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**CODE OF CONDUCT COMPLAINTS
INTEGRITY COMMISSIONER REPORT
2020-01 – 2020-08**

THE CORPORATION OF THE CITY OF THOROLD

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Aird & Berlis LLP**

November 24, 2020

INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT COMPLAINTS 2020-02 – 2020-08

I. SUMMARY

Six (6) formal complaints were filed with the Integrity Commissioner on July 24, 2020 (the “**Original Complaints**”). The Original Complaints each allege that Councillor Jim Handley (the “**Councillor**”) of The Corporation of the City of Thorold (the “**City**”) contravened a number of provisions of the City’s Code of Conduct for Members of Council and Local Boards (the “**Code**”) and a number of other ethical policies.

The alleged contraventions pertain to a number of provisions of the Code, the Council/Staff Relations Policy No. 100-33 (the “**Council/Staff Policy**”), the Council and Staff Communications Policy (the “**Communications Policy**”) and the Workplace Violence & Harassment Policy (the “**Workplace Policy**”), as will be detailed below.

Two (2) additional complaints were filed with the Integrity Commissioner on August 4, 2020 (the “**New Complaints**”). The New Complaints both allege that the Councillor contravened Sections 2.2, 4.1(f), (h) and (i), 10, 10.1, 10.2, 11 and 13.1 of the Code as a result of statements and conduct on the Facebook page entitled “Thorold Municipal Politics Priorities and Concerns for Citizens” (the “**Facebook Page**”) which the Councillor created and manages. Although the Original Complaints in part related to the comments and conduct on the Facebook Page, the New Complaints provided greater detail and provided a more in-depth analysis of why the statements and conduct on the Facebook Page constituted alleged contraventions of the Code.

II. APPOINTMENT & AUTHORITY

Aird & Berlis LLP was appointed as Integrity Commissioner for the City pursuant to subsection 223.3(1) of the *Municipal Act, 2001*¹ by Council by By-law No. 28-2019 on February 20, 2019.

Council adopted the Code and its Complaint Protocol (the “**Complaint Protocol**”) on October 1, 2019 by By-law No. 126-2019.

As Integrity Commissioner, we are appointed to act in an independent manner on the application of the Code, and other rules and procedures governing the ethical behaviour of members of Council. We are required to preserve secrecy in all matters that come to our knowledge as Integrity Commissioner in the course of our duties. At the same time, the City is required to ensure that reports received from the Integrity Commissioner are made available to the public.

The Original Complaints and the New Complaints (collectively, the “**Complaints**”) were all properly filed pursuant to Part B, Section 1(1) of the Complaint Protocol and subsection 223.4(1) of the *Municipal Act, 2001* and fall within the scope of the Code.²

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

² The Complaints alleged a contravention of Section 2.2 of the Code. From the outset of the investigation, we determined that Section 2.2 is a statement of principles in the Code and is not capable of independent enforcement. However, the principles are important in providing guidance as to the interpretation and application of the Code.

The allegations raised in the New Complaints were largely related to allegations raised in the Original Complaints, and as such, we exercised our authority pursuant to Part B, Section 3(2)(b) of the Complaint Protocol to coordinate our investigation regarding the Complaints.

This is a report on the investigation of the Complaints made in accordance with Part B, Section 11 of the Complaint Protocol and subsection 223.6(2) of the *Municipal Act, 2001* (the "**Report**"). The Report contains recommendations that Council for the City is requested to consider imposing.

The principles of procedural fairness require us to provide reasons for our conclusions and recommendations, which we have done in this Report. Our investigation was conducted in accordance with the Complaint Protocol and with a process that was fair to all parties. We have assessed the evidence in an independent and neutral manner. We have provided an opportunity to the Councillor to respond to all of the allegations set forth in the Complaints, including additional time to do so, and to review and provide comments on our preliminary findings and conclusions.

III. CODE OF CONDUCT AND POLICY PROVISIONS AT ISSUE

The Complaints allege that the Councillor contravened the following provisions of the Code:

- Sections 2.2; 4.1(f), (h) & (i); 5.3; 5.5(a) & (b); 5.6; 7.2; 10.1; 10.2; 10.3; 11; and 13.1.

In addition, the Complaints also allege the Councillor breached various provisions of the following policies:

- Council/Staff Policy - Item 1;
- Communications Policy - Pages 1 and 3; and
- Workplace Policy - Sections 3.2.3, 3.2.4 and 3.4.

The provisions of the Council/Staff Policy, Communications Policy and Workplace Policy all properly form part of the Complaints as constituting "procedures, rules and policies of the municipality and local board governing the ethical behavior of members of council and of local boards"³ (collectively, the "**Policies**").

The Policies are brought within the ambit of the Code by virtue of Section 12.1:

12.0 Council Policies and Procedures

- 12.1 A Member shall observe and adhere to the policies, procedures and rules established from time to time by Council.

The aforementioned provisions of the Code and of the Policies, while referenced in part throughout this Report, have been reproduced in their entirety in Appendix "A" due to their number and length.

³ Paragraph 223.3(1) 2 of the *Municipal Act, 2001*.

IV. REVIEW OF MATERIALS AND INTERVIEWS

In order to undertake our investigation and prepare this Report, we have reviewed and considered the following materials:

- Complaints 2020-01 through 2020-08 and all attachments thereto;
- The Councillor's responses to Complaints 2020-01 – 2020-06 dated August 16, 18, 23 and September 1, 2020 and the Councillor's response to Complaints 2020-07 and 2020-08 dated August 30, 2020 (collectively, the "**Responses**");
- Further information provided by the Councillor at our request on September 30, October 1 and October 4, 2020 (collectively, the "**Requested Information**");
- Further information provided by the complainant in Complaint 2020-07 on September 11, 2020;
- Further information provided by the complainant in Complaint 2020-08 on September 11, October 14 and October 20, 2020;
- Further information provided by the complainant in Complaint 2020-03 on October 20, 2020; and
- Posts made on the Facebook Page from the date of the Complaints until October 20, 2020.

We also reviewed such further materials that we considered appropriate to understand the context of the ethical framework and matters related to the Complaints.

Furthermore, we conducted interviews with members of City staff on September 15 and 21, 2020. We subsequently reviewed additional information provided by one (1) staff member on September 21, 2020.

V. BACKGROUND AND FACTUAL CIRCUMSTANCES

(a) The Original Complaints

The Original Complaints contain a series of allegations with respect to seven (7) primary subject areas and their surrounding events, which we set out below:

i. Fire Department Food Giveaway

On or about June 26, 2020, the Councillor organized a community food giveaway at Fire Station 2 (the "**Food Giveaway**"), which he had evidently done in the past.

On June 23 and 24, 2020, the Councillor communicated with several of the City's staff members by email in preparation for the Food Giveaway. On June 22, 2020, the Councillor also contacted the District Fire Chief about setting up the Food Giveaway, including with respect to putting out a sign at the Fire Station.

In response, the District Chief indicated that the Councillor would need to obtain permission the City's Fire Chief, which was necessary as the last event at the Fire Station had posed some issues. The District Fire Chief thereafter communicated with the Fire Chief, indicating to him that the Councillor had been told he would need to speak with him prior to setting up the event. The Councillor indicated that he thought that he remembered at some point having left a voicemail for the Fire Chief, however, there is no evidence that a voicemail was received.

The Original Complaints do not allege that the Food Giveaway was itself inappropriate, but rather that, in failing to first communicate with the City and the Fire Chief and by going ahead with the event without their concurrence, the Councillor failed to follow proper protocol. The Original Complaints state that this is especially problematic given that the Councillor has a history of litigation with the professional fire fighters in the City, in which the Councillor was sued for slander by Professional Fire Fighters Local 1182.⁴

The Original Complaints allege that the Councillor's failure to follow protocol in proceeding with the Food Giveaway constituted a contravention of the following provisions:

- Code - Sections 2.2, 7.2 and 11.1;
- Council/Staff Policy - Item 1; and
- Communications Policy - Page 3.

ii. **Parking Ticket Matter**

On or about April 1, 2020, a City resident assisted the Councillor by delivering an anonymous donation of food to individuals in need. While doing so, she received a parking infraction notice for \$75.00 (the "**Parking Ticket**") from a By-law Enforcement Officer, despite having evidently explained to the officer what she was doing and why she was parked in a loading zone. The Parking Ticket resulted in a significant amount of controversy and attracted media coverage.

On or about April 3, 2020, the Councillor raised a complaint by email with City staff and fellow members of Council, stating that the individual should not have been ticketed as it demonstrated a lack of compassion and consideration by the By-law Enforcement Officer, and because it was inconsistent with a motion that Council had passed regarding the issuance of tickets during the pandemic. The Councillor indicated that he himself would pay for the ticket because he was ashamed that the resident would have to pay.

In response, the City's Chief Building Official ("**CBO**") (who is responsible for by-law enforcement), clarified that upon review, it was determined that the Parking Ticket was legitimate, and that the motion that had been passed by Council was to waive all parking fees within short term lots during the pandemic – the motion was not to discontinue parking enforcement or not issue parking tickets. The CBO indicated that while the incident was certainly unfortunate, given that the event was not a city-sanctioned event, there was no way for the By-law Enforcement Officer to have known about the food delivery. The CBO requested that, in the future, the Councillor should provide notification of similar events so that City staff could be better informed.

⁴ <https://www.niagarathisweek.com/news-story/5834853-slash-thorold-fire-department-budget-handley/>

On April 6, 2020, the Councillor posted the following on the Facebook Page: "Volunteer Fined \$75 Bringing Food 2 the Needy Thank U Mayor Ugilini 4 lookin out 4 our citizens during these difficult times. Share" [sic].

On April 8, 2020, the Councillor responded to the CBO and others, indicating that the individual was disputing the legitimacy of the Parking Ticket, and expressed larger concerns about the City, indicating, among other things, that he was "disgusted" by the attitude of the By-law Enforcement Officer during these difficult times, that he was "embarrassed by the leadership we have shown our citizens during these times", that it had been "a joke", and that "we couldn't lower ourselves any further".

In a response of the same day, the CBO indicated that the Councillor did not need to pay for the ticket, and that it would be "taken care of." Shortly thereafter, the Councillor posted on the Facebook Page, stating: "Breaking News City has agreed to pay fine for Parking Ticket issued to Volunteer while delivering food 4 needy. Thanks Mr. Mayor".

