



THE CORPORATION OF THE TOWN OF WHITBY

Council Code of Conduct

A by-law to establish a code of conduct for Members
of Council of the Town of Whitby.

By-law # 7245-17

Consolidated Version

As Amended by By-laws:

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Schedule A to By-law # 7245-17

Council Code of Conduct Statement

The Council Code of Conduct is a public declaration of principles of good conduct and ethics reasonably expected from Members in the performance of their duties and responsibilities as elected representatives.

Purpose

The principal objective of this Council Code of Conduct is to outline the behaviours expected of all Members to ensure that:

- Council works as a strong, respectful team with a positive vision;
- All municipal affairs are conducted with professionalism and integrity;
- Council is transparent, accessible and supports effective public consultation and engagement;
- Workplace morale remains a priority in order to facilitate a collaborative and creative work environment that engages the abilities of all staff members to solve problems, accomplish new things and deliver best outcomes to residents;
- Decisions are made through appropriate channels of government structure;
- Public office is not to be used for personal gain; and
- The conduct of Members of Council is of the highest standard.

Scope

This policy applies to the Mayor and all Members of the Council of the Town of Whitby. It is incumbent upon Members of Council to be aware of, and understand, statutory obligations imposed upon municipal Council as a whole, as well as on Members of Council individually. This Council Code of Conduct is supplementary and should be viewed in conjunction with existing legislation and policies.

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1 Definitions

- 1.1 **Complaint** means an alleged contravention of the Code submitted to an Integrity Commissioner appointed by the Council of the Town of Whitby.
- 1.2 **Code** means this Council Code of Conduct adopted by the Council of the Town of Whitby.
- 1.3 **Confidential Information** means any information that is of a personal nature concerning Town employees or clients or information that is not available to the public, such as third party technical, commercial or financial information which, if disclosed, could result in loss or damage to the Town or could give the person to whom it is disclosed an advantage and includes, but is not limited to:
- a) Information that is circulated to Members of Council and marked as "confidential";
 - b) Information that is discussed at a closed session of Council;
 - c) A record or part of a record that the Municipal Freedom of Information and Protection of Privacy Act, as amended, provides the head shall refuse to disclose;
 - d) Information regarding personal matters about an identifiable individual, including personnel matters;
 - e) Information relating to legal matters and negotiations;
 - f) Information regarding complaints where the identity of the complainant is given in confidence; and,
 - g) Information which may prejudice the reputation of the Town, its officers and employees or its effective operation.
- 1.4 **Employee** means a person employed by the Town of Whitby, including those on contract, but does not include Members.
- 1.5 **Family Member** means a child, parent, and/or spouse as defined by the Municipal Conflict of Interest Act, R.S.O. 1990.
- 1.6 **Gift or Benefit** means anything of value including but not limited to cash or monetary equivalent, fee, object of value, service, meal, travel, accommodation or entertainment.
- 1.7 **Integrity Commissioner** means the officer appointed by Council pursuant to Section 223.3 of the Municipal Act, 2001.
- 1.8 **Member** means the Mayor or Member of the Council of the Town of Whitby.
- 1.9 **Office** means the authority and duties attached to the position of being an elected Member.
- 1.10 **Pecuniary Interest** means an interest, direct or indirect, as defined under the Municipal Conflict of Interest Act, R.S.O. 1990.
- 1.11 **Town Clerk** means the Clerk for the Corporation of the Town of Whitby or the Clerk's designate.

- 1.12 Town Property** means items, services, or resources which are the property of the Town of Whitby including but not limited to: materials, equipment, vehicles, facilities, technology, intellectual property, Town-owned images, logos and supplies.

2 Responsibilities

- 2.1** Every Member of Council shall observe and comply with every provision of this Code of Conduct, as well as all applicable legislation and other policies and procedures adopted or established by Council.
- 2.2** The roles of Council, the Head of Council and Municipal Administration are outlined in Section 224, 225, and 227 of the Municipal Act, 2001, as amended, or as established by the Council of the Town of Whitby from time to time.

3 Conduct at Meetings

- 3.1** Every Member shall conduct himself or herself properly and in a civil manner at Council, Committee and other meetings and in accordance with the provisions of the Town's Procedure By-Law, this Code and other applicable policies or laws.

