Date: February 2, 2011
File: G20
Subject: Open, Transparent and Accountable Government

-Proposed Code of Conduct and approval of an Office of the Integrity Commissioner on an interim basis for one-year

Contact: Deborah Dubenofsky, City Manager, 905-874-2625

Overview:

- On December 15th, 2010, Council directed the City Manager to provide Council with a Code of Conduct, an updated Mayor and Councillor’s Expense Policy plus an implementation plan and budget requirements for establishing the Office of an Interim Integrity Commissioner and to Report back within 100 days.
- The attached Code of Conduct, Mayor and Councillors’ Expense Policy, implementation plan and budget for retaining ADR Chambers as the Office of the Interim Integrity Commissioner are provided for Council approval, and underscore Council’s commitment to achieving the highest standard of ethical conduct while serving the citizens of Brampton.

Recommendations:

1. That the report from Deborah Dubenofsky, City Manager, dated February 2, 2011, re: Open, Transparent and Accountable Government, be received; and

2. That the Code of Conduct for the Mayor and Members of Council, herein after referred to as the Code of Conduct for Members of Council, be approved as presented in the binder attached to this report; and

3. That Council endorse the following resolution which approves retaining an interim Integrity Commissioner to provide education, advice and complaints investigation services as authorized by the Municipal Act, 2001;

   WHEREAS the Members of Council of the City of Brampton agree to serve their community in an open, transparent and accountable manner, respecting that members of the public expect elected officials to be guided by the highest ethical standards of behaviour in decision-making and conduct; and
WHEREAS to promote public confidence in government, Members of Council agree to execute their duties and obligations without improper use of influence, taking all steps necessary to avoid conflicts of interest both apparent and real and to uphold the letter and spirit of the law including policies adopted by Council; and

WHEREAS rigorous oversight of Members of Council is contained in numerous Statutes such as the Criminal Code of Canada, the Ontario Human Rights Code, Provincial legislation and various City of Brampton by-laws, policies and protocols including but not limited to:

- Municipal Act
- Municipal Conflict of Interest Act
- Municipal Freedom of Information and Protection of Privacy Act
- Municipal Elections Act
- Occupational Health and Safety Act
- Procedure By-law 160-2004
- Purchasing By-Law
- Conflict of Interest Guidelines as it relates to the Provincial Offences Court
- The Corporate Values Statement
- Corporate policies related to expenses, sponsorships, use of resources
- Corporate policies related to “human resources” matters; and

WHEREAS the Municipal Act, 2001 authorizes municipalities to establish a Code of Conduct for Members of Council to supplement legislation that governs their conduct; and

WHEREAS the Municipal Act, 2001 authorizes municipalities to appoint an Integrity Commissioner who reports to Council and is responsible for performing in an independent manner the application of a Code of Conduct for Members of Council, as well as the application of any procedure, rule and policy of the municipality governing the ethical behaviour of Members of Council; and

WHEREAS the establishment of a Code of Conduct for the Members of Council and the appointment of an interim Integrity Commissioner are consistent with the principles of open, transparent and accountable government providing Members of Council with a common basis for demonstrating their high regard and respect for the public trust that extends beyond current legislative provisions; and

THEREFORE BE IT RESOLVED THAT the Code of Conduct and the retention of an interim Integrity Commissioner will underscore the Members of Council's commitment toward the highest standard of conduct to serve the City of Brampton’s citizens.
4. That staff be directed to initiate a 30-day public consultation period for the purposes of gathering public input related to the Code of Conduct and to report back to Council with recommended amendments to the Code of Conduct, if necessary; and

5. That a By-law be passed to establish the Office of Integrity Commissioner, and appoint ADR Chambers as the City’s Office of an Integrity Commissioner on an interim basis for up to one year, to provide advisory, educational and complaints investigation function in accordance with Part V.1 of the Municipal Act, 2001 as set out in Appendix “A”; and

6. That following the 30-day public consultation period, the City Manager be authorized to execute a retainer agreement, on behalf of the City, for ADR Chambers to provide Integrity Commissioner services on an interim basis to City Council in accordance with this Report, and in a form satisfactory to the City Solicitor; and

7. That the 2011 budget submission include $150,000 for the estimated costs related to the operation of the Office of the Integrity Commissioner on an interim basis for one year; and

8. That the City Manager, in consultation with the interim Integrity Commissioner, report back to Council before the end of the one-year term with a status report and with recommendations for the position and function of the interim Integrity Commissioner; and

9. That an updated “Mayor and Councillors' Expense Policy,” attached to this Report as Appendix “B” be approved, and that all previous policies (Expenses - Travel, Councillors Expense Account policy, Expenses – Professional Membership policy) relating to Members of Council expenses be repealed; and

