

**REPORT ON COMPLAINT OF VIOLATION OF CODE OF CONDUCT FOR MEMBERS OF COUNCIL**

**Recommendation**

The Integrity Commissioner recommends:

1. THAT Council implement the recommendations contained in the Supplemental Report of the External Auditor regarding the Mayor's City-Related Expenses for 2007. In particular, that Council:

In reference to City of Vaughan Policy 01.14 "Council Budget/Expenditure Policy",

- a) require all Corporate and Council expenditures to have detailed supporting documentation and original receipts from Members of Council,
- b) consider appropriate action to be taken where there has been a finding of non-compliance,

**Economic Impact**

The adoption of the recommendations in this Report will have no economic impact.

**Communications Plan**

**Purpose**

To report on a complaint by a private citizen who complained that Mayor Linda Jackson violated sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Code of Ethics and Conduct for Members of Council, Policy 01.06 – 96-03-25 (the "Code") and in so doing, breached the ethical rules of conduct, which include the obligation to act with dignity, in the best interests of all people in the municipality, without consideration for personal gain.

**Background**

On September 25, 2008, the previous Integrity Commissioner Mr. William Weissglas, confirmed receipt of a formal complaint and advised the complainant that a file had been opened with the Office of the Integrity Commissioner.

On October 10, 2008, Mr. Weissglas forwarded a letter to both the Complainant and Mayor Jackson indicating his intention to suspend the investigation. Mr. Weissglas gave as his reasons for suspending the investigation, that a substantial part of the issues which gave rise to the complaint were already being investigated under a separate process commenced under the authority of the Audit Committee. He further reasoned that this Committee of Council had directed that the issues raised by the complainant be investigated by an external auditor.

Mr. Weissglas notified both the Complainant and Mayor Jackson that pursuant to the interim Complaint Protocol For Council Code of Conduct, the Integrity Commissioner

would conclude the investigation once Council had made its final deliberations on the External Auditor's Report and if, the facts of the report merit continuation of the investigation.

A Supplemental Report regarding the Mayor's City-Related Expenses for 2007 was presented by Ernst & Young LLP to Vaughan City Council in June 2009. After reading both the December 5, 2008, original Ernst & Young Report and the Supplemental Report, I found that the substantive issues common to this complaint had in large part been addressed by the external audit process. Although Council's final deliberation of the Supplemental Report has not been concluded and City staff have been directed to report on implementation, it is my belief that the complainant has had to wait far too long for a response since the filing of the original complaint. Since the receipt of the original complaint, Vaughan's first Integrity Commissioner resigned and a new Integrity Commissioner was appointed, a Supplemental External Auditor Report was drafted and submitted and further discussion by Council and policy development by City staff will take place. The private citizen should not be made to wait any further for a much-deserved conclusion to the complaint.

### **Complaint #9-25-08**

On September 22, 2008, a private citizen filed a formal complaint with the former Integrity Commissioner for the City of Vaughan, Mr. William Weissglas. The complaint was received by the City of Vaughan Clerks Department. In the complaint, the private citizen (the "Complainant") asked the Office of the Integrity Commissioner to investigate into a series of questions regarding the use by Mayor Linda Jackson ( "Mayor Jackson") of the Mayor's City-Related expense account. The Complainant alleged that Mayor Jackson had breached several sections of the Code of Ethics and Conduct for Members of Council, 1996 (the "Code").

The complaint centered on the contents of a letter that the Complainant had forwarded originally to the City Manager of the City of Vaughan. The Complainant's letter, dated May 2, 2008, was forwarded by the City Manager to the Audit and Operational Review Committee (the "Audit Committee") and was subsequently included as a confidential written submission Item 6 to the May 6, 2008 Audit Committee meeting.

On September 25, 2008, Mr. William Weissglas confirmed receipt of the formal complaint and advised that a complaint file had been opened with the Office of the Integrity Commissioner.

This complaint is governed by the interim Complaint Protocol which was adopted by Vaughan City Council at its meeting held on June 23, 2008, in addition to the Code of Ethics and Conduct for Members of Council (Policy 01.06 – 96-03-25).

