CODE OF CONDUCT FOR MEMBERS OF COUNCIL

A. PREAMBLE

Members of Council for the City of Winnipeg recognize that they hold office for the benefit of the public and that their conduct must adhere to the highest ethical standards, exceeding the minimum obligations required by law.

A written Code of Conduct demonstrates that Members of Council share a common understanding of the ethical obligations which are essential to the fair and effective operation of government.

Members of Council first instituted a Code of Conduct in 1994. This Code of Conduct stems from the principles set out in that Code.

Although the Preamble cannot support a stand-alone contravention of the Code of Conduct, together with the Key Principles listed below, it provides a helpful framework within which to review the actions of Members of Council.

To further assist Members of Council and members of the public in understanding and interpreting the Code of Conduct, the Code of Conduct document shall be made available in a version which includes commentary provided by the Integrity Commissioner.

That commentary, which will be updated from time to time by the Integrity Commissioner, does not form part of the Code of Conduct itself.

B. APPLICATION AND INTERPRETATION

1. This Code of Conduct ("Code") applies to all Members of Council, including the Mayor ("Members").

2. It is intended that this Code operate together with and supplemental to the statutes, By-laws and policies which govern the conduct of Members, including but not limited to:

    - *The City of Winnipeg Charter*
    - *The Municipal Council Conflict of Interest Act ("MCCIA")*
    - *The Human Rights Code of Manitoba*
    - *The Freedom of Information and Protection of Privacy Act*
    - *The Criminal Code of Canada*
    - *City of Winnipeg Policies, By-laws and Protocols*
    - *Codes of Conduct for City Boards or Commissions*

3. Members are responsible to be familiar with the requirements of the By-laws, policies, protocols and legislation which govern their conduct together with the provisions of this Code.

4. This Code is to be given a broad and liberal interpretation in accordance with the Key Principles set out herein and applied in a reasonable and pragmatic manner.

5. Members should seek the advice of the Integrity Commissioner in determining how this Code is to be interpreted and applied.

C. DEFINITIONS

"**Appendix A**" means the Advice Protocol for Members of Council, attached to and forming part of the Code.

"**Appendix B**" means the Complaint Protocol, attached to and forming part of the Code.

"**Duties of Office**" include those activities that are reasonably related to a Member's office, taking into consideration the different interests and the diverse profiles of their constituents as well as the Members' different roles on committees, agencies, boards and commissions.

"Staff" includes Directors, Managers, Supervisors, salaried staff, hourly staff, part time staff, temporary/seasonal staff, contract staff, students, interns and volunteers.

D. KEY PRINCIPLES

The public interest is best served when Members:

- perform their duties of office honestly and with integrity, impartiality and transparency, putting the public interest before private and self-interest;
- conduct themselves in such a way as to promote respect for Council and municipal government;
- serve their constituents and the City in a conscientious and diligent manner and approach decision making with an open mind; and
- perform their duties of office and manage their private interests in a manner that promotes public confidence and trust in the political process.

Commentary

- *"An ethical approach to democratic politics is one where political actors are expected to make principled decisions based on mutual respect. If they put personal gain or the interests of political friends ahead of the public interest, they have acted unethically by abusing the trust placed in them."* *Honest Politics Now, Ed. Greene and Shugarman, 2017, James Lorimer & Company Ltd., Toronto,p.38*

E. RULES OF CONDUCT

1. Confidential Information

a. Members must not disclose and shall only use confidential information as required for their duties of office.

> **Confidential information** is information which is otherwise not available to the general public, including information contained in the agenda for or discussed at an *in camera* meeting held pursuant to the City's *In Camera By-law*, and information in the possession of or received in confidence by the City that the City is either prohibited from disclosing, is required to refuse to disclose, or may refuse to disclose pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*.

b. Members must not intentionally access or attempt to access confidential information which is in the custody of the City unless it is necessary for the performance of their duties of office.

Commentary

- *While they are working on behalf of the City, Members will have access to and become knowledgeable of information that is not available to the public. The purpose of this rule is to ensure that such information continues to be used solely for its intended purpose and is not divulged to the public except as allowed by law.*

2. Conflict of Interest

a. Members must not act in situations in which they have a real or apparent conflict of interest, whether during a meeting of Council or Committee of Council or at any other time while performing their duties of office.

