


TO: GENERAL COMMITTEE


SUBJECT: CODE OF CONDUCT AMENDMENT RECOMMENDATIONS

WARD: ALL

PREPARED BY AND KEY CONTACT: D. MCALPINE, DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. #4421

SUBMITTED BY: D. MCALPINE, DIRECTOR OF LEGISLATIVE AND COURT SERVICES 

GENERAL MANAGER APPROVAL: E. ARCHER, CMA, GENERAL MANAGER OF CORPORATE SERVICES 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the Code of Conduct for members of Council, Local Boards and Council Committees be amended to reflect the following changes:
 - a) To add the following definitions to Section 4: Definitions in alphabetical order:

“in-law” means a relative by marriage.

“sibling” means one of two or more children having one or both parents in common; a brother or sister.”
 - b) To delete the reference to “a member’s spouse, child or parent” in Section 8.2 of the Code of Conduct with respect to Gifts and Benefits and replace it with “a member’s spouse, child, parent, brother, sister, father-in-law, mother-in-law, sister-in-law and brother-in-law”;
 - c) To delete the references to the number \$500 in Section 8.4 of the Code and replace the references with “\$250”;
 - d) To delete the references to the number \$250 in Section 9.1 and Appendix “A” of the Code of Conduct and replace the references with “\$150”;
 - e) To delete Section 25.2 (e) and replace it with the following:

“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.”

PURPOSE & BACKGROUND

Report Overview

2. The purpose of this report is to recommend changes to the Code of Conduct that applies to members of Council, Local Boards and Council Committees based on a review of the recommendations of the Integrity Commissioner contained in his 2011 and 2012 Annual Reports.

Background

3. Barrie City Council adopted a Code of Conduct for members of Council, Local Boards and Council Committees in 2010 with the Code becoming effective as of December 2010. John Craig was appointed as the Integrity Commissioner to:
 - a) Provide information to Council/Committee members as to their obligations under the Code of Conduct;
 - b) Provide advice to individual members regarding specific situations as they relate to the application of the Code;
 - c) Provide advice to Council/Committee members on other policies and procedures that relate to the ethical behavior of members;
 - d) Provide information to the public regarding the Code and the obligations of members under the Code;
 - e) Conduct investigations regarding alleged breaches of the Code; and
 - f) Provide an annual report to Council on the activities of the Integrity Commissioner
4. In his 2011 and 2012 Annual Reports, the City's Integrity Commissioner recommended three changes to the Code of Conduct:
 - a) Re-define the family relationships identified in the Gifts and Benefits section to add siblings and in-laws;
 - b) Lower the dollar amounts identified in the Gifts and Benefits section to \$250 (maximum value) and \$150 (disclosure required); and
 - c) Eliminate the Clerk's responsibilities from the complaint process.
5. On April 15, 2013, City Council adopted motion 13-G-100 concerning the 2012 Annual Report of the Integrity Commissioner for the City of Barrie dated March 6, 2013, as follows:

"That the 2012 Annual Report of the Integrity Commissioner for the City of Barrie dated March 6, 2013 be received and referred to staff in the City Clerk's Office for a report back to General Committee on the changes to the Code of Conduct recommendations by the Integrity Commissioner."

ANALYSIS

Current Gifts and Benefits Provisions

6. The current provisions in the Code of Conduct prohibit a member from accepting a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions included in the Code. Gifts or benefits provided to a member's spouse, child or parent or to a member's staff that are connected directly or indirectly to the performance of the member's duties are deemed to be a gift to that member, under the Code.

7. The definitions of each of the relationships in the Code of Conduct were established in accordance with the *Municipal Conflict of Interest Act, R.S.O. 1990, Chapter M.50*, and specifically identified as follows:
 - a) "child" means a child born within or outside a marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family or as defined under the current Municipal Conflict of Interest Act as amended from time to time;
 - b) "parent" means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child or as defined under the current Municipal Conflict of Interest Act as amended from time to time;
 - c) "spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage or as defined in the current Conflict of Interest Act as defined from time to time.

