



REPORT

Report Date: January 8, 2021
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Meeting Date: January 20, 2021
[Submit comments to Council](#)

TO: Standing Committee on City Finance and Services

FROM: Francie Connell, Director of Legal Services

SUBJECT: The Code of Conduct for Council Members and Advisory Board Members (BY-LAW NO.____)

RECOMMENDATION

- A. THAT Council direct the City Solicitor to bring forward for enactment, a By-law (the "By-law") substantially in the form attached as Appendix "A" to this Report.
- B. THAT Council direct the City Solicitor to bring forward for approval consequential amendments to the Code of Conduct (Policy Number AE-028-01) to exclude application to Council Members and Advisory Board Members upon enactment of the By-law.
- C. THAT Council direct the City Manager to conduct a selection process after enactment and that a recommended candidate for Integrity Commissioner be put forward for Council's consideration.
- D. THAT Council approve a budget of \$200,000 in 2021 from the \$2 million Council contingency, and direct staff to identify an ongoing funding source from deferral of investments, adjustment to service levels, or additional property tax increases to be considered as part of the 2022 annual budget process.

REPORT SUMMARY

This report recommends the creation of a new Code of Conduct By-Law applicable to Council Members and Advisory Board Members and includes the recommended form of a By-law intended to achieve this purpose.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

On October 1, 2019, Council passed a motion directing staff to review the operation of the current Code of Conduct Policy and report back with recommendations to Council as to how the Code of Conduct could be improved to better promote and enforce ethical standards. In performing the review, Council directed staff to consider best practices in ethics regimes and ethics regimes implemented in other Canadian jurisdictions.

Council additionally directed staff to consider the inclusion of provisions for the reimbursement of legal costs for Mayor and Councillors who are complainants or respondents in a Code of Conduct complaint.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The Acting City Manager recommends approval of the foregoing.

REPORT

Background/Context

In accordance with the motion passed by Council, staff conducted its review of the current Code of Conduct in four phases:

- **Phase 1:** Researched best practices in ethics regimes and Codes of Conduct.
- **Phase 2:** Identified problems and gaps with the City's current Code of Conduct Policy based on staff's experience under the Code of Conduct and research of best practices.
- **Phase 3:** Identified recommendations to improve the City's Current Code of Conduct framework.
- **Phase 4:** Prepared report to Council and a draft By-law.

A proposed By-law has been drafted by the City Solicitor and is attached as Appendix "A". The proposed By-law has been drafted with the intent of implementing the recommendations prepared by staff.

Strategic Analysis

In reviewing best practices, staff reviewed both relevant academic literature and ethics regimes in other large municipalities in Canada. The literature review included various secondary sources including a recent policy paper and model code produced by the Working Group on Responsible Conduct consisting of the Union of British Columbia Municipalities, Local Government Management Association of BC and the Ministry of Community, Sport and Cultural

Development¹ and the recently updated text on Municipal Ethics Regimes by Gregory J. Levine.²

Staff reviewed ethics regimes in Toronto, Montreal, Winnipeg, Saskatoon, Regina and Surrey and considered various elements including provincial legislation, code of conduct by-laws, and establishment of third party ethics officers. Staff additionally considered past practice under the City's current code policy and noted issues that had previously been identified.

There is a clear trend across major municipalities in Canada to retain an independent ethics officer on a set term with a mandate to provide advice, education and to adjudicate disputes. The adoption of an independent ethics officer, commonly referred to as an Ethics or Integrity Commissioner, is beneficial to both individual members and the City as a whole as it provides a knowledgeable third party who can provide advice and education, vet and ultimately adjudicate complaints. In most provinces, this role is mandated by provincial legislation, which has the added benefit of prescribing specific powers which would not otherwise be available. While British Columbia has not enacted any legislation requiring municipalities to have a Code of Conduct or appoint an Integrity Commission, the City of Surrey recently revised its code of conduct and retained an independent ethics officer.

The City's current Code of Conduct policy was originally approved by Council on May 15, 2008 and was last revised on March 1, 2011. In reviewing the current Code, staff identified positive aspects of the current Code and several areas where the current Code fell short of best practices.

As a result of the review, staff identified nine key recommendations:

1. Create a new separate Code of Conduct By-law for Councillors and Advisory Board Members;
2. Retain an independent third party on a set term with mandate for education, advice and investigation;
3. Minimize the overlap between new Code and other applicable legislation;
4. Provide a mechanism for preliminary vetting before determining whether to proceed with formal dispute resolution process;
5. Include informal dispute resolution procedures;
6. Revise current procedures for formal dispute resolution with final decision made by Council;
7. Establish a process for public release of investigation reports;
8. Include provisions for the re-imbusement of legal expenses for Council Members; and
9. Set a procedure for regular review of the Code;

¹ UBCM Executive, *Strengthening BC's Responsible Conduct Framework*, (August 2017), online: https://www.ubcm.ca/assets/Resolutions~and~Policy/Policy/Governance/Working~Group~on~Responsible~Conduct/Policy_Book_1.pdf and UBCM Working Group on Responsible Conduct, *Model Code of Conduct – Getting Started on a Code of Conduct for your Council/Board*, (August 2018), online: https://www.ubcm.ca/assets/Resolutions~and~Policy/Policy/Governance/Working~Group~on~Responsible~Conduct/MODEL_CODE_OF_CONDUCT_Aug2018_FINAL.pdf

² Gregory J. Levine, *Municipal Ethics Regimes*, 2nd Edition (Canada: Municipal World Inc. 2018)

The nine recommendations are in line with the practices in all, or most, of the other municipalities reviewed and represent the current best practices in ethics regimes.

1. Create a new separate Code of Conduct By-law for Councillors and Advisory Board Members

The best practice, both in the academic literature and the approach taken by other municipalities, is to have separate ethics codes for elected officials and staff.

The City's current code applies to Council Members, Advisory Board Members and City staff. A combined code creates difficulties in adequately addressing concerns specific to each group. Given the significant changes required to separate the codes, and the number of problems identified, staff determined that it was not practical to revise the current code and that a new separate code applying only to Council Members and Advisory Body Members was preferable.

The proposed By-Law only applies to Council Members and Advisory Board Members. Staff anticipates providing recommendations to Council to update the Employee Code of Conduct later this year.

2. Retain an independent third party on a set term with mandate for education, advice and investigation;

A comprehensive ethics regime involves educating members about their ethical obligations, providing advice to members on ethical problems, and the enforcement of ethical obligations through a complaint and investigation process.