On October 10, 2008, Mr. Weissglas forwarded a letter to both the Complainant and Mayor Jackson indicating his intention to suspend the investigation. Mr. Weissglas stated in his letter that:

Both the Complainant in her complaint, and the Mayor in her October 6<sup>th</sup>, 2008 letter have indicated that a substantial part of the facts/issues which give rise to the present complaint are being investigated under another process, i.e. the Audit Committee has directed that the facts/issues raised by the complainant be investigated by an external

auditor. The referral to the external auditor of the complainant's original complaint questions appears to address the investigation of the procedural irregularities alleged by the complainant. The auditor's report should also clarify other facts/issues involved in the complainant's original complaint and in this complaint.

Section 6(3) of the interim Complaint Protocol headed "Matter Already Pending", gives the Integrity Commissioner sole discretion to suspend any investigation of a complaint that is already the subject matter of an outstanding complaint under another process. The investigation can be suspended pending the results of that other process.

Mr. Weissglas reasoned that the external Auditor's Report, the findings of facts, as well as, Council's deliberation on the report would likely clarify and address many, if not all of the issues raised in the current complaint.

Mr. Weissglas notified both the Complainant and Mayor Jackson that pursuant to the interim Complaint Protocol, the Integrity Commissioner would conclude the investigation **once** Council had made its final deliberations on the external Auditor's Report and **if**, the facts of the report merit continuation of the investigation.

In the complaint, the Complainant alleged that Mayor Jackson breached, or may have breached sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Code of Ethics and Conduct for Members of Council , Policy 01.06 – 96-03-25 (the "Code"), which require an elected Member of Council to conform to ethical rules of conduct, which include the obligation to act with dignity, in the best interests of all people in the municipality, without consideration for personal gain.

### **The Relevant Provisions of the interim Complaint Protocol for the Code of Ethics and Conduct for Members of Council**

Sections 3 and 5 of the interim Complaint Protocol, in addition to the Council direction of June 11, 2007, provide the Integrity Commissioner's jurisdiction to investigate into the alleged contraventions of the Code:

#### **Part A: Informal Complaint Procedure**

Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behavior or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council – (the "Code of Conduct") may address the prohibited behavior or activity themselves as follows.

#### **Part B: Formal Complaint Procedure**

Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behavior or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council , may file a formal complaint with the required information on the prescribed affidavit.

In its final incarnation of the complaint, the Complainant alleges breaches of ss. 1-9 of the Code. Although the current Code does not contain text headings for each rule, I have put each under headings and I have extrapolated text from the body of each section, in an attempt to paraphrase the principle embodied in rule and underscore, what I believe to be the original intent of the authors of the Code.

**Rules 1-9 provide:**

**Rule 1 - Public Trustee**

A Councillor believes in the dignity and worth of the services rendered by local government. He/she also has a deep sense of his/her own social responsibility as a public trustee and is confident that he/she can serve to the advantage of the municipality.

**Rule 2 - Best Interests of the Public**

A Councillor recognizes that the chief function of local government at all times is to serve the best interests of all the people in the municipality.

**Rule 3 - Accountability**

As an elected official, a municipal Councillor has a responsibility to carry out his/her duties to the best of his/her ability and to be accountable for his/her decisions and actions.

**Rule 4 - Integrity**

A Councillor is governed by the highest ideals of honour and integrity in all his/her public relationships.

**Rule 5 - Without Personal Gain**

The decisions that a Councillor makes will be based on the proper best interest of the municipality, without consideration of personal gain. He/she believes that personal glorification or profit secured through the misuses of his/her position or through misuse of public time is dishonest and therefore unacceptable.

**Rule 6 - Council as decision-maker**

A Councillor recognizes that the decision-making authority for the municipality lies with the council, not an individual councillor. Within Council, a Councillor will make his/her position known, and will listen to and respect those whose opinions differ from his/her own. Further, Councillors recognize that once a majority decision has been reached, it becomes Council's decision.

**Rule 7 - Public Trust**

A Councillor will not violate the public trust by discussing matters of municipal concern in an [in]appropriate place, or in an unsuitable manner.

**Rule 8 - Cooperation and Confidence**

A Councillor recognizes the importance of cooperation, and endeavours to earn the respect and confidence of the public, the administrative staff, as well as his/her colleagues.

**Rule 9 - Collaboration**

A Councillor strives to create an atmosphere within council conducive to solving the many problems that they will be required to address. He/she is willing to work as part of a team; to contribute constructively; to compromise when necessary; and to share the knowledge of his/her experience with new Councillors.

