

# The Corporation of the Town of Grimsby

## By-law 20-74

### By-law to establish a Code of Conduct for the Council of the Town of Grimsby and Local Boards of the Municipality

Whereas Section 223.2(1) of the Municipal Act, 2001, S.O. 2001, c. 25, authorizes the municipality to establish codes of conduct for members of council of the municipality and of local boards of the municipality;

Now Therefore by its Council, the Corporation of the Town of Grimsby hereby enacts as follows:

#### **Preamble:**

Members of Council have the privilege of attaining elected office. That privilege carries significant responsibilities and obligations with respect to the public trust. In order to strengthen the role of Council and to enhance public trust with respect to the obligations of Members, this Code is established to govern and regulate the ethical conduct of all Members. This Code also supplements other existing Federal and Provincial legislation and by-laws and policies of the Town that govern Members' conduct which include but are not limited to the following:

- Criminal Code of Canada;
- Municipal Act, 2001;
- Municipal Conflict of Interest Act;
- Municipal Freedom of Information and Protection of Privacy Act;
- Occupational Health and Safety Act (Violence and Harassment in the workplace);
- Human Rights Code;
- Planning Act;
- Municipal Elections Act; and
- All by-laws and policies approved by the Council of the Town.

#### **1. Preamble and Principles**

- 1.1 The Code sets out and identifies the Town's expectations for its Members and establishes rules for appropriate conduct.
- 1.2 The public expects the highest moral and ethical standards of conduct from Members that it elects. The behaviour and actions of Members is expected to reflect the principles of accountability, transparency, and public trust. Adherence to these standards will protect and maintain the Town's reputation and integrity.

1.3 The key statements of principle that underline this Code are as follows:

- a) The decision-making process of Council is open, accessible, and equitable, and respects the Town's governance structure;
- b) Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- c) Members are expected to perform their duties and arrange their private affairs in a manner that promotes public confidence and which will bear close public scrutiny;
- d) Members shall seek to serve the public interest by upholding both the letter of the law and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council of the Town.
- e) Public office is not to be used for the personal financial benefit of any Member;
- f) Town residents should have confidence in the integrity of their local government and of their Members; and
- g) The conduct of each Member demonstrates fairness, respect for differences, and a duty to work with other Members together for the common good.

## **2. Purpose**

2.1 The purpose of this Code is:

- a) To set out clear expectations of the behaviour of Members in accordance with the principles of the Code;
- b) To provide information to the public as to the behaviour they can expect from their Members;
- c) To provide guidance to Members in the conduct of their duties as selected officials; and
- d) To provide a mechanism for responding to alleged breaches of the Code.

2.2 The clear statement of these standards and expectations should serve to enhance the public's confidence that the elected officials of the Town will operate with integrity and fairness to ensure responsible and accountable conduct by the Member.

## **3. Definitions**

3.1 In this Code:

- a) "applicant" means a person who has applied for an investigation by the Integrity Commissioner of an alleged contravention of the Municipal Conflict of Interest Act;
- b) "application" means a written request for an investigation with respect to an alleged contravention of the Municipal Conflict of Interest Act;

