



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: April 14, 2008
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VanRIMS No.: 08-2200-20
Meeting Date: May 15, 2008

TO: Standing Committee on Planning and Environment

FROM: City Clerk

SUBJECT: Roles, Relationships and Responsibilities Review - Follow Up on the Code of Conduct

CONSIDERATION

- A. THAT Council adopt the recommended language put forward by staff regarding sections 5.3, 8.1, 9.5, 9.8, 10.18, and 11.3 of the City's Code of Conduct.
- B. THAT Council request that the Province of British Columbia amend the *Vancouver Charter* to include the necessary and appropriate authorities regarding a Code of Conduct to:
 - i. allow a body or panel the power to investigate alleged breaches of the Code of Conduct,
 - ii. make recommendations to Council on the enforcement of the Code of Conduct,
 - iii. allow Council the authority to impose sanctions on members of Council including those listed in section 11.6 of the Code of Conduct with respect to breaches, and
 - iv. provide for an appeal process where a Council member receives a sanction.

CITY MANAGER'S COMMENTS

The City Manager put forward the foregoing for Council's CONSIDERATION.

COUNCIL POLICY

There is no applicable Council policy.

PURPOSE

This report provides amended wording to the Code of Conduct to ensure that it complies with the *Vancouver Charter* and other existing laws and collective agreements. It also responds to Council's request for information about the feasibility of establishing a three-person panel to assist the Mayor and Council with investigating complaints about alleged breaches, and options available for reviewing alleged breaches of the Code by the Mayor.

BACKGROUND

At the Regular Meeting of Council on January 17, 2006 Council approved the terms of reference for the Roles, Relationships and Responsibilities Review and established a committee of community members to undertake the Review. As part of the Review, the Committee developed a proposed Code of Conduct to apply to Council, advisory bodies and City staff.

On July 20, 2006 at the Standing Committee on Planning and Environment, Council considered the recommendations put forward by the Review Committee. At that time Council adopted in principle the Code of Conduct put forward by the Review Committee and approved the following changes to the wording of the Code:

5.3, Page 29 of the Report: Council officials, staff and advisory body members have a duty of fidelity to the City and must refrain from making public statements that are demeaning or disparaging to the individuals responsible for the administration of the City.

8.1, Page 33 of the Report: Staff members enjoy broad political freedoms and should be able to engage in democratic politics with few restrictions. However, such broad freedoms must be exercised so as not to call into question their ability to perform their public duties in a professional and impartial manner.

9.5, Page 34 of the Report: Staff and advisory body members must not accept any gift or personal benefit given because of the individual's position. This includes gifts and personal benefits of a token value such as bottles of alcohol, free or subsidized meals, invitations to social functions organized by groups or community organizations, ties, and scarves.

10.18, page 36 of the Report: Advisory bodies must not inappropriately direct or influence, or attempt to inappropriately direct or influence, any staff in the exercise of their duties or functions; and

FURTHER THAT this clause be accompanied by a legal definition of "appropriate" and "inappropriate".

11.3, Page 37 of the Report: Alleged breaches in the Code of Conduct by Council officials, and advisory body officials should be reported in writing to the Mayor, and a response to the allegation of breaching of the Code of Conduct will be requested from the Council official or advisory body official accused of breaching the Code of Conduct before a response is considered.

The Code of Conduct and the Council approved changes were referred to the City Manager to recommend any necessary changes to ensure compliance with the Vancouver Charter and other existing laws and collective agreements.

In addition to the above, Council resolved the following:

THAT Council request the City Manager determine the feasibility of the development of an independent 3-person panel which would be appointed by Council, to act as advisory to the Mayor on fulfilling his duties respecting the Code of Conduct. This panel would be unanimously appointed by the entire Council. If necessary, the City Manager will recommend amendments to 11.2 to 11.6 of the proposed Code of Conduct; and

FURTHER THAT Council request the City Manager to report back on options, including the proposed independent 3-person panel, for reviewing complaints and recommending action, regarding alleged breaches of the Code of Conduct by the Mayor.