8. The following exceptions related to Gifts and Benefits are included in the Code:
 - a) Compensation or benefit authorized by Council;
 - b) Such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
 - c) A political contribution otherwise reported by law;
 - d) Services provided without compensation by persons volunteering their time;
 - e) A suitable memento of a function honouring the member;
 - f) Food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country;
 - g) Food and beverages consumed at banquets, receptions or similar events, if:
 - i) Attendance serves a legitimate business purpose;
 - ii) The person extending the invitation or a representation of the organization is in attendance; and
 - iii) The value is reasonable and the invitations infrequent
 - h) Communication to the offices of a member, including unpaid subscriptions to newspapers and periodical.

9. In addition, the Code specifies that a member is not permitted to accept a gift or benefit worth in excess of \$500 or gifts and benefits from one source during a calendar year worth in excess of \$500 (with the exception of compensation or benefit authorized by Council or hospitality provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country).

10. In the case of the categories b) e) f) g) and h) of paragraph 8, if the value of the gift or benefit exceeds \$250, or if the total value received from any one source during the course of a calendar year exceeds \$250, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner.

Family Relationship – Gifts and Benefits

11. Section 3 of the *Municipal Conflict of Interest Act*, states, “For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.” The family relationships included in the current code were specifically chosen to replicate the relationships identified in the *Municipal Conflict of Interest Act*. As a result of a number of challenges in the courts, there have been recommendations to alter the *Municipal Conflict of Interest Act* to clarify the provisions, which may include changes to the definition of family
12. The Integrity Commissioner has recommended that the family relationships identified in the Gifts and Benefits section be re-defined to add siblings and in-laws. If this change were approved, the family relationships where a gift to the family member would be deemed to be a gift to a member would then include a member’s spouse, child, parent, brother, sister, father-in-law, mother-in-law, sister-in-law and brother-in-law.
13. The Integrity Commissioner noted that he believes that the Gifts and Benefits provision in the Code of Conduct is separate from the provisions of the *Municipal Conflict of Interest Act* related to declaring a pecuniary interest concerning a specific decision. He believes re-defining the family relationships to add siblings and in-laws would result in a comprehensive inclusion of all of the family relationships that would most likely raise a concern about conflicts of interest as it relates to the receipt of gifts and/or benefits. He also noted that many municipalities applied Gift and Benefit provisions to these relationships or were in the process of reviewing/expanding the family relationships associated with Gifts and Benefits.
14. In reviewing the Codes of Conduct for a number of municipalities, a number of different approaches to family relationships as it relates to gifts and benefits have been adopted, as follows:

Family Relationship where a gift/benefit deemed to be a gift to the Member or Members is prohibited from soliciting, accepting, offering or agreeing to accept a gift, advantage or benefit of any kind, personally or through a family relationship, which is connected with the performance of his or her Official Duties	Municipality
No specific identification of anyone other than the member	Aurora, Brampton, Guelph, Kingston, Markham, Richmond Hill
Spouse or child	Kitchener
Spouse, parent or child	Barrie, Toronto, Vaughan, Waterloo
Spouse, child (includes step-child and grand-child) or sibling	Mississauga
Spouse, child, parent, sibling, grandchild, grandparent, aunt, uncle, niece, nephew, in-laws, step-parents/step-children and child, mother or father in a relationship where the role of parent has been assumed	Hamilton

Parent, spouse, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood, marriage or adoption (or friend)	Oakville
Family member (not defined)	Kawartha Lakes
Family member (not defined) or friend	London

15. It is recommended that the provisions related to family relationships be expanded to include siblings and in-laws, to reflect the relationships that would most likely result in concerns related to the receipt of gifts or benefits.

Maximum Amount and Disclosure Amount – Gifts and Benefits

16. The intent of the maximum amount and/or requirement for completion of disclosure statements is to provide transparency about the receipt of incidental gifts and benefits, where the total value may be perceived as potentially influencing decision making.
17. The Integrity Commissioner has also recommended the lowering of the maximum dollar amount for gifts and benefits types that fall under exemptions from \$500 to \$250 and the lowering of the amount requiring the completion a disclosure statement from \$250 to \$150 for certain types of gifts/benefits. He has noted that the amounts included in the current Code appear to be excessive for a municipality the size of Barrie and that the proposed \$250 maximum amount and \$150 for disclosure statements to be completed reflect what he believes to the higher end of values for events, dinner and other social obligations that members of Council are expected to attend as part of their community involvement.
18. The following summarizes information collected from other municipalities with respect to gift and benefit dollar amounts:

Municipality	Gift and Benefit Amounts:
Aurora Pop: 53,203	Members may only receive gifts, hospitality or entertainment that are received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office. Any gifts, benefits, or hospitality that exceeds the guidelines shall be returned with an explanation of this Code of Conduct. Gifts, souvenirs or mementos with a value greater than a nominal value, if accepted shall be the property of the Town. Members may accept hospitality or entertainment if the offer is infrequent and appropriate to the occasion. Further exemptions related to food and beverages at events, ceremonies and hospitality provided by other levels of government. Nominal not defined.
Brampton Pop: 523,911	The acceptance of gifts, hospitality and benefits of a nominal value is considered part of the Member's role and responsibilities and are to be received by the Member only in good faith, as an incident of protocol or social obligation. Members of Council are encouraged to keep a list of <u>all</u> gifts and benefits received from individuals, firms or associations, with estimated values for review. Nominal not defined.
Guelph Pop: 115,000	Maximum amount of \$500. Disclosure of specific gifts and benefits with values exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300.
Hamilton Pop: 519,949	No apparent maximum amount. Disclosure of specific gifts and benefits with values exceeds \$200, or if the total value received from any one source during the course of a calendar year exceeds \$200.

Kawartha Lakes Pop: 73,214	No member shall accept meals and beverages, entertainment, fees, gifts, or hospitality unless of a nominal value (defined as a value of under \$100) or unless the acceptance of meals and beverages, entertainment, fees, gifts, or hospitality if the offer is infrequent (less than 3 times a year by an individual, business or organization) and appropriate to the occasion.
Kingston Pop: 123,363	Members of Council and members of the public appointed to committees must not accept gifts and benefits except as provided for under law and in the course of their duties. They may accept gifts of token value only but should be aware that even these may place them in a position where their actions are open to serious question. Token value not defined.
Kitchener Pop: 219,153	No apparent maximum amount. Disclosure of specific gifts and benefits (similar to Barrie) with values exceeds \$100, or if the total value received from any one source during the course of a calendar year exceeds \$300.
London Pop: 366,151	Dollar amounts not defined – permits token gifts for souvenirs/mementos and “reasonable” gifts as an incidence of social protocol. No limits or parameters related to food, hospitality, etc. A requirement to return any gifts or benefits which exceed these limits, along with an explanation why the gifts or benefits cannot be accepted. Token, reasonable not defined.
Markham Pop: 301,709	Similar exemptions as Barrie. No gifts are to be accepted by a Member that would, to a reasonable member of the public, appear to be in gratitude or compensation for influence, to induce the Member to exercise his/her influence, or otherwise to go beyond necessary and appropriate public actions. Each member must maintain a list of <u>all</u> gifts to be available upon request by the Integrity Commissioner.
Mississauga Pop: 713,443	No apparent maximum amount. Disclosure of specific gifts and benefits with values exceeds \$500, or if the total value received from any one source during the course of a calendar year exceeds \$500.
Oakville Pop: 185,000	Dollar amounts not specifically defined in code – references to souvenirs, mementoes and commemorative gifts of nominal value where the value does not exceed the value permitted for members of the Legislative Assembly of Ontario (currently \$200), amounts/hospitality of where the value is “reasonable” and a requirement to return any gifts or benefits which exceed these limits, along with an explanation why the gifts or benefits cannot be accepted.
Richmond Hill Pop: 185,000	No apparent maximum amount. Disclosure of specific gifts and benefits with values exceeds \$350, or if the total value received from any one source during the course of a calendar year exceeds \$500.
Toronto Pop: 2,615,060	No apparent maximum amount. Disclosure of specific gifts and benefits with values exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300.
Vaughan Pop: 288,301	Members are strongly encouraged to list all gifts and benefits received. Disclosure required of specific gifts and benefits with values exceeds \$500, or if the total value received from any one source during the course of a calendar year exceeds \$500.
Waterloo Pop: 119,000	No apparent maximum amount. Disclosure of specific gifts and benefits with values exceeds \$100, or if the total value received from any one source during the course of a calendar year exceeds \$100.

19. The review of Codes of Conduct for a number of municipalities indicates approaches ranging from provisions that don't specifically identify a requirement to complete a disclosure statement as acceptance of gifts and benefits is limited to “nominal”, “reasonable” or “token” amounts only, to requirements for the completion of a disclosure statement for gift or benefit type permitted under an exception, with dollar values from \$0 (all) to \$500.

