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Amendments to Council Code of Conduct Staff Report

Report Number: 2019-16

Department(s): Legislative Services

Author(s): Kiran Saini, Acting Town Clerk/Director, Legislative Services
Andrew Walkom, Legislative Coordinator

Meeting Date: February 4, 2019

Recommendations

1. That the report entitled Amendments to Council Code of Conduct dated February 4, 2019 be received; and,
2. That Council adopt the amendments to the Council Code of Conduct attached as **Attachment A** with an effective date of March 1, 2019; and,
3. That Council adopt amendments to the Indemnification By-law attached as **Attachment B**; and,
4. That Staff be directed to investigate further amendments or revisions to the Code of Conduct as required; and,
5. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Purpose

The purpose of this report is to seek Council approval in enacting certain legislative amendments to 1) the current Council Code of Conduct; 2) include Local Boards and Adjudicative Boards in the Code of Conduct; and, 3) revise the Indemnification By-law.

Background

Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017 received Royal Assent on May 30, 2017, with the changes under this legislation coming into effect in stages. The

first stage of changes under Bill 68 came into effect on January 1, 2018 and included changes to the Municipal Act. Council adopted required amendments to the Procedure By-law on December 4, 2017.

The second stage of amendments under Bill 68 will come into effect on March 1, 2019. These changes are wide-ranging and amend numerous laws, including the Municipal Act and Municipal Conflict of Interest Act. One major area of focus of the amendments is the mandatory creation of a Code of Conduct for all municipal Councils and Local Boards. Council established a Code of Conduct in 2007 and revised the Code in 2016. The amendments and corresponding regulation also set out a number of required elements for the Code of Conduct, which now require amendments to the Town's Code to ensure compliance with the legislation.

The Municipal Act allows for future regulations to prescribe specific elements to be included in a Code of Conduct. To date, one regulation has been made (O. Reg. 55/18), which prescribes that the following elements must be included in a Code of Conduct:

- Gifts, benefits and hospitality.
- Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be.
- Confidential information.
- Use of property of the municipality or of the local board, as the case may be.

These requirements are already present in the Town's Code of Conduct and are in compliance with the legislation.

Local Boards and Adjudicative Boards

In addition to the mandatory requirement for a Code of Conduct for Municipal Councils, the Municipal Act now requires Local Boards to adopt a Code of Conduct. Council's current Code does not apply to Members of Local Boards.

After consultation with the Town's Integrity Commissioner, all Advisory Committees of Council are considered to be Local Boards for the purposes of the Municipal Act.

Further to this, in order to recognize the arm's-length, quasi-judicial nature of some of the Town's boards and committees, and upon the advice of the Town's Integrity Commissioner, Staff have divided these bodies into two distinct definitions: Local Boards and Adjudicative Boards.

It is important to note that under the definition of Section 223.1 of the Municipal Act, there is no such division. Both Local Boards and Adjudicative Boards are considered "Local Boards" in the legislation.

The Code divides the Local Boards and Adjudicative Boards as follows:

| Local Boards | Adjudicative Boards |
|--|------------------------------|
| Accessibility Advisory Committee | Appeal Committee |
| Audit Committee | Committee of Adjustment |
| Elman W. Campbell Museum Board | Property Standards Committee |
| Heritage Newmarket Advisory Committee | |
| Main Street District Business Improvement Area Board of Management | |
| Newmarket Downtown Development Committee | |
| Newmarket Economic Development Advisory Committee | |
| Newmarket Environmental Advisory Committee | |

Central York Fire Services – Joint Council Committee

The Central York Fire Services – Joint Council Committee is composed of three members from the Town of Newmarket Council and three members from the Town of Aurora Council. Since all members of the Committee belong to a Town Council, they will continue to be governed by their respective Code of Conduct while serving on the Joint Council Committee.

Library Board

Library Boards are established through the Public Libraries Act rather than the Municipal Act. Library Boards are specifically exempted from the definition of Section 223.1 of the Municipal Act and therefore are not included in the revised Code of Conduct.

A Code of Conduct is included in the Newmarket Public Library Board Governance Policy. This Governance Policy applies to all Directors of the Library Board. However, Members of Council who are also Library Board Directors remain subject to the Council Code of Conduct while acting as Directors.

Other Boards and Committees

Members of Councillors may be appointed from time to time to serve on other boards or committees that are not listed in the chart above, for example, the Newmarket Historical Society or the Lake Simcoe Region Conservation Authority. In these instances,

Members of Council will continue to be governed by the Code of Conduct because they are still acting in their capacity as a Councillor.

Discussion

Council Code of Conduct Amendments (Attachment A)

Below is a summary of the amendments to the Council Code of Conduct, to take effect March 1, 2019.

1. Addition of Local Boards and Adjudicative Boards to the Code of Conduct (Mandatory under Bill 68)

The existing Council Code of Conduct does not include members of Local Boards or Adjudicative Boards. The Code requirements for Local Boards and Councils are identical in the Municipal Act. Since the requirements are identical, the Council Code of Conduct has been amended to include Local Boards and Adjudicative Boards, to take effect March 1, 2019.

2. Schedule: Adjudicative Boards (Recommendation based on best practice from the Integrity Commissioner)

It is recommended that an additional schedule be added to the Code of Conduct that applies only to Adjudicative Boards. These additional sections are designed to preserve the independent and impartial nature of Adjudicative Boards. The first section is intended to guide the communication with Adjudicative Board Members through Staff and prevent separate communication with individual Members. The second section includes provisions to protect the arm's-length status of Adjudicative Boards by governing their relation with Council.

