

Notice

In accordance with the Town's Procedure By-law, no decisions are to be made but rather this meeting is an opportunity for Council to have informal discussion regarding various matters.

Declarations of Pecuniary Interest

Items

1. Mr. David Nitkin, EthicScan Canada Ltd. to provide a PowerPoint presentation p. 1 regarding the Council Code of Conduct.

Adjournment

COUNCIL MEMBERS WORKSHOP

PHASE THREE: TOWN COUNCIL WORKSHOP

DEVELOP CODE OF CONDUCT: NEWMARKET

NEWMARKET TOWN CENTRE
OCTOBER 20, 2015

DAVID NITKIN, ETHICSCAN

AGENDA

1. Process Context and History
2. Phase Three Decision-Making
3. Recommendations
 1. Choices
 2. Good Governance
 3. Routine disclosure of information
 4. Communications Channels
4. Next Steps

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1. Process context (1)

- Ask for thoughts, inputs from public
- Help develop a robust, state of the art code of conduct for elected officials
- Phase three of a three part process
- Explore themes where
 - Content choices need to be made
 - Texts and approaches need to be formulated
 - Corporate policies vs. code of conduct vs. guidelines vs. values statement vs integrity test

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1. Process history (2)

Phase One: 19 in-depth interviews with
elected officials, senior staff, ERIC employees

June 23-25

Phase Two: Open Public meeting: public and
staff: 16 persons

September 16

Phase Three: Today's: Council Workshop

October 20

2. Phase Three Decision-Making: Expectations (1)

Decisions should

- Update roles and responsibilities
- Provide necessary good governance guidance
- Address public, staff and councillor inputs
- Identify model best practices, where they exist
- Use all available opportunities: policies, code, ethics Q and A manual, social media
- Emphasize process as well as text product
- Recognize or anticipate possibilities of prospective Provincial changes

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2. Phase Three Decision-Making: Framework (2)

Today's Phase Three Recommendations

- Choices (n=3)
- Housekeeping (n=12)
- Text change (n=10)
- Park (n=15)

New language

Pre-December 31, 2015 Decision and Disposition Deadline

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2. Phase Three Decision-Making Logic (3)

Excel spread sheet recommendations

Application media or venue choices

- Code of conduct
- Corporate policy
- Integrity test
- Commissioner guidance statement (voluntary but binding on commissioner)
- Ethics Q and A manual
- Member sign-off statement
- Social media

2. Phase Three Decision-Making New language (4)

Pecuniary and social, familial interests

Routine presumptive reporting and
accountability regimen

Ethics Q and A Manual

“Ask before act” prophylaxis

- Freedom for member
- Binding upon Integrity Commissioner

Transparency and Accountability Committee
of Council

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3. Recommendations

Recommendations

1. Choices
2. Good Governance
3. Routine disclosure of information
4. Communications Channels

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3. Choice One

Family and Business Partners

Should code recognize activities of spouse, relatives and business partners doing business with Town

Yes - appearance of propriety

- personal interest, corrupt practices
- practice in many other jurisdictions
- court cases in Toronto, Mississauga

No – members opposed

- unfair to restrict “family”

3. Choice Two; Town vs Personal Events

Should members have their own events, and in any year of office

Yes - community leadership, promotion

- not inherent conflict of interest

- legacy issues

No - potential misuse Town resources

- unfair bias favouring incumbents

- is it Town event or not?

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3. Choice Three

Conflict of interest

Do we exceed letter of law which stops at pecuniary interest

Yes - family interests are real

- members can sit on community boards
- Provincial letter of law is likely to change

No – you'd need training on declaration, when to participate in discussion, when in vote

