

DATE OF MEETING MAY 16, 2022

AUTHORED BY KAREN ROBERTSON, DEPUTY CITY CLERK

SUBJECT CODE OF CONDUCT FOR COUNCIL & COMMITTEE MEMBERS

OVERVIEW

Purpose of Report

To outline the proposed amendments to the *Community Charter* through Bill 26 – Municipal Affairs Statutes Amendment Act (No. 2) that would add new requirements for municipal councils and regional district boards to consider developing or updating codes of conduct, and to introduce companion bylaw and policy provisions to support the code of conduct's foundational provisions through: 1) an enhanced Code of Conduct Bylaw; 2) establishing an Ethics Commissioner position; 3) implementing an Elected Officials Oath of Office Bylaw; and 4) amending the Council Spending and Amenities Policy.

Recommendation

Code of Conduct Bylaw

That “Code of Conduct Bylaw 2022 No. 7348” (a bylaw to regulate the conduct for Council and Committee Members) pass first reading;

That “Code of Conduct Bylaw 2022 No. 7348” pass second reading;

That “Code of Conduct Bylaw 2022 No. 7348” pass third reading.

Ethics Commissioner Establishment Bylaw

That “Ethics Commissioner Establishment Bylaw 2022, No. 7349” (a bylaw to establish an Ethics Commissioner or ad hoc Commissioner) pass first reading;

That “Ethics Commissioner Establishment Bylaw 2022, No. 7349” pass second reading;

That “Ethics Commissioner Establishment Bylaw 2022, No. 7349” pass third reading.

Elected Officials Oath of Office Bylaw

That “Elected Officials Oath of Office Bylaw 2022 No. 7350” (a bylaw to establish the oath or solemn affirmation of office for Mayor and the office of Councillor) pass first reading;

That “Elected Officials Oath of Office Bylaw 2022 No. 7350” pass second reading;

That “Elected Officials Oath of Office Bylaw 2022 No. 7350” pass third reading.

Council Spending and Amenities Policy

That Council endorse the amendments to section two and three of the Council Spending and Amenities Policy related to code of conduct breaches and attendance at in-town or out-of-town meetings as outlined in red within Attachment 4 to the 2022-MAY-16 report by the Deputy City Clerk.

BACKGROUND

In 2018, the “Working Group on Responsible Conduct” (WGRC) was formed to undertake collaborative research and policy work around the issues of responsible conduct of local government officials. The group included representatives from the Ministry of Municipal Affairs, the Union of British Columbia Municipalities (UBCM) and the Local Government Management Association (LGMA). Support for the group was provided by various elected and staff officials, and legal experts who advised them. Their work (as of April, 2021) yielded an integrated suite of resources, including:

- identification of foundational principles for responsible conduct;
- a model Code of Conduct and Guide;
- a database of consultants to advise communities when dealing with conduct issues; and
- a guide with procedural considerations for informal and formal approaches to dealing with matters of conduct, including considerations for the development of fair processes to enforce Codes of Conduct.

Based on this work, the UBCM Executive put forward UBCM Resolution SR3 (Strengthening Responsible Conduct) which was endorsed by the membership at the 2021 convention (see Attachment 5). The resolution requested that the provincial government:

- introduce a legislative requirement that all local governments in British Columbia must consider the adoption of a code of conduct policy or bylaw or review their existing codes of conduct (if one exists) at least once early in each new term of office;
- work collaboratively with UBCM and others to consider the design of a mandatory educational module that would support responsible conduct by local elected officials;
- update the oath of office prescribed by regulation to embed the foundational principles identified by the Working Group on Responsible Conduct; and
- provide guidance for local governments that have established an oath of office by bylaw so that these oaths may be updated with the same foundational principles for responsible government.

