

ROBERT J. SWAYZE

BARRISTER & SOLICITOR

CERTIFIED BY THE LAW SOCIETY OF UPPER CANADA AS A SPECIALIST IN
MUNICIPAL LAW - LOCAL GOVERNMENT/LAND USE PLANNING AND DEVELOPMENT

TELE: (519) 942-0070
FAX: (519) 942-1233
E-mail: robert.swayze@sympatico.ca

20736 Mississauga Road
CALEDON, ONTARIO
L7K 1M7

Integrity Commissioner's Report

DATE: May 7, 2014

TO: Chair and members of the Governance Committee
Meeting Date: May 12, 2014

FROM: Robert J. Swayze
Integrity Commissioner

SUBJECT: Review of Code of Conduct regarding Social Media

<p>Governance Committee</p> <p>MAY 12 2014</p>
--

RECOMMENDATION: 1. That the following definition be added to the Definition section of the Council Code of Conduct:

“Social Media” means freely accessible, third party hosted, interactive web technologies used to produce, post and interact through text, images, video and audio to inform, share, promote, collaborate or network.

2. That Rule 6 of the Council Code of Conduct as set out in Appendix “A” to this report be deleted and replaced by the following:

Rule No. 6

Election Campaigns:

1. *Members are required to follow the provisions of the*

Municipal Elections Act, 1996 and Members are accountable under the provisions of that statute.

2. *No Member shall use the facilities, equipment, supplies, services, staff or other resources of the City (including Councillor newsletters, individual websites linked through the City's website and social media accounts used for ward communication) for any election campaign or campaign-related activities and all such sites shall not use the City of Mississauga logo.*
 - a) *If a member of Council uses any social media account for campaign purposes, such account must not be created or supported by City resources or use the City logo. Social media accounts used for campaign purposes must utilize personal cell phones, tablets and/or computers.*
 - b) *To avoid confusion with any website or social media accounts used for Council Member work, Council members who choose to create or use social media accounts for campaign communications must include, for the duration of the campaign, a clear statement on each campaign website or social media account's home page indicating that the account is being used for election campaign purposes.*
 - c) *Despite the foregoing, Members are allowed to place campaign phone numbers, websites and E-mail addresses on the election pages on the City's website, which is available and authorized for use by all candidates for municipal and school board office.*
3. *In a municipal election year, commencing on June 30th until the date of the election, Members may not publish Councillor newsletters or distribute them in municipal facilities. All newsletters distributed through the mail must be post-marked by no later than June 30th in an election year. Members of Council may, during such period, use City facilities to communicate important notifications to the residents of their ward by E-mail in*

normal Outlook format or by letter on the Councillor's stationery.

- 4. *In a municipal election year, commencing on Nomination Day until the date of the election, no Member or other candidate for elected office, may book directly or indirectly, any facility for any purpose that might be perceived as an election campaign purpose if that facility is being used as a polling station. The booking of city facilities for election campaign purposes is permitted if such facilities are available to the general public including other candidates, at a set price for rental.*
- 5. *Members shall be respectful of the role of the City Clerk in managing the municipal election process and meeting all statutory requirements in respect thereof. The Clerk must ensure all candidates are treated equally and no candidate for elected office should interfere with how the Clerk carries out these duties.*

Commentary

Staff should not interpret or provide advice to Members regarding the requirements placed on candidates for municipal office.

The restriction on booking facilities ensures that election-related functions, or those that could appear to be election-related, will not occur at any time there is an advance or regular poll at the facility. The need to set up in advance means that election night parties cannot be held in the same facilities that polling stations are located in. Members should not authorize any event that could be perceived as the City providing them with an advantage over other candidates. It is the personal responsibility of Members to ensure that any use of facilities or the services of municipal staff are carried out in accordance with applicable legislation. Staff are not responsible for monitoring and advising Members or any other candidates, in this regard.

2c

The Municipal Elections Act, 1996 clearly states that it is the responsibility of the City Clerk to conduct the election and take all necessary actions to ensure municipal elections meet all statutory requirements.

6. *No Members shall use the services of persons for campaign related activities during hours in which those persons receive any compensation from the City.*
7. *The Integrity Commissioner may at any time be consulted with regard to complying with any part of Rule 6 and in particular may rule on whether any activity by staff in a Councillor's office during an election year is prohibited election work or permitted activity sufficiently unrelated to the election.*
3. That the Governance Committee provide direction on whether the Council Code of Conduct should prohibit incumbent members of Council who are running for election, from transferring the mailing list, E-mail lists and social media followers which have been assembled by their ward staff to their election campaign computer, website, and/or social media accounts and if so directed, the Integrity Commissioner be instructed to draft an amendment to Rule 6 accordingly.
4. That any changes to computer facilities used by a member of Council running in the 2014 municipal election required by the amendments to the Code of Conduct recommended in the Integrity Commissioner's report or as may be directed by Council, be implemented by June 30th, 2014.

