



TOWN OF NEWMARKET  
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January 15, 2014

## JOINT CAO/COMMISSIONERS INFORMATION REPORT - 2014-02

TO: Mayor Van Bynen and Members of Council  
SUBJECT: Draft Council Code of Conduct – Public Feedback  
ORIGIN: Commissioner, Corporate Services

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### COMMENTS

Members of Council will recall that the Draft Council Code of Conduct went through a public consultation period and attached to this report in chart form is the feedback received. In addition to providing the feedback via this information report, staff felt it important to give some context around it and will set out a procedure going forward for reporting on public comments received.

#### Public Feedback - Draft Council Code of Conduct (Code)

As outlined in Joint CAO/Corporate Services Information Report #2013-06, the Code is being held until the next term of Council where it can have a full discussion and input from Members of the new term of Council.

The Code had been posted on the Town's website and made available for public comment for approximately one month. Individuals who provided comments will be advised of the new timeframe. The feedback received is attached along with where appropriate, staff comments. With little exception, the comments are being provided as submitted.

#### Public Feedback - Going Forward

There have been many times in the past that a public consultation process has been undertaken – whether staff initiated or Council requested. This has proven to be an extremely valuable exercise however, in some instances the comments received do not relate to the matter under review and/or the comments are frivolous or vexatious (intended to harass as an example). These types of comments are not a productive outcome of seeking public comment on policy and/or strategic direction setting for the municipality and there are more appropriate ways that the public can communicate directly with specific individuals (e.g. via personal meetings or emails) should they wish to.

In keeping with the Procedure By-law (Section 32 - Correspondence) and unless Council deems otherwise, staff will no longer publish and/or consider as part of the matter under review comments that contain statements that are defamatory in nature. This will also be the case with comments that do not relate to the subject matter.

There is an expectation by the public that their comments will be considered as part of the process and staff will via a message or statement at the outset, inform the public (e.g. on the website when the input opportunity is being advertised) that only comments that relate to the subject matter can be considered as part of the public process. In addition, it will include a statement advising that some or all comments

received may be reproduced verbatim (with the name of the commenter removed) in a public session for consideration by Council. This message will provide advance notice to anyone who may submit a comment that could still reveal the commenter's identity even after their name has been removed (should they for example, include the name of their workplace, occupation or affiliation).

### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

This report links to Newmarket's vision of being:

- *Well Equipped and Managed* by implementing policies and processes that reflect sound and accountable governance; and
- *Well Respected* by inspiring partnerships and cooperation with stakeholders that revolve around well-being, synergy and balanced living.

### **CONSULTATION**

Consultation has taken place with the Legal and Legislative Services staff.

### **BUDGET IMPACT**

#### Operating Budget (Current and Future)

None.

#### Capital Budget

None

### **CONTACT**

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Robert N. Shelton  
CAO



Anita Moore  
Commissioner, Corporate Services

Council Code of Conduct – Public Feedback

Date Received	Feedback	Staff Comments / Response
October 25, 2013	<p>-Section D - there is no concrete definition of the term “nominal”. I suggest to avoid ambiguity and an on-going valuation of every potential gift, hospitality and benefit, that a set dollar value be included in the code as to what is acceptable for each category.</p> <p>-I further suggest that a section be added to the effect that cumulative gifts from a source for a single gift, event or hospitality not exceed the nominal value. (i.e. There can be more than one component to a gift or benefit; for example multiple tickets to an event, or a one day rental of ski equipment may fall under the nominal value, in combination with a one day pass it would conceivably exceed the amount.)</p> <p>-It has been my experience that nominal is an extremely ambiguous terms that can be defined on an as needed basis to justify any amount; as well by inserting the cumulative clause it avoids the attempt to spread the gifts over a period of time or components to take advantage of this loophole in the accepted amount</p>	<p>Staff conducted research on other municipal practices in this regard. Potential options will include assigning a nominal value and a cumulative value limit.</p>
October 30, 2013	<p>Section F – Confidentiality - I think this policy is too restrictive allowing for too many instances of confidentiality and too wide a range of matters that are kept from the public.</p> <p>Section G - Gifts, Hospitality, Benefits - I think this code as written is too generous. There should be no acceptance at all of gifts, food, beverages or other benefits, no matter how small.</p> <p>The 6 month filing requirement should not be required as it is too restrictive.</p>	
October 21, 2013	<p>Requesting clarification on current Council Code of Conduct:</p> <p>-That the currently effective Code of Conduct is the version that was enacted by bylaw 2007-42, as indicated on the town’s webpage referenced above.</p> <p>-That bylaw 2007-42 defines (in part XI) the (currently effective) protocol that Council is to follow whenever there is an alleged contravention of any provision of the Code of Conduct.</p> <p>-That paragraph (e) within part XI stipulates that when council feels a breach of the Code may have occurred, but is unable to make its own determination, Council may pass a resolution requesting an investigation by a judge of the Ontario Superior Court of Justice, but does not provide an option for such matters to be investigated by any other person.</p> <p>-That there is presently a draft Code of Conduct that would grant Council the right to appoint an Integrity Commissioner, instead of a judge.</p> <p>-That, at present, neither this draft Code of Conduct nor any other version of the Code of Conduct has been brought into effect by the enactment of any bylaw, which supersedes or nullifies the provisions of bylaw 2007-42. In particular, that no presently enacted bylaw authorizes Council to deviate from the protocol mandated in part XI of bylaw 2007-42. I would be very grateful if you could confirm the accuracy of my understanding in regard to these five points.</p>	<p>Staff responded to the resident’s questions explaining that the Municipal Act created an independent right of council to request an inquiry by an Integrity Commissioner, regardless of whether that right is specifically set out in a Code of Conduct. That right to appoint an Integrity Commissioner was intended to provide municipal councils with a more efficient, cost effective and less complicated way of conducting Code of Conduct investigations.</p>