The esteemed previous Integrity Commissioner advised both the Complainant and Mayor Jackson that “[o]nce [he had] been notified that Council [had] made its final deliberations

on the external auditor's report, and the facts merit continuation of this investigation [emphasis added], [he] will write to the respondent...and request...the Complainant provide [the] office with a written response to the allegations made by the Complainant within 10 days. When [he receives] the Mayor's written response [he] will send it to the Complainant, and pursuant to section 10(1)b of the Complaint Protocol, [he] will request that the Complainant provide a written reply within 10 days. The investigation will then proceed."

It is my position that the facts of the findings of the External Auditor's Report do not give merit to the continuation of this investigation. Although Council has not conducted a final deliberation on the recommendations of the External Auditor and although the interim findings by the previous Integrity Commissioner who had carriage of the complaint advised that this office would make a decision on whether to go forward with the investigation **after** final Council deliberation of the External Auditor's report, it is my position that the substantive issues common to this complaint and the audit process have in large part, if not entirely been addressed and the Complainant should not have to wait further conclusion.

In the interests of clarity, it would be beneficial to briefly go over how the Ernst & Young Report substantively addressed the issues subject of this complaint.

### **Facts**

On December 5, 2008, the External Auditor Ernst & Young attended the City of Vaughan's Audit Committee to present the Ernst & Young LLP report dated December 3, 2008 regarding the Mayor's City-Related Expenses for 2007 (the "2008 Report"). At the December 2008 meeting, members of the Audit Committee raised a series of questions. As a result, a supplemental report was prepared by the External Auditor to present final findings.

The Supplemental Report of the External Auditor found the following:

The City policies that were breached include:

- Policy 01.14 Council Budget/Expenditure Policy – City funds were expended for personal use;
- Policy 01.14 Council Budget/Expenditure Policy – the Mayor failed to retain supporting invoices and documentation relating to cellular telephone bills;
- Policy 01.14 Council Budget/Expenditure Policy – the Mayor failed to retain or provide receipts and supporting documentation relating to business meals, explanation relating to a meal expense;
- City of Vaughan Purchasing Policy – the Mayor made a purchase of substantial value and did not follow the City's policies with respect to such purchases.

\*Ernst & Young Report

The Supplemental Report of the External Auditor made the following recommendations that relate to this complaint:

- Council should confirm that the intent of Policy 01.14 was to include "fuel";

- Council should amend Policy 01.14 “Council Budget/Expenditure Policy relating to cellular phones to require that the summary page of the bill indicating the cellular phone number and total charges relating to that number be submitted in support of the amount claimed in the expense report;
- Council should attempt to clarify the wording in relation to business meals to add the requirement of the submission of the original detailed restaurant invoice and the transaction slip. “Also ‘supporting documentation’ should be expanded to include who attended and the business purpose”.
- “Council should consider whether a policy is required with respect to the Mayor’s practice of entertaining staff members and their spouses at an annual holiday party in December paid for with funds from the Mayor’s budget”.

\* Ernst & Young Report

The scope of the 2008 Report included:

- A full and comprehensive forensic audit on all of the Mayor’s expenses for 2007, with full and detailed explanations;
- Whether the city’s policies were violated (if any);
- Whether personal expenditures were claimed as business expenses;
- Whether the Mayor’s expenses have been properly disclosed to the public;
- Whether the Mayor’s use of public funds were appropriately used to perform her duties in the interest of the City;
- To answer the issues raised in the two letters of the resident ...;
- To issue a full and comprehensive report with the results which may be available to the public.

\* Ernst & Young Report

**Integrity Commissioner’s ruling:**

Both the 2008 Report and the Supplemental Report regarding the Mayor’s City-related expenses for 2007 addressed the questions originally posed in the letter to the City Manager dated May 2, 2008 from the Complainant, as well as the issues subject of this complaint.

As a general proposition, a Complainant who alleges that a Member of Council has contravened the Code must establish the allegations asserted in the complaint. This is to say that the Complainant who accuses a Member of Council of contravening the Code bears the onus of proving that the breaches put forward in the complaint took place.

Allegations of contraventions of the Code will always be taken seriously by this Office. It is for this reason that such allegations must be accompanied by clear and convincing evidence.

As previously stated, it is my position that the facts of the findings of the External Auditor’s Report, do not give merit to the continuation of this investigation by the Office of the Integrity Commissioner.

In making a determination of findings of the facts brought forward, I can accept all of the information brought forward, some of the information or none. I may also draw reasonable conclusions based on the information that I accept.