> A **conflict of interest** exists when a Member exercises his or her duties of office and at the same time knows that in the performance of those duties there is the opportunity to further his or her private interests.
>
> A **private interest** includes any personal benefit, whether pecuniary or not.
>
> A **real conflict of interest** exists when a Member has knowledge of a private interest that is sufficient to influence the exercise of his or her duties of office.
>
> An **apparent conflict of interest** exists when there is a reasonable perception, which a reasonably well-informed person could properly have, that the Member's ability to perform any official duty or function must be influenced by his or her private interest.

b. Interests which do not give rise to a conflict of interest include:

- interests in matters of general application;

- interests in matters that affect a Member as one of a broad class of the public;
- interests that concern the remuneration and benefits of the Member as a Member of Council; and
- interests that are trivial.

c. A Member is presumed not to have an interest in any appointment to serve in his or her official capacity on any commission, board or agency, or in matters arising in relation to that commission, board or agency.

d. A Member who has a conflict of interest with respect to any matter must refrain from influencing the matter and from discussing or voting on any decision with respect to the matter.

e. Should a conflict of interest, real or apparent, arise with respect to a matter that will be discussed or determined at a meeting of Council or a Committee of Council, the Member must:

i. disclose the general nature of the Member's interest, and

ii. withdraw from the meeting without voting or participating in the discussion.

f. Where a Member does not disclose an interest under Rule 2.e. because they are not in attendance at the meeting at which the matter arose, the Member must disclose the general nature of his or her interest at the next meeting of the same body before which the matter arose.

g. Where, by reason of withdrawal from a meeting because of non-pecuniary interests, there would be fewer Members remaining than are needed to meet quorum, those Members who have withdrawn by reason of a non-pecuniary interest must disclose their interest, but may still vote in respect of the matter.

Commentary

- *"Conflict of interest in the public sector is the clash of a private interest with a public duty." The Law of Government Ethics, 2nd Ed., G Levine, 2015, Thomson Reuters Canada, p.9*
- *In the public sector, a conflict of interest occurs "when an elected or appointed public official attempts to promote a private interest for him - or herself, or for some other person(s), that results, or appears to result, in interference in the impartial discharge of one's duties or a gain or advantage by virtue of his or her position … Where there is a conflict between public and private interests, the public should always prevail.". Honest Politics Now, supra, pp.70-71*
- *It is important to understand that having the interest is not the problem; what matters is what one does about it.*
- *If a member declares a conflict of interest and does not take part in decision making or discussion, then there will likely be no ethical transgression. Honest Politics Now, supra, p.240*
- *The process which is set out in the Code of Conduct to be followed when a Member has a*

conflict of interest is consistent with the process required by the MCCIA.

- *"Conflict of interest rules attempt "to prevent personal financial gain from public office …. But the rules have gradually begun to increase in scope to include the granting of favours to friends and associates."* Honest Politics Now*, supra, p.80*
- *This Rule expands the ethical obligations that are imposed on Members under the MCCIA.*
- *The difference between the MCCIA and the Code of Conduct is that, under the MCCIA, conflicts of interest are limited to pecuniary or financial interests, either direct or indirect.*
- *In contrast, the Code of Conduct does not limit "conflict of interest" to pecuniary benefits.*
- *Non-pecuniary conflicts of interest may arise from relationships, non-financial benefits or conflicting loyalties because of a person having multiple roles in the community. As Justice Cunningham said in the Mississauga Inquiry Report:*

  > *Councillors (and staff) are not to use their office to promote private interests, whether their own or those of friends or relatives. They must be unbiased in the exercise of their duties. That is not only the common law but the common sense standard by which the conduct of Municipal representatives ought to be judged.*
  >
  > *The Honourable J. Douglas Cunningham,* Report of the Mississauga Judicial Inquiry/Updating the Ethical Infrastructure*, Mississauga Judicial Inquiry (2011) online: <www.mississaugainquiry.ca>*

- *A conflict of interest, therefore, can occur, in addition to pecuniary interests, because of past or present personal relationships that influence someone's judgment through emotion, loyalty or lack of proper perspective.*
- *Generally, a non-pecuniary interest that creates a conflict for the purposes of this Code will involve:*

  a) *A relationship between a Member and another person that is particularly close, for example, a "dependent" as defined in Rule 3 of the Code, a former spouse or partner, another person from the Member's extended family with whom the Member has a close personal relationship or another person living in the same household;*

  b) *Other relationships that are particularly close, such as friendships and business relationships. A close relationship is defined by: the nature of the friendship or business relationship; the frequency of the contact; and the duration of the friendship or relationship; an affiliation between the Member and an organization, sporting body, club, corporation, or association, that is particularly close including but not limited to active participation in the management or administration of the entity and other activities. For example, where the Member sits as a director on the board of an entity.*

- *There are significant sanctions for a breach of the MCCIA including the potential for the loss of office on application to the Court. Alleged breaches of the MCCIA are not dealt with by the Integrity Commissioner.*
- *No court application is needed to complain about a breach of the Code. A breach of the Code of Conduct is addressed by Council upon filing a Complaint with the Integrity Commissioner. Council may only impose sanctions of a more limited nature - as set out later*

in this Code.

3. Gifts and Benefits

Acceptability

a. Members must not accept any gift or personal benefit that would, to a reasonable, well-informed person, create the appearance that the donor is seeking to influence the Member or gain the favour of the Member.

b. For these purposes, a gift or benefit provided with the Member's knowledge to a Member's dependant or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member.