On April 9, 2020, the Councillor again responded by email, stating that people in the community had showed generosity by offering to pay the Parking Ticket themselves and dropping off money in the Councillor's mailbox. The Councillor also wrote: "where the compassion and common sense from some of our employees gone. Answer Out the Door" [sic] and that he was "bewildered by the actions of some employees during these times".

On or about April 9, 2020, an article came out in *Niagara This Week* which covered the incident. The article provided a quote from the Councillor, stating that when the City was informed of the ticket and when he threatened to contact the media, the ticket had been rescinded. The Councillor was further quoted stating that other complaints had been made about the By-law Enforcement Officer who issued the Parking Ticket, indicating that everyone he talked to said "he belittles them or he's ignorant."

The City's Chief Administrative Officer (the "CAO") was also quoted as indicating that while the ticket had been legitimate, steps would be taken to support the community in a more holistic way.

On April 9, 2020, the CBO responded to the Councillor by email, indicating that it is "not appropriate for any of us to start degrading one another." He wrote that "we need to all be working together". The CBO wrote that he had hoped that the Parking Ticket matter could have been handled internally at the City, and that the information in the article was incorrect in that the ticket was not being "rescinded" but was being dealt with in an appropriate and legal manner that was fair to others. Lastly, the CBO indicated that he had instructed staff to stop proactive parking enforcement during the pandemic. He noted that he was disappointed that the City had been cast in a negative light.

In a further response of April 14, 2020, the Councillor responded by apologizing to members of Council and to staff for any statements "that may have been offensive or degrading", and that the potentially hurtful or offensive comments did not reflect how he felt about the City or its employees. The Councillor concluded the email noting, "This is not becoming of myself and the treatment one should show towards out employees. My Apologies."

The Original Complaints allege that the emails from the Councillor dated April 3, 8 and 9, 2020 communicated in a derogatory and condescending manner toward staff with respect to the Parking Ticket.

The Original Complaints further allege that the Councillor provided incorrect and non-factual information to the *Thorold News* with respect to the parking ticket issue and that an article was subsequently published which caused “damage ... to the City of Thorold[’s] reputation”.

Lastly, the Original Complaints alleged that due to the Councillor’s “disruptive behavior” on social media and as a result of him having provided inaccurate information, the Niagara Regional Police became involved when a member of the public threatened the By-law Enforcement Officer with bodily harm, resulting in the staff member being unable to perform his duties for a period of time and negatively impacting the By-law Enforcement Officer’s general ability to do his job, and unnecessarily aggravating the efforts of City staff.

The Original Complaints allege that the above-noted actions constituted a contravention of the following provisions:

- Code - Sections 2.2, 4.1(c), 4.1(f), 5.4, 5.5(b), 5.6, 10.1 and 10.2 (in part);
- Council/Staff Policy - Item 1;
- Communications Policy - Pages 1-3; and
- Workplace Policy - Sections 3.2.3 and 3.2.4.

iii. Portland Street & Chapel Street South Matter

On June 10, 2020, the Councillor sent an email to other members of Council and several City staff indicating that he had received notices of concern from citizens that “a decision had been made” with respect to the intersection of Portland Street & Chapel Street South – an intersection that has reportedly been experiencing long-standing traffic concerns.

A City staff member responded to the Councillor indicating that similar concerns were received from one (1) resident, and that the City staff had been out to speak with him. It was further communicated that while no decision had been made for the entire area, some line painting had been contemplated as an interim measure to reinforce the rules of the road in the area.

Later the same day, the Councillor responded with a lengthy email, indicating that the reasons for the calls and concerns were due to the fact that residents were told that no action would be taken with respect to the intersection without further prior information and consultation. The Councillor questioned whether the information had come across the desk of the CAO, and why line painting was not on the agenda for the meeting of Council on June 2, 2020. The Councillor indicated that Council was being made to look like the “bad guy” and that there was “probably no accountability” which was “frustration at the least” [*sic*]. The Councillor questioned what other decisions were being made “behind closed doors” and that “this is not transparency”.

The CAO responded the same day, indicating that he understood from the Councillor’s email that he was not satisfied with the response received from the staff member, and provided context for the decision making regarding line painting. The CAO explained that provincial guidelines around meeting restrictions made it difficult to advance the unfinished community discussion about the intersection. It was clarified that a short-term, cost-effective solution which was operational in nature was put in place to advance the public safety concern. The CAO indicated that routine operational matters were not brought before Council unless there was a need to change the level of service, and that line painting was part of an annual program for which budget was already allocated.

The Original Complaints state that, similar to the Parking Ticket matter, the Councillor's correspondence questioned staff capability and authority with respect to the line painting decision, and that the inaccurate information provided by the Councillor served to incite a small group of residents who were frustrated with a number of issues, "many that are beyond the mandate of the City of Thorold and its officials", and unnecessarily aggravated the efforts of City staff.

The Complaints allege that the above-noted actions of the Councillor contravened the following:

- Code - Sections 4.1(f), 4.1(h), 5.5(a) and 10.3;
- Council/Staff Policy - Item 1;
- Communications Policy - Pages 1-3; and
- Workplace Policy - Sections 3.2.3 and 3.2.4.

iv. Staff Lay-off Matter

At the outset of the pandemic, the Councillor made a suggestion at a meeting of Council that some City staff should be laid off. The Councillor's request was reviewed, and it was determined that in order to maintain core services, a layoff was not appropriate but that seasonal workers would not be hired and that new positions previously approved with the 2020 operating budget would be put on hold. A report outlining the senior staff's rationale was presented to Council on April 21, 2020.⁵ Council agreed with the staff's proposed directions, and the recommendations of the report were accepted.⁶

On May 27, 2020, the Councillor emailed Council and various City staff with a subject line regarding the City of Welland making the decision to lay off staff as a result of the COVID-19 pandemic. The subject line further stated that: "Some municipalities are making tough decisions. And some are acting like it's business as usual and all is ok. I believe we are the latter. It's time we make some to...". The Councillor included a link to an article regarding the staff layoffs at the City of Welland.

In response, the CAO wrote that since the article in question was published, staff had presented two (2) further reports to Council that outlined several mitigation measures related to spending and staff. The CAO indicated that given that the City continued to be in a financially favourable position, and given that staff were continuing to closely monitor the situation and maintain service levels to residents, Council would need to bring back the report previously provided and give new direction to staff in order for further changes to be made in relation to staff and spending.

The same day, another member of Council responded and expressed his written support for the decision made by Council based on staff reports, that staff and service levels were very important during the pandemic, and that lay-off of City staff did not help anyone unless it was absolutely necessary.

⁵ <https://calendar.thorold.ca/meetings/Detail/2020-04-21-1830-Council-Meeting/638870da-733f-4a3b-94ed-ab9f0110ed0f> at page 320.

⁶ <https://calendar.thorold.ca/meetings/Detail/2020-04-21-1830-Council-Meeting/8e26dc2b-64c5-45cb-9266-abb00b4030d>

The Councillor responded again, indicating that other municipalities appeared to be taking the measure because they are not as financially sound as the City, and that they didn't have "the cash" and were also "getting ahead of the issue before its too late" [sic]. The Councillor further indicated that "for the ones that feel todays world is business as usual. Just my feeling. You are also fooling yourself. Because its not business as usual" [sic].

The Original Complaints also note that the Councillor subsequently changed his position as a result of correspondence received from CUPE's President, but that he continued to question staff in a subsequent email dated May 27, 2020 regarding the need to maintain staff in a particular department. These specific emails were not included with the documentation submitted.

The Original Complaints allege that the above-noted actions constituted a contravention of the following provisions:

- Code - Sections 4.1(f), 5.5(a) and 10.3;
- Council/Staff Policy - Item 1;
- Communication Policy - Pages 1-3; and
- Workplace Policy - Sections 3.2.3 and 3.4.

v. Canada Summer Games Matter

On May 21 and December 3, 2019, Council passed two (2) different motions related to the City's support of the Canada Summer Games park facility. These motions, and the City's support of Canada Summer Games in general appear to have been a major topic for Council over the last year, and possibly longer, which has included several reports, presentations and discussions.

The Original Complaints state that the Councillor has been very vocal in Council, in public and on social media, including the Facebook Page, in voicing his opposition of the direction Council has taken in support of the Canada Summer Games project.

The Original Complaints provided correspondence from the Councillor dated July 8, 2020 to the IT Manager requesting access to two (2) memoranda that were referred to at the Council meeting of July 7, 2020. The IT Manager thereafter involved the CAO in the correspondence, and the memoranda in question were sent by email to the Councillor by the CAO.

On July 8, 2020, the Councillor and CAO continued to correspond, with the Councillor indicating that the memoranda provided by the CAO did not contain a detailed explanation of why the Regional Municipality of Niagara had taken over construction management with respect to the Canada Summer Games. The Councillor appeared to suggest that there was more at play that had not been fully disclosed outside of what was common knowledge throughout Niagara Region. The CAO responded, indicating that the June 4, 2020 memorandum from the Director of Public Works and Community Services included a comprehensive report from regional staff, which included details as to why Niagara Region wanted to take over the construction of the Canada Games Park. The CAO indicated that the City's financial contribution would remain unchanged, and he provided the Councillor with a link to the memorandum.

In response, the Councillor sent the following email:

As I said. I'm not talking about region. That was info available to anyone. Where is the memo you sent. You sent nothing. Only info I could find myself. U sent no memo bottom line. Listen to your statement from last night. All that happens is forwarded info I can asses without you forwarding. You have done nothing yourself. Just admit you did not send any info or memo yourself. Just as I stated forwarded info from other resources. Those memo do nothing to serve the citizens of Thorold interest. Nothing. Cost implications, effect on current negotiations, etc. Thank God Tom Richardson was listening in last night. At least he gave info. Not jibber jabber. He was more informative and gave us info you have never divulged to council. To me you are a disappointment. [sic]

The Original Complaints indicate that the words used by the Councillor in his correspondence which accused the CAO of not looking after the City's interest were highly inappropriate and included a racial slur.

The Original Complains also indicate that the Councillor wrongly accused the CAO of lying and misconstruing facts, and that on numerous occasions, the Councillor provided inaccurate information to Council, the public and on the Facebook Page which is a reflection of the Councillor's personal opinion and beliefs on the matter.

The Original Complaints state that while staff have been working diligently with partners to protect the City's interests, which has resulted in significant cost savings, the Councillor has continued to harass, intimidate, demean staff and Councillors who are not in agreement with his position.