Educating members about their ethical obligations and providing advice to members on ethical problems are tools that can serve to prevent ethical breaches.³

While the current code allows for the appointment of an independent investigator, the process is cumbersome, requiring consent of all parties, and does not allow the investigator to provide advice and education or build meaningful institutional knowledge.

Retaining an independent integrity commissioner on a set term with a mandate for education, advice and dispute resolution is in line with best practices from other municipalities, facilitates the other recommendations outlined in this report and addresses many of the concerns raised with respect to the current code.

Part 5 of the Proposed By-Law provides for the appointment of an Integrity Commissioner and sets out the process for appointment and the duties and responsibilities associated with this role.

The proposed By-Law provides that Council must appoint an Integrity Commissioner for a term of two years and that the term may be renewed. The appointment requires a 2/3 vote of all Council Members, and cannot be terminated except for cause which similarly requires a 2/3 vote of all Council Members. Provision is also made in the proposed By-law for the appointment of an ad hoc Integrity Commissioner to address complaints that may arise in circumstances in which an Integrity Commissioner has not yet been appointed, or if the appointed Integrity Commissioner is unable to act. The ad hoc appointment may be made by the Mayor, in the

³ Gregory J. Levine, *Municipal Ethics Regimes*, 2nd Edition (Canada: Municipal World Inc, 2018)

case of a complaint made by a member, and by the City Manager in the case of complaint made by a City employee or member of the public.

The Integrity Commissioner is empowered to provide advice and recommendations to either an individual member or Council as a whole regarding the operation of the Code and duties and ethical obligations under the Code.

The Integrity Commissioner is additionally empowered to deliver educational programs to members and to prepare written materials for the city's website to aid the public in understanding the role of the Integrity Commissioner and the ethical obligations and responsibilities of members.

The Integrity Commissioner is empowered to investigate complaints brought against members under the Code. The duties include preliminary vetting of complaints, directing and assisting with informal resolution of complaints, investigating complaints, and preparing a report to Council, including recommendation on an appropriate sanction, if a member has been found to have breached the proposed By-law.

The Integrity Commissioner is also required publish an annual report summarizing their work and submit an annual budget to Council for approval, which is one of the hallmarks of the independence of the role.

3. Minimize the overlap between new Code and other applicable legislation

This recommendation is in line with best practices identified in the academic literature and the current practice under the *Ombudsperson Act*⁴. It also reflects the practice of the ethics regimes in many Canadian municipalities. Ensuring minimum overlap cuts down on duplication and the risk of contradictory findings, prevents trial cases or venue shopping, and prevents adjudicators from having to make findings outside of the scope of the code.

The application section of the proposed By-Law excludes conduct that could lead to disqualification under the *Vancouver Charter*. For example, while the conflicts of interest section of the proposed By-Law requires Council Members to comply with the conflict of interest requirements set out in the *Vancouver Charter*, the proposed By-law only applies to those conflicts for which a Council Member is not subject to disqualification.⁵ The reason being that the *Vancouver Charter* already provides for a formal legal process to address pecuniary conflicts of interest which can result in disqualification.

Similarly, in the complaint process, the Integrity Commissioner is required to reject any complaint that would be more appropriately addressed through another process, such as the Courts, the Office of the Information and Privacy Commissioner or the Human Rights Tribunal.

4. Provide a mechanism for preliminary vetting before determining whether to proceed with formal dispute resolution process

⁴ *Ombudsperson Act*, RSBC 1996, c. 340

⁵ Section 145.2(2)(b) requires a member to declare "another interest in the matter that constitutes a conflict of interest" but is not listed as a grounds for disqualification under section 38(2).

Providing a mechanism for preliminary vetting before proceeding with formal dispute resolution is consistent with the practice in all other jurisdictions reviewed. Preliminary vetting allows the City to address abuse of process of process and limit the time and resources necessary to administer the code, but is best done by an impartial third party to maintain fairness and impartiality in the process. In the municipalities reviewed, this is typically done by allowing an independent ethics officer to vet complaints.

While the current code allows for a third party investigator to dismiss complaints at an early stage, this third party is appointed on an ad hoc basis, and the complaint cannot be dismissed without first going through a cumbersome appointment process.

The proposed By-Law requires the Integrity Commissioner to review each complaint at the initial stage. First, if the complaint is outside the jurisdiction of the code because it relates to matters that would be more appropriately addressed through another statutory process, the Integrity Commissioner must reject the complaint. Second, the Integrity Commissioner must conduct an initial assessment and close the complaint if the Integrity Commissioner determines that:

- a) the complaint is not with respect to a breach of the By-law;
- b) the complaint is frivolous, vexatious, or not made in good faith;
- c) an investigation of the complaint would not be in the public interest;
- d) the investigation is, or might be, hampered, or the member might be prejudiced by the complainant's failure to provide a compliant complaint or otherwise cooperate with the investigation; or
- e) there are no grounds or insufficient grounds for concluding that a violation of the By-law has occurred.

5. Include informal dispute resolution procedures

The City's current Code of Conduct policy does not provide any opportunity for informal resolution of disputes. Rather, all complaints are resolved through a formal investigation process, regardless of the wishes of the parties, which results in greater costs and delay in resolving complaints.

Including informal dispute resolution procedures is consistent with the practice in all other jurisdictions reviewed. Informal dispute resolution is cost effective, timely, and provides significant flexibility. Informal dispute resolution can be tailored to the parties and the nature of their dispute thereby increasing the likelihood of a satisfactory resolution to the complaint.

In addition, the current Code does not allow anonymous complaints to be made thereby requiring every complainant to come forward and participate in a formal investigation process. However, protecting the confidentiality of a complainant must be balanced with the procedural fairness of the respondent to be able to fully answer and respond to allegations of misconduct.

The proposed By-Law provides for an informal dispute resolution process in the complaint process. The Integrity Commission is required to review each complaint and make a determination as to whether it may be resolved informally. Where the Integrity Commissioner determines that it would be appropriate to attempt to resolve the complaint informally, they may

either attempt to resolve the complaint themselves, or refer to the complaint to the Mayor, in the case of a complaint made by a member, or the City Manager, in the case of a complaint made by a City employee or member of the public. The Mayor or City Manager may then attempt to resolve the disputes themselves, or appoint a third party to assist.

