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C H A M B E R S

Integrity Commissioner Office
for the Town of Richmond Hill

**ADR CHAMBERS INTEGRITY COMMISSIONER OFFICE
FOR THE TOWN OF RICHMOND HILL**

August 24, 2018

SENT BY EMAIL TO:

Town Council
c/o Stephen M.A. Huycke
Director of Legislative Services/Town Clerk
Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, ON L4B 3P4
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Re: Council Code of Conduct and Integrity Commissioner Procedures

Dear Members of Council:

Background

As you may be aware, the Council Code of Conduct currently in use by the Town of Richmond Hill (the “old Code”) was brought into force in November 2010 and was last updated in November 2012.

The role of the Integrity Commissioner is set to change significantly on March 1, 2019 as a result of the Bill 68 amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*.

We were requested to provide our comments on, and revise as appropriate, a proposed updated Council Code of Conduct (the “new Code” or, simply, the “Code”) and Integrity Commissioner Procedures (the “Procedures”) developed by Town Staff. The new Code and Procedures take into consideration best practices as well as the upcoming legislative changes.

General Comments

We would encourage Town Council to view the Code and the Procedures as “living documents” that should be reviewed and refreshed periodically. Our annual reports to Council will provide advice and recommendations to Council regarding proposed amendments to the Code and the Procedures where appropriate.

We have completed a review of both the new Code and the Procedures, both of which are thorough and very well written, and we have revised these documents where appropriate based on our previous experience providing Integrity Commissioner Services. However, our review does not constitute legal advice to the Town. Accordingly, in the event that there are any legal issues which are of concern to the Town relative to the Code or the Procedures, those issues should be referred to the Town Solicitor or outside counsel for further advice and direction.

I. Council Code of Conduct

2.0 Purpose

While the purpose of the new Code remains largely the same as the purpose of the old Code, the new Code includes guiding principles at s. 1.2. Members of Council (“Members”) should keep these guiding principles in mind throughout each term they serve on Council.

3.0 Definitions

The Definitions in s. 3 have been expanded to assist Members, Town Staff, members of the public and the Integrity Commissioner in understanding and interpreting the new Code.

4.0 Application and Responsibilities

Section 4 has been expanded upon to outline the duties and obligations of Members under the new Code.

5.0 Acceptance of Gifts and Benefits

Section 5.8 is new and, to ensure compliance, requires Members to track and monitor gifts or benefits received during each calendar year.

6.0 Confidential Information

The prohibitions contained in s. 6.4 are new and provide clarity by replacing the confidential information requiring the exercise of “particular care” in the old Code. Section 6.5 is also new and extends the duty of confidentiality beyond the term of Members’ office.

7.0 Council, Staff and Public Relations

Section 7.1 is new and is becoming increasingly common in newer Codes of Conduct, with the goal of encouraging respect for democracy and the decision-making processes of Council.

Section 7.4(c) is also new and reaffirms the proper avenue for Members to express any performance concerns they may have respecting Town Staff.

Sections 7.6, 7.7 and 7.8 are also new and address the requirements for, among other things, honest, accurate and respectful communications, whether via social media or otherwise. The addition of these sections is advisable given the proliferation of social media usage in recent years.

8.0 Use of Municipal Property

Section 8.3 makes clear that the Town's property must not be used for election campaign purposes.

9.0 Adherence to Richmond Hill By-laws, Policies and Procedures

This section is new and relatively straightforward in that Members are required to conduct themselves according to the Procedure By-law and are to be aware of and adhere to all other applicable by-laws, policies and procedures.

10.0 Respect in the Workplace

This new section is self-explanatory given the recent increase in reports of workplace harassment, including workplace sexual harassment; abusive conduct; discrimination; and workplace violence, not specifically in Richmond Hill but in society at large.

11.0 Compliance and 12.0 Enforcement

While these topics were addressed in the old Code, they have been expanded upon in the new Code, one of the more noteworthy additions being the possible penalties to be recommended by the Integrity Commissioner for Council's imposition following a finding that a Member has contravened the Code.

You will note that the balance of the old Code, dealing with complaints, investigations and reporting, including the moratorium on filing complaints and reporting on complaints between Nomination Day and Voting Day in a regular election year, is now found in the Procedures.

II. Integrity Commissioner Procedures

We highly recommend the implementation of the Procedures, separate and apart from the Code, so that the Procedures can be amended from time to time as necessary without requiring the passing of a by-law for any such amendments.

Informal Complaint Procedure and Formal Complaint Procedure

The Informal Complaint Procedure under the Procedures remains the same as the process under the old Code. The Formal Complaint Procedure is enhanced somewhat in that the new Code suggests that a complainant should notify any witnesses in advance of identifying them in their complaint; in addition, the Formal Complaint Procedure requires a complainant to sign a Consent and Confidentiality Agreement. We recommend the use of such an Agreement to impress upon a complainant the importance of keeping confidential the existence of their complaint as well as the progress of the investigation, if any. We suggest that our office will not review a Formal Complaint as filed unless and until we receive a signed Agreement from the complainant. A copy of our suggested wording for this Agreement is attached for Council's review and consideration.

Refusal to Conduct an Investigation

In addition to giving the Integrity Commissioner the ability to refuse to conduct an investigation where, in the opinion of the Integrity Commissioner, a complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Procedures include language allowing the Integrity Commissioner to cease an investigation where the complaint, in our opinion, *becomes* frivolous or vexatious, or it *becomes* clear that the complaint was not made in good faith, or that there are no or insufficient grounds for an investigation. We believe it is important for the Integrity Commissioner to have flexibility and the ability to exercise her or his judgment throughout the investigation, and not just upon the initial review of a complaint.

Investigation

The Procedures include language to indicate that the Integrity Commissioner will "use best efforts" to complete and report on any investigation within ninety (90) days. In our experience, a 90-day timeframe is not always workable, particularly where parties may be out of town or otherwise unavailable, or additional information may be revealed part-way through an investigation. While we are always mindful of the 90-day timeframe, our goal is to conduct our investigations to the best of our abilities, affording the parties procedural fairness and due process.

The Procedures also include wording directing the Integrity Commissioner to provide a draft report to the complainant and the Member and allowing ten (10) calendar days for receipt of any comments or suggested revisions. This is not an opportunity for the parties to dispute our findings, but rather it provides the parties with reasonable notice of the basis for the proposed finding and any recommended sanction. There was no such provision in the old Code.

Municipal Conflict of Interest Act Complaint

With the coming into force of Bill 68, the Integrity Commissioner will have the jurisdiction to entertain complaints that a Member has contravened ss. 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*. The Procedures therefore include a section on the submission and investigation of such complaints.

Conclusion

We look forward to meeting with you at the Council meeting on September 4, 2018, to answering any questions you may have about the Code and the Procedures, and to serving as your Integrity Commissioner.

Yours very truly,

Deborah C. Anschell
Integrity Commissioner
Office of the Integrity Commissioner for the Town of Richmond Hill

Attachment A – 2018 Draft Council Code of Conduct
Attachment B – 2018 Draft Integrity Commissioner Procedures
Attachment C – 2018 Consent and Confidentiality Agreement
Attachment D – 2010 Council Code of Conduct