

## AUMA's Submission on the Code of Conduct Regulation

### Overarching comments

- This regulation does not provide for appropriate oversight or process, and self-review will lead to a lack of credibility. There needs to be an integrity commissioner or similar body responsible for enforcing the policy.
- The regulation should provide for one set of rules that can be used to develop a common understanding and a consistent approach.
- A recommended option is for the province to provide a template provincial code of conduct that all municipalities must adopt at a minimum, and include some areas that are discretionary where municipalities can adjust it to their unique circumstances.
- The regulation needs to include sanctions if a councillor or municipality doesn't adopt or sign the code of conduct.

### Code of Conduct Contents

#### **1. Should the regulation set out the minimum requirements for matters that a municipality's code of conduct must address?**

- Yes

#### **2. If the regulation does set out the minimum requirement for matters that a municipality's code of conduct must address, what matters would you add or remove from Section 2 (Code of Conduct Contents) of the sample regulation**

- This list above creates overlap between duties and conduct. There are certain duties a councillor must do (e.g. participate in council meetings, adhere to procedures and bylaws), and those things that are behavioral (e.g. respect). The list needs to be revised so that delineates between duties versus the personal conduct of an elected official.
- Some of the areas listed above are very subjective, such as "appropriate use of influence," and "interactions with the council members; interactions with municipal staff; interactions with the public". The regulation needs to be more specific so that conflicting council members do not use the criteria to bully other council members and create a process and sanctions towards someone that is not truly violating the intent of the code.
- Add to the policy content list: "(n) Delineated conflict of interest provisions"
- For clarity – change it to read "A code of conduct must address the conduct of members of council", (not "councillors").

### Validity of a Complaint

#### **3. Should the regulation allow local councils to determine the process by which complaints are reviewed and evaluated?**

- No, the establishment of what constitutes a breach should be set out in the regulation and have some parameters around it.
- The regulation should set out provisions for who can make a complaint and how a complaint initially comes forward. There should also be considerations for CAOs who bring forward a complaint, as their employment could be at risk.
- The method by which complaints should be made should involve a third party that is not personally invested in the situation or the validity of the complaint. There should be an integrity commissioner to reflect a quasi-judicial process, including defined timelines, evidentiary standards, burden of proof, and a right to appeal. The integrity commissioner should have a separate investigative role from the decision-making and sanction role.

**4. If the regulation does set out a standard process to review and evaluate complaints, who should be given the responsibility to carry out the review?**

- The validity of a complaint should be determined by a third party that is not personally invested in the situation or the validity of the complaint.
- There should be an integrity commissioner to reflect a quasi-judicial process, including defined timelines, evidentiary standards, burden of proof, and a right to appeal. The integrity commissioner should have a separate investigative role from the decision-making and sanction role. This role could be overseen by a body such as the Provincial Ethics Commissioner. Consideration would need to be given to providing the oversight in a swift and timely manner as local issues can escalate quickly.
- If the province does maintain municipal oversight for review, it should be clear that municipal administrators should **not be** involved in conducting this process. Instead, councils would determine who oversees the process, whether it be council, a committee of council, an officer of the municipality, an independent individual (or contractor), a committee, or an inter-municipal board to come up with an effective review and evaluation process.

Sanctions

**5. Should the regulation allow local councils to determine the sanctions to be imposed if a councillor is found to have breached the code of conduct?**

- No - Sanctions should be set out clearly within the regulation; there needs to be some standardized rules for sanctions, not ad-hoc. The regulation needs to set out the spectrum of tools that are proportionate to the severity and number of offenses.

**6. If the regulation does set a list of sanctions that may be applied, what sanctions should be included in the list?**

- Sanctions could include: formal warning letter; pledge to recommit to Code of Conduct; requirement to take training; letter of reprimand; request for an apology to council or to impacted individual(s); public disclosure of offense; restriction of activities; removal from committees; full suspension of duties for a defined period of time; withholding of office budget; reduction or full suspension of pay or stipend corresponding to a reduction in duties; suspension or reduction of the remuneration (including salary, benefits, and or expenses) paid to the member for a period of 90 days; monetary fine of up to \$25,000; restriction of access to civic services or City Hall.
- Since disqualification is being considered as an outcome for failing to complete mandatory training, then it should also be in the spectrum of sanctions for very serious code of conduct infractions.

Review Date

**7. Should the regulation set out the minimum frequency for reviews of the code of conduct bylaw? Yes No**

- Yes

**8. If the regulation does set out the minimum frequency for reviews of the code of conduct bylaw, how often should the review be required?**

- Revise this clause so that municipalities are required to review the Code of Conduct at least once within a council's term.