In addition, in undertaking an informal dispute resolution process, the proposed By-Law provides significant flexibility to the Integrity Commissioner as to the form of informal dispute resolution. The Integrity Commissioner may consider culturally appropriate, or transformative or restorative justice approaches, and may engage a third party to assist them for this purpose.

With respect to anonymous complaints, the Proposed By-Law provides for a separate Confidential Requests Process. Under this process a person may approach the Integrity Commissioner on a confidential basis and request that the Integrity Commissioner attempt to address an issue directly with a member on an informal basis. While the Integrity Commissioner will know the identity of the individual, the Integrity Commissioner is required to protect the confidentiality of the individual who has made the request. This process does not empower the Integrity Commissioner to conduct an investigation, make any findings or recommend any sanctions. If this process is unsuccessful, there is no automatic trigger to the formal resolution process and the only avenue to proceed is for the individual to make a formal complaint.

6. Revise current procedures for formal dispute resolution with final decision made by Council;

Based on the City's experience, the current Code of Conduct policy has a cumbersome and vague process for the investigation of complaints. Shortcomings of the current Code include an ad hoc investigator appointed for each new complaint; a requirement that all parties mutually agree to the appointment of a particular investigator; no ability to ensure that the timeline for an appointment of an investigator is met due to the need for consent from parties; timeliness of decisions; no guidance with respect to multiple complaints being filed or the withdrawal of complaints; a requirement that reports be confidential; and a lack of clarity surrounding the Mayor's role.

The best practices of other major municipalities provide for a robust, clear and formal investigation process conducted by an appointed and independent Ethics or Integrity Commissioner.

Allowing the final decision on sanctions to be made by Council is consistent with all other jurisdictions reviewed except for Montreal, where inquiries are conducted by a provincial agency. The current code provides for two separate investigation processes, one process for Council Members where recommendations made by the investigator are sent to the Mayor for determination, and one process for Advisory Board Members where recommendations are sent to Council for determination. There does not appear to be a reasoned basis for establishing two separate processes and best practices would indicate that these processes be combined with Council being the final arbiter.

Part 6 of the proposed By-Law sets out a comprehensive procedure for the formal investigation and resolution of complaints that addresses the shortcomings in the current Code.

Formal Requirements for a Complaint

The proposed By-Law has express requirements for the filing of a complaint. A complaint must be in writing and include specific details including the names of the complainant and respondent, the specific conduct alleged, the breach alleged, the date and the basis for the complainant's knowledge. The Integrity Commissioner may proceed notwithstanding a complaint does not meet all of these requirements, but also has the discretion to close an investigation if failure to meet any of the requirements would hamper the investigation or prejudice the respondent.

Limitation Period for Filing a Complaint

The complaint procedure section of the Proposed By-Law sets out specific timelines for filing complaints by imposing a 180 day limitation period which runs from the date that the complainant knew or reasonably ought to have known of the alleged breach. The Integrity Commissioner must reject all complaints filed after this date.

Multiple Complaints

The proposed By-Law addresses the issue of multiple complaints being filed with respect to the same subject matter. The Integrity Commissioner is not permitted to accept multiple complaints and must proceed with the first complaint accepted, however, the Integrity Commissioner has the discretion to expand the scope of the complaint or add additional complainants.

Investigation Timelines

The proposed By-Law introduces timelines to ensure that complaints are investigated and determined in a timely manner by requiring the Integrity Commissioner to make a determination within 90 days of the date of the decision to proceed with a formal investigation. The Integrity Commissioner may extend this period for additional 30 day periods by providing notice to the parties.

Election Periods

The proposed By-Law addresses concerns about politically motivated complaints made during election periods by requiring the Integrity Commissioner to reject all complaints made from the last day of the nomination period and general voting day, which is the period before an election during which no Council meeting may be held.⁶

In addition, the Integrity Commissioner may, but is not required to, suspend an investigation underway during the period 90 days prior to the general voting day.

Complaint Founded - Council Determines Sanctions

Upon receipt of a report by the Integrity Commissioner which finds misconduct on the part of a member, Council is obligated to determine the sanctions that will be imposed in response to the Investigation Report, and must do so within 30 days of delivery of the report, subject to Council extending the time. As well, the Respondent must be given an opportunity to comment on the decision and the final decision must be made in a public meeting.

⁶ See section 2.9 *Procedure By-Law No. 12577*

The sanctions available for Council to impose are necessarily limited as the City has no specific statutory powers to sanction members for breach of the proposed By-Law.

7. Establish a process for public release of investigation reports.

In all other jurisdictions, investigation reports are generally made available to the public. Establishing a process for public release of investigation reports facilitates transparency and enhances public trust and confidence in local government. The current Code requires that the investigation report be kept confidential and this had led to dissatisfaction from both complainants and respondents, and resulted in previous investigation reports being leaked to the media contrary to the express provisions of the Code.

In the proposed By-Law, the Integrity Commissioner must prepare a written report providing reasons for their determination, disclosing only such information as is necessary for the purpose of the investigation report.

Where a complaint is dismissed, the Integrity Commissioner must deliver the report to the complainant, respondent and Council. The Integrity Commissioner must make the report available to the public 48 hours later.

Where a complaint is founded, the Integrity Commissioner must deliver the report to the Respondent 48 hours before disclosing it to Council and the complainant. Once it has been disclosed to all parties, the Integrity Commissioner must make the report available to the public.

In all cases, the publicly disclosed report is required to comply with the City's obligations under the *Freedom of Information and Protection of Privacy Act*.

8. Include provisions for the re-imbusement of legal expenses for Council Members.

While not universal, some jurisdiction provide for the reimbursement of legal fees of Council Members who are subject to a formal investigation process under a Code of Conduct. In many cases, where it is found that a council member has not engaged in misconduct, the council member is entitled to be indemnified for any reasonable legal fees incurred. The City of Surrey's Code of Conduct provides that where a council member's conduct is found not to have involved dishonesty, gross negligence or malicious or willful misconduct, the council member is entitled to be reimbursed reasonable legal fees incurred.

A Code of Conduct complaint is a serious matter and could have significant repercussions to a Council Member, particularly with the public release of investigation reports. In many cases it will be reasonable and prudent for a Council Member to retain legal counsel to advise them during a formal investigation process.

