

CITY OF WELLAND
Integrity Commissioner Procedures

Effective Date: February 15, 2022
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1.0 Purpose

- 1.1 These Integrity Commissioner Procedures establish the practices and procedures to be observed by the Integrity Commissioner in fulfilling his or her Office. They also set out the process to follow in any complaint that a Member has contravened the Code or the *Municipal Conflict of Interest Act*.

2.0 Definitions

- 2.1 For the purpose of these Procedures the following definitions have been provided:
- (a) “Clerk” means the Clerk of Welland, or his or her designate;
 - (b) “Code” means the Code of Conduct, including any appendices to the Code of Conduct, established by Council pursuant to the *Municipal Act, 2001*;
 - (c) “Code Complaint Form” means the form established by the Clerk in accordance with these Procedures for the purpose of submitting a formal complaint to the Integrity Commissioner that a Member has allegedly contravened the Code;
 - (d) “complaint” means an alleged contravention of the Code, or the *Municipal Conflict of Interest Act*, whether made through an informal complaint process or through the filing of a formal written complaint;
 - (e) “complainant” means a person who has either made an informal complaint or who has filed a formal complaint in accordance with the procedures set out in this Code;
 - (f) “Consent and Confidentiality Agreement” means the form established by the Integrity Commissioner that requires a complainant to maintain confidentiality in respect to all aspects of the complaint and any investigations until the Integrity Commissioner has reported his or her finding or closed the file;

- (g) “Council” means the Council of the City of Welland;
- (h) “Election Period” means the time period starting on Nomination Day and ending on Voting Day in a regular election year;
- (i) “Elector” means a person who is a qualified elector as determined by section 17 of the *Municipal Elections Act*;
- (j) “frivolous” means something that is not worthy of serious consideration, or that is of little or no importance, due to its lack of seriousness or sense;
- (k) “Welland” means the Corporation of the City of Welland;
- (l) “good faith” means in accordance with standards of honesty, trust and sincerity;
- (m) “Integrity Commissioner” means the person appointed by Council pursuant to section 223.3 of the *Municipal Act, 2001*;
- (n) “Integrity Commissioner Procedures” means:
 - i) the rights, procedures, rules, responsibilities and/or duties assigned to the Integrity Commissioner in respect of the Code as set out in the *Municipal Act, 2001*, as may be amended from time to time; and
 - ii) the procedure approved by Council that, among other things:
 - 1. establishes general practices or procedures to be observed by the Integrity Commissioner in fulfilling his or her other duties; and
 - 2. the procedures to be followed in making a complaint;
- (o) “Local Board” means a local board as defined in section 223.1 of the *Municipal Act, 2001*;
- (p) “Member” means a Member of Council, or a Local Board or Committee Member, unless the context otherwise requires;
- (q) “MCIA Complaint Form” means the form established by the Clerk in accordance with these Procedures for the purpose of submitting a

formal complaint to the Integrity Commissioner that a member has allegedly contravened the *Municipal Conflict of Interest Act*;

- (r) “Nomination Day” means the date set out in section 31 of the *Municipal Elections Act*, currently the fourth (4th) Friday of July in a regular election year;
- (s) “Procedures” means these Integrity Commissioner Procedures;
- (t) “Staff” means all full-time and part-time persons hired by Welland including the Chief Administrative Officer, directors, managers, supervisors, administrative staff, contract and temporary employees, students, secondments, co-op placement staff, volunteers, and hired contractors;
- (u) “vexatious” means without reasonable or probable cause or excuse;
- (v) “Voting Day” means the date as set out in section 5 of the *Municipal Elections Act*, currently the fourth (4th) Friday in October of a regular election year.

3.0 Scope

- 3.1 These Procedures apply to any complaint made to the Integrity Commissioner pursuant to the Council Code of Conduct or the *Municipal Conflict of Interest Act*.