In response to this request, the provincial legislature introduced amendments to the *Community Charter* through Bill 26 – Municipal Affairs Statutes Amendment Act (No. 2) on October 26, 2021. The Bill received Royal Assent on November 25, 2021 and is expected to be brought into law by regulation at a future date. Once in effect, these sections would add new requirements for municipal councils and regional district boards to consider developing or updating codes of conduct. These changes will provide tools to strengthen local government responsible conduct by creating a regular process for elected officials to discuss expectations for conduct as they carry out their governance responsibilities.

Proposed *Community Charter* Amendments:

The first amendment (section 113.1) would require a council to consider developing a code of conduct or to review a current code of conduct if one already exists. This consideration would need to take place within 6 months after the first regular council meeting that follows a general local election. If a council decides not to establish a new code, or declines to review an existing code, reasons for the decision must be made.

The second amendment (section 113.2) requires a council to reconsider its decision should it choose not to consider establishing a code of conduct or review an existing code of conduct

under section 113.1. The reconsideration would need to occur before January 1st of the year of the next general local election.

In anticipation of the legislation coming into effect, the topic of code of conduct was part of the agenda at the recent Corporate Officer's Forum. Members of the WGRC panel, including Mr. Reece Harding, Ethics Commissioner for Surrey (who was also part of the initial WGRC) were in attendance to provide advice and guidance on how to develop a model code of conduct policy or bylaw, or enhance existing ones, as well as recommendations for how they could be applied. One suggestion put forward by the panel was for Corporate Officers to bring forward existing codes of conduct for review, or bring forward new ones for consideration if none existed, to existing Councils in advance of the 2022 general election as having a clear understanding about conduct rules and expectations prior to the election can be key in newly elected officials meeting those expectations. It would also provide an opportunity to have a new oath of office bylaw in place for the newly elected councils that aligns with the policy to further support responsible conduct.

With the above in mind, coupled with Council's Strategic Plan Priority to develop a culture of excellence around governance, an enhanced Code of Conduct Bylaw is being brought forward for discussion and consideration along with a draft Elected Officials Oath of Office Bylaw, and amendments to the Council Spending and Amenities Policy to include code of conduct breach provisions.

DISCUSSION

The Code of Conduct changes included in Bill 26 build upon the ongoing effort by the Government of BC, the LGMA, and the UBCM to support local government efforts to promote and uphold responsible conduct by elected officials.

Codes of Conduct provide conduct standards that supplement conduct already required by legislation (i.e. Council's Procedure Bylaw, conflict of interest rules, and confidentiality requirements as set out in the *Community Charter*).

Currently, the City has a Code of Conduct Policy (see Attachment 6). However, the existing policy could benefit from: 1) expansion to include additional companion provisions that are connected to the foundational principles; and 2) inclusion of accountability/enforcement provisions as the existing policy does not address how alleged breaches would be handled should a conduct issue emerge.

The proposed bylaw for the Council's consideration (see Attachment 1) retains the foundational principles of integrity, accountability, respect, leadership & collaboration found in the existing policy. These principles provide a basis for how Council and Committee members are to fulfill their roles and responsibilities, including their relationships with each other, staff and with the public, but the new bylaw contains added companion provisions of importance that relate to the behavioural expectations connected to the foundational principles (outlined in part 3). They include expectations associated with:

- interactions with staff, volunteers and committee members;
- interactions with the public and media;
- public meetings;
- collection and handling of information;
- use of social media;

- conflict of interest;
- use of influence;
- use of social media; and
- gifts and personal benefits.

The bylaw also has added accountability provisions (in part 4) that outline the process for breaches, complaint handling and disciplinary action to support compliance, including an informal resolution process and a more formal process that complies with the rules of procedural fairness and natural justice should the parties be unable to resolve a matter informally. The provisions within the bylaw and policy are based on the WGRC's document guide "Forging the Path to Responsible Conduct in Your Local Government" (Resolving Conduct Issues Informally – Attachment 7) and (Essentials of Code of Conduct Enforcement – Attachment 8).

Without a clear set of expectations and process for breaches, the current policy lacks teeth as breaches would have to be addressed based on unwritten rules or general statements of principle not endorsed by Council.