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5. Next steps

Decisions on choices

Decisions on text

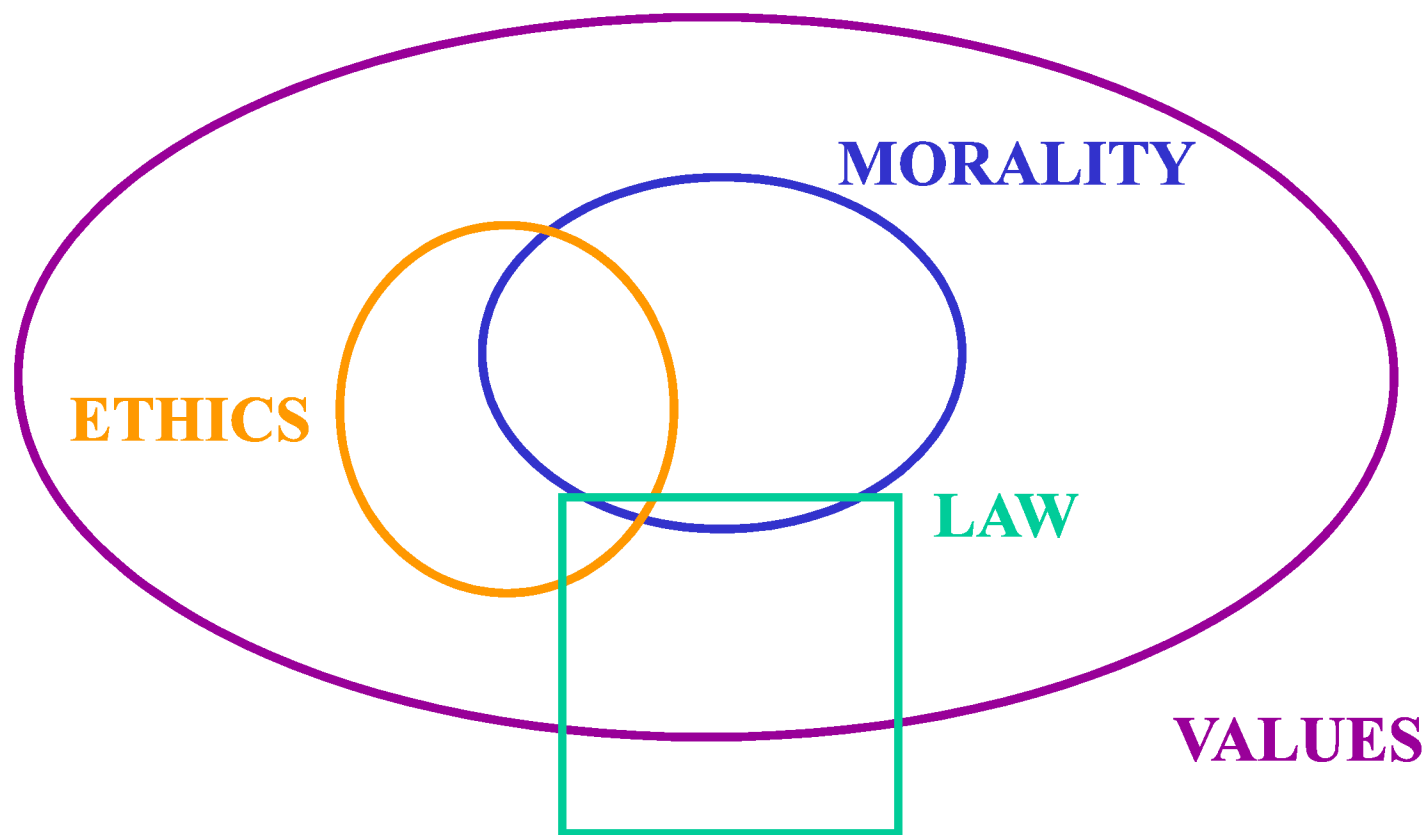
Review and approve

- Housekeeping items (staff, EthicScan)
- Text change (EthicScan)
- Park (not immediate problem, Q and A input, enduring accountability, input from IC)

Monitor Provincial, other jurisdictions' decisions

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LANGUAGE OF ETHICS AND ACCOUNTING (1)



