cannot be impartial in voting on an item benefitting the organization, particularly if the vote will remove a benefit from another charitable organization.

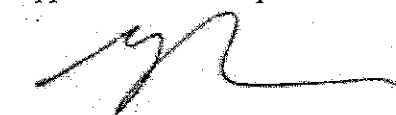
In my opinion, it would not be advisable for any member of Council to accept an appointment to any category 3 board. If the corporation is a developer, a contractor or at any time in the future may lobby the City, the conflict potential would be constant. It would be an invitation to any member of the public to file a complaint with me or bring an application under the *Municipal Conflict of Interest Act* to unseat the member. The corporation would need to be completely remote from the City, owning no land in the City, having no office in the City and not being in a business in any way relating to municipalities. There are occasions when a Councillor feels he or she must join a board of a family business or because he or she is a major shareholder. In these cases vigilance is required to ensure that all conflicts are declared and consultation with me is again encouraged.

CONCLUSION:

Adopting Codes of Conduct and a complaint Protocol applicable to Local Board members extends the principles of transparent and accountable government to citizen members appointed by Council who are required to be independent, impartial and responsible in serving on such boards.

ATTACHMENTS:

- Appendix 1: Code of Conduct for Local Boards (non-adjudicative)
- Appendix 2: Code of Conduct for Adjudicative Boards
- Appendix 3: Complaint Protocol for Local Boards



Robert J. Swayze
Integrity Commissioner

Prepared By: Robert J. Swayze

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DRAFT ONLY***Code of Conduct for Local Boards - City of Mississauga February 27, 2013***

Note: This document is a modified version of the *Council Code of Conduct* applying to members of local boards (restricted definition), other than adjudicative boards.

There is a separate version of the Code of Conduct for members of local boards that adjudicate and a Complaint Protocol which applies to both local board codes.

Whereas the *Municipal Act, 2001* authorizes municipalities to establish a code of conduct for Members of Council or local boards of the municipality;

And whereas the establishment of a code of conduct is consistent with the principles of transparent and accountable government and is also reflective of the City's core values of Trust, Quality and Excellence in public service;

And whereas Council has adopted a *Council Code of Conduct* applying to members of Council;

And whereas the public is entitled to expect the highest standards of conduct from members of Council and the citizen members who are appointed to local boards by Council to act on its behalf;

And whereas a draft of a proposed code of conduct for local boards has been circulated to all members of such boards for comment and comments received have been considered by Council;

Now therefore the Council of the City of Mississauga adopts a code of conduct applying to all members of local boards except for boards that adjudicate, to underscore the requirement that appointed members of local boards be independent, impartial, and duly responsible in serving on such boards.

Application

This Code of Conduct applies to members of local boards (restricted definition) of the City of Mississauga excluding boards that adjudicate as defined in the *Code of Conduct for Adjudicative Boards*.

Definitions

- a. The following terms have the meanings indicated:

“local board” means a local board as defined in section 223.1 of the *Municipal Act*;

“Member” means a member of a City of Mississauga local board excluding boards that adjudicate;

- b. In the Code of Conduct the terms “child”, “parent” and “spouse” have the same meanings as in the *Municipal Conflict of Interest Act*:

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

“parent” means a parent who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside of marriage;

“Family Member” means a spouse, common-law partner, or any other person with whom the person is living as a spouse outside of marriage;

- child, includes step-child and grand-child;
- siblings.

- c. “staff” includes the City Manager and Chief Administrative Officer, Commissioners, Directors, Managers, Supervisors and all non-union and union staff whether full-time, part-time, contract, seasonal or volunteers.
- d. A Member has an apparent conflict of interest (as referred to in Rule 1b) if a well informed reasonable person could properly have a reasonable perception, that the Member’s impartiality in deciding to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Framework and Interpretation

1. This Code of Conduct is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein. As a living document the *Code of Conduct for Local Boards* will be brought forward for review at the end of each term of Council, when relevant legislation is amended, and at other times when appropriate to ensure that it remains current and continues to be a useful guide to members of local boards.

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2. Commentary and examples used in this Code of Conduct are illustrative and not exhaustive. From time to time additional commentary and examples may be added to this document and supplementary materials may also be produced by the Integrity Commissioner as deemed appropriate.
 3. Where a Member discloses all known facts to the Integrity Commissioner and as long as those facts remain unchanged, the Member may rely on written advice provided by the Integrity Commissioner. The Integrity Commissioner will be bound by the advice given, as long as the facts remain unchanged, in the event that he or she is asked to investigate a complaint.
 4. Members seeking clarification who are provided advice in a general way, cannot rely on advice given by the Integrity Commissioner to the same extent as advice given in respect of specific facts. Advice that is general in nature is subject to change when applied to specific facts that may not have been known at the time the general advice was provided.
 5. Members seeking clarification of any part of this *Code* should consult with the Integrity Commissioner.
 6. The *Municipal Act, 2001* is the primary piece of legislation governing municipalities however there are other statutes that govern local boards and the conduct of its members. It is intended that the Code of Conduct operate together with and as a supplement to the following legislation:
 - *Municipal Act, 2001*;
 - *Municipal Conflict of Interest Act*;
 - *Municipal Freedom of Information and Protection of Privacy Act*;
 - *Criminal Code of Canada*.
 7. In carrying out his or her responsibilities regarding this Code of Conduct, the Integrity Commissioner is not limited to looking at the pecuniary interest of the Member, and for clarity the Integrity Commissioner is specifically authorized to investigate issues of conflict in a broad and comprehensive manner.

Rule No. 1

Key Principles that Underlie the Code of Conduct for Local Boards:

- a. Members shall serve and be seen to serve the City in a conscientious and diligent manner.

Commentary

Members recognize the public's right to reasonable access to information in relation to how decisions are made. The public's right to access however must be balanced against the

requirement to protect the legitimate interests of the City and the respect for approved policies of the City.