The Original Complaints allege that the above-noted actions constituted a contravention of the following provisions:

- Code - Sections 2.2, 4.1(c), (e), (f), (h), 5.4, 5.5(a), 10.1, 10.2 and 10.3;
- Council/Staff Policy - Item 1;
- Communication Policy - Pages 1-3; and
- Workplace Policy - Sections 3.2.2, 3.2.3, 3.2.4 and 3.4.

vi. Resident Issues and Comments Matter

On July 13, 2020, the Councillor wrote to the CBO, copying other members of Council and staff, as well as a resident of the City. The email concerned possible illegal construction activities complained of by the resident copied on the email, and the fact that the City had been unable to inspect the activities as a result of COVID-19 and not having the appropriate Personal Protective Equipment ("PPE").

In his email, the Councillor stated that the By-law Enforcement Officer who had investigated the incident stated that "nothing will be done" about the resident's concern because he did not have the proper PPE to visit the site. The Councillor questioned what steps were being taken so illegal construction activities could be addressed, and stated that if the information was true, that illegal construction activities were now "untouchable".

Lastly, the Councillor wrote, “[D]o I need to bring a motion to council to address this. Because as a councillor this practice if occurring as states by the complainant. Can not continue. And I will be raising this concern at our next meeting. Your response is and will be greatly appreciated.” [sic]

The resident followed up on July 18, 2020, replying directly in the email chain and pointing to a number of concerns, including construction activities without a permit, drinking and smoking marijuana on the property in question, an un-mowed lawn, rats, and a landlord who was cutting corners and trying to “get rich” renting to students. The resident seemed genuinely upset with both the state of the property and the interference with their own enjoyment of their property, indicating that they “could not wait to get out of this town”.

On July 22, 2020, the Councillor followed up with other members of Council and City staff writing:

I hate to say it, but this city is becoming more and more of a shit show everyday. And as far as I’m concerned it has not been getting better with current the administration. Only worse. It’s comments like this from long standing citizens. That tells me we have problems and have had problems. More now than ever. And it starts at the top. In my 20 plus yrs involved in Municipal politics. This term has seen the worst leadership ever. As far as I’m concerned. And the comments from the over 850 mbers of my political page over the last couple months. Proves I’m not wrong. [sic]

The Complaints allege that the above-noted correspondence was a breach of the following provisions:

- Code - Sections 2.2, 5.3, 5.5(a), 5.6, 10.1 and 10.2;
- Council/Staff Policy - Item 1;
- Communications Policy - Pages 1 and 3; and
- Workplace Policy - Sections 3.2.4 and 3.4.

vii. Posts on the Facebook Page

The Councillor has both a personal Facebook page and the group Facebook Page of which he is an administrator and moderator entitled “Thorold Municipal Politics Priorities and Concerns for Citizens.”

While it is beyond the scope of this Report to provide a complete analysis of the entire contents of both Facebook pages, it is clear that the Councillor is quite active on this forum with respect to City issues, including those matters before and involving Council.

The Original Complaints provided, as evidence, a number of posts made by the Councillor which were identified as problematic, but did not indicate which specific sections of the Code or Policies the Councillor was alleged to have contravened.

(b) The New Complaints

The New Complaints pertained only to various statements and conduct on the Facebook Page, and alleged that the Councillor contravened Sections 2.2, 4.1(f), (h) and (i), 10, 10.1, 10.2, 11 and 13.1 of the Code as a result of the posts made on the Facebook Page.

In support of these allegations, the New Complaints provided a detailed report prepared by a third party on the Councillor's conduct on his Facebook Page. While we cannot speak to the preparation of, or the process of reaching the conclusions found in the report, from our review of the Facebook Page, the factual evidence cited in the report is accurate.

(c) The Councillor's Leave of Absence

It should be noted that shortly after the Councillor was provided with notice of the Complaints, he advised us that he was taking a leave of absence from Council. Despite in some instances requiring additional time to respond to the Complaints, the Councillor was cooperative during the Investigation.

It is our understanding that the Councillor returned to his official duties on or about October 20, 2020.

(d) The Councillor's Apology (the "Apology")

As part of the Responses, on August 30, 2020, the Councillor wrote, *inter alia*, the following:

Yep, I've brought this upon myself And will accept or must accept what transpires [sic].

...

I could just accept my punishment for all others. Apologize for my actions, declare I won't respond as I have. No more criticizing my fellow councillors publically [sic]. No more criticizing staff about decisions. No more comments about the CAO and leadership. No more about making uninformative or uneducated decisions. No more questioning council decisions. ETC. And let's move on.

...

There is and will much more pressing issues coming forward in the near future [sic]. And staff and council needs to be focused. Not worrying about what Jim Handley is doing on social media. Because its obvious people are spending a lot of time watching my movements.

...

Lay out what is expected of me. Which I'm aware of, but in recent weeks have not acted as I should have. My punishment. And I can then myself concentrate what's most important to me at this time. My Health. [sic]

Given the nature of the Councillor's email, we accepted it as significant and we believed its contents warranted communication of it to the Complainants along with the Responses, in accordance with the Complaint Protocol.

In reply, some Complainants expressed their concerns that the Councillor's Apology was not genuinely remorseful, and that they firmly believed that the Councillor would resume his prior behaviour upon his return to his official duties or otherwise.

(e) Further Information from Complainants

Following the Apology and in the course of our Investigation, we were, on several occasions, directed by some of the Complainants to the Facebook Page in support of the proposition that notwithstanding the Councillor's awareness of the ongoing investigation and complaints made against him (and the Apology noted above), he continued to spread allegedly incorrect information regarding various matters and persisted in publicly criticizing other members of Council and City staff.

While it was beyond the scope of our investigation to have monitored the Facebook Page on an ongoing basis, we did review posts that corresponded to the descriptions provided by the Complainants.

For example, on October 19, 2020, the Councillor posted the results of a motion that he had made to Council on July 7, 2020, stating that Councillor Nella Dekker had voted against the motion.

On October 20, 2020, in response to a question from a member of the Facebook Page about why Councillor Dekker "doesn't just speak up for herself? Im sure she reviews this page..." [sic], the Councillor responded, "... Sorry buy I got no Edumucation. Lol" [sic] in reference to Councillor Dekker.

On October 19, 2020, the Councillor posted a video lasting approximately five and a half (5 ½) minutes in length announcing his return to Council (the "**Video**"). The Video referenced, *inter alia*, the Investigation, and named two other Councillors who the Councillor believed to be two (2) of the Complainants.

In the Video, the Councillor referred to the complaint regarding the Food Giveaway, and announced his intention not to host any events on City property. While indicating that not doing so would protect the City and himself from liability, the Councillor also criticized those who would bring such a complaint by saying, "what reason would a person in their right mind have to complain about giving food away for free?"

Lastly, the Councillor made the following statement:

And I will now speak publicly. I will not be intimidated by my political foes who are determined, it seems, to have me removed from council. I will not be bullied and intimidated by the repeated attempts to silence me. I will continue to be outspoken. I will continue to question the mayor, the CAO, and others. To be accountable and transparent as should be, but is not the case today. I will continue to work for the betterment of all citizens of Thorold. Not some. And I will continue to look out for what is in the best interests of our citizens, not what is in the best interest of myself.

I will continue to do so as elected – to represent the citizen taxpayers to the best of my ability. And you can be rest assured, the silent majority will be heard. For I will be your voice. And I would suggest that any issues, complaints, or concerns you may have be posted on this site. For I know for a fact this page is being monitored 24/7 by city hall. And I know for a fact that the city has addressed concerns and complaints posted on this site as previously as the last council meeting on October the 6th. So please, don't stop complaining. For if you don't complain, I don't get to speak out, and nothing will get done.

Most recently, the Councillor has posted a number of critical remarks on the Facebook Page with respect to the motion on July 7, 2020, which the Councillor states is related to allowing the public to view the Canada Summer Games lease agreement for a period of thirty (30) days.

The Councillor has also made statements that Council “just voted to overthrow my democratic motion that was passed 7 to 1 for Canada Games Transparency... Sickening to say the least”, that he has complained to the Ontario Ombudsman, and encouraged others to make complaints to the Ombudsman as well.

While the Complainants do not point to specific portions of the Code or Policies which the new Facebook Page activity violates, they were submitted in support of the proposition that the Councillor does not recognize the error of his ways, even in the face of formal complaints made against him and notwithstanding the Apology.

VI. PRELIMINARY MATTER

We note that the Complaints refer to several alleged contraventions of Section 2.2 of the Code, which forms part of the Code’s key statements of principles, the purposes of which are to establish a foundation for an understanding of the Code and to assist in the interpretation and application of the Code. Statements of principles are not capable of independent enforcement.

Although our findings below take guidance from Section 2.2 in our interpretation and application of the Code, we have not made specific determinations as to any contraventions pertaining to Section 2.2.

VII. FINDINGS

This Part of our Report sets out our findings regarding the allegations in the Complaints.

Given the large number of provisions of the Code and of the Policies cited in each factual category of the Complaints, our findings are grouped by subject matter of complaint rather than by the Code or policy section in question.

In Part VIII – Conclusions, we have set out the contraventions under each of the Code and the Policies.

(a) Fire Department Food Giveaway

The Original Complaints allege that by failing to follow protocol and proceeding with the Food Giveaway, the Councillor breached the following provisions of the Code and Policies:

	Code of Conduct
7.2	By virtue of their office or appointment, a Member must not use or permit the use of City's lands, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the City unless they are entitled to such use equally with any other resident and have paid fair market value for such use.

11.1	A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.
	Council/Staff Relations Policy
Item 1	Using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.
	Direct the activities of staff or departments except through established channels of authority. Direction to staff shall come from Council as a whole.
	Council/Staff Communications Policy
Page 3	Consult with the CAO prior to making commitments to agencies, groups, citizens or likewise.

Based on the evidence, we conclude that the Councillor has not breached the Code in hosting the Food Giveaway at the Fire Station. The Councillor does not appear to have received an unfair benefit and, in fact, the event appears to have been for the benefit of others, and in the public interest.

For the same reason, we see no evidence that the Councillor improperly influenced staff in their duties to gain an advantage for himself in contravention of the Council/Staff Policy. In fact, the correspondence between the Councillor and staff in relation to the Food Giveaway appears to have been supportive and cordial, with no evidence of attempted influence by the Councillor.

We were provided with a copy of an announcement made by the Councillor on his social media on June 23, 2020 regarding the “8th COVID grocery giveaway”, and another announcement that he would be appearing on CKTB at 6:50 am on June 26, 2020 to discuss the “8th COVID-19 food giveaway”. As such, these allegations in the Original Complaints are not substantiated.