EthicScan Canada

Integrity, ethics officer and
accountability commissioners

Complaint investigations

Ethics codes and guidance

Webinars, conferences and courses

Municipal governance blog

<http://www.ethicscan.ca>

EthiScan: Newmarket Draft Code Phase Three: Presentation for Council Workshop

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
1. (consultant reference 6)	Members, family, business partners who do business with town	Provide clarity about whether Code should apply to related parties <ul style="list-style-type: none"> Annual statement of assets, income and liability; appearance of conflict; rights of arm's length relative/relation 	2. Code of Conduct	Choices
2. (consultant reference 14)	Conflict of Interest; social, familial	Embrace latest thinking and commissioner investigation review decisions about conflict of interest <ul style="list-style-type: none"> move beyond letter of law; good governance; transparency; record all votes on everything 	5. Ethics Q and A Manual	Choices
3. (consultant reference 8)	Definition of council- supported events	Clarify whether Town's name be only one used for Town events <ul style="list-style-type: none"> implications of "branding"; incumbent electoral advantage; text on use e-mail for charitable purposes; use of Town and personal resources 	1. Corporate policy	Choices
4. (consultant reference 5)	Coverage: members as well as appointees, committees and boards	Anticipate problem of apparent lack of Code rules for ABC appointees <ul style="list-style-type: none"> Perhaps a future problem; should Code apply to others beside councillors? If Yes, should this be advisory, adjudicative, other? 	2. Code of Conduct	Park
5. (consultant reference 7)	Gift framework including limits	Further clarify current workplace gift framework in terms of dollar amount, requesting, and ownership by Town <ul style="list-style-type: none"> Ideal is no gifts of any amount; sharpen restrictions on disposition; clarify rules on asking (in addition to receiving) 	2. Code of Conduct	Park
6. (consultant reference 11)	Legal relations with lobbyists	Address apparent gap in reference to lobbyists as good governance and proactive policy interest area <ul style="list-style-type: none"> public trust issue; transparency; identify initial thinking re: options; corruption probes 	5. Ethics Q and A manual	Park

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
7. (consultant reference 12)	Social media policy for Members	Provide guidelines on increasingly important communications reality <ul style="list-style-type: none"> guidelines explicitly for councillors; potential complaint risk high; confidentiality; collegiality; personal integrity; practice and law in transformation 	1. Corporate policy	Park
8. (consultant reference 17)	Timeliness of investigation: service warrantee	Provide complainants with a phased, service standard warrantee <ul style="list-style-type: none"> For four phases: Acknowledgement; Initial processing; Investigation; Report to Council 	2. Code of Conduct	Park
9. (consultant reference 18)	Formal complaint process: staff, public, councillors	Decision whether to incorporate question and complaint process into Code <ul style="list-style-type: none"> Clarify interim complaint process: by-law direct to IC; transparency; good governance 	2. Code of Conduct	Park
10. (consultant reference 19)	Informal complaint process	Decision to clarify in Code what is ill-defined process in legislation <ul style="list-style-type: none"> interim complaint process: interpretation; reduce prospective adversarial components; arm's length; mediation; responsiveness; responsibility to keep engaged; accountability 	2. Code of Conduct	Park
11. (consultant reference 23)	Accountability and Transparency Committee of Council	Choose proactive and promising option to enhance ongoing, routine discussion of good governance <ul style="list-style-type: none"> committee of Council with representative from media, community association, member of council; low cost; high public engagement 	6. Guidance	Park
12. (consultant reference 27)	Declaration of conflict of interest	Provide necessary education in types of conflicts and guidance on legal requirements <ul style="list-style-type: none"> Understand liability risks; appearance of conflict; personal interest; private advantage 	6. Guidance	Park

