

REPORT

Office of the Chief Administrative Officer

To: Mayor Johnstone and Members of Council
Date: November 20, 2023

From: Lisa Spitale,
Chief Administrative Officer
File: 05.1035.10-2023

Item #: 2023-752

Subject: Council Code of Conduct Bylaw No. 8408, 2023 Amendments for Second Reading and Third Reading

RECOMMENDATION

THAT Council consider giving Code Conduct Bylaw No. 8408, 2023, as amended, second reading and third reading; and

THAT Staff be directed to bring Code of Conduct Bylaw No. 8408, 2023, as amended, to the next regular Council meeting for consideration of adoption; and

THAT Council approve the Ethics Commissioner Job Description attached to this Code of Conduct Bylaw report dated November 20, 2023.

PURPOSE

The purpose of this report is to inform Council of amendments made to the proposed Code of Conduct Bylaw No. 8408, 2023 after first reading at the June 26, 2023, Regular Council Meeting, and after further discussion at the October 30, 2023 Council meeting, and request Council to consider giving the amended Bylaw second and third reading.

BACKGROUND

New legislative requirements for codes of conduct came into force on June 13, 2022, with the Municipal Affairs Statutes Amendment Act. It requires that within six months after the first regular Council meeting following the 2022 election, Council must decide

whether to adopt or review an existing code of conduct for the Council members. Council before making this decision under section 113.1 of the *Community Charter*, must consider the principles for codes of conduct prescribed by regulation. The principles for Council Codes of Conduct are prescribed by BC Regulation 136/2022 and are as follows:

- 1) Council members must carry out their duties with integrity;
- 2) Council members are accountable for the decisions that they make, and the actions that they take in the course of their duties;
- 3) Council members must be respectful of others:
- 4) Council members must demonstrate leadership and collaboration.

Council considered these principles when it made its decision in March 2023 to incorporate a new Code of Conduct by bylaw.

DISCUSSION

The proposed Code of Conduct Bylaw No. 8408 was given first reading on June 26, 2023 and Council was led through the provisions of the Bylaw by legal counsel. Various changes were requested by Council and further review was undertaken by senior staff and legal counsel and came back to Council on October 30, 2023.

Notable changes included:

- A Table of Contents
- Definitions of “Confidential Information” and “Director” (s. 2);
- Additional details on Council communications and interactions with City staff (s. 18);
- Additional clarity regarding interactions with the public and media (ss. 19, 20);
- Reordering and adding clarity with respect to the items on Council meeting decorum (s. 21);
- Stating more succinctly the restrictions on use of public resources (s. 30);
- Clarifying the language around use of City premises for election purposes (s.32);
- Making the language around the Ethics Commissioner’s preliminary assessment of grounds for dismissal consistent as between sections 49(f) and 50 (s. 50);
- Providing for consistency of language as between section 70(a)(iv) and 76(f); and
- Various minor changes to wording, section numbering and section references.

At the October 30, 2023 Council meeting, further discussion was had by Council in respect of the following matters:

- Ethics Commissioner - definition-needs to define qualifications and experience;
- Section 11 -“conduct reasonably undermines public confidence in City governance” is too broad and vague- could be tied to section 51 Criminal Conduct;
- Section 18 Interactions with Staff- should allow for incidental communication with staff other than the CAO or a Director, also tie the permission to committee interactions;
- Section 20 – Media Interactions- it was suggested that it should be implicit in the Code that they are expressing their own opinions and not a Council position - Charter rights of freedom of expression need to be respected. It was suggested that members “fairly represent a Council position”;
- Section 21 – Texting or emailing during meetings (e) consensus to delete this provision-Charter violation;
- Section 32 – Events that a member undertakes- this needs work such as defining what constitutes a “City event” and co-sponsorship. It was suggested that just having a member’s name attached should not be a violation. Have the Ethics Commissioner arbitrate the policies. Note some municipalities such as Surrey provide funding for each member of Council to host or attend any event.
- Section 37 Appointment of Ethics Commissioner 2/3 vote- this was approved as drafted by a Council vote at the meeting.
- Section 80(c) Complaints- revise in the case of Staff- it is too broad and needs to be subject to Whistle Blower Policy.

Legal Counsel have taken away these comments and come back with Attachment 1, containing a tracked change version of the Bylaw with proposed amendments for second and third readings. A clean version of the Bylaw can be found in the Bylaws section of the November 20, 2023 Agenda. Attachment 2 is the draft Job Description for the Ethics Commissioner.

It is expected that the Code of Conduct will be fleshed out by additional policies to support the implementation of the Code and the manner in which it is intended to work. Some of these may be operational policies and procedures required by the Ethics Commissioner and some will be ensuring City policies regarding substantive matters provide the necessary context for application of the Code.

OPTIONS

There are three options for Council's consideration; they are:

1. That Council consider giving Code Conduct Bylaw No. 8408, 2023, as amended,
(a) second reading, and
(b) third reading;
2. That Staff be directed to bring Code of Conduct Bylaw No. 8408, 2023, as amended,
to the next regular Council meeting for consideration of adoption; and
3. That Council approve the Ethics Commissioner Job Description attached to this
Code of Conduct Bylaw report dated November 20, 2023; or
4. That Council provide alternate direction to staff.

Staff recommend Options 1, 2 and 3.

ATTACHMENTS

Attachment 1 – Bylaw No. 8408, 2023 with Table of Contents and other tracked changes.

Attachment 2 – Ethics Commissioner Job Description

APPROVALS

This report was prepared by:
Peter DeJong, Corporate Officer, Legislative Services

This report was reviewed by:
Craig MacFarlane, Corporate Legal Counsel

This report was approved by:
Lisa Spitale, Chief Administrative Officer