The Councillor’s primary shortcoming with respect to the Food Giveaway matters appears to be that he took matters into his own hands instead of following proper procedures. After being told that he would need to obtain the Fire Chief’s permission, the Councillor failed to do so. Such neglect, based on a plain reading of the Council/Staff Policy, amounts to a failure to direct activities through “established channels of authority”, despite the absence of a formal protocol. Furthermore, there is no evidence that the Councillor consulted with the CAO prior to making the commitment to host the Food Giveaway, which is contrary to the requirements of the Communications Policy to do so. We have not, however, concluded that the Councillor did so deliberately in order to by-pass the CAO.

Based on the evidence a whole, we have determined that the Councillor’s transgressions in breach of the Staff/Council Policy and Communications Policy are minor and could possibly be inadvertent, given the Councillor’s other amicable correspondence and interactions with City staff with respect to this event, and the nature of the event itself.

(b) Parking Ticket Matter

The Original Complaints allege that by communicating in a derogatory and condescending manner toward staff, providing incorrect and non-factual information to the *Thorold News* and posting on social media to incite disruptive behavior, the Councillor breached the following provisions of the Code and related policies:

	Code of Conduct
4.1 (c)	Seek to advance the public interest with honesty.
4.1 (f)	Refrain from making statements known to be false or with the intent to mislead Council or the public.
5.4	A Member shall not publicly criticize staff. Should a Member have any issue with respect to any staff member, such issue shall be referred to the CAO who will direct the matter to the particular staff member's appropriate superior.
5.5(b)	Work within the administration of justice and that a Member must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of justice, and therefore, a Member shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties including any duty to disclose improper activity.
5.6	Staff establish administrative policies, systems, structures and internal controls necessary to implement the goals and objectives of Council. Council should expect a high quality of advice from staff based on political neutrality and objectivity. No member shall compel any staff member to engage in activities that are contrary to the direction of Council or the policies of the City.
10.1	A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.
10.2	A Member shall not use indecent, abusive, demeaning or insulting words, phrases or expressions toward any member of the public, another Member or staff.
	Council/Staff Relations Policy
Item 1	Members of Council shall be respectful of the role of staff to advise, based on political neutrality and objectivity; all members shall show respect for the professional capacities of staff within and outside the Council Chambers. Refrain from exerting any pressure on staff that could result in the infringement of legislation, regulations or a deviation from procedures. Using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.

	Council/Staff Communications Policy
Page 1	<p>Members of Council and Staff shall, uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions.</p> <p>Members of Council and Staff shall, seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives.</p> <p>Enhance public education about the political process by providing context and process information about decision making.</p> <p>Refrain from publicly criticizing Members of Council or staff.</p> <p>The formal relationship between staff and members of Council must be respected to ensure that all members of staff and Council are treated equally. There is a chain of command in place to deal with significant issues, and Council members are encouraged to primarily direct questions and concerns to the Mayor and/or CAO for their consideration. Any request for information from a Council member that is not received and answered at a Council meeting, shall be received in writing and circulated in writing to all Council members.</p>
Page 2	Act in a way that enhances public confidence in local government.
Page 3	<p>Refrain from using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.</p> <p>Refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility.</p> <p>Direct questions or concerns regarding departmental activities to the Mayor and/or CAO or use the online complaint form/request for information.</p>
	Workplace Violence/Harassment Policy
3.2.3	Unwelcome words or actions that are known, or should be known, to be offensive, embarrassing, humiliating, or demeaning to a person, or people, in a workplace.
3.2.4	Workplace harassment may also include behaviour, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading working environment. This is commonly referred to as a "poisoned" or "toxic" work environment and it is also a form of harassment.

We find that the Councillor's emails of April 8 and 9, 2020, and, in particular, his statements:

- that he was “embarrassed by the leadership we have shown our citizens during these times”, that it had been “a joke”, that “we couldn’t lower ourselves any further”;
- where he questioned “where the compassion and common sense from some of our employees gone. Answer Out the Door”; and
- that he was “bewildered by the actions of some employees during these times”

are clearly in breach Sections 10.1 and 10.2 of the Code as well as Sections 3.2.3 and 3.2.4 of the Workplace Policy.

The Ministry of Municipal Affairs and Housing publishes *The Ontario Municipal Councillor's Guide 2018*⁷ for all municipal councillors in the province. The guide includes the following commentary:

Council-staff relationship and roles

All municipalities should recognize the importance of council-staff relations. Some councils have established programs that require employee input into operational policies and procedures. Programs like this recognize the experience and expertise of staff and encourage communication between management staff and council.

Councils and their administration have different roles within the municipality, but their roles have common goals and purposes.

The relationship between council and staff is a vital component of an effective municipal government. Staff and council rely on one another to move the municipality forward. Both staff and council provide leadership; council provides political leadership, while staff provide leadership in implementing council decisions.

The relationship between staff and council is intertwined and it is important for council members and staff to respect one another's roles so that they can serve the public in an effective and efficient manner.⁸ [emphasis added]

We have discerned throughout this investigation that the matter of disrespectful conduct towards staff is a constant theme. The power imbalance between a member of council and a member of staff must be recognized and acknowledged, especially in the face of clear legislative direction from the Province to municipalities to address this through policies at the local government level.

This issue is covered in Commissioner Frank N. Marrocco's recent judicial inquiry report emanating from the Town of Collingwood.⁹ Commissioner Marrocco provides that members of council must respect the need for a neutral and impartial public service and must act respectfully toward staff. The matter is of such importance that Commissioner Marrocco sets out a specific recommendation in the report that he states should be implemented in the *Municipal Act, 2001*:

- 10 The Province of Ontario should amend the *Municipal Act* to require that the Staff / Council Relations Policy in each municipality contain specific provisions. For example the Staff / Council Relations Policy should include the following:

⁷ <https://www.ontario.ca/document/ontario-municipal-councillors-guide-2018>

⁸ The Province considered the importance of council and staff relations so significant that it made mandatory for all municipalities to adopt and maintain a policy with respect to "the relationship between members of council and the officers and employees or a municipality" under para. 270(1) 2.1 of the *Municipal Act, 2001*.

Moreover, O. Reg. 55/18 (made pursuant to s. 223.2(4) of the *Municipal Act, 2001*) prescribes the following as a mandatory subject matter to be addressed in a municipal code of conduct: "Respectful conduct, including conduct towards officers and employees or a municipality...".

⁹ *Report of the Collingwood Judicial Inquiry – Transparency and the Public Trust* (Collingwood: Town of Collingwood, 2020) (Associate Chief Justice Frank N. Marrocco).

- a Council members must respect the role of staff to provide advice based on objectivity and political neutrality and without undue influence from an individual Council member or group of Council members;
- b no member of Council shall use, or attempt to use, his or her power or authority to pressure, initiate, threaten, coerce, or command a staff member in order to interfere with the staff member's duties;
- c no Council member shall maliciously or falsely injure the professional or the ethical reputation of staff and all Council members must treat staff with respect and courtesy;
- d only Council as a whole - and no single Council member - has the authority to direct staff to carry out a particular function unless specifically authorized by Council.¹⁰

The Councillor's statements were, as he has himself admitted in his Apology, disrespectful, degrading and offensive towards other members of Council and of City staff. Based on the evidence, the Councillor's statements have contributed, along with other comments and statements, to a toxic work environment at the City.

Furthermore, based on the evidence, the Councillor's statements regarding the Parking Ticket, both in public and to Council members and City staff, contravened Sections 5.5(b) and 5.6 of the Code, Item 1 of the Council/Staff Policy and portions of Pages 1, 2 and 3 of the Communications Policy.

The Councillor's actions plainly sought to influence the direction of the staff with respect to the Parking Ticket and its withdrawal, for which there are established rules in place, and in requesting a deviation from those rules and procedures, the Councillor's interference with the administration of justice is wholly inappropriate.

Lastly, the Councillor's statements in the media and on the Facebook Page are a clear breach of the requirement to act in a way that enhances public confidence in local government. The Councillor's statements deliberately sought to do contrary.

It should be noted that the issue is not the fact that the Councillor expressed concern that the By-law Enforcement Officer may have unfairly or incorrectly issued the Parking Ticket, nor the Councillor's suggestion that new City direction or instruction could be appropriate during the pandemic. What is at issue is the forceful and sarcastic tone which the Councillor took, both in his correspondence and on social media – a public forum. Had the Councillor approached the issue differently, perhaps with a greater degree of civility, the request to address the Parking Ticket may not have formed a subject area of these formal Complaints.

In his Responses, the Councillor indicated that he apologized and was sorry for the comments that he made. He further indicated that he knew the individual to whom the ticket was given for many years, and that he had no reason to believe that she was lying. Moreover, the Councillor indicated that the police might have been called as this was not the first confrontation with the By-law Enforcement Officer.

¹⁰ *Ibid.*, Volume IV – Recommendations and Inquiry Process, at pages 7 and 9.

The Councillor stated that he simply advised the media about what he was told by the resident who was issued the Parking Ticket. However, as indicated above, the Councillor posted on the Facebook Page on both April 6 and 8, 2020 with respect to the Parking Ticket. Furthermore, the Councillor is quoted as stating that once he threatened to contact the media, the Parking Ticket was rescinded. However, it not does appear that the Councillor had to threaten going to the media in order for the CBO to state that the City “would take care of” the Parking Ticket.

While the Councillor may have been uncertain what it meant for the staff to “take care of” the Parking Ticket, there was no basis for the Councillor to have leapt to the conclusion that the ticket was to be fully rescinded. The Councillor’s explanation that he needed to threaten going to the media to have the matter addressed is not substantiated.

Furthermore, it certainly does not serve as justification for the acerbic tone and nature of the comments made towards the other members of Council and City staff over email.

(c) Portland Street & Chapel Street South Matter

The Complaints allege that the Councillor’s actions with respect to the Portland/Chapel Street issue are in contravention of the following provisions:

	Code of Conduct
4.1 (f)	Refrain from making statements known to be false or with the intent to mislead Council or the public.
4.1 (h)	Accurately communicate the decisions of Council with respect to Council's decision-making process even if they disagree with Council's ultimate determinations and rulings.
5.5(a)	Provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise.
10.3	A Member shall comply with the City's workplace harassment and violence policy.
	Council/Staff Relations Policy
Item 1	Members of Council shall be respectful of the role of staff to advise, based on political neutrality and objectivity; all members shall show respect for the professional capacities of staff within and outside the Council Chambers. Refrain from exerting any pressure on staff that could result in the infringement of legislation, regulations or a deviation from procedures. Using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.

