

## Mayor Clark – Governance Options – Conduct of Members of Council

### ISSUE

What governance options are available to City Council when public concerns are raised regarding the conduct of members of City Council?

### BACKGROUND

At its meeting held on [October 24, 2022](#), the Governance and Priorities Committee (“GPC”) considered a Notice of Motion put forward by His Worship Mayor Clark regarding “Governance Options – Conduct of Members of Council” and resolved as follows:

Would the Administration provide a report outlining what governance options are available to Council, including the legislative framework, when public concerns are raised regarding the conduct of members of Council.

### CURRENT STATUS

There are legislative, bylaw and policy requirements that apply to conduct of members of City Council. These documents establish the governance framework in which City Council may act with respect to the conduct of members of City Council. More detail is provided in the discussion/analysis below.

In summary the framework provides as follows:

1. Members of City Council are elected for four year terms. Members of Council can only be disqualified or removed from office for the reasons outlined in *The Cities Act*.
2. Individual Councillors or the Mayor have no ability to make decisions or take actions on behalf of the City. Any decisions must be made by City Council as a whole.
3. City Council has established a Code of Conduct for members of City Council. Complaints under the Code are received and investigated by the Integrity Commissioner. If the Integrity Commissioner finds there has been a violation of the Code and a complaint is substantiated, the Integrity Commissioner will provide a report at a public meeting of City Council which will detail the findings along with recommendations for possible censure, sanctions or corrective actions. City Council will consider the report and decide whether they want to impose censure, sanctions or corrective actions in relation to the complaint. Members of City Council cannot be removed from office under the Code of Conduct.

4. City Council makes annual appointments to Council Committees and other boards. *The Procedures and Committees Bylaw, 2014* states that each Standing Policy Committee shall consist of five Councillors, appointed annually. Appointments of other bodies are done at the discretion of City Council. One of the sanctions outlined in the Code for a violation of the Code is removal from Council Committees or other bodies.

## DISCUSSION/ANALYSIS

### General Statutory Framework

Municipalities in Saskatchewan are created by provincial statute. In the case of the City of Saskatoon, the relevant legislation is *The Cities Act* (the “Act”). As a creature of statute, the City and City Council must act in accordance with the provisions of this legislation.

As provided by the Act, Councillors and the Mayor are elected in accordance with *The Local Government Election Act, 2015*. In Saskatoon, a ward system is used where Councillors are elected to represent a defined area of the City. The term of office of Councillors and Mayors is governed by *The Local Government Election Act, 2015*, which currently provides for a four year term.

Section 5 of the Act provides that a City is required to act through its Council. Each member of Council has one vote each time a vote is held at a meeting of City Council and unless a greater percentage of votes is required, all questions are to be decided by a majority of the votes. In other words, the Mayor or members of City Council have no individual decision making power and decisions must be made by a majority of City Council.

Sections 65 and 66 of the Act set out the general duties of Councillors and the Mayor. Section 66.1 of the Act requires City Council to adopt a code of ethics that applies to all members of City Council and includes requirements for inclusion in the code of ethics.

### Disqualification from City Council

Part VIII of the Act outlines how members of Council can be disqualified from City Council. Section 120 states the following reasons for disqualification:

- When nominated, was not eligible for nomination or election as a candidate pursuant to *The Local Government Election Act, 2015*;
- Ceases to be eligible for nomination or election or to hold office pursuant to *The Local Government Election Act, 2015* or any other Act;
- Is absent from all regular City Council meetings held during any period of three consecutive months unless the absence is authorized by a resolution of City Council or a leave of absence policy adopted by City Council;
- Is convicted while in office:
  - Of an offence punishable by imprisonment for five years or more; or

- Of an offence pursuant to Section 123 (Municipal corruption), 124 (Selling or purchasing office), or 125 (Influencing or negotiating appointments or dealing in offices) of the *Criminal Code*;
- Contravenes:
  - A bylaw passed pursuant to Section 34 of *The Local Government Election Act, 2015* (*The Campaign Disclosure and Spending Limits Bylaw, 2006*);
  - Section 116 (Public disclosure statement) or 117 (Declaration of conflict of interest) of the Act;
  - Subsection 87.1(2) (Protection from reprisal);
  - Subsection 162(5) (Civil liability of members of Council);
- Ceases to reside in the City;
- Is determined to have made a false statement or declaration in the nomination paper filed in accordance with *The Local Government Election Act, 2015*; or
- Is removed from office by the Minister or by the Lieutenant Governor in Council pursuant to Section 356 (Minister's power to issue directions and dismiss) or 358.1 (Dismissal and appointment of members of council).

If one of these reasons is met, Sections 121, 122, 123, and 124 of the Act outline the procedure for enforcement of a disqualification.

These are the only reasons that a member of City Council can be disqualified or removed from office during their elected term.