- c) "Clerk" means the Clerk of the Town or his/her designate;
- d) "Code" means the "Code of Conduct for Council Members" as established by Council pursuant to Section 223.2 of the Municipal Act, 2001;
- e) "complainant" means a person who has filed a complaint in accordance with this Code;
- f) "complaint" means a written objection filed with the Integrity Commissioner pursuant to this Code respecting a Member; received in confidence by the Town that the Town is prohibited from disclosing or
- g) "confidential information" means any information in the possession of or has decided to refuse to disclose under the Municipal Freedom of Information and Protection of Privacy Act or other legislation, which includes but is not limited to:
  - i. Information that is disclosed or discussed at a meeting that is closed to the public pursuant to subsection 239(2) of the Municipal Act, 2001;
  - ii. Information that is given verbally in confidence in preparation for or following a meeting that is closed to the public pursuant to subsection 239(2) of the Municipal Act, 2001;
  - iii. Personal information as defined in subsection 2(1) of the Municipal Freedom of Information and Protection of Privacy Act;
  - iv. Advice that is subject to solicitor-client privilege or information that concerns litigation or potential litigation, including matters before administrative tribunals, affecting the Town;
  - v. Information that concerns any confidential matters pertaining to personnel, labour relations, or items under negotiation;
  - vi. Price schedules in contract tenders and information about suppliers provided in contract tenders or requests for information, quotations or proposal submissions, if such information is given in confidence, implicitly or explicitly;
  - vii. Information circulated to Members and marked "confidential";
  - viii. Sources of complaints where the identity of the complainant is given in confidence; or
  - ix. Any information lawfully determined by the Council to be confidential or required to remain or be kept confidential by legislation or order.
- h) "Conflict of Interest" means a situation in which a Member has competing interests or loyalties between the Member's personal or private interests and his or her public interests as an elected representative such that it might influence his or her decision in a particular matter;
- i) "Council" means the Council of The Corporation of the Town of Grimsby;
- j) "gift" means cash, fees, admission fees, advances, vouchers, invitations, objects of value, services, offers, personal benefits, travel and accommodation or entertainment that are provided to or received by a

- Member, that could be seen to be connected directly or indirectly to the performance of the Member's duties;
- k) "harassment" or "harass" involves engaging in a course of behaviour, limited to any behaviour, conduct or comment by a Member that is directed at or comment or conduct, whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwelcome. It includes but is not is offensive to another person:
    - i. on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
    - ii. which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate, or ridicule the recipient;
  - l) "Integrity Commissioner" means the person appointed by Council pursuant to Section 223.3 of the Municipal Act, 2001;
  - m) "Local Board" is hereby defined as in Section 1(1) and Section 223.1 of the Municipal Act, 2001;
  - n) "meeting" means any legally-constituted meeting of Council or a Local Board;
  - o) "Member" means a member of Council including the Mayor, or a member of a Local Board;
  - p) "Municipal property" includes, but is not limited to, all real and personal property, facilities, vehicles, equipment, supplies, services, staff, documents, intellectual property, computer programs, or technological innovations belonging to the Town;
  - q) "Non-Pecuniary interest" means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member's decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity;
  - r) "social media" means web-based applications and on-line forums that allow users to interact, share, and publish content, such as text, links, photos, audio, and video; and
  - s) "Staff" includes anyone employed by the Town of Grimsby including full-time, part-time, temporary or seasonal Staff, contract Staff, students, and volunteers (in accordance with the Municipal Act, 2001, Members are not considered employees of the Town).
  - t) "Town" means The Corporation of the Town of Grimsby;

#### **4. Conduct of Members**

4.1 In all respects, Members shall:

- a) Make every effort to act with good faith and care; of the Council or any committee and in accordance with the Town's Procedural;
- b) Conduct themselves with integrity, courtesy and respectability at all meetings By-law or other applicable procedural rules and policies;
- c) Seek to advance the public interest with honesty and to avoid conflicts of interest and unethical behaviour;
- d) Seek to serve their constituents in a conscientious and diligent manner;
- e) Respect the individual rights, values, beliefs and personality traits of any other person;
- f) Refrain from making statements the Member knows, or ought reasonably to know, to be false or with the intent to mislead Council or the public;
- g) Accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings;
- h) Make it clear that he or she is expressing a personal opinion when expressing disagreement with a decision of Council; and
- i) Refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member.

## **5. Compliance with the Code of Conduct**

5.1 This Code applies to every Member. This Code shall be applied to members of Local Boards, who are not members of Council, with necessary modifications applied in the discretion of the Integrity Commissioner.

5.2 A Member shall:

- a) Observe and comply with every provision of this Code, as well as all other policies and procedures adopted or established by Council affecting the Member, acting in his or her capacity as a Member;
- b) Respect the integrity of the Code and inquiries and investigations conducted under it; and
- c) Co-operate in every way possible in securing compliance with the application and enforcement of the Code.

