

To: City Council

From: Tracy Adams, Chief Administrative Officer,  
Office of the C.A.O.

Report Number: CNCL-24-35

Date of Report: April 24, 2024

Date of Meeting: April 29, 2024

Subject: Review of the Council Charter

Ward: All Wards

File: 03-05

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## **1.0 Purpose**

The purpose of this report is to respond to Council's direction of November 15, 2022 regarding Report CNCL-22-70 concerning the Oshawa Council Charter which was referred to staff for review.

Attachment 1 is a copy of CNCL-22-70 and the current Council Charter as approved December 12, 2011.

## **2.0 Recommendation**

It is recommended to City Council:

That in accordance with Report CNCL-24-35 dated April 24, 2024 concerning a review of the Oshawa Council Charter:

1. That Council reconsider its decision of December 12, 2011 concerning a review of the Council Charter in each new Term of Council; and,
2. That Council repeal the Council Charter and associated By-law 109-2008.

## **3.0 Executive Summary**

Not applicable

## **4.0 Input From Other Sources**

Not applicable

## **5.0 Analysis**

### **5.1 Background**

#### **5.1.1 Municipal Statute Law Amendment Act (Bill 130) and Adoption of the Council Charter**

Bill 130, assented in December 2006, provided a number of amendments to the Municipal Act, 1996, S.O. 1996, c. 32, Sched. (“Municipal Act, 2001”), including authorizing municipalities to establish codes of conduct for Council and local boards. At that time, such codes were discretionary for all municipalities in Ontario with the exception of the City of Toronto.

On September 22, 2008, Council adopted the Council Charter (the “Charter”), chosen in lieu of a formal code of conduct and at its October 15, 2008 meeting Council passed By-law 109-2008 to establish the Charter.

Of note, the recitals in the Council Charter By-law reference Section 223.2 of the Municipal Act, 2001, which is the same section that authorized a Council the option to establish, and later to mandate the establishment of, a code of conduct for municipal Councils and their local boards.

#### **5.1.2 Review of the Charter in 2011**

At its meeting of September 26, 2011, Council formed a Council Charter Subcommittee consisting of the Mayor and one member of each Standing Committee to review and make recommendations on the Charter. The Council Charter Subcommittee condensed the Charter into four key principles:

1. Treat each other, City staff and members of the public with respect and courtesy;
2. Discharge all duties with honour, integrity, professionalism and impartiality;
3. Attend faithfully and conduce City business at public meetings; and,
4. Preserve confidentiality where required by law or decided upon by Council pursuant to applicable law.

On December 12, 2011, Council adopted the revised Charter (refer to Attachment 1). At the same meeting, Council directed that the Charter be brought forward, reviewed and signed by each new Council as soon as practicable during their term of office.

#### **5.1.3 Subsequent Reviews of the Charter**

During the Council Orientation session on November 17, 2014, the City Solicitor reviewed the Council Charter and suggested Council endorse or amend it as appropriate; however no motions to amend the Charter were made at that time.

During the Council Orientation Session on December 6, 2018, the City Clerk provided an overview of the Charter and advised that the Charter was not repealed or superseded as a

result of the adoption of the Code of Conduct. The City Clerk noted that the presentation satisfied Council's direction for each new Council to review the Charter.

At the Inaugural Meeting of Council on November 15, 2022, staff brought forward Report CNCL-22-70 (refer to Attachment 1) being a review of the Oshawa Council Charter in accordance with the 2011 Council direction. At that meeting, Council referred the Charter to staff for further review.

#### **5.1.4 Development of a Code of Conduct**

At its meeting of May 19, 2015, Council passed By-law 51-2015, being a by-law to establish a Code of Conduct for Members of the Council of the Corporation of the City of Oshawa (the "Code of Conduct" or "Code").

Effective March 1, 2019, Bill 68 further amended a number of sections of the Municipal Act, 2001 including Section 223.2. This amendment removed the option for municipalities to establish codes of conduct for its members of Council and local boards, making it a legislated requirement to have such a code. In addition, other amendments required municipalities to appoint an Integrity Commissioner responsible for investigating complaints of alleged breaches of the code of conduct and Municipal Conflict of Interest Act as well as providing advice to members of Council and local boards concerning the procedures, rules and policies governing the ethical behavior of such members.

Ontario Regulation 55/18 which also came into force on March 1, 2019 and sets out prescribed subject matters that must be addressed in a code of conduct for members of Council and local boards, specifically:

- gifts, benefits and hospitality;
- respectful conduct toward officers and employees of the municipality or local board;
- confidential information; and,
- use of municipal or local board property.

