Section 25: Procedure – Complaints

Informal Complaints

25.1 Any individual who has identified or witnessed behaviour or activity by a member that appears to be in contravention of the Code may address their concerns in the following manner:

a) Advise the member that their behaviour or activity contravenes the Code;

b) Encourage the member to stop the prohibited behaviour or activity;

c) If applicable, confirm to the member your satisfaction or dissatisfaction with his or her response to the concern identified;

d) Keep 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.

e) If not satisfied with the response received through the informal process, an individual may proceed with a formal complaint through the Integrity Commissioner as outlined in section 25.2.

Formal Complaints

25.2 Any individual who has identified or witnessed behaviour or activity by a member that appears to be in contravention of the Code or sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act ("MCIA") in the case of Council members, may address their concerns through the formal complaint process set out below.

a) All formal complaints must be made using the City's Complaints Form / Affidavit (see Appendix "B") and shall be dated and signed by the complainant;

b) The complaint must include an explanation as to why the issue raised may be a contravention of the Code and any evidence in support of the allegation must be included with the Complaints Form/Affidavit;

c) Any witnesses in support of the allegation must be identified on the Complaint Form/Affidavit;

d) The Complaint Form/Affidavit must include the name of the member alleged to have breached the Code, the section of the Code allegedly contravened, the date, time and location of the alleged contravention and any other information as required on the Complaint Form/Affidavit;

e) The complaint shall be filed with the Integrity Commissioner who shall confirm that the information is complete as to a), b), c) and d) of this section. The Integrity Commissioner will determine whether the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or policies; and
f) The Integrity Commissioner may request additional information from the complainant.

g) If the complaint relates to an alleged violation of sections 5, 5.1, or 5.2 of the MCIA, 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.

Response Of Integrity Commissioner Of Complaint Outside Jurisdiction

25.3 If the complaint received by the Integrity Commissioner is deemed not to be a complaint with respect to non-compliance with the Code, or sections 5, 5.1, or 5.2 of the MCIA in the case of Council members, 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 Conflict of Interest** – if the complaint is an allegation with respect to matters under the *Municipal Conflict of Interest Act*, save an except sections 5, 5.1, and 5.2, the complainant shall be advised to review the matter with their own legal counsel;

c) **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; and

d) **Discrimination or Harassment** – if the complaint is an allegation of discrimination, violence or harassment, the complainant shall be advised to file a complaint directly to the Human Resources Department under the City of Barrie’s Workplace Human Rights Program or Violence in the Workplace Policy, as appropriate. The complainant will also be advised of his or her right to advance an application to the Ontario Human Rights Tribunal.

25.4 In the event that a resolution of the complaint is not achieved, any complainant or member may request the complaint be dealt with in accordance with Section 25.1 or 25.2 of this Code.

25.5 If the matter is covered by other policies with a complaint procedure or legislation, the complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

25.6 If the Integrity Commissioner has already reviewed and rendered a decision or has investigated the subject matter of the complaint, the complainant will be advised that the matter cannot be further pursued through Code complaint process.

Refusal To Conduct An Investigation

25.6 If upon review of a complaint, the Integrity Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation and shall communicate this position in writing to the complainant and the member identified in the Complaint Form/Affidavit.

Opportunity For Resolution

25.7 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.

Public Registry and Periodic Reports to Council

25.8 The Integrity Commissioner shall report to Council annually. In his/her report to Council, he/she shall report on all complaints received and on their disposition. In addition, the Integrity Commissioner shall post all decisions of Formal Complaints regarding whether to conduct an inquiry, and the outcome of any inquiry, on a public registry established by the City for such purpose.

Section 26: Investigation

26.1 If the Integrity Commissioner determines that a formal investigation is required he or she shall proceed in the following manner, 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.

26.2 The Integrity Commissioner shall provide a copy of the complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within fourteen days.

26.3 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 fourteen days.

26.4 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.

26.5 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.

26.6 At any time the complainant may abandon the request for an investigation and the Integrity Commissioner will cease his or her investigation.

Section 27: Recommendation Report

27.1 Upon completion of an investigation, the Integrity Commissioner shall report to the complainant and the member on the results of his or her review within ninety days of receiving a complete Complaint Form/Affidavit. If the investigation process is going to take more than ninety days, the Integrity Commissioner shall provide an interim report to the complainant and member indicating when the complete report will be available.

27.2 If during the investigation process, the complaint is sustained, the Integrity Commissioner shall report to Council, outlining the findings, the terms of any resolution and any recommended action within thirty days of the completion of the investigation. If the complaint is withdrawn or resolved, the Integrity Commissioner shall not report to Council.

27.3(a) If upon completion of the investigation the Integrity Commissioner finds that a breach of the Code has occurred, the Commissioner shall report his or her findings to Council including a recommendation:

a) as to the imposition of a penalty as set out in the Municipal Act of: a reprimand; suspension of remuneration paid to the member for a period of up to ninety days, and/or

b) As to remedial action which may include but is not limited to:
Council and Committee Member Code of Conduct

i) return of a gift or benefit;
ii) removal from a Local Board or committee;
iii) loss of Chairmanship;
v) a verbal and/or written apology;
v) Any other remedial action recommended by the Integrity Commissioner.