5.3 No Member shall:

- a) Undertake any act of reprisal or threaten reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person;
- b) Obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this Code, in the carrying out of such responsibilities, or pursuing any such objective; or

- c) Use the influence of their office for any purpose other than for the lawful exercise of their official duties for municipal purposes.

## **6. Transparency and Openness in Decision Making**

### **6.1 Members shall:**

- a) Conduct Council business and their duties in an open and transparent manner so that the public can understand the process and rationale which has been used to reach decisions;
- b) Ensure the public has input and receives notice regarding Council's decisionmaking processes in accordance with the Procedure By-law;
- c) Ensure compliance with the Municipal Act, 2001; Municipal Conflict of Interest Act; Municipal Freedom of Information and Protection of Privacy Act, and other applicable legislation regarding open meetings, accountability and transparency.

## **7. Access to Information and Confidentiality**

Through the course of their official duties, Members may have access to Confidential Information. Generally, the Municipal Freedom of Information and Protection of Privacy Act restricts or prohibits disclosure of information received in confidence from third parties of a corporate, financial, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor client privilege.

### **7.1 A Member shall:**

- a) Only be entitled to have access to information in the possession of the Town that is relevant to matters before Council or a Committee or that is relevant to his or her role as a Member of Council. Otherwise, he or she shall have the same access rights to information as any member of the public; and
- b) Have a continuing obligation to keep information confidential, even if the Member ceases to be a Member.

### **7.2 No Member shall:**

- a) Obtain access, or attempt to gain access, to confidential information in the custody or control of the Town except in accordance with the Municipal Freedom of Information and Protection of Privacy Act;
- b) Disclose, release or publish by any means, including social media any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;

- c) Provide to any other person to disclose, release, or publish any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;
- d) Use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body; or
- e) Disclose or discuss, through written, electronic or verbal communication, to any individual or corporate third party, any information that has been or will be discussed at a closed session meeting of Council or a Committee until such time that Council or a Committee has determined or has been advised by staff that the matter, or any part of the matter, can be made public subject to review by the head or designate under the Municipal Freedom of Information and Protection of Privacy Act or if directed to do so by a court.

## **8. Staff Relations**

8.1 Section 8 shall be read in conjunction with the Town's By-law 19-18: A By-law to establish a Council-Staff partnership and relationship policy.

8.2 Only Council as a whole and no single Member, including the Mayor, has the authority to direct staff, approve budgets, policy, and other such matters, unless specifically authorized by Council.

8.3 A Member shall:

- a) Respect the professional competence of staff and acknowledge that staff is required to provide objective advice while remaining neutral, carry out directions of council as a whole, and administer the policies of the Town without undue influence from any Member.
- b) Respect the administrative structure ("chain of command") and direct any of the Town. Staff performance concerns through the Chief Administrative Officer as the person responsible for the general control and management of the affairs

8.4 No Member shall:

- a) Maliciously or falsely impugn, or without sufficient cause criticize, the professional or ethical reputation of any staff.
- b) Compel staff to engage in partisan political activities, or subject staff to threat or discrimination for refusing to engage in such activities.
- c) Use their authority or influence to threaten, intimidate, or coerce staff or interfere with the lawful exercise of the duties of staff or the professional or legal obligations of staff.

## 9. Gifts

9.1 No Member shall accept a gift or personal benefit that is connected directly or indirectly with the performance of their duties unless authorized by one of the exceptions below. For these purposes, a gift, hospitality or benefit paid to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly with the performance of the Member's duties of office is deemed to be a gift to that Member.