DISCUSSION

As requested by Council in the above mentioned Council-approved motions, staff are providing the following information relative to the Code of Conduct:

1. Amendments and compliance with existing laws and collective agreements
2. Establishment of an independent 3-person panel
3. Options for Reviewing Alleged Breaches of the Code by the Mayor

1. Amendments and Compliance with Existing Laws, Collective Agreements

Staff reviewed the Code and the amendments put forward by Council at the above meeting. Staff advice is as follows:

- Section 5.3, Page 29 of the Report
Council approved amended wording for section 5.3 as set out below. No changes are necessary.

Council Approved Language	Staff Recommended Language
Council officials, staff and advisory body members have a duty of fidelity to the City and must refrain from making public statements that are demeaning or disparaging to the individuals responsible for the administration of the City.	No change.

- Section 8.1, Page 33 of the Report
The language approved by Council is below. Staff recommend replacing ‘public’ with ‘employment’ as the term ‘public’ duties could be too broadly construed and could impinge on staff’s political freedoms.

Council Approved Language	Staff Recommended Language
Staff members enjoy broad political freedoms and should be able to engage in democratic politics with few restrictions. However, such broad freedoms must be exercised so as not to call into question their ability to perform their public duties in a professional and impartial manner.	Staff members enjoy broad political freedoms and should be able to engage in democratic politics with few restrictions. However, such broad freedoms must be exercised so as not to call into question their ability to perform their employment duties in a professional and impartial manner.

- Section 9.5, Page 34 of the Report
At the July 2006 meeting, Council approved the wording of section 9.5 as proposed by the Review Committee with the exception that ‘chocolates’ be removed as an example of a gift or personal benefit of token value. Upon reviewing the language approved by Council at that time, staff are proposing that the language be edited to better communicate the intent of this section as approved by Council.

Staff are proposing two additional changes. First, staff recommend the exclusion of ‘bottles of alcohol’ as a gift or personal benefit of token value. By doing so, staff and advisory body members are not to accept alcohol as a gift or personal benefit under any circumstance.

Further, staff recommend the inclusion of business meetings and functions as being occasions where it is acceptable to receive a gift or personal benefit provided that there is no conflict of interest as set out in the Code.

Council Approved Language	Staff Recommended Language
<p>Staff and advisory body members must not accept any gift or personal benefit given because of the individual’s position. This includes gifts and personal benefits of a token value such as bottles of alcohol, free or subsidized meals, invitations to social functions organized by groups or community organizations, ties, and scarves.</p> <p>Staff and advisory body members may accept a gift or personal benefit received as an incident of protocol or as a City representative on speaking engagements, technical presentations, or other related activities.</p>	<p>Staff and advisory body members must not accept any gift or personal benefit given because of the individual’s position. However, staff and advisory body members may accept a gift or personal benefit received as an incident of protocol or as a City representative on speaking engagements, technical presentations, business meetings and functions where there is no conflict of interest as set out in s7.1 of this Code, or other related activities.</p> <p>Gifts and personal benefits includes items of a token value such as free or subsidized meals, invitations to social</p>

	functions organized by groups or community organizations, ties, and scarves.
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- Section 9.8, Page 34 of the Report

It should be noted that if Council approves the staff recommended language for section 9.5 (that is, the inclusion of 'business meetings and functions where there is not conflict of interest...'), a similar change should be made to s.9.8 which addresses the handling of gifts having a value of over \$200.

Council Approved Language	Staff Recommended Language
Gifts with a value of over \$200 presented to staff or advisory body members being paid to represent the City on speaking engagements, technical presentations, or other related activities must be turned over to the City Clerk for safekeeping or disposition.	Gifts with a value of over \$200 presented to staff or advisory body members being paid to represent the City on speaking engagements, technical presentations, business meetings and functions where there is no conflict of interest as set out in s7.1 of this Code , or other related activities must be turned over to the City Clerk for safekeeping or disposition.

- Section 10.18, Page 36 of the Report
Council had asked for a legal definition of "appropriate" and "inappropriate". Such definitions are not feasible. Staff believe the intent of Council in this section is to ensure that advisory body members do not act beyond their mandates or beyond the principles enshrined in the Code. Wording reflecting this understanding is proposed.

Council Approved Language	Staff Recommended Language
Advisory bodies must not inappropriately direct or influence, or attempt to inappropriately direct or influence, any staff in the exercise of their duties or functions.	Advisory body members must not direct or influence, or attempt to direct or influence, any staff in the exercise of their duties or functions except where such direction or influence is necessary to fulfill the specific mandate of the advisory body.