While the current Council Charter speaks to respectful conduct and preservation of confidential information, the Regulation requires that all four of these subject matters be included in a code of conduct.

To remain compliant with legislation, Council passed a by-law to amend By-law 51-2015 to effect the changes in legislation and directed staff to recommend procedures and forms to access Integrity Commissioner Services by Members of Council and local boards seeking advice and for the public to initiate complaints. At its meeting of April 27, 2020, Council passed a by-law to further amend By-law 51-2015, as amended, to update the Code of Conduct and implement the necessary forms and procedures for accessing the services of the Integrity Commissioner as directed.

## **5.2 Council Charter vs the Code of Conduct**

As noted, the Charter was created prior to any legislated requirements for a code of conduct, and while the intent and principles are similar in nature, the Code of Conduct is more robust and includes the additional subjects now required by legislation. The

principles in the current Charter however can be correlated to a number of sections in the Code of Conduct. The following sections compare the principles of the Charter to these applicable sections of the Code.

**5.2.1 Charter Principle 1 – “Treat each other, City staff and members of the public with respect and courtesy;”**

The first Charter principle is addressed in Sections 10 to 15 of the Code of Conduct:

- “10. Each Member has the duty and responsibility to treat members of the public, each other Member and staff appropriately and without abuse, bullying or intimidation, and to ensure that the City’s work environment is free from discrimination and Harassment. Without limitation, a Member shall not:
- (a) use indecent, abusive or insulting words or expressions toward any other Member, any member of staff or any member of the public;
  - (b) speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability; or
  - (c) engage in any Harassment of any other Member, any member of staff or any member of the public.
11. Under the direction of the senior City administration, and in accordance with the decisions of Council, City staff are required to serve the municipal corporation as a whole and staff of the local board are required to serve it. Each Member shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any Member.
12. No Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
13. Each Member shall show respect for staff, and for their professional capacities and responsibilities.
14. No Member shall compel any member of staff to engage in partisan political activities or subject any member of staff to threat or discrimination for refusing to engage in any such activity.
15. No Member shall use or attempt to further her or his authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that person's duties, including the duty to disclose improper activity.

**5.2.2 Charter Principle 2 – “Discharge all duties with honour, integrity, professionalism and impartiality;”**

The second Charter principle is addressed in Sections 5 and 33 of the Code of Conduct:

- “5. b) Members must be committed to performing their functions with integrity, avoiding the improper use of the influence of their office, and conflicts of interest;
- 5. c) Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;”

And,

- “33. No Member shall use the influence of her or his office for any purpose other than for the lawful exercise of her or his official duties and for City purposes. Without limitation, no Member shall:
  - (a) use her or his office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage or that of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise;
  - (b) attempt to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties; or
  - (c) hold out the prospect or promise of future advantage through the Member's supposed influence within Council or the local board, as applicable, in return for any action or inaction.”

### **5.2.3 Charter Principle 3 – “Attend faithfully and conduct City business at public meetings;”**

The third Charter principle is addressed in Sections 5 and 9 of the Code of Conduct:

- “5. a) Members must serve and be seen to serve their constituents in a conscientious and diligent manner;
- 5. d) Members must recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible;”

And,

- “9. Each Member shall conduct herself or himself properly and in a civil manner at Council, Committee and other meetings, and in accordance with the provisions of the Procedure By-law 111-2017 as from time to time amended, this Code of Conduct, the procedural rules adopted by the local board and other applicable law.”

**5.2.4 Charter Principle 4 – “Preserve confidentiality where required by law or decided upon by Council pursuant to applicable law.”**

The fourth Charter principle is addressed in Section 5 as well as Sections 25 to 30 of the Council Code of Conduct:

“5. e) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of Parliament and the Ontario Legislature, as well as the laws and policies adopted by the Council;”

And,

- “25. No Member shall disclose, release or publish by any means to any person or to the public any confidential information of the City or of the local board, whether or not acquired by virtue of her or his office, except when required or authorized by Council or of the local board, as applicable, or otherwise by law to do so.
26. No Member shall use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person.
27. No Member shall disclose a matter, the substance of the matter and information pertaining to the matter that has been debated or discussed at a meeting closed to the public, and shall be maintained as confidential unless authorized by the Council or the local board or other legislation to be released, generally or subject to conditions and are such complied with.
28. No member shall disclose the content of any matter referred to in Section 27 or the subject matter of deliberations, at a meeting closed to the public, only after the Council or Committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public.
29. No Member shall, without lawful authority, disclose or make personal use of any of the following types of Confidential Information (including but not limited to):
- (a) Information concerning litigation, negotiation or personnel matters;
  - (b) Information that the publication of which may infringe on the rights of any person (e.g. the source of a complaint where the identity of the person making the complaint is given in confidence);
  - (c) Price schedules in any contract, tender or proposal document while it remains a confidential document;
  - (d) Information deemed to be “personal information” as defined by the Municipal Freedom of Information and Protection of Privacy Act; and,
  - (e) Any other information or statistical data required by law not to be released.

