

# Code of Conduct for Council Members and Advisory Board Members

January 20, 2021

# Council Resolution

- October 1, 2019
  - A. THAT Council direct staff to review the operation of the current Code of Conduct and report back with recommendations to Council as to how the Code of Conduct could be improved to better promote and enforce ethical standards.
  - B. THAT Council direct staff to also 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.
  - C. THAT, in reviewing the Code of Conduct and developing recommendations as provided for in A and B above, Council direct staff to consider:
    - i) best practices in ethics regimes; and
    - ii) ethics regimes implemented in other Canadian jurisdictions.

# Review Stages

- **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.

# Researched Best Practices

- Literature Review
  - Working Group on Responsible Conduct (Union of British Columbia Municipalities, Local Government Management Association of BC, Ministry of Community, Sport and Cultural Development)
    - 2017 Report
    - 2018 Model Code of Conduct
  - Municipal Ethics Regimes 2<sup>nd</sup> Edition, Gregory J. Levine
- Comparing Similar Municipalities
  - Staff reviewed ethics regimes in Toronto, Montreal, Winnipeg, Saskatoon, Regina and Surrey
  - Staff considered various elements including provincial legislation, City by-laws and policies and establishment of third party ethics officers
  - Staff identified best practices and tracked adoption of these practices across municipalities

# Identified Problems and Gaps

- Does not acknowledge different concerns relating to conduct of elected officials
- Outdated
  - Passed in 2008 and last updated 2011
- No express provisions for education or advice
- No informal dispute resolution process
- Open to abuse
  - No discretion whether to proceed with formal investigation process
  - Overlap with other legislation
  - No controls regarding complaints during election periods
- Cumbersome and unwieldy investigation process against Councillors
  - Appointment of investigator requires consent
  - Impossible to ensure compliance with appointment timeline

# Recommendations

- 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.

# Create a Separate Code of Conduct

- Staff have drafted a new Code of Conduct By-law
  - Proposed to be in the form of a By-Law rather than a policy
- Addresses all nine key recommendations
- Only applies to Council Members and Advisory Board Members
  - Does not apply to members' conduct in their personal life, except where the conduct has the potential to reasonably undermine public confidence in City governance.
- Does not apply to City employees
  - Staff anticipates providing recommendations on new Employee Code of Conduct later this year

# Create a Separate Code of Conduct – Key Provisions

- Part 2: Standards and Values
  - Sets out standards and values that members are expected to uphold relating to: competence, fairness, integrity, leadership, respect, responsibility and transparency.
- Part 3: Communications and Confidentiality
  - Expectations regarding public communications and handling of confidential information
- Part 4: Conflicts of Interest
  - Use of municipal assets and services
  - Influence
  - Election activities
  - Gifts or Personal benefits



# Retain an Independent Third Party - Integrity Commissioner

- Appointment
  - By 2/3 majority of Council.
  - Set term of 2 years.
- Ad Hoc Appointment
  - For limited purpose of conducting investigation.
- Duties and Responsibilities
  - Provide advice and recommendations;
  - Educate members, City staff and the public;
  - Assist with the informal resolution of complaints and confidential requests;
  - Conduct intake processes for complaints and, where warranted, investigate complaints;
  - Report to Council with recommendation on complaints;
  - Submit an annual budget for approval by Council; and
  - Publish an annual report summarizing work and any advice and recommendations for improvements to the Code.

# Minimize Overlap with Applicable Legislation

- Does not apply to conduct that may subject a member to disqualification under the *Vancouver Charter*.
  - i.e. conflicts of interest where a member has a pecuniary interest
  - *Vancouver Charter* provides a remedy through application to a Court
- IC must reject any complaint that would more appropriately be addressed through another process