10. That the Mayor continue advocacy efforts with the Province of Ontario and the Association of Municipalities of Ontario (AMO) seeking the establishment of one consistent, uniform Code of Conduct to be applicable to elected officials for all municipalities across the province.
Background:

The Ontario government updated the requirement for a municipality to adopt certain policies in the *Municipal Act, 2001* through the *Municipal Statute Law Amendment Act, 2006*, which came into effect on January 1, 2007. The revisions provided expanded measures for municipal governments to promote accountability and transparency through adopting new policies, appointing a Closed Meeting Investigator and, at their discretion, the appointment of an Integrity Commissioner through specific reference to the establishment of Codes of Conduct for Members of Council.

As a result of this amendment to the *Municipal Act, 2001*, Brampton Council approved three new policies:

- Accountability and Transparency
- Delegation and Controllership, and
- Appointed Dr. Andrew Sancton as its Closed Meeting Investigator, who investigates complaints whether Council or any of its committees has inappropriately considered a matter in a closed or in camera session.

Additionally, Council approved Public Complaints Guidelines in 2007 to provide a standardized, accessible and efficient mechanism for resolving public complaints on alleged misconduct occurring within the City. A specific complaints process for Council Members is not in place.

The Need for One Consistent, Uniform Code of Conduct for Municipalities

Notwithstanding changes to the *Municipal Act, 2001*, municipalities across the province have sought ways to improve upon existing legislative measures related to accountability and transparency. Some municipalities have exercised their discretionary authority under the Act to appoint an Integrity Commissioner. The role of Integrity Commissioner reports directly to Council and is responsible for performing in an independent manner, the application of Codes of Conduct for Members of Council and the application of any procedure, rule or policy of the municipality that governs the ethical behaviour of Council Members.

Municipal leaders from across the province, including Mayor Fennell, have consistently expressed concern that there is not one, uniform Code of Conduct applying to all elected officials, nor is there one, uniform approach related to the appointment of an Integrity Commissioner. Municipal leaders have requested the Association of Municipalities of Ontario (AMO) to review the legislation’s policy implications pertaining
to the appointment of an Integrity Commissioner, and the feasibility of a shared resource similar to the Closed Meeting Investigator service that AMO provides to many municipal Councils. The Association has not completed this work.

**Action Plan for Accountable Government**

Mayor Fennell’s Inaugural Speech for the 2010-2014 term of Council outlined her priorities for the first 100 days of this term, including the launch of the Mayor’s Action Plan for Accountable Government. The plan focuses on updating existing Council policy in two key areas where transparency and accountability are vitally important: a Code of Conduct and the appointment of an interim Integrity Commissioner.

At the first meeting of the new term of Council on December 15, 2010, City of Brampton Council unanimously approved Mayor Fennell’s Plan for Accountable Government and directed that the City Manager be tasked with the investigation and benchmarking of best practices related to the discretionary authority of municipalities to appoint an Integrity Commissioner and report back to Council within 100 days including:

- A Code of Conduct for Members of Council plus an updated Expense Policy for Members of Council, so that an Integrity Commissioner can review, in an independent manner, the application of these and other rules governing the ethical behaviour of Members of Council; and,

- A proposed implementation plan for retaining an interim Integrity Commissioner for the City of Brampton; and,

- A preliminary budget and implementation plan related to the appointment of an interim Integrity Commissioner for consideration of Council during the 2011 Budget debate.

**Current Situation:**

In response to Council’s direction, a cross-departmental staff team was developed, under the direction of the City Manager, to provide research, benchmarking and analytical expertise to this report. The team consisted of:

- M. Lewis, Commissioner of Finance, City Treasurer
- K. Zammit, Commissioner of Corporate Services
- C. Grant, City Solicitor
- C. Spence, City Auditor
- P. Fay, City Clerk
- D. Reader, Government Relations
- O. Lukich, Executive Assistant to the City Manager.
The team research began with a benchmarking exercise of the various approaches considered by other municipalities to set standards for accountability and transparency, focusing on the Code of Conduct for elected officials and the appointment of an Integrity Commissioner.

The results of the benchmarking exercise indicated that, of the 445 Ontario municipalities, less than 10 have an established Code of Conduct and an Integrity Commissioner. Of these, the most notable were from the Cities of Toronto and Mississauga, which were established in response to recent public inquiries into Council Members’ conduct.

