

Governance Committee Meeting – November 22, 2017
Item 5 – Proposed Changes to Directors Code of Conduct
Ian Beverley, General Counsel

Agenda Item	5
Purpose	<p>For Governance Committee review: Proposed changes to the Directors Code of Conduct and Conflict of Interest Procedures</p> <p>For information only: background Memo</p> <p>As part of a Contribution Agreement compliance audit conducted by EY on behalf of the City of Toronto, Waterfront Secretariat in 2016, it was recommended that Waterfront Toronto update its Code of Conduct and Conflict of Interest Procedures to expand the definition of conflict of interests to address certain Contribution Agreement terms relating to gifts to government officials and hiring of relatives.</p> <p>Management is proposing changes to the Directors Code of Conduct to address the recommendation relating to gifts to government officials.</p>
Key Message	Addition of 3.5(e) of TWRC Board of Directors Code of Conduct and Conflict of Interest Procedure to cover giving of gifts to government officials.
Areas of note/ Key issues	Changes will also be made to the Code of Conduct and Conflict of Interest Procedures <u>for Employees</u> . Such changes to the Employee Code are mentioned in the attached Memo, however, they do not require Governance Committee review or approval.
Expected Outcome	<p>Governance Committee to understand proposed changes to the Code of Conduct.</p> <p>Governance Committee to recommend the adoption of the revised TWRC Board of Directors Code of Conduct and Conflict of Interest Procedures by the Board at the December 7 meeting.</p>
Key Takeaways/ Next Steps	Revised TWRC Board of Directors Code of Conduct and Conflict of Interest Procedures to be brought to the Board for approval at the December 7 meeting.



WATERFRONTToronto

MEMORANDUM

To: Ian Beverley, General Counsel, Waterfront Toronto

From: Sameer Akhtar, Senior Legal Counsel, Waterfront Toronto

Date: November 15, 2017

Re: Recommended changes to Conflict of Interest policies;
Contribution Agreement compliance audit on behalf of the Waterfront Secretariat

Background:

A Contribution Agreement compliance audit was conducted in 2016 by EY on behalf of the City of Toronto, Waterfront Secretariat.

EY's audit report recommended that Waterfront Toronto update the Code of Conduct to expand the definition of conflict of interest per Contribution Agreement terms.

Based on EY's recommendations and a review of Waterfront Toronto's Code of Conduct and Conflict of Interest Procedures for Employees ("Employee Code") and the Board of Directors Code of Conduct and Conflict of Interest Procedures ("Director Code"), I recommend that:

1. The Director Code and Employee Code be amended by adding a provision dealing with the "giving of gifts to government officials"; and
2. The Employee Code be amended by adding a provision which deals with the "hiring of relatives".

The additional provisions that I recommend are set out below.

Giving of Gifts- Proposed changes to Employee Code and Director Code

I recommend that the Employee Code and the Director Code be amended with the addition of the following provision. The Director Code is a document that is reviewed periodically by the Governance Committee and approved by the Board of Directors. The amendment of the Code of Conduct with the addition of this provision would first be reviewed by the Governance Committee and then recommended by the Governance Committee for approval by the Board of Directors:

You will not directly or indirectly give, offer or agree to give or offer to an official or employee of the government of Canada, the government of Ontario or the City of Toronto (or to any member of his/her family) a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with any TWRC business or transaction relating to the government of Canada, the government of Ontario or the City of Toronto.

(This wording is adapted from the bribery provision (section 121) of the *Criminal Code*)

Hiring of Relatives- Proposed change to Employee Code

I recommend the Employee Code be amended with the addition of the following provision. The Employee Code is a management document and is not reviewed or approved by the Board of Directors. The information concerning this proposed provision is provided to the Governance Committee for information purposes only:

Employment of Relatives

For the purposes of this policy, “relative” is defined as:

- *spouse, any person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage*
- *parent, including step-parent and legal guardian*
- *child, including step-child*
- *sibling and children of siblings*
- *father/mother-in-law, brother/sister-in-law, son/daughter-in-law*
- *any family member who lives with the employee on a permanent basis*

TWRC shall not hire an individual who is known to be a relative of an Employee or director of TWRC, except if the CEO is satisfied that such hiring is not the result of favoritism due to relationship and the CEO approves such hiring.