# Complaint and Resolution Procedures

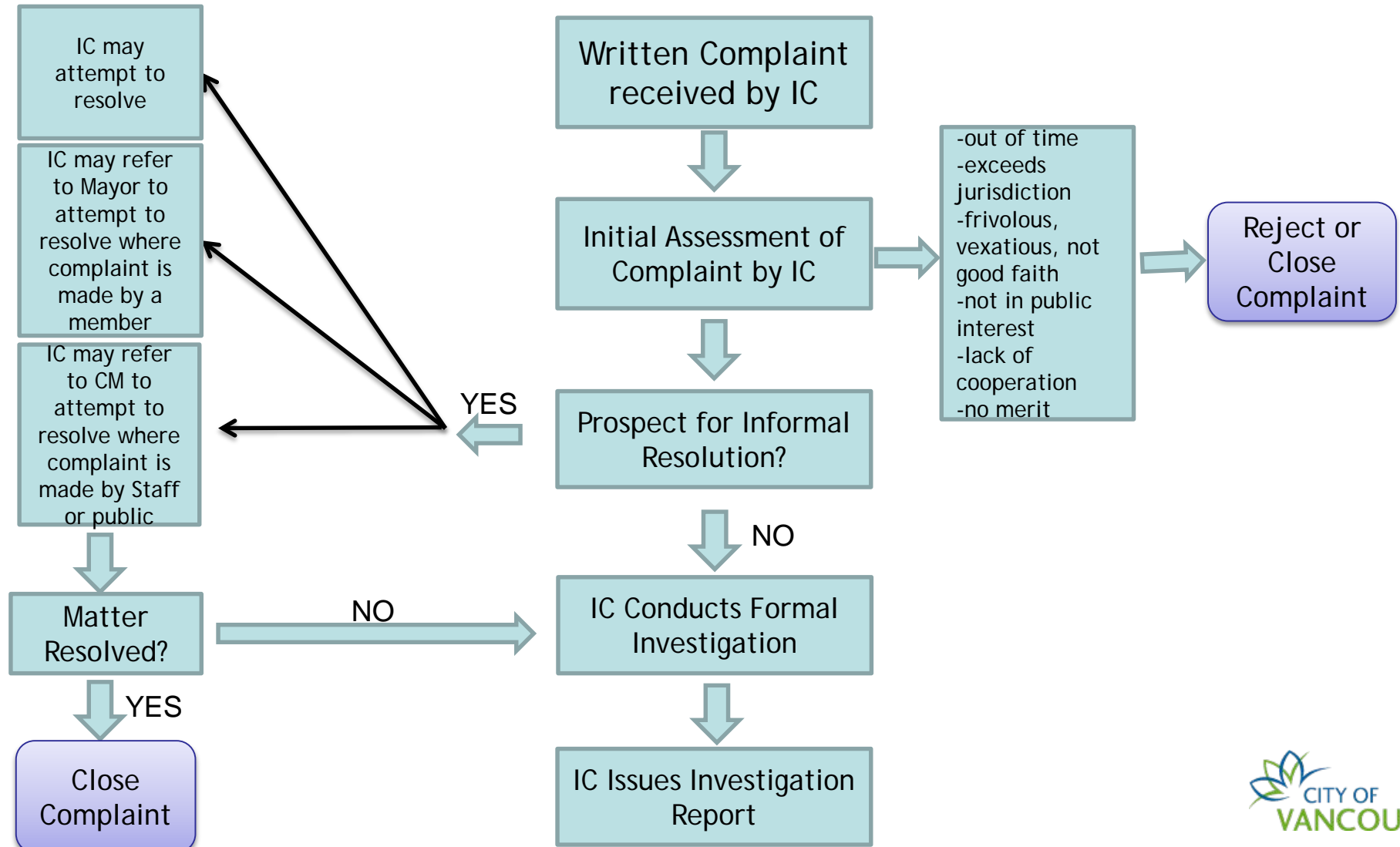
## 1. Confidential Requests:

- Identity of person is confidential (unless consent to disclose)
- No formal complaint filed
- IC attempts to informally address conduct with member

## 2. Complaint Process

- Preliminary Assessment by IC
- Potential for Informal Resolution
- Formal Investigation process

# Summary of Complaint Process



# Complaint Procedure

- Complaints submitted to IC
- Requirements of a Complaint:
  - In writing
  - Names complainant and respondent
  - Alleges specific conduct
  - Alleges specific breaches of Code
  - Date of alleged conduct
  - Sets out basis of knowledge regarding conduct
- IC has discretion to proceed if all requirements not met