- b. Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their membership on the board, and private conflicts of interest, both apparent and real. Members shall also not extend in the discharge of their official duties, preferential treatment to Family Members, organizations or groups in which they or their Family Members have a direct or indirect pecuniary interest.

Commentary

Members have a common understanding that in carrying out their duties as a Member of a local board, they will not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to a Family Member or an individual which is not available to every other individual.

Members are governed by the *Municipal Conflict of Interest Act* and in the event a complaint under the Act is filed with the Court, the provisions of that statute take precedence over any authority given to the Integrity Commissioner to receive or investigate complaints regarding alleged contraventions under the *Municipal Conflict of Interest Act*. It is intended that the Integrity Commissioner be empowered to investigate and rule on all conflicts of interest, whether pecuniary or non-pecuniary until Court proceedings are started under the Act.

- c. Members are expected to perform their duties as a member of the local board and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

Commentary

Members may seek conflict of interest advice, including a written opinion, from the Integrity Commissioner.

Members shall not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to an individual which is not available to every other individual member of the public. For example, Members shall remain at arm's length when City staff or the board is asked to consider a matter involving a Family Member or a person or organization with whom the Member has a real or apparent conflict of interest.

- d. Members shall avoid any interest in any contract made by him/her in an official capacity and shall not contract with the local board or any agency thereof for the sale and purchase of supplies, material or equipment or for the rental thereof.
- e. Members, while a member of a local board, shall not engage in the management of a business and shall not profit directly or indirectly from such business that relies or has relied on an approval from the local board.

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- f. Despite subsection e., a Member may hold office or directorship in an agency, board, commission or corporation where the Member has been appointed by City Council or by the Council of the Regional Municipality of Peel or by the Federal or Provincial government.
- g. Despite subsection e., a Member may hold office or directorship in a charitable, service or other corporation subject to the Member disclosing all material facts to the Integrity Commissioner and obtaining a written opinion from the Integrity Commissioner approving the activity, as carried out in the specified manner, which concludes that the Member does not have a conflict between his/her private interest and public duty. In circumstances where the Integrity Commissioner has given the Member a qualified opinion, the Member may remedy the situation in the manner specified by the Integrity Commissioner.

Commentary

Examples of exceptions include hospital boards, charitable boards, police services boards, community foundations, the Association of Municipalities of Ontario, the Federation of Canadian Municipalities, service clubs such as the Rotary Club, Lions Club and other not-for-profit organizations. Members should exercise caution if accepting such positions if the organization could be seeking a benefit or preferential treatment from the Member's local board at any time.

- h. Members shall seek to serve the public interest by upholding both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and by City Council.

Commentary

The provisions of this Code are intended to be applied in concert with existing legislation and go beyond the minimum standards of behaviour set out in current federal and provincial statutes.

To ensure the *Code* remains a living document that will remain current and continue to be a beneficial guide, the *Code* shall be brought forward for review at the end of each term of Council, with any changes to be implemented at the start of the following Council session.

- i. In fulfilling their roles as members of a local board, Members shall respect the role of staff in the administration of the business affairs of the City and in so doing will comply with the City's *Respectful Workplace* policy.

Rule No. 2**Gifts and Benefits:**

1. No Member shall accept a fee, advance, cash, gift, gift certificate or personal benefit that is connected directly or indirectly with the performance of his/her duties of office unless permitted by the exceptions listed below. No Member shall accept the use of property or facilities, such as a vehicle, office or vacation property at less than reasonable market value or at no cost.

For these purposes, a fee or advance paid to or a gift or benefit provided with the Member's knowledge to a Family Member or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties, is deemed to be a gift to that Member.

The following are recognized as exceptions:

- a. compensation authorized by law;
- b. such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c. a political contribution otherwise reported by law, in the case of Members running for office;
- d. a suitable memento of a function honouring the Member;
- e. food, lodging, transportation and entertainment provided by Provincial, Regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event;
- f. 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; and
- g. communications that are educational or training materials received from professional associations relating to similar tribunals.

Commentary

In the case of exceptions claimed under categories 1. b, d, e and f:

- a) where the value of the gift or benefit exceeds \$500, or if the total value received from any one source during the course of a calendar year exceeds \$500, the Member shall within 30 days of receipt of the gift or reaching the annual limit, list the gift or benefit on a Local Board Member Information Statement in a form prescribed by the Integrity Commissioner, and file it with the Integrity Commissioner.

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- b) On receiving a Local Board Member Information Statement, the Integrity Commissioner shall examine it to determine whether the receipt of the gift or benefit might, in the opinion of the Integrity Commissioner, create a conflict between a private interest and the public duty of the Member. In the event that the Integrity Commissioner makes that preliminary determination, he/she shall call upon the Member to justify receipt of the gift or benefit.
- c) Should the Integrity Commissioner determine the receipt was inappropriate, the Integrity Commissioner may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or the Integrity Commissioner may order the Member to forfeit the gift or remit the value of any gift or benefit already consumed to the City, or a City agency, board or commission. Any such direction ordered by the Integrity Commissioner shall be a matter of public record.

Commentary

Examples of gifts in excess of \$500 in value that are required to be listed on the Local Board Information Statement may include:

- a. property (i.e. a book, flowers, gift basket, painting or sculpture, furniture, wine);
- b. membership in a club or other organization (i.e. a golf club) at a reduced rate or at no cost;
- c. an invitation to and/or tickets to attend an event (i.e. a sports event, concert, play) at a reduced rate or no cost;
- d. or an invitation to attend a gala or fundraising event at a reduced rate or at no cost.

Any doubts about the propriety of a gift should be resolved in favour of not accepting it or not keeping it. It may be helpful to consult with the Integrity Commissioner when a Member chooses to decline a gift as well as when a recipient may opt to keep a gift.

Rule No. 3

Confidential Information:

Confidential Information includes information in the possession of, or received in confidence by, a local board that the board is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), or any other legislation such as the *Council Procedure By-law* or similar provisions of the local board's procedural by-law (if any).

MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege. For the purposes of this Code of Conduct, "confidential information" also includes this type of information.

No Member 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 to do so by the local board or, if applicable, by Council.

Nor shall Members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation, either directly or indirectly.

The *Municipal Act*, allows information that concerns personnel, labour relations, litigation, property acquisitions and security of the property of the City or a local board, and matters authorized in other legislation including MFIPPA, to remain confidential. For the purposes of the Code of Conduct, "confidential information" includes this type of information.

1. The following are examples of the types of information that a Member must keep confidential:
 - items under litigation, negotiation, or personnel matters;
 - information that infringes on the rights of others (e.g. sources of complaints where the identity of a complainant is given in confidence);
 - price schedules in contract tender or request for proposal submissions if so specified;
 - information deemed to be "personal information" under the *Municipal Conflict of Interest Act*; and
 - statistical data required by law not to be released (e.g. certain census or assessment data)
2. Where it is clear that a communication was not made in a confidential manner (i.e. copied to others, or made in the presence of others) or the manner of communication undermines the validity of labelling it "Confidential", such communication will not be given any higher level of confidentiality than any other communication. The words "Privilege", "Confidential" or "Private" will not be understood to preclude the appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication.
3. Under the *Council Procedure By-law* or similar provisions of the local board's procedural by-law (if any) a matter that has been discussed at an *in-camera* (closed) meeting remains confidential, until such time as a condition renders the matter public.
 - a. No Member shall disclose the content of any such matter, or the substance of deliberations, of the *in-camera* meeting until the local board or if applicable, Council or one of its Committees discusses the information at a meeting that is open to the public or releases the information to the public.
 - b. No Member 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 where required by law or authorized by Council to do so.

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- c. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.
- d. Members should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and is not prohibited by the local board or Council policy.

Rule No. 4

Use of City Staff, Property, Services and Other Resources:

No Member should use, or permit the use of local board or City land, facilities, equipment, supplies, services, staff or other resources (for example, local board or City-owned materials, websites, local board and City transportation delivery services,) for activities other than the business of the local board or the City; nor should any member obtain personal financial gain from the use or sale of local board or City-developed information, intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the local board or City.

Rule No. 5

Election Campaigns:

No member shall use the facilities, equipment, supplies, services or other resources of the local board or the City for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on the local board's or City's property unless permitted by City policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes where those persons receive compensation from the local board or the City.

Rule No. 6

Improper Use of Influence:

No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the local board.

Examples of prohibited conduct are: the use of one's status as a member of a local board to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or

associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage in the carrying out of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within the local board or at the City, in return for present actions or inaction.

Rule No. 7

Business Relations:

1. No Member shall allow the prospect of his/her future employment by a person or entity to affect the performance of his/her duties to the City, detrimentally or otherwise.
2. No Member shall borrow money from any person who regularly does business with the local board unless such person is an institution or company whose shares are publically traded and who is regularly in the business of lending money, such as a credit union.
3. No Member shall act as a paid agent before the local board.
4. No Member shall refer a third party to a person, partnership or corporation in exchange for payment or other personal benefit.

Rule No. 8

Conduct of Members at Local Board Meetings

1. Members shall conduct themselves with decorum at meetings of the local board in accordance with the local board's procedure by-law (if any) and this Code of Conduct as well as other applicable common law and statutory requirements. Where the local board's procedure by-law does not address an issue or one does not exist, Members should use Council's Procedures By-law as a reference.

Commentary

A Member recognizes the importance of cooperation and strives to create an atmosphere during board meetings that is conducive to solving the issues before the board, listening to various points of view and using respectful language and behaviour in relation to all of those in attendance.

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2. Members shall endeavour to conduct and convey local board business and all their duties in an open and transparent manner other than for those decisions which by virtue of legislation are authorized to be dealt with in a confidential manner in closed session, and in so doing, allow the public to view the process and rationale which was used to reach decisions and the reasons for taking certain actions.
 3. Members shall make every effort to participate diligently in the activities of the local board.
 4. No Member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the local board and to the City.

Rule No. 9

Media Communications:

1. Members will accurately communicate the decisions and proceedings of their Local Board, even if they disagree with the majority decision of the Local Board, and by so doing affirm the respect for and integrity in the decision-making processes of the Board.
2. Members will keep confidential information confidential, until such time as the matter can properly be made public.

Commentary

A Member may state that he/she did not support a decision, or voted against the decision. A Member should refrain from making disparaging comments about other Members or about the Board's processes and decisions.

When communicating with the media, a Member should at all times refrain from speculating or reflecting upon the motives of other Members in respect of their actions on the Board.

While openness in government is critical, governments also must respect confidentiality when a matter must remain, at least for a period of time, confidential. Breaches of confidentiality by Members erodes public confidence.

Rule No. 10

Respect for the Board, the City and its Policies:

1. Members shall encourage public respect for the Board, the City and its by-laws and policies.

Commentary

A Member must not encourage disobedience of a City by-law in responding to a member of the public, as this undermines confidence in the City and in the Rule of Law.

2. Members shall conduct themselves with appropriate decorum at all times.

Rule No. 11**Respectful Workplace Policy:**

1. Members are governed by the City's *Respectful Workplace* policy. All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.
2. Upon receipt of a complaint that relates to the City's *Respectful Workplace* policy and involves a Member, the Integrity Commissioner shall forward the information subject to the complaint to Human Resources who will refer it for an independent investigation.

Commentary

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

The City of Mississauga's *Respectful Workplace* policy ensures a safe and respectful workplace environment and provides for the appropriate management of any occurrences of harassment and discrimination as those terms are defined in the policy.

The City of Mississauga's *Respectful Workplace* policy applies equally to members of staff and members of boards and members of Council. It will provide guidance to an independent investigator when a complaint is received involving a Member.

3. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall make a determination on the application of this Code of Conduct and the merits of the investigation respecting the conduct of the Member subject to the complaint. The findings of the Integrity Commissioner shall be reported to the local board and to City Council as per the normal procedure respecting such matters.
4. The *Ontario Human Rights Code* applies in addition to the City's *Respectful Workplace* policy.

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Rule No. 12**Conduct Respecting Staff:**

1. No Member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.
2. No Member shall use, or attempt to use, their authority for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties, including the duty to disclose improper activity.
3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual Member or faction of the Board.
4. No Member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff, and all Members shall show respect for the professional capacities of the staff of the City.

Commentary

Members of Local Boards should expect a high quality of advice from staff based on neutrality and objectivity.

The City's *Respectful Workplace* policy applies to Members of Local Boards. Staff and Members are all entitled to be treated with respect and dignity in the workplace.

It is inappropriate for a Member to attempt to influence staff to circumvent normal processes in a matter, or overlook deficiencies in a file or application. It is also inappropriate for Members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the City Manager. Any such attempts should be reported to the Integrity Commissioner.

Rule No. 13**Failure to Adhere to Council Policies and Procedures:**

1. Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.

Rule No. 14**Reprisals and Obstruction:**

1. It is a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his/her responsibilities.
2. No Member shall threaten or undertake any active reprisal against a person initiating an inquiry or complaint under the Code of Conduct, or against a person who provides information to the Integrity Commissioner in any investigation.
3. It is also a violation to destroy documents or erase electronic communications or refuse to respond to the Integrity Commissioner where a formal complaint has been lodged under the Code of Conduct.

Commentary

Members of local boards should respect the integrity of this Code of Conduct and investigations conducted under it.

Rule No. 15**Acting on Advice of Integrity Commissioner:**

1. Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.

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DRAFT ONLY***Code of Conduct for Adjudicative Boards - City of Mississauga February 27, 2013***

Note: This document is a modified version of the *Council Code of Conduct* for members of adjudicative boards that are local boards (restricted definition).

There is a separate version of the Code of Conduct for members of local boards (restricted definition) that are not adjudicative boards and a Complaint Protocol which applies to both local board codes.

Whereas the *Municipal Act, 2001* authorizes municipalities to establish a code of conduct for Members of Council or local boards of the municipality;

And whereas the establishment of a code of conduct is consistent with the principles of transparent and accountable government and is also reflective of the City's core values of Trust, Quality and Excellence in public service;

And whereas Council has adopted a *Council Code of Conduct* applying to Members of Council;

And whereas the public is entitled to expect the highest standards of conduct from members of Council and the citizen members who are appointed to local boards by Council to act on its behalf;

And whereas a draft of a proposed code of conduct for adjudicative boards has been circulated to all members of such boards for comment and comments received have been considered by Council;

Now therefore the Council of the City of Mississauga adopts a code of conduct applying to all members of adjudicative boards as defined herein, to underscore the requirement that appointed members of local boards be independent, impartial, and duly responsible in serving on such boards.

Application

This Code of Conduct applies to members of adjudicative boards of the City of Mississauga.

The current adjudicative boards are as follows:

- Committee of Adjustment
- Committee of Revision
- Property Standards Committee

- Mississauga Appeal Tribunal
- Election Campaign Finance Committee
- Heritage Advisory Committee

Definitions

- a. The following terms have the meanings indicated:

“adjudicative board” means a tribunal that is a local board;

“local board” means a local board as defined in section 223.1 of the *Municipal Act*;

“Member” means a member of a City of Mississauga adjudicative board;

- b. In the Code of Conduct the terms “child”, “parent” and “spouse” have the same meanings as in the *Municipal Conflict of Interest Act*:

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

“parent” means a parent who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside of marriage;

“Family Member” means a spouse, common-law partner, or any other person with whom the person is living as a spouse outside of marriage;

- child, includes step-child and grand-child;
- siblings.

- c. “staff” includes the City Manager and Chief Administrative Officer, Commissioners, Directors, Managers, Supervisors and all non-union and union staff whether full-time, part-time, contract, seasonal or volunteers.
- d. A Member has an apparent conflict of interest (as referred to in Rule 1b) if a well informed reasonable person could properly have a reasonable perception, that the Member’s impartiality in deciding to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Framework and Interpretation

1. This Code of Conduct is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein. As a living document the *Code of*

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Conduct for Adjudicative Boards will be brought forward for review at the end of each term of Council, when relevant legislation is amended, and at other times when appropriate to ensure that it remains current and continues to be a useful guide to members of adjudicative boards.

2. Commentary and examples used in this Code of Conduct are illustrative and not exhaustive. From time to time additional commentary and examples may be added to this document and supplementary materials may also be produced by the Integrity Commissioner as deemed appropriate.
3. Where a Member discloses all known facts to the Integrity Commissioner and as long as those facts remain unchanged, the Member may rely on written advice provided by the Integrity Commissioner. The Integrity Commissioner will be bound by the advice given, as long as the facts remain unchanged, in the event that he or she is asked to investigate a complaint.
4. Members seeking clarification who are provided advice in a general way, cannot rely on advice given by the Integrity Commissioner to the same extent as advice given in respect of specific facts. Advice that is general in nature is subject to change when applied to specific facts that may not have been known at the time the general advice was provided.
5. Members seeking clarification of any part of this *Code* should consult with the Integrity Commissioner.
6. The *Municipal Act, 2001* is the primary piece of legislation governing municipalities however there are other statutes that govern adjudicative boards and the conduct of its members. It is intended that the Code of Conduct operate together with and as a supplement to the following legislation:
 - *Municipal Act, 2001*;
 - *Municipal Conflict of Interest Act*;
 - *Planning Act*;
 - *Municipal Freedom of Information and Protection of Privacy Act*;
 - *Criminal Code of Canada*.
7. In carrying out his or her responsibilities regarding this Code of Conduct, the Integrity Commissioner is not limited to looking at the pecuniary interest of the Member, and for clarity the Integrity Commissioner is specifically authorized to investigate issues of conflict in a broad and comprehensive manner.