9.2 Notwithstanding Section 9.1, the following exceptions are applicable:

- a) Gifts received as an incident of protocol or social obligation that normally accompany the responsibilities of elected office;
- b) Gifts that are not connected directly or indirectly with the performance or duties of office;
- c) Compensation authorized by law;
- d) A reimbursement of reasonable expenses incurred in the performance of activities connected with a legitimate municipal purpose;
- e) Political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
- f) Services provided without compensation by persons volunteering their time;
- g) A suitable memento of a function with nominal value, honouring the Member or the Town; provincial, regional and local governments or political subdivisions of Food, lodging, transportation and entertainment provided by them, and by the federal government or the government of a foreign country; and
- h) Food, beverages and/or admission fees provided by banquets, receptions or similar events if attendance is the result of protocol or social obligation consistent with the responsibilities of office, and the person extending the invitation has done so infrequently and that person or a representative of the organization is in attendance.
- i) A Member who has received and accepted a gift or benefit pursuant to Section 9.2 shall file a disclosure of the gift or benefit indicating the person, body or entity from which it was received together with the estimated value of the gift or benefit. The list shall be provided to the Town Clerk within 30 days of receiving the gift and shall be a matter of public record and posted to the Town's website.
- j) No Member shall seek or obtain by reason of his or her office any personal privilege or advantage with respect to municipal services not otherwise available to the general public and not connected directly or indirectly to the performance of the Member's duties.



## **10. Use of Municipal Property**

10.1 A Member shall:

- a) Only use Municipal property for activities relevant to their role as a Member; and
- b) Not obtain any personal financial gain or advantage from the use of Municipal property.

## **11. Political Activity**

11.1 Members may not use Municipal property for any type of political activity during a municipal election and at any other time, including promoting or opposing the candidacy of any person to elected office in any municipal, provincial and federal campaign

## **12. Harassment**

12.1 No Member shall harass any other Member, any staff, or any member of the public.

12.2 A Member shall observe and comply with any workplace harassment and workplace violence policies of the Town.

## **13. Encouragement of Respect for the Town and its By- Laws, Policies and Procedures**

13.1 A Member shall:

- a) Encourage the public, prospective contractors and members of the public, and their colleagues to abide by the Town's by-laws, policies and procedures, including this Code; and
- b) Accurately communicate the decisions of Council even if they disagree with the majority decision of Council, and by so doing affirm the respect and integrity in the decision-making processes of Council.

## **14. Social Media**

14.1 A Member shall:

- a) Adhere to any and all Town policies and guidelines, regarding social media use; and
- b) Always identify themselves without any attempt to cover, disguise or mislead as to their identity or status as an elected representative of the Town when using social media.

14.2 No Member shall use social media to publish anything that is dishonest, untrue, offensive, disrespectful, constitutes harassment, or is defamatory or misleading in any way.

## **15. Role of the Integrity Commissioner**

15.1 The Town shall appoint an Integrity Commissioner under Section 223.3 of the Municipal Act, 2001 who is an independent officer and who will report directly to Council and be responsible for carrying out his or her functions in accordance with the Municipal Act, 2001 and any other functions assigned by Council, in an independent manner.

15.2 The Integrity Commissioner shall provide the following services.

- a) The application of the Code.
- b) The application of any procedures, rules and policies of the Town and
- c) The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Local Boards governing the ethical behaviour of Members.
- d) Interest Act to Members.
- e) Requests from Members for advice respecting their obligations under the Code applicable to the Member.
- f) Requests from Members for advice respecting their obligations under a procedure, rule or policy of the Town or of the Local Board, as the case may be, governing the ethical behaviour of Members.
- g) Requests from Members for advice respecting their obligations under the Municipal Conflict of Interest Act.
- h) The provision of educational information to Members, the Town and the public about the Code and about the Municipal Conflict of Interest Act.
- i) Any further services as may be set out within the contract for the provision of services between the Town and the Integrity Commissioner.

## **16. Investigations**

16.1 If a Member of the public or Staff believes a Member has contravened the Code of Conduct, they should submit a written complaint in accordance with the established protocol set out in Appendix "A".

16.2 If a Member of the public or Staff believes a Member has contravened any of section(s) 5, 5.1, or 5.2 of the Municipal Conflict of Interests Act, they should submit a written complaint in accordance with the protocol set out in Appendix "B". The provisions of sections 5, 5.1, and 5.2 of the Municipal Conflict of Interests Act are set out in Appendix "C".

**17. Conflicts of Interest**

17.1 Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Town and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.