30. No Member shall obtain access, or attempt to gain access, to confidential information except to the extent that such access is necessary for the performance of her or his duties, such confidential information is provided to Council or to the local board, as applicable, as a whole, and such access is not prohibited by Council or by the local board, as applicable, or otherwise by law.”

### **5.3 Forthcoming Revised Code of Conduct**

As set out in this Report, each of the four points in the current Charter can be correlated to a number of sections in the existing Code of Conduct, therefore the Council Charter can be repealed while maintaining the key principles to ensure responsibility and accountability.

As noted by Principles Integrity during a presentation to City Council at its February 26, 2024 meeting, a revised Code of Conduct will be presented for Council’s consideration in the near future. Staff will work with Principles Integrity to ensure the revised Code of Conduct includes similar clauses to those in the current Code to be certain the Charter’s principles of accountability and transparency continue in the new Code.

### **6.0 Financial Implications**

There are no financial implications associated with the recommendations contained in this Report.

### **7.0 Relationship to the Oshawa Strategic Plan**

This report supports the Oshawa Strategic Plan Goal of Accountable Leadership.



Mary Medeiros, Director, Legislative Services/City Clerk,  
Office of the C.A.O.



Tracy Adams, Chief Administrative Officer,  
Office of the C.A.O.



## **CNCL-22-70 Memorandum**

**Corporate Services Department  
City Clerk Services**

**Date:** November 9, 2022  
**To:** Mayor Carter and Members of City Council  
**From:** Mary Medeiros, City Clerk  
**Re:** Review of Oshawa Council Charter

### **Purpose**

The purpose of this memorandum is to provide Council an opportunity to review the Oshawa Council Charter ("Council Charter") and to endorse or amend it prior to signing it.

### **Background**

Prior to adopting a Council Code of Conduct as required by the Municipal Act 2001, S.O. 2001, c. 25 ("Municipal Act"), Council established a statement of conduct principles in the form of the Council Charter. The Council Charter was initially developed by the Accountability and Transparency Subcommittee, adopted by Council its meeting of September 22, 2008 and signed by Council.

At its meeting of September 26, 2011, Council directed that a sub-committee be formed to review the Council Charter and make any recommended changes to the Charter and to report to Council. The Council Charter Sub-Committee met and reviewed the Council Charter and recommended a revised Council Charter.

At its meeting of December 12, 2011, Council adopted a revised Council Charter and directed that the Council Charter be brought forward, reviewed and signed by each new Council as soon as practicable during their term in office. This memorandum offers Council the opportunity to endorse the Council Charter as written or provide direction with respect to amendments.

A copy of the Council Charter is appended as Attachment 1.

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## **Recommendation**

If Council wishes to endorse the Council Charter as written, it should adopt the following recommendation:

“That based on Report CNCL-22-70, Council endorse the Oshawa Council Charter as set out in Attachment 1 of said Report and that all members of Council sign a copy as soon as possible.”

If Council wishes to amend the Council Charter, it should refer the matter to staff to report back to the appropriate Council Standing Committee on any proposed changes.

“That Report CNCL-22-70 dated November 9, 2022 concerning the Council Charter be referred to the appropriate Council Standing Committee in order to provide direction to staff concerning a revised Council Charter.”



## CNCL-22-70 - Attachment 1

# Council Charter

Members of Council for the City of Oshawa, a responsible and accountable level of government, work within a framework prescribed by law.

As community leaders, Council members are held to a higher standard of behavior in all aspects of their conduct at all times and must fulfill their duties in a way that maintains and enhances public confidence and trust in the Corporation and the members of Council.

Each member of Council will:

1. Treat each other, City staff and members of the public with respect and courtesy;
2. Discharge all duties with honour, integrity, professionalism and impartiality;
3. Attend faithfully and conduct City business at public meetings; and,
4. Preserve confidentiality where required by law or decided upon by Council pursuant to applicable law.

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Mayor Carter

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Councillor Chapman

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Councillor Marimpietri

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Councillor Giberson

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Councillor Marks

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Councillor Gray

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Councillor McConkey

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Councillor Lee

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Councillor Neal

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Councillor Kerr

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Councillor Nicholson