BACKGROUND:

The Governance Committee at its meeting of April 14, 2014 directed me to review Rule 6, Election Campaigns, of the *Council Code of Conduct* (the "Code") in relation to the impact of Social Media on campaigning in the municipal election of 2014. The review was requested by the Mississauga Residents Associations' Network ("Miranet").

The City of Toronto conducted a similar review and a report from its Integrity Commissioner has quoted research which found that between April 2010 and April 2013, the use of social media by municipalities has increased by 860% with 54% of all municipalities on social media. This remarkable growth underlines the need for a review to identify policies which may be needed to extend the principles and restrictions that apply in the Code to other forms of communication.

The fundamental principle applying to an incumbent Councillor running for election is that public funds must not be expended on his or her campaign so that a level playing field is provided to all candidates. Spending public funds includes the use of any City facilities, equipment, supplies, services or other resources of the City including the City's E-mail address, e-mail network, any website supported by the City and the use of City employees. Setting up social media accounts is free and for this reason the argument has been made that they are not City resources. However, they are maintained by Councillors' staff and I regard it to be important that any account opened for campaign purposes not be confused with one that is used to communicate City business in a ward.

A memorandum from Miranet was filed at the meeting which offered a series of questions relating to social media which I will deal with in this report as well one other. Some of my answers to these questions have caused me to recommend changes to the Code and some of them have caused me to seek direction from the Committee on whether certain amendments are appropriate.

COMMENTS:

The first and fifth questions from Miranet are as follows:

1. "Is it appropriate for a sitting Councillor to switch their Ward-oriented Twitter and/or Facebook account over to their Campaign account, thus switching over their followers in the process?"
5. Are campaign-oriented e-mails sent out to a councillor's mailing list – a mailing list created through the conduct of their Ward work – in violation of the "letter" or "spirit" of Rule no. 6?"

I have expressed my opinion that mailing lists collected by a Councillor while in office are the personal property of the Councillor and cannot be considered a City resource. I regard a "followers' list" as the same type of property. Any use of such a list by the City might be contrary to privacy laws applying to the City. The legal department of the City has expressed the opinion that Councillors who campaign and fund-raise are exempt from the new federal anti-spam legislation coming into force on July 1, 2014 and there is no legal reason why a Councillor cannot use the lists for his or her campaign. However, it has been put to me that it is inappropriate for a ward resident who follows the ward Councillor on Twitter or signs up only for a newsletter to access information in the ward, to be contacted for campaign purposes. I have decided not to make a recommendation on the answer to these questions and I am seeking direction from the Committee.

The second question is the following:

2. "Is it appropriate for a sitting Councillor to announce they are running for election via their Ward Twitter account?"

In my opinion the answer to this question is "no". There should be no reference to the Councillor running for election on any City supported ward facilities. All residents of Mississauga can find who is running by logging into the City website election page which contains all candidates' telephone number, e-mail addresses and in some cases, websites all of which, for incumbents, are different from their City coordinates.

Question 3 follows:

3. a) Do councillors with existing Twitter or Facebook accounts need to create separate campaign accounts instead of continuing to use their Ward accounts as a hybrid during any part of the campaign period?
b) If so, is there a date when this needs to happen?"

A separate account should be set up to avoid any confusion between the accounts. I have recommended that campaign accounts include on

all home pages a clear statement that the facility is used for campaign purposes. The existing ward account can continue to be used for ward business. I have recommended that any changes required by this report, to councillors' communication facilities, both ward and campaign, be completed by June 30, 2014.

Question four is as follows:

4. "Are the rules about Ward office staff working on the election campaign clear in the Code of Conduct? With the heightened use of social media, this possibly requires further clarification, as social media is used throughout the day."

Ward office staff take their direction from the ward Councillor but report administratively to the City Clerk. She has met with all ward staff and prepared a detailed set of rules relating to working during this election and the rules are attached to this report as Appendix 2. Ward staff are not to work on anything related to the campaigns of their Councillor during business hours but may answer election enquiries by referring them to the campaign phone number or E-mail address.

Question 6:

6. Rule 6, section 3: Does the Clerk's Office vet the links provided for posting on the City's "Mississauga Votes website? We also note that candidates' Twitter and Facebook links are not provided on the City's election website and therefore some may infer these platforms are outside of the jurisdiction of Rule 6."

I have recommended that only phone numbers, E-mail addresses and election websites be posted on the election pages of the City's website. If the candidate uses social media for his or her campaign, his or her website will contain links. Now that social media is referred to in Rule 6, there can be no doubt that it is within the jurisdiction of the Code.