Dependant means
(a) the spouse of a Member,
(b) the common-law partner of a Member, and
(c) any child, natural or adopted, of the Member,
who resides with the Member.

c. For clarification, it is generally not a violation of Rule 3.a. to accept the following:

i. compensation authorized by law;

ii. gifts or benefits received as an incident of accepted protocol or normal expression of courtesy;

iii. a political contribution otherwise authorized and reported in accordance with the law;

iv. services provided without compensation by persons volunteering their time;

v. admission to charitable or community organized events, widely-attended events such as conventions or conferences, or training and education programs, provided that:

1. admission is offered by the entity responsible for organizing and presenting the event;

2. admission is unsolicited by the Member; and

3. the Member is attending or participating in his or her official capacity;

vi. food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or their political subdivisions or by the government of a foreign country, as long as these benefits are received by the Member during the performance of their duties of office; and

vii. sponsorships and donations for community events organized or run by a Member or a third party on behalf of a Member.

d. Except for political contributions allowable by law, Members must never accept gifts or benefits provided by a registered lobbyist, or their lobbyist client or employer.

Disclosure Requirements

e. Members must provide the Integrity Commissioner with a quarterly Disclosure Statement identifying the receipt of any gift or benefit connected to the performance of the Member's duties of office, which has a value of $50 or greater, with the exception of gifts falling under 3.c.i., iii., or iv., above. The Disclosure Statement must identify the following:

i. the nature of the gift or benefit;

ii. its source and date of receipt;

iii. the circumstances under which the gift was given or received;

iv. the gift's estimated value; and

v. what the recipient intends to do with the gift.

f. Disclosure Statements provided under this rule will be a matter of public record.

Commentary

- *This section prohibits Members of Council from receiving any gift or benefit connected with their duties as a Member of Council, with some limited exceptions.*
- *Under the Code, Members are not allowed to accept any gift or benefit that might reasonably be seen to have been given to influence them.*
- *If the person or entity offering the gift or benefit is seeking or is likely in the future to seek the Member's support in the exercise of a duty or function of the Member's office, then the Member must refuse it. This applies to all organizations, including non-profit and charitable organizations.*
- *Members are not only prohibited from accepting gifts and benefits directly but also indirectly. This means, for example, that gifts that do not pass the acceptability test cannot be accepted by the Member's staff on the Member's behalf or in the Member's stead.*
- *This rule gives clear guidance to Members and the public about which gifts are unacceptable. The rule is intended to reassure the public that Members are not receiving gifts from people or businesses who might be trying to influence them, whether or not that is the donor's actual intention.*
- *The Code lists a number of circumstances in which acceptance of a gift will generally not be considered a violation of Rule 3.a (see Rule 3.c.i.-vii.). Included in this is where such gifts or benefits are "received as a normal expression of courtesy or protocol".*
- *Light refreshments given in the context of an official interaction with a lobbyist where the Member is not able to obtain refreshments at their own cost may be considered a normal expression of courtesy or protocol or within the customary standards of hospitality that normally accompany a Member's position and therefore acceptable.*
- *Members are, however, always cautioned to seek advice from the Integrity Commissioner to provide guidance on specific situations.*

- *Items of token value, such as pins, pens, notepads, key chains or baseball caps would generally not reasonably be seen to be given to influence a Member and would therefore usually be acceptable. However, each gift must be assessed on the surrounding circumstances at a given time. Depending on a Member's role and whether the gift is being offered by someone whose interests could be affected by a decision the Member may be called upon to make, it may still be inadvisable to possess an article that clearly advertises a particular donor.*
- *Acceptability and Disclosure are separate requirements.*
- *That is, the $50 threshold at which acceptable gifts or benefits must be publicly declared (Rule 3.e) is not a threshold for their acceptability.*
- *Note that this threshold is lower than the threshold for gift disclosure required by The Municipal Conflict of Interest Act and provides for enhanced transparency to the public about the gifts and benefits a Member has accepted.*
- *Disclosure of gifts to the Integrity Commissioner also serves an educational purpose by giving the Integrity Commissioner an opportunity to have a discussion with the Member as to whether the gift ought to have been accepted.*

4. Use of Influence

Members must not use the influence of their office for purposes other than for the proper exercise of their duties of office.

Commentary

- *The reality of public office is that Members have influence.*
- *They have a responsibility not to use their influence to improperly benefit themselves, their friends, family or associates and must use their influence solely for purposes related to their role as a Member of Council.*
- *This rule is not intended to prohibit the activities in which Members normally engage on behalf of constituents.*
- *The rule with respect to use of influence is a broad rule. It is different than the conflict of interest rule in that it applies to any action taken by a Member to influence matters inside or outside of the City.*
- *For example: Due to the role Members play in relation to planning matters, Members must not use the influence of their office to promote, or appear to promote, particular development proponents outside the confines of the standard development application process.*
- *That said, members of the public must not be concerned with every interaction between a Member of Council and, for example, a developer. "Local governments are the primary decision-makers responsible for land use planning. Members are permitted to escalate issues within the City on behalf of developers or to make statements in favour of development interests, as along as the Member is otherwise in compliance with the Code and the clear rules of engagement in place for dealings between Members of Council and*

developers." Investigation Report regarding the Conduct of Councillor Mark Grimes – Office of the Integrity Commissioner City of Toronto, July 5, 2016, p.37

- *The following sample advice with respect to inappropriate influence is set out in the Annotated version of the Code of Conduct for Members of Council of the City of Toronto and offers guidance to the interpretation of this Code:*

  Q. A member attends an event in her or his Ward celebrating the completion of a significant property development. The property developer asks the Member to pose for a photograph along with other dignitaries attending the event. Should the Member agree?