# Provide a Mechanism for Preliminary Vetting

- IC conducts a preliminary assessment of complaint and must reject or close if:
  - Complaint is received later than 180 days from date Complainant knew or should have reasonably known of alleged conduct.
  - Complaint is outside the jurisdiction of the Code.
  - Complaint is against a Council Member seeking re-election and is received in the period from the last day of the nomination period to the general voting day.
  - Complaint is frivolous, vexatious or not made in good faith.
  - Investigation of the complaint would not be in the public interest.
  - Investigation would be hampered, or the member prejudiced, due to non-compliant complaint or complainant's refusal to cooperate with investigation.
  - There are insufficient grounds to support allegation of breach.

# Include Informal Resolution Procedures

- Upon receipt of Complaint, IC must assess whether complaint may be resolved informally and, if so:
  - IC may attempt to resolve the complaint directly;
  - If complaint is made by a member, IC may refer complaint to Mayor to attempt to resolve. Mayor may engage third party to assist;
  - If complaint is made by staff or public, IC may refer complaint to City Manager to attempt to resolve. City Manager may engage third party to assist; and
  - IC may consider culturally appropriate, or transformative or restorative justice approaches and may engage third party to assist.
- If Informal resolution is unsuccessful, matter is automatically referred for a formal investigation.

# Revise Formal Resolution Process

- Process
  - IC must serve complaint on Respondent
    - Respondent must provide response within 10 days (IC has discretion to extend)
  - IC may serve response on Complainant
    - Complainant must respond within 10 days (IC has discretion to extend)
  - IC may speak to any relevant witnesses and request documents
  - IC is entitled to access to any City record except a privileged record.
  - Investigation must comply with rules of procedural fairness and natural justice
  - IC must make reasonable efforts to conduct investigation in confidence
- Investigation must be completed within 90 days of making a decision to proceed with formal investigation (IC may extend for 30 day periods)



# Public Release of Investigation Reports

- If IC determines no breach of Code:
  - Written report with reasons issued to Complainant, Respondent and Council with public release 48 hours after.
- If IC determines that Code has been breached:
  - IC must prepare written investigation report providing reasons for the determination;
  - Report must make recommendations as to appropriate sanctions;
  - If member took reasonable steps to avoid breach, breach is trivial, inadvertent or an error in judgment made in good faith, IC may recommend no sanction be imposed;
  - IC must deliver confidential report to respondent;
  - 48 hours after delivery of report to Respondent, IC must deliver report to the Complainant and Council;
  - After delivery of report to Complainant and Council, IC must make the report available to the public.

# Determination by Council

- Council determines the appropriate sanctions to be imposed
- Council must make determination within 30 days of receipt of report (unless Council votes to extend)
- Prior to making determination, Respondent must be provided an opportunity before Council to comment on the decision and any recommended sanctions
- Council must deliberate and vote on the report in a public meeting

# Determination by Council - Sanctions

- Sanctions that may be imposed include the following:
  - a letter of reprimand from Council addressed to the member;
  - a request from Council that the member issue a letter of apology;
  - the publication of a letter of reprimand and a request for apology by the Integrity Commissioner, and the member's written response;
  - a recommendation that the member attend specific training or counselling;
  - suspension or removal of the appointment of a Council Member as the Deputy Mayor;
  - suspension or removal of the Council Member from some or all Council committees and bodies to which the Council Member was appointed by Council;
  - 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
  - public censure of a member.

# Miscellaneous Provisions

- Where investigation of Council Member overlaps with a municipal election and the Council Member is not re-elected, the IC must close the complaint.
- IC cannot open multiple investigations on the same subject. IC must proceed with first complaint accepted but may expand complaint or add additional complainants.
- IC has discretion to accept withdrawal of a complaint.

# Reimbursement of Legal Expenses

- Vancouver Charter does not permit, by By-Law, indemnification for claims other than damages claims.
- 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.