Section 180 of the Vancouver Charter does not permit the City, by By-Law, to provide for indemnification of legal fees for matters other than damages claims. However, section 180 does permit Council to pass a resolution, by a vote of not less than 2/3 of all members, to indemnify in specific circumstances. Accordingly, the proposed By-Law provides that Council may resolve to reimburse the reasonable legal expenses of Council Members in accordance with the *Vancouver Charter* where appropriate and in considering all the circumstances.

9. Set a procedure for regular review of the Code

Setting a procedure for regular review of an ethics code was expressly recommended by the provincial working group. Regular review allows issues with the code to be addressed on a timely basis and increases members' knowledge and understanding of the code.

The proposed By-Law requires that the Integrity Commissioner in their annual report include any advice or recommendations to improve the operation of the By-Law.

Overview of By-Law

The proposed By-law is organized in 6 Parts:

1. Part 1 – General (sections 1 to 8);
2. Part 2 – Standards and Values (section 9);
3. Part 3 – Communications and Confidentiality (sections 10 to 17);
4. Part 4 – Conflicts of Interest (sections 18 to 37);
5. Part 5 – Appointment of an Integrity Commissioner (sections 38 to 46); and
6. Part 6 – Complaint and Resolution Procedures (sections 47 to 85)

In addition to addressing the shortcomings of the current Code of Conduct, outlined above, the proposed By-Law also updates, clarifies and expands upon some of the features of the current Code of Conduct, as follows:

- While the proposed By-Law adopts numerous definitions from the current Code of Conduct, substantive changes have been made to the definition of “confidential information” to provide additional clarity.
- The proposed By-Law draws a line between a member’s professional and personal conduct, by creating a higher standard for the review of personal conduct. Under this section, the proposed By-law does not apply to a members’ conduct in their personal life unless “such conduct reasonably undermines, or has the potential to reasonably undermine, public confidence in city governance”.
- Part 2 of the proposed By-Law sets out aspirational standards and values for members, similar to the current Code. These standards and values are competence, fairness, integrity, leadership, respect, responsibility and transparency. The standards and values set out in the proposed By-law have been revised for clarity and phrased in a declarative manner that is intended to improve its application.
- Part 3 of the proposed By-Law (sections 10-17) sets out expectations for public communication by Council members and requirements for treatment of confidential information by Council members and Advisory Board members. This section is intended to clarify when Council Members are permitted to communicate on behalf of the City and expectations when communicating in their capacity as individual Council Members. It also requires both Council Members and Advisory Board Members to refrain from disclosing, and actively protect, “confidential information”. This section specifically restricts access and use of confidential information to the purpose for which it was intended to be used and only in the normal course of duties and confirms that members

are required to comply with the *Freedom of Information and Protection of Privacy Act* when dealing with personal information.

- Part 4 of the proposed By-Law (sections 4.1 to 4.20) provides greater detail on conflicts of interest and use of influence than the current Code of Conduct. Of note, the proposed By-Law:
 - Restricts Members from directing City employees, contractors, tenders or consultants and restricts the use of City assets and resources for activities other than the business of the City, except in accordance with City policies permitting reasonable personal use;
 - Provides that members are only entitled to use the influence of their office for the exercise of their duties. Members are also required to act in an independent and impartial manner and not provide preferential treatment to any person or organization.
 - Provides that members may only use City assets or resources for election campaign activity if those resources are similarly available to all candidates and any associated fees have been paid for with election campaign funds. This section additionally prohibits members from compelling City employees to engage in partisan political activity.
 - Reflects the rules set out in the *Vancouver Charter* relating to when a Council Member may accept a gift or personal benefit along with provisions, consistent with the current Code of Conduct, providing for the City Clerk to administer the system. Under the rules, Council Members must file a disclosure statement for any gift or personal benefit over \$50, or if the total gifts received from a single source in a year exceed \$100. The rules also include provisions for returning or disposing of gifts. An Advisory Board Member may only accept gifts under \$50.

Implications/Related Issues/Risk (if applicable)

Financial

As recently approved by the City of Surrey, and as is the case in most other Canadian municipalities, staff recommends that the Integrity Commissioner be compensated by retainer. As this is a new role, it is difficult to estimate the exact costs required, but noting that additional time will likely be required in the first year to establish procedures, and educational material, we estimate that costs may be in the range of \$200,000.

Funding for this initiative was not included in the 2021 operating budget, therefore funding would be needed from the \$2 million Council Contingency or Council could provide direction to fund from deferring an equivalent 2021 budget funded investment or adjusting service levels. Since the funding need is ongoing, this item would be brought forward for Council consideration as part of the 2022 budget, with options to fund from investment deferrals, service level adjustments, or through additional property tax increases. A budget of \$200,000 would equate to a 0.02% tax increase above the current 2022 estimate, and the current 2022 tax increase is estimated at 7.3% based on 5 year plan.

The Integrity Commissioner will be required to submit a budget to Council for approval in future years.

Legal

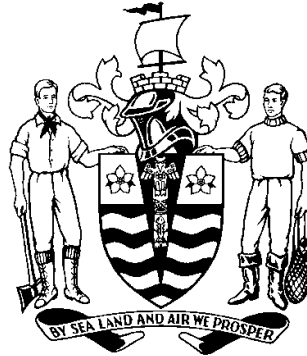
Approval of Recommendation A in this Report will result in the City Solicitor bringing a By-law substantially in the form attached as Appendix "A" to Council for enactment. Upon Council's enactment of the By-law, the Code of Conduct will be in force and applicable to the conduct of Council Members and Advisory Body Members.

CONCLUSION

Staff recommends Council approve the Recommendation of this report so that the By-law can be brought back for enactment.