  A. Inquire as to the use the developer intends to make of the photograph. If the answer is that it will be used for advertising or other promotional purposes, decline the invitation …

  Another example of an improper use of influence could be if a Member of Council participated in a promotional video for a condominium project where it could be established either:

  that appearing in the video and lending their name and title to the project was not a proper use of the Councillor's influence; or

  that the Member of Council, their family, friends or associates, stood to gain a private advantage or benefit from the Member's position in the video including receipt or promise of gifts or benefits.

  Members of Council are not precluded from taking a position that aligns with the commercial interests of a third party. It is not improper for a Member of Council to advocate in favour of a development proponent, for example, in a Council debate as long as the Member does not have a pecuniary interest or is otherwise in contravention of the Code or other regulations. What a Member must avoid, however, is using his or her influence to assist a third party in activities which fall outside the formal processes which have been established by the City.

- *As the Integrity Commissioner for the City of Toronto has reported:*

  "In the context of a planning application, there is a heightened need to avoid endorsements … Members of Council play a significant role in the planning and development application process. They act as community facilitators and contacts for developers, residents and other stakeholders to assist with navigating the planning application process. In addition, they are administrative decision-makers when planning applications come before City Council for approval. When performing their role, Members of Council are required to take positions about various applications that come before them.

  In consideration of the significant official role that Members of Council play in the planning application process, Members of Council must confine their support for developers or applications to the formal processes in which their participation is set out and regulated. When a Member of Council involves himself in advocacy and support of a particular developer outside of the City's process [emphasis added] – in this case in the form of a promotional video – he not only acts in contravention of the Code, but also creates a perception that he has a stake in the interests of the developer that he may or may not actually have. This perception can be damaging to the trust and confidence that the public has in City Council's decision-making processes as it relates to land use planning." Investigation Report regarding the Conduct of Councillor Mark Grimes – Office of the Integrity Commissioner City of Toronto, July 5, 2016, p.32

Application to Fundraising

- *This rule will also apply when Members support community fundraising or special events. Members must ensure that their fundraising efforts are done in a way that is transparent and that does not create a conflict of interest for them.*
- *The concerns that arise from using one's influence for fundraising, even for a good cause, are that requests could be perceived as a way to gain advantage in return for a donation. Alternatively the recipient of the request may feel uncomfortable declining to make a donation.*
- *As has often been pointed out*

  "the problem with using one's influence, even for a good cause, is that such a request can be received in many different ways. The recipient may wish to do business with the City, lobby the City, or be appointed by the City. Alternatively, the individual may work for the City or appear as an advocate for other citizens. The recipient may have made a deputation before committees or community councils. The recipient could take such a request as a way to gain an advantage by making a donation. Alternatively, […] recipients could feel uncomfortable for declining to donate." Former Integrity Commissioner for the City of Toronto Janet Leiper - Report Regarding Conduct of Then Councillor Rob Ford, 2010, p.12.

5. Use of City Staff, Resources and Property

Members must not use or permit the use of their staff, City staff, or City resources or property for purposes other than those connected with the discharge of their duties of office.

Commentary

- *By virtue of their position, Members have access to a wide variety of property, equipment, services and supplies to assist them in the conduct of their duties of office. Members should not use City staff, resources, or property for any purpose other than for carrying out their duties of office.*
- *Example of prohibited conduct: using City email address and work computer to send invitations to a Member's private event.*

6. Election-Related Activity

a. Members are required to follow all applicable election legislation and By-laws, including without limitation, *The City of Winnipeg Charter*, *The Municipal Councils and School Boards Elections Act* and all relevant City of Winnipeg By-laws.

b. Members must not use the facilities, equipment, supplies, services or other resources of the City (including Members' newsletters or websites linked through the City's website) for any election campaign or campaign-related activities.

c. Members must not use the services of City staff for election-related purposes during hours in which those staff members are in the paid employment of the City.

Commentary

- *During an election, using one's position as a Member of Council to supplement campaign activities gives the Member an unfair advantage over non-Member nominees.*
- *Further, the City must remain neutral during elections. By using City resources for campaign purposes, a Member would be using City support for his or her campaign, in breach of this requirement of neutrality.*
- *To ensure that Members of Council do not receive any undue benefit by virtue of being an incumbent, Members must refrain from using any City-owned resources including but not limited to cell phones, business cards, computers, civic phone numbers, City email addresses, official City photograph and City logo, for election related purposes.*
- *The Integrity Commissioner does not have jurisdiction to receive or investigate complaints regarding alleged contraventions of the Municipal Councils and School Boards Elections Act, or election-related City of Winnipeg By-laws.*

7. Conduct Concerning Staff

a. Members must not directly or indirectly, request, induce, encourage, aid, or permit City staff or their own staff to do something which, if done by the Member, would be a breach of this Code of Conduct.

b. Members must not compel City staff or their own staff to engage in partisan political activities or subject them to reprisal of any kind for refusing to engage in such activities.

c. Members must not use, or attempt to use, their authority for the purpose of intimidating, coercing, or influencing City staff or their own staff with the intent of interfering with such staff's duties.

d. Members must not maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of City staff or their own staff and must at all times show respect for staff's professional capacities.