<p>October 31, 2013</p>	<p>As you are aware today is the final official day allowing for public input with regards to "Council Code of Conduct" I therefore would like to see a major change regarding paragraph "G". Gifts, Hospitality, Benefits and Prerequisites. I find the clause totally out of line with the norm of today's business practises. I am surprised that Mayor Van Bynen would have ever allowed this clause to be included. Both the Mayor and myself come from similar backgrounds working for major banks. I'm confident he would be aware of these policies in the private sector. If you wish I can given time to go through my old contracts supply you with hard copy of the Bank of Nova Scotia's hardened policy on the receipt of gifts. As well as a sales agent who has practised for the last 25 years in the automotive private and commercial sectors these policies would not be condoned. To give just one example I deal with representatives from (various companies) just to name a few. Their policies regarding their staff or agents is totally plain, clear cut. They are not allowed to accept even token gifts. At the very most around the end of the year they are allowed to be taken out for a year end lunch. I therefore find the proposed policy to be direct conflict with the norm in today's business world. Our members of Council should never be in a position of a possible conflict of interests. This open policy as stated in my opinion should be totally removed from the code. I would honestly like to hear the rationale behind this clause.</p>	
<p>October 23, 2013</p>	<p>As you aware the Council of Newmarket has made two if not three modifications to the Bylaw regarding "Code of Conduct". The latest of these changes were introduced October 17, 2013. In view of these recommendations and modifications to the original proposed Bylaw I am hereby requesting a further extension beyond the October 31, 2013 deadline. This request is made on the grounds that because of these additional amendments the public has <b>not</b> had adequate time to review or study these changes and there implications. These latest changes or modifications have denied the public adequate time for review and input and concerns. On the onset it would appear that there could also be the possibility of infringements on our Charter of Rights Canada. Notwithstanding the possibility that a certain number of these changes may have a direct impact on the Municipal Act itself that lays out very clearly the conduct expected of a Councillor. Without giving the citizens of Newmarket consideration and a proper time frame in which to respond to these changes the Town could be faced with certain legal challenges that ultimately would cost the taxpayers of Newmarket. We are hereby formally requesting an extension of an additional 30 day grace to allow for further and adequate public input and response to this very important document.</p>	<p>Staff responded to the resident outlining opportunities for input including deputations to Committee and Council. Clarified that the changes referenced were not included in the Council Code of Conduct that was currently posted for comments.</p>
<p>October 24, 2013</p>	<p>Regarding the draft code of conduct, can you specifically tell me which part of the new draft amendment relates to matters of serving council members being convicted of a criminal offence, and the sanctions imposed as a result? The draft code mentions "integrity", and "council members being held in the highest standard", but I cannot find specifically where it states being permitted to serve after being arrested or convicted as a result of a criminal act? Is this rule to be applied selectively, or what is the specific criteria? Does it not somehow seem inappropriate to have one member of council that has a criminal record allowed to speak and vote on matters of integrity and professionalism? Most places of work do specifically have rules or policies relating to this, and it would be beneficial to specifically have this mentioned in the current code so very important issues cannot be overlooked. I do have serious concern with a current member of council being criminally convicted of Impaired driving after attending an official town function, and being permitted to continue to serve. I attended the subsequent motion and vote that followed this incident, however the Mayor and majority of Council apparently didn't feel that this was a breach of the code of conduct, and voted that no repercussions would be furthered as a result. Many residents were of course outraged with this decision. My question is, can you let me know specifically which parts of the new draft amendment will deal with such instances in the future. I do agree that all work places do need a code of conduct, however they must be applied equally and without bias.</p>	<p>Staff responded to the resident advising that there isn't any legislative authority for a Code of Conduct or any municipal by-law to require a member of council who may have been charged or convicted of a criminal offence to be faced with a possible removal from office. Staff further outlined the process to lodge a Code of Conduct complaint and the associated penalties that may apply.</p>