**18. Repealing of By-law**

18.1 That By-law 14-73, as amended, be repealed.

Read a first time this 5 day of October, 2020.

Read a second and third time and finally passed this 5 day of October, 2020.

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J.A. Jordan, Mayor

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S. Kim, Town Clerk

**“Appendix A”**

**Council Code of Conduct Complaint Protocol**

## **“Appendix A”**

### **Council Code of Conduct**

#### **Complaint Protocol**

##### **A. Informal Complaint Procedure**

Council, a member of Council or a member of the public who has identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct who wishes to address this behaviour or activity through the informal complaint procedure shall:

1. File a written request and supporting affidavit with the Clerk, noting grounds for belief of an alleged contravention including, dates, times, locations, other persons present and any other relevant information.
2. The Clerk shall provide to the subject member of Council a copy of the allegation without disclosing the identity of the complainant.
3. The member of Council will be provided ten working days in which to provide the Clerk with a written response to the allegation. ten working days in which to:
4. The complainant will be provided a copy of the member’s response and be given
  - a) Provide a written response to the Clerk stating satisfaction with the response;
  - or,
  - b) Provide a written response to the Clerk stating dissatisfaction with the response and the need to pursue the matter in accordance with the Formal Complaint Procedure of the protocol.
5. The Clerk shall advise the member of the complainant’s position.

Anyone wishing to file a request for an investigation is encouraged to initially pursue the Informal Complaint Procedure as a means of stopping and remedying the behaviour or activity that is inconsistent with the Code of Conduct. However, it is not a precondition or prerequisite that the complainant pursue the Informal Complaint Procedure prior to pursuing the Formal Complaint Procedure.

##### **B. Formal Complaint Procedure**

Under Section 223.4(1) of the Municipal Act, 2001, Council, a Member, or a member of the public may request the Integrity Commissioner (the “IC”) to conduct an inquiry about whether a Member has contravened the Council Code of Conduct.

###### **1. Request for Inquiry**

A request for an inquiry shall be in writing.

- a) All requests for an inquiry shall be signed by an identifiable individual (which includes the signing officer of an organization).
- b) A request for an inquiry shall set out all reasonable and probable grounds for the allegation that the Member has contravened the Council Code of Conduct and shall include a supporting affidavit that sets out the evidence in support of the complaint.
- c) Staff in the office of the Town Clerk, who are commissioners for taking affidavits, are authorized to swear the supporting affidavit.
- d) All requests must include a signed Consent and Confidentiality Agreement.
- e) All requests must be submitted within six weeks of the complainant becoming aware of the alleged contravention, and no more than six months after the alleged violation.
- f) The fee to initiate a formal request is \$200.00, payable in cash, or certified cheque to the Town. This fee will be refunded if the Integrity Commissioner determines that the complaint warrants proceeding to the investigation stage.
- g) In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted to the IC and the IC shall not report to the Town about whether or not a Member contravened the Council Code of Conduct.
- h) If the IC has not completed an inquiry into a potential Council Code of Conduct violation before Nomination Day for a regular election, the IC shall terminate the inquiry on that day. If the IC terminates an investigation, the IC shall not start another investigation into the matter unless, within 6 weeks after Voting Day in a regular election, the person who made the request or the Member or former Member whose conduct is concerned makes a written request to the IC that the inquiry be commenced.

## **2. Initial Review by the Integrity Commissioner**

- a) The request shall be filed with the Town Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, within the time limitation and is a complaint with respect to non-compliance with the Council Code of Conduct and is not covered by other legislation or other Council policies.
- b) If the request does not include the required affidavit, the request will be deemed incomplete and the Town Clerk will return the request to the complainant.
- c) If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with the Council Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall advise the complainant in writing as follows:

- a) If the complaint is, on its face, an allegation of a contravention of the Municipal Conflict of Interest Act, the IC will investigate it as outlined in Appendix “B”.
- b) If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the IC shall refer it to the appropriate authorities and advise the complainant that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police service.
- c) If the complaint on its face relates to non-compliance with the Municipal Freedom of Information and Protection of Privacy Act, the Complainant shall be advised that the matter will be referred to the Town Clerk for review.
- d) If the complaint on its face is with respect to non-compliance with a different Council policy, with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure.
- e) In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.
- f) The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

### **3. Integrity Commissioner Investigations**

- a) If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- b) The IC shall report to Council that a specific complaint has been terminated, but shall not disclose confidential information that could identify a person concerned.