I put forward one further question of my own. Should a Councillor running for election be able to identify herself or himself as a

29

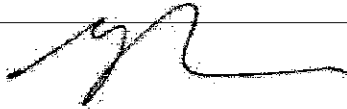
Councillor on election campaign material? I raise it because the City of Toronto Integrity Commissioner has recommended that the incumbent should be prohibited from including such information and from using the City logo. I agree that the City logo should not be used but identifying ones current occupation would seem to be acceptable. Certainly use of the word: "re-elect" can be used. My recommended wording is silent on this opinion and if the Committee feels otherwise, I have no objection to revising the Code.

CONCLUSION:

The use of social media has grown exponentially and it improves the communication of ward information by a Councillor as well as delivering election campaign messages. This report supports the use of social media and recommends changes to the Code to clarify the appropriate use of this media for elections and keeping it separate from its use in the ward.

ATTACHMENTS:

- Appendix 1: *Council Code of Conduct* – Rule 6 - current
- Appendix 2 *Council Staff Conduct during an Election Year*



Robert J. Swayze
Integrity Commissioner

Prepared By: Robert J. Swayze

APPENDIX 1

Rule No. 6

Election Campaigns:

1. Members are required to follow the provisions of the *Municipal Elections Act, 1996* and Members are accountable under the provisions of that statute.
2. No Member shall use the facilities, equipment, supplies, services, staff or other resources of the City (including Councillor newsletters, individual websites linked through the City's website and social media accounts used for ward communication) for any election campaign or campaign-related activities and all such sites shall not use the City of Mississauga logo.
 - a) If a member of Council uses any social media account for campaign purposes, such account must not be created or supported by City resources or use the City logo. Social media accounts used for campaign purposes must utilize personal cell phones, tablets and/or computers.
 - b) To avoid confusion with any social media accounts used for Council Member work, Council members who choose to create or use social media accounts for campaign communications must include, for the duration of the campaign, a clear statement on each campaign account's home page indicating that the account is being used for campaign purposes.
 - c) Despite the foregoing, Members are allowed to place campaign phone numbers, websites and E-mail addresses on the City's election website, <http://www.mississaugavotes.ca/>, which is available and authorized for use by all candidates for municipal and school board office.

3. In a municipal election year, commencing on June 30th until the date of the election, Members may not publish Councillor newsletters or distribute them in municipal facilities. All newsletters distributed through the mail must be post-marked by no later than June 30th in an election year. Members of Council may, during such period, use City facilities to communicate important notifications to the residents of their ward by E-mail in normal Outlook format or by letter on the Councillor's stationery
4. In a municipal election year, commencing on Nomination Day until the date of the election, no Member or other candidate for elected office, may book directly or indirectly, any facility for any purpose that might be perceived as an election campaign purpose if that facility is being used as a polling station.
5. Members shall be respectful of the role of the City Clerk in managing the municipal election process and meeting all statutory requirements in respect thereof. The Clerk must ensure all candidates are treated equally and no candidate for elected office should interfere with how the Clerk carries out these duties.

Commentary

Staff should not interpret or provide advice to Members regarding the requirements placed on candidates for municipal office.

2i

The restriction on booking facilities ensures election-related functions, or those that could appear to be election-related, will not occur at any time there is an advance or regular poll at the facility. The need to set up in advance means that election night parties cannot be held in the same facilities that polling stations are located in. Members should not authorize any event that could be perceived as the City providing them with an advantage over other candidates.

It is the personal responsibility of Members to ensure that any use of facilities or the services of municipal staff are carried out in accordance with applicable legislation. Staff are not responsible for monitoring and advising Members or any other candidates, in this regard.

The *Municipal Elections Act, 1996* clearly states that it is the responsibility of the City Clerk to conduct the election and take all necessary actions to ensure municipal elections meet all statutory requirements.

6. No Members shall use the services of persons for campaign related activities during hours in which those persons receive any compensation from the City.

 7. The Integrity Commissioner may at any time be consulted with regard to complying with any part of Rule 6 and in particular may rule on whether any activity by staff in a Councillor's office during an election year is prohibited election work or permitted activity sufficiently unrelated to the election.
-

APPENDIX 2

**Presentation to Council Executive Assistants and Administrative Assistants
Council Staff Conduct During and Election Year
December 19, 2013
Presented by: Crystal Greer and Mary Ellen Bench**

The next municipal Election is October 27, 2014.

Candidates may register between January 2, 2014 and September 12, 2014.