20. While relatively few of the municipalities surveyed indicated a maximum dollar amount for gifts or benefits, it was often because members of Council were prohibited from accepting anything but mementos or hospitality of nominal value. As a result a maximum dollar amount for gifts and benefits of \$500 appears to be excessive.
21. The determination of any amounts requiring disclosure statements to be completed in other municipalities appears to be based on the individual community's perception of amounts that could potentially be deemed to generate a concern regarding the creation of an obligation/favouritism/bias or based on the limits in the Employee Code of Conduct. This has resulted in the relatively wide dollar range of requirements for disclosure statements (\$0 or all, to \$500). The Legislative Assembly of Ontario currently requires Members of Provincial Parliament to disclose a gift or personal benefit with a value of \$200 or greater in accordance with the *Members' Integrity Act, 1994, S.O. 1994, c. 38*.
22. The current version of Barrie's Statement of Principles Regarding the Conduct of Public Employees limits gifts and benefits to nominal gifts and moderate hospitality. The amounts associated with "nominal" or "moderate" are not specifically defined in the Statement of Principles.
23. The value that may be perceived as potentially influencing decision making is entirely dependent upon an individual's own views of their community, community leaders and corporate partners. There isn't a single definitive amount. However, it is likely that many would see the current amount which exceeds the amount for Members of Provincial Parliament as too high for members of Barrie City Council. The recommendation to lower the amount associated with completion of a disclosure statement related receipt of a gift or benefit in the form of a souvenir or ticket to an event in Barrie with a value of \$150 does not seem unreasonable.

Section 25: Procedure – Complaints

24. Currently, the Code of Conduct requires formal complaints to be filed with the City Clerk. The City Clerk is then required to confirm that the Complaint Form/Affidavit have been completed, dated and signed, an explanation has been provided on why the issue raised may be a Code of Conduct violation and any evidence included with the Complaint Form/Affidavit, and any witnesses in support of the allegation are identified on the Complaint Form/Affidavit. The City Clerk then forwards the information to the Integrity Commissioner, for the Integrity Commissioner to determine whether the matter is on its face, a complaint under the Code (and not covered by other legislation/policies).
25. The Integrity Commissioner is recommending the elimination of the Clerk's responsibilities in the complaint process. This is intended to prevent concerns a complainant may have regarding confidentiality, and strengthen the independence of the Integrity Commissioner. Complainants would deal directly with the Integrity Commissioner. The recommendation from the Integrity Commissioner is supported.

ENVIRONMENTAL MATTERS

26. There are no environmental matters related to the recommendation regarding the proposed changes to the Code of Conduct.

ALTERNATIVES

27. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could choose to maintain the current family relationships in the Gifts and Benefits Section of the Code of Conduct and alter the Code to expand the family relationships when the *Municipal Conflict of Interest Act* is amended to include such relationships.

The existing family relationships mirror the terms of the *Municipal Conflict of Interest Act*, which achieves consistency between the Gifts and Benefits provision in the Code and the Act. However, it is apparent from court cases related to both the *Municipal Conflict of Interest Act* and municipal Codes of Conduct, that there is a perception that matters impacting siblings and in-laws are a concern as it relates to the decision-making of members of Council/Committee members.

Alternative #2

General Committee could alter the proposed recommendation by maintaining the current the dollar amounts within the Code of Conduct associated with maximum amounts for specific types of gifts and benefits and the amount requiring completion of a disclosure statement.

Generally, the Codes of the municipalities surveyed either contained no clear amounts or had requirements for disclosure for amounts ranging from \$0 (or all) – 500. Few specified a maximum amount. A maximum dollar value for the acceptance of mementos or hospitality at a community event of \$500 would likely be excessive to the majority of Barrie residents. Requiring disclosure statements to be completed for these types of gifts or benefits with values exceeding \$150 does not appear to be an unreasonable provision.

Alternative #4

General Committee could alter the proposed recommendation by maintaining the requirement for formal complaints to be filed with the City Clerk.

The Integrity Commissioner would be able to resolve any issues regarding the completion of a complaint form and the direct provision of this documentation to the Integrity Commissioner would maintain confidentiality.

FINANCIAL

28. There are no direct financial implications for the Corporation resulting from the proposed recommendation to alter the Code of Conduct.

LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

29. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2010-2014 City Council Strategic Plan.