### **4. Investigation & Settlement**

- a) If a complaint has been classified as being within the IC’s jurisdiction and not rejected under section 2 or 3, the IC shall investigate and may attempt to settle the complaint.
- b) Section 223.4(2) of the Municipal Act, 2001, authorizes the IC to exercise the powers of a commission under Parts I and II of the Public Inquiries Act.
- c) When the Public Inquiries Act applies to an investigation of a complaint, the IC shall comply with the procedures specified in that Act and this Complaint Protocol, but if there is a conflict between a provision of the Complaint Protocol and a provision of the Public Inquiries Act, the provision of the Public Inquiries Act prevails.

- d) Bearing in mind the confidentiality requirements of the Municipal Act, 2001, it will be at the discretion of the IC whether to disclose the identity of the complainant to relevant parties in order to facilitate the investigation. Any party to this investigation who is made aware of the identity of the complainant is bound to maintain the secrecy of the complainant and is not to use this information for any purpose other than to provide a full answer or defence to the complaint.
- e) The IC will proceed as follows, except where otherwise required by the Public Inquiries Act:
  - a) Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit be filed within ten days or such longer period as the IC may authorize in writing; and
  - b) Serve a copy of the response provided by the Member upon the complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- f) Section 33 of the Public Inquiries Act allows the IC to require anyone relevant to the complaint to give evidence and to access and examine any information relevant to the complaint and to enter any work location of the Town relevant to the complaint for the purpose of investigation and settlement. The IC is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the Town.
- g) The IC shall not issue a report finding a violation of the Council Code of Conduct on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.
- h) The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

## **5. Final Report**

- a) The IC shall report to the complainant and the Member, generally no later than 90 days after the making of the complaint.
- b) Where the complaint is sustained in whole or in part, the IC shall also report to Council outlining their findings and/or recommended penalty and the terms of any settlement.
- c) Where the complaint is dismissed, other than in exceptional circumstances, the IC shall not report to Council except as part of an annual or other periodic report.



- d) Any recommended corrective action or penalty must be permitted by the Municipal Act, 2001, and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated.

## **6. Member Not Blameworthy**

- a) If the IC determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the IC shall so state in the report and shall make recommendations with respect to any corrective action, having regard to the findings.

## **7. Copies**

- a) The IC shall give a copy of the report to the complainant and the Member that was involved.

## **8. Report to Council**

- a) The Town Clerk shall process all report of the IC to the next available meeting of Council. The report shall remain confidential until the matter has received complete and final disposition by the IC and has been reported out to Council.

## **9. Council Review**

- a) Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- b) Section 223.4(5) of the Municipal Act, 2001, allows the Town to impose either of the following penalties on a Member if the Commissioner reports to the Town that, in their opinion, the Member has contravened the Council Code of Conduct:
  - a) A reprimand.
  - b) Suspension of the remuneration paid to the Member in respect of their service as a Member, for a period of up to 90 days.

## **10. Confidentiality**

- a) Section 223.5(1) of the Municipal Act, 2001, provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- b) If the IC provides a periodic report to the Town on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.

- c) If the IC reports to the Town their opinion about whether a Member has contravened the Council Code of Conduct, the IC may disclose in the report such matters as in the IC's opinion are necessary for the purpose of the report (including the name of the Member whose conduct was investigated).

#### **11. Request for Reimbursement of Member's Costs**

- a) A member of Council who is party to a complaint under this procedure where the findings of the Integrity Commissioner do not substantiate a contravention of the Code of Conduct or that the member was not blameworthy as set out in section 6 of this Protocol, may apply to the Town for reasonable reimbursement and relevant expenses. Such application shall be referred to the Town's solicitor for a ruling on whether reimbursement under the By-law is applicable.

