



The Corporation of the Town of Tecumseh

Corporate Services & Clerk

To: Policies and Priorities Committee

From: Laura Moy, Director Corporate Services & Clerk

Date to Council: January 28, 2020

Report Number: CS-2020-03

Subject: Code of Conduct for Members of Council and Local Boards Review

Recommendations

It is recommended:

That CS-2020-03 entitled “Code of Conduct for Members of Council and Local Boards Review” (Code of Conduct), **be received;**

And that the revised Code of Conduct as appended to CS-2020-03, **be accepted;**

And further that a by-law to approve the revised Code of Conduct, for Council’s consideration at their next regularly scheduled meeting to be held on Tuesday, February 11, 2020, **be prepared.**

Background

Bill 68, *Modernizing Ontario’s Municipal Legislation Act, 2017* (Bill 68), which amended the *Municipal Act, 2001* (Municipal Act), *Municipal Conflict of Interest Act* (MCIA) and the *Municipal Elections Act* (MEA), received Royal Assent in May 2017. The changes to these Acts came into effect in phases.

The purpose of this report is to advise on the changes to the Municipal Act regarding the new requirement for municipalities to appoint an Integrity Commissioner (IC), or make arrangements for all of the responsibilities of an IC as set out in the Municipal Act to be provided by an IC of another municipality, and to establish codes of conduct for members of the council of the municipality and of its local boards. Previously, appointing an IC and establishing a code of conduct were discretionary.

This report will also recommend amendments to the Code of Conduct for Members of Council, Committees and Local Boards Policy No. 63, as adopted by By-law No. 2014-01, in order to conform with the amendments to the Municipal Act.

Comments

Section 223.3 (1) of the Municipal Act authorizes a municipality to appoint an IC who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the MCIA to members of council and of local boards. (Note: these sections of the MCIA are in respect to disclosure by a member, when present at a meeting, to disclose any pecuniary interest, direct or indirect, in a matter.)
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality, or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the MCIA.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's code of conduct for members of council and members of local boards, and about the MCIA.

The functions of the IC were expanded to include investigations under the MCIA in respect of members' of council, and members' of local boards, responsibility to a disclosure of pecuniary interest, whether direct or indirect, when attending a meeting. Additionally, a member may seek advice from the IC respecting their obligations under the MCIA.

The Municipal Act also now requires, in subsection 223.3 (6), a municipality to indemnify and save harmless the IC, or any person acting under the instructions of the IC, for costs reasonably incurred by either of them in connection with the defence of a proceeding, if the proceeding relates to an act done in good faith in the performance, or intended performance, of a duty or authority under the Municipal Act, or a by-law passed under the Municipal Act; or an alleged neglect or default in the performance in good faith of the duty or authority.

Municipalities, and their local boards, must give the IC such information as the IC believes to be necessary for an inquiry. The IC is also entitled to have free access to all books, accounts,

financial records, electronic data processing records, reports, files and all other papers, things or property belonging to, or used by the municipality, or a local board that the IC believes to be necessary for an inquiry.

New provisions are now also included in the Municipal Act in subsections (7) and (8) which relate to the Municipal Election. These sections state that if the IC has not completed an inquiry before nomination day for a regular election, as set out in the MEA, the IC shall terminate the inquiry on that day. If an inquiry is terminated under subsection (7), the IC shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, the person or entity who made the request, or the member or former member whose conduct is concerned, makes a written request to the IC that the inquiry be commenced.

The added functions of the IC in respect of investigations under the MCIA are contained in Section 223.4.1 of the Municipal Act and permit a person demonstrably acting in the public interest to apply in writing to the IC for an inquiry to be carried out concerning an alleged contravention of sections 5, 5.1 or 5.2 of the MCIA by a member of council, or local board.

No application for an inquiry under this section can be made to the IC during the period of time starting on nomination day for a regular election and ending on voting day in a regular election.

An application may only be made within six weeks after the applicant became aware of the alleged contravention. Except that an application may be made more than six weeks after the applicant became aware of the alleged contravention if both of the following are satisfied:

1. The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election and ending on voting day in a regular election, and
2. The applicant applies to the IC within six weeks after the day after voting day in a regular election.

The application must set out the reasons for believing that the member has contravened the above-referenced sections of the MCIA and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application.

The IC may conduct such inquiry as he or she considers necessary and the IC may have a public meeting to discuss the inquiry. The IC must complete the inquiry within 180 days after receiving the completed application, unless the inquiry is terminated, due to a regular election.

Upon completion of the inquiry, the IC may, if he or she considers it appropriate, apply to a judge under Section 8 of the MCIA for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of MCIA. The IC must advise the applicant if he or she will not be making an application to a judge and, after deciding whether or not to apply to a judge, the IC is required to publish written reasons for the decision.

The IC's costs of applying to a judge are to be paid by the municipality, if a member of council is alleged to have contravened the MCIA, and in the case of a member of a local board, the local board.

ICs may now also elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009* to conduct the inquiry, which includes powers to summons witnesses and to hold hearings open to the public.

The Code of Conduct adopted in January 2014 under By-law No. 2014-01 has been reviewed in consultation with the Town's IC, Robert Swayze. Changes recommended to the Code to conform with the Municipal Act are shown on the revised draft Code of Conduct attached as **Appendix 1**. The recommended revisions include the acquisition of duties under the MCIA by the IC, as well as revisions to how the IC will conduct an investigation based upon best practices. References to 'Committee' have been removed, as the definition of 'Local Board' in the Municipal Act includes committees.

Consultations

Robert Swayze, Integrity Commissioner

Financial Implications

There are no financial implications to the revisions to the Code of Conduct. Funding is included in the annual budget for any costs that may be incurred for services rendered by the IC.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

**Attachment
Number**

**Attachment
Name**

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Code of Conduct for Members of Council and Local Boards with recommended revisions