***Municipal Government Act***  
**Code of Conduct Regulation**

**Discussion Guide**

**June 2016**

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## Introduction

The *Municipal Government Act (MGA)* is the law under which all Alberta municipalities are empowered to shape their communities. The *MGA* was introduced in the mid-1990s and was considered a model for municipal legislation in Canada. However, after nearly 20 years, it was determined the *MGA* should be revisited in order to meet the changing needs of Alberta's communities and an extensive review and public consultation took place throughout 2014.

In the spring of 2015, Bill 20 was passed by the Legislature. The Bill addressed issues that have received broad support from the rural and urban municipal associations, the cities of Calgary and Edmonton, and business and industry associations representing key economic sectors.

These changes fall under four broad categories:

- enhancing municipal accountability;
- enabling more efficient municipal operations;
- enhancing municipal viability; and
- strengthening municipal and intermunicipal planning.

Bill 20 also approved legislative amendments to address emerging issues, as well as housekeeping matters to update minor items such as definitions, references, and terminology.

## Code of Conduct Legislation and Regulation-Making Authority

Bill 20 will add a new Section 146.1 to the *MGA* which will require councils to establish a code of conduct for councillors. The new section will also provide councils with the discretionary authority to establish a code of conduct governing the conduct of members of council committees and other bodies established by the council. The section also provides the Minister with the authority to make regulations respecting matters that a code must address, the date by which it must be established, respecting sanctions to be imposed for a breach, respecting matters that a council must take into consideration in establishing a code, respecting implementation of a code, and respecting any other matter the Minister considers necessary or advisable. The new section specifies that a councillor cannot be disqualified or removed from office for a breach of the code. The Bill also amends Section 153 of the *MGA* (General Duties of Councillors) to add a requirement that councillors must adhere to the code of conduct.

Bill 20 added the following to the *MGA*:

### ***Bylaws - codes of conduct***

146.1 (1) *A council must, by bylaw, establish a code of conduct governing the conduct of councillors.*

(2) *A code of conduct under subsection (1) must apply to all councillors equally.*

- (3) A council may, by bylaw, establish a code of conduct governing the conduct of members of council committees and other bodies established by the council who are not councillors.*
- (4) A councillor must not be disqualified or removed from office for a breach of the code.*
- (5) The Minister may make regulations*
  - (a) respecting matters that a code of conduct established under subsection (1) must address;*
  - (b) respecting the date by which councils must establish a code of conduct under subsection (1);*
  - (c) respecting sanctions to be imposed for a breach of a code of conduct established under subsection (1);*
  - (d) respecting matters that a council must take into consideration in establishing a code of conduct under subsection (1) or (3), or both;*
  - (e) respecting implementation of a code of conduct established under subsection (1) or (3), or both;*
  - (f) respecting any other matter the Minister considers necessary or advisable to carry out the intent and purpose of this Division.*

*Section 153 (Councillors have the following duties: ) is amended by adding the following after clause (e):*

*(e.1) to adhere to the code of conduct established by the council under section 146.1(1);*

These changes are not yet in effect, but will come into effect when proclaimed.

The intended outcomes of the code of conduct legislation are that municipally elected officials will conduct themselves in an appropriate manner, that all municipally elected officials within a municipality will be held accountable for their conduct, that councillor misconduct will be dealt with consistently within municipalities, and that code of conduct provisions are appropriately enforced.

### **Purpose of This Discussion Paper**

This discussion paper has been developed to seek your input into the development of the regulations for the councillor code of conduct. Your comments and observations will be important in ensuring that the new legislation and regulations accomplish their intended objectives.

## Development of a Code of Conduct

The *MGA* sets out the general duties of councillors, helping to direct appropriate conduct of councillors, and sets out specific requirements in respect of pecuniary interest. Councils typically establish informal expectations and standards within their organizational culture, and councillor orientation and training through local, regional, or province-wide events reinforces these expectations. Public attendance at council and council committee meetings further serves to reinforce expectations of appropriate conduct. Municipal inspections and resulting directives ordered by the Minister of Municipal Affairs have addressed inappropriate conduct. Furthermore, councillor actions are at all times subject to the requirements of law that apply to all citizens.

These mechanisms, together with the strong personal ethics that most councillors bring to their office, typically result in high standards of conduct across Alberta. However, some councils face isolated cases of poor conduct, and some stakeholders have identified the need for more accountability at the local level for councillor misconduct as well as the opportunity for improved local enforcement mechanisms.

As a formal document setting out expectations and standards, codes can be an effective mechanism to support high standards of councillor conduct. The code of conduct can contribute toward a better understanding of the values of the municipality and promote those values, prevent ethical conflicts and assist in their resolution, serve as a basis for council orientation and training, and serve as a reference throughout the operation of the council's term.