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Rule No. 1**Key Principles that Underlie the Code of Conduct for Adjudicative Boards:**

- a. Members shall serve and be seen to serve the City in a conscientious and diligent manner.

Commentary

Members recognize the public's right to reasonable access to information in relation to how decisions are made. The public's right to access however must be balanced against the requirement to protect the legitimate interests of the City and the respect for approved policies of the City.

- b. Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their membership on the board, and private conflicts of interest, both apparent and real. Members shall also not extend in the discharge of their official duties, preferential treatment to Family Members, organizations or groups in which they or their Family Members have a direct or indirect pecuniary interest.

Commentary

Members have a common understanding that in carrying out their duties as a Member of an adjudicative board, they will not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to a Family Member or an individual which is not available to every other individual.

Members are governed by the *Municipal Conflict of Interest Act* and in the event a complaint under the Act is filed with the Court, the provisions of that statute take precedence over any authority given to the Integrity Commissioner to receive or investigate complaints regarding alleged contraventions under the *Municipal Conflict of Interest Act*. It is intended that the Integrity Commissioner be empowered to investigate and rule on all conflicts of interest, whether pecuniary or non-pecuniary until Court proceedings are started under the Act.

- c. Members are expected to perform their duties as a member of the adjudicative board and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny.

Commentary

Members may seek conflict of interest advice, including a written opinion, from the Integrity Commissioner.

Members shall not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to an individual which is not available to every other

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individual member of the public. For example, Members shall remain at arm's length when City staff or the board is asked to consider a matter involving a Family Member or a person or organization with whom the Member has a real or apparent conflict of interest.

- d. Members shall avoid any interest in any contract made by him/her in an official capacity and shall not contract with the adjudicative board or any agency thereof for the sale and purchase of supplies, material or equipment or for the rental thereof.
- e. Members, while a member of an adjudicative board, shall not engage in the management of a business and shall not profit directly or indirectly from such business that relies or has relied on an approval from the adjudicative board.
- f. Despite subsection e., a Member may hold office or directorship in an agency, board, commission or corporation where the Member has been appointed by City Council or by the Council of the Regional Municipality of Peel or by the Federal or Provincial government.
- g. Despite subsection e., a Member may hold office or directorship in a charitable, service or other corporation subject to the Member disclosing all material facts to the Integrity Commissioner and obtaining a written opinion from the Integrity Commissioner approving the activity, as carried out in the specified manner, which concludes that the Member does not have a conflict between his/her private interest and public duty. In circumstances where the Integrity Commissioner has given the Member a qualified opinion, the Member may remedy the situation in the manner specified by the Integrity Commissioner.

Commentary

Examples of exceptions include hospital boards, charitable boards, police services boards, community foundations, the Association of Municipalities of Ontario, the Federation of Canadian Municipalities, service clubs such as the Rotary Club, Lions Club and other not-for-profit organizations. Members should exercise caution if accepting such positions if the organization could be seeking a benefit or preferential treatment from the Member's adjudicative board at any time.

- h. Members shall seek to serve the public interest by upholding both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and by City Council.

Commentary

The provisions of this Code are intended to be applied in concert with existing legislation and go beyond the minimum standards of behaviour set out in current federal and provincial statutes.

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To ensure the *Code* remains a living document that will remain current and continue to be a beneficial guide, the *Code* shall be brought forward for review at the end of each term of Council, with any changes to be implemented at the start of the following Council session.

- i. In fulfilling their roles as members of an adjudicative board, Members shall respect the role of staff in the administration of the business affairs of the City and in so doing will comply with the City's *Respectful Workplace* policy.

Rule No. 2

Gifts and Benefits:

Caution – Hearing Limitations

While this Rule permits a member to receive certain specified gifts and benefits, as a member of an adjudicative body, the members should always keep in mind that they may be required to remove themselves from a hearing on the basis of a conflict of interest or perception of bias as a result of a gift or benefit.

1. No Member shall accept a fee, advance, cash, gift, gift certificate or personal benefit that is connected directly or indirectly with the performance of his/her duties of office unless permitted by the exceptions listed below. No Member shall accept the use of property or facilities, such as a vehicle, office or vacation property at less than reasonable market value or at no cost.

For these purposes, a fee or advance paid to or a gift or benefit provided with the Member's knowledge to a Family Member or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties, is deemed to be a gift to that Member.

The following are recognized as exceptions:

- a. compensation authorized by law;
- b. such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c. a political contribution otherwise reported by law, in the case of Members running for office;
- d. a suitable memento of a function honouring the Member;
- e. food, lodging, transportation and entertainment provided by Provincial, Regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event;
- f. food and beverages consumed at banquets, receptions or similar events, if:

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- 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; and
- g. communications that are educational or training materials received from professional associations relating to similar tribunals.

Commentary

In the case of exceptions claimed under categories 1. b, d, e and f:

- a) where the value of the gift or benefit exceeds \$500, or if the total value received from any one source during the course of a calendar year exceeds \$500, the Member shall within 30 days of receipt of the gift or reaching the annual limit, list the gift or benefit on a Local Board Member Information Statement in a form prescribed by the Integrity Commissioner, and file it with the Integrity Commissioner.
- b) On receiving a Local Board Member Information Statement, the Integrity Commissioner shall examine it to determine whether the receipt of the gift or benefit might, in the opinion of the Integrity Commissioner, create a conflict between a private interest and the public duty of the Member. In the event that the Integrity Commissioner makes that preliminary determination, he/she shall call upon the Member to justify receipt of the gift or benefit.
- c) Should the Integrity Commissioner determine the receipt was inappropriate, the Integrity Commissioner may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or the Integrity Commissioner may order the Member to forfeit the gift or remit the value of any gift or benefit already consumed to the City, or a City agency, board or commission. Any such direction ordered by the Integrity Commissioner shall be a matter of public record.