An Employee shall not participate in any part of the selection process where a relative is an applicant.

Relatives shall not be permitted to work together if this places them in a direct or indirect supervisory relationship, either in a subordinate or supervisory role to each other.

When Employees who are relatives are aware that they are working in positions that put them in a direct or indirect supervisory relationship with each other, they must declare this situation in writing to the Director, Human Resources or the CEO. The Director, Human Resources shall work to resolve the situation promptly.

(This wording is adapted from the City of Toronto, Human Resources Policies – Employment of Relatives.)

TORONTO WATERFRONT REVITALIZATION CORPORATION
("TWRC")
BOARD OF DIRECTORS
CODE OF CONDUCT AND CONFLICT OF INTEREST PROCEDURES
(the "Code")

1. DEFINITIONS

For the purpose of the Code:

- (a) "Board" is the Board of Directors of TWRC.
- (b) "Chair" is the person who chairs the Board.
- (c) "Confidential Information" is information that is not available to the general public and includes information provided by an external or internal source with the expectation that the information will be kept confidential and will be used solely for the business purposes for which it was conveyed.
- (d) "Conflict of Interest" means:
 - (i) a direct or indirect personal or pecuniary interest in a contract involving TWRC;
 - (ii) an influence that is likely to negatively affect the advice or services that a person is providing to TWRC;
 - (iii) any personal or pecuniary interest, condition, connection, relationship, activity or circumstances as a result of which you are or might reasonably appear to be unable or potentially unable to provide an impartial and objective decision, recommendation or assessment of facts in any circumstance;and includes any other circumstance in which your individual interests conflict with your duties to TWRC.
- (e) "Contractors" include suppliers, consultants, advisors and independent managers.
- (f) "Designated Waterfront Area" is the area defined by regulations made under the Toronto Waterfront Revitalization Act in which the Corporation has authority to act.
- (g) "Director" is a member of the Board of Directors of TWRC.
- (h) "Governance Committee" refers to the Committee of the Board, however named, that is responsible for reviewing the corporate governance of TWRC and the Board.
- (i) Information is "non-public" if it has not been effectively disseminated to the general public. Examples of public dissemination include a press release carried over a major-news service, an article in-a major-news-publication, and a public filing made with a regulatory agency. It is important to note that even following a public announcement of a major transaction, many aspects of the matter may remain non-public.

- (j) A "Material Interest" is not restricted to the minimum 10% investment threshold often used in securities legislation. The conflict of interest test does not lend itself to such clear quantitative measurement. The relevant question is: would a reasonable, well-informed person conclude that a person's interest in another entity or organization could affect the person's exercise of a power or performance of a duty on behalf of TWRC.

2. GUIDING PRINCIPLES

- (a) It is critically important that TWRC preserve public confidence, trust and accountability because of its public mandate. Accordingly, TWRC expects that it, and all persons dealing with TWRC in any manner, will conduct themselves in accordance with principles of fair and honest dealings and in the absence of actual or perceived conflicts of interest. The Code sets out the standards of behaviour which will assist TWRC and its Directors in meeting these expectations. TWRC officers, employees and Contractors are also expected to comply with the standards of behaviour described in their code of conduct and conflict of interest procedures in order to meet these expectations.
- (b) The Code is not intended to conflict with the standards of behaviour set by the Government of Canada, the Province of Ontario or the City of Toronto. The principles set forth in the Code are to be regarded as illustrative and are not exhaustive. Directors are expected to meet both the letter and the spirit of the Code.
- (c) TWRC stakeholders are entitled to expect that the business and interests of TWRC will be conducted with efficiency, economy, fairness, impartiality and integrity.
- (d) You should understand that breach of the Code will be treated very seriously. For those who breach it, sanctions by the Board and/or body for which you are a representative, may be in the form of reprimand, suspension, dismissal or other legal action.