**Developing a Code of Conduct:**

City of Brampton Members of Council are committed to achieving transparent and accountable governance to best serve their constituents. Brampton Council is entrusted with the public’s confidence to make decisions that impact the economic and social vitality of the city, and to do so with the highest regard for ethical standards. Guiding the role of Mayor and Councillor are many laws, regulations and policies enacted by the Federal Parliament, the Ontario Legislature and Brampton Council, itself.

Adherence to these Statutes and policies is required and taken together govern the conduct of Council Members. Specifically, these Statutes include:

- **Criminal Code of Canada**
- **Ontario Human Rights Code**
- **Municipal Act, 2001**
- **Municipal Conflict of Interest Act**
- **Municipal Freedom of Information and Protection of Privacy Act**
- **Municipal Elections Act**
- **Occupational Health and Safety Act**
- **City of Brampton Policies, By-laws and Protocols.**

Councils across Ontario continue to debate and consider the introduction of a Code of Conduct to provide further guidance and oversight for Members of Council. This debate continues despite the recognition that elected officials are bound by a myriad of pieces of legislation, and hundreds of rules and policies.
The Merits of a Value-Based versus a Rules-Based Code of Conduct

Every Council that introduces a Code of Conduct must decide whether a rules-based regime or a values-based reference is most suited to their community.

In general terms, a rules-based regime would be of most interest to communities who believe that rigid requirements are a more useful way to assist Council Members who may be uncertain about the boundaries or standards of acceptable conduct. A prescriptive Code of Conduct is introduced as a means of instructing and guiding elected officials on what they can and cannot do in exercising their responsibilities.

As is often the case, the unintended consequence of a rules-based regime is that a scenario or incident will emerge that is not specifically enumerated in the Code of Conduct. In that instance, a member of Council could breach the Code, however inadvertently, simply because they did not follow the 'letter of the law' as written in the Code. Of more concern would be those rare instances where an elected official skirted the rule as written, and although not in strict violation of the Code, their conduct would nevertheless fall short of public confidence.

A values-based reference guide, on the other hand, is generally considered to be more educational and is introduced as a complement to the rules and regulations that already govern the conduct of elected officials.

By describing 'principles' and 'standards' of behaviour, a values-based Code of Conduct can assist elected officials to apply their judgment when exercising their responsibilities. Adopting a values-based approach avoids having to prescribe or detail every conceivable interaction an elected official might have with a member of the public, or every conceivable scenario presented to an elected official as they govern the City on a daily basis.

Excessive regulation can be crippling to a municipality and can seriously erode the capacity of elected officials to respond to emerging community needs and priorities. By adopting a values-based reference, elected officials are empowered to design a Code of Conduct that reflects the interests and expectations of the public they serve.

In light of these considerations, a values-based approach is recommended for the City of Brampton as it deliberates and confirms a Code of Conduct for elected officials. It is predicated on the understanding that Members of Council are aware of and understand the statutory obligations imposed on municipal Council as a whole, as well as upon individual Members of Council.
The attached Code of Conduct is intended to encourage the highest standard of ethical behaviour for Council Members in the exercise of their responsibilities. The principles identified in the Code are deemed to be significant and important hallmarks of public trust and confidence.

As a living document, the Code of Conduct will be brought forward for review at the start of each term of Council, when relevant legislation is amended, and at other times when appropriate to ensure that it remains current and continues to be a useful guide to Council Members.

**Establishing the Office of the Integrity Commissioner:**

While a Code of Conduct is a stand-alone document, once approved, it serves as the legislative foundation under the *Municipal Act, 2001* for Council to appoint an Integrity Commissioner. The Code of Conduct along with other City procedures, rules, and policies, become the tools by which an Integrity Commissioner provides education, advice or complaints investigations.

To strengthen and complement existing legislation, rules, procedures, and policies, staff recommends that Council establish an Office of the Integrity Commissioner on an interim basis for a period of up to one year.

The Office of the Integrity Commissioner would be able to provide the multiple services required of an Integrity Commissioner, in an independent manner, accountable directly to Council. Part V.1 of the *Municipal Act, 2001* allows the City to appoint an Integrity Commissioner with many functions with respect to the application of the Code of Conduct, along with any City legislation, procedures, rules and policies governing the ethical behavior of the Mayor and Councillors. The powers and duties of an Integrity Commissioner, as set out in Part V.1 of the *Municipal Act, 2001* are attached as Appendix “C”, as reference.

**Advice and Education**

The role of the Office of an Integrity Commissioner can play an invaluable role as a trusted advisor to Council. The Integrity Commissioner can provide advice to Council with respect to obligations under the Code of Conduct, specific situations as they relate to the application of the Code and other policies and procedures that relate to the ethical behavior of Members. The functions of the Office of the Integrity Commissioner would include:
- advising Members of Council, upon their request, on their obligations and responsibilities under the Code of Conduct, and any other legislation, rule or policy governing their ethical behavior; and
- educating Council as a whole, upon request, or where deemed appropriate by the Integrity Commissioner, on their ethical obligations and responsibilities under the Code of Conduct, and any other legislation, rule or policy governing their ethical behavior.