Commentary

Examples of gifts in excess of \$500 in value that are required to be listed on the Local Board Information Statement may include:

- a. property (i.e. a book, flowers, gift basket, painting or sculpture, furniture, wine);
- b. membership in a club or other organization (i.e. a golf club) at a reduced rate or at no cost;
- c. an invitation to and/or tickets to attend an event (i.e. a sports event, concert, play) at a reduced rate or no cost;
- d. or an invitation to attend a gala or fundraising event at a reduced rate or at no cost.

Any doubts about the propriety of a gift should be resolved in favour of not accepting it or not keeping it. It may be helpful to consult with the Integrity Commissioner when a Member chooses to decline a gift as well as when a recipient may opt to keep a gift.

Rule No. 3**Confidential Information:**

Confidential Information includes information in the possession of, or received in confidence by, a local board that the board is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), or any other legislation such as the *Council Procedure By-law* or similar provisions of the local board's procedural by-law (if any).

MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege. For the purposes of this Code of Conduct, "confidential information" also includes this type of information.

No Member 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 to do so by the adjudicative board or, if applicable, by Council.

Nor shall Members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation, either directly or indirectly.

The *Municipal Act*, allows information that concerns personnel, labour relations, litigation, property acquisitions and security of the property of the City or a local board, and matters authorized in other legislation including MFIPPA, to remain confidential. For the purposes of the Code of Conduct, "confidential information" includes this type of information.

1. The following are examples of the types of information that a Member must keep confidential:
 - items under litigation, negotiation, or personnel matters;
 - information that infringes on the rights of others (e.g. sources of complaints where the identity of a complainant is given in confidence);
 - price schedules in contract tender or request for proposal submissions if so specified;
 - information deemed to be "personal information" under the *Municipal Conflict of Interest Act*; and
 - statistical data required by law not to be released (e.g. certain census or assessment data)
2. Where it is clear that a communication was not made in a confidential manner (i.e. copied to others, or made in the presence of others) or the manner of communication undermines the validity of labelling it "Confidential", such communication will not be given any higher level of confidentiality than any other communication. The words "Privilege",

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"Confidential" or "Private" will not be understood to preclude the appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication.

3. Under the *Council Procedure By-law* or similar provisions of the local board's procedural by-law (if any), a matter that has been discussed at an *in-camera* (closed) meeting remains confidential, until such time as a condition renders the matter public.
 - a. No Member shall disclose the content of any such matter, or the substance of deliberations, of the *in-camera* meeting until the adjudicative board or if applicable, Council or one of its Committees discusses the information at a meeting that is open to the public or releases the information to the public.
 - b. No Member 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 where required by law or authorized by Council to do so.
 - c. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.
 - d. Members should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and is not prohibited by the adjudicative board or Council policy.

In the case of an adjudicative board which is subject to the *Statutory Powers Procedure Act*, that Act requires that an oral hearing be open to the public except where the tribunal is of the opinion that:

- Matters involving public security may be disclosed; or
- Intimate financial matters or personal matters may be disclosed at the hearing of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle of hearings being open to the public, when the interests of the public and persons affected are considered.

Rule No. 4

Use of City Staff, Property, Services and Other Resources:

No Member should use, or permit the use of local board or City land, facilities, equipment, supplies, services, staff or other resources (for example, adjudicative board or City-owned materials, websites, local board and City transportation delivery services,) for activities other than the business of the adjudicative board or the City; nor should any member obtain personal financial gain from the use or sale of adjudicative board or City-developed information, intellectual property (for example, inventions, creative

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writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the adjudicative board or City.

Rule No. 5

Election Campaigns:

No member shall use the facilities, equipment, supplies, services or other resources of the adjudicative board or the City for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on the adjudicative board's or City's property unless permitted by City policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes where those persons receive compensation from the adjudicative board or the City.

While serving as member of an adjudicative board, no such Member shall work on, fundraise, endorse or otherwise contribute to the election campaign for any person running for a seat on Council including the office of Mayor.

Rule No. 6

Improper Use of Influence:

No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the adjudicative board.

Examples of prohibited conduct are: the use of one's status as a member of an adjudicative board to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage in the carrying out of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within the adjudicative board or at the City, in return for present actions or inaction.

Rule No. 7

Business Relations:

1. No Member shall allow the prospect of his/her future employment by a person or entity to affect the performance of his/her duties to the City, detrimentally or otherwise.

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2. No Member shall borrow money from any person who regularly does business with the adjudicative board unless such person is an institution or company whose shares are publically traded and who is regularly in the business of lending money, such as a credit union.
3. No Member shall act as a paid agent before the adjudicative board.
4. No Member shall refer a third party to a person, partnership or corporation in exchange for payment or other personal benefit.

Rule No. 8

Conduct of Members at Adjudicative Board Meetings

1. Members shall conduct themselves with decorum at meetings of the local board in accordance with the local board's procedure by-law (if any) and this Code of Conduct as well as other applicable common law and statutory requirements. Where the local board's procedure by-law does not address an issue or one does not exist, Members should use Council's Procedures By-law as a reference.

Commentary

A Member recognizes the importance of cooperation and strives to create an atmosphere during board meetings that is conducive to solving the issues before the board, listening to various points of view and using respectful language and behaviour in relation to all of those in attendance.

2. Members shall endeavour to conduct and convey adjudicative board business and all their duties in an open and transparent manner other than for those decisions which by virtue of legislation are authorized to be dealt with in a confidential manner in closed session, and in so doing, allow the public to view the process and rationale which was used to reach decisions and the reasons for taking certain actions.
3. Members shall make every effort to participate diligently in the activities of the adjudicative board.
4. No Member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the adjudicative board and to the City.

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Rule No. 9**Media Communications:**

Members of adjudicative boards should generally not comment to the media in relation to any decision made by the board or the rationale behind such decision. On the rare occasion when a comment may be appropriate, only the Chair shall serve as media contact and all enquiries shall be referred to him or her.