### **Matters To Be Addressed in a Code of Conduct**

Some municipal councils have adopted codes of conduct on a voluntary basis. These codes have typically addressed matters such as:

- core values such as integrity, impartiality, honesty, respect, confidentiality, unity, and putting the public interest first;
- conduct at meetings;
- respect for council decisions and the decision making process;
- adherence to council policies and procedures;
- respect for the municipality and its bylaws;
- treatment of confidential information;
- release of information to the public and media;
- conduct when representing the municipality;
- interactions with council members, municipal staff, and the public;
- conflict of interest avoidance including gifts, sponsored travel and events, benefits, and business relations;
- appropriate use of influence of office; and
- appropriate use of municipal assets and services.

Other matters related to council service could also be addressed through the code of conduct bylaw. For instance, proposed amendments to the *MGA* will require municipalities to offer orientation training to each councillor within 90 days after the councillor has been elected.

Although the proposed *MGA* requirement does not impose an obligation on the respective elected councillors to attend the offered orientation, a municipality's code of conduct bylaw could impose this obligation on the members of its council.

### **Reviewing and Evaluating Complaints**

In order to maintain fairness and consistency, the review and evaluation of an allegation or complaint about a councillor's conduct should be carried out objectively and according to a fair process. Given the heightened tensions that often accompany these circumstances, it is important that these roles and procedures be set out in advance through the code of conduct.

As a local government process, responsibility for the review and evaluation of a complaint could be given to council itself. Alternatively, the responsibility could be delegated to a committee of council, an officer of the municipality, an independent individual, a committee, or an inter-municipal board.

Depending on the person or body appointed to carry out the review, the code of conduct should also identify how complaints are to be submitted, the process by which the complaint will be reviewed, and the process by which the results will be communicated to council.

Example 1 – The municipality's code of conduct requires that complaints regarding a councillor's conduct be submitted in writing to council through the CAO. The review and evaluation of the complaint is made by a committee of council appointed for this purpose. The committee provides a verbal report to council indicating that the allegations are supported by the documents they reviewed and interviews they heard. The committee recommends that the councillor be removed from all committees for a period of six months. Council accepts and implements the recommendation of the committee.

Example 2 - A group of municipalities create an inter-municipal board to review complaints about councillor conduct. The board is composed of one elected official from each municipality, and three citizens at large. The code of conduct adopted by each member council requires that the complaint about a councillor's conduct be submitted directly to the board. The board's policy sets out the process and timelines for notifying the municipality and the councillor about the complaint. The board carries out an investigation of the circumstances surrounding the complaint, and determines that the allegations are supported. The board provides a written report to the council on its findings, and recommends that the councillor be reprimanded by letter from council and that the letter be published on the municipal website for three months. Council accepts the report and implements the recommended sanctions.

### **Sanctions**

To be effective, sanctions or penalty options to be imposed for a breach of a code of conduct must be meaningful and effective.

Councils have general authority under the *MGA* to adopt a councillor code of conduct. However, the *MGA* does not provide councils with any specific authority to enforce a code of conduct. Some municipalities have adapted other existing authorities under the *MGA* to exercise limited control over the actions of an offending councillor, including the removal of committee appointments or chair duties. New Section 146.1(4) specifies that a councillor must not be disqualified or removed from office for a breach of the code.

To ensure consistency in the enforcement of codes of conduct, the regulation may provide direction or identify specific sanctions that could apply.

### **Matters to Consider in the Development of a Code of Conduct Regulation**

New *MGA* Section 146.1(5) provides the Minister with the authority to make regulations respecting matters that a code of conduct must address; respecting the date by which councils must establish a code of conduct; respecting sanctions to be imposed for a breach of a code of conduct; respecting matters that a council must take into consideration in establishing a code of conduct; respecting implementation of a code of conduct; and respecting any other matter the Minister considers necessary or advisable to carry out the intent and purpose of the provision.

To the extent that these matters are set out in regulation, the regulation will set a standard requirement that all municipalities must adhere to. This has the benefit of setting a consistent standard of practice across Alberta. However, individual municipalities might benefit from taking a more tailored local approach that complies with the new *MGA* requirement in the absence of standardized regulated requirements. A balanced approach might be to establish basic minimum standards in the regulation and allow municipalities to tailor their policies to meet or exceed this benchmark.

The following sample regulation is based on a balanced approach that sets a minimum standard and allows individual municipalities substantial discretion in determining how the *MGA* requirements can be satisfied.

#### **Sample Regulation**

The following sample regulation is intended to provide context and facilitate discussion about what the final regulation should contain. It is not intended to represent a recommended approach.