	Council/Staff Communications Policy
Page 1	Members of Council and Staff shall, seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives. Demonstrate a commitment to accountability and transparency among Council and staff and with the general public. Enhance public education about the political process by providing context and process information about decision making.
Page 2	Act in a way that enhances public confidence in local government.
Page 3	Refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility.
	Workplace Violence/Harassment Policy
3.2.3	Unwelcome words or actions that are known, or should be known, to be offensive, embarrassing, humiliating, or demeaning to a person, or people, in a workplace.
3.2.4	Workplace harassment may also include behaviour, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading working environment. This is commonly referred to as a "poisoned" or "toxic" work environment and it is also a form of harassment.

In the Responses with respect to the Portland/Chapel street matter, the Councillor advised that, during what he believed to be a public meeting of March 10, 2020, residents were informed and guaranteed that no actions, including painting, would be taken with respect to the intersection unless they were first notified. The Councillor stated that because the City proceeded with the line painting, there were several complaints from residents, and that because he is one of the more active members of Council, he took the brunt of those complaints.

The Councillor indicated that he could provide a list of residents who complained. However, when asked whether the complaints made to him had been in writing and whether copies could be provided, the Councillor indicated that he chronically deleted his emails. He instead forwarded two (2) new emails from October 1 and October 3, 2020 from two individuals who did not seem terribly concerned about the intersection issue, only stating that they had been told during the public meeting that nothing would be done prior to residents being advised.

The Councillor did provide an email dated June 16, 2020 from a resident couple that expressed concerns about “behind the scenes” decision-making concerning the intersection, and that the Councillor’s approach to informing residents regarding these matters was the right one. The resident indicated that she “had to admit the line additions are a nice addition to the flow of the traffic.”

The Councillor insisted that the reason why he sought clarification from the CAO was because of his exasperation and frustration over what he perceived to be broken promises to residents. The Councillor indicated that he was apologetic if he had offended someone.

We requested minutes or a recording of the public meeting in question. The Councillor provided correspondence from the Deputy City Clerk which confirmed the meeting was only an information meeting and that no minutes or recording existed, but that a report containing some public comments would come before Council in due course.

Having regard to the evidence, we do not find that the Councillor has breached any sections of the Code or the Workplace Policy with respect to the Portland/Chapel matter. Aside from engaging in conversations in which the Councillor was solicited by residents about this issue, we do not have any evidence that the Councillor himself made public comments or statements related to this issue or the City's approach to it. As such, the portions of the cited policies pertaining to public disclosure are not applicable and as such, those portions of the Complaints are dismissed.

However, the Councillor's emails are inconsistent with the Council/Staff Policy, as there is a clearly demonstrated lack of respect for the professional capacity of staff in the tone of the correspondence.

Furthermore, we find the Councillor's approach to dealing with this issue to be inconsistent with the Communications Policy, which requires a member of Council to seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives. The Councillor's communications exhibit an accusatory tone that openly questions staff's administration actions.

We note that the evidence suggests that the Councillor's intentions are, to some extent, consistent with the values of the policies as they seek a commitment to accountability and transparency among Council and staff, and with the general public in their own right. However, it is the Councillor's means of achieving those intentions with respect to this matter, like others, that we have determined are contrary to the City's adopted policies.

(d) Staff Lay-off Matter

The Complaints allege that the Councillor's actions related to staff lay-offs are in contravention of the following provisions:

	Code of Conduct
4.1(f)	Refrain from making statements known to be false or with the intent to mislead Council or the public.
5.5(a)	Provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise.

	Council/Staff Relations Policy
Item 1	<p>Members of Council shall be respectful of the role of staff to advise, based on political neutrality and objectivity; all members shall show respect for the professional capacities of staff within and outside the Council Chambers.</p> <p>Refrain from exerting any pressure on staff that could result in the infringement of legislation, regulations or a deviation from procedures.</p> <p>Using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.</p>
	Council/Staff Communications Policy
Page 1	<p>Members of Council and Staff shall, uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions.</p> <p>Members of Council and Staff shall, seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives.</p>
Page 2	<p>Respond to concerns from the public and refer concerns to staff members through the Mayor and CAO for action — elected officials do not have the administrative managerial role in the day to day business of the organization.</p>
Page 3	<p>Acknowledge that only Council as a whole has the capacity to direct staff members to carry out specific tasks or functions.</p> <p>Refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility.</p>
	Workplace Violence/Harassment Policy
3.2.4	<p>Workplace harassment may also include behaviour, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading working environment. This is commonly referred to as a "poisoned" or "toxic" work environment and it is also a form of harassment.</p>
3.4	<p>Repeated and persistent negative comments and/or acts towards one or more individuals, which can involve perceived power imbalance and create a hostile environment.</p>

In the Responses, the Councillor indicates that he felt strongly that he should have been able to bring up the matter of layoffs during a pandemic, and that despite the fact that recommendations had been made by Council, it was not uncommon to reconsider decisions of Council. While a reconsideration may occasionally occur, it is subject to the strictures of Section 19 of the City's Procedure By-law No. 124-2020 and requires a two-thirds affirmative majority of Council to permit same. The Councillor further expressed his concern that only private sector employees had been laid off (including himself), and that no public sector employees had been laid off despite some services, like the library, having been closed.

There is no evidence that the Councillor's position, or intentions with presenting the position, was disingenuous. We do not find any evidence of false public statements, or an attempt to publicly injure the reputation of staff with respect to the lay-off recommendations. Furthermore, there is no evidence of an attempt to gain an advantage by influencing staff. Lastly, although the Councillor's tone may have been off-putting and condescending, it did not rise to the level of workplace harassment under the Workplace Policy or a breach of the Code.

However, we find that in seeking to advance his opinion to staff and Council, the Councillor took a tone which is contrary to Page 1 of the Communications Policy which requires him to uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions. The Councillor did not seek to achieve a team approach in an environment of mutual respect and trust.

We note that, in particular, his statements that "some are acting like it's business as usual and all is ok. I believe we are the latter" and "for the ones that feel today's world is business as usual. Just my feeling. You are also fooling yourself. Because it's not business as usual", are unnecessarily condescending.

There is no evidence that the City was approaching the pandemic as "business as usual", and the Councillor acknowledges that a report on the financial issues and associated decisions was brought before Council and accepted. As the Councillor points out, in his role, it is acceptable to raise issues for consideration and reconsideration. However, the Councillor's tendency is to do so in a manner that is critical, condescending and often confrontational and which leaves staff to defend their actions, rather than to contribute to further collaborative discussion or solutions.

We find that with specific respect to the staff lay-off issue, the Councillor's correspondence failed to comply with the Council/Staff Policy.

(e) Canada Summer Games Matter

The Complaints allege that the Councillor's actions with respect to Canada Summer Games constitute a contravention of the following provisions:

	Code of Conduct
4.1 (c)	Seek to advance the public interest with honesty.
4.1 (e)	Respect the individual rights, values, beliefs and personality traits of other person, recognizing that all persons are entitled to be treated equally with dignity and respect for their personal status regarding gender, sexual orientation, gender identity, gender expression, race, creed, religion, ability and spirituality.
4.1 (f)	Refrain from making statements known to be false or with the intent to mislead Council or the public.
4.1 (h)	Accurately communicate the decisions of Council with respect to Council's decision-making process even if they disagree with Council's ultimate determinations and rulings.

5.4	A Member shall not publicly criticize staff. Should a Member have any issue with respect to any staff member, such issue shall be referred to the CAO who will direct the matter to the particular staff member's appropriate superior.
5.5(a)	Provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise.
10.1	A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.
10.2	A Member shall not use indecent, abusive, demeaning or insulting words, phrases or expressions toward any member of the public, another Member or staff.
10.3	A Member shall comply with the City's workplace harassment and violence policy.
Council/Staff Relations Policy	
Item 1	<p>Members of Council shall be respectful of the role of staff to advise, based on political neutrality and objectivity; all members shall show respect for the professional capacities of staff within and outside the Council Chambers.</p> <p>Refrain from exerting any pressure on staff that could result in the infringement of legislation, regulations or a deviation from procedures.</p> <p>Using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others.</p>
Council/Staff Communications Policy	
Page 1	<p>Members of Council and Staff shall, uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions.</p> <p>Members of Council and Staff shall, seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives.</p> <p>Demonstrate a commitment to accountability and transparency among Council and staff and with the general public.</p> <p>Enhance public education about the political process by providing context and process information about decision making.</p> <p>Refrain from publicly criticizing Members of Council or staff.</p> <p>The formal relationship between staff and members of Council must be respected to ensure that all members of staff and Council are treated equally. There is a chain of command in place to deal with significant issues, and Council members are encouraged to primarily direct questions and concerns to the Mayor and/or CAO for their consideration. Any request for information from a Council member that is not received and answered at a Council meeting, shall be received in writing and circulated in writing to all Council members.</p>

Page 2	Act in a way that enhances public confidence in local government. Refrain from behaviour that could constitute an act of disorder or misbehaviour; and abuse of power or otherwise amounts to discrimination, intimidation, harassment, verbal abuse or the adverse treatment of others; or prejudices the provision of a service or services to the community.
Page 3	Refrain from using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others. Refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility. Direct questions or concerns regarding departmental activities to the Mayor and/or CAO or use the online complaint form/request for information.
Workplace Violence/Harassment Policy	
3.2.2	Every person who is an employee has a right to freedom from harassment in the workplace by the employer, agent of the employer, or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.
3.2.3	Unwelcome words or actions that are known, or should be known, to be offensive, embarrassing, humiliating, or demeaning to a person, or people, in a workplace.
3.2.4	Workplace harassment may also include behaviour, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading working environment. This is commonly referred to as a "poisoned" or "toxic" work environment and it is also a form of harassment.
3.4	Repeated and persistent negative comments and/or acts towards one or more individuals, which can involve perceived power imbalance and create a hostile work environment.

It has become abundantly clear in the course of our investigation that the Councillor has very set opinions on and a great disdain for the Canada Summer Games project. The Councillor takes significant issue with the financial viability of the project, for which position he provided us with certain numbers and figures. The Councillor is adamant that certain financial negotiations took place without Council direction or authorization, resulting in what the Councillor believes was a unilateral and unauthorized commitment from the City of \$7M as a contribution to a facility together with other municipalities.

The Councillor provided us with two (2) reports dated August 14, 2018 and March 25, 2019 which were tabled at meetings of Council on September 4, 2018 and April 2, 2019, respectively. The Councillor points to the reports to support the proposition that budgetary discussions were ongoing, and that no financial commitments had been made or authorized, but were nevertheless negotiated by the Mayor.