Rule No. 10**Communications with Adjudicative boards**

Written communication to an adjudicative board shall take place only through the Secretary of the board or the Legislative Coordinator assigned to such board by the Clerk's Department, and shall be copied to all parties or their representatives as appropriate. Oral communications with the adjudicative board about a current proceeding shall take place only in the presence of or with the consent of all parties.

Where a party is represented by a representative, all communication between the adjudicative board and the party shall be through the representative, with the exception of notices of hearing, which shall be served upon all parties and their representatives known to the adjudicative board as appropriate. The adjudicative board shall not be copied on correspondence and documents exchanged by parties, unless the Secretary has given prior approval to such copying.

Rule No. 11**Independent Nature of Adjudicative Boards**

The Chairs of adjudicative boards should ensure that the actions of any member, as well as Council members and staff attending adjudicative board meetings, are consistent with the arm's-length, quasi-judicial nature of the adjudicative board. Any actions compromising this position should be immediately dealt with by the Chair or panel chair.

Members of adjudicative boards operating at arm's-length from Council should refrain from seeking advice on their roles and responsibilities from Council members. In clarifying their roles and responsibilities, members should seek advice from appropriate legal staff or expert staff where such advisors are not otherwise involved in the case.

An adjudicative tribunal is required by the applicable laws to operate at arm's-length from and independently of Council. Members should therefore not request members of

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Council to intervene on applications considered by the adjudicative board. Under the *Council Code of Conduct*, members of Council are only permitted to communicate to the administrative board regarding a matter before the board by a letter addressed to the Secretary of the board which is available to all parties.

Rule No. 12

Respect for the Board, the City and its Policies:

1. Members shall encourage public respect for the Board, the City and its by-laws and policies.

Commentary

A Member must not encourage disobedience of a City by-law in responding to a member of the public, as this undermines confidence in the City and in the Rule of Law.

2. Members shall conduct themselves with appropriate decorum at all times.

Rule No. 13

Respectful Workplace Policy:

1. Members are governed by the City's *Respectful Workplace* policy. All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.
2. Upon receipt of a complaint that relates to the City's *Respectful Workplace* policy and involves a Member, the Integrity Commissioner shall forward the information subject to the complaint to Human Resources who will refer it for an independent investigation.

Commentary

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

The City of Mississauga's *Respectful Workplace* policy ensures a safe and respectful workplace

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environment and provides for the appropriate management of any occurrences of harassment and discrimination as those terms are defined in the policy.

The City of Mississauga's *Respectful Workplace* policy applies equally to members of staff and members of boards and members of Council. It will provide guidance to an independent investigator when a complaint is received involving a Member.

3. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall make a determination on the application of this Code of Conduct and the merits of the investigation respecting the conduct of the Member subject to the complaint. The findings of the Integrity Commissioner shall be reported to the adjudicative board and to City Council as per the normal procedure respecting such matters.
4. The *Ontario Human Rights Code* applies in addition to the City's *Respectful Workplace* policy.

Rule No. 14

Conduct Respecting Staff:

1. No Member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.
2. No Member shall use, or attempt to use, their authority for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties, including the duty to disclose improper activity.
3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual Member or faction of the Board.
4. No Member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff, and all Members shall show respect for the professional capacities of the staff of the City.

Commentary

Members of Local Boards should expect a high quality of advice from staff based on neutrality and objectivity.

The City's *Respectful Workplace* policy applies to Members of Local Boards. Staff and Members are all entitled to be treated with respect and dignity in the workplace.

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It is inappropriate for a Member to attempt to influence staff to circumvent normal processes in a matter, or overlook deficiencies in a file or application. It is also inappropriate for Members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the City Manager. Any such attempts should be reported to the Integrity Commissioner.

Rule No. 15

Failure to Adhere to Council Policies and Procedures:

1. Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.

Rule No. 16

Reprisals and Obstruction:

1. It is a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his/her responsibilities.
2. No Member shall threaten or undertake any active reprisal against a person initiating an inquiry or complaint under the Code of Conduct, or against a person who provides information to the Integrity Commissioner in any investigation.
3. It is also a violation to destroy documents or erase electronic communications or refuse to respond to the Integrity Commissioner where a formal complaint has been lodged under the Code of Conduct.

Commentary

Members of adjudicative boards should respect the integrity of this Code of Conduct and investigations conducted under it.

Rule No. 17

Acting on Advice of Integrity Commissioner:

1. Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.

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DRAFT ONLY
February 27, 2013

**CODE OF CONDUCT COMPLAINT PROTOCOL
FOR
MEMBERS OF LOCAL BOARDS
(RESTRICTED DEFINITION)
INCLUDING ADJUDICATIVE BOARDS**

APPLICATION:

This Code of Conduct Complaint Protocol applies to local boards (restricted definition), including adjudicative boards that are local boards (restricted definition).

The Informal Complaint Procedure in Part A does not apply to members of adjudicative boards. Complaints regarding members of adjudicative boards must be processed under the Formal Complaint Procedure in Part B.

PART A: INFORMAL COMPLAINT PROCEDURE

Any person or a representative of an organization who has identified or witnessed behaviour or an activity by a member of a Local Board (restricted definition) other than an adjudicative board, that they believe is in contravention of the Code of Conduct applicable to the member may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that the behaviour or activity contravenes the Code;
- (2) encourage the member to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) if applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and
- (5) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

All persons and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

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PART B: FORMAL COMPLAINT PROCEDURE:

The Formal Complaint Procedure in this Part applies to complaints regarding members of local boards (restricted definition) including members of adjudicative boards.

In this Part, the applicable Code of Conduct as noted above is referred to as the "Code" and a local board (restricted definition) is referred to as a "Board".

Integrity Commissioner Requests for Inquiries Sec. 1

1. (1) A request for an investigation of a complaint that a Member has contravened the Code (the "complaint") shall be sent directly to the Integrity Commissioner by mail, E-mail, fax or courier in the form attached to this Protocol as Schedule "A".
- (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the Member has contravened the Code.