4.0 Application & Limitation

- 4.1 These Procedures establish the practices and procedures to be observed by the Integrity Commissioner in fulfilling his or her Office.
- 4.2 Without limiting the generality of Section 4.1, these Procedures establish the complaint process for enforcement of:
 - (a) the Council Code of Conduct;
 - (b) the *Municipal Conflict of Interest Act*; and

- (c) any other matter assigned by Council to the Integrity Commissioner.
- 4.3 Without limiting the generality of Section 4.1, these Procedures also establish the administrative and reporting requirements for the Integrity Commissioner.
- 4.4 Nothing in these Procedures shall be deemed to limit any authority granted to the Integrity Commissioner by the *Municipal Act, 2001*, *Municipal Conflict of Interest Act*, or any law.
- 4.5 Nothing in these Procedures shall be deemed to limit any responsibility or duty imposed on the Integrity Commissioner by law.
- 4.6 These Procedures come into force and effect upon adoption by Council.

5.0 General Duties of the Integrity Commissioner

- 5.1 The Integrity Commissioner shall:
 - (a) Provide Members with advice in accordance with these Procedures;
 - (b) Investigate complaints that a Member has contravened the Code;
 - (c) Investigate complaints that a Member has contravened the *Municipal Conflict of Interest Act*;
 - (d) Provide an annual report to Council in accordance with these Procedures; and
 - (e) Maintain full and complete records of the activities of the Integrity Commissioner.
- 5.2 The Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, unless otherwise required by law or as otherwise required, as determined by the Integrity Commissioner, to fulfill any duty or responsibility imposed on the Integrity Commissioner.
- 5.3 The Integrity Commissioner shall observe the tenets of procedural fairness in fulfilling his or her responsibilities under the Code, the *Municipal Act, 2001* and these Procedures.

- 5.4 Any record of the Integrity Commissioner may be provided to the Clerk to be maintained in accordance with any records retention rules of Welland, having regards to the provisions of section 223.5 of the *Municipal Act, 2001*.

6.0 Advice

- 6.1 A Member may request that the Integrity Commissioner provide that Member with advice respecting his or her obligations under the Code, the *Municipal Conflict of Interest Act*, or any other municipal policy, procedure or rule governing the ethical behaviour of Members.
- 6.2 Any request by a Member for advice shall be made in writing in such form or manner as deemed appropriate by the Integrity Commissioner.
- 6.3 Any advice provided to a Member by the Integrity Commissioner shall be provided by the Integrity Commissioner in writing.
- 6.4 A Member may consent, in writing, to the disclosure of any advice received from the Integrity Commissioner.
- 6.5 Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of that Member in the same matter as long as all the relevant facts known to the Member were disclosed to the Integrity Commissioner.
- 6.6 The Integrity Commissioner may provide educational information to Members of Council, Local Board Members, Staff and the public about the Code and/or the *Municipal Conflict of Interest Act*.
- 6.7 Any educational information provided by the Integrity Commissioner pursuant to section 6.6 of these Procedures to the public may be summarized and disclosed, but shall not disclose any confidential information that could identify a person concerned.

7.0 Code of Conduct Complaint – General Rules

- 7.1 A complaint that a Member has contravened the Code may be filed by any person or entity, including but not limited to a Member of Council, a Local Board Member, Staff or a member of the public.
- 7.2 Any complaints shall be filed in writing on the forms established by these Procedures.
- 7.3 A complaint that a Member has contravened a provision of the Code must be submitted within six weeks of the complainant becoming aware of the alleged contravention, and no more than six months after the alleged violation, unless otherwise provided in the Code.
- 7.4 The Integrity Commissioner shall decline to investigate any complaint that is not received within the timeframe set out in section 7.3 of these Procedures unless otherwise required to do so by law, and shall notify the complainant in writing that the time period for submitting the particular complaint has passed.
- 7.5 In accordance with subsection 223.4(9) of the *Municipal Act, 2001*, during the Election Period no complaint that a Member has contravened a provision of a Code may be submitted by any person despite anything in these Procedures to the contrary.

8.0 Code of Conduct Complaint – Informal Complaint

- 8.1 Any individual who has identified or witnessed behaviour or activity by a Member that appears to be in contravention of the Code may address his or her concerns through an informal complaint process.
- 8.2 The Informal Complaint process will normally be to:
 - (a) advise the Member that his or her behaviour or activity contravenes the Code;
 - (b) encourage the Member to stop the prohibited behaviour or activity;
 - (c) confirm to the Member your satisfaction or dissatisfaction with his or her response to the concern identified, if applicable.
- 8.3 Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code may seek to address the prohibited

behaviour or activity themselves in the following manner by following this Informal Complaint process:

- (a) the individual shall document the incident (s) where the Member may have contravened the Code including dates, times, locations, other persons present, and any other relevant information;
- (b) the individual shall advise another person/witness about the concerns regarding the Member's actions, to corroborate the incident;
- (c) the individual is encouraged to notify and discuss the concern with the Mayor and/or the Chief Administrative Officer ("CAO");
- (d) the individual shall advise the Member that the behaviour or activity appears to contravene the Code;
- (e) the individual shall identify to the Member the specific provision(s) of the Code that may have been contravened;
- (f) if it has been confirmed that the Member has contravened the Code, the Member is encouraged to acknowledge and agree to stop the prohibited behaviour or activity and to undertake to refrain from future occurrences of the prohibited behaviour or activity;

8.4 A complainant who has followed these informal complaint procedures should maintain a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.

8.5 If not satisfied with the response received through the informal process, a complainant may proceed with a formal complaint through the Integrity Commissioner as outlined in Section 9 of these Procedures, provided that the complainant shall commence the formal complaint within four weeks of the conclusion of the Informal Complaint process. This Informal Complaint process is not a precondition or a prerequisite to pursuing a Formal Complaint pursuant to the Code.

8.6 The Integrity Commissioner may be requested to assist in an attempt to settle or resolve the issue with the Member and the individual, but will participate only if both parties have consented.

- 8.7 The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator and conciliator of issues related to the complaint.

9.0 Code of Conduct Complaint – Formal Complaint

Complaint Submission

- 9.1 Any individual who has identified or witnessed behaviour or activity by a Member that appears to be in contravention of the Code may address his or her concerns through the formal complaint process.
- 9.2 A formal complaint must be submitted on the approved Code Complaint Form, and will include the following information:
- (a) the name of the Member alleged to have breached the Code;
 - (b) the section(s) of the Code allegedly contravened by the Member;
 - (c) the facts supporting the contravention of each section of the Code allegedly breached including the date, time and location of the alleged contravention(s);
 - (d) when the complainant first became aware of the alleged contravention(s);
 - (e) the full contact information for the complainant, including mailing address, telephone number, and email address;
 - (f) the date and the complainant's signature; and
 - (g) any other information as required on the Code Complaint Form.
- 9.3 The affidavit portion of the Code Complaint Form must be signed and sworn or affirmed before the Clerk, a deputy clerk, a notary public, or a commissioner for taking affidavits in Ontario.
- 9.4 If the complainant is aware of any witnesses to the alleged contravention of the Code, the complainant may identify those witnesses on the Code Complaint Form.

- 9.5 The complaint shall be filed with the Integrity Commissioner who shall confirm that the information submitted on the Code Complaint Form is complete.
- 9.6 The Integrity Commissioner will inform the City Clerk of receiving the complaint.
- 9.7 Upon receipt of a complete Code Complaint Form, the Office of the Integrity Commissioner will send to the complainant a Consent and Confidentiality Agreement for review and signature.
- 9.8 Upon receipt of the complete Code Complaint Form, the Integrity Commissioner will determine whether the matter is, on its face, a complaint with respect to an alleged contravention of the Code.
- 9.9 The Integrity Commissioner may request additional information from the complainant.

Complaint Outside the Jurisdiction of the Integrity Commissioner

- 9.10 If the Integrity Commissioner determines that the matter referred to in a Code Complaint Form is not, on its face, a complaint with respect to an alleged contravention of the Code, the Integrity Commissioner shall advise the complainant in writing as follows:
 - (a) Criminal Matter – if the complaint is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;
 - (b) Municipal Freedom of Information and Protection of Privacy – if the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be referred to the Clerk to have the matter reviewed under that Act;
 - (c) Other Legislation or Policies – if the matter is covered by other policies or legislation, the complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

Refusal to Conduct an Investigation

- 9.11 The Integrity Commissioner may refuse to conduct an investigation if, upon review of a complaint, the Integrity Commissioner is of the opinion that the complaint:
- (a) is frivolous, vexatious or not made in good faith; or
 - (b) there are no or insufficient grounds for an investigation.
- 9.12 The Integrity Commissioner may cease an investigation if, upon review of the evidence gathered and the complaint, the Integrity Commissioner comes to the conclusion that the complaint:
- (a) has become frivolous, vexatious or not made in good faith; or
 - (b) that there are no or insufficient grounds to continue an investigation.
- 9.13 If the Integrity Commissioner decides not to conduct an investigation, or to cease an investigation, that decision shall be communicated in writing to the complainant, the Member and the Clerk.