3. CONDUCT

3.1 Ethical Decision Making

You should consider the following questions as a guide to your everyday conduct and decision-making as a Director:

- (a) Is the decision or conduct legal? In addition, is it consistent with TWRC's mandate and policies? Is it ethical?
- (b) Is the decision or conduct in line with TWRC's publicly stated objectives and mission?
- (c) Is there a conflict of interest that should be disclosed? If you are uncertain whether a conflict exists, you should err on the side of disclosure.

3.2 Honesty and Integrity

The fundamental relationship between you and TWRC must be one of trust. TWRC expects you to observe the highest business and ethical standards. Essential to trust is a commitment to honesty, openness and integrity.

3.3 Compliance with Laws

- (a) You will carry out TWRC's contract policies in a manner that does not impair (or appear to impair) TWRC's ability to act impartially in the best interests of TWRC.
- (b) You will not engage in any illegal or improper conduct.
- (c) You will comply with all applicable laws.
- (d) You will not commit or condone an illegal act or instruct or encourage another person or party involved with TWRC to do so.
- (e) You will not create or participate in the creation of a false or misleading record.

3.4 Confidential Information

- (a) You will not disclose any Confidential Information even when you are no longer engaged as a Director.
- (b) You will at all times maintain the confidentiality of all information and records connected with the business of TWRC and will not reveal such information unless required by law or it otherwise becomes a matter of general public knowledge.
- (c) You will not use Confidential Information obtained by virtue of your engagement as a Director for your personal benefit, or to benefit friends, relatives or others.
- (d) You will comply with TWRC's policy on the storage, use and transmission of information when using TWRC's electronic mail system.
- (e) You will not divulge any information which could impair the negotiating position of TWRC or which could benefit the competitive position of one Contractor at the expense of another.
- (f) Personal information you receive will be dealt with in accordance with TWRC's Privacy Code.

3.5 Entertainment, Gifts and Favours

- (a) Contractors or service providers who do business with TWRC will have access to TWRC on equal terms.
- (b) You will not solicit or accept benefits, entertainment or gifts of any kind (including cash, preferred pricing, preferred loans, securities or secret commissions) or any other direct or indirect benefit as a condition of the exercise of your duties or as an inducement for performing an act associated with your duties or in exchange for preferential treatment.

- (c) You may accept gifts, hospitality or other benefits associated with your official duties and responsibilities if such gifts, hospitality or other benefits:
 - (i) are within the bounds of propriety, a normal expression of courtesy or are within the normal standards of hospitality;
 - (ii) would not bring suspicion on your objectivity and impartiality; and
 - (iii) would not compromise the integrity of TWRC.
 - (iv) have a value not exceeding \$100
- (d) Inappropriate gifts that you receive must be returned to the donor together with a letter making reference to the Code.
- (e) You will not directly or indirectly give, offer or agree to give or offer to an official or employee of the government of Canada, the government of Ontario or the City of Toronto (or to any member of his/her family) a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with any TWRC business or transaction relating to the government of Canada, the government of Ontario or the City of Toronto.
- (e)(f) If you experience or witness conduct contravening or not in compliance with the letter and spirit of the Code, or have reasonable grounds for believing that such conduct has occurred, you must immediately report the incident to the Chair or the Chair of the Governance Committee.

