

DATE: Monday, January 23, 2023

TO: Honourable Mayor and Members of Council

CC: Nick Spensieri, City Manager

FROM: Suzanne Craig, Integrity Commissioner and Lobbyist Registrar

RE: Conduct Respecting Staff – Public Meetings

I am writing to you today in fulfillment of my role under subsection 223.3(1).7 of the Municipal Act, 2001, which states:

223.3 of the *Municipal Act*, 2001,

(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council...and about the *Municipal Conflict of Interest Act*.

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

When participating in deliberations and discussions at meetings of council, including Committee of the Whole, Working Sessions and Public Meetings, Members are reminded of their obligations under the *Code of Ethical Conduct for Members of Council and Local Boards* (the "Code"), in particular those rules that underpin the integrity of Members of Council and City staff.

The Relevant Provisions of the Code of Conduct

Rule No. 1– Key Principles

(a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner.

The *Commentary* to this rule underscores that Members carry out their official City activities in a way that will foster and enhance respect for government and above all, demonstrate respect for members of the public.

- (i) Members shall fulfill their roles as set out in the Municipal Act and respect the role of staff in the administration of business affairs of the City of Vaughan

The *Commentary* to this rule requires each Member's understanding that under the direction of the City Manager, staff serve the Council as a whole, and the combined interests of all Members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity. The corollary to this obligation of Members of Council is found in staff's obligations under the Employee Code of Conduct and the standards of those staff who are also members of professional regulatory bodies (i.e., City lawyers, Planners, Engineers, and Enforcement Officers). In application of staff's ethical obligations, they follow strict rules on how employees conduct themselves and agree to adhere to rules of personal integrity, ethics, honesty and diligence in performing their duties.

Rule No. 8 – Conduct At Council Meetings and Local Board Meetings

1. Members shall conduct themselves at meetings with decorum. Respect for deputants and for fellow Members and staff requires that all Members show courtesy and not distract from the business of the Council or local board during presentations and when other members have the floor.

The *Commentary* to this rule includes the statement that a Members recognizes the importance of cooperation and strives to create an atmosphere during Council and Committee meetings that is conducive to solving the issues before Council, listening to various points of view and using respectful language and behaviour in relation to all those in attendance.

Rule No. 16 – Conduct Respecting Staff

This rule has 4 components, including:

4. No Member shall maliciously or falsely impugn or injure the professional or ethical reputation, or the prospects or practice of staff and all Members shall show respect for the professional capacities of the staff of the City.

The *Commentary* to this rule underscores that City staff provide a high quality of advice and work to the City based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power or their personal opinions.

These rules, read together, highlight the requirement that each Member of Council must avoid comments that denigrate the decisions of the City or that cast aspersions on the integrity of Members of Council or City staff. Healthy and respectful debate and disagreement is part of the democratic foundation of a municipal Council. However, it is a violation of the Code of Conduct to make comments that do not enhance respect for City decisions or to make utterance that impugn the reputation of staff and suggest illegal activity of staff.

Integrity Commissioner Comments Regarding the Application of Relevant Code Rules to Discussions at Meetings of Council

Although the role of individual members of Council are not set out in the *Municipal Act, 2001*, their role can be discerned from the articulation of the role of council as set out in section 224 of the *Municipal Act, 2001*, which include, *inter alia*, to represent the public and to consider the well-being and interests of the municipality to ensure that administrative policies, practices and procedures are in place to implement the decisions of council and to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management or the municipality.

The Council Staff Relations Policy (the “Policy”) provides assurance to City Council and the public that City Staff is neutral and professional. Importantly, it contains mechanisms to raise concerns about serious misconduct or concerns about staff behaviour. Under the Policy and the Code, a Member shall not publicly criticize staff or allege misconduct of staff. Should a Member have any issue with respect to any staff member or department, such issue shall be referred to the City Manager, in private.

Under the Code rules, a Member shall respect the role of staff in the administration of the business and governmental affairs of the City and acknowledge and appreciate that staff:

- a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise.

In a 2018 Code of Conduct Investigation Report of the former Integrity Commissioner of the City of Toronto¹, the following observations were made:

1. When questioning staff reports or actions, members of Council should ensure that their comments are in the nature of "fair comment" and related to the substance of the report and not the authors or their suggested motivations. This means that members of Council can raise concerns about whether information is correct, or whether staff considered certain information, such as local concerns. The Toronto public service is prepared (and expect) to respond to these kinds of questions from City Council. City Council discharges its duties when it is robustly and fairly scrutinizing the information and advice that staff provide.
2. However, members of Council should not publicly state or imply that a particular public servant, or a group of public servants, acted for political or private motivations or in a way that is negligent or that failed to meet professional standards. Serious concerns about staff misconduct should be raised with the public servant's supervisor, the City Manager, the applicable governing board, or as a last resort, the Auditor General through the disclosure of wrongdoing mechanism in the TPS Bylaw. However, these types of statements will not normally be tolerated by the Speaker or a Chair in a Council proceeding and could result in a Councillor being found to have contravened the Code of Conduct.

¹ City of Toronto Integrity Commissioner, *Byford v Matlow*, 2018 ONMIC 5

3. Extra scrutiny should be applied to public statements about the public service that are broadcast in mass media. This is because staff do not have the same platform as members of Council to engage in the public arena. (They do not have a political accountability.)

I concur with the statements set out in the above-noted City of Toronto Integrity Commissioner Report.

I remind all Members of Council that it is not a Code contravention to have an opinion, even a strong one and a dissenting perspective that differs from the perspective of your colleagues on Council. However, the Code requires Members must avoid making statements that may injure the professional reputation of City staff and integrity of Council.

A Member does not have limitless free speech. A Member's utterances at meetings are limited by the rules of the Code of Conduct, in particular statements that would discredit or compromise the integrity of Council, City Staff and the municipality during meetings, made in bad faith or that suggest wrongdoing or illegal activity. When expressing individual views, Members must adhere to the rules of the Code. Failure to follow the agreed upon rules contained in the Code may result in the Member being named in a Code complaint and the matter being formally investigated by the Integrity Commissioner.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Suzanne Craig', is written over a faint, circular blue stamp or watermark.

Suzanne Craig
Integrity Commissioner and Lobbyist Registrar