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
13. (consultant reference 30)	Regular education on governance best practice for Members	Endorse opportunity to realize benefits of "ask before act" mentality <ul style="list-style-type: none"> Better to ask for permission than forgiveness; Member not have to follow advice given; IC bound by ruling; share preventative advice with all Members; guidance; value for money 	6. Guidance	Park
14. (consultant reference 33)	Conduct of independent investigations: off site, separate phone and e-mail system	Provide appropriate confidentiality and assistance in IC carrying out investigations <ul style="list-style-type: none"> reduce risk privacy breaches; avoid compromise of details of investigation 	6. Guidance	Park
15. (consultant reference 35)	Conditions when to select independent investigator: closed meeting, ombudsman, IC	Identify circumstances when accountability officer is to be engaged <ul style="list-style-type: none"> Does this need to be in writing; policy or guidelines rather than code or mandatory 	6. Guidance	Park
16. (consultant reference 36)	Complaint retaliation protection	Strengthen framework for whistleblower protection for staff, Member, contractor, vendor, and supplier <ul style="list-style-type: none"> Transparency; confidentiality; protection against arbitrary retaliation, punishment and openness chill 	1. Corporate policy	Park
17. (consultant reference 41)	Member accountability, guidelines once elected: declaration, vote, recorded vote, other	Provide clear and concise guidance on Member's leadership roles, on Council and in community <ul style="list-style-type: none"> education on conflicts of interest scenarios; guidelines pre and post-election roles and decision-making 	5. Ethics Q and A	Park
18. (consultant reference 48)	Complaint investigation post-election if Member not re-elected	Monitor developments to enhance approach to complaint investigation <ul style="list-style-type: none"> Legislation weak on public trust nature of complaints; what happens if complaint withdrawn; consideration of investigation in Markham case; involvement in Province reviewing current legislation 	tbd	Park

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
19. (consultant reference 9)	Registry of gifts and donations, given and received	Adopt a transparency regimen for gifts that is state of the art <ul style="list-style-type: none"> Common-sense education in routine reporting of gifts, donations, benefits and perquisites; guidance on legal requirements, transparency and accountability 	1. Corporate policy	Housekeeping
20. (consultant reference 10)	Restrictions on Member activities during election period	Provide more clarity on inappropriate Member communications during election period <ul style="list-style-type: none"> promotion of name, activities under office stationary; transit stop advertising; advantage not available to non-incumbent; definition of duration of election period 	2. Code of Conduct	Housekeeping
21. (consultant reference 20)	Question whether a fee required for complaint	Confirm that there is no fee for anyone initiating a complaint <ul style="list-style-type: none"> No fee if complaint adjudged frivolous or vexatious; no cost recovery if dismissed; in town rules, is cost recovery cost for audit 	7. Social media	Housekeeping
22. (consultant reference 21)	General Municipal Service complaints process	Make progress toward Town staff having procedures and benchmarks for all forms of citizen service queries <ul style="list-style-type: none"> Public service standards; openness 	1. Corporate policy	Housekeeping
23. (consultant reference 28)	Mandatory cycle, periodicity for code of Conduct review	Confirm that there will be a routine review of Code every two years, with possibility of update <ul style="list-style-type: none"> Good governance; proactive administration 	2. Code of conduct	Housekeeping
24. (consultant reference 31)	Private speech after consensus realized	Confirm practice that a councillor will support democratic decision of Council once vote taken but s/he has individual rights thereafter to state personal opinion and voting history <ul style="list-style-type: none"> Democratic freedom of expression; collective accountability; collegiality 	5. Ethics Q and A	Housekeeping