* * * * *

CITY OF VANCOUVER BRITISH COLUMBIA



BY-LAW NO. _____

**This By-law is printed under and
by authority of the Council of
the City of Vancouver**

_____, 2021

TABLE OF CONTENTS

PART 1
GENERAL

- 1.1 Name of By-law**
- 1.2 Definitions**
- 1.3 Table of Contents**
- 1.4 Purpose**
- 1.5 Application**
- 1.10 Severability**

PART 2
STANDARDS AND VALUES

- 2. Standards and Values**

PART 3
COMMUNICATIONS AND CONFIDENTIALITY

- 3.1 Public Communications by a Council Member**
- 3.5 Confidential Information**

PART 4
CONFLICTS OF INTEREST

- 4.1 Conflicts of Interest**
- 4.2 Use of Municipal Assets and Services**
- 4.7 Use of Influence**
- 4.11 Election Activities**
- 4.13 Gift or Personal Benefit**

PART 5
APPOINTMENT OF INTEGRITY COMMISSIONER

- 5.1 Appointment of an Integrity Commissioner**
- 5.6 Interim of Ad Hoc Appointment**
- 5.9 Duties and Responsibilities**

PART 6
COMPLAINT AND RESOLUTION PROCEDURES

- 6.1 Confidential Requests**
- 6.3 Complaint Procedure**
- 6.11 Complaint Outside of Jurisdiction**
- 6.14 Initial Assessment**
- 6.16 Informal Resolution**
- 6.23 Informal Resolution**
- 6.28 Adjudication and Reporting**
- 6.36 Final Determination by Council**
- 6.39 Remedies**
- 6.40 Confidentiality of the Investigation**
- 6.43 Reprisals and Obstruction**

PART 7
ENACTMENT

- 7. Force and Effect**

BY-LAW NO. _____

The Code of Conduct for Council Members and Advisory Board Members

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts the following:

**PART 1
GENERAL**

Name

1.1 The name of this By-law, for citation is the “Code of Conduct By-Law”.

Definitions

1.2 In this By-law:

“Advisory Board Member” means a person sitting on an advisory committee, task force, commission, board, or other Council-established body;

“city” means the City of Vancouver;

“complaint” means a formal allegation that a member has breached this By-law submitted to the Integrity Commissioner in accordance with the complaints procedure set out in Part 6 of this By-Law;

“complainant” means a person who has submitted a complaint to the Integrity Commissioner;

“confidential information” means information that is not publicly available and is treated as confidential by the city and includes information that may or must be considered by Council in a closed meeting pursuant to section 165.2 of the *Vancouver Charter* including:

- a) decisions, resolutions or report contents forming part of the agenda for or from a closed meeting of Council until a Council decision has been made for the information to become public or otherwise released;
- b) information about the acquisition, disposition or expropriation of land or improvements if disclosure could reasonably be expected to harm the interests of the city;
- c) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages if disclosure could reasonably be expected to harm the interests of the city;
- d) advice that is subject to any privilege at law; and

- e) personal information that is prohibited from disclosure under the provisions of the *Freedom of Information and Protection of Privacy Act*;

“Council” means the Council of the city;

“Council Member” means a member of Council, including the Mayor;

“Integrity Commissioner” means the person appointed by Council to fulfill the duties and responsibilities assigned to that position as set out in this By-law;

“gift or personal benefit” means an item or service of value that is received by a member for their personal use including money, gift cards, tickets to events, clothing, jewelry, pens, food or beverages, discount/rebates on personal purchases, entertainment, participation in sport and recreation activities, and invitations to social functions;

“member” means a Council Member or an Advisory Board Member;

“personal information” means recorded information about an identifiable individual other than contact information as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*; and

“respondent” means a member whose conduct is the subject of a complaint.

Table of Contents

1.3 The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

Purpose

1.4 This By-law sets out the rules members must follow in fulfilling their duties and responsibilities as elected or appointed officials, and the powers and procedures of the Integrity Commissioner in exercising oversight over members.

Application

1.5 This By-law applies to Council Members and Advisory Board Members.

1.6 This By-law does not apply to city employees.

1.7 In the event of a conflict between this By-law and another city by-law or policy governing member conduct, this By-law prevails.

1.8 This By-law does not apply to conduct that may subject a member to disqualification under the *Vancouver Charter*, including sections 140(4), 143(4), and 145.3 to 145.911.

1.9 This By-law does not apply to a member’s conduct in their personal life, except to the extent that such conduct reasonably undermines, or has the potential to reasonably undermine, public confidence in city governance.

Severability

1.10 A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

PART 2 STANDARDS AND VALUES

2. A member must uphold the following standards and values:
- a) competence: a member must act competently and diligently;
 - b) fairness: a member must consider all issues consistently and fairly, and in light of all relevant facts, opinions and analysis of which a member should be reasonably aware;
 - c) integrity: a member must avoid improper use of influence and avoid all conflicts of interest, both apparent and real;
 - d) leadership in the public interest: a member must act in the best interests of the city as a whole, and without regard to the member's personal interests;
 - e) respect: a member must treat members of the public, one another, and staff respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment;
 - f) responsibility: a member must respect and comply with the Acts of the Parliament of Canada, the Legislature of British Columbia, including the *Vancouver Charter*, city by-laws, and applicable city policies, and avoid conduct that, reasonably, undermines, or has the potential to undermine, public confidence in city governance; and
 - g) transparency: a member must to conduct their duties in an open and transparent manner, except where this conflicts with their duties to protect confidential information.

PART 3 COMMUNICATIONS AND CONFIDENTIALITY

Public Communications by a Council Member

3.1 A Council Member must not communicate on behalf of the city unless authorized to do so by Council resolution or by virtue of a position or role the member has been authorized to undertake by Council.

3.2 A statement or communication made by a Council Member is presumed to be made on the Council Member's own behalf, not the city's behalf.

3.3 Where a Council Member is authorized to communicate on behalf of the city, the Council Member must take reasonable efforts to ensure that the communication is fair and accurate.

3.4 Without limiting the ability of a Council Member to hold a position on an issue and respectfully express their opinions, a Council Member must:

- a) ensure that their communications accurately reflect the facts of Council decisions;
- b) ensure that all communications relating to Council business are accurate and not issue any communication that the member knows, or ought to have known, to be false; and
- c) ensure that all communications issued by, or on behalf of a member, including communications made via social media, are respectful and do not discriminate, harass, defame, or demonstrate disrespect toward any person.

Confidential Information

3.5 A member must:

- a) not disclose or release any confidential information acquired by virtue of their office, except as authorized by Council, or required by law;
- b) not use confidential information with the intention to cause harm or detriment to Council, the city or any other person or body;
- c) protect confidential information from inadvertent disclosure;
- d) use confidential information only for the purpose for which it is intended to be used;
- e) take reasonable care to prevent the examination of confidential information by unauthorized individuals; and
- f) not take advantage of, or obtain private benefit from, confidential information acquired by virtue of their office.

3.6 A member must access and use city information only in the normal course of their duties.

3.7 A member must retain records and other information in accordance with the procedures, standards, and guidelines established by the city, including the Records Management By-law No. 9067, as amended, and must assist the city in good faith in responding to all requests for information made pursuant to the *Freedom of Information and Protection of Privacy Act*.