- Section 11.3, Page 37 of the Report
The wording 'before a response is considered' is not easily understood. Staff recommend replacing 'before a response is considered' with 'before an alleged breach is considered'.

Council Approved Language	Staff Recommended Language
Alleged breaches in the Code of Conduct by Council officials, and advisory body officials should be reported in writing to the Mayor, and a response to the	Alleged breaches in the Code of Conduct by Council officials, and advisory body officials should be reported in writing to the Mayor, and a response to the

allegation of breaching of the Code of Conduct will be requested from the Council official or advisory body official accused of breaching the Code of Conduct before a response is considered.	allegation of breaching of the Code of Conduct will be requested from the Council official or advisory body official accused of breaching the Code of Conduct before an alleged breach is considered.
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2. Establishment of an Independent 3-Person Panel

Under the current legislation, the City has very limited authority to set up a panel to consider alleged breaches of the Code of Conduct. Section 159 of the *Vancouver Charter* provides that Council may establish committees and refer any matter to a committee for a report. However, these committees are advisory and do not have investigative powers. They cannot compel information from any parties. As a result, a committee could only consider information presented to them voluntarily which would mean that the information obtained concerning the alleged breach may not be complete.

In order to establish a panel with the appropriate authority and independence to:

- investigate alleged breaches of the Code;
- make the determination of fault; and
- recommend to the Mayor and/or Council a course of action regarding a breach which could include Council imposing sanctions,

Council must request that the Province amend the *Vancouver Charter* to include these provisions.

At present, the *Vancouver Charter* allows Council to impose specific sanctions in specific situations such as matters of disclosure of conflict (s.145), and expulsion of a Council member from a meeting of Council (s.165.5). In order to impose the sanctions listed in section 11.6 of the Code of Conduct, Council must ask the Province to amend the *Charter* to include those sanctions. Further, Council may wish to request that the Province amend the *Charter* to allow Council to impose additional sanctions appropriate to Code of Conduct breaches. Such sanctions could include a suspension from Council for different specified periods of time depending upon the nature of the breach. As well, should Council wish to impose sanctions, Council must request that the *Charter* amendment include a mechanism for Council members whose conduct is in question to be heard.

3. Options for Reviewing Alleged Breaches by the Mayor

The ability to review alleged breaches of the Code by the Mayor is limited by the *Vancouver Charter* as well. Currently, the option available under the *Vancouver Charter* is to engage a barrister. Under section 176 of the *Charter*, Council may engage a barrister to investigate and report upon any alleged misfeasance, breach of trust, or other misconduct by any member of Council, any member of any other administrative body, any employee of the city, or any person having a contract with the city in regard to the duties or obligations of such

member, employees or person to the city. Section 177 sets out the powers of the barrister which includes the power to investigate and report to Council.

As indicated previously, apart from s.176, Council has the authority to establish committees and refer any matter to a committee for a report. However, these committees do not have investigative powers and would be of limited use in the review of alleged breaches to the Code.

If Council wishes to have an independent body investigate and advise Council in the event of alleged breaches of the Code of Conduct by the Mayor, Council must request that the *Vancouver Charter* be amended to allow for an independent body with the appropriate authority and independence as outlined above.

FINANCIAL IMPLICATIONS

There are no financial implications.

CONCLUSION

Staff reviewed the Code of Conduct and the amendments put forward by Council at the July 20, 2006 meeting of the Standing Committee on Planning and Environment, and recommend that Council adopt the wording changes as set out in this report.

With respect to establishing an independent three-person panel, an amendment to *Vancouver Charter* would be required to establish a panel with the necessary independence and authority to investigate alleged breaches to the Code of Conduct, make determination of fault, and make recommendations to Council. Additionally, an amendment to the *Charter* would be required should Council wish to have the ability to impose sanctions - including those listed in section 11.6 of the Code of Conduct. An amendment to impose sanctions should include an appeal mechanism.

Regarding the available options for reviewing alleged breaches of the Code of Conduct by the Mayor, at present the only feasible option is the hiring of a barrister under s. 176 of the *Charter*. The *Charter* enables the barrister to investigate and report to Council.

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