4 Conduct Respecting Others

- 4.1** Every Member of Council has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment.
- 4.2** The Ontario Human Rights Code and the Occupational Health and Safety Act recognize the right to freedom from harassment. Under the Ontario Human Rights Code and the Town's Respect in the Workplace Policy, all persons are to be treated with dignity and respect in the workplace in an environment free of abuse, discrimination and of personal and/or sexual harassment..
- 4.3** Harassment, whether it occurs inside or outside the workplace but is related to the work environment or activities of elected office, is considered to be harassment and is inappropriate behaviour for the purpose of this Code of Conduct.
- 4.4** Any complaints of abuse, bullying, intimidation or harassment will be investigated in accordance with the procedures set out in the Town's Respect in the Workplace Policy and may be subject to an investigation under this Code.

5 Conduct Respecting Staff

- 5.1** Under the direction of the CAO and Senior Management Team, and in accordance with the decisions of Council, Employees are required to serve the municipal corporation as a whole.

- 5.2 Further to the Council-Staff Relations Policy, every Member shall be respectful of the role of Employees to provide advice based on political neutrality and objectivity and without undue influence from any Member. Accordingly, no Member shall injure or impugn the professional or ethical reputation of any Employee. Every Member shall show respect for Employees and for their professional capacities and responsibilities.
- 5.3 No Member shall compel any Employee to engage in partisan political activities, or subject any Employee to threat or discrimination for refusing to engage in such activity.
- 5.4 No Member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any Employee or interfering with that person's duties, including the duty to disclose improper activity.

6 Council / Staff Working Relationships

- 6.1 Members are elected officials and representatives of their constituents. Employees are ultimately accountable to the Chief Administrative Officer and are responsible for implementing the decisions of Council, and ensuring the efficient and effective operation of municipal services.
- 6.2 Members and Employees will work cooperatively based on shared values of honesty, trust, mutual respect, and leadership for continuous improvement based on the Council-Staff Relations Policy.

7 Gift and Benefit

- 7.1 A Gift or Benefit to a Member's Family Member that is connected directly or indirectly to the performance of the Member's duties is deemed to be a Gift or Benefit to the Member if provided with the Member's knowledge or solicited by the Member.
- 7.2 A Member shall not solicit or accept any Gift or Benefit that:
 - a) is intended to influence, might influence or could reasonably be perceived that it might influence or is intended to influence, the Member in the performance of the Member's duties as an elected official; or,
 - b) is intended, or could reasonably be perceived that it is intended, as a reward for any action or impending action by the Member.
- 7.3 Despite Section 7.2, a Member may accept the following:
 - a) Political contributions that are otherwise offered, accepted and reported in accordance with applicable law.

- b) Food or beverages, of reasonable value, at a banquet, reception, ceremony or similar event that the Member attends for a legitimate municipal purpose.
- c) A Gift or Benefit that is received as an incident of protocol or social obligation that normally and reasonably accompanies the responsibilities of Office.
- d) A token gift such as a souvenir, memento and commemorative gift that is given in recognition of service on a committee, for speaking at an event, or representing the Town at an event.
- e) A communication to the office of a Member, including subscriptions to a newspaper and periodical.
- f) A service provided by a person volunteering time without compensation.
- g) Food, lodging, transportation or entertainment lawfully provided by a government (federal, provincial, local or foreign) or government agency, or by a not-for-profit organization whose members are governments or government agencies (examples of such a not-for-profit organization include the Canadian Association of Nuclear Host Communities and the Federation of Canadian Municipalities).
- h) Food, lodging transportation or entertainment lawfully provided by the organizer of a conference, seminar, charity fundraiser, reception, ceremony, cultural event, sporting event, business, or political event where the Member is speaking or attending in an official capacity.
- i) An invitation from and at the expense of a private third party to attend a conference, seminar, charity fundraiser, reception, ceremony, cultural event or other similar event where the proceeds raised are to support a not-for-profit or charity organization.
- j) Reimbursement of reasonable expenses incurred, or an honorarium received, in the performance of activities connected with a public authority, or municipal association, agency, board or corporation, including a corporation of which the Town is a shareholder or member.
- k) Compensation authorized by Council or law.

7.4 This section does not preclude a Member from soliciting funds or donations in support of a charitable or philanthropic cause, organization, or charity provided that all funds or donations are provided directly by the donor(s) to the recipient organization or charity.

7.5 In a report on a Complaint that relates to a Gift or Benefit, in addition to the range of recommendations otherwise provided under this Code, the Integrity Commissioner may recommend, and upon consideration of the Integrity Commissioner's report the Council, in addition to its other powers under this Code, may impose, one or more of the following remedies:

- a) That the Member be directed to return the Gift or Benefit.
- b) That the Member be directed to reimburse the donor for the value of a Gift or Benefit already consumed.
- c) That the Member forfeit the Gift or Benefit to the Town.
- d) That the Member be directed to remit to the Town the value of a Gift or Benefit already consumed.