3.8 A member must comply with the *Freedom of Information and Protection of Privacy Act* when dealing with personal information and take all reasonable and necessary measures to ensure that personal information is protected.

PART 4 CONFLICTS OF INTEREST

Conflicts of Interest

4.1 A Council Member must comply with the conflict of interest requirements set out in sections 145.2 to 145.911 of the *Vancouver Charter*.

Use of Municipal Assets and Services

4.2 A member may not direct the work of city employees, other than city employees assigned to assist a member, and should follow the processes established by the City Manager when communicating with city employees.

4.3 A member must respect that it is the role of city employees to provide neutral and objective information without undue influence and interference.

4.4 A member must not request or require city employees to undertake personal or private work on behalf of a member, or accept an offer to perform such work from a city employee.

4.5 A member must not use, or permit the use of, city land, facilities, equipment, supplies, services, employees or other resources for activities other than the business of the city, except in accordance with city policies permitting reasonable personal use.

4.6 A member must not contact, instruct, or direct any of the city's contractors, tenders, consultants or other service providers regarding city business.

Use of Influence

4.7 A member must only use the influence of their office for the exercise of their duties.

4.8 A member must be independent and impartial, and must not provide preferential treatment to any person or organization except as warranted by the ordinary and lawful discharge of their duties.

4.9 A member must not use the prospect of future employment by a person or entity, or other future economic opportunities, to detrimentally affect the performance of their duties.

4.10 A member must not use, or attempt to use, their office for the purpose of intimidating, improperly influencing, threatening, or coercing city employees.

Election Activities

4.11 A member must not use, or permit the use of, city land, facilities, equipment, supplies, services, employees or other resources for any election campaign or campaign-related activities, unless those resources are similarly available to all candidates and any associated fees have been paid for with election campaign funds.

4.12 A member must not compel city employees to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.

Gift or Personal Benefit

4.13 A member must not accept a gift or personal benefit that is connected directly or indirectly with the performance of their duties unless permitted by the exceptions listed in sections 4.14 and 4.15.

4.14 A Council Member may accept a gift or personal benefit if it is:

- a) received as an incident of the protocol of social obligations that normally accompany the responsibilities of office;
- b) compensation authorized by law; or
- c) a lawful contribution made to a member who is a candidate for election conducted under the Vancouver Charter or Part 3 of the *Local Government Act*.

4.15 An Advisory Board Member may accept a gift or personal benefit if it:

- a) has a value under \$50; and
- b) is received as an incident of protocol or as a city representative for an activity reasonably related to their role with the city.

4.16 If a Council Member accepts a gift or personal benefit pursuant to section 4.14(a), and if the total value of the gift or personal benefit exceeds \$50, or the total value of the gift or personal benefit received from one source during the calendar year exceeds \$100, the Council Member must within 30 days of receipt of the gift or personal benefit, or reaching the annual limit, file a disclosure statement with the City Clerk. The disclosure statement must set out:

- a) the name of the Council Member;
- b) the nature of the gift or personal benefit, by description, photograph, or both;
- c) the date the gift or personal benefit was received;
- d) the estimated value of the gift or personal benefit;
- e) the source of the gift or personal benefit, including, if it is from a corporation, the full names and addresses of at least 2 individuals who are directors of the corporation;
- f) the circumstances under which the gift or personal benefit was given; and
- g) the final disposition of the gift or personal benefit.

4.17 If a member is unable, or elects not, to accept a gift or personal benefit, a member must as soon as practicable, either:

- a) return the gift or personal benefit to the donor along with an explanation as to why the gift or personal benefit cannot, or will not, be accepted; or
- b) turn the gift or personal benefit over to the City Clerk for disposition.

4.18 A gift or personal benefit turned over to the City Clerk is deemed property of the City. At the City Clerk's discretion, a gift or personal benefit may be disposed of as follows:

- a) returned to the donor;
- b) displayed in individual offices, general offices, or in the public areas of City Hall;
or
- c) disposed of by donation, sale or auction, with any proceeds credited to the city's general revenues or to the direct or indirect support of a charitable organization.

4.19 A gift or personal benefit provided to a member's spouse, child or parent, or the member's staff, that to the member's knowledge, is connected directly or indirectly to the performance of the member's duties is deemed to be a gift or personal benefit to that member.

PART 5

APPOINTMENT OF INTEGRITY COMMISSIONER

Appointment of an Integrity Commissioner

5.1 Council must appoint an Integrity Commissioner to undertake the duties and responsibilities set out in this By-law.

5.2 The appointment of an Integrity Commissioner must be for a set period of two (2) years. An Integrity Commissioner may be appointed for more than one term.

5.3 At the request of the Integrity Commissioner, Council may suspend the appointment for a mutually agreed period of time.

5.4 Council will not terminate an Integrity Commissioner except for cause.

5.5 The appointment of an Integrity Commissioner may only be made, suspended, or terminated by a 2/3 vote of all Council Members.

Interim of Ad Hoc Appointment

5.6 Subject to sections 5.7 and 5.8, an ad hoc Integrity Commissioner may be appointed in the following circumstances:

- a) if the City has not yet entered into a contract for the appointment of an Integrity Commissioner;
- b) in the interim period between the expiry of the appointment of one Integrity Commissioner and the appointment of a new Integrity Commissioner; or
- c) if the appointed Integrity Commissioner is unable or unwilling to act.

5.7 The Mayor will be responsible for appointing an ad hoc Integrity Commissioner for complaints made by a member, except in the case of a complaint against the Mayor, in which case the responsibility will be passed to the Deputy Mayor.

5.8 The City Manager will be responsible for appointing an ad hoc Integrity Commissioner for complaints made by a City employee or the public.

Duties and Responsibilities

5.9 The duties and responsibilities of the Integrity Commissioner are as follows:

- a) provide advice and recommendations to a member on questions of compliance with this By-law where requested to do so by that member;
- b) provide advice and recommendations to Council on questions of compliance with this By-law where requested to do so by Council;
- c) prepare written materials and content for the city's website for distribution to, and use by, the public, to aid in their understanding of the role of the Integrity Commissioner and the ethical obligations and responsibilities of members under this By-law;
- d) deliver educational programs regarding the role of the Integrity Commissioner and the ethical obligations and responsibilities of members under this By-law;
- e) assist with informal resolution of confidential requests and complaints;
- f) receive and assess all complaints to determine if the complaint must be rejected, closed, resolved or investigated;
- g) investigate and conduct inquiries as to violation of this By-law;
- h) report to Council as to whether a member has breached this By-law;
- i) make recommendations on an appropriate remedy if a member has breached this By-law;
- j) submit an annual budget for approval by Council; and
- k) publish an annual report that includes a summary of the work of the Integrity Commissioner and any advice or recommendations that the Integrity Commissioner has to improve the text or operation of this By-law.