However, although I have decided, within my discretionary authority, to not continue this investigation, I believe that the Complainant's efforts in bringing forward the issues subject of the complaint deserve an analysis, particularly given the fact that the City of Vaughan is in the process of transition from a 1996 Code to a new Code of Ethical Conduct for Members of Council. Although I have made a determination that the facts that came forward in the External Auditor's Report address in large part the issues of this complaint and therefore, there is, in my view, no merit to the continuation of the investigation by my Office, a review of the issues brought forward in the complaint in relation to their application to the rules of the current Code will serve as guidance as the City moves forward with the new Code of Ethical Conduct. I will therefore review the rules of the Code and briefly apply them to the issues contained in the complaint.

### **Review and Discussion:**

#### **Rules 1-9 of the Code**

##### **Rule 1**

Section 1 of the Code requires a Member of Council to act as a public trustee in serving to the advantage of the municipality. In reference to acting as a public trustee, it is reasonable to attribute this term to Councillors when they make financial decisions. In making financial decisions, Council's role as a public trustee is to safeguard the taxpayer's money and make the best use of scarce financial resources. Council as a decision-making body sets the budget of the City in an amount that is available and required to provide the services to the residents of Vaughan and fulfill the responsibilities of the City.

At such time as the budget is approved by Council, public funds are allocated for the delivery of specific City-related services.

Policy 01.14 Council Budget/Expenditure Policy enshrines the Council-approved rules that City funds shall not be expended for personal use, although not explicitly stating that public funds may not be committed or expended for personal use, non-City business use, campaign or election related purposes. The Supplemental Report of the External Auditor in relation to Mayor Jackson's City office expenses found that Policy 01.14 was breached. I agree with these findings.

Rule 6 (3) (f) of the interim Complaint Protocol provides for the complaint to be held in abeyance pending the result of another process. Although the process of the external audit has not had final deliberation by Council, insofar as responses by City staff to the External Auditor's recommendations are still pending, I am sufficiently confident that the parallel process has reached a conclusion on the substantive matters subject of this complaint.

The current Code does not provide for any penalties in the event of a finding of non-compliance with the sections/rules. However, the interim Complaint Protocol provides for a determination by the Integrity Commissioner that a complaint is sustained in whole or in part, with a provision for penalties, as well as, a finding that the complaint is not sustained.

At the conclusion of a complaint investigation, the Integrity Commissioner may make recommendations on sanctions to Council. The sanctions that may be imposed are a reprimand or suspension of the remuneration paid to the member of Council.

The Integrity Commissioner also has the authority to find that although a breach of the Code may have taken place, “ *a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith*”. Such a finding may be accompanied by appropriate recommendations pursuant to the *Municipal Act*.

Of relevance, we can look to the Ontario Municipal Councillor’s Guide for guidance. Page 6 of the Guide states:

#### Stewardship Role

... council has the responsibility for ensuring that the municipality’s financial and administrative resources are being used as efficiently as possible, and in a way that is consistent with council’s objectives. To refer back to section 224 of the *Municipal Act, 2001*, part of your role, together with the rest of council, is to ensure that administrative policies, practices and procedures are in place to implement the decisions of council and to maintain the financial integrity and long-term viability of the municipality. All of this can be done through good policy and monitoring practices.

It is my view that safeguarding the financial integrity of the municipality is one of the core elements that a member of Council must include in guiding their decision-making. Upon review, I find that although the actions subject of this complaint are extremely serious, I must recognize that based on the information that I have received to date, it does not appear as though Mayor Jackson went about intentionally trying to contravene the City’s Council Budget/Expenditure Policy to achieve personal gain.

#### **Rule 2**

Regarding Rule 2, it appears that there are gaps in the Council Budget/Expenditure Policy in relation to reimbursement of funds and the use of the City Amex card. Insofar as Mayor Jackson has intimated that her understanding of the expense declaration was “while in the conduct of business related to...” and insofar as the City is in the process of responding to the recommendations of the External Auditor to amend Policy 01.14 by adding a “Guiding Principles” section, Mayor Jackson appears to have made significant errors in judgment, albeit in good faith, in relation to the use of the City Amex card.