3.6 Non-Profit And Professional Associations

- (a) From time to time, you may reach positions of leadership in other entities or organizations where you may be viewed as spokespersons for such groups. In such situations, you must ensure that you are seen as speaking for your organization or as individuals, and not as a spokesperson of TWRC.
- (b) You will not use your association with TWRC to solicit donations of funds, goods, or services for (i) you personally; (ii) other individuals or organizations; or (iii) otherwise, from TWRC staff or from those contracting or otherwise involved with TWRC. However, this limitation will not otherwise limit you from soliciting funds, goods or services from such parties in the normal course and in a manner unrelated to and without any influence or benefit from your association with TWRC.
- (c) On any matter before the Board or a Committee of the Board affecting said entity or organization, you must declare that you may have a conflict of interest and you will not participate in the discussion or vote on the matter.

3.7 Use of TWRC's Assets

TWRC makes a substantial investment in physical, electronic and staff resources. The use of such resources for non-business purposes will be modest and reasonable in the circumstances, and will not in any way threaten or harm the reputation of TWRC.

3.8 Discussions with Media

You will recognize that the Chair and CEO are the primary spokespersons for the corporation with the media. If you have a discussion with the media you will endeavour to keep the Chair informed of such discussions and will not represent yourself as a spokesperson for the corporation. Presentations to other groups at seminars, conferences, and similar occasions as a representative of the corporation require the consent of the Chair.

3.9 Social Media

The Corporation takes no position on an individual's personal use of social networking media ("SNM") such as blogs, Twitter, Facebook, My Space, LinkedIn, YouTube, etc, except to the extent, if any, that the use involves the Corporation in some way. The Corporation respects the right of Board members to use SNM for freedom of expression consistent with the law.

The Corporation is committed to protecting the privacy of its Board members in relation to their work on behalf of the Corporation. The Corporation is equally committed to protecting its interest in proprietary information, intellectual property and reputation. Board members may not post on their personal SNM sites, any material owned by the Corporation, protected by copyright, trademark law or other intellectual property right.

Board members must ensure that the Corporation's reputation and interests are not impacted by their actions and are expected to use SNM responsibly and reasonably. Derogatory remarks regarding the Corporation should not be used and any commentary should be under the auspices of enhancing or protecting the Corporation.

3.10 Purchasing Residential Condominium Units or Real Estate within the Designated Waterfront Area

There are a number of developers selling residential condominium units in the marketplace within the Designated Waterfront Area.

Board Members (or any member of their immediate family) who decide to purchase a unit from a developer dealing with Waterfront Toronto must bring this to the attention of the CEO, the Chair and Board of Directors in order to have it determined if a conflict of interest (or perceived conflict of interest) could exist. This discussion must happen in advance of a purchase being made. If it is determined that a conflict does exist, or could be perceived to exist, that individual or their family member must forego the purchase.

For clarity and without limiting the generality of the foregoing, a conflict of interest will be determined to exist if any Board Member will benefit from any developer incentives

such as “early bird” pricing, other discounts or preferential positioning on sale prospect lists, etc. that are not then generally available to the public.

3.11 Interests in Development Lands within the Designated Waterfront Area

Except as may be permitted in Section 3.10, Directors, their immediate family members and business entities with which they are associated are prohibited from acquiring, holding or disposing of interests in land in the Designated Waterfront Area.

Any such acquisition, holding or disposition shall be deemed to constitute a Conflict of Interest for the purposes of this Code.

Directors are also required to disclose to the Board, the acquisition, holding or disposition of any interest in land that is adjacent to the Designated Waterfront Area by themselves, their immediate family members and business entities with which they are associated.

4. CONFLICT OF INTEREST PROCEDURES

4.1 Full Disclosure

You are responsible for taking such action as is appropriate to prevent real, potential or apparent conflicts of interest when contracting for goods or services. You are required to make a full and timely disclosure in writing or orally to the Board or the Governance Committee of your personal (or corporate) interest, connection or relationship:

- (a) as parties to contracts or proposed contracts with TWRC;
- (b) as directors or officers of entities or organizations that are parties to contracts or proposed contracts with TWRC;
- (c) if you hold a Material Interest in any entities or organizations that are parties to contracts or proposed contracts with TWRC; or
- (d) with any party when it is likely that they could be influenced, or could be perceived to be influenced by such personal (or corporate) interest, connection or relationship in carrying out their duties for TWRC.