5.10 The Integrity Commissioner must perform the duties and responsibilities of their office in an independent manner.

PART 6 **COMPLAINT AND RESOLUTION PROCEDURES**

Confidential Requests

6.1 If a person believes that they have been subject to conduct by a member in breach of this By-law, that person may approach the Integrity Commissioner on a confidential basis, without the need to file a complaint, to request that the Integrity Commissioner inform the member of the

alleged breach. Upon receipt of the confidential request, the Integrity Commissioner may attempt to address the conduct with the member.

6.2 The Integrity Commissioner must protect the confidentiality of a person making a request under section 6.1, unless the person making the request consents to disclosure.

Complaint Procedure

6.3 Any person may submit a complaint to the Integrity Commissioner.

6.4 A complaint must be in writing and describe with sufficient detail:

- a) the name of the complainant;
- b) the name of the respondent;
- c) the conduct that the complainant alleges to have breached this By-law;
- d) the date of the alleged conduct;
- e) the part or parts of this By-law that the complainant alleges has or have been breached; and
- f) the basis for the complainant's knowledge about the conduct.

6.5 A complainant may specify in the complaint if they are willing to participate in an informal resolution of the complaint.

6.6 The Integrity Commissioner may prescribe a form for submitting a complaint.

6.7 Provided that a complaint has been submitted, the Integrity Commissioner may accept a complaint, notwithstanding that the form of the complaint does not comply with all of the requirements set out in section 6.4 if, in the Integrity Commissioner's opinion, the circumstances warrant.

6.8 The Integrity Commissioner must not accept multiple complaints concerning the same matter. In the event that the Integrity Commissioner receives multiple complaints concerning the same matter, the Commissioner must proceed with the first complaint accepted, but may expand the complaint and/or add complainants for the purpose of conducting the investigation and preparing the investigation report.

6.9 The Integrity Commissioner must reject a complaint received more than 180 days after the complainant knew or reasonably ought to have known of the alleged breach of this By-law.

6.10 The Integrity Commissioner must reject a complaint received regarding a Council member seeking re-election in the period from the last day of the nomination period to the general voting day.

6.11 In the period 90 days prior to general voting day, the Integrity Commissioner may suspend any investigation underway until the day after the general voting day.

Complaint Outside of Jurisdiction

6.12 The Integrity Commissioner has the authority to investigate a complaint alleging that a member is in breach of this By-law.

6.13 If a complaint is submitted that, on its face, is not made with respect to a breach of this By-law, or if a complaint would be more appropriately addressed through another process, including if the complaint is:

- a) an allegation of a criminal nature consistent with the Criminal Code;
- b) with respect to non-compliance with the *Freedom of Information and Protection of Privacy Act*;
- c) with respect to conduct that may subject a member to disqualification pursuant to sections 140(4), 143(4) and 145.3 to 145.911 of the *Vancouver Charter*;
- d) with respect to non-compliance with a more specific Council policy or by-law with a separate complaint procedure; or
- e) with respect to a matter that is subject to another outstanding process, such as a court proceeding or a Human Rights complaint,

the Integrity Commissioner must reject the complaint, or part of the complaint, and must notify the complainant in writing that the complaint is not within the jurisdiction of this By-law, or that the complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Integrity Commissioner considers appropriate.

6.14 Where a complaint is made against a Council Member and the complaint procedure overlaps with a municipal election and the Council Member is not re-elected in that election, the Integrity Commissioner must notify the complainant and the Council Member in writing that the Integrity Commissioner is closing the complaint on this basis and close the complaint.

Preliminary Assessment

6.15 On receipt of a complaint, the Integrity Commissioner must conduct a preliminary assessment and if at that time, or any time thereafter, the Integrity Commissioner is of the opinion that:

- f) the statement is not with respect to a breach of this By-law;
- g) the complaint is frivolous, vexatious, or not made in good faith;
- h) an investigation of the complaint would not be in the public interest;
- i) the investigation is, or might be, hampered, or the member might be prejudiced by the complainant's failure to provide a complaint in compliance with section 6.4, or otherwise cooperate with the investigation;

- j) the complainant wishes to withdraw the complaint, and it would be appropriate in the circumstances to allow the withdrawal; or
- k) there are no grounds or insufficient grounds for concluding that a violation of this By-law has occurred,

the Integrity Commissioner must notify the complainant and the respondent in writing that the Integrity Commissioner is closing the complaint, set out the reasons therefore, and close the complaint.

6.16 Notwithstanding section 6.15, the Integrity Commissioner may request further information from the complainant before determining whether or not there are sufficient grounds for believing that a breach of this By-law may have occurred.

Informal Resolution

6.17 When the Integrity Commissioner has decided to proceed with a complaint, the Integrity Commissioner must determine whether the complaint requires a formal investigation, or whether the complaint may be resolved informally. In the latter case, the Integrity Commissioner may, at their discretion, either attempt to resolve the complaint directly, or refer the complaint to:

- a) the Mayor, if the complaint is made by a member, unless the complaint is against the Mayor, in which case the complaint will be referred to the Deputy Mayor; or
- b) the City Manager, if the complaint is made by a City employee or the public.

6.18 When determining whether the complaint may be resolved informally, the Integrity Commissioner may consider culturally appropriate, or transformative or restorative justice approaches, and may engage a third party to assist the Integrity Commissioner for this purpose.

6.19 Where the Integrity Commissioner refers the complaint in accordance with section 6.17, the Mayor, the Deputy Mayor, or the City Manager, as the case may be, may agree to assist in resolving the complaint directly, or may appoint a third party to assist in resolving the complaint at their discretion.

6.20 The person assisting in the informal resolution of a complaint will assess the suitability of the complaint for settlement or resolution on an ongoing basis and may decline to assist at any point.

6.21 The complainant, or the respondent, can decline to participate in an informal resolution at any time.

6.22 If a complaint is resolved informally, the person assisting in resolving the complaint must notify the Integrity Commissioner in writing of the terms of the resolution, upon receipt of which, the Integrity Commissioner must close the complaint.