Commentary

- *Members should not try to circumvent the Code by asking or suggesting that staff do something that would be unethical for the Members to do themselves.*
- *Members must be respectful of the role of City staff to provide advice which is based on political neutrality and objectivity and without undue influence from any individual Member or faction of Council.*
- *This Rule does not prohibit a Member from expressing criticism in a respectful manner, based on factual matters.*
- *It is inappropriate for a Member to attempt to influence staff to circumvent normal processes in a matter, or overlook deficiencies in a file or application. It is also inappropriate for Members to involve themselves in matters of administration or departmental management*

which fall within the jurisdiction of the Chief Administrative Officer.

8. Respectful Conduct

a. All Members have a duty to treat members of the public, one another, City staff and their own staff with respect and without abuse, harassment, or intimidation.

Harassment includes:

i. any behaviour, whether a single incident or a course of conduct, that a reasonable person should have known would be unwelcome, and that is inappropriate, demeaning, humiliating, embarrassing, or otherwise offensive, including but not limited to:
   a. verbal or written insults, abuse or threats;
   b. racial or ethnic slurs, including racially derogatory nicknames;
   c. leering or other offensive gestures;
   d. bullying; or
   e. patronizing or condescending behaviour; and

ii. objectionable and unwelcome sexual solicitations or advances.

b. While Members may passionately debate issues and promote ideas, they must maintain proper decorum during meetings of: Council, Committees of Council, and boards, agencies or commissions on which they serve as part of their duties of office.

Commentary

- *This Rule applies to a Member's conduct at all times when they are considered to be performing their duties of office.*
- *The goal of a Code of Conduct is to create and support an ethical environment with respect to how Members of Council perform their duties of office, and extends to creating an ethical environment between City Council and staff.*
- *This Rule recognizes that all persons must be treated fairly in the workplace in an environment which is free from discrimination and personal and sexual harassment.*
- *The City's Respectful Workplace Policy does not apply to Members of Council. It is, therefore, important to identify in this Code, what constitutes acceptable conduct for Members.*
- *The rationale for requiring decorum in Council and Committee meetings was well stated in the Commission Report of The Honourable Madam Justice Denise E. Bellamy (Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, 2005):*

  "Ill-mannered behaviour impedes the effectiveness of Council as a decision-making body and diminishes the stature of Council in the eyes of the public."

  "Principled criticism of others' positions is to be expected at times, but it should be delivered respectfully and civilly. Angry or abusive language and personal attacks are inappropriate at all times."

- *This rule is not intended to replace the role performed by the Speaker or any Chair of any committee, board or agency.*
- *Complaints about conduct which occurs during the course of a meeting of Council or of a committee, board or agency should be made in the first instance to the Speaker or Chair of the relevant committee, board or agency.*
- *The Integrity Commissioner will generally not accept a complaint if it is about a Member's conduct if it has already been dealt with by the Speaker or Chair of the relevant committee, board or agency.*

9. Adherence to Council Policies and Procedures

Members must adhere to all By-laws, policies and procedures adopted by Council.

10. Reprisals and Obstruction

a. It is a violation of this Code to obstruct the Integrity Commissioner in the carrying out of his or her duties and responsibilities.

b. No Member shall threaten or undertake any reprisal against a person who makes a complaint under this Code or against a person who provides information to the Integrity Commissioner in any investigation of such a complaint.

Commentary

- *Members of Council must respect the intent of the Code of Conduct and investigations conducted under it.*
- *It is a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his or her responsibilities by, for example, destroying documents or erasing electronic communications or refusing to respond in writing to a Formal Complaint lodged pursuant to the Complaint Protocol passed by Council and attached as Appendix B to the Code.*

F. ENFORCEMENT

1. Annual Meeting with Integrity Commissioner

Members shall meet with the Integrity Commissioner at least once annually in order to discuss their obligations under this Code and under other policies, By-laws or Acts which govern their ethical behaviour.

Commentary

- *Meeting with the Integrity Commissioner at a minimum, on an annual basis ensures that Members regularly refresh their knowledge of their ethical requirements and demonstrates to the public that the Members are committed to acting ethically.*

2. Investigation of Complaints

The Integrity Commissioner may: receive and investigate complaints alleging that the Rules set out in this Code have been breached; make findings; and report to Council, in accordance with the provisions of the Complaint Protocol attached as Appendix B to the Code.