4.2 Conflicts of Interest Situations

Conflict of Interest situations occur if:

- (a) you or a member of your household, or a corporation, trust, entity or other organization in which you are involved as a director, trustee or manager or over which you exert influence, have, whether directly or indirectly, a significant financial interest in, or obligation to,
 - (i) a contractor with TWRC (other than a Contractor with an existing relationship with TWRC at the time of your appointment), or
 - (ii) a party seeking to establish a Contractor relationship with TWRC;

- (b) you conduct business on behalf of TWRC with a Contractor of which your relative by blood or marriage is a principal officer or representative;
- (c) you or a member of your household, or a trust in which you have a legal or equitable interest or over which you exert influence, accepts gifts of more than a token or nominal value from an actual or potential contractor of TWRC; or
- (d) you have a personal (or corporate) interest, connection or relationship with a third party which is likely to cause influence, or could be perceived to influence your conduct in carrying out your duties for TWRC.

These situations are not exhaustive.

4.3 Material Effect

If a conflict may exist in principle, but would not as a practical matter have any material effect on TWRC, the Board, upon its own recommendation or upon the recommendation of the Governance Committee, may permit the condition to continue on such terms and conditions as the Board may determine. Any permission of this sort must be in writing or properly recorded in TWRC's corporate records.

4.4 Co-operation with TWRC

You must make a full disclosure to the Board or the Governance Committee if you engage in any business activity directly or indirectly:

- (a) which is in competition with TWRC; or
- (b) which in any other manner may be construed as being in conflict with TWRC's interests.

4.5 Suspected Conflicts of Interest

All suspected Conflicts of Interest will be investigated initially by the Chair. Matters investigated may be resolved by the Chair or referred by the Chair to the Board for resolution. Where necessary, matters may be referred to an Ethics Advisor for resolution.

4.6 Participation in Meetings

You will refrain from participating in any decision and will absent yourself from any meeting involving a discussion to approve any proposed Contractor where you have any relationship with or financial interest in such Contractor or where a member of your household or a relative by blood or marriage is a director or employee of such Contractor. You will recuse yourself from any meeting when the subject matter of the conflict is to be considered.

5. RESPONSIBILITY

You must adhere to the standards described in the Code and to the standards set out in TWRC's policies, guidelines and any legislation applicable to TWRC.

5.1 Review of Code

To demonstrate its determination and commitment to ethical business practices, TWRC asks you to review the Code annually. Please take the opportunity to discuss with the Chair or the Chair of the Governance Committee (or their designees for this purpose), any circumstances that may have arisen which could be an actual or potential violation of the standards of conduct described in the Code.

5.2 Reporting

Integrity, honesty and trust are essential elements of the business success of TWRC. If you know or suspect of any existence of a conflict of interest, fraud, mismanagement or theft from TWRC, please report it to the Governance Committee. You should have no fear of reprisal for any reporting.

6. WHERE TO SEEK CLARIFICATION

6.1 TWRC Resources

If you require advice on a particular matter or suspect improper activities, you should seek clarification from the Chair or the Chair of the Governance Committee (or their designees).

6.2 Ethics Advisor

From time to time, TWRC may retain a person to act as its ethics advisor (the "**Ethics Advisor**"). The Ethics Advisor will:

- (a) assist TWRC in maintaining appropriate conflict of interest and procurement policies;
- (b) advise TWRC as required on any issues relating to conflict of interest and the Code; and
- (c) be available to you (on a confidential basis) to discuss any questions or concerns you have in relation to the Code and/or how the Code applies to you.

In addition, TWRC's outside legal counsel is available to speak with you about the Code and how it applies to you.

