Agenda – Council – December 9, 2015

Report – Executive Policy Committee – December 2, 2015

Item No. 6 Office of Integrity (Ethics) Commissioner

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 2, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the Office of Integrity Commissioner be created, and the Winnipeg Public Service be directed to report back at the January, 2016 Council meeting with a proposed process for the engagement of an Integrity Commissioner, on a two-year renewable term, in accordance with all applicable City policies including, without limitation, the City's Materials Management policy.

2. That the mandate of the Integrity Commissioner, as detailed in this report (attached as Appendix C), be adopted and applicable to Members of Council only.

3. That a new draft Code of Conduct of the Council of the City of Winnipeg be developed by the Integrity Commissioner for consideration by Council, and that such draft Code of Conduct for Council include, without limitation, sanctions and enforceability mechanisms.

4. That should a Lobbyist Registry be established, the oversight of the registry be included in the Integrity Commissioner's mandate.

5. That an annual budget in the amount of $100,000 per year for ongoing operations of the Integrity Commissioner be referred to the 2016 Operating Budget process.

6. That the Winnipeg Public Service request the Province of Manitoba to amend The City of Winnipeg Charter Act to create an applicable section specifically on the mandate and role of an Integrity Commissioner, identify appropriate penalties should any relevant by-law, policy or Act be breached, and grant investigative powers to the Integrity Commissioner.

7. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – December 2, 2015

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 2, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 18, 2015, the Executive Policy Committee granted an extension of time of 60 days for the Winnipeg Public Service to report back on the matter.

COUNCIL DECISION:

On June 17, 2015, Council adopted the following motion:

Moved by His Worship Mayor Bowman,
Seconded by Councillor Gerbasi,

WHEREAS on December 11, 2013 Council concurred in the recommendation of the Executive Policy Committee with respect to the creation of an Office of Ethics Commissioner (the "2013 Motion");

AND WHEREAS the 2013 Motion also requested the Province of Manitoba to amend the City of Winnipeg Charter Act (the "Charter") to provide the Ethics Commissioner with investigative powers to compel witnesses and evidence, which amendments have not as yet been made;

AND WHEREAS the 2013 Motion also provided that the Ethics Commissioner have jurisdiction over investigating complaints and recommending to Council sanctions with respect to members of the Public Service, and it is desirable to obtain further analysis of this issue from a labour relations perspective;

Report – Executive Policy Committee – December 2, 2015

DECISION MAKING HISTORY (continued):

COUNCIL DECISION (continued):

THEREFORE BE IT RESOLVED THAT the Public Service be requested to report back within 120 days to Executive Policy Committee with recommendations for a process and implementation plan to create an Office of Ethics Commissioner with the maximum authority under the existing Charter, which report shall include;

(i) a review of best practices in other jurisdictions;
(ii) human resource and labour relations implications;
(iii) budgetary implications;
(iv) legal implications; and
(v) all other relevant considerations.

BE IT ALSO RESOLVED THAT the Governance Committee of Council work with the City Solicitor to review the existing Councillor Code of Conduct (the "Code") to develop recommendations for Council consideration with respect to updating and amending the Code to ensure: (i) guidelines for ethical conduct are in line with best practices in other jurisdictions; and (ii) consequences for breaching the Code are clearly defined and articulated.

ADMINISTRATIVE REPORT

Title: **Office of Integrity (Ethics) Commissioner**

Critical Path: **Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
D. Watt	R. Kachur	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That Council create the Office of Integrity Commissioner, and direct the Public Service to report back at the January, 2016 Council meeting with a proposed process for the engagement of an Integrity Commissioner, on a two-year renewable term, in accordance with all applicable City policies including, without limitation, the City's Materials Management policy.

2. That the mandate of the Integrity Commissioner, as detailed in this report (attached as Appendix C), be adopted and applicable to Members of Council only.

3. That a new draft Code of Conduct of the Council of the City of Winnipeg be developed by the Integrity Commissioner for consideration by Council, and that such draft Code of Conduct for Council include, without limitation, sanctions and enforceability mechanisms.