6.23 If a complaint cannot be resolved informally, the person assisting in resolving the complaint must refer the complaint back to the Integrity Commissioner for a formal investigation.

Formal Resolution

6.24 If a complaint is not rejected, closed, or resolved informally, the Integrity Commissioner must proceed with a formal investigation.

6.25 The Integrity Commissioner must serve the complaint on the respondent with a request that the respondent provide a written response to the complaint together with any submissions the respondent chooses to make within 10 days, subject to the Integrity Commissioner's discretion to extend the timeline.

6.26 The Integrity Commissioner may serve the complainant with the respondent's written response together with any submissions, on a strictly confidential basis, and request a reply in writing within 10 days, subject to the Integrity Commissioner's discretion to extend the timeline.

6.27 The Integrity Commissioner may:

- a) speak to anyone relevant to the complaint;
- b) request disclosure of documents relevant to the complaint; or
- c) access any record in the possession or control of the city, except a record that is subject to privilege.

6.28 The Integrity Commissioner must ensure that the formal investigation complies with the rules of procedural fairness and natural justice required in the circumstances.

Adjudication and Reporting

6.29 The Integrity Commissioner must make a decision within 90 days of making a decision to proceed with a formal investigation, unless section 6.11 applies, or the Integrity Commissioner determines that doing so is not practicable, in which case the Integrity Commissioner must notify the complainant and respondent of the delay and provide a revised decision date. The revised decision date may be extended by periods of up to 30 days on provision of written notice to the complainant and the respondent.

6.30 A notification issued pursuant to sections 6.13, 6.14, 6.15 or 6.29 is confidential and must not be disclosed except in the following circumstances:

- a) the Integrity Commissioner may use information in the notice in an annual report in the form of context and statistics;
- b) the Integrity Commissioner may prepare an anonymized bulletin based on the notice if the Integrity Commissioner believes that doing so would be of public benefit;
- c) to Council for the purpose of considering a resolution for reimbursement of legal fees pursuant to section 6.44; and
- d) the respondent may disclose the fact that the complaint has been closed, or that a finding has been made that the respondent did not breach this By-law.

6.31 If after reviewing all material information, the Integrity Commissioner determines that the respondent did not violate this By-law, then:

- a) Integrity Commissioner must prepare a written investigation report providing reasons for their determination that the member did not breach the By-Law;
- b) the Integrity Commissioner must deliver a copy of the investigation report to the complainant, respondent and Council; and
- c) the Integrity Commissioner must make the investigation report available to public forty eight (48) hours after delivery of the investigation report to the complaint, respondent and Council.

6.32 If after reviewing all material information the Integrity Commissioner determines that a member did violate this By-law then:

- d) the Integrity Commissioner must prepare a written investigation report providing reasons for their determination that the member breached this By-law;
- e) the investigation report will make recommendations as to the appropriate sanction for the breach;
- f) if the Integrity Commissioner determines that a member did breach this By-law, but that the member took all reasonable steps to prevent it, or that it was trivial or done inadvertently or because of an error in judgment made in good faith, the Integrity Commissioner will so state in the investigation report and may recommend that no sanction be imposed;
- g) the Integrity Commissioner must deliver, on a strictly confidential basis, a copy of the investigation report to the respondent; and
- h) the Integrity Commissioner must deliver a copy of the investigation report to the complainant and Council forty eight (48) hours after delivery of the investigation report to the respondent; and
- i) the Integrity Commissioner must make the investigation report available to public after delivery of the investigation report to the complainant and Council.

6.33 The Integrity Commissioner must ensure that the investigation report as drafted complies with the city's obligations regarding disclosure of personal information set out in the *Freedom of Information and Protection of Privacy Act*, or ensure that appropriate redactions are applied prior to release to the public.

Final Determination by Council

6.34 Council must, within 30 days of delivery of the investigation report pursuant to section 6.32 (h), or a longer period if approved by a vote of Council, decide on the appropriate measures, if any, that are warranted by the breach of this By-law, and will take such actions as Council considers appropriate in the circumstances.

6.35 Prior to Council making any decision regarding the findings and recommendations set out in the investigative report, the respondent must be provided with an opportunity, either in

person or in writing, to comment on the decision and any recommended censure, sanctions or corrective actions.

6.36 While an investigation report provided to Council may be considered in a closed meeting for the purpose of receiving legal advice, or other valid reason, when Council deliberates and votes on the investigation report, it will do so in a public meeting and the investigation report must be made available to the public in a form that complies with section 6.33.

Remedies

6.37 Sanctions that may be imposed for violating this By-law include the following:

- a) a letter of reprimand from Council addressed to the member;
- b) a request from Council that the member issue a letter of apology;
- c) the publication of a letter of reprimand and a request for apology by the Integrity Commissioner, and the member's written response;
- d) a recommendation that the member attend specific training or counselling;
- e) suspension or removal of the appointment of a Council Member as the Deputy Mayor;
- f) suspension or removal of the Council Member from some or all Council committees and bodies to which the Council Member was appointed by Council;
- g) termination of the Advisory Board Member's appointment from the advisory committee, task force, commission, board, or other Council-established body to which the Advisory Board Member was appointed by Council; and
- h) public censure of a member.

Confidentiality of the Investigation

6.38 The Integrity Commissioner must make all reasonable efforts to investigate complaints in confidence.

6.39 The Integrity Commissioner and every person acting under the Integrity Commissioner's instructions must preserve confidentiality with respect to all matters that come into the Integrity Commissioner's knowledge in the course of any investigation or complaint except as required by law.

6.40 An investigation report must only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purpose of the investigation report.

Reprisals and Obstruction

6.41 No member or City employee will obstruct the Integrity Commissioner in the carrying out of the Integrity Commissioner's duties or responsibilities.

6.42 No member or City employee will threaten or undertake any active reprisal against a complainant or against a person who provides information to the Integrity Commissioner in the context of an investigation.

6.43 No member or City employee will tamper with or destroy documents or electronic records related to any matter under investigation under this By-law or refuse to respond to the Integrity Commissioner when questioned regarding an investigation.

Reimbursement of Costs

6.44 If appropriate after considering all circumstances, Council may resolve to reimburse legal fees reasonably incurred by a Council Member in relation to a complaint in accordance with the provisions of the *Vancouver Charter*.

**PART 7
ENACTMENT**

Force and effect

7. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this ____ day of _____, 2021

Mayor

City Clerk