It should be noted, however, that the Office of the Integrity Commissioner does not provide legal advice. Council Members are able to continue to seek independent legal advice, where desired.

Investigation of Complaints about Council

Any individual who has reasonable grounds to believe that a Council Member has breached a provision of the Code of Conduct may proceed with a complaint to the Office of an Integrity Commissioner.

If the Integrity Commissioner undertakes an investigation into a public complaint and the results of the findings confirm a breach of the Code of Conduct, appropriate penalties, as defined in the legislation, will be recommended to Council and would become a matter of public record.

The Office of the Integrity Commissioner would be responsible for:

- receiving, assessing and, where appropriate, investigating complaints made by Council, a Member of Council, a member of staff or a member of the public, respecting an alleged breach of the Code of Conduct; and
- determining whether and how investigations will be conducted.

Penalties under the legislation include a reprimand or the suspension of remuneration paid to the Member of Council for a period of up to 90 days.
Complaints Protocol

The Office of the Integrity Commissioner may adopt a Complaints Protocol. It will be the responsibility of the Office of the Integrity Commissioner to establish its complaints protocol. The draft Complaints Protocol may be adopted in whole or in part, or serve as guidance to the Office of the Integrity Commissioner.

The goal of an Office of the Integrity Commissioner, rather than appointing a single person, is to streamline the complaints process with efficient use of independent resources as follows:

- An experienced administrative assistant will receive a broad range and number of complaints.
- A trained lawyer will consider the nature of the complaint and determine whether the complaint may be resolvable informally, or through other existing avenues, or whether the complaint should be investigated and referred to the Integrity Commissioner.
- The Integrity Commissioner would be a former judge who would be responsible for investigating complaints, and for advising, reporting and making recommendations directly to Council.

With this team approach, the Office of the Integrity Commissioner would be able to receive and quickly assess a broad range and number of complaints and requests, investigate and report to Council, using the most appropriate resource for the matter at hand.

It should be noted that the Office of the Integrity Commissioner is not intended to respond to complaints about City staff members. In 2007, City Council approved a Public Complaints Resolution Guideline to establish a process designed to address public complaints on alleged misconduct by City employees. A copy of the City’s Public Complaints Resolution Guideline is available to the public on the City’s website.

ADR Chambers

After benchmarking and careful consideration, staff recommends the retainer of ADR Chambers, on an interim basis, as the Office of the Integrity Commissioner for the City of Brampton.

ADR Chambers is a well-known alternative dispute resolution company that provides conflict resolution services across Canada and internationally. ADR Chambers’ members are retired judges, experienced lawyers and other dispute resolution...
professionals dedicated to assisting and resolving disputes in an expeditious and cost-effective manner.

ADR Chambers services include Mediation, Arbitration, Neutral Evaluation, Fairness Monitoring, Investigations and Private Appeals.

Members of ADR Chambers possess the experience and qualifications necessary to act in the important position of Integrity Commissioner, including:

- proven impartiality, neutrality, and good judgment
- experience with sensitive inquiries, conducting investigations, and making recommendations
- expertise with legal principles of fairness and natural justice
- ability to provide services on a flexible and as-needed basis
- demonstrated experience in upholding public trust and confidence with high ethical standards.

ADR Chambers would provide the services of no less than:

a) A former judge, appointed under s. 96 of the Constitution Act, 1867, who has now retired from office, acting as the interim Integrity Commissioner, accountable directly to City Council
b) A lawyer called to the bar of Ontario reporting to the interim Integrity Commissioner
c) An administrative assistant reporting to the interim Integrity Commissioner providing valuable intake and customer service to members of the public.

