

Report to Council



Date: September 23, 2024
To: Council
From: City Manager
Subject: Responsible Conduct Framework Discussion Paper
Department: Office of the City Clerk

Recommendation:

THAT Council receives, for information, the report from the Office of the City Clerk dated September 23, 2024 with respect to the UBCM/LGMA Responsible Conduct Framework Discussion Paper;

AND THAT Council directs staff to submit a response from Council to the UBCM, based on feedback provided by Council.

Purpose:

To receive the UBCM/LGMA Responsible Conduct Framework Discussion Paper and provide feedback for a response to the UBCM.

Background:

The Working Group on Responsible Conduct is a joint initiative of the Union of British Columbia Municipalities (UBCM), the Local Government Management Association (LGMA), and the Ministry of Municipal Affairs (MMA). It was created in response to requests from local governments for more resources to support responsible conduct of elected officials. The foundational principles that guide responsible conduct of individual members of Council and Council as a whole are: integrity, accountability, respect, and leadership and collaboration.

As part of the responsible conduct framework, councils are now required to consider establishing a code of conduct or revising an existing code of conduct (sections 113.1 and 113.2). Council adopted its [Code of Conduct Council Policy No. 388](#) on September 11, 2023.

Discussion:

The UBCM and LGMA recently released a [Discussion Paper](#) in response to continued calls for more tools to support responsible conduct. Common concerns with the existing structure include:

- Perceived lack of tools and inability to effectively address extreme examples of poor conduct;
- Reliance on staff to intervene or resolve conflict;
- Lack of resources to properly administer and enforce codes of conduct; and
- Potential to weaponize codes of conduct and sanctions.

Over 70% of local governments in BC now have a code of conduct in place. BC is the only province where a code of conduct is optional; it is mandatory in all other provinces. In BC, codes of conduct are currently administered and enforced through one or more of the following methods:

- Internal – Council, a committee, and/or senior staff;
- Third party investigator – typically a lawyer with experience in the field of responsible conduct; or
- Integrity commissioner – appointed by council for a defined term, also provide ongoing advice and education. Currently, four municipalities and one regional district in BC have appointed an integrity or ethics commissioner.

Kelowna’s Code of Conduct applies a combination of the internal and third party investigator approaches to administration and enforcement. In all cases, Council is the decision-maker on any recommended sanctions following an investigation.

To address the perceived gaps in the development, administration, and enforcement of codes of conduct in BC, the discussion paper explores three models:

- Model I: Local determination – code of conduct remains optional, with administration and enforcement by a third party investigator or integrity commissioner. This is similar to the status quo, though removes the option for internal administration of a code.
- Model II: Provincial requirements for centralized – code of conduct is mandatory, with a new provincial body responsible for overseeing administration and enforcement on behalf of all local governments.
- Model III: Provincial requirements for local – code of conduct is mandatory, with local governments required to appoint an independent third party to administer and enforce.

A summary of responsibilities for each model is outlined in the table below.

| Responsibility | Model I: Local Determination | Model II: Centralized (Required) | Model III: Local (Required) |
|---|---|------------------------------------|--|
| Establish Code of Conduct | Council - Optional | Council - Mandatory (standardized) | Council - Mandatory (with prescribed elements) |
| Administer (review complaints, investigate, present findings, make recommendations) | Third party | Provincial body | Third party |
| Enforce (apply sanctions) | Council | Council | Council |
| Educate and advise | Third party, other resources (e.g., UBCM, LGLA) | Provincial body | Third party |

The paper offers an assessment of how each model might contribute to addressing current challenges in the responsible conduct framework and contribute to the overall effectiveness of codes of conduct. Note

that legislative amendments would be needed to implement Models II and III, and potentially Model I. This assessment of various factors is summarized in the following table.

| Factor | Model I: Local Determination | Model II: Centralized Administration and Enforcement | Model III: Required Local Administration and Enforcement |
|------------------------------|-----------------------------------|--|--|
| Scope of Sanctions | Broad Council's discretion | Broad Set by legislation | Broad Set by legislation |
| Closest Examples | Similar to BC's status quo | Quebec (key differences) | Manitoba, Ontario |
| Local Government Choice | High | Low | Limited |
| Oversight and Accountability | Council, third party investigator | Provincial body, Council | Council, provincial government, third party investigator |
| Standardization | Best practices | High | High |
| Control over costs | High | Low | Limited |
| Fairness | Variable | High | High |
| Effectiveness | Variable | Variable | High |

The UBCM and LGMA invite comment on the following questions:

1. Should the Province be requested to develop legislation mandating codes of conduct modelled on established best practices for all local governments in BC?
2. Are legislated changes needed to support code of conduct administration and enforcement?
3. If so, what factors do you think are most important to the success of a new approach to code administration and enforcement?

Conclusion:

The provincial responsible conduct framework continues to evolve in response to emerging needs of and challenges being experienced by some local governments across BC. This discussion paper points to potential models for further consideration and seeks input from Council and staff on the options presented.

Staff are seeking Council's input on these matters and will prepare a response to the UBCM on Council's behalf. Staff will also provide a response to the LGMA and continue to monitor developments from this Discussion Paper and the Working Group on Responsible Conduct.

Additionally, staff are reviewing Kelowna's Code of Conduct and will report back to Council with observations and recommendations. The UBCM/LGMA Discussion Paper will help to inform this review.

Considerations applicable to this report:

Legal/Statutory Procedural Requirements:

Community Charter Section 113.1: Requirement to consider code of conduct

- (1) Within 6 months after its first regular council meeting following a general local election, a council must decide

- (a) whether to establish a code of conduct for council members, or
 - (b) if a code of conduct for council members has already been established, whether it should be reviewed.
- (2) Before making a decision under subsection (1), the council must
- (a) consider the prescribed principles for codes of conduct,
 - (b) consider the other prescribed matters, if any, and
 - (c) comply with the prescribed requirements, if any, including requirements respecting public notice or consultation.
- (3) If the council decides, under subsection (1), not to establish a code of conduct or review an existing code of conduct, it must make available to the public, on request, a statement respecting the reasons for its decision.

Existing Policy: [Code of Conduct Council Policy No. 388](#)

Financial/Budgetary Considerations: The City would be responsible for costs associated with each model, with Model II providing the least control over costs and Model I providing the greatest control, based on how the Code is designed, administered, and enforced.

Considerations not applicable to this report:

Legal/Statutory Authority:

Consultation and Engagement:

Communications Comments:

Submitted by:

L. Bentley, City Clerk

Approved for inclusion: D. Gilchrist, City Manager

Attachments:

Attachment A: Discussion Paper – Potential for Change: Responsible Conduct Framework for Local Government Elected Officials