



# Memo

**TO:** Chair, Committee of the Whole

**SUBJECT:** Code of Conduct Policy Update

**DATE:** April 6, 2023

**FROM:** Chief Administrative Officer

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## **Background**

Municipal Councils and regional boards are now expected to adopt or update a code of conduct which applies to Council and committees following a general local election. This Council adopted such a code in 2017. The CVRD is now in the process of adopting one using the City of Nanaimo's "Code" as its model. Indeed, a Code of Conduct is supposed to ensure that Council and committee members conduct business in a lawful and transparent manner. Council members are expected to be free from undue influence by others and not to act to gain financial or other benefits for themselves, family, friends, or business interests. So long as Council is the arbiter of any charges of perceived unethical behavior on the part of a Council or a committee member the integrity of Council may be questioned especially if the finding favours a Council member or a personal interest.

What is not spelled out under the current code is that a complaint may not only be lodged by any Council member, but it can also be lodged by a committee or commission member or a staff member. So long as Council remains the arbiter of complaints the notion that Council can make decisions fairly may be suspect.

## **Without Fear, Favour, or Prejudice**

For the following reasons Council should not become the arbiter of complaints against its members or those of any committee:

- It may not be independent or impartial or more importantly be accessible anonymously;
- It may not wholly be in favour of complaints against one or more of its own;
- A complainant may be unwilling to proceed with a complaint against a Councillor if Council is to be the adjudicating body;
- People who exercise political power should not be given arbiter status as complainant(s) will be dissuaded, for fear of being targeted for filing a complaint;
- A Council is supposed to be fair to all and to act without fear, favour, or prejudice, not something it is equipped for;

- Council does not have the necessary expertise to deal with complaints filed against one or more of their number; and
- Council's role is to develop policies and be solely responsible for governance for which responsible conduct should be an essential component.

### Why an Ethics Commissioner

The Code of Conduct Policy has been amended to reflect some of the changes reflected in the CVRD's draft. However, missing from this equation is the use of an Ethics Commissioner that the CVRD and the City of Nanaimo are proposing to use or are using. As in Nanaimo's case an Ethics Commissioner can be one appointed by Council or an *ad hoc* Commissioner appointed by the CAO to administer this Policy in respect of an individual complaint. The use of an Ethics Commissioner will ensure that the Code of Conduct is adhered to rather than simply providing lip service to a requirement of the Province of BC. The self-enforcing aspect of the policy needs to be amended.

A Member may not attempt to influence a decision of Council, a Committee, Municipal Officer, or Staff if the Member has a direct or indirect pecuniary Conflict of Interest in relation to that decision. A Member shall not participate in discussion of a matter or vote on a question in respect of that matter, where the Member appears to have a Conflict of Interest.

A Member must not use their office to provide preferential treatment to any person or organization except as warranted by the ordinary and lawful discharge of their duties. This may not appear to be the case, but decisions may appear to be made to favour personal or business interests or family members, or an individual who is simply given favoured treatment because of who it is.

The Ethics Commissioner may also anonymously accept a complaint on a breach of the Code of Conduct from a Council member, committee member or a member of the staff. This will ensure conduct becoming of a Council member or committee member. All Council and Committee Members have a duty to act and comport themselves in accordance with the law, including, but not limited to, the common law, the *Local Government Act*, *Community Charter*, *Workers Compensation Act*, *Freedom of Information and Protection of Privacy Act*, and *Human Rights Code of British Columbia*, and any applicable federal legislation.

If the Code of Conduct is to be effective or meaningful, then the appointment of an Ethics Commissioner must be seriously considered. Otherwise, the Code of Conduct may prove to be a meaningless document if Council gets to decide the outcome of a complaint. In the case of the City of Abbotsford complaints are addressed through the City Manager who has the option of selecting a third-party investigator.



Joseph A. Fernandez

**DATE APPROVED:**

**APPROVED BY:**

**SUBJECT:** Town of Lake Cowichan Council Code of Conduct Policy

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## 1. PURPOSE

The Town of Lake Cowichan shall always strive to be an ethical organization. The fundamental relationship between the Council and members of its committees or commission and its residents must be one of mutual trust. Essential to trust is a commitment to honesty and integrity.

To that end, it is each Elected or Appointed Committee or Commission Member's individual responsibility to uphold both the letter and the spirit of this Code of Conduct Policy in their dealings with other elected officials, staff and the public.

These Members are expected to:

- Make decisions that benefit the Town;
- Act lawfully and within the authorities of the B.C Local Government Act, B.C. Community Charter, and other applicable enactments;
- Behave in a manner that promotes public confidence, including actively avoiding any perceptions of conflicts of interest, improper use of office, or unethical conduct;
- Be free from undue influence and not act to gain financial or other benefits for themselves, family, friends or business interests;
- Conduct their business in a transparent, efficient, accountable, and respectful fashion;
- Conduct their business with integrity, accountability, respect, leadership, and their conduct in the performance of their duties and responsibilities must be above reproach;
- Refrain from any form of discriminatory conduct against another elected official, staff, or the public;
- Demonstrate the same ethical principles during both meetings that are open and closed to the public; and
- Promote principles of transparency, accountability and civility through their decisions, actions, and behaviour.

## 2. POLICY

### Application of the Code

Council of the Town of Lake Cowichan has adopted a Code of Conduct applicable to members of Council and to any person appointed by Council to boards, committees, commissions, panels, or task forces. Recognizing that the Town seeks to maintain and enhance the quality of life for all Town residents through effective, responsive, and responsible government, members will conduct their business with integrity, in a fair, honest and open manner.

**1. Comply with the Law**

Members shall comply with all applicable federal, provincial, and local laws in the performance of their public duties. These laws include but are not limited to: the Constitution Act; the Provincial Human Rights Code; the Criminal Code, the Local Government Act; Community Charter; laws pertaining to financial disclosures, and employer responsibilities; and relevant Town bylaws and policies.

**2. Conduct of Members**

The conduct of members in the performance of their duties and responsibilities with the Town must be fair, open and honest. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, committees, the staff, or the public.

**3. Respect for Process**

Members shall perform their duties in accordance with the policies and procedures and rules of order established by Council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the Council by Town staff. Members of committees shall be aware of the mandate of their respective committee, and act in accordance with it.

**4. Conduct of Public Meetings**

Members shall prepare themselves for public meetings; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall not interrupt other speakers; make personal comments not germane to the business of the body; or otherwise disturb a meeting.

**5. Decisions Based on Merit**

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

They should refrain from making comments not germane to the business at hand or bring personal experiences into the discussions to substantiate a point of view.

**6. Communication**

Subject to paragraph 10, members shall publicly share substantive information that is relevant to a matter under consideration by the Council or a committee, which they may have received from sources outside of the public decision-making process.

**7. Conflict of Interest**

Members shall be aware of and act in accordance with Division 6 of the Community Charter, and Mayor and Council shall fulfil their Oath of Office.

**8. Gifts and Favours**

Members shall not accept any money, property, position or favour of any kind whether to be received at the present or in the future, from a person having, or seeking to have dealings with the Town in accordance with the provisions of Division 6 of the *Community Charter*.

**9. Confidential Information**

Members shall respect the confidentiality of information concerning the property, personnel or legal affairs of the Town. They shall neither disclose confidential information without proper authorization, nor