Commentary

- *Investigation of Complaints is an important accountability mechanism for promoting ethical conduct and was stipulated by Council to be part of the Integrity Commissioner's mandate.*

3. Reliance on Advice Provided to Member by Integrity Commissioner

a. Members may seek advice from the Integrity Commissioner in accordance with the provisions of the Advice Protocol attached as Appendix A to the Code.

b. Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as the facts presented by the Member to the Integrity Commissioner were accurate and complete.

Commentary

- *The advisory function is the Integrity Commissioner's most important role and is strengthened by this provision.*
- *Members of Council are encouraged to seek advice from the Integrity Commissioner on a proactive basis.*

4. Sanctions for Misconduct

Where the Integrity Commissioner has determined there has been a violation of the Code, the Integrity Commissioner may recommend to Council that:

i. the Member be reprimanded;

ii. the Member be required to make a public apology;

iii. the Member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;

iv. the Member be removed from a committee; and/or

v. the Mayor be requested to remove the Member from his or her position as Chair of a committee.

Commentary

- *This section gives the Integrity Commissioner discretion in recommending sanctions. It is available to the Integrity Commissioner to recommend no sanctions be imposed if, for example, the circumstances do not warrant sanctions, or if a Member has already taken steps*

to address his or her unethical conduct.

- *There is currently limited legislative authority for imposing sanctions.*
- *Ultimately the decision whether and to what extent sanctions will be imposed must be made by Council.*
- *However "Council should consider the integrity commissioner's recommendations very seriously and depart from them only where they are manifestly unfit." Commission Report of The Honourable Madam Justice Denise E. Bellamy (Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, 2005)*

Adopted: [date]

Appendix A to the Code of Conduct
for Members of Council

ADVICE PROTOCOL FOR MEMBERS OF COUNCIL

Circumstances and Effect of Seeking Advice from the Integrity Commissioner

1. Any written advice given by the Integrity Commissioner ("Commissioner") to a Member of Council ("Member") binds the Commissioner in any subsequent consideration of the Member's conduct in the same matter, as long as the facts presented by the Member to the Commissioner were accurate and complete.

2. The Commissioner may, on his or her own initiative, reconsider advice that has been provided to a Member. The Commissioner will let the Member know that the advice is being reconsidered, but that the original advice will stand unless and until amended.

3. Advice that is general in nature will only be given informally by the Commissioner and is subject to change by the Commissioner when applied to specific facts that may not have been known at the time the general advice was provided.

4. The Commissioner will not provide advice as to whether or not the Member's past conduct was in contravention of the Code of Conduct, but will provide information, in a general way, as to how the Member may govern himself or herself, in similar situations in the future.

5. It is inappropriate for a Member to use advice sought from the Commissioner to attack or malign the behaviour of another Member.

6. Communication between the Commissioner and a Member is confidential, subject to any disclosure required by law, except:

    a. The fact that advice was sought may be reported by the Commissioner in a report following the investigation of a complaint; and

    b. At any time, should a portion of the advice provided by the Commissioner to a Member be made public, the Commissioner shall be at liberty to make public the entirety of the advice that was provided.

7. The Commissioner may include a summary of advice given to Members, in a general and anonymous way, in Annual Reports to Council and in commentary on the Commissioner's website.

Appendix B to the Code of Conduct
for Members of Council

COMPLAINT PROTOCOL

Part A: Informal Complaint Procedure

1. Any individual who identifies or witnesses behaviour or activity by a Member of Council ("Member"), which includes the Mayor, that they believe contravenes the Rules of the Code of Conduct may seek to address the prohibited behaviour or activity in the following way:

   a) contact the Member directly to advise that the behaviour or activity appears to contravene the Code of Conduct, identifing the specific provision(s) of the Code of Conduct that may have been contravened, in an attempt to settle or resolve the matter;

   b) ask the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to settle or resolve the matter;

   c) if applicable:

      i) confirm to the Member that his or her response is satisfactory, or

      ii) advise the Member that his or her response is unsatisfactory; or

   d) consider the need to pursue the matter in accordance with the Formal Complaint Procedure set out in Part B of this Protocol, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

2. Individuals are encouraged to pursue the Informal Complaint Procedure as the first means of remedying behaviour or activity of a Member that they believe violates the Code of Conduct.

3. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal complaint resolution process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint.

4. The Integrity Commissioner has the discretion to withdraw from any informal complaint resolution process at any time.

5. Any participation by the Integrity Commissioner in an informal complaint resolution process will not preclude the Integrity Commissioner from undertaking a formal investigation of the same matter pursuant to the Formal Complaint Procedure set out in Part B of this Protocol.

6. The Informal Complaint Process is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure.

Part B: Formal Complaint Procedure

Formal Complaints

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Rules of the Code of Conduct may file a formal complaint requesting an investigation by the Integrity Commissioner as to whether the Member has contravened the Rules of the Code of Conduct, in accordance with the following requirements:

   a. all complaints shall be in writing on the prescribed Formal Complaint Form (attached to this Part) and shall be dated and signed by an identifiable individual; and

   b. all complaints shall be sent directly to the Integrity Commissioner by mail, e-mail or fax to the address or number identified on the Integrity Commissioner's webpage: http://www.winnipeg.ca/council/integritycommissioner/default.stm.