In support of his position, the Councillor has also forwarded correspondence with the City Clerk dated June 30, 2020, in which the City Clerk indicates that the Host Society for the Canada Summer Games set out an amount of \$5M, and then a further \$2M for servicing infrastructure. The City Clerk further indicated that Council approved both requests, and that the Councillor's concerns respecting the Operating Model or Partnership Agreement could be raised when they were to come before Council in July, 2020.

It is beyond the scope of this Report and our jurisdiction to fully investigate and opine on the extent of the Canada Summer Games negotiations, and the associated reports and documents dating back over two (2) years. The purpose of our investigation and Report is to determine whether in the course of what is clearly, from the Councillor's perspective, a contentious and unsettled topic, the Councillor breached the Code or other associated policies as alleged by the Original Complaints.

Without commenting on the merit of the Councillor's substantive positions on the Canada Summer Games matter, we find that the Councillor's internal correspondence directed to the CAO is in breach of Sections 4.1(f), (h), 5.4, 5.5(a), 10.1, 10.2, 10.3 of the Code, Item 1 of the Council/Staff Policy in failing to be respectful to the role of staff to advise and show respect for the professional capacities of staff, and Page 1 of the Communications Policy in failing to uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions, failing to seek to achieve a team approach in an environment of mutual respect and trust.

Lastly, we find that the Councillor breached Sections 3.2.3, 3.2.4 and 3.4 of the Workplace Policy. Specifically, we conclude that the following email and associated statements are clearly in breach of the Workplace Policy:

As I said. I'm not talking about region. That was info available to anyone. Where is the memo you sent. You sent nothing. Only info I could find myself. U sent no memo bottom line. Listen to your statement from last night. All that happens is forwarded info I can asses without you forwarding. You have done nothing yourself. Just admit you did not send any info or memo yourself. Just as I stated forwarded info from other resources. Those memo do nothing to serve the citizens of Thorold interest. Nothing. Cost implications, effect on current negotiations, etc. Thank God Tom Richardson was listening in last night. At least he gave info. Not jibber jabber. He was more information and gave us info you have never divulged to council. To me you are a disappointment. [sic]

It is clear that in the above passage the Councillor is berating the CAO in an insulting and offensive manner. Even if the Councillor was correct in any of his assertions, the harshness of his words and tone are simply not acceptable in a professional environment. They are clearly not to be tolerated where Council has adopted policies to foster a respectful workplace and has expressly prohibited behavior and conduct that creates a degrading working environment.

The Original Complaints indicate that the words used by the Councillor in his correspondence, which blatantly accuse the CAO of not looking after the City's interest are exceedingly inappropriate. Moreover, the Councillor chose to include a racial slur in admonishing the CAO who is a racialized individual.

The *Collins Dictionary* defines “jibber jabber” as foolish or worthless talk; nonsense.¹¹ The term appears to have its roots in the word “gibberish” and is often used to describe rapid or unintelligible speech. In our research, we found some acknowledgement that the term has been used to disparage other languages. We agree with the Complainants that it is highly inappropriate for the Councillor to have described the CAO’s speech as “jibber jabber”, which, along with the majority of the email, is a breach of the Code and associated policies as described above.

We have stopped short of finding that the Councillor’s use of the term amounted to a breach of Section 4.1(e) of the Code or Section 3.2.2 of the Workplace Policy with respect to racial discrimination, as it is unclear whether it was necessarily intended as a racial slur. Notwithstanding, we note that it is incumbent on the Councillor, as a public official, to recognize that his language carries significant meaning and that his chosen terminology is not without consequence. The Councillor is directed to be much more vigilant in his choice of terminology in the future, which in this case, could not have been more unsuitable.

The Original Complaints indicate that the Councillor wrongly accuses the CAO of lying and misconstruing facts, and that on numerous occasions, the Councillor provided inaccurate information to Council, the public and on the Facebook Page which is a reflection of the Councillor’s personal opinion and beliefs on the matter.

The Councillor’s statements, both in the private correspondence and in public, constitute breaches of Pages 1-3 of the Communications Policy in failing to refrain from publicly criticizing members of Council or City staff, failing to act in a way that enhances public confidence in local government, failing to refrain from behaviour that amounts to harassment or verbal abuse or adverse treatment of others, and failing to refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility.

We point, in particular, to one post on the Facebook Page dated May 15, 2020 and re-shared by the Councillor on July 7, 2020, which, *inter alia*, states that:

Staff have been working on this for months. We have yet to even see a report. We will no doubt get the report maybe a week ahead of making a multi million dollar decisions. Some councillors are in the loop. And some are on the outside looking in. Total transparency has been a joke. It will be shoved in front of us to make a decision. NOW.... To do research and make an informed decision is impossible. Just shove it down the taxpayers throat. And give no chance for rebuttal. I feel sorry for our citizens. ... Starting to feel like the sucker who got taken by the shell game.

We also note a further comment made by the Councillor on the post:

Well, 5 councillors vote for something in 3 hours. That over the long term will cost the taxpayers 40 million. You know they are only voting how one wants them too vote. Not an educated or informed decision for sure. Councillor Dekker, Kenny, Neale, Wilson and Sentance talked on the issue for eg. Less then 15 minutes.... That’s how we are currently operating. Some People making decisions based on what’s in the best interest of their own agenda. Now what’s in the best interest of the taxpayers. [sic]

It should be noted that in one of his Responses, the Councillor acknowledged wrongdoing with respect to the Canada Summer Games matter and stated, “I’ve done wrong. And I will admit it.

¹¹ <https://www.collinsdictionary.com/dictionary/english/jibber-jabber>.

Not looking for excuses. But now its like a witch hunt.... I'm stressed, I've have more important issues. I'll take my punishment. And what consequences come with it.”

(f) Resident Issues and Comments Matter

The Complaints allege that the Councillor’s correspondence with respect to resident issues is in breach of the following provisions:

	Code of Conduct
5.3	A Member shall not publicly criticize staff. Should a Member have any issue with respect to any staff member, such issue shall be referred to the CAO who will direct the matter to the particular staff member’s appropriate superior.
5.5(a)	Provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise.
5.6	Staff establish administrative policies, systems, structures and internal controls necessary to implement the goals and objectives of Council. Council should expect a high quality of advice from staff based on political neutrality and objectivity. No member shall compel any staff member to engage in activities that are contrary to the direction of Council or the policies of the City.
10.1	A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.
10.2	A Member shall not use indecent, abusive, demeaning or insulting words, phrases or expressions toward any member of the public, another Member or staff.
	Council/Staff Relations Policy
Item 1	Members of Council shall be respectful of the role of staff to advise, based on political neutrality and objectivity; all members shall show respect for the professional capacities of staff within and outside the Council Chambers.
	Council/Staff Communications Policy
Page 1	Members of Council and Staff shall, uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions. Members of Council and Staff shall, seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives.
Page 3	Acknowledge that only Council as a whole has the capacity to direct staff members to carry out specific tasks or functions. Refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility.

	Workplace Violence/Harassment Policy
3.2.4	Workplace harassment may also include behaviour, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading working environment. This is commonly referred to as a "poisoned" or "toxic" work environment and it is also a form of harassment.
3.4	Repeated and persistent negative comments and/or acts towards one or more individuals, which can involve perceived power imbalance and create a hostile work environment.

The Councillor did not provide any response to the Original Complaints pertaining to his email comments of July 13 and 22, 2020.

On the basis of the evidence provided by the Complainants, we find that the Councillor's emails of July 13 and 22, 2020 constitute breaches of Sections 5.3, 5.5(a), 5.6, 10.1 and 10.2 of the Code, Item 1 of the Council/Staff Policy, Page 1 and 3 of the Communications Policy, and Sections 3.2.4 and 3.4 of the Workplace Policy.

We are mindful of the fact that in his email of July 13, 2020, the Councillor includes (carbon copies) as a recipient the resident who initiated the complaint. When the Councillor subsequently engages in his critique of the By-law Enforcement Officer's alleged failure to investigate the property due to not having PPE and the City not doing more to ensure that illegal construction is addressed, he thereby publicly criticizes staff and maligns their reputations. The Councillor also serves to intimidate and threaten staff by asking if he needs to bring a motion to Council on the issue.

The finding that the Councillor is in breach of the Code and related policies with respect to his email of July 13, 2020 should not be confused with the Councillor not being able to request information or express concerns on behalf of a resident. The contraventions relate to *how* the Councillor approaches such situations, which, on the totality of the evidence, is often with criticism, disrespect, questioning of competence and, in some instances, unmistakable bullying. We were not presented with any evidence, whether by the Councillor or otherwise, that the Councillor himself has ever received any such treatment from staff or from his fellow members of Council. He has provided no justification to defend his uncivil and, quite frankly, rude approach.

Furthermore, the Councillor seems to somewhat arbitrarily pick and choose what information he considers relevant and accurate. For example, in response to the July 13, 2020 email, the CBO clearly states that by-law enforcement officers do not investigate such types of complaints, and that due to a backorder of PPE (which was quite plausible in July 2020) the City was not, at the time, undertaking the inspection of occupied dwellings. The Councillor's forceful response ignores the information he is presented with, and is inconsistent with his general position of promoting residents' well-being. It is likely that the City's residents would take significant issue with City officials if they were forcing inspections to proceed without proper PPE in the midst of a global pandemic. The Councillor's complaints and statements undermine such measures, and appear as attempts to try to get staff to breach the City's rules and policies.

Even more significantly, the Councillor's response of July 22, 2020 in which he calls the City a "shit show", indicates that the current administration "starting at the top" is at fault for the City's failure to improve, and that this term has seen the worst leadership, is, in our opinion, squarely a form of workplace harassment that is prohibited by Section 3.2.4 of the Workplace Policy, as it

includes comments which create a degrading working environment. Combined with the other comments, actions and instances of “repeated and persistent negative comments and/or acts towards one or more individuals” as defined in Section 3.4 of the Workplace Policy, the Councillor’s actions have clearly created a hostile work environment for others.

(g) Posts on the Facebook Page

The Councillor did not provide any response with respect to the social media posts of complaint, either from the Original Complaints or the detailed report provided in support of the New Complaints, despite being given several extensions to respond.

