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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

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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.

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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.

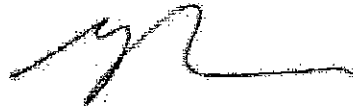
In my opinion, it would not be advisable for any member of Council to accept an appointment to any category 3 board. If the corporation is a developer, a contractor or at any time in the future may lobby the City, the conflict potential would be constant. It would be an invitation to any member of the 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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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

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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.

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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

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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.

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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.

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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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***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.

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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.

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- (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.

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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):

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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: _____