Staff reviewed several Code of Conduct policies and bylaws as recommended by the WGRC that had informal and formal complaint procedures within their policy or bylaw. The most notable included:

- City of Abbotsford (policy);
- District of Sparwood (policy);
- District of North Cowichan (policy);
- District of Saanich (policy);
- City of Maple Ridge (bylaw);
- City of Surrey (bylaw); and
- City of Vancouver (bylaw)

From the above list, the majority follow very similar informal and formal processes; however, a few differences are as follows:

1. Those who have their codes within a Council policy:
 - primarily administer informal complaints through the Mayor and CAO;
 - hire Third-Party Investigators to investigate formal complaints (on as as-needed basis);
 - educate and monitor the policy through staff; and
 - are silent as to whether the final determination of any potential sanctions are addressed in a closed or open meeting.
2. Those who have their codes within a bylaw (Surrey and Vancouver):
 - hired an Ethics Commissioner (Surrey) or Integrity Commissioner (Vancouver) to administer both informal and formal complaints; and
 - educate and monitor the bylaw through the Commissioner position.

The City of Surrey's bylaw is silent on whether it will deliberate and vote on investigative reports (where sanctions or corrective actions are recommended) in an open or closed meeting. The City of Vancouver's bylaw states that when a violation of the bylaw has occurred and sanctions are being recommended by the Commissioner, it will deliberate and vote in an open meeting to ensure accountability is retained. It should be noted that

any open reports comply with the Freedom of Information & Protection of Privacy legislation and where necessary appropriate redactions are applied.

3. The City of Maple Ridge has their Code of Conduct within a Bylaw but they utilize a Third-Party Investigator to investigate formal complaints.

It should be noted that the Code of Conduct Bylaw before Council has been expanded to include Committee Members; however, the complaint and resolution process (outlined in section 4.2) differs for Committee Members in that they are directly accountable to Council. Therefore, Council would make the determination on what measures would be deemed appropriate given any alleged breaches by a Committee Member. The Bylaw is also not applicable to staff as their conduct is governed through the City's Respectful Workplace Administrative Policy.

Oath of Office Bylaw

Staff had the opportunity to discuss codes of conduct with Mr. Reece Harding, lawyer for Young Anderson. He is also BC's first appointed Ethics Commissioner for the City of Surrey and was one of the legal advisors to the WGRC. To prepare the information contained in this report, Staff asked him about his experiences in the role and what recommendations he for bylaws, policies, procedures, or practises that could assist to align and support responsible conduct. He also shared this information with Council at the 2022-MAY-02 In-Camera meeting.

As noted in that meeting, he recommended that councils consider implementing an Oath of Office bylaw (see Attachment 3) as a companion document to a Code of Conduct bylaw or policy that has language within the oath stating that the elected official will abide by the Code of Conduct policy or bylaw. This is something that UBCM strongly supported. Based on this information Staff has put forward a draft bylaw for Council's consideration and recommend that Council support its adoption even if Council wishes to retain the existing policy.

Council Spending & Amenities Policy

Another recommendation put forward by the WGRC was to implement compensation provisions for breaches of Code of Conduct bylaw to support expectations for conduct and to assist in off-setting the costs associated with the Ethics Commission or Third-Party Investigator conducting a formal investigation. Should Council support the enhanced Code of Conduct Bylaw and wish to consider this option, staff drafted an amendment to the Council Spending and Amenities Policy for discussion (see Attachment 4) based on what the District of North Cowichan has implemented. Under these provisions, a Council Member who has been found to have breached the bylaw for the first time, would have their remuneration reduced by 10% for a 12 month period (from the date of the breach). Second breaches by the same Council Member would result in a reduction of 15%. Third or subsequent breaches by the same Council Member would incur a 25% reduction. Specifics of those provisions are outlined in the attached policy.