In addition to the Facebook Page posts mentioned in the other factual sections above, we found several additional examples of similar posts in the evidence presented to us, as follows:

- The Councillor’s comment of an unidentified date stating: “I brought this to the attention of staff in 2018. (Murals) Still waiting for the report I was promised. Another item ignored by our staff. And our CAO does nothin to see motions are addressed in a timely matter. To busy taking care of the Mayors Canada Games Park Agenda maybe.” [sic]
- The Councillor’s comment of an unidentified date stating: “One other thing. Is there people living there? If yes. Then an occupancy permit was issued. And the city failed to assure that all conditions were met before such. And with the drainage plan in black and white. There is no excuse. Failure on all ends by the city. And it starts at the top.”
- The Councillor’s comment of an unidentified date stating: “Just hope councillors like Nella Dekker, Ken Sentance, Fred Neale, Victoria Wilson, John Kenny and Mayor Terry Ugulini are listening to the experts and their constituents. I have, as well as Councillors Anthony Longo and Carmen DeRose. We don’t need wasteful spending and pet projects at a time like this. And getting out of the Canada Games Project will inflict millions of unneeded tax increases in our citizens is not in the cities or taxpayers best interest. Only their own it seems. Time to put egos aside. And do as elected to do. What is in the best interest of the taxpayer. Not your fellow councillor or the Mayor.”

Following our review of the Facebook Page, including, but not limited to, the posts mentioned in this Report, we find that the Councillor’s posts on the Facebook Page have habitually contravened Sections 4.1(f), (h), (i), 10.1, 10.2, 11.1 and 13.1. The Councillor routinely makes statements that undermine Council as a whole and individual members of Council, the City and its staff, ranging from observation and criticism to undermining, derogatory, and disrespectful statements which cast doubt on the integrity of the City, staff and Council.

While the Councillor is free to express himself and advocate on behalf of residents, he does so in such a way that publicly belittles and ridicules persons who disagree with him. The Councillor’s *modus operandi* on social media is intentional and deliberate – to denigrate the decisions and actions of those members of Council and City staff that do not attend to his bidding with alacrity. His actions cast disrepute upon the City as a whole.

As an elected representative of the City, the Councillor’s disregard for established policies and standards of conduct is unbecoming, and serves to undermine the municipality in its own right. The Councillor’s public insults, jokes or comments about others in no way contribute to a collaborative professional environment which allows Council and the City to productively conduct its business and serve the public interest. Ironically, the Councillor’s actions appear to often detract from progress, which is one of the Councillor’s ongoing criticisms of the City.

VIII. CONCLUSIONS

Based on the foregoing and the entirety of the evidence before us, we conclude that the Councillor has breached the Code, the Council/Staff Policy, the Communications Policy and the Workplace Policy as outlined below. We note that some instances of breach are interrelated in that they amount to a contravention of more than one policy.

(a) The Code

The Councillor breached the following sections of the Code:

- Section 4.1(f), in providing incorrect and non-factual information to the *Thorold News* and on social media with respect to the Parking Ticket matter; with respect to the Councillor's internal correspondence to the CAO in the Canada Summer Games matter; and in posting incorrect information to the Facebook Page;
- Section 4.1(h), with respect to the Councillor's internal correspondence to the CAO in the Canada Summer Games matter and in posting information to the Facebook Page that does not accurately communicate Council's decisions and/or the decision-making process of Council;
- Section 4.1(i), in posting disparaging remarks about other Council members to the Facebook Page;
- Section 5.3 in publicly criticizing the City staff in emails dated July 13 and 22, 2020;
- Section 5.5(a) with respect to the Councillor's internal correspondence to the CAO in the Canada Summer Games matter, and by falsely and maliciously injuring the reputation of City staff in emails dated July 13 and 22, 2020;
- Section 5.5(b) with respect to the Parking Ticket matter, by attempting to influence the direction of City staff with respect to the ticket and its withdrawal, and requesting a deviation from established rules and procedures;
- Section 5.6 with respect to the Parking Ticket matter, by attempting to influence the direction of City staff with respect to the ticket and its withdrawal, and requesting a deviation from established rules and procedures;
- Section 10.1 by communicating in a highly disrespectful manner on April 8 and 9, 2020 with respect to the Parking Ticket matter; with respect to the Councillor's internal correspondence to the CAO in the Canada Summer Games matter; by threatening and intimidating staff in his July 13 and 22, 2020 emails with respect to the Resident Issues and Comments matter; and by posting language to the Facebook Page that lacked respect to staff and other Council members;
- Section 10.2 by responding with indecent, insulting, and demeaning language in the April 8 and 9, 2020 emails with respect to the Parking Ticket matter; with respect to the Councillor's internal correspondence to the CAO in the Canada Summer Games matter; by threatening and intimidating staff in his July 13 and 22, 2020 emails with respect to the Resident Issues and Comments matter; and by posting indecent, abusive, demeaning, and insulting language to the Facebook Page regarding staff and other Council members; and

- Section 13.1 by not conducting himself in accordance with the policies, procedures and rules established by Council with respect to the Facebook Page and the posts contained therein.

(b) Council/Staff Policy

The Councillor breached the following provision of the Council/Staff Policy:

- Item 1, by making statements that lacked respect to staff members in his April 8 and 9, 2020 emails with respect to the Parking Ticket matter; by making statements that clearly demonstrated a lack of respect for the professional capacity of staff in the Councillor's emails with respect to the Portland & Chapel Street matter; by making disrespectful remarks to staff and other Councillors in his comments on the Staff Lay-off matter; by failing to be respectful to the role of staff to advise, and to show respect for the professional capacities of staff in the Councillor's correspondence with respect to the Canada Summer Games matter; and by criticizing staff in his July 13, 2020 email with respect to the Resident Issues and Comments matter.

(c) Communications Policy

The Councillor breached the following provisions of the Communications Policy:

- Page 1, by failing to uphold Council's decisions, showing a lack of respect to the team approach, and publicly criticizing fellow Councillors and staff in his public and private statements with respect to the Parking Ticket matter; by failing to achieve a team approach in an environment of mutual respect and trust with respect to the comments made about Council in the Portland & Chapel Street matter; by failing to uphold the decisions of Council, regardless of his personal beliefs, in his comments with respect to the Staff Lay-off matter and the Canada Summer Games matter; and by showing a lack of respect to the team approach, and publicly criticizing Councillors, staff, and the administration in his responses to the Resident Issues and Comments matter;
- Page 2, by failing to act in a way that enhances public confidence in local government in his statements regarding the Parking Ticket matter; by failing to act in a way that enhances public confidence in government by publicly criticizing staff in his communications with respect to the Portland & Chapel Street matter; and by failing to act in a way that enhances public confidence in local government in the Councillor's private and public statements on the Canada Summer Games matter; and
- Page 3, by attempting to influence the direction of the staff with respect to the Parking Ticket and its withdrawal, and requesting a deviation from established rules and procedures in his statements to the public and to Councillors and staff; and by failing to acknowledge that only Council as a whole has the capacity to direct staff members, and by criticizing the professional competence and credibility of staff in his July 13 and 22, 2020 emails with respect to the Resident Issues and Comments matter.

(d) Workplace Policy

The Councillor breached the following sections of the Workplace Policy:

- Section 3.2.3, by using offensive and demeaning language in the workplace towards staff and Councillors in his April 8 and 9, 2020 emails with respect to the Parking Ticket matter; and by using demeaning and offensive language towards the CAO in his communications with respect to the Canada Summer Games matter;
- Section 3.2.4, by engaging in workplace harassment through creating a toxic and degraded work environment through, *inter alia*, his April 8 and 9, 2020 emails with respect to the Parking Ticket matter; by using demeaning and offensive language towards the CAO in his communications with respect to the Canada Summer Games matter; and by creating a toxic and degraded work environment through bullying and intimidating municipal staff and Councillors in the Resident Issues and Comments matter; and
- Section 3.4, by, *inter alia*, making repeated and persistent negative comments towards the CAO with respect to the Canada Summer Games matter; and by creating a hostile work environment through persistent negative comments to Councillors and staff with respect to the Resident Issues and Comments matter.

We conclude that the remaining portions of the Complaints are not substantiated and are dismissed.

IX. RECOMMENDATIONS

(a) Penalties

In determining appropriate recommendations to Council with respect to our findings that the Councillor contravened the Code, the Council/Staff Policy, the Communications Policy and Workplace Policy multiple times, we have taken into account the frequent and repetitive contraventions of the Code and the Policies by the Councillor. The vast majority of the alleged contraventions have been substantiated by the evidence and our findings.

We have noted that the Councillor himself has twice apologized for his transgressions, meaning that he was acutely aware that his actions were wrong and had caused harm to others and to the City.

The Councillor's expressions of apology and apparent remorse for his actions as communicated to us in the course of the investigation (and to others earlier) have little bearing on our recommendations, for the simple reason that we have observed the Councilor resume similar actions and behavior that caused the eight (8) Complainants to come forward with their concerns, despite extensive knowledge of the nature and number of complaints made against him.

We have taken into account the number, magnitude and severity of the contraventions committed by the Councillor and the fact that the Councillor is not a first time elected representative. We also note that the Councillor had been involved in previous instances of inappropriate behavior at the City.

The *Municipal Act, 2001* and the Code authorize the Integrity Commissioner to recommend and Council to impose the following penalties on a member who has contravened the Code of Conduct or other policies:

- (a) a reprimand; and
- (b) a suspension of remuneration paid to the member for a period up to ninety (90) days.

In considering appropriate penalties we have taken into account the fact that eight (8) separate Complaints by eight (8) different individuals were filed with our office. The contraventions did not arise or relate to a single incident but a multitude of instances over a period of time. Council has the authority to impose multiple penalties, including reprimands and suspensions of remuneration, each to a maximum of ninety (90) days.

In accordance with Section 12.(1)(b)(i) of the Protocol, if the Integrity Commissioner determines that a contravention of the Code or any other applicable policy has occurred, but that it was committed through inadvertence, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*, including, but not limited to, a recommendation of no penalty.

With respect to the finding that the Councillor breached Section 4.1(d) of the Code and the Council/Staff and Communications Policies with respect to the Food Giveaway by failing to communicate with the Fire Chief and CAO prior to hosting the event, we conclude that the Councillor's failure amounts to inadvertence. Given the Councillor's Video, it appears that he appreciates the serious nature of hosting events on City property, and intends not to do so in the future. If such an event is to be planned, we recommend that the Councillor follow clear protocol with contacting the Fire Chief if necessary, and in any event, the CAO. Although it is recommended that the Councillor ensures that he respects the appropriate channels of authority moving forward, no penalty is recommended with respect to this contravention.

