

ATTACHMENT #2
DRAFT Complaint Protocol

COMPLAINT PROTOCOL
FOR THE CODE OF ETHICAL CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

Authority: *Municipal Act, 2001*, S.O. 2001, (as amended) CHAPTER 25 and as adopted by Council at its meeting held on _____, 2019.

1. Until such time as a new/revised *Council Code of Ethical Conduct* is adopted, only complaints relating to behaviour or activity occurring subsequent to March 1, 2019 will be addressed by this procedure.
2. After December 31, 2008 all complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.
3. Defined terms used but not defined in this Complaint Protocol shall have the same meaning as set out in the *Code of Ethical Conduct for Members of Council and Local Boards* (the "Code of Conduct").

PART A: INFORMAL COMPLAINT PROCEDURE

4. Individuals (including City employees, members of the public, Members of Council or local boards) who identify or witness behaviour or activity by a Member that appears to be in contravention of the Code of Conduct, or sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* ("MCIA") in the case of Council Members, may address the prohibited behaviour or activity themselves as follows:

- (i) Advise the Member that the behaviours or activity appears to contravene the Code of Conduct, or section 5, 5.1 or 5.2 of the MCIA in the case of Council Members;
- (ii) Encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
- (iii) Document the incidents including dates, times, locations, other persons present, and any other relevant information. Request that the Integrity Commissioner assist in the informal discussion of the alleged complaint with the Member in an attempt to resolve the issue. If applicable, confirm to the Member your satisfaction with the response of the Member; or, if applicable, advise the Member of your dissatisfaction with the response; and

At the earliest possible juncture, the Member whose behaviour is complained of will be advised of an inquiry to the Integrity Commissioner under the Informal Complaint Procedure, and any complainant will be so advised;

- (iv) Pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

Individuals are encouraged to pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that they believe violates the Code of Conduct. The informal complaint procedure will not apply to complaints against Members in respect of section 5, 5.1 or 5.2 of the MCIA.. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint. However, it is not a precondition or a prerequisite that those complaining to pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B. The Commissioner will assess the suitability of the informal complaint process for settlement or resolution on an ongoing basis and may at any time decline to continue participation in the process. The complainant or the respondent can decline to participate in the informal complaint process at any time. The informal complaint procedure is an informal process, and the Integrity Commissioner will not perform an official investigation nor provide a public report, even if the parties agree to involve the Integrity Commissioner in this informal process.

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PART B: FORMAL COMPLAINT PROCEDURE

Formal Complaints

5. Electors and individuals acting in the public interest (including City employees, members of the public, and Members of Council or local boards) who identify or witness behaviour or an activity by a Member that they believe is in contravention of the Code of Conduct, or sections 5, 5.1, or 5.2 of the MCI A in the case of Council Members, may file a formal complaint with the required information on the proscribed affidavit (see page 6 of this procedure):
- (i) All complaints must be made on the Complaints Form/Affidavit and shall be dated and signed by an identifiable individual;
 - (ii) The complaint must include an explanation for why the issues raised may be a contravention of Code of Conduct or the MCI A. Evidence in support of the allegation must also be included;
 - (iii) Witnesses in support of the allegation must be named on the complaint form;
 - (iv) The complaint form will be disclosed to the respondent and to others who may be involved in carrying out this procedure;
 - (v) The complaint form/affidavit must include the name of the alleged violator, the provision of the Code of Conduct or MCI A allegedly contravened, facts constituting the alleged contravention, the names for the complainant during normal business hours;
 - (vi) Receipt of formal complaints will be acknowledged in writing;
 - (vii) If the complaint relates to an alleged violation of sections 5, 5.1, or 5.2 of the MCI A, the complaint must be made within six weeks after the applicant became aware of the alleged contravention. The complainant must also provide a statutory declaration to this effect in their application.

Filing of Complaint and Classification by Integrity Commissioner

6. (i) The complaint shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct, or sections 5, 5.1, or 5.2 of the MCI A in the case of Council Members, and not covered by other legislation or other Council policies as described in subsection 3. The Integrity Commissioner shall make a decision regarding classification within 30 days of receiving the complaint from the City Clerk.
- (ii) If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a Complaint Form/Affidavit is received.

NOT A VIOLATION

- (iii) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct, or sections 5, 5.1, or 5.2 of the MCI A in the case of Council Members, or the complaint is covered by other legislation or complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

CRIMINAL MATTER

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code* of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

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MUNICIPAL CONFLICT OF INTEREST ACT

- (b) If the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, save an except sections 5, 5.1, and 5.2, the complainant shall be advised to review the matters with the complainant's own legal counsel.

MFIPPA

- (c) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy Review.

OTHER POLICY APPLIES

- (d) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

LACK OF JURISDICTION

- (e) If the complaint is, for any reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

MATTER ALREADY PENDING

- (f) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion suspend any investigation pending the result of the other process.
- (g) If the Integrity Commissioner has already reviewed and rendered a decision or has investigated the matter subject of the complaint, the complainant will be advised that the matter cannot be further pursued through Code complaint process

INDIVIDUAL NOT ACTING IN PUBLIC INTEREST

- (h) If the Integrity Commissioner is of the opinion that the individual making the complaint is not acting in the public interest, the complainant shall be so advised, and the Integrity Commissioner shall not conduct an investigation. In assessing whether a complainant is acting in the public interest, the Integrity Commissioner shall consider: (i) whether the complainant is advancing a concern, issue or complaint that involves an issue of importance to some or all citizens of Vaughan rather than a private interest which is mainly of interest to the affected parties; and (ii) whether the complaint is vexatious, frivolous, or unreasonably persistent, as set out in the City of Vaughan's Vexatious and Frivolous Complaints Policy. The Integrity Commissioner may also consider any other relevant facts in assessing whether a complainant is acting in the public interest.