**“Appendix B”**  
**Conflict of Interest**  
**Investigation Protocol**

## **“Appendix B”**

### **Conflict of Interest**

#### **Investigation Protocol**

Under Section 223.4,1(2) of the Municipal Act, 2001, a Member, an elector as defined in the Municipal Conflict of Interest Act, or a member of the public demonstrably acting in the public interest, may request the Integrity Commissioner (the “IC”) to conduct an inquiry about whether a Member has contravened Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act, as set out in Appendix “C”.

#### **1. Request for Inquiry**

- a) A request for an inquiry into a potential contravention of Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act shall be in writing and may only be made within six weeks of the complainant becoming aware of the alleged contravention.

**NOTE:** If both of the following are satisfied, the six-week limitation period does not apply: 1) The complainant became aware of the alleged contravention within the period starting six weeks before Nomination Day for a regular election and ending on Voting Day; and, 2) The complainant makes the request for an inquiry within six weeks after Voting Day in a regular election.

- b) All requests shall be signed by an identifiable individual (including the signing officer of an organization).
- c) A request shall set out all reasonable and probable grounds for the allegation that the Member has contravened Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act and shall include a supporting affidavit that sets out the evidence in support of the complaint.
- d) Staff in the office of the Town Clerk, who are commissioners for taking affidavits, are authorized to swear the supporting affidavit.
- e) In a municipal election year, starting on Nomination Day and ending on Voting Day, no requests for an inquiry shall be submitted and the IC shall not report to the Town about whether or not a Member of Council contravened the Municipal Conflict of Interest Act.

#### **2. Initial Review by Integrity Commissioner**

- a) The request shall be filed with the Town Clerk who shall forward the matter to the IC for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.

- b) If the request does not include the required affidavit, the Town Clerk shall not forward the request to the IC until one is provided.
- c) If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act or the complaint is covered by other legislation or a complaint procedure under another Council policy, the IC shall advise the Complainant in writing as follows:
  - a) If the complaint is, on its face, an allegation of a contravention of the Council Code of Conduct, the IC will investigate it as outlined in Appendix “A”.
  - b) If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the Integrity Commissioner shall refer it to the appropriate authorities and advise the complainant that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police service;
  - c) If the complaint on its face relates to non-compliance with the Municipal
  - d) Freedom of Information and Protection of Privacy Act, the complainant shall be advised that the matter will be referred to the Town Clerk for review.
  - e) If the complaint on its face is with respect to non-compliance with a different Council policy, with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
  - f) In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the IC to process, with any additional reasons and referrals as the IC considers appropriate.
- d) The IC shall report annually to Council on complaints made that were determined not to be within the jurisdiction of the IC, but shall not disclose information that could identify a person concerned.

### **3. Integrity Commissioner Investigations**

- a) If the IC is of the opinion that the referral of a matter to them is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the IC shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- b) Other than in exceptional circumstances, the IC shall not report to Council on any complaint described in subsection (i) except as part of an annual or other periodic report.

### **4. Investigation & Settlement**

- a) If a complaint has been classified as being within the IC’s jurisdiction and not rejected under Section 2 or 3, the IC shall investigate and may attempt to settle the complaint.