Staff also took the opportunity to reinstate the provisions to authorize Council's attendance at meetings and seminars related to municipal government that are within Canada without Council approval provided the costs are within the Council approved budget.

Ethics Commissioner Appointment

Many municipalities within B.C. who have adopted a Code of Conduct policy, with identified complaint procedures, have utilized the CAO and/or the Mayor to adjudicate informal complaints (when the individual is not comfortable speaking to the Council or Committee Member directly). Independent Third-Party Investigators (also known as ad hoc Commissioners) are hired on an as-need basis to adjudicate formal complaints. The CAO and Corporate Officer also review the policy with newly elected officials and Committee Members and Department Heads would be responsible for reporting any breaches to the CAO.

Another option is where everything related to the Code of Conduct is overseen by an appointed Ethics or Integrity Commissioner. The City of Surrey was the first municipality in B.C. to appoint an Ethics Commissioner and the City of Vancouver recently followed suit by appointing an Integrity Commissioner in January, 2022. The person appointed to this position operates independently of Council and Administration and oversees all aspects of elected officials conduct including:

- providing advice to Council Members on behaviour that would be consistent with the Council Members' ethical obligations under the Code of Conduct;
- delivering training, as part of orientation or on an annual basis, on any aspects of ethical conduct that the Commissioner determines may be valuable for Council Members;
- receiving, reviewing, investigating and adjudicating complaints related to the conduct of a Council member and violations of the Code of Conduct;
- deciding whether the matter is within the jurisdiction of the Commissioner;
- adopting procedures, policies and protocols designed to ensure that formal complaints are fully and fairly investigated;
- determining whether to proceed to investigate a formal complaint or dispose of the formal complaint in a summary manner;
- subject the requirements of the Code of Conduct respecting procedural fairness, identifying records and documentation received and reviewed during an investigation as confidential; and
- providing advice and recommendations to Council regarding amendments to the Code of Conduct and any other policies, procedures or protocols governing Council Members' ethical behaviour.

Advantages to an appointed Commissioner, are that many or all aspects of the Code of Conduct bylaw could be vetted by one individual who would oversee any informal or formal complaints that may arise. That individual could also oversee the training to Council and Committee members on governance matters and provide confidential advice to elected officials when they have ethical concerns. Having one person appointed would also ensure consistency with application of the bylaw. This option, to a lesser degree, also exists with the hiring of ad hoc Commissioner to oversee any complaints that may arise; however, it would be subject to that person's availability. In this case, orientation and training would likely be done by consultants or staff and confidential advice provided by the City's legal counsel.

The Ethics Commissioner Establishment bylaw before Council (see Attachment 2) has been drafted so the option exists to either have a more formally Council appointed Ethics Commissioner, or to utilize a Third-Party ad hoc Commissioner hired by the CAO. In both instances, the individual would be utilized on an as-needed basis only.

One potential disadvantage to the appointed Commissioner option is that the appointment is at the pleasure of Council and there may be a time when recommendations within a report may not be popular. As a result, there is potential for the appointment to be eliminated with the majority vote of Council. In order to retain the integrity of the position, Staff has followed Vancouver's lead by ensuring that termination of a Commissioner's appointment would only be possible by 2/3^{rds} members of Council, or for cause. Appointment terms are flexible so that Council could evaluate the process or the individual in the position. If favourable, options within the bylaw are available to re-appoint the same individual, or re-advertise if Council so desires.

Should Council be supportive of adopting the Ethics Commissioner Establishment bylaw, it would come into effect on October 15, 2022, to coincide with the effective date of the Code of Conduct Bylaw. However, to give Council an idea on what the process for selecting an appointed Commissioner might look like, one could look to Surrey's model where a Task Force was established (under the guidance of the Chief Administrative Officer) to develop a recruitment process or selection criteria for the purposes of making recommendations to Council regarding an individual to serve as the Commissioner. Listed below were the qualifications that the City of Surrey sought for their Commissioner:

- proven impartiality, neutrality and high ethical standards;
- senior-level management, municipal, legal, judicial or quasi-judicial experience;
- knowledge of municipal or other administrative law;
- knowledge of municipal governance;
- ability to interpret and apply the provisions of various statutes, regulations, policies and other enabling frameworks;
- knowledge of investigatory procedures and applicable legal principles, particularly as they relate to evidence, legal interpretation and natural justice; and
- an ability to provide services on an as-needed basis.