#### **ALBERTA REGULATION ###/2015**

#### ***Municipal Government Act***

#### **CODE OF CONDUCT REGULATION**

#### *Table of Contents*

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- 2** Code of Conduct Content
- 3** Considerations in Establishing a Code of Conduct Bylaw
- 4** Complaints
- 5** Validity of Complaint

- 6 Sanctions
- 7 Implementation Date
- 8 Review Date

### **Definitions**

- 1 In this Regulation,
  - (a) “Act” means the *Municipal Government Act*;
  - (b) “Code of Conduct” means a Code of Conduct Bylaw established under subsection 146.1(1) of the *Act*.

### **Code of Conduct Content**

- 2(1) A Code of Conduct must address the conduct of councillors in relation to:
  - (a) Participation at meetings of council and council committees;
  - (b) Representing the municipality outside of council and council committee meetings;
  - (c) Respect for council decisions and the decision making process of council;
  - (d) Adherence to council policies, procedures, and bylaws;
  - (e) Interactions with council members;
  - (f) Interactions with municipal staff;
  - (g) Interactions with the public;
  - (h) Releasing or communicating information to the public or media;
  - (i) Conflict of interest avoidance, including the receipt of gifts or other benefits;
  - (j) Appropriate use of influence of office;
  - (k) Appropriate use of municipal assets and services;
  - (l) Treatment of information received in confidence;
  - (m) Obligation to attend orientation or training sessions offered by the municipality.
- 2(2) Notwithstanding section 2(1), any or all of the matters in Section 2(1) may be addressed in one or more other bylaws of the municipality instead of the Code of Conduct.

### **Considerations in Establishing a Code of Conduct Bylaw**

- 3 In establishing a Code of Conduct, the purpose of the municipality set out in Section 3 of the *Act* and the general duties of councillors set out in Section 153 of the *Act* must be considered.

### **Complaints**

- 4 A Code of Conduct must establish who can make a complaint regarding breaches of the Code of Conduct Bylaw, and the method by which complaints can be made.

**Validity of Complaint**

- 5 A Code of Conduct must establish the process used to determine the validity of the complaint.

**Sanctions**

- 6 A Code of Conduct must establish the types of sanctions that can be imposed for a breach of the Code of Conduct, and the process used to determine how sanctions are imposed if a complaint is determined to be valid.

**Implementation Date**

- 7 A municipality must establish a Code of Conduct within 270 days of the day that Section 146.1 of the Act is proclaimed.

**Review Date**

- 8 Each municipality must review the Code of Conduct and any bylaw referred to in subsection 2(2) every 3 years.

**Questions About the Code of Conduct Regulation**

We would appreciate your responses to the following questions about the Code of Conduct Regulation.

**Code of Conduct Contents**

The regulation could set out the minimum requirement for matters that the municipality's code of conduct should address, leaving the municipality with the option of addressing additional items above the minimum requirement at its discretion. Alternatively, the decision of what matters are to be addressed in the code of conduct could be left entirely to the municipality.

- 1. **Should the regulation set out the minimum requirements for matters that a municipality's code of conduct must address?**      Yes                      No
- 2. **If the regulation does set out the minimum requirement for matters that a municipality's code of conduct must address, what matters would you add or remove from Section 2 (Code of Conduct Contents) of the sample regulation?**

**Validity of Complaint**

The regulation could set out a standard process for reviewing and evaluating complaints about councillor conduct, including specifying who will review the complaint to ensure it is valid. Alternatively, these decisions could be left to the discretion of each local council to determine.

- 3. Should the regulation allow local councils to determine the process by which complaints are reviewed and evaluated?      Yes                  No**
- 4. If the regulation does set out a standard process to review and evaluate complaints, who should be given the responsibility to carry out the review?**

**Sanctions**

The regulation could set out a list of sanctions that could be imposed by a council if a councillor is found to have breached the code of conduct. Alternatively, the regulation could leave this to the discretion of the local council.

- 5. Should the regulation allow local councils to determine the sanctions to be imposed if a councillor is found to have breached the code of conduct?      Yes                  No**
- 6. If the regulation does set a list of sanctions that may be applied, what sanctions should be included in the list?**

**Review Date**

**7. Should the regulation set out the minimum frequency for reviews of the code of conduct bylaw?**      Yes                      No

**8. If the regulation does set out the minimum frequency for reviews of the code of conduct bylaw, how often should the review be required?**

**Other**

**9. Are there any other matters that should be addressed in the regulation, or any other changes you would suggest to the sample regulation?**

**Next Steps**

After Municipal Affairs has concluded engagement on this regulation, feedback will be assessed and taken into consideration when developing the final recommendations to government.

Thank you for providing your comments. Your feedback is very important and will be essential to improving municipal governance, administration and accountability.