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
25. (consultant reference 37)	Member solicit donations for charity	Tweak language in Code on Member use of time, Town resources, and influence <ul style="list-style-type: none"> link to guidance; personal influence or benefit 	2. Code of conduct	Housekeeping
26. (consultant reference 39)	Listing of available redress mechanisms for public complainant: speak informal, OHRC, court, ombuds, mediator, et cetera	Provide elemental information to public about available information/ public advice sources, resources and mechanisms <ul style="list-style-type: none"> reduce incidence and cost of complaints; enhance public knowledge of democratic rights 	5. Ethics Q and A	Housekeeping
27. (consultant reference 43)	Fee for closed meeting investigation	Confirm there is no cost recovery imposed on request for closed meeting investigation <ul style="list-style-type: none"> Good governance; transparency 	1. Corporate policy	Housekeeping
28. (consultant reference 44)	Interim arm's length process of IC on retainer as needed: direct communication by complainant	Confirm interim policy in place for existing and future independent IC complaint investigations <ul style="list-style-type: none"> not need referral through clerk's office; Code accommodates review of a question and concern in addition to a complaint 	2. Code of conduct	Housekeeping
29. (consultant reference 49)	Use town resources in election campaign	Broaden rules to govern resource use in any election campaign, including all levels of government and nomination processes <ul style="list-style-type: none"> Transparency; accountability; compliance 	1. Corporate policy	Housekeeping
30. (consultant reference 50)	Restrict distribution or use of corporate communications for any election/nomination purposes	Restrict use of corporate communications in election year after June 30 and for any election/nomination processes <ul style="list-style-type: none"> Incumbent advantage; fairness; fiscal responsibility 	1. Corporate policy	Housekeeping
31. (consultant reference 40)	Use of Town resources for golf tournaments, fundraising , campaign related meetings, and charitable events	Expand Town rules in these various application areas into a proactive, readily understood set of norms <ul style="list-style-type: none"> Proactive guidance test to anticipate allowable practices; empower staff and elected Members 	4. Integrity test	see 8 above

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
32. (consultant reference 3)	Civility, mutual respect and courtesy in bylaw	Add select language to Code to enhance importance of civility <ul style="list-style-type: none"> Text re interpersonal mutual respect; prevent unnecessary personal recrimination; can't legislate morality but can confirm values 	3. Values Statement	Text change
33. (consultant reference 4)	Values/principles statement	Strengthen language of existing Code re: principles of public trust <ul style="list-style-type: none"> Text to address gaps in current code 	2. Code of Conduct	Text change
34. (consultant reference 15)	Role of Integrity Commissioner in Code	Select option to clarify role of Integrity Commissioner in Code text <ul style="list-style-type: none"> some municipalities do include, others not; good governance 	2. Code of Conduct	Text change
35. (consultant reference 16)	Enumerate remediation, discipline, sanctions by IC	Make transparent Council's support of progressive adjudication by accountability officer(s) in Code text <ul style="list-style-type: none"> Progressive sanctions or discipline; some municipalities do include, others not; transparency; better recommendations from IC to Council following investigation 	2. Code of Conduct	Text change
36. (consultant reference 22)	Principle of progressive discipline in complaint recommendations	Allow Integrity Commissioner to recommend progressive discipline within the existing legislation <ul style="list-style-type: none"> Interpretation of spirit and letter of law; not delegate decision to Integrity Commissioner 	2. Code of Conduct	Text change
37. (consultant reference 25)	Consequences from closed meeting investigations	Enhance text to address possible action options from results of closed meeting investigation <ul style="list-style-type: none"> not punitive in law; prospective corrective lessons are possible from recurrent misadventure 	1. Corporate policy	Text change
38. (consultant reference 26)	Respect confidentiality of information	Enhance text dealing with respecting privacy rights and confidentiality of information <ul style="list-style-type: none"> Privacy rights; good governance 	2. Code of conduct	Text change

ITEM	TOPIC	DESCRIPTION AND LOGIC	RECOMMEN- DATION	PROPOSED DISPOSITION
39. (consultant reference 32)	Acknowledge read, review and agree abide by code, annual sign-off	Provide authoritative and compulsory attestation statement that each member that read and understood code of conduct <ul style="list-style-type: none"> • can be paper or electronic; forestall claim of ignorance of rules; if ethics important, need to acknowledge in writing 	8. Attestation	Text change
40. (consultant reference 38)	Member preferential treatment for certain not for profit groups: staff, advertising	Enhance language in Code around Member decisions involving support of community group events <ul style="list-style-type: none"> • Use of staff, budgets, and time for non-profit community-based causes; fiscal responsibility; conflict of interest 	1. Corporate policy	Text change
41. (consultant reference 51)	Ensure appropriate conduct respecting staff	Strengthen text in Code to underscore the independence and reporting relationship of Town staff <ul style="list-style-type: none"> • expand current text 	1. Corporate policy	Text change