Financial Implications:

With a higher level of accountability through an enhanced Code of Conduct bylaw, there would be costs associated with administering informal and formal complaints should they arise, regardless of whether Council chooses to appoint an Ethics Commissioner or utilize the services of an independent Third-Party Investigator/ad hoc Commissioner. However, with a focus on education through quarterly governance workshops (i.e. Council Procedure Bylaw, Conflict of Interest, meeting conduct, etc.) the hope is that Council will actively participate in working towards ensuring the foundational principles are followed. As a result, costs for the educational workshops, administering the occasional informal or formal complaint, and providing proactive advice to Council members can be absorbed through the existing legal budget. Once the new legislation comes into effect, future Councils will have the opportunity to review the Code of Conduct each term at which time they can assess the process, scope, and financial implications and make changes as necessary.

Legal Fees:

Under the bylaw, legal fees for Council Members who are alleged to have breached the Code of Conduct would not be covered under the Code of Conduct Bylaw, or through the Indemnification Bylaw. A provision, however, has been included (under section 4.4.2) whereby a Council Member may make a request to Council for reimbursement for the costs of legal advice and representation for responding to a formal complaint process. If appropriate, after considering all circumstances, Council may resolve to reimburse legal fees reasonably incurred provided it is

the Council Member's first formal complaint process, and the amount does not exceed \$10,000.

To protect from vexatious allegations and complaints being made a provision has also been added whereby any individual covered by the Bylaw who has made a complaint in a deliberately vexatious or malicious manner, or bad faith, will be subject to appropriate disciplinary action such as:

- sanctions for Council Members;
- termination of a Committee Member's appointment; or
- termination of employment for just cause in the case of Staff.

Next Steps:

Local governments that have a strong ethical foundation as a part of their culture are more likely to engage in discussions about responsible conduct. For this reason, Staff wanted to provide the current Council with the opportunity to discuss the ramifications of the new legislation and explore the accountability gaps associated with the existing Code of Conduct Policy. Based on preliminary discussions held at the 2022-MAY-02 In-Camera meeting, where Mr. Reece Harding was in attendance, Council directed staff to bring forward a Code of Conduct Bylaw, Ethics Commissioner Establishment Bylaw, Elected Officials Oath of Office Bylaw, and amendments to the Council Spending and Amenities Policy for consideration at the 2022-MAY-16 Regular Council Meeting.

Staff and Mr. Reece Harding will provide an overview of the bylaws and policy at the meeting. If supported, the bylaws and policy would take effect October 15, 2022 so that they would be place for the new Council.

OPTIONS

Option 1:

Code of Conduct Bylaw

That "Code of Conduct Bylaw 2022 No. 7348" (a bylaw to regulate the conduct for Council and Committee Members) pass first reading;

That "Code of Conduct Bylaw 2022 No. 7348" pass second reading;

That "Code of Conduct Bylaw 2022 No. 7348" pass third reading.

Should Council select support giving three readings to the Code of Conduct Bylaw, Council would be conveying support for replacing the existing Code of Conduct Council policy with an enhanced Code of Conduct Bylaw that includes companion provisions to support the foundational principles and accountability provisions.

It should be noted that the Code of Conduct bylaw option can be selected with or without establishing a Commissioner position.

Ethics Commissioner Establishment Bylaw

That "Ethics Commissioner Establishment Bylaw 2022, No. 7349" (a bylaw to establish an Ethics Commissioner or ad hoc Commissioner) pass first reading;

That "Ethics Commissioner Establishment Bylaw 2022, No. 7349" pass second reading;

That "Ethics Commissioner Establishment Bylaw 2022, No. 7349" pass third reading.