4. That should a Lobbyist Registry be established, the oversight of the registry be included in the Integrity Commissioner's mandate.

5. That an annual budget in the amount of $100,000 per year for ongoing operations of the Integrity Commissioner be referred to the 2016 Operating Budget process.

6. That the Winnipeg Public Service request the Province of Manitoba to amend *The City of Winnipeg Charter Act* to create an applicable section specifically on the mandate and role of an Integrity Commissioner, identify appropriate penalties should any relevant by-law, policy or Act be breached, and grant investigative powers to the Integrity Commissioner.

7. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On June 17, 2015, Council adopted the following motion:

WHEREAS on December 11, 2013 Council concurred in the recommendation of the Executive Policy Committee with respect to the creation of an Office of Ethics Commissioner (the "2013 Motion");

AND WHEREAS the 2013 Motion also requested the Province of Manitoba to amend the City of Winnipeg Charter Act (the "Charter") to provide the Ethics Commissioner with investigative powers to compel witnesses and evidence, which amendments have not as yet been made;

AND WHEREAS the 2013 Motion also provided that the Ethics Commissioner have jurisdiction over investigating complaints and recommending to Council sanctions with respect to members of the Public Service, and it is desirable to obtain further analysis of this issue from a labour relations perspective;

THEREFORE BE IT RESOLVED THAT the Public Service be requested to report back within 120 days to Executive Policy Committee with recommendations for a process and implementation plan to create an Office of Ethics Commissioner with the maximum authority under the existing Charter, which report shall include;

(i) a review of best practices in other jurisdictions;
(ii) human resource and labour relations implications;
(iii) budgetary implications;
(iv) legal implications; and
(v) all other relevant considerations.

BE IT ALSO RESOLVED THAT the Governance Committee of Council work with the City Solicitor to review the existing Councillor Code of Conduct (the "Code") to develop recommendations for Council consideration with respect to updating and amending the Code to ensure: (i) guidelines for ethical conduct are in line with best practices in other jurisdictions; and (ii) consequences for breaching the Code are clearly defined and articulated.

EXECUTIVE SUMMARY

- The cross jurisdictional review found that many municipalities who have implemented an Integrity Commissioner have adopted very similar mandates and roles.

- An Office of Integrity Commissioner be created, the Commissioner to be appointed by Council, for a minimum two-year renewable term.

- The Integrity Commissioner shall be responsible to provide an Advisory, Investigative and Education role to Members of Council, as outlined in this report, and report directly to Council.

- Should a Lobbyist Registry be created the Commissioner shall be responsible for oversight of the registry.

- That the City of Winnipeg request the Province of Manitoba to amend *The City of Winnipeg Charter Act* to create an applicable section specifying the mandate and role of an Integrity Commissioner and identify appropriate penalties that the Integrity Commissioner may impose, should any relevant by-law, policy or Act be breached.

IMPLICATIONS OF THE RECOMMENDATIONS

By implementing an Integrity Commissioner, the City is providing a transparent, accessible and open process for Members of Council, members of Administration and members of the public, to report or receive information on a perceived conflict by a Member of Council and be ensured that an independent officer will have powers to investigate issues and report their findings to Council.

HISTORY/DISCUSSION

On February 18, 2009, Council requested the Province of Manitoba to review and amend existing legislation to create stronger Conflict of Interest rules and guidelines for the City of Winnipeg and Council through such measures as the establishment of a separate municipal office for the Conflict of Interest Commissioner or by expanding the role and responsibilities of the existing Commissioner.

On December 11, 2013, Council adopted the creation of an Office of Ethics Commissioner and requested the Province of Manitoba to amend the *City of Winnipeg Charter Act* to provide the Ethics Commissioner with investigative powers, and the ability for Council to Sanction Members of Council, Statutory Officers and Members of the Winnipeg Public Service, on recommendation of the Ethics Commissioner.