2. The details of the complaint will be disclosed to the respondent Member, however, the name of the person complaining will only be disclosed in circumstances where fairness requires such disclosure.

3. Council may, by resolution, direct the Integrity Commissioner to investigate any matter that is within the Integrity Commissioner's jurisdiction and the Integrity Commissioner will, upon receiving such resolution, commence the investigation in accordance with the provisions of this Protocol.

Time for Filing Complaints

4. Complaints must generally be made: (a) within 60 days after the date of conduct giving rise to the complaint; or (b) within 60 days after the Complainant became aware of the conduct giving rise to the complaint. Subject to section 25 of this Part, the campaign period prior to a general Municipal election will not be counted as part of the 60 days in which a complaint may be made.

   The "campaign period" is as defined in section 31(1) of *The City of Winnipeg Charter*.

5. The Integrity Commissioner may accept a complaint filed after the expiry of the time limit set out in section 4 if the Integrity Commissioner is satisfied that:

   a. the delay was incurred in good faith;

   b. it is in the public interest to conduct an investigation, or give consideration to whether or not to conduct an investigation; and

   c. no substantial prejudice will result to any person because of the delay.

Complaints Outside Integrity Commissioner's Jurisdiction

6. If the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or if the complaint relates to matters addressed by other legislation or complaint

procedure under another City of Winnipeg procedure, policy or rule, the Integrity Commissioner shall advise the Complainant in writing as follows:

Criminal Matter

(a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code* of Canada, the Complainant shall be advised that if the Complainant wishes to pursue any such allegation, the Complainant must pursue it with the appropriate police service;

The Municipal Council Conflict of Interest Act

(b) If the complaint on its face is regarding non-compliance with *The Municipal Council Conflict of Interest Act* as opposed to the Code of Conduct, the Complainant shall be advised to review the matter with the Complainant's own legal counsel;

Freedom of Information and Protection of Privacy Act

(c) If the complaint is more appropriately addressed under the *Freedom of Information and Protection of Privacy Act*, the Complainant shall be advised that the matter must be referred to the City of Winnipeg Clerk to deal with under the City's access and privacy policies under the legislation;

Other Legislation or Procedure, Policy or Rule Applies

(d) If the complaint appears to fall within the scope of other legislation or another procedure, policy or rule of the City, the Complainant shall be advised to pursue the matter under such legislation or procedure, policy or rule;

Lack of Jurisdiction

(e) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the Complainant shall be so advised and provided with any additional referrals as the Integrity Commissioner considers appropriate; and

Matter Already Pending

(f) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to *The Municipal Council Conflict of Interest Act*, a complaint under the Manitoba *Human Rights Code* or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in his or her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

Refusal to Conduct Investigation

7. If the Integrity Commissioner is of the opinion that:

a. the conduct described in the complaint is not within the Integrity Commissioner's jurisdiction to investigate; or

b. the complaint is frivolous, vexatious or not made in good faith; or

c. there are no grounds or insufficient grounds for an investigation, or that it is unlikely that the complaint will succeed;

the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation.

8. The Integrity Commissioner may request further information from the Complainant before deciding whether or not there are reasonable grounds for believing that a violation of the Code of Conduct may have occurred and an investigation is warranted.

9. In the event that the Integrity Commissioner receives multiple complaints concerning the same matter, the Commissioner may combine those complaints for the purposes of investigating and reporting to Council.

10. The Integrity Commissioner, in considering a complaint, may have regard to all of the Rules of the Code of Conduct and not simply those which the Complainant identifies as having been contravened.

Opportunities for Resolution

11. Following receipt and review of a Formal Complaint, or at any time during an investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter informally may be successfully pursued, and both the Complainant and the Member agree, efforts may be pursued to achieve such an informal resolution.

Investigation

12. If a complaint is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner will investigate the complaint as follows:

    a. provide the Member whose conduct is in question with the details of the complaint and any supporting material determined to be relevant by the Integrity Commissioner, by mail or e-mail, together with a notice of intention to conduct an investigation.

    b. request that the Member provide a written response to the complaint, any supporting documents or materials, and a list of relevant witnesses, within ten (10) days.

    c. provide a copy of the Member's response to the Complainant with a request that any written reply be provided by the Complainant within ten (10) days. A copy of that reply will be provided to the Member.

13. The Integrity Commissioner may seek information from anyone relevant to the complaint and may receive such information either in person or in writing.

14. The Integrity Commissioner may review all books, financial records, electronic data, processing records, reports, files and any other papers, things or property belonging to or used by the City of Winnipeg and enter any relevant City of Winnipeg work location which the Integrity Commissioner deems necessary for the purpose of the investigation.

