



INFORMATION REPORT
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May 26, 2015

**JOINT CAO/CORPORATE SERVICES INFORMATION REPORT –
FINANCIAL SERVICES 2015-21**

TO: Mayor Van Bynen and Members of Council

SUBJECT: Councillor's Expense Account

ORIGIN: Director, Financial Services/Treasurer

In accordance with the Procedure By-law, any Member of Council may make a request to the Town Clerk that this Information Report be placed on an upcoming Committee of the Whole agenda for discussion.

COMMENTS

Council at its meeting of March 30th, 2015, adopted the following motion:

THAT staff prepare an Information Report advising whether former Councillor Maddie Di Muccio's use of her expense account for obtaining personal legal advice and for payment of advertisements while seeking the provincial nomination are permitted by Town policy.

This report will outline Town policies that may be applicable to Council's request and provide the method available for an investigation of the matter should Council wish to do so.

ELECTED OFFICIALS EXPENSE POLICY

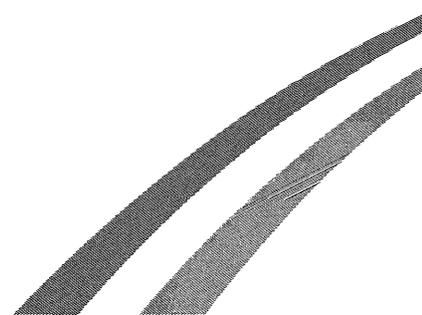
Background

Council approved the Policy to come into effect on January 1, 2014. There are two components to this policy – the guidelines and the policy itself.

The guidelines are very detailed but the Policy makes it clear that they are just guidelines:

These guidelines are not mandatory – Elected Officials need to be mindful of the public's expectations.¹

¹ Elected Officials Expense Policy, page 2, definition of Discretionary expenses



The Policy further states that elected officials are responsible for their expenses:

The responsibility for determining the appropriateness of discretionary expenses rests with the individual Elected Official and not with staff. The Elected Official is accountable to the public.²

For this reason, the Town went to more extensive reporting of Council expenses. The Policy does not give staff authority to approve expenses:

the sign off by the CAO or Treasurer is only for completeness and appropriateness of backup (account coding, etc.) and is not an approval of the expense.³

That authority resides with the individual Council member:

The decision to approve a discretionary expense covered by this policy ultimately rests with each individual Elected Official.⁴

This aligns with the Guiding Principles for the Policy:

Elected Officials are the stewards of Town resources and are ultimately accountable to the public and their constituents for the type and level of expenses they incur.⁵

This theme builds upon the past practice that Members of Council are responsible for their expenses. A memorandum from the CAO on April 12, 2007 to Members of Council, was followed up with an email on September 10, 2008 which stated the guiding principle that expenses are at the discretion of Members of Council and that they are responsible for responding to inquiries on these expenses.

That said, staff can deny paying or reimbursing an expense if it meets the definition of being an Ineligible Expense. The items that are considered ineligible are:

- items for personal use
- expenses unrelated to Newmarket business
- individual donations that do not support community group efforts in the Town
- expenses incurred by a third party, for example: expenses paid or requested by a group or individual other than an Elected Official
- events for a for-profit organization
- alcohol expenses except when incurred while acting as a representative of the Town as agreed to by Council

² Elected Officials Expense Policy, page 2, Definitions, Discretionary expenses

³ Elected Officials Expense Policy, page 3, Processing

⁴ Elected Officials Expense Policy, page 4, Expense Accountability

⁵ Elected Officials Expense Policy, Appendix A, Accountability

- any expense for office supplies, furniture, or equipment (including computer and technology related equipment) that does not make use of the Town of Newmarket's approved vendors
- transportation costs between home and work location (395 Mulock Drive)
- election-related expenses
- expenses for ward/constituency events, publications or personalized stationery and business cards after June 30 of an election year
- accumulated expenses exceeding the Elected Official's annual budget allocation

Interpretation and general application

This expense as was presented to staff appeared to be within the policy guidelines. As has been outlined earlier in the report and as set out by the policy, the responsibility for determining appropriateness for the use of discretionary funds rests with the elected official. In keeping with that policy direction, these expenses are taken at face value, as presented by the councillor and unless a clear violation is noted no further review is conducted. This practice is consistently applied.

USE OF CORPORATE RESOURCES & ELECTION CAMPAIGN ACTIVITIES POLICY

Background

Council approved the "Use of Corporate Resources and Election Campaign Activities Policy" in December, 2005 (and was amended in March, 2006).