<p>October 7, 2013</p>	<p>Let's hope this is not about the cry baby Mr. Mayor to have more of his own way. Make sure this is a legitimate CofC which will look after those that break the law or misrepresent their constituents. It should not be something that the mayor or Regional Councillor hide behind when they don't get their way. I hope the staff are not going to be bullied into this!</p>	
<p>October 8, 2013</p>	<p>As a resident of Newmarket I am concerned that this initiative is taking place at a time when there is so much upheaval within the Council ranks. It is also disturbing to see this Code brought forward now when in 2011 Ward 7 Councillor was charged with DUI after attending a Public event and no mention was made of amending the Code or revisiting it. In my mind this is a ploy by certain members of Council to muzzle Ward 6 Councillor. I am disappointed with most members and suggest that members deal with Business at hand and not frivolous attempts at politicking.</p>	
<p>October 26, 2013</p>	<p>Regarding the proposed changes to the Code of Conduct:  I am opposed to any changes to the code of conduct unless those changes were applied to curtail the use of the code of conduct to silence debate. It is an undemocratic tool when a point of order is called to censure another councillor. A perfect example of this occurred during the Honeywell debate. All councillors were in agreement to proceed with the project but called into question was the accounting procedure that council was implementing. One councillor inquired why the town was loaning itself the money with a 2% interest rate to fund the project, stating that this seemed like creative accounting. The visible anger and venom by another councillor, that seemed to take the comments personally, was channelled into a point of order. He then had the floor and in my view berated the councillor until this councillor apologised. Can you explain to me how the term creative accounting is not acceptable under the circumstance? It was not addressed to anyone nor was it an accusation. It was a question. That sir is my point! Who will decide what is appropriate? A majority of council members? Will a majority be able to silence other council members thus silencing their constituents? Do we blindly trust that a majority will not be more interested in pushing through their agenda's or at worst decide an issue is not worth debating for the sake of expediency? Why then do we continue a charade to elect council members if they cannot openly disagree or debate? This Council seems to be using an enormous amount of time and effort on the code of conduct and the only thing that is very transparent is the effort to silence Ms. Dimuccio. It is an unfortunate choice of words that Ms. Dimuccio used to convey her feelings of frustration. I find this incident not reflective of Ms. Dimuccio behavior in council, and find her to be very respectful and informative. The issues that arise come from Ms. Dimuccio's attempt to be transparent to her constituents. Calling for recorded votes, asking for clarifications and putting into the record her stand, all of which seem to irritate the other council members. While an integrity commissioner can add nothing more than an arbitrary ruling, a mediator may give both sides some perspective. If it is this councils intention to silence opposition, so that they can continue unimpeded, regardless of the concerns of it's citizens then this council has lost it's foothold in the democratic process.</p>	

October 31, 2013	<p>Pursuing Ms DiMuccio, for her comment towards the Mayor, is a waste of taxpayer dollars. While my jury is still out on the misogyny claim, Mr VanBynen's behaviour towards the Councillor, on this and during council meetings, is unacceptable. This is a personal issue, and not one that the taxpayer should have to bear. I have far more names I would use, face to face. BULLY being at the top of my list. She is not our Councillor, but has been very helpful to many outside her ward, and has a growing following around ALL of town. MY Councillor, Chris Emmanuel, SHOULD have resigned upon his drunk driving conviction, or been dismissed. Those with criminal records have NO place representing us. Drunk driving is disgraceful conduct, a bad example for our youth, and, as a footnote, I have lost many friends, and relatives, to drunk drivers over my lifetime, and, my wife, as a 32 year ER Nurse, has witnessed, the results, loss of life, and crippled for life victims. Mr Emmanuel DOES NOT have my vote, and that is echo'ed by most of my neighbours. I give you the "road to nowhere" Davis Dr, and the numbers of businesses that have been lost, forever, to East Gwillimberry. And the damage to the feeder streets, caused by same, to serve, what is acknowledged as "the worst conceived transit system, in the WORLD" , and acknowledged by Councillor Taylor, and anyone I have spoken to, that rides VIVA. Heavy industry virtually GONE 20% + tax increases The highest water rates in Canada Food bank usage growing at an ever increasing rate. Affordable housing, non existent Nothing at all being done for the aging population crisis, that will soon be upon us. Old town hall reno, which is far overpriced, and totally irresponsible spending. A Soccer Club, which WILL end at a net LOSS to taxpayers And a Secondary Plan, which is, a JOKE, and yes, I have attended the meetings. A record number of "in Camera" meetings, unheard of in any other municipality in the Province Newmarket's logo used to be a beehive, representing a busy, growing place. Bring back the beehive.</p>	
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