15. Where, during the course of an investigation, the Integrity Commissioner becomes aware of any additional complaint which is within the Integrity Commissioner's jurisdiction and is not rejected by the Integrity Commissioner on one of the grounds listed in section 7, the Integrity Commissioner shall, upon notice to the Member, investigate such complaint in accordance with the provisions of this Protocol.

Reporting

16. Where the Integrity Commissioner finds that the complaint has been sustained either in whole or in part, the Integrity Commissioner shall report to Council outlining his or her findings and any recommended corrective action or sanctions.

17. The Integrity Commissioner shall not issue a report to Council which finds a violation of the Code of Conduct on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and recommended sanction and an opportunity either in person or in writing to comment to the Integrity Commissioner on the proposed finding and recommended sanction. In preparing his or her report to Council, the Integrity Commissioner shall take the Member's response into consideration and shall attach a copy of the response to his or her report.

18. The Complainant will be provided with a copy of the Integrity Commissioner's report to Council when the report is placed on the agenda for the meeting at which the report will be considered.

19. The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.

20. If the Integrity Commissioner determines that there has been no breach of the Code of Conduct, he or she will advise the Member and the Complainant of that determination, and will generally, not report to Council about his or her determination, except as part of an Annual Report.

Member not Blameworthy

21. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct, or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence, or an error of judgment made in good faith, the Integrity Commissioner may so state in a report to Council and may make appropriate recommendations.

Duty of Council

22. When Council receives a report from the Integrity Commissioner following an investigation it shall consider and act on that report forthwith.

23. A Member who is the subject of an Integrity Commissioner's report following an investigation shall be entitled to make a delegation to Council on the matter, but shall not participate in the deliberations of Council or in any vote of Council on the matter. The ability to make such delegation, however, is subject to the provisions of *The Municipal Council Conflict of Interest Act* which prohibit a Member from influencing Council in any way where the Member has a pecuniary interest in the matter.

Commentary

- *The decision whether to accept the Integrity Commissioner's findings that the Code has been breached and decisions as to what sanction, if any, should be imposed, are decisions which are ultimately made by Council.*
- *However, "Council should consider the integrity commissioner's recommendations very seriously and depart from them only where they are manifestly unfit." Commission Report of The Honourable Madam Justice Denise E. Bellamy (Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, 2005)*
- *As a matter of procedural fairness, Members of Council who are the subject of a report to Council which finds they have breached the Code of Conduct must be allowed an opportunity to speak to the matter before Council responds to the report.*
- *The ability to make a presentation to Council is subject to the provisions of The Municipal Council Conflict of Interest Act which prohibit a Member of Council from influencing Council in any way where the Member has a pecuniary conflict of interest whether direct or indirect. Accordingly, where Council is considering recommendations from the Integrity Commissioner in which the Member has a direct or indirect pecuniary interest, the Member will not be able to make a presentation to Council.*

Election Year

24. During the campaign period, with respect to complaints alleging that a Member of Council has breached the Code of Conduct, the Integrity Commissioner will:

    a. not receive any complaints;

    b. suspend any ongoing investigation of a previously filed complaint; and

    c. not submit any report to Council, of findings with respect to complaints.

    The "campaign period" is as defined in section 31(1) of *The City of Winnipeg Charter*.

25. Following the Municipal election, investigations or reports concerning the conduct of a former Member while that individual was still a Member, will only be commenced or continued at the request of Council, by resolution.

Commentary

- *The rationale behind these provisions is to prevent undue influence and interference in the electoral process including preventing the complaint process from being used as a political or campaign tool.*

Public Disclosure

26. The Integrity Commissioner and every person acting under the Integrity Commissioner's jurisdiction shall preserve confidentiality of the investigation process, except as required by law and as required by this Protocol.

Commentary

- *"Confidentiality during an investigation is important to protect innocent respondents, as well as to de-politicize the process." Robert Wechsler: City Ethics.Org – Commentary to Model Ethics Code, p.49/59*
- *It should be emphasized that confidentiality here refers solely to the proceedings themselves, including their existence, not to the underlying accusations. For example, a person can tell the world that they have a concern about a Member of Council, subject, of course, to the laws of defamation but cannot say that they have asked the Integrity Commissioner to investigate a complaint that makes a given accusation.*

27. If the Integrity Commissioner finds that the Code of Conduct has been breached, the identity of the Member who is the subject of the complaint shall not be treated as confidential.

28. All reports from the Integrity Commissioner to Council will be made available to the public.

Formal Complaint Form

Confidential Complainant Information:

Name: _____

Permanent Residence: _____

Mailing Address: _____

Phone Number: _____

Email Address: _____

Note: The name of the Complainant will only be disclosed in circumstances where fairness requires disclosure or where required by law. The Complainant will be notified in advance if their identity is to be disclosed.

Member(s) of Council in Question: _____

Rule(s) of the Code of Conduct believed to have been contravened: _____

Outline the details of your Complaint. Include names of any witnesses. Use additional pages as necessary. Provide clear and specific information. If you refer to any documents please attach copies of these documents to this Complaint Form:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

Complainant **Date**