The Policy is intended to restrict the use of corporate resources (including facilities, equipment, supplies, services, staff or other resources) for municipal election campaign or election campaign activities by candidates, Members of Council and Town staff.

Interpretation and general application

The Policy specifies that it covers "Members of Council, Municipal Election Candidates and All Employees" and the Policy's purpose "is to clarify that all election candidates, including Members of Town Council, are required to follow the provisions of the *Municipal Elections Act, 1996*. It also clarifies procedures for all Town employees to maintain the highest standards of ethical conduct throughout the election campaign period, generally recognized as beginning with the municipal election candidates registration date, being January 1 through Voting Day in a municipal election year". It appears the Policy is intended in scope and purpose to apply to municipal election activities and not those of provincial or federal elections or activities related to political party nomination or election activities.

The Policy also states that "Nothing in this Policy shall preclude a Member of Council from performing his/her job as Mayor, Regional Councillor or Councillor, nor inhibit him/her from

representing the interests of the constituents representing them". The Policy does not define the role of Members of Council, so presumably the *Municipal Act, 2001* definition of the role of Council (as well as other legislation and the Town's By-laws) is what is referred to in this context, in addition to what the individual Member feels their role entails.

The Policy is primarily self-governing and interpretive in nature and where a perceived breach of the Policy is brought to staff's attention during the municipal election, the Director of Legislative Services/Town Clerk would follow up and provide advice or guidance and respond to the complainant. While the Policy does not include specific enforcement or recourse measures for candidates, Members of Council or staff, it does cross reference both the Council Code of Conduct (the Code) and the Employee Code of Conduct. This Policy is mentioned specifically in the Code which does include recourse methods.

Staff were not approached in reference to the advertisements referred to in the motion at the time they were published. If the advertisements related to a provincial nomination, the letter of the Policy would appear not to preclude this. Certainly, it should be noted though that the original intent of the Use of Corporate Resources and Election Campaign Activities Policy was for it to apply to municipal elections. The Policy will be reviewed and recommendations will be brought forward prior to the next regular municipal election.

COUNCIL CODE OF CONDUCT

Background

In April 2007, Council enacted By-law 2007-42 which authorized the approval of a policy to govern the conduct of Members of Newmarket Council. This policy, referred to as the Council Code of Conduct (the Code), along with the *Municipal Act, 2001* set out the ethical standards of behaviour for Members of Council.

The Code and related corporate policies are currently under review. A Request for Proposal for a consultant to assist with the review has been issued and will be evaluated and awarded by the end of May, 2015. The selected consultant will facilitate research and undertake consultation with Members of Council, senior staff and the public with recommendations expected September, 2015.

While the Code is under review, Council (through resolution) established an interim complaint process. The process involves complaints being reviewed by the Integrity Commissioner.

Interpretation and general application

The Code provides a framework for ethical behavior, which includes such themes as confidentiality; conflicts of interest; staff relations; gifts, hospitality, benefits and perquisites; political activity and use of Town property. In some areas, the Code provides for independent policy statements which guide ethical behavior and in other areas the Code simply refers to other corporate policies as the standard for ethical behavior.

As directed by Council resolution, the mechanism to determine whether there was a breach of the Code during the time the Code is under review is through a review by the Integrity Commissioner.

SUMMARY

Council has, through its motion of March 30th, asked staff to advise whether certain expenses are permitted by Town policies. While this report outlines various policies that may apply in this instance, these policies do not put staff in a position to adjudicate on the appropriateness of use. The vehicle for that process would be a review by the Integrity Commissioner (IC) who under the *Municipal Act* has the authority to perform in an independent manner an investigation with respect to the application of the Code of Conduct and any procedures, rules and policies of the Town. In addition, the Integrity Commissioner is also granted powers of inquiry and free access to records.

Staff are however, uncertain as to how the application of the Council Code of Conduct might relate in a situation where a councillor is no longer in office (as there is no reference to this in the current Code). Therefore if Council were giving consideration to requesting that an IC investigation be undertaken, staff would recommend seeking external legal advice in this regard prior to any action being taken. During the Code of Conduct review process and with the assistance of the consultant, staff will investigate best practices and approaches specifically related to this matter.

BUDGET

Should Council wish to pursue this matter further there will be associated costs - external legal advice (estimated to be up to \$1,000) and an investigation by the Integrity Commissioner (estimated to be in the area of \$3000.).

CONTACT

For more information on this report, contact one of the undersigned.



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