Investigation

- 7. (i) Where the Integrity Commissioner determines that an investigation is warranted, he/she will proceed as follows, except where otherwise required by the *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched. 6:

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- a. Give the complaint and supporting material to the Member whose conduct is in question with a request that a written response to the allegation be provided within ten days; and
 - b. Give a copy of the response provided to the complainant with a request for a written reply within ten days.
- (ii) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (iii) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances or interference, obstruction, delay or retaliation encountered during the investigation.

Opportunities for Resolution

8. Following receipt and review of a formal complaint, or at any time during the investigation, where 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 pursued to achieve an informal resolution.

No Complaint Prior to Election

9. (i) Notwithstanding any other provisions of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation between the regularly scheduled nomination day and voting day in any year in which a regular municipal election will be held.
- (ii) If the Commissioner has not completed an inquiry before nomination day for a regular election the Commissioner shall terminate the inquiry on nomination day.
- (iii) If an inquiry is terminated in accordance with section 12(ii), the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election he person who made the application or the Member or former Member whose conduct is concerned applies in writing to the Commissioner for the inquiry to be carried out.
- (iv) Where an inquiry has been terminated, and the complainant or former Member has requested the inquiry be carried out, the Integrity Commissioner shall be permitted to use any information and evidence obtained prior to the termination. If no request is made to carry out the inquiry, no review or investigation shall be made

Reporting on Code of Conduct Investigations

10. (i) The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties the date the report will be available.
- (ii) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.
11. (iii) Where the Integrity Commissioner reports to Council that in her or his opinion, there has been a violation of the Code of Conduct, the municipality may impose penalties and remedial actions in

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accordance with the *Municipal Act* and the Code of Conduct. The Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any respondent unless the respondent has had notice of the basis for the proposed finding and any recommended sanction or remedial action, and an opportunity either in person or in writing to comment on the proposed findings.

(iv) If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act* and the Code of Conduct.

(v) The Integrity Commissioner shall give a copy of the report to the complainant and the Member whose conduct is concerned.

(vi) Upon receipt of a report, the Clerk shall process the report for the next meeting of Councils' Committee of the Whole.

Reporting on MCIA Investigations

12. (i) The Integrity Commissioner shall complete his/her investigation into alleged contraventions of sections 5, 5.1, or 5.2 of the MCIA within 180 days after the receipt of the Complaint Form/Affidavit. However, this section does not apply if the investigation is terminated in accordance with section 223.4.1(12) of the *Municipal Act*.

(ii) If, upon completion of the investigation, the Integrity Commissioner determines that on a balance of probabilities there has been a violation of the MCIA, or is otherwise of the opinion that it is in the City's interest for a judge to determine if there has been a violation of the MCIA, the Integrity Commissioner may apply to a judge for such a determination. For greater certainty, nothing in this Protocol shall prevent a complainant from bringing their own application to a judge for a determination of whether there has been a violation of sections 5, 5.1, or 5.2 of the MCIA.

(iii) Upon completion of the investigation, the Integrity Commissioner shall advise the complainant whether the Commissioner will be making an application to a judge for a determination if there has been a violation of the MCIA. The Integrity Commissioner shall publish written reasons for his/her decision within 90 days of such decision. The Integrity Commissioner shall periodically report to Council on the outcome of his/her investigations of alleged MCIA contraventions.

No Reports Prior to Election

13. Notwithstanding any other provisions of this Protocol, between nomination day and voting day for a regular municipal election, the Integrity Commissioner shall not make any report to Council or to any other person about whether a Member has contravened the Code of Conduct, including sections 5, 5.1, or 5.2 of the MCIA in the case of Council Members.

Duty of Council

14. Council shall consider and respond to the report within 45 days after the day the report is presented to it (this timeline shall be extended as necessary in the case of summer hiatus and festive closure).

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Public Disclosure

15. (i) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
- (ii) At the time of the integrity Commissioner's report to Council, and as between the parties, the identity of the person who is the subject of the complaint shall not be treated as confidential information.
- (iii) All reports from the Integrity Commissioner to Council will be made available to the public.

Please see below for (i) Complaint Form/Affidavit and (ii) the Written Request for Advice Form for use by Members below.

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Please note that signing a false affidavit may expose you to prosecution under Section 131 and 132 or 134 of the *Criminal Code*, R.S.C.1985,c.C-46, and also to civil liability for defamation.

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Complaint Form/Affidavit

AFFIDAVIT OF

_____ [full name]
I, _____ [full name], of the [City, Town, etc.] of _____
_____ [municipality of residence]
in the Province of Ontario.

MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this affidavit, because

_____ [insert reasons e.g. I Work for...I attended the
meeting at which....etc.]

2. I have reasonable and probable grounds to believe that a Member of Vaughan City Council, or a Member of a Vaughan local board, as set out in the *Code of Ethical Conduct for Members of Council* (the "Code of Conduct")

_____ [specify
name of member], has contravened section(s) _____ [specify section(s)] of the
Code of Conduct or sections 5, 5.1, or 5.2 of the *Municipal Conflict of Interest Act* in the case of Council
Members. The particulars of which are as follows: [Set out the statements of fact in consecutively
numbered paragraphs in the space below, with each paragraph being confined as far as possible to a
particular statement of fact. If you require more space, please use the attached Schedule A form and
check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to
the exhibits as Exhibit A, B, etc. and attach them to this affidavit.]

Please see attached Schedule A ()

1. This affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

SWORN [or AFFIRMED] before me at
the [City, Town, etc. of _____)
_____)
_____ in the Province of Ontario on _____)
_____ [date] _____)
_____)

[Signature of commissioner]
A Commissioner for taking affidavits, etc. _____)