Should Council support establishing a Code of Conduct Bylaw, Council could then consider whether it wishes to establish an Ethics Commissioner position. If Council supports establishing this position, the Commissioner (which could either be an appointed position or an ad hoc Commissioner) would oversee informal and formal complaints. The option also exists for that individual to conduct the training workshops on conflict of interest, ethics, etc. with the new Council.

The costs associated with hiring an Ethics Commissioner (on an as-needed basis) could be managed within Council's current legal budget. With the focus on training and education, formal investigations should be a rarity. Costs for conducting educational governance workshops would be the same regardless of whether conducted by an Ethics Commissioner, Consultant, or the City's Solicitor.

Elected Officials Oath of Office Bylaw

That "Elected Officials Oath of Office Bylaw 2022 No. 7350" (a bylaw to establish the oath or solemn affirmation of office for Mayor and the office of Councillor) pass first reading;

That "Elected Officials Oath of Office Bylaw 2022 No. 7350" pass second reading;

That "Elected Officials Oath of Office Bylaw 2022 No. 7350" pass third reading.

Regardless of whether Council is supportive of a more enhanced Code of Conduct Bylaw, staff recommend that Council consider adopting an Elected Officials Oath of Office bylaw that embeds the existing Code of Conduct policy, or any future Code of Conduct bylaws or policies within the Oath.

Council Spending and Amenities Policy

That Council endorse the amendments to section two and three of the Council Spending and Amenities Policy related to code of conduct breaches and attendance at in-town or out-of-town meetings as outlined in red within Attachment 4 to the 2022-MAY-16 report by the Deputy City Clerk.

Should Council support endorsing the Code of Conduct Bylaw above, consideration should also be given to whether Council wishes to include penalties for breaches or for repeat offences. Implementing compensation provisions through an amendment to the Council Spending and Amenities policy would assist in off-setting the costs associated with conducting the formal investigations in those instances.

Option 2:

Council direction is sought.

Should Council wish to make amendments to the bylaw, specific direction would be sought and a future report to highlight any implications would be required.

SUMMARY POINTS

- In 2018, the Working Group on Responsible Conduct (WGRC) was formed to undertake collaborative research and policy work around the issues of responsible conduct of local government officials.
- Based on the WGRC's work, UBCM endorsed a resolution at the 2021 convention requesting the provincial government enact legislation requiring all local governments to adopt or review their codes of conduct and update the oath of office to embed the foundational principles identified by the WGRC.
- On November 25, 2021 *Charter* Provisions requiring councils to consider developing codes of conduct or review existing ones received Royal Assent.

- Amendments to Council's existing code of conduct that include companion and accountability provisions are being brought forward for discussion and direction, including the option to establish an Ethics Commissioner position and Oath of Office bylaw to embed the foundational principles within the oath.
- If supported, the Code of Conduct Bylaw, the Ethics Commissioner Establishment Bylaw, Oath of Office Bylaw for Elected Officials, and the amendment to the Council Spending and Amenities Policy would take effect on October 15, 2022.

ATTACHMENTS:

Attachment 1 - BL7348 - Code of Conduct Bylaw
Attachment 2 - BL7349 – Ethics Commissioner Establishment Bylaw
Attachment 3 - BL7350 – Elected Officials Oath of Office Bylaw
Attachment 4 - Council Spending and Amenities Policy Amendment
Attachment 5 - UBCM Resolution SR3 – Code of Conduct
Attachment 6 – Existing Code of Conduct Policy COU-203
Attachment 7 - Chapter 3 (Resolving Conduct Issues Informally)
Attachment 8 - Chapter 4 (Essentials of Code of Conduct Enforcement)

Submitted by:

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Concurrence by:

Sheila Gurrie, Director of Legislative Services
John Van Horne, Director of Human Resources
Laura Mercer, Director of Finance
Jake Rudolph, CAO