Subsequently the Province did not amend the Charter Act and advised that the City of Winnipeg has the authority to establish an Ethics Commissioner under the existing framework. The Public Service did not proceed with the creation of the Office as the intent of the office lacked the legislated powers that were desired.

On June 17, 2015, Council instructed the Winnipeg Public Service to create an Office of Ethics Commissioner, with the maximum authority under the existing Charter, and therefore this report is being considered.

On May 27, 2015, Council received as information the Audit Department's Report titled "Report on the Creation of a Lobbyist Registry". Within this report the Audit Department provided a number of recommendations on implementing a Lobbyist Registry and Registrar, some of which included the role of an Integrity Commissioner, which is detailed further in this report.

It should be noted that previous Council decisions on this matter have cited an "Ethics" Commissioner, but after a cross jurisdictional review, it was found that all of the Ontario municipalities refer to this position as an Integrity Commissioner, as does the legislation which governs this role in Ontario; therefore we are proposing the same.

Best Practices in other Jurisdictions:

A review of best practices across jurisdictions in Canada who have appointed an Integrity Commissioner has been concluded and is attached as Appendix A.

The review found that some municipalities across Ontario have created an Integrity Commissioner Office, which is based on the Toronto model, first established in 2006, under the City of Toronto Act, 2006. The City of Calgary is currently in the early stages of appointing an Integrity Commissioner which is one of the only jurisdictions in Western Canada who have adopted this role.

Cities such as Ottawa, Vaughan, Windsor, Brampton and Mississauga have all appointed Integrity Commissioners which are legislated under the Ontario Municipal Act, 2001, attached as Appendix B.

There are many similarities among the municipalities who have appointed Integrity Commissioners. All Commissioners report to Council with an annual report summarizing their findings as well as reports to Council on investigations conducted; they provide advice to Members of Council in relation to the Code of Conduct

and/or any other applicable bylaw; investigate complaints made by a Member of Council or the general public, as well as assist in the creation of / or amendments to current applicable policies or bylaws.

There are some differences amongst the municipalities such as the term of appointment, the budget for the office and additional duties of the Integrity Commissioner such as investigating city committees and boards (appointed by Council) and overseeing the Lobbyist Registry.

Lobbyist Registry

An investigation across other jurisdictions has indicated that only Toronto has a separate Lobbyist Registrar, which works very closely with the Integrity Commissioner's Office. Some municipalities do not have a Lobbyist Registry, some are in the midst of creating one, and Cities like Ottawa have their Lobbyist Registry included in the mandate of the Integrity Commissioner.

On May 27, 2015, Council received as information the Audit Department's Report titled "Report on the Creation of a Lobbyist Registry". Within this report the Audit Department provided a number of recommendations on implementing a Lobbyist Registry and Registrar. Notably, it was suggested that consideration should be given to combining the Lobbyist Registrar with the establishment of an Integrity Commissioner in order to create efficiencies and reduce total overall costs.

Additionally, on May 27, 2015, Council requested the Public Service to prepare a report outlining the required amendments to *The City of Winnipeg Charter Act* to create an enforceable lobbyist registry that allows for investigative and enforcement activities.

If no changes to the Charter are made, the creation of a voluntary lobbyist registry could be established under the existing legislation, but similar to the Integrity Commissioner under the existing Charter, there would be no legal enforcement should there be any breaches.

Should Council implement a Lobbyist Registry in the future, it is envisioned that the Integrity Commissioner would be mandated to oversee the Lobbyist Registry, similar to the model used by the City of Ottawa.

Mandate and Duties of Integrity Commissioner

After review of other jurisdictions best practices, it is envisioned that The Office of the Integrity Commissioner for the City of Winnipeg would have the following mandate:

***1. Advisory*:**

a. To provide written and oral advice to individual Members of Council on questions under the Code of Conduct, *The Municipal Council Conflict of Interest Act* and any other by-laws, policies, or Acts governing the behaviour of Council.

b. To provide Council with specific and general opinions and advice on by-laws, policies, protocols or Acts regulating the conduct of Members of Council, and issues of compliance with those by-laws, policies, protocols or Acts.