#### **Rule 3**

Submission of receipts and explanations relating to Councillors’ expenses are the corollary to accountability and public trust when we talk about public money. A municipality has powers of public spending expressly granted for essential and declared purposes. Tantamount to the accountability of an elected official, is transparency in decision-making through the provision of access to general information to the public. In Dr. Ann Cavoukian’s address to the provincial legislature in 1996, the Ontario Information and Privacy Commissioner (IPC), urged municipal and provincial government organizations in Ontario to make a concerted effort towards ensuring that the public has full access to government spending records. The IPC went on to say that “[t]he right of citizens to access government-held information is essential in order to hold elected and appointed officials accountable to the people they serve”.



All Ontario municipalities, including the City of Vaughan, are subject to closed-meetings rules. A strong commitment to openness, accountability and transparency must form the foundation of the life of a municipality. This commitment has been strengthened by Provincial efforts to make municipal government understandable and approachable for citizens. To this end, the Province of Ontario has set the rules defining when a council, local board or a committee is allowed to go into a closed meeting.

These rules are found in the Municipal Act 2001. Closed meetings are part of good government when these rules are honoured. From time to time municipal councils, local boards and their committees must meet in closed session. The purpose of such a closed meeting is to receive information or give direction on the following specific topics:

- the security of the property of the municipality or local board;
- personal matters about an identifiable individual, including municipal or local board employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations;
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- a matter in respect of which a council, local board, committee or other body may hold a closed meeting under another Act;
- a matter relating to the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act if the council, board, commission or other body is the head of an institution for the purposes of that Act;
- the meeting is held for educating and training and no member discusses or deals with a matter in a way that materially advances the business decision-making of the council

Upon review, it is my understanding that a resolution was passed by the Audit and Operational Review Committee that the April 14, 2008 meeting be held in open session at 11:13 a.m., move to closed session at 11:15 a.m., resume open session at 12:37 p.m. and conclude at 12:40 p.m. I further understand that the meeting went into closed session in accordance with the City of Vaughan Procedural By-Law.

Any person may request that an investigation be undertaken respecting whether the City of Vaughan, one of its local boards or committees has complied with closed meeting rules outlined in the Municipal Act, 2001, as amended or the applicable Procedural By-Law during the closed part of a meeting.

Based on the information that I have received to date, Mayor Jackson has indicated her intentions to post her office expenses online and has cooperated fully and to the best of her ability when information relating to her office expenses has been requested either through formal freedom of information requests or by the members of the Audit and Operational Review Committee. With reference to disclosure of information at the Audit Committee Mayor Jackson appears to have followed the protocol prescribed by the City of Vaughan Procedural By-Law.

#### **Rule 4**

The current Code requires that a Councillor be governed by the highest ideals of honour and integrity in all his/her public relationships. The draft Code of Ethical Conduct adopted in principle by Vaughan City Council on June 30, 2009 is premised on the principle that elected officials of the City of Vaughan have and recognize their obligation to not only obey the law, but to go beyond the minimum standards of behaviour and act in a manner that is of the highest ethical ideals so that their conduct will bear the closest public scrutiny.

Based on the information that I have received to date, Mayor Jackson has not submitted receipts for certain office expenses incurred. This contravenes the Policy 01.14 which states that “[i]t shall be the responsibility of each Member of Council to retain supporting invoices and documentation” for reimbursement of expenditures for cellular telephone charges, 407 charges and mileage. Although the failure to submit receipts can be attributed to the Mayor’s reliance on her staff to ensure compliance with City policy, each Member of Council is ultimately responsible for compliance with office expense monitoring and reporting. Mayor Jackson appears to have contravened the City policy through inadvertence and error in judgment in good faith.

#### **Rule 5**

Based on the information that I have received to date, Mayor Jackson appears to have made inappropriate use of the City Amex card. The mere fact that the office of Mayor affords the Member use of a corporate purchasing card, presupposes that the use of the card will be limited to purchases directly related to facilitating the execution of the office’s legislative responsibilities. Any personal use of the corporate card infers personal gain, whether intentional or not.

However, there does not appear to have been a rigid enforcement of the City of Vaughan Council Budget/Expenditure Policy nor a strict prohibition on expenditure and/or commitment for personal use. It is my understanding that the City’s Internal Auditor will be bringing forward a report to the Audit and Operational Review Committee with recommendations on tighter rules around accountability and amendments to the Council Budget/Expenditure Policy.