Opportunity for Informal Resolution

- 9.14 If at any time, following the receipt of a formal complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the Member agree, efforts may be made to achieve an informal resolution.
- 9.15 The Integrity Commissioner shall notify the complainant, Member and the Clerk of any such completed informal resolution.

Investigation

- 9.16 If the Integrity Commissioner determines that a formal investigation is required he or she shall, subject to the Integrity Commissioner's ability to elect to exercise the powers of a commissioner under Parts I and II of the *Public Inquiries Act*, proceed in the following manner:
- (a) The Integrity Commissioner shall provide a copy of the complaint and any supporting materials to the Member who is alleged to have contravened the Code with a request that a written response to the

allegation be provided to the Integrity Commissioner within ten (10) days.

- (b) The Integrity Commissioner shall give a copy of the response provided by the Member to the complainant with a request for a written reply within ten (10) days.
- (c) If necessary, after reviewing the submitted materials, the Integrity Commissioner may request further information from the complainant or the Member, speak to anyone, access and examine any other documents or electronic materials, and may enter any Welland work location relevant to the complaint for the purpose of investigation and potential resolution.

- 9.17 The Integrity Commissioner may extend the timelines for submission of any responses from either the Member or the complainant as he or she deems it fair or necessary.
- 9.18 The Integrity Commissioner may make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation encountered during the investigation.
- 9.19 The Integrity Commissioner will use best efforts to complete and report on any investigation within ninety (90) days of having received the signed Consent and Confidentiality Agreement.
- 9.20 Notwithstanding anything else in these Procedures, if an investigation has not been completed by the Integrity Commissioner before Nomination Day, the Commissioner shall terminate the investigation on Nomination Day.
- 9.21 If an investigation is terminated pursuant to section 9.20 of these Procedures, the Integrity Commissioner shall not commence another investigation of the same matter unless, within six weeks after Voting Day, the complainant or the Member who was the subject of the complaint requests, in writing, that the Commissioner commence the investigation.
- 9.22 At any time the complainant may abandon the request for an investigation and the Integrity Commissioner will cease his or her investigation.
- 9.23 If an investigation is being abandoned pursuant to Section 9.22 of these Procedures, the Integrity Commissioner shall notify, in writing, the complainant, the Member and the Clerk.

Recommendation Report

- 9.24 In the event of a finding of contravention, the Integrity Commissioner shall provide a draft report to the Member and allow ten (10) calendar days for the Member to provide any comments on the findings and/or recommended penalty.
- 9.25 Upon completion of the review as described in Section 9.24, the Integrity Commissioner shall within a further thirty (30) days report to Council outlining the findings of the investigation, including if the complaint has been withdrawn, sustained or resolved (including the terms of any such resolution). At this time, the final report will also be provided to the complainant and the Member.
- 9.26 If upon completion of the investigation the Integrity Commissioner finds that a Member has contravened the Code, the Commissioner shall report his or her findings to Council and may make a recommendation on whether Council should impose one of the penalties provided for in the *Municipal Act, 2001*.
- 9.27 Notwithstanding anything in these Procedures to the contrary, during the Election Period, the Integrity Commissioner shall not submit any report to Council, and Council shall not consider the imposition of any penalty on a Member.

10.0 Municipal Conflict of Interest Act Complaint

Timelines

- 10.1 A complaint that a Member or a Member of a Local Board has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* may be filed by an elector or person demonstrably acting in the public interest as determined by the Integrity Commissioner.
- 10.2 A complainant who alleges that a Member has contravened the *Municipal Conflict of Interest Act* must submit their complaint within six weeks of becoming aware of the alleged contravention, unless:
 - (a) The complainant became aware of the alleged contravention within the period of time starting six weeks prior to Nomination Day and ending on Voting Day; and
 - (b) The complainant submits a complaint to the Integrity Commissioner within six weeks after Voting Day.
- 10.3 The Integrity Commissioner shall decline to investigate any complaint that is not received within the timeframe set out in section 10.2 of these Procedures unless otherwise required to do so by law, and shall notify the complainant in writing that the time period for submitting the particular complaint has passed.
- 10.4 In accordance with subsection 223.4.1(9) of the *Municipal Act, 2001*, during the Election Period no complaint that a Member has contravened the *Municipal Conflict of Interest Act* may be submitted by any person despite anything in these Procedures to the contrary.