***2. Investigative*:**

a. To investigate complaints from members of the public, City staff or other Members of Council involving conflict or bylaw matters of Members of Council

b. To conduct inquiries into a request made by Council, a Member of Council, or a member of the public, into whether a Member of Council has contravened any applicable by-law, policy, or Act and report to Council on its findings.

3. Educational:

To publish an annual report on the work of the office of the Integrity Commissioner including examples in general terms of advice rendered and complaints received and disposed of.

4. Other Duties:

Oversee the City's Lobbyist Registry, should one be established.

The City Clerk's Department will retain the budget, if approved, and provide support services and administrative functions to the Office of the Integrity Commissioner as required.

It is important to note that the Integrity Commissioner will not be a City of Winnipeg employee but will be appointed on retainer, and will provide the service for a fee, on an as needed basis.

The Municipal Council Conflict of Interest Act

In 1987 the Province of Manitoba enacted *The Municipal Council Conflict of Interest Act*, legislation which serves all municipalities in the Province of Manitoba, including the City of Winnipeg. Many of the guidelines within the Code of Conduct of the Council of the City of Winnipeg were comprised from this Act.

It will be the role of the Integrity Commissioner to interpret, implement and respond to any Members of Council, members of the public, or City staff's questions concerning this Act.

Council Code of Conduct

On September 21, 1994, the City of Winnipeg established a Code of Conduct of the Council of the City of Winnipeg. This existing Code of Conduct will serve as the guiding principles for the Integrity Commissioner to utilize under its mandate.

On June 17, 2015, Council requested the Governance Committee of Council to work with the City Solicitor to review the existing Councillor Code of Conduct to develop recommendations for Council consideration with respect to upgrading and amending the Code to ensure guidelines are in line with best practices in other jurisdictions and that consequences for breaching the Code are clearly defined and articulated.

Once an Integrity Commissioner is hired, the Council Code of Conduct should be included in the mandate and a review of the existing Code should be undertaken, as well as a cross jurisdictional analysis and a new Council Code of Conduct be established. The Integrity Commissioner will work with Legal Services as required to bring forward any by-laws required to implement enforcement mechanisms for such new Council Code of Conduct.

Employee Code of Conduct

On March 14, 2001, Council adopted the City of Winnipeg Employee Code of Conduct, administered by the Chief Administrative Officer, which provides a complaint and disclosure process, as well as enforcement should a contravention of the Code be discovered. This Code was further enhanced by Council on November 20, 2013 to ensure that employees are aware of the Code and the requirement for all Department Heads to disclose any assets and/or interests at the point of hire or re-establishing contracts.

It should be noted that under the Ontario Municipal Act, 2001, the Integrity Commissioner is only responsible for the investigation of Members of Council and/or members of local boards, not employees. The City's Integrity Commissioner would also not have jurisdiction over employees.

The City of Winnipeg Charter Act

The City of Winnipeg Charter Act does not specifically empower the Integrity Commissioner, nor does it provide the authority for any penalties, enforced through Council, and therefore a request to the Province of Manitoba to amend the Charter to create an applicable section specifically on the mandate and role of an Integrity Commissioner, identify appropriate penalties should any relevant by-law, policy or Act be breached, and grant investigative powers to the Integrity Commissioner, is being recommended.

FINANCIAL IMPACT

Financial Impact Statement

Date: October 23, 2015

Project Name:

Office of Integrity (Ethics) Commissioner

First Year of Program **2016**

	2016	2017	2018	2019	2020
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000

Additional Comments: Direct costs above represent the ongoing operations of the Office of the Integrity Commissioner. This report recemmends that funding for these costs be referred to the 2016 Operating Budget Process.

original signed by

Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this Report there was consultation with:

The Office of the Chief Administrative Officer

Corporate Support Services

Legal Services

OURWINNIPEG POLICY ALIGNMENT

Not applicable.

SUBMITTED BY

Department: City Clerk's
Prepared by: Destiny Watt, Senior Committee Clerk
Date: October 22, 2015