#### **Rule 6**

Rule 6 of the current Code contains the principle of supremacy of Council decision-making. Based on the information that I have received, Mayor Jackson appears to have adhered to the resolutions of the Audit Committee and Council. The Audit and Operational Review Committee received a confidential response from Mayor Jackson. Subsequently, the Committee’s direction was recorded as follows:

*“The Audit and Operational Review Committee recommends:*

- *That the confidential memorandum from Mayor Jackson, dated May 6, 2008, be received;*
- *That the confidential written submission of [a named individual]], dated May 2, 2008, be received;*
- *That all documentation related to this matter be referred to an external forensic auditor to bring back a comprehensive report before the summer hiatus if possible, and that this be coordinated by the City’s Internal Auditor; and*

- *That the deputation of [ a named individual], be received.”*

A resolution was passed by the Audit and Operational Review Committee in Open Session prior to the meeting being closed to the public, pursuant to s.2.4 of the Procedural By-Law.

Upon review, Mayor Jackson does not appear to have contravened Rule 6 of the Code.

#### **Rule 7**

I reiterate here that the submission of receipts and explanations relating to Councillors' expenses are the corollary to accountability and public trust when we talk about public money. Further, based on the information and facts available to me, a resolution of the Audit and Operational Review Committee was passed in Open Session prior to the meeting being closed to the public in accordance with section 2.4 of the Procedural By-Law No. 140-2008 – June 11/08. Authority to make a determination of whether a municipality has breached closed-meeting rules lies with the City-appointed closed-meeting investigator or in the absence of such an appointment, the Ombudsman of Ontario.

The facts that I have before me to date appear to point to Mayor Jackson having adhered to resolutions of the Audit Committee and Council.

#### **Rule 8**

Rule 8 of the current Code states that a Councillor recognizes the importance of cooperation, and endeavours to earn the respect and confidence of the public, the administrative staff, as well as his/her colleagues.

The questions relating to Mayor Jackson's office expenditures were posed by a member of the public to Mr. Michael DeAngelis, City Manager, City of Vaughan. Based on the information that I have received to date, Mr. DeAngelis addressed the questions relating to the Mayor's expenses in a public report. Based on the facts presented to me, Mayor Jackson appears to have cooperated with and adhered to the resolutions of the Audit and Operational Review Committee and Council in relation to responding to questions on the office expenses of the Mayor's Office. While any contravention of the Council Budget/Expenditure Policy by a Member of Council will erode public trust and confidence in the City's decision-making, it appears that the actions of Mayor Jackson in relation to responding to questions in this matter, while not made directly to any member of the public, were in compliance with and cooperative with resolutions of the City's Committees and Council.

#### **Rule 9**

This Rule speaks to collaboration among all Members of Council with a view to solving problems required to effectively direct the municipality. Based on the information that I have received to date, the City Manager together with the members of the Audit and Operational Review Committee, the City's Internal Auditor and members of Council as a whole, have collaborated in accordance with the Procedural By-Law to address the questions on the matter of the Mayor's use of public funds allocated to her offices expenses.

Mayor Jackson appears to have collaborated with the City administration, members of the Audit and Operational Review Committee and City Council in responding to the questions put forward by the member of the public.

### **Relationship to Vaughan Vision 2020/Strategic Plan**

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

### **Regional Implications**

This report has no Regional implications.

### **Conclusion**

Although the current Code does not deal with penalties, section 12(3) of the interim Complaint Protocol provides the authority to the Integrity Commissioner, upon concluding a complaint investigation, to impose either a reprimand or a suspension of the remuneration paid to the member in respect of his or her services as a member of council for a period of up to 90 days. The investigation of this complaint was suspended by the previous Integrity Commissioner, pending Council's final deliberation of the External Auditor's Report of the Mayor's City Related Expenses for 2007.

Even though I have decided not to continue with the investigation of this complaint, the issues raised by the Complainant in relation to the Mayor's management of City-Related Expenses for 2007, demonstrate a lack of awareness of current Council policies and a serious lapse in judgement.

It is imperative that Members of Council of the City of Vaughan take their obligations under the current and future Code of Conduct seriously. At any level of government, the public's perception of ethical government decision-making is critical to the reputation of the government organization and to the level of public trust and confidence. This perception shapes the public's opinion about government officials' personal integrity, honesty and ultimately, the government's performance.