***The Code of Ethical Conduct for Members of City Council Bylaw, 2019***

As required by the Act, City Council has adopted *The Code of Ethical Conduct for Members of City Council Bylaw, 2019* ("Code"). The purpose of the Code is to outline the basic ethical standards and values for members of City Council. It is to be used to guide members respecting what their obligations are when fulfilling their duties and responsibilities as elected officials. It also describes a procedure for the investigation and enforcement of these standards and values.

Pursuant to the Code, City Council has appointed an Integrity Commissioner. The Integrity Commissioner is an independent party who is appointed to undertake the duties and responsibilities outlined in the Code. Duties of the Integrity Commissioner include, in part:

- Provide oral advice and written advance rulings and recommendations to members on questions of compliance with the Code;
- Receive and assess all written complaints to determine if there is jurisdiction to investigate, sufficient grounds for an investigation, opportunity for settlement or if the complaint is frivolous or vexatious;
- Investigate and conduct inquiries as to violations of the Code;
- Determine and report to GPC and City Council as to whether a member has violated the Code; and
- Make recommendations on whether to censure the member, impose sanctions or require corrective actions if there is a violation.

If the Integrity Commissioner determines that the Code has been violated and a complaint is substantiated, the Integrity Commissioner shall report to City Council the findings and the terms of settlement, recommended censure, sanctions or corrective actions. Under the Code, City Council considers the investigation report and may impose the censure, sanctions or corrective actions recommended by the Integrity Commissioner or any other censure, sanctions and corrective actions allowed by law. To be clear, consideration of this report happens at a public City Council meeting and any censure, sanction or corrective action is imposed by City Council at a public City Council meeting. A majority decision of City Council would be required to impose any censure, sanction or corrective action and any action taken is only in relation to the Integrity Commissioner finding that the Code has been violated.

Possible sanctions are outlined in the Code and may include:

- A letter of reprimand;
- Requesting the member issue a letter of apology;
- Publishing a letter of reprimand or request for apology and the member's response;
- Requiring the member to attend training;
- Suspending or removing the member from Council Committees or other bodies; or
- Suspending or removing the member from a position of chairperson of a Council Committee.

Members of Council cannot be removed from City Council for a violation of the Code. Disqualification of members of City Council can only occur for the reasons outlined in this report and as specified in the Act. Given this fact, there is a limitation to the sanctions that can be imposed by the Code. A member of Council would still need to be able to conduct their general Council duties.

Section 88 of the Code outlines the jurisdiction of the Integrity Commissioner. The Code acknowledges the broad nature of the obligations and the potential for overlap with other processes or forums. Thus, the Code provides that the Integrity Commissioner shall advise the complainant in writing as follows if a complaint would be more appropriately addressed through another process:

- If the complaint is an allegation of a criminal nature consistent with the *Criminal Code*, the complainant shall be advised that they must pursue the allegation with the appropriate police service;
- If the complaint is with respect to non-compliance with the Act, the complainant shall be advised that they must pursue the allegation pursuant to the Act;
- If the complaint is with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure, the complainant shall be advised that they must pursue the allegation under that procedure;

- If the complaint is with respect to a matter that is subject to an outstanding complaint under another process such as a court proceeding, a Human Rights complaint or similar process, the investigation may be suspended pending the result of the other process;
- In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to investigate, with any additional reasons and referrals that are appropriate.

Section 4 of the Code states that it does not apply to any acts, behaviour or alleged violations that occurred prior to the date the Code came into force, which is April 29, 2019.

### **Appointment of Council Members to Committees**

The City does have an *Appointments to Civic Boards, Commissions, Authorities, and Committees Policy*, C01-003. This Policy applies generally to citizen appointments to civic boards, commissions, authorities and committees. It does not expressly deal with appointments of City Councillors to committees.

*The Procedures and Committees Bylaw, 2014* provides that appointments of City Council members to the Standing Policy Committees will be done on an annual basis. Unless otherwise prescribed, it has been the general past practice of City Council to make Council appointments to other bodies on an annual basis as well, with appointments being made at the discretion of City Council. City Council appointments are usually considered by City Council in the last quarter of each year

Possible sanctions when a violation of the Code has been found by the Integrity Commissioner include suspending or removing the member from Council Committees or other bodies or suspending or removing the member from a position of chairperson of a Council Committee.

While not entirely clear, given the provisions outlined in the Code, *The Procedures and Committees Bylaw* and the provisions of the Act, members of City Council should be appointed to a Standing Policy Committee unless a violation of the Code has occurred and City Council has decided removal from a Council Committee is a sanction for that violation. Appointments to other bodies are always made at the discretion of City Council.

### **OTHER IMPLICATIONS**

There are no privacy, legal, social or environmental implications not already identified in the report.

#### **Report Approval**

Written and Approved by: Cindy Yelland, City Solicitor

Reviewed by: Adam Titemore, City Clerk  
Jeff Jorgenson, City Manager