Staff has held several discussions with ADR Chambers and can confirm the following candidates would be of service to the City:

**The Honourable Donald R. Cameron, Q.C.**

- mediator and arbitrator with ADR Chambers
- appointed to the Superior Court of Justice in 1995 where he presided over civil and commercial cases including insolvency and bankruptcy disputes
- practiced corporate and commercial law, employment law and environmental law before his appointment to the Bench
- lecturer and seminar leader at the Law Society of Upper Canada’s Bar Admission Course in Corporate and Commercial law
- former speaker at various Continuing Legal Education Programmes on business acquisitions, shareholders’ rights, directors and officers’ liability and environmental issues
- recipient of the Canadian Bar Association Award for Distinguished Service (1993).
Edward T. McDermott

- mediator, arbitrator and investigator with ADR Chambers with more than 35 years of experience before administrative tribunals and all levels of the courts in a variety of matters
- conducted numerous investigations involving complaints by both customers and employees for major financial institutions and other private and public companies
- Chair of the Ombudsman Committee of the Canadian International Air Show and a member of the discipline hearings panel of the Investment Industry Regulatory Organization of Canada (IIROC), with responsibility for adjudication on complaints filed against members of the investment industry.
- Called to the Bar in 1969 and then appointed to and served as law clerk to the Chief Justice of the High Court for the Supreme Court of Ontario. Following that, he began private practice as a partner with the firms of White, Bristol, Beck and subsequently Paulin, McDermott. He then joined Osler LLP where he was a senior partner and head of the firm’s Employment and Labour Department.
- consistently named as one of Canada’s top 500 lawyers in Lexpert/American Lawyer Media Guide to the Leading 500 Lawyers in Canada and a leading labour lawyer in Canada in many other publications.

Budget for the Office of the Integrity Commissioner

The Office of the Integrity Commissioner’s annual budget shall be submitted directly to Council for approval as part of the City’s budget process. As noted, the Office of the Integrity Commissioner will be retained by Council on an as-needed fee for service basis, for an interim period of up to one year. While every effort has been made to determine an appropriate budget allocation, the current estimate of $150,000 may prove too high or too low, depending on the number and nature of requests for service.

This figure represents the sliding scale of fees for the continuum of services to be provided by ADR Chambers. Staff is satisfied that these rates are competitive and comparable to the fees being paid by other municipalities who have retained the services of an Integrity Commissioner. The actual costs for service provision will constitute part of the report back to Council after the first year of operation.
Updating the Mayor and Councillors’ Expense Policy:

As a supplement to the Code of Conduct, a key foundation document for the Integrity Commissioner will be the Expense Policy.

Council expenses and the use of corporate resources overall, are often the subject of public debate. With the introduction of a Code of Conduct, Council can expect a renewed interest in the City's policies for Member expenses. While some Codes of Conduct opt to embed provisions related to expenses directly into the Code, staff is recommending a separate, updated Policy that provides guidance related to office, business and travel expenses.

The revised Expense policy is structured to encompass all relevant business expense policies that currently exist (Expenses -Travel, Councillors’ Expense Account policy, Expenses – Professional Membership policy) and have been written to reflect a “value-based” approach rather than the “rules-based” approach that forms the basis for the current set of policies. The key impetus for the revised policy is to reinforce the City’s continued commitment to provide the highest standard of public accountability. The revised policy is attached to this Report as Appendix “B”.

Next steps:

Subject to Council’s approval of the report recommendations, the City Manager will proceed to negotiate the terms of appointing ADR Chambers as the City’s interim Integrity Commissioner. Once retained, the interim Integrity Commissioner will provide an information session for Members of Council on the Code of Conduct and the functions of the Office of the Integrity Commissioner. Thereafter, the interim Integrity Commissioner will independently report to Council, on the application of the approved Code of Conduct and its related legislation and City policies. Council can expect that the City Manager will report back with results and recommendations for the Integrity Commissioner at the end of the one-year term.

Recognizing that informing and communicating to and with the public is an integral part of how City Council conducts itself in a transparent and accountable manner, a communications plan has been developed should Council approve the Report’s recommendations.
The plan leverages the City’s communication vehicles to educate and inform various audiences including the public, media, businesses and industry associations on:

- the role of the City of Brampton’s interim Integrity Commissioner
- the mechanisms and tools already in place to ensure transparency and accountability by Council, and
- Council’s continued commitment to raise the bar on transparency and accountability by advocating for consistent standards within the municipal government sector.

The plan recognizes, however, that Council may wish to seek public input on the recommended Code of Conduct. The communications plan suggests a 30-day window of opportunity for public input by using tools already in place including, but not limited to, the website and written submissions.

**Summary Comments:**

The introduction of a Code of Conduct, along with the establishment of an interim Office of the Integrity Commissioner, are additional means for Council to underscore the commitment of Members of Council to achieving the highest standard of conduct and ethical behaviour to serve the citizens of Brampton.

Original Signed By:

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Deborah Dubenofsky
City Manager

**Appendices:**

- Appendix “A” – Draft Interim Integrity Commissioner By-law
- Appendix “B” - Mayor and Councillors’ Expense Policy
- Appendix “C” - Municipal Act, 2001 Part V.1, Accountability and Transparency
- Code of Conduct for Members of Council (February 9, 2011)