Corresponding provisions have been added to the Undue Use of Influence section of the Code which outline the relationship between Council Members and Adjudicative Boards. Specifically, these provisions outline the appropriate way for Council Members to communicate with Adjudicative Boards, in order to preserve their impartiality. One further clause provides guidance on the relationship between Council and external tribunals such as the Local Planning Appeal Tribunal.

3. Role of the Integrity Commissioner - section 16 (Mandatory under Bill 68)

In the existing Code, Section 16 outlined the services provided by the Integrity Commissioner. This section has been revised to include the services now required by the Municipal Act. This includes the application of certain sections of the Municipal Conflict of Interest Act. Both the request for advice and provision of that advice to a Member by the Integrity Commissioner must now be in writing.

4. Complaint Process (Mandatory under Bill 68)

The Municipal Act states that the Integrity Commissioner will now investigate complaints related the Municipal Conflict of Interest Act. In Council's current Code, the Integrity Commissioner did not investigate complaints regarding this legislation.

New sections (18.11 and 18.12) prevent inquiries by the Integrity Commissioner during the period between nomination day and Voting Day during a regular election (i.e., complaints could be filed during a by-election), and is a requirement of the Municipal Act. This "black out" period would commence in 2022, as this is would be the next regularly scheduled municipal election.

The Municipal Act also states that if an inquiry has already commenced prior to nomination day in a regular election year, but has not yet been completed, that the inquiry will terminate on nomination day. If the requestor/complainant makes a written request to the Integrity Commissioner within six weeks of Voting Day, the Commissioner may initiate another inquiry on the same matter that was previously terminated.

5. Amendment to Penalties Section (Recommendation based on best practice)

Additional penalties have been included which are not required by the Bill 68 amendments but provide additional measures in the case of a violation of the Code of Conduct.

6. Other changes

A number of minor changes have been included which include housekeeping changes and amendments for clarification.

At the January 28, 2019 Council Workshop, Council Members discussed additional changes to the Code, including an expanded section respecting gifts. Staff note that no complaints have been received regarding Council Members accepting gifts and that the Community's tolerance of the issue drives the content of the Code of Conduct. Staff will continue to investigate further amendments such as an expanded gift section as needed and as best practices suggest. Staff will continue to monitor complaints received to determine if these or other revisions are needed.

Indemnification By-law (Attachment B)

The Municipal Act now requires municipalities to indemnify Integrity Commissioners and anyone acting under their direction. The revised Indemnification By-law ensures that this requirement is met, and that the Town is meeting its legislative requirements under the Act.

Regional Code of Conduct

The Region of York has developed a Code of Conduct to be compliant with the March 1, 2019 deadline of the Bill 68 amendments. The Mayor and Deputy Mayor & Regional Councillor of the Town of Newmarket serve on Regional Council as well as Town Council. The Regional Code will apply to these Members only when acting in their capacity as a Regional Councillor and the Town Code will apply only when acting as Town Councillor.

Complaints against a Regional Councillor will need to be filed with the Integrity Commissioner who represents the Municipality in which the contravention is alleged to have occurred. In the case of a complaint submitted to the wrong Municipality, the Integrity Commissioner may dismiss the complaint or refer the complaint to the correct Municipality's Integrity Commissioner.

Declarations of Pecuniary Interest

Bill 68 also amends the Municipal Conflict of Interest Act to require Members to file a written statement of a declared interest at the meeting or as soon as possible afterwards. The amendments also require the Town to keep a registry of these declarations and provide them to the public for inspection.

Staff have produced a standardized form for Members to complete after a declaration in anticipation of the March 1, 2019 deadline which has been attached as **Attachment C**. A public registry will be added to the Town website to ensure compliance with these legislated requirements. The Town's meeting management software provider is currently developing an automated system to record written statements and incorporate the system with the Town's agendas and minutes. Staff will investigate the use of this system to automate the process and integrate the written statements with the meeting management solution.

Conclusion

The Municipal Act now requires Codes of Conducts to be established for Councils and Local Boards by March 1, 2019. The Code of Conduct and Indemnification By-law amendments described in this report are designed to ensure compliance with legislation and incorporate Local Boards and Adjudicative Boards into the Code. Training for Council, Local Boards and Adjudicative Boards on the new provisions of the Codes of Conduct will take place in Q1 2019, concurrent with orientation related to the beginning of the new term of Council. Staff will investigate further amendments and revisions to the Code of Conduct as directed by Council or as best practices suggest. Staff will continue to monitor the provision of advice to Members of Council, Local Boards and Adjudicative Boards and the associated costs.

Business Plan and Strategic Plan Linkages

This report relates to the “Well Equipped and Managed” link of the Town’s community vision implementing policy and processes that reflect sound, accountable governance.

Consultation

Staff reviewed Codes of Conduct and relevant reports on Bill 68 and Integrity Commissioners from a number of municipalities including the City of Ottawa, City of Toronto, City of Oshawa and Region of York. Staff consulted with Town of Newmarket Integrity Commissioner Robert Swayze. Staff consulted Legal Services and the Newmarket Public Library.

Human Resource Considerations

None.

Budget Impact

Staff will continue to monitor the provision of advice related to the Code of Conduct and Municipal Conflict of Interest Act and its related budget impact.

Attachments

Attachment A: Code of Conduct for Council, Local Boards and Adjudicative Boards

Attachment B: Amended Indemnification By-law

Attachment C: Written Statement of Disclosure of Pecuniary Interest Form

Approval

Lisa Lyons, Acting Commissioner, Corporate Services

Contact

For more information on this report, contact Kiran Saini, Acting Town Clerk/Director, Legislative Services at 905-953-5300 extension 2203 or via email at ksaini@newmarket.ca.