27.3(b) Upon Council’s decision on the recommendations, the Member who is the subject of the Integrity Commissioner’s investigation and recommendations, shall comply with the Council decision. Failure to comply with Council’s decision requiring the Member to carry out an action set out as a penalty or set out as a remedial action, shall constitute a contravention of this Code.

27.4 If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred, however, the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in its report to Council.

27.5 With respect to alleged violations of sections 5, 5.1, or 5.2 of the MCIA, if 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 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.

Section 28: Duty Of Council

28.1 The Council shall consider the report of the Integrity Commissioner within 30 days of it being received by the Clerk and shall take the action it considers appropriate with regard to the recommendation(s) of the Integrity Commissioner.

28.2 In circumstances where the alleged breach of trust or other misconduct is serious in nature, Council may pass a resolution, pursuant to the Municipal Act, 2001, requesting a judicial investigation into the Member’s conduct.

No Complaints or Reports Prior to Election

28.3 No complaint regarding a Member of Council or Local Board regarding a Code contravention or sections 5, 5.1, or 5.2 of the MCIA in the case of Council members, whether the Member is a candidate in an election or not, may be referred to the Integrity Commissioner for review and/or investigation between regularly scheduled Nomination Day and Voting Day in any year in which a regular municipal election will be held. Any complaint received after Nomination Day shall be deemed received by the Integrity Commissioner on November 15th in a regular election year and the complaintant shall be so advised of this process. The time elapsed between Nomination Day in a regular election year and the inaugural meeting of the newly elected Council shall not be included in the time calculation referred to in section 9.0.

28.4 Notwithstanding section 9.7 of the Code, the Integrity Commissioner shall not make any report to General Committee or any other person after the regularly scheduled General Committee meeting immediately preceding Nomination Day in any year in which a regular municipal election is to be held.

28.5 If the Commissioner has not completed an inquiry before regular nomination day for a regular election the Commissioner shall terminate the inquiry on Nomination Day.

28.6 If an inquiry is terminated in accordance with section 28.5, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after Voting Day in a regular
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election, the 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 commenced.

28.7 Where an inquiry has been terminated, and the complainant, member 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 of investigation shall be made.

28.8 Council shall not consider whether to impose the penalties referred to in 27.3 on a Member during the period starting on Nomination Day for a regular election and ending on Voting Day in a regular election.

Section 29: Confidentiality Of Complaint Documents

29.1 The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the City or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act.

29.2 Pursuant to section 223.5(3) of the Municipal Act, this section prevails over the Municipal Freedom of Information and Protection of Privacy Act.

29.3 If the Integrity Commissioner reports to the Council on an investigation into an alleged breach of the Code, the report shall only disclose such information that in the Integrity Commissioner’s opinion is required for the purposes of the report.

29.4 If the Integrity Commissioner issues an annual or other periodic report to Council on his or her activities, the Integrity Commissioner shall summarize the advice he or she has given but shall not disclose confidential information that could identify a person concerned.
Formal Complaint Form / Affidavit

I, ________________________________ (full name) of the ____________________________ (municipality) in the Province of Ontario do solemnly swear/affirm and declare that the following contents of this affidavit as subscribed are true and correct:

Permanent place of residence:

Mailing address (if different from above):

I have personal knowledge of the facts as set out in this Affidavit because

________________________________________________________________________________________
________________________________________________________________________________________

(insert reasons e.g. I work for… I attended a meeting at which… etc.) I have reasonable and probable grounds to believe that ____________________________ (specify name of member) has contravened section (s) _____________ of the Council Code of Conduct of the City of Barrie. 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 the attached Schedule A

This affidavit is made for the purpose of requesting that this matter be reviewed by the City of Barrie appointed Integrity Commissioner and for no other purpose.

Identification # (of Identification provided) _________________________________________________

Sworn (or Affirmed) before me at the City of Barrie, in the County of Simcoe, in the Province of Ontario on the _________ day of ______________________, ________

______________________________

A Commissioner, etc.  

Signature (to be witnessed by Commissioner)

Note: This is a sworn (affirmed) affidavit of the deponent only. No investigation has been conducted by this authority to confirm or verify the above sworn information. THE CRIMINAL CODE OF CANADA provides that: everyone commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation by affidavit, solemn declaration or deposition or orally, knowing that the statement is false, is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years (Section 131, 132), or by summary conviction (Section 134). Signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the Criminal Code, R.S.C. 1985, c. C-46 and also to civil liability for defamation.
Schedule “A”
(Additional Information)

To the affidavit required under subsection 25.2 of the Procedure – Formal Complaint of the Council Code of Conduct.

(If more than one page is required, please photocopy this blank page and mark each additional page as 2 of 2, 2 of 3, etc. at the top right corner.)

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This Schedule “A” referred to in the Affidavit of

_________________________________ (full name)

Sworn (or Affirmed) before me on this _________ day
of _________________________, ____________.

__________________________________________

A Commissioner for taking affidavits, etc.