New for this election, the **Council Code of Conduct** has been adopted by Council, which contains Rule No. 6 – Election Campaigns. Rule No. 6 is attached for your reference. Included in Rule No. 6 is a provision which states:

The Integrity Commissioner may at any time be consulted with regard to complying with any part of Rule 6 and in particular my rule on whether any activity by staff in a Councillor’s office during an election year is prohibited election work or permitted activity sufficiently unrelated to the election.

When in doubt about a request made of you, ask your Councillor to consult with the Integrity Commissioner. Please remind your Councillor that providing this type of guidance is included as part of the annual retainer provided to the Integrity Commissioner and will not result in additional costs to the City.

The City also has 2 Corporate Policies which relate to the actions of employees and elected officials during an election year. The first is the **Conflict of Interest** policy (#01-03-02) and it deals with restrictions for City employees engaged in political activity. The second is the **Elected Officials’ Expenses** policy (#04-05-04) and it addresses expenses during the election year, specifically newsletters and external communication services.

The benefits of having the Code of Conduct and Corporate Policies are:

- ◆ Protection for the employee
 - to avoid being intimidated into doing work that is a conflict of interest
- ◆ Protection for the Councillor
 - a conflict of interest or an appearance of one on the part of Council staff will reflect on both the City and the Councillor
 - By ensuring that you aren’t engaged in inappropriate political activity you assist the Councillor by ensuring that there is no appearance that the Councillor is using City staff (or resources) to assist with matters outside of the employee’s City responsibilities

2K

Excerpt from City of Mississauga Corporate Policy #01-03-02 - CONFLICT OF INTEREST

(to view the entire policy go to the Policies & Procedures section on Inside Mississauga at <http://inside.mississauga.ca/Policies/Pages/default.aspx>)

Political Activity *City employees must always be impartial and must always be seen by the public as being impartial. City employees must take steps to ensure that no personal bias interferes, or appears to interfere, with the performance of their official duties.*

- **Election Campaigns:**
An employee may campaign for an election candidate provided the campaigning does not interfere with the employee's normal duties and the campaigning is done without reference to the fact that the employee is a City employee. Specifically, an employee who chooses to work on an election campaign:

- *may work on the campaign only outside of City work hours only; and*
- *must not use City resources, assets, or equipment of any kind for any purpose related to a political campaign; and*
- *must not campaign while wearing a City uniform, badge, crest or any other item that would identify the employee as City staff.*

- **Political Issues:**
City employees may not publicly, in a personal capacity, state an opinion which is in opposition to an official City position on an issue, at any time or in any way that would identify the individual as a City employee.

Excerpt from City of Mississauga Corporate Policy #04-05-04 - ELECTED OFFICIALS' EXPENSES

(to view the entire policy go to the Corporate Policies & Procedures section on Inside Mississauga <http://inside.mississauga.ca/Policies/Pages/default.aspx>)

Ineligible Expenses

- **Election Campaign Expenses:** *As of June 30th of an election year, any costs associated with an election campaign, including:*
 - *the production or distribution of campaign literature or materials. Newsletters may not be distributed after June 30 of an election year.*

– communications services expenses or use of City facilities, materials or equipment for election campaigning purposes.

Note: Costs associated with published telephone, pager or fax numbers, or published e-mail addresses used in conjunction with campaign information and communications are considered election related and are not funded through the elected officials' expense budget. Elected officials are responsible for declaring any communication services expenses which have been paid by the City, but used for campaigning purposes, and the City must be reimbursed.

What is acceptable during an election year:

- ◆ responding to residents issues
- ◆ updating the Councillor's website – with **non-election related information**
- ◆ Preparing and sending Newsletter(s) – up until June 30th
- ◆ organizing public meetings relating to ward specific issues
- ◆ preparing communications relating to specific issues
- ◆ providing the Councillor with information relating to issues in the ward
- ◆ providing the Councillor with information with respect to residents who have contacted the office
- ◆ organizing community events which are not targeted to promote the Councillor and have no element of campaigning

What is not acceptable during an election year:

- ◆ producing Newsletter(s) * after June 30th
- ◆ using City resources (i.e. computer, printer/copier, fax line, telephone) to assist with the campaign after normal business hours
- ◆ to campaign for the Councillor on your own time while identifying yourself as a City employee
- ◆ to do any campaign related activity during normal business hours (i.e. draft/type correspondence; photocopy election material; make campaign calls; process financial donations; compile lists from CivicTrack or ACT to be used for campaign purposes)
- ◆ promoting City, external websites or phone numbers (funded by the City) on campaign/election materials

*the Integrity Commissioner is reviewing whether this prohibition includes electronic distribution of newsletters. Mr. Swayze will be reporting to the January 13, 2014 meeting of the Governance Committee on this matter.

2m

Questions & Discussion:

- ◆ are there specific activities that you are concerned about and would like clarification?
-