7. ACKNOWLEDGEMENT

You acknowledge, and will acknowledge annually, that you have read and understood the Code, that you have complied with the Code to date and that you agree to conduct yourself in accordance with the Code as it applies to you.

Upon becoming a director of TWRC or one of its subsidiaries, and annually thereafter, you will complete the disclosure statement attached as Appendix A to this Code.

Signature

Printed Name

Date

APPENDIX A

TORONTO WATERFRONT REVITALIZATION CORPORATION

DISCLOSURE STATEMENT

To ensure that Toronto Waterfront Revitalization Corporation ("**TWRC**") maintains its accountability and integrity, avoids potential embarrassment and reduces any legal exposure resulting from conflict of interest situations arising in its business, we have established a database to record information to allow us to determine if conflicts of interest exist.

In this regard, and after you have read and signed TWRC's Code of Conduct and Conflict of Interest Procedures (the "**Code**"), you will complete this statement (the "**Disclosure Statement**") by checking off the appropriate items below and supplying any additional information that may be required to indicate whether you or any members of your immediate family (which for the purposes of this Disclosure Statement means your spouse (including your common law spouse, if any) and your respective (i) parents, their siblings and children, (ii) siblings and their children, (iii) children and (iv) grandchildren):

- (a) own or control through either direct or indirect ownership (other than ownership of 5% or less of the shares of an issuing corporation) any interest in a corporation, partnership, or other entity or organization which has interests in any manner whatsoever in the plan to revitalize the Toronto waterfront or on other TWRC activities; or
- (b) work, whether as agent, employee, officer, director, partner, consultant, advisor, provider of financial or technical support or assist in any capacity whatsoever, any corporation or other entity which has interests in any manner whatsoever in the plan to revitalize the Toronto waterfront or other TWRC activities.

In addition, please confirm that you have not directed, co-ordinated, or otherwise arranged for any contractual or financial commitment involving TWRC or are involved in any manner whatsoever with plans or potential plans in being involved in any manner whatsoever in the plans to revitalize the Toronto waterfront or other TWRC activities, whether as a partner, agent or otherwise, to be awarded to any corporation or other entity in which any member of your immediate family have an interest whether as owner, employee, officer, director, partner, consultant or advisor.

To ensure that our database remains up to date, we also require that if, after this form is complete, a change in circumstances would result in the information contained in this form being incorrect, you disclose this change in circumstances to the Chair of the Board of Directors of TWRC, or his or her designee, and provide the updated information as soon as possible.

1. I have read and signed the Code.
2. If I so requested, I was given the opportunity to discuss this Disclosure Statement with TWRC's outside legal counsel.

3. _____ No. Neither I, nor any member of my immediate family, has any interest as described above in any corporation, partnership or other entity which has interests in any manner whatsoever in the plan to revitalize the Toronto waterfront or other TWRC activities.

_____ Yes. As set forth on Schedule "A" to this Disclosure Statement, I and/or the following member(s) of my immediate family have an interest as described above in a corporation, partnership or other entity that has interests in the plan to revitalize the Toronto waterfront or other TWRC activities.

4. _____ No. I confirm that I have not co-ordinated, directed or otherwise arranged for any contractual commitment involving TWRC, whether in a partnering relationship or otherwise, to be awarded to any corporation or other entity in which any member of my immediate family has an interest whether as owner, employee, officer, director, partner, consultant or advisor.

_____ Yes. On the attached Schedule "A" of this Disclosure Statement, I provide details of my involvement, by way of co-ordination, direction or other arrangement, in any contractual commitment involving TWRC, whether as a partner, agent or otherwise, to be awarded to any corporation or other entity in which any member of my immediate family has an interest, whether as owner, employee, officer, director, partner, consultant or advisor.

Date

Signature

Name

Witness Signature

Witness Name

SCHEDULE "A"
REQUIRED DISCLOSURES