8 Confidential Information

- 8.1** Members have access to Confidential Information by virtue of their position with the Town of Whitby.
- 8.2** No Member shall disclose or release by any means to any person other than those who are entitled to have access, any Confidential Information acquired by virtue of their Office, in either oral or written form, except when authorized by Council or law.
- 8.3** The obligation to keep Confidential Information confidential is a continuing obligation even if the Member ceases to be a Member.
- 8.4** Members have the same access rights to municipal information as any other resident of the municipality, unless the information relates specifically to a matter before Council. Requests for information should be referred to the appropriate Employee to be addressed either as an informal request to access municipal records, or as a formal request under the Municipal Freedom of Information and Protection of Privacy Act.

9 Open, Transparent Government

- 9.1** Members will promote behaviour and actions conducive to an open and fair exchange of ideas in accordance with the adopted Accountability and Transparency policy.
- 9.2** Members will be advocates for the public process, and will ensure decisions are made in an open, transparent and democratic manner.
- 9.3** Members will promote public consultation and involvement in the decision-making process.

10 Municipal Resources / Uses of Town Property

- 10.1 Members will only use Town Property for activities associated with the discharge of their official duties, unless otherwise approved by the Mayor and Chief Administrative Officer or as specified within a Council approved policy.
- 10.2 Members shall not use information gained in the execution of his or her duties that is not available to the general public for any purpose other than his or her official duties.
- 10.3 All Members must comply with the Municipal Elections Act, 1996 and procedures developed and approved by the Town Clerk and/or Council for the use of corporate resources for election purposes.

11 Improper Use of Influence

- 11.1 No Member of Council shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.
- 11.2 Without limitation, no Member of Council shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage or that of a Member's Family Member.

12 Compliance

- 12.1 All Members shall be aware of and comply with this Code.
- 12.2 Members are accountable to the public through the election process. Members may become disqualified from holding Office through contravention or non-compliance with various laws, including the Municipal Act, 2001, Municipal Conflict of Interest Act and Municipal Elections Act, 1996. In addition to any other consequence imposed by law, Members found to have breached this Code may be subject to discipline or corrective action including those permitted by the Municipal Act, 2001.
- 12.3 Any individual, including members of the public, Town employees and Members who have reasonable grounds to believe that a Member has breached a provision of the Code may proceed with a Complaint. Complaints must be submitted within six (6) weeks of the matter becoming known to the individual and no more than six (6) months after the alleged violation occurring. The Integrity Commissioner shall be responsible for ensuring compliance with these deadlines, and shall take no action on a complaint received beyond these deadlines.
- 12.4 A Complainant does not have to pursue the informal complaint process set out in the following section prior to pursuing the formal complaint process.

13 Procedure – Informal Complaint

- 13.1 Any individual who has identified or witnessed behaviour or activity by a Member that appears to be in contravention of the Code may address their concerns in the following manner:

- a) Advise the Member that their behaviour or activity appears to contravene the Code;
- b) Encourage the Member to stop the prohibited behaviour or activity;
- c) If applicable, confirm to the Member your satisfaction or dissatisfaction with the response received to the concern identified;
- d) Keep a written record of the incidents including dates, times, location, other persons present and any other relevant information including steps taken to resolve the matter.

13.2 If not satisfied with the response received through the informal process, an individual may proceed with a formal complaint through the Integrity Commissioner as outlined in the following section.

14 Procedure – Formal Complaints

14.1 Any individual who believes that a Member has contravened the Code may make a request (the “Complaint”) that the matter be formally reviewed. Every Complaint shall:

- a) be in writing;
- b) set out the grounds for the belief and the contravention alleged;
- c) be signed by an identifiable individual or authorized signing officer of an organization (note: the identity of the complainant will not be maintained in confidence);
- d) include supporting document(s) that sets out the evidence in support of the complaint;
- e) include the original or copy of any supporting documentation or other supporting material available to the complainant; and
- f) include the name and contact information of the complainant and any witness.

14.2 If upon review of the Complaint, the Integrity Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation and shall communicate this position in writing to the complainant and the Member identified in the formal complaint.

14.3 If at any time, following the receipt of a formal Complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation and both the complainant and the Member agree, efforts may be made to achieve an informal resolution.

14.4 If the Integrity Commissioner determines that a formal investigation is required, he/she shall proceed with an investigation, subject to the Integrity Commissioner’s ability to elect to exercise the powers of a commissioner under the Public Inquiries Act.