Had I found that the findings of the External Auditor's report gave merit to the continuation of this investigation, based on the information I have received to date, I would likely have come to a conclusion that there had been contraventions of rules 1, 2, 4 and 5 of the current Code of Ethics and Conduct for Members of Council. Had there been merit in the continuation of the investigation, there also appear to be several gaps in the Council Budget/Expenditure Policy which may have led to a finding that the contraventions were committed through inadvertence or error of judgment made in good faith.

Lastly, notwithstanding the fact that I have decided that the findings of the External Auditor do not give merit to the continuation of this investigation, I very strongly recommend the need for amendments to the City's Council Budget/Expenditure Policy and the adoption and implementation of the recommendations contained in the Supplemental Report of Ernst & Young. In particular, I concur with the findings of the External Auditor's Report that there is a need to strengthen the requirement for submission of receipts by a Member of Council and to provide explanatory notes for

expenses to guarantee that the funds were required and committed in the exercise of the Member of Council's official duties.

I commend the Complainant for the diligence and commitment in bringing forward this complaint and effectively working to hold elected officials accountable to a more open and transparent decision-making framework.

**Attachments**

- 1 Code of Ethics and Conduct for Members of Council Policy No.: 01.06
- 2 Complaint Protocol for Council Code of Conduct

**Report prepared by:**

Suzanne Craig  
Integrity Commissioner

**NOTE: This policy is currently under review.**

ATTACHMENT #1

<b>SECTION: COUNCIL</b>	<b>POLICY NO.: 01.06</b>
CNL: 96.03.25(22)	
<b>DEPARTMENT:</b> MAYOR & MEMBERS OF COUNCIL	<b>SUBJECT:</b> CODE OF ETHICS AND CONDUCT FOR MEMBERS OF COUNCIL

Council resolved:

That the following Code of Ethics and Conduct for Councillors, as prepared by the Alberta Association of Municipal Districts and Counties, be approved:

1. A councillor believes in the dignity and worth of the services rendered by local government. He/she also has a deep sense of his/her own social responsibility as a public trustee and is confident that he/she can serve to the advantage of the municipality.
2. A councillor recognizes that the chief function of local government at all times is to serve the best interests of all the people in the municipality.
3. As an elected official, a municipal councillor has a responsibility to carry out his/her duties to the best of his/her ability and to be accountable for his/her decisions and actions.
4. A councillor is governed by the highest ideals of honour and integrity in all his/her public and personal relationships.
5. The decisions that a councillor makes will be based on the proper best interest of the municipality, without consideration of personal gain. He/she believes that personal glorification or profit secured through the misuses of his/her position or through misuse of public time is dishonest and therefore unacceptable.
6. A councillor recognizes that the decision-making authority for the municipality lies with the council, not an individual councillor. Within council, a councillor will make his/her position known, and will listen to and respect those whose opinions differ from his/her own. Further, councillors recognize that once a majority decision has been reached, it becomes council's decision.
7. A councillor will not violate the public trust by discussing matters of municipal concern in an appropriate place, or in an unsuitable manner.
8. A councillor recognizes the importance of cooperation, and endeavours to earn the respect and confidence of the public, the administrative staff, as well as his/her colleagues.

**CITY OF VAUGHAN  
POLICY MANUAL**

<b>SECTION: COUNCIL</b>	<b>POLICY NO.: 01.06</b> CNL.96.03.25(22)
<b>DEPARTMENT: MAYOR &amp; MEMBERS OF COUNCIL</b>	<b>SUBJECT: CODE OF ETHICS AND CONDUCT FOR MEMBERS OF COUNCIL</b>

9. A councillor strives to create an atmosphere within council conducive to solving the many problems that they will be required to address. He/she is willing to work as part of a team; to contribute constructively; to compromise when necessary; and to share the knowledge of his/her experience with new councillors.

## **COMPLAINT PROTOCOL FOR COUNCIL CODE OF CONDUCT**

Authority: *Municipal Act*, 2001 S.O. 2001, (as amended) CHAPTER 25 Ss. 223.3 to 223.8 and as adopted by Council at its meeting held on June 23, 2008.

1. Until such time as a new/revised Council Code of Conduct is adopted, only complaints relating to behaviour or activity occurring subsequent to April 23, 2007 will be addressed by this procedure. From the date of adoption of a new/revised Code of Conduct forward, only complaints relating to behaviour or activity occurring subsequent to that date of adoption will be addressed by this procedure.
2. After September 30, 2008 all complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.