We also urge the Councillor to refrain from public criticism of the Complaints related to the Food Giveaway and others matters. It is clear that the Original Complaints were not brought contrary to the spirit of a free food giveaway, but out of concern of misuse of public property and safety related to the Fire Station where signs and laneways are of utmost importance.

However, with respect to the remaining Complaints, the Councillor has been found to have committed multiple contraventions which were not trivial, committed through inadvertence or resulted from an error made in good faith. Disturbingly, it appears that the Councillor's behavior exhibited a pattern of conduct that was deliberate and intentional.

As such, we recommend that the imposition of the following penalties:

- (a) that Council reprimand the Councillor and denounce his actions;
- (b) that the Councillor's remuneration be suspended as follows:
 - (i) twenty (20) days for contraventions related to the Parking Ticket matter;
 - (ii) ten (10) days for contraventions related to the Portland Street & Chapel Street South matter;

- (iii) ten (10) days for contraventions related to the Staff Lay-off matter;
- (iv) ninety (90) days for contraventions related to the Canada Summer Games matter;
- (v) sixty (60) days for contraventions related to the Resident Issues and Comments matter; and
- (vi) sixty (60) days for contraventions related to the Posts on the Facebook Page matter.

(b) Remedial Measures and Corrective Actions

The courts have recognized that the imposition of remedial measures or corrective actions allow codes of conduct to operate effectively and to address problems arising from violations. Section 16 of the Code expressly provides that Council may, on the basis of a recommendation from the Integrity Commissioner, take corrective actions or impose remedial measures. The purpose of a remedial measure or corrective action is to seek to repair or rectify the harm or injury caused by the contravention, in other words, to ameliorate the situation.

It is our view that Council should be concerned with respect to the conduct and behavior of the Councillor and take steps to minimize the risk of it occurring again and of further harm, including reputational damage being inflicted upon the City and its staff.

We are of the view that the imposition of remedial or corrective measures or actions is appropriate in the circumstances. It is our recommendation that the Councillor:

- (a) make a formal public sincere apology to Council and to City staff within thirty (30) days of Council's imposition of this recommendation that will be posted and distributed by the City on its website and social media, and in any other manner that the City deems appropriate;
- (b) be required to complete training (whether through a course or independent study) with respect to appropriate, effective and, above all, respectful professional communication, and provide the Integrity Commissioner with satisfactory proof of completion of the training no later than ninety (90) days after Council's imposition of this recommendation. The Councillor and/or Council may seek the advice of the Integrity Commissioner with respect to the specific training chosen should they wish to do so; and
- (c) for the duration of the time of the suspension of remuneration, be removed from and not appointed as a member of any committee of Council and be removed from and not be appointed as chair of any committee of Council.

* * *

We strongly caution the Councillor that any further contraventions of the Code and Policies on similar grounds may very well result in additional complaints with the possible consequence of escalated penalties being recommended and imposed.

In accordance with Section 7(4) of the Protocol, an advance copy of this Report (without Recommendations) was provided to the Councillor in draft so that he was aware of our findings.

The Councillor was also given seven (7) days to provide any comments on the draft Report so that we could take them into consideration prior to finalizing the Report. The Councillor did not respond to us.

The complainants were each provided with a draft copy of this Report (without Recommendations) and provided five (5) days to correct any factual or other inaccuracies. We have taken into consideration the responses provided by the complainants in completing this Report.

This Report has been prepared for and is forwarded to Council for its consideration of the Recommendations set out herein. Subsection 223.6(2) of the *Municipal Act, 2001* provides that this Report be made public.

AIRD & BERLIS LLP



John Mascarini



Daria Peregoudova

Integrity Commissioner for the City of Thorold

Dated this 24th day of November, 2020

APPENDIX "A"

CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

2.0 Statement of Principles

2.2 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code of Conduct:

- Members shall avoid the improper use of the influence of their office and act without self-interest.
- Members shall observe and act with the highest standard of ethical conduct and integrity.
- Members shall be cognizant that they are at all times representatives of the City and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and maintain and promote the public trust in the City.

4.0 General Obligations

4.1 In all respects, a Member shall:

- (c) seek to advance the public interest with honesty;
- (e) respect the individual rights, values, beliefs and personality traits of any other person, recognizing that all persons are entitled to be treated equally with dignity and respect for their personal status regarding gender, sexual orientation, gender identity, gender expression, race, creed, religion, ability and spirituality;
- (f) refrain from making statements known to be false or with the intent to mislead Council or the public;
- (h) accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings;
- (i) refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member.

5.0 The Role of Staff

5.3 A Member shall comply with the City's Council and Staff Relationship Policy.

5.4 A Member shall not publicly criticize staff. Should a Member have any issue with respect to any staff member, such issue shall be referred to the CAO who will direct the matter to the particular staff member's appropriate superior.

5.5 A Member shall respect the role of staff in the administration of the business and governmental affairs of the City, and acknowledge and appreciate that staff

- (a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise;
- (b) work within the administration of justice and that a Member must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of justice and, therefore, a Member shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties, including any duty to disclose improper activity.

5.6 Staff establish administrative policies, systems, structures and internal controls necessary to implement the goals and objectives of Council. Council should expect a high quality of advice from staff based on political neutrality and objectivity. No member shall compel any staff member to engage in activities that are contrary to the directions of Council or the policies of the City.

7.0 City Property

7.2 By virtue of their office or appointment, a Member must not use or permit the use of the City's land, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the City unless they are entitled to such use equally with any other resident and have paid fair market value for such use. No Member shall seek financial gain for themselves, family or friends from the use or sale of the City's intellectual property, computer programs, technological innovations, or other patent, trademarks or copyright held by the City.

10.0 Discrimination and Harassment

- 10.1 A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.
- 10.2 A Member shall not use indecent, abusive, demeaning or insulting words, phrases or expressions toward any member of the public, another Member or staff. A Member shall not make comments or conduct themselves in any manner that is discriminatory to any individual based on the individual's race, colour, ancestry, citizenship, ethnic origin, place of origin, creed or religion, gender, gender identity, gender expression, sexual orientation, marital status, family status, disability, age or record of offences for which a pardon has not been granted.
- 10.3 A Member shall comply with the City's workplace harassment and violence policy.

11.0 Improper Use of Influence

11.1 A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

13.0 Council Policies and Procedures

13.1 A Member shall observe and adhere to the policies, procedures and rules established from time to time by Council.

COUNCIL AND STAFF RELATIONS POLICY
POLICY NO: 100-33

Policy Requirements

The relationship between Members of Council and the officers and employees of the Corporation is guided by the following:

1. Code of Conduct for Members of Council

The Code of Conduct for Members of Council establishes the ethical behaviour expected of Members of Thorold City Council.

Section 8 of the Code of Conduct for Members of Council, titled, "Council/Staff Relations" states as follows:

"Members of Council shall be respectful of the role of staff to advise, based on political neutrality and objectivity; all members shall show respect for the professional capacities of staff within and outside the Council Chambers."

Members of Council should not:

- Direct the activities of staff or departments except through established channels of authority. Direction to staff shall come from Council as a whole.
- Refrain from exerting any pressure on staff that could result in the infringement of legislation, regulations or a deviation from procedures.
- Using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or other.

COUNCIL AND STAFF COMMUNICATIONS POLICY
POLICY NO: 100-32

General

Members of Council and Staff shall:

- Demonstrate a commitment to accountability and transparency among Council and staff and with the general public;
- Enhance public education about the political process by providing context and process information about decision making;
- Uphold the decisions of Council, regardless of personal opinion or belief, and commit to the implementation of those decisions;
- Refrain from publicly criticizing members of council or staff; and
- Seek to achieve a team approach in an environment of mutual respect and trust, with acceptance of the different roles in achieving Council's objectives.

Respectful Reporting Relationship

The formal relationship between staff and members of Council must be respected to ensure that all members of staff and Council are treated equally. There is a chain of command in place to deal with significant issues, and Council members are encouraged to primarily direct questions and concerns to the Councillor and/or CAO for their consideration. Any request for information from a Council member that is not received and answered at a Council meeting, shall be received in writing and circulated in writing to all Council members.

Role of the Members of Council

- Act in a way that enhances public confidence in local government;
- Respond to concerns from the public and refer concerns to staff members through the Councillor and CAO for action – elected officials do not have an administrative managerial role in the day to day business of the organization;
- Refrain from behaviour that could constitute an act of disorder or misbehaviour; an abuse of power or otherwise amounts to discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others; or prejudices the provision of a service or services to the community.

It is expected that Council Members will:

- Acknowledge that only Council as a whole has the capacity to direct staff members to carry out specific tasks or functions;
- Refrain from using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others;
- Refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility;
- Direct questions or concerns regarding departmental activities to the Councillor and/or CAO or use the online complaint form/request for information;
- Consult with the CAO prior to making commitments to agencies, groups, citizens or likewise.

WORKPLACE VIOLENCE AND HARASSMENT POLICY

POLICY NO. 3

Workplace Harassment

3.2.2 The Ontario *Human Rights Code* states:

Every person who is an employee has a right to freedom from harassment in the workplace by the employer, agent of the employer, or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. (OHRC s.5.2)

3.2.3 Unwelcome words or actions that are known, or should be known, to be offensive, embarrassing, humiliating or demeaning to a person, or people, in a workplace.

Examples of harassment include, but are not limited to:

- Making remarks, jokes or innuendos that demean, ridicule, intimidate or offend
- Name calling
- Gossiping or spreading malicious rumors
- Repeated offensive or intimidating phone calls or e-mails
- Practical jokes that embarrass or insult someone
- Making false allegations about someone
- Invading personal space
- Distributing and/or displaying offensive electronic messages or attachments such as pictures or video files
- Jokes or insults that are offensive, racist or discriminatory in nature.
- A leader blocking an individual's effort at promotions or transfers for reasons that are not legitimate

3.2.4 Workplace harassment may also include behavior, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading working environment. This is commonly referred to as a "poisoned" or "toxic" work environment and it is also a form of harassment.

Workplace Bullying

3.4 Repeated and persistent negative comments and/or acts towards one or more individuals, which can involve perceived power imbalance and create a hostile work environment.

Examples include, but are not limited to:

- Intimidating a person

- Undermining or deliberately impeding a person's work
- Yelling or using profanity towards someone
- Belittling a person's opinions
- Using condescending language and tone
- Excluding or isolating someone socially (silent treatment)
- Spreading malicious rumors, gossip or innuendo
- Withholding necessary information or purposefully giving the wrong information
- Contributing to a toxic workplace.