15 Investigations

- 15.1** If at any time during an investigation, the Integrity Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are insufficient grounds for an investigation, the Integrity Commissioner shall discontinue the investigation and shall communicate this position in writing to the complainant and the Member identified in the formal complaint. (Amended by By-law #7441-18).
- 15.2** If the Integrity Commissioner discontinues an investigation in accordance with the above section the Integrity Commissioner is under no obligation to prepare a report for any matter after an investigation is discontinued. (Amended by By-law #7441-18).
- 15.3** The Integrity Commissioner will provide a copy of the Complaint to the Member who is the subject of the Complaint, with a request that a written response to the allegation be provided to the Integrity Commissioner.
- 15.4** During an investigation, the Integrity Commissioner may review any submitted materials, speak to anyone, enter any Town work location relevant to the Complaint, and access and examine any other documents or electronic materials necessary to complete the investigation.
- 15.5** Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.
- 15.6** The Integrity Commissioner may make interim reports to Council if necessary. Upon completion of the investigation, the Integrity Commissioner shall present a report to a meeting of Council outlining the findings of the investigation, the terms of any resolution and any recommended action including but not limited to the imposition of penalties. At this time, any Member of Council, including the Member who is the subject of the Complaint, shall have an opportunity to address and speak to the report submitted by the Integrity Commissioner.
- 15.7** In accordance with Section 223.6 of the Municipal Act, the Town shall ensure that reports received from the Integrity Commissioner are made available to the public.
- 15.8** Council shall have the sole authority to impose or not impose the penalties recommended by the Integrity Commissioner.
- 15.9** Where a complaint has been submitted to an integrity commissioner appointed by the Regional Municipality of Durham against a Member who is a member of both the upper-tier and lower-tier councils, the Integrity Commissioner shall not investigate a similar Complaint unless:

- The Regional Integrity Commissioner has completed an investigation into matters pertaining to the Member's responsibilities and obligations under the upper-tier code of conduct and the Complaint is also directly related to the Member's responsibilities and obligations as a Member of the Town of Whitby Council under this Code; or,
- The Regional Integrity Commissioner declined to investigate the complaint and the Complaint is also directly related to the Member's responsibilities and obligations as a Member of the Town of Whitby Council under this Code.

16 Complaint Confidentiality

- 16.1** The Integrity Commissioner shall preserve the confidentiality of all matters that come to his or her knowledge in the course of his or her duties and shall disclose information only in accordance with this Code or as otherwise required by law.
- 16.2** In order to allow for a fair and reasonable investigation, the Town and complainant shall maintain the Complaint in confidence until such time as the Integrity Commissioner presents a report to Council under Section 15.3 of this Code. During the course of an investigation, the Integrity Commissioner shall only circulate information regarding the Complaint to persons requiring access in order to provide information as part of that investigation, including the Member. As per Section 14.1 of this Code, the identity of the complainant will be shared with the Member and not maintained in confidence once a report under Section 15.3 is published.

17 Response to Complaints outside of Jurisdiction

- 17.1** If the Complaint received by the Integrity Commissioner is deemed not to be a Complaint with respect to non-compliance with the Code, the Integrity Commissioner shall advise the complainant in writing as follows:
- Criminal Matter** – if the Complaint is an allegation of a criminal nature consistent with the Criminal Code of Canada, the Complainant shall be advised that pursuit of such an allegation must be made through the appropriate Police Service.
 - Municipal Conflict of Interest** – if the Complaint is an allegation with respect to matters under the Municipal Conflict of Interest Act (MCIA), the Complainant shall be advised as to the relevant MCIA process.
 - Municipal Freedom of Information and Protection of Privacy Act** – if the Complaint is more appropriately addressed under the Municipal Freedom of Information and Protection of Privacy Act, the matter shall be referred to the Office of the Clerk for review under that Act.

- d) **Matter Already Pending** – if the Complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion, suspend any investigation pending the result of the other process.
- e) **Other** – if the matter is covered by other policies or legislation, the Complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

18 Reprisals and Obstruction

- 18.1** Members shall respect the integrity of the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his/her responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications.

19 Records and Review

- 19.1** The Town Clerk shall maintain a comprehensive record of all formal complaints submitted with respect to the Council Code of Conduct and the details and decisions associated with each complaint.
- 19.2** In rendering any judgement or decision with respect to a Code of Conduct complaint or violation, the comprehensive record of formal complaints and decisions rendered shall be consulted with a view to maintaining consistency in the application of the Code.

20 Interpretation

- 20.1** Members seeking clarification on any part of this Code may consult with the Integrity Commissioner.

21 Regular Review and Implementation

- 21.1** The Council Code of Conduct shall be reviewed by Council at least every five years, with such review preferably occurring shortly after the Council inauguration following a regular municipal election.