For example, the complaint should include the name of the alleged violator, the provision of the Code allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.

Initial Classification by Integrity Commissioner Sec. 2

2. (1) Upon receipt of the request, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or other board or Council policies as described in subsection (2).
- (2) If the complaint is not, on its face, a complaint with respect to non-compliance with the Code or the complaint is covered by other legislation or a complaint procedure under another board or Council policy the Integrity Commissioner shall advise the complainant in writing as follows:
 - (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such

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allegation, the complainant must pursue it with the appropriate police force;

- (b) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred for review to the City Clerk;
 - (c) if the complaint on its face, is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
 - (d) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.
 - (e) If the Integrity Commissioner receives a complaint during a municipal election year respecting a Member who is seeking election to a seat on council and he is of the opinion that it is politically motivated, he may stay the investigation until after the new Council takes office or dismiss it if he concludes it is specious.
- (3) The Integrity Commissioner may report to Council and the Local Board that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
 - (4) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but, where possible, shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation Secs. 3 – 9

- 3. (1) The Integrity Commissioner is responsible for performing the duties set out in this Protocol independently, and shall report directly to Council in respect of all such matters. The Integrity Commissioner shall file an annual report to City Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Integrity Commissioner.
- (2) If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient

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grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.

- (3) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in subsection (2) except as part of an annual or other periodic report.
4. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and may attempt to settle the complaint.
- (2) Upon receipt of a formal complaint pursuant to the Code, and where the Integrity Commissioner determines that the complaint meets the criteria to be investigated, the Integrity Commissioner may elect to conduct an informal investigation or alternatively to exercise the powers of a Commission under Parts I and II of the Public Inquiries Act, as contemplated by Subsection 223.4(2) of the Act.
- (3) If the Integrity Commissioner elects to conduct an inquiry under the Public Inquiries Act, he/she shall report to Council and seek instructions before proceeding, setting out the reasons for the investigation and providing an estimate of the expected cost and time that the investigation will require.
- (4) When the Public Inquiries Act applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the Public Inquiries Act, the provision of the Public Inquiries Act prevails.
5. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the Public Inquiries Act:
 - (a) serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days; and
 - (b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.
- (2) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3) and (4) of the Municipal Act, and may enter any City work location relevant to the complaint for the purposes of

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investigation and settlement.

- (3) The Integrity Commissioner shall not issue a report finding a violation of the Code on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.
- (4) The Integrity Commissioner may make interim reports to the Local Board and/or Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
6. (1) The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the making of the complaint.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to the Local Board and Council outlining the findings, the terms of any settlement, or recommended corrective action.
- (3) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to the Local Board or Council except as part of an annual or other periodic report.
- (4) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
7. If the Integrity Commissioner determines that there has been no contravention of the Code or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
8. The City Clerk shall process any report to Council for the next meeting of Council.

Council Review Sec. 9

9. (1) Council and/or the Local Board shall consider and respond to the report within 90 days after the day the report is laid before it.
- (2) In responding to the report, Council may vary a recommendation that imposes a penalty, subject to Section 223.4, subsection (5) of the Municipal Act, but shall not refer the recommendation other than back to the Integrity Commissioner.

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- (3) Upon receipt of recommendations from the Integrity Commissioner, Council may, in circumstances where the Integrity Commissioner has determined there has been a violation of the Code, impose either of two penalties:
- (a) a reprimand; or
 - (b) suspension of the remuneration, if applicable, paid to the Member in respect of his/her services as a Member for a period of up to 90 days

In the case of a member of the Board who is a member of Council, Council may also consider suspension of the remuneration, paid to the Member in respect of his or her services as a member of Council, for a period of up to 90 days.

- (4) The Integrity Commissioner may also recommend that Council take the following actions:
- (a) removal from the Local Board;
 - (b) removal as chair of the Local Board;
 - (c) require repayment or reimbursement of monies received;
 - (d) require return of property or reimbursement of its value;
 - (e) a request for a written and/or verbal apology to Council, the Local Board, the complainant, or to all three.

Confidentiality; Sec 10

10. (1) A complaint will be processed in compliance with the confidentiality requirements in sections 223.5 and 223.6 of the *Municipal Act*, which are summarized in the following subsections.
- (2) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding.
 - (3) All reports from the Integrity Commissioner to Council and a Local Board will be made available to the public.
 - (4) Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.

1(h)(h)

- (5) The Integrity Commissioner in a report to Council or a Local Board on whether a member has violated the Code shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

1(0)(0)

Schedule "A"

I _____ hereby request the Integrity
 Commissioner for the City of Mississauga to conduct an inquiry pursuant to Part V.1 of the
Municipal Act, 2001 about whether or not the following member(s) of the _____
 _____ Local Board has (have) contravened the Code of Conduct
 applicable to the member(s): _____

I have reasonable and probable grounds to believe that the above member(s) has (have)
 Contravened the Code of Conduct applicable to the Member(s) by reason of the following
 (please insert date, time and location of conduct, together with particulars and names of all
 persons involved, and of all witnesses, and information as to how they can be reached, (if more
 space is required, please attach additional pages as needed):

1(p)(p)

I hereby request the Integrity Commissioner to conduct an inquiry pursuant to the provisions of section 223.4 of the *Municipal Act, 2001* with respect to the above conduct.

Attached are copies of documents and records relevant to the requested

inquiry. Please mail, fax, e-mail, or otherwise deliver this request to:

Robert J. Swayze
Integrity Commissioner
City of Mississauga
20736 Mississauga Road
Caledon, Ontario
L7K 1M7

Phone: 519 942 0070
Fax: 519 942 1233
E-mail: robert.swayze@sympatico.ca

Date: _____

(Signature of Requester)

Name: _____

Address: _____

Telephone: _____

Fax: _____

Cell: _____

E-mail: _____

