

DECISION/DIRECTION NOTE

Title: Councillor Code of Conduct By-Law

Date Prepared: February 8, 2023

Report To: Regular Meeting of Council

Councillor and Role: Mayor Danny Breen, Governance & Strategic Priorities

Ward: N/A

Decision/Direction Required:

To approve and adopt the Councillor Code of Conduct By-Law (“2023 Code”) as required by the Municipal Conduct Act, SNL 2021 c. M-20.01 (“the Act”) and regulations. The 2023 Code applies to members of Council only.

Discussion – Background and Current Status:

In 2018, the City prepared a By-Law entitled the “Code of Ethics By-Law.” This By-Law was drafted as result of an independent report of the Honourable Clyde K. Wells, K.C, which recommended the repeal and consolidation of various By-Laws that applied to City employees and Councillors. The 2018 “Code of Ethics By-Law” governed various subjects, including but not limited to, Conflicts of Interest, Disclosure, Discrimination/Harassment, Elections, Confidential Information and Wrongdoings. This By-Law was approved by Council but could not be enacted due to limitations of the City of St. John’s Act.

Subsequent to the preparation of the 2018 “Code of Ethics By-Law” the Province of Newfoundland and Labrador (“the Province”) announced it would be bringing in legislation governing the conduct of all municipal employees, as well as Councillors, and that the legislation would contain a requirement for all municipalities to bring in two Codes of Conduct. As a result, the City waited to update its by-laws until the Province put forward this new legislation.

On September 1, 2022, the Province brought the Act into force. The Act requires not only Council, but all “municipal officials” including employees, to abide by a code of ethics dealing with conflict of interest and general conduct. The Act also sets out applicable penalties for current and former Council Members for conflict-of-interest breaches or conduct breaches.

The Act requires significant changes to the 2018 Code of Ethics By-Law previously approved, but not passed by Council. Council have been following other City By-Laws to address matters now contained in the 2023 Code, such as the Conflict of Interest By-Law, the Workplace Human Rights By-Law and the Freedom of Information By-Law.

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Part I: Conflict of Interest

The Conflict of Interest By-Law is the most pertinent City by-law in relation to the 2023 Code. The Act addresses the conduct of Municipal Officials and includes requirements for identifying and addressing conflicts of interest.

Currently under the Conflict of Interest By-Law, a conflict of interest is defined narrowly to be a pecuniary interest. The Act requires a broader definition of conflict of interest and now includes a “Private Interest”:

Conflict of Interest By-Law	2023 Code
<p>3.(1) No member of Council shall vote on or speak to any matter before the Council or any committee thereof where:</p> <p>(a) the member of Council has a pecuniary interest directly or indirectly in that matter;</p> <p>(b) a relative of the member of Council has a pecuniary interest directly or indirectly in the matter; or</p> <p>(c) the member of Council is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a pecuniary interest in that matter.</p>	<p>Definition is more expansive to include a Private Interest of a Council Member or a Relative, that may be affected. The inability to act impartially due to personal relationships would also qualify as a conflict of interest. Section 2(h)</p> <p>“Conflict of Interest” means a Councillor is in a position whereby in the making, or involvement in the making, of a decision</p> <p>(i) a Councillor’s Private Interests are affected...;or</p> <p>(ii) the Councillor is unable to act impartially on behalf of the City due to the Councillor’s personal relationships...</p>

Under the Act, “Private Interest” includes director positions and memberships (reflected in s. 2(t) of the 2023 Code)

“Private Interest” includes:

- (i) an asset, liability or financial interest;**
- (ii) a source of income;**
- (iii) a position of director or executive officer in a corporation, association or trade union, whether for profit or not for profit;**
- (iv) membership in a board, commission or agency of the Crown in Right of Canada or a Province;**

(v) membership in or employment by a trade union where the trade union has entered into or is seeking to enter into a collective agreement with the City or an entity of a Council, with respect to any matter related to the administration or negotiation of the collective agreement, and

(vi) a benefit or award,

but does not include an excluded private interest, which means:

(i) cash on hand or on deposit with a financial institution that is lawfully entitled to accept deposits;

(ii) a position of director or executive officer in a Municipal entity or Municipal corporation;

(iii) membership in a Council committee;

(iv) purchase or ownership of a Municipal debenture;

(v) fixed value securities issued by a government or Municipality in Canada or an agency of a government or Municipality in Canada; and

(vi) a benefit or award of a value less than \$500.00 as prescribed in the Municipal Conduct Act regulations.