### **PART A: INFORMAL COMPLAINT PROCEDURE**

3. Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behaviour or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council - (the "Code of Conduct") may address the prohibited behaviour or activity themselves as follows:
  - (1) Advise the member that the behaviour or activity appears to contravene the Code of Conduct;
  - (2) Encourage the member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behavior or activity.
  - (3) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
  - (4) Request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the member in an attempt to resolve the issue. If applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and  

At the earliest possible juncture, the member whose behaviour is complained of will be advised of an inquiry to the Integrity Commissioner under the Informal and Complaint Procedure, and any complainant will be so advised;
  - (5) Pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
4. Individuals are encouraged to pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that they believe violates the Code of Conduct. With the consent of both the complaining individual and the member, the Integrity Commissioner may participate in any informal



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. However, it is not a precondition or a prerequisite that those complaining to pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B.

## **PART B: FORMAL COMPLAINT PROCEDURE**

### **Formal Complaints**

5. Individuals (including City employees, members of public or members of Council or local boards) who identify or witness behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct for members of Council, may file a formal complaint with the required information on the proscribed affidavit (see page 6 of this procedure):
  - (1) All complaints must be made on the Complaints Form/Affidavit and shall be dated and signed by an identifiable individual.
  - (2) The complaint must include an explanation for why the issue raised may be a contravention of Code of Conduct. Evidence in support of the allegation must also be included.
  - (3) Witnesses in support of the allegation must be named on the complaint form.
  - (4) The complaint form will be disclosed to the respondent and to others who may be involved in carrying out this procedure.
  - (5) The complaint form/affidavit must include the name of the alleged violator, the provision of the Code of Conduct allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.
  - (6) Receipt of formal complaints will be acknowledged in writing.

### **Filing of Complaint and Classification by Integrity Commissioner**

6.
  - (1) The complaint shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection 3.
  - (2) If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a Complaint Form/Affidavit is received.

### **NOT A CODE OF CONDUCT VIOLATION**

- (3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another Council policy, 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.

## **MUNICIPAL CONFLICT OF INTEREST ACT**

- (b) If the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel.

## **MFIPPA**

- (c) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy review.

## **OTHER POLICY APPLIES**

- (d) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

## **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 reasons and referrals as the Integrity Commissioner considers appropriate.

## **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, Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion suspend any investigation pending the result of the other process.

## **Periodic Reports to Council**

- 7. The Integrity Commissioner shall report to Council semi-annually during the first year, and annually thereafter. In his/her report to Council, he/she shall report on all complaints received and on their disposition.

## **Refusal to Conduct Investigation**

- 8. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, and where this becomes apparent in the course of an investigation, terminate the investigation.

### **Opportunities for Resolution**

9. Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the member agree, efforts may be pursued to achieve an informal resolution.

### **Investigation**

10. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
  - (a) give the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten days; and
  - (b) give a copy of the response provided to the complainant with a request for a written reply within ten days.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (3) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.

### **No Complaint Prior to Election**

11. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after June 30 in any year in which a regular municipal election will be held. The time elapsed between June 30 in a regular municipal election year and the inaugural meeting shall not be included in calculation of the six (6) months referred to in section 2.

### **Recommendation Report**

12. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties the date the report will be available.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.

- (3) Pursuant to the *Municipal Act* the municipality may impose either of the following penalties on a member of council if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:
  - (a) A reprimand;
  - (b) Suspension of the remuneration paid to the member in respect of his or her services as a member of council for a period of up to 90 days.
13. 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 the report and may make appropriate recommendations pursuant to the *Municipal Act*.
14. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.

#### **Report to Council**

15. Upon receipt of a report, the Clerk shall process the report for the next meeting of Councils' Committee of the Whole.

#### **No Reports Prior to Election**

16. Notwithstanding section 12 or any other provision of this Protocol, the Integrity Commissioner shall not make any report to Council or to any other person after the last Committee of the Whole meeting of June in any year in which a regular municipal election is to be held, until following the date of the inaugural meeting.

#### **Duty of Council**

17. Council shall consider and respond to the report within 45 days after the day the report is presented to it {except longer in summer hiatus}.

#### **Public Disclosure**

18. (1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
- (2) At the time of the Integrity Commissioner's report to Council, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.
- (3) All reports from the Integrity Commissioner to Council will be made available to the public.

Please see Complaint Form/Affidavit below.