- b) The IC shall complete their investigation within 180 days after the date of submission of the complaint.
- c) Section 223.4(2) of the Municipal Act, 2001, authorizes the IC to elect to exercise the powers of a commission under Parts I and II of the Public Inquiries Act.
- d) When the Public Inquiries Act applies to an investigation of a complaint, the IC shall comply with the procedures specified in that Act and this Complaint Protocol, but if there is a conflict between a provision of the Complaint Protocol and a provision of the Public Inquiries Act, the provision of the Public Inquiries Act prevails.
- e) The IC will proceed as follows, except where otherwise required by the Public Inquiries Act:
  - a) Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit be filed within ten days or such longer period as the IC may authorize in writing; and,
  - b) Serve a copy of the response provided by the Member upon the complainant with a request for a written reply within ten days or such longer period as the IC may authorize in writing.
- f) Section 33 of the Public Inquiries Act allows the IC to require anyone relevant to the complaint to give evidence and to access and examine any information relevant to the complaint and to enter any work location of the Town relevant to the complaint for the purpose of investigation and settlement. The IC is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the Town. The IC may conduct a public meeting to discuss the inquiry.
- g) Upon completion of the inquiry, the IC may, if they deem it appropriate, apply to a judge under Section 8 of the Municipal Conflict of Interest Act, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act.
- h) After making their decision as to whether or not to apply to a judge as set out above, the IC will provide the Town Clerk, the complainant and the Member with written reasons for the decision. Upon request, the Town Clerk will also provide a copy of the written reasons to a member of the public.
- i) The City shall pay any costs incurred by the IC in making its application to a judge as set out above.
- j) The IC may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during their investigation.

## 5. Final Report

- a) The IC's written submission to the Town Clerk outlining their decision to not apply to a judge under Section 8 of the Municipal Conflict of Interest Act, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act shall constitute the final report on the matter.
- b) Where the IC has applied to a judge under Section 8 of the Municipal Conflict of Interest Act, for a determination as to whether the Member has contravened Section 5, 5.1, or 5.2 of the Act, the resulting court decision shall constitute the final report on the matter. The Town Clerk shall post this court decision on the Town's website.

## 6. Confidentiality

- a) Section 223.5(1) of the Municipal Act, 2001, provides that the IC shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties.
- b) If the IC provides a periodic report to the Town on their activities, the IC may summarize advice they have given but shall not disclose confidential information that could identify a person concerned.
- c) The IC may disclose any information that is, in their opinion necessary for:
  - a) the purposes of a public meeting into an inquiry as to whether a Member has contravened Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act;
  - b) in an application to a judge for a determination as to whether a Member has contravened Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act;and,
  - c) in the written reasons provided by the IC as to why they did/did not apply to a judge as to whether a Member has contravened Section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.

**“Appendix C”**

**Sections 5, 5.1, and 5.2 of the  
Municipal Conflict of Interest Act**



## **Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50**

### **DUTY OF MEMBER**

When present at meeting at which matter considered

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting the meeting or the part of the meeting during which the matter is under consideration.

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave R.S.O. 1990, c. M.50, s. 5 (2).

### **Exception, consideration of penalty**

(2.1) The following rules apply if the matter under consideration at a meeting or a part of a meeting is to consider whether to suspend the remuneration paid to the member under subsection 223.4 (5) or (6) of the Municipal Act, 2001 or under subsection 160 (5) or (6) of the City of Toronto Act, 2006:

Despite clauses (1) (b) and (c), the member may take part in the discussion of the matter, including making submissions to council or the local board, as the case may be, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting. However, the member is not permitted to vote on any question in respect of the matter.

Despite subsection (2), in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration. 2017, c. 10, Sched. 3, s. 3.

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1). R.S.O. 1990, c. M.50, s. 5 (3).

Section Amendments with date in force (d/m/y) [2017, c. 10, Sched. 3, s. 3](#) - 01/03/2019

### **Written statement re disclosure**

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be. 2017, c. 10, Sched. 3, s. 4.

Section Amendments with date in force (d/m/y) [2017, c. 10, Sched. 3, s. 4](#) - 01/03/2019

### **Influence**

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter. 2017, c. 10, Sched. 3, s.

### **Exception**

(2) However, if a municipality delegates a power to suspend the remuneration paid to a member under subsection 223.4 (5) of the Municipal Act, 2001 or subsection 160 (5) of the City of Toronto Act, 2006 to a person or body, and the person or body is considering exercising that power with respect to a member, subsection (1) of this section does not prevent the member from attempting to influence any decision or recommendation of the person or body that results from consideration of the matter. 2017, c. 10, Sched. 3, s. 4.

Section Amendments with date in force (d/m/y)

[2017, c. 10, Sched. 3, s. 4](#) - 01/03/2019