Complaint Submission

- 10.5 Any complaint that a Member has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* shall be submitted to the Clerk using the MCIA Complaint Form.
- 10.6 The MCIA Complaint Form shall include:
 - (a) the name of the Member alleged to have breached the MCIA;
 - (b) the section(s) of the MCIA allegedly contravened by the Member;

- (c) the facts supporting the contravention of each section of the Act allegedly breached including the date, time and location of the alleged contravention(s);
 - (d) the statutory declaration required by section 223.4.1(6) of the *Municipal Act, 2001* stating when the complainant first became aware of the alleged contravention(s);
 - (e) the full contact information for the complainant, including mailing address, telephone number, and email address;
 - (f) the date and the complainant's signature; and
 - (g) any other information as required on the MCIA Complaint Form.
- 10.7 The Clerk will forward a complete MCIA Complaint Form to the Integrity Commissioner.
- 10.8 Upon receipt of a completed MCIA Complaint Form, the Integrity Commissioner may request additional information from the complainant.

Refusal to Conduct an Investigation

- 10.9 The Integrity Commissioner may refuse to conduct an investigation for any reason that the Integrity Commissioner deems reasonable.
- 10.10 If the Integrity Commissioner decides not to conduct an investigation, that decision shall be communicated in writing to the complainant, the Member identified in the MCIA Complaint Form and the Clerk.

Investigation

- 10.11 The Integrity Commissioner may conduct such investigation of an alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* as he or she deems necessary.
- 10.12 The Integrity Commissioner may have a public meeting to discuss the investigation.
- 10.13 In conducting an investigation of an alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Integrity Commissioner may elect to exercise the powers under sections 33 and 34

of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry.

- 10.14 The Integrity Commissioner shall complete any investigation of an alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* within 180 days after having received the completed MCIA Complaint Form.
- 10.15 Notwithstanding anything else in these Procedures, if an investigation of an alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* has not been completed by the Integrity Commissioner before Nomination Day, the Commissioner shall terminate the investigation on Nomination Day.
- 10.16 If an investigation is terminated pursuant to section 10.15 of these procedures, the Integrity Commissioner shall not commence another investigation of the same alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* unless, within six weeks after Voting Day, the complainant or the Member, including a former Member, who was the subject of the complaint requests, in writing, that the Commissioner commence the investigation.

Completion of Investigation

- 10.17 Upon completion of an investigation the Integrity Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member has contravened section 5, 5.1 or 5.2 of that Act.
- 10.18 If the Integrity Commissioner decides not to make an application to a judge, he or she shall notify the complainant.
- 10.19 Upon completion of an investigation by the Integrity Commissioner, and having decided whether or not to apply to a judge, the Integrity Commissioner shall publish reasons for the decision.
- 10.20 The Integrity Commissioner shall provide a copy of the reasons referred to in section 10.19 of these Procedures to the complainant, the Member and the Clerk.

11.0 Annual Report

- 11.1 The Integrity Commissioner shall provide an annual report to Council of the activities of his or her Office.
- 11.2 The annual report will normally include:
- (a) information on the nature and volume of activity for the past year including but not limited to:
 - (i) the number of complaints received by the Integrity Commissioner by type (Code Complaint or *Municipal Conflict of Interest Act* Complaint);
 - (ii) the number of complaints the Integrity Commissioner refused to investigate by type;
 - (iii) the number of investigations started by the Integrity Commissioner by type;
 - (iv) the number of investigations completed by the Integrity Commissioner by type;
 - (v) the number of requests for advice received;
 - (vi) the number of requests for advice responded to; and
 - (vii) the number and types of educational sessions provided;
 - (b) examples of the type of advice provided and the nature of complaints received and responded to by the Integrity Commissioner provided that the provision of any example shall preserve the secrecy of the matter including the identity of any person involved; and
 - (c) any recommendations arising from such activity that the Integrity Commissioner deems necessary to provide.
- 11.3 The Integrity Commissioner shall file his or her annual report within three (3) months of every 12 month anniversary of his or her appointment.