When addressing the requirements of reporting a Conflict of Interest, both the Conflict of Interest By-Law and the 2023 Code have similar processes:

Conflict of Interest By-Law	2023 Code
<p>4. (1) Where a member of Council has an interest as set out in section 3 he or she shall state that he or she has such an interest and the nature of that interest at the commencement of discussion on the matter in which he or she has such an interest.</p> <p>(2) Where the member of Council declaring a conflict of interest under subsection (1) is the presiding officer he or she shall vacate the chair.</p> <p>(3) Where the member of Council declaring a conflict of interest under subsection (1) does so at a privileged meeting he or she shall leave that meeting while the matter on which</p>	<p>28. (1) Where a Councillor knows or ought reasonably to know that they have a Conflict of Interest in a matter before Council, the Councillor shall:</p> <p>(a) declare the Conflict of Interest before any consideration or discussion of the matter;</p> <p>(b) disclose the general nature of the Conflict of Interest;</p> <p>(c) refrain from participating in any discussion relating to the matter;</p> <p>(d) refrain from voting on any question, decision, recommendation, or other action to be taken relating to the matter;</p>

<p>he or she has a conflict of interest is being discussed.</p> <p>5.(1) Where a member of Council is in doubt as to whether he or she has an interest that is a conflict of interest under section 3 he or she shall make a disclosure and the Council may decide the question by majority vote and its decision on the matter is final.</p>	<p>(e) leave the room in which the meeting is held for the duration of the consideration of the matter; and</p> <p>(f) where the Councillor declaring a Conflict of Interest is the presiding officer, they shall vacate the chair for the matter.</p> <p>(2) Notwithstanding paragraph 28(1)(e), where the meeting referred to in subsection (1) is open to the public, the Councillor may remain in the room.</p> <p>...</p> <p>29.(1) Where a Councillor is uncertain as to whether or not they are in a Conflict of Interest, the Councillor shall disclose the nature of the possible Conflict of Interest to Council who may decide whether a Conflict of Interest exists by a majority vote. In the event that the Council vote is tied, the Councillor shall be considered to have a Conflict of Interest.</p> <p>(2) A Councillor whose possible Conflict of Interest is being voted on is not entitled to vote.</p> <p>(3) Where Council determines by a majority vote that a Councillor does not have a Conflict of Interest and a Complaint is subsequently filed under this Councillor Code and it is determined that the Councillor did have a Conflict of Interest, Council may invalidate the decision of Council in which the Councillor acted in a Conflict of Interest but shall not impose any penalties against the Councillor.</p>
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The Conflict of Interest By-Law does not address a complaint made alleging a Member of Council acted in a conflict of interest. This addition is required by the Act and the mandated process has been set out beginning at section 30 of the 2023 Code.

Complaint Process under 2023 Code:

- 30. A Complaint alleging a Conflict of Interest shall include the following:**
- (a) the nature of the Conflict of Interest;**
 - (b) the Councillor's or former Councillor's actions in relation to the Conflict of Interest; and**
 - (c) any other information the City Manager or their designate determines necessary.**
- 31. The City Manager or their designate shall provide a copy of the Complaint to the Councillor no later than 5 business days after receipt of the Complaint.**
- 32. (1) The Councillor may provide a written response respecting the Complaint to the City Manager or their designate no later than 20 business days after receipt of a copy of the Complaint.**
- (2) Where the Councillor provides a written response under subsection (1), the City Manager or their designate shall provide a copy of the written response to the Complainant within one business day after receipt of the written response.**
- 33. The City Manager or their designate shall review the Complaint and the Councillor's written response no later than 10 business days after receipt of the written response, or where a written response is not filed, the City Manager or their designate shall review the Complaint no later than 10 business days after the time period to file the written response has expired, and shall:**
- (a) prepare a Report regarding the Complaint;**
 - (b) refer the Complaint and the Councillor's response, if any, to a Special Meeting of Council along with a copy of the Report; and**
 - (c) give written notice of the referral to the Complainant and the Councillor.**
- 34. No later than 15 business days after receiving the Report referred to in section 33, Council shall consider the Complaint, any response, and the Report provided in a Special Meeting of Council and may, by resolution,**
- (a) dismiss the Complaint;**
 - (b) determine that the Councillor or former Councillor acted in a Conflict of Interest; or**

(c) order an investigation by an External Investigator to determine whether the Councillor or former Councillor acted in a Conflict of Interest.

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36. The External Investigator assigned under paragraph 34(c) shall prepare a Report regarding the investigation and submit it during a Special Meeting of Council.

37. Following review of the investigation Report submitted under section 36 Council may, by resolution,

(a) dismiss the Complaint; or

(b) make a determination that the Councillor or former Councillor acted in a Conflict of Interest.

In the event a complaint of a conflict of interest is upheld, penalties are set out in the Act and are reproduced in the 2023 Code. The complaint process and potential penalties apply to both current and former Councillors.

Part II: Wrongdoing

The Conflict of Interest By-Law does not address complaints made against current or former Councillors alleging “Wrongdoing,” meaning a breach of the 2023 Code other than a conflict of interest complaint or an alleged breach of any act or regulation.

Currently, a complaint against a Councillor alleging workplace harassment or other matters may be made under the St. John’s Workplace Human Rights By-Law. However, the Act mandates a procedure for a complaint of this nature, which has been included in the 2023 Code as a “Wrongdoing Complaint” and is different from the said By-Law:

St. John’s Workplace Human Rights By-Law	2023 Code
<p>5.1 Outside Consultant</p> <p>The making and resolution of complaints under this Policy by or against the Chief Commissioner or a Member of City Council will be contracted to a qualified human rights consultant (the Consultant) reporting directly to the Mayor and Council.</p> <p>The Consultant will be retained by City Council and will be selected based upon the recommendation of the Chief Commissioner,</p>	<p>A complaint must be filed within 6 months of becoming aware of the potential wrongdoing. Timeline may be extended in some circumstances. Section 46</p> <p>A complaint of wrongdoing is filed with the City Solicitor. May also be filed with the City Internal Auditor or a direct supervisor or HR in the case of an employee complaint. Section 47</p>

<p>the City Solicitor and Director of Human Resources.</p> <p>5.2 Notification of Complaint The Consultant shall notify the Mayor and Council of all complaints immediately upon receipt.</p> <p>5.3 Authority and Duties of the Consultant</p> <p>The Consultant has the authority of the Mayor and Council to investigate and/or attempt to settle the complaint, and to speak with anyone, examine any documents and enter any work location relevant to the complaint for the purposes of investigation or settlement. These duties shall be carried out in accordance with the preceding provisions of this Policy.</p> <p>Prior to conducting a full investigation into the complaint, the Consultant shall determine whether the complaint, if proven, would constitute discrimination or harassment under the Policy.</p> <p>The Consultant may recommend to Council that the complainant pay the costs of the investigation where, in the opinion of the Consultant, the complaint is spurious or vexatious.</p> <p>5.4 Consultant's Report</p> <p>The Council shall be presented with a report outlining the findings, terms of settlement, if any, or recommended corrective action within 30 days of the making of the complaint.</p> <p>The complainant and respondent have the right to review and comment on the Report.</p> <p>5.5 Final Decision</p>	<p>Complaint may be informally resolved unless the complainant requests an investigation. Section 49</p> <p>Complaint may be dismissed if no reasonable prospect of being substantiated. Section 51</p> <p>If a complaint is not dismissed or resolved informally, the City Solicitor shall retain an External Investigator to investigate the complaint. Section 56</p> <p>Unless the investigation is ceased by the External Investigator (section 60) the final Report shall be presented and filed with Council at a Special Meeting. The Report will have findings and conclusions, not recommendations. Section 61</p> <p>Council shall review the matter and dismiss the complaint or find a contravention of the Code. Section 62-63</p> <p>63. At a Regular Meeting, where Council determines that a Councillor has contravened this Councillor Code or failed to comply with a penalty imposed under this section, Council may, by resolution, do one or more of the following:</p> <ul style="list-style-type: none"> (a) reprimand the Councillor; (b) require the Councillor to attend training as determined by Council; (c) suspend the Councillor from Council committees or other additional activities or duties for a period of no more than 3 months; (d) suspend the Councillor from Council, without remuneration, for a period of no more than 3 months; and (e) where one or more of the following apply, make an application to Court seeking
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<p>Prior to making any final decision on the matter the Council shall review the Report and any comments of the Consultant. The Council may approve, change or reject any proposed terms of settlement or recommended corrective action.</p>	<p>that the Councillor vacate their seat on Council and that the Councillor be ineligible to be nominated as a candidate until the nomination period for the next general election:</p>
<p>5.6 Other Avenues of Redress</p>	<p>(i) the contravention of the Councillor Code resulted in loss of public trust;</p>
<p>Nothing in this section should be interpreted as denying or limiting access to other avenues of redress available under the law (e.g., criminal complaint, civil suit, or a complaint with the Newfoundland Human Rights Commission). Council, however, may decide to postpone, suspend or cancel any investigation into a complaint under this Policy if it is believed that the investigation would duplicate or prejudice such a proceeding.</p>	<p>(ii) the contravention of the Councillor Code consisted of violence or the credible threat of violence; and</p>
<p>5.7 Discipline/Sanctions</p>	<p>(iii) the Councillor has contravened the Councillor Code more than once and has refused to comply with the penalties imposed.</p>
<p>Depending upon the circumstances, a founded complaint under this Part will be considered a form of misconduct.</p>	<p>64. At a Regular Meeting where Council determines that a former Councillor has contravened the Councillor Code, Council may, by resolution, do one or both of the following:</p>
<p>In the case of misconduct under this Part involving the Chief Commissioner, corrective action may include discipline which can vary from verbal counselling or a written reprimand to suspension or discharge, subject to the provisions of any contract of employment or applicable legislation.</p>	<p>(a) reprimand the former Councillor; and</p>
<p>In the case of misconduct under this Part involving a Member of Council, and depending upon the recommendations of the Consultant the Council may impose appropriate sanctions, including monetary sanctions (i.e. lost salary or remuneration).</p>	<p>(b) where one or more of the following apply, declare that the former Councillor is ineligible to be nominated as a candidate until the nomination period for the next general election:</p>
	<p>(i) the contravention of the Councillor Code resulted in loss of public trust,</p>
	<p>(ii) the contravention of the Councillor Code consisted of violence or the credible threat of violence, and</p>
	<p>(iii) the former Councillor has contravened the Councillor Code more than once and has refused to comply with penalties imposed.</p>

Part III: Social Media

Section 5 of the Municipal Conduct Regulations requires that a code of conduct developed for Members of Council must address the use of social media. Currently, there is no social media policy or by-law in place for Council. However, there is a social media policy applicable to the City and all employees. With the current City policy on social media as the basis, the language of the 2023 Code was drafted:

Social Media Usage Policy	2023 Code
<p>Policy Statement</p> <p>The City is committed to developing and maintaining a Social Media presence that:</p> <ul style="list-style-type: none"> a) is informative, welcoming, respectful, and inclusive; b) aligns with the City’s vision and guiding principles; c) supports the City’s image; and d) is accessible, transparent, and accountable. <p style="text-align: center;">...</p> <p>1 General Requirements</p> <p>a) City Social Media content shall:</p> <ul style="list-style-type: none"> i. align with the City’s vision and guiding principles and not negatively impact on the City’s reputation; and ii. be accurate, transparent, and accountable. <p>b) Use of Social Media shall support the City’s operational objectives.</p> <p>c) Only authorized Employees shall create, publicize, and manage a City Social Media account.</p> <p>d) All City Social Media sites shall conform with the appropriate and applicable City corporate branding and standards.</p> <p>e) All City Social Media sites shall contain a link to the Social Media Terms of Use.</p>	<p>15. All Councillors posting to their personal media accounts should be consistent with their duties and obligations as Councillors including, but not limited to, those obligations under this Councillor Code and all applicable City policies and must not bring the integrity of Council or the City into disrepute.</p> <p>16. Any opinions expressed in public by a Councillor while acting in their capacity as City Councillor shall be solely for the purposes of genuine political discourse and shall not include any Confidential Information obtained through their position with the City.</p> <p>17. Councillors shall, where possible, conduct Council business through City operated accounts and devices and shall avoid conducting Council business on personal devices or through personal accounts.</p>

<p>f) All Social Media activities shall be in accordance with the City’s Social Media Handbook.</p> <p>g) The City reserves the right to restrict or remove any content that is deemed to be, in its sole discretion, in violation of this policy, or any applicable legislation.</p> <p style="text-align: center;">...</p> <p>3 Employee Use of Social Media</p> <p>a) An Employee shall not represent the City of St. John’s on any Social Media unless authorized to do so.</p> <p>b) All Employees shall use sound judgment when posting to their personal Social Media and all postings should be consistent with their employment obligations, including, but not limited to those obligations under the St. John’s Code of Ethics By-law and City policies.</p>	
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Part IV: Remainder of 2023 Code

As stated previously, while the 2018 “Code of Ethics By-Law” was voted on and approved by Council, it was never passed due to the limitations imposed by the City of St. John’s Act. Nonetheless, the 2018 “Code of Ethics By-Law” was achieved through extensive work and deliberations.

Given that there are significant new requirements under the Act, and to facilitate the transition for Council as seamlessly as possible, the 2023 Code has maintained much of the 2018 “Code of Ethics By-Law” previously approved:

2018 Code of Ethics By-Law		2023 Code	
Part I:	Ethical Conduct	Part 1:	Ethical Conduct
Part II:	Workplace Protection;	Part 2:	Conflict of Interest Complaint
Part III:	Financing of Municipal Elections;	Part 3:	Wrongdoing Complaint
Part IV:	Protection of Confidential Information;	Part 4:	Disclosure
		Part 5:	Workplace Protection

Part V: Reporting Breaches of the Code	
Part VI: Miscellaneous	Part 6: Protection of Confidential Information
	Part 7: Miscellaneous.

In comparing the 2018 “Code of Ethics By-Law” and the 2023 Code:

Part I Ethical Conduct - In the “2018 Code of Ethics By-Law”, the Ethical Conduct section was broader in that it also applied to employees. All employee references have been removed in the 2023 Code.

Part 1 Ethical Conduct of the 2023 Code is further streamlined as sections such as Conflict of Interest and Disclosure have been moved elsewhere.

Part II - Workplace Protection of the 2018 “Code of Ethics By-Law” has been moved to Part 5 - Workplace Protection of the 2023 Code.

Part III - Financing of Municipal Elections of the 2018 “Code of Ethics By-Law” was a copy of the Election Finance By-Law, the reason being that the intention was that the Election Finance By-Law would be repealed. This is no longer the case with the 2023 Code. The Election Finance By-Law will remain in place so there is no corresponding section in the 2023 Code.

Part IV - Protection of Confidential Information of the 2018 “Code of Ethics By-Law” has been moved to Part 6 of the 2023 Code, with the exception of Travel Expenses which is now under Part 4 - Disclosure.

Part V - Reporting of Breaches of the Code in the 2018 “Code of Ethics By-Law” has been streamlined to remove employees and has been broken down into 2 parts under the 2023 Code:

Part 2 - Conflict of Interest Complaints of the 2023 Code now addresses conflict of interest, the requirements on Council to report, the complaint process if a breach is alleged and the penalties.

Part 3 - Wrongdoing Complaint of the 2023 Code addresses allegations of wrongdoing, which is an alleged breach other than a conflict-of-interest.

Part VI - Miscellaneous of the 2018 “Code of Ethics By-Law” is reflected in Part 7 - Miscellaneous of the 2023 Code.

The Legal Department has drafted the 2023 Code to comply with the Act. With respect to the public disclosure of investigation reports the Department has interpreted the Act’s provision to not conflict with or violate privacy, ATIPPA, or other applicable laws.

Part V: Training

The Act requires 2 types of training; Code Training and Orientation Training.

On the 2023 Code, Council is required to have the Code in place within 6 months of the Act coming into force (s. 12), which means by March 1, 2023. Training under the 2023 Code must be completed within 3 months of the Code being established by Council (s.13). Failure to do so within the prescribed time period means that the Member of Council shall not carry out any duty or function of Council.

Orientation training must be completed within one year of the Act coming into force, September 1, 2023. Newly elected Members of Council must be trained within 60 days of being elected. Again, a Member of Council cannot assume their role until training is complete.

Part VI: Summary

The Legal Department has drafted the 2023 Code in accordance with the Act. Unless specific definitions or procedures were set out in the Act, the Legal Department has used existing City policies and by-laws to the extent possible. Further, as much of the 2018 “Code of Ethics By-Law” was preserved as long as the sections complied with the Act and dealt with Members of Council only.

With respect to the public disclosure of investigation reports the Legal Department has taken a drafted the 2023 Code taking into consideration the City’s requirements under ATIPPA, 2015, privacy and all other applicable laws.

Key Considerations/Implications:

1. Budget/Financial Implications: Cost of Training – Training and orientation will be completed using current HR and Legal resources. However, once the training is designed there may be additional resources required. There may be increased costs for external investigations under the By-Law.
2. Partners or Other Stakeholders: Members of Council and Staff
3. Alignment with Strategic Directions:
 - Effective City – The 2023 Code will ensure accountability and good governance by providing a regulatory framework for dealing with conflicts of interests, wrongdoing allegations, and conduct in general.
4. Alignment with Adopted Plans: N/A
5. Accessibility and Inclusion: N/A
6. Legal or Policy Implications:

- The passage of the 2023 Code would result in the repeal of several City by-laws;
- The passage of the 2023 Code will result in required training for Members of Council;
- The 2023 Code will create a complaint process for both allegations of wrongdoing and conflicts of interest

7. Privacy Implications:

As indicated, the legal Department is concerned about the potential public disclosure of investigation reports, which is why redaction is recommended to remain in compliance with ATIPPA 2015 and other applicable laws. This approach has been reviewed with the City's Access and Privacy Analysts of the Office of the City Clerk who are in agreement with the approach.

8. Engagement and Communications Considerations:

Council and staff will need to be made aware of the requirements of the 2023 Code. Staff will, through training, learn of the 2 By-Laws and that complaints regarding Members of Council will be governed by the 2023 Code.

9. Human Resource Implications:

Legal and Human Resources will need to coordinate to ensure training and policies comply with the provisions of the 2023 Code.

10. Procurement Implications: N/A

11. Information Technology Implications: N/A

12. Other Implications: N/A

Recommendation:

That Council approve and adopt the Councillor Code of Conduct By-Law

Prepared by: Raman Balakrishnan, Legal Counsel
Approved by: Cheryl Mullett, City Solicitor

Report Approval Details

Document Title:	Decision Note - Code of Conduct for Councillors.docx
Attachments:	- Code of Conduct for Councillors Feb 9 2023 - final.docx
Final Approval Date:	Feb 9, 2023

This report and all of its attachments were approved and signed as outlined below:

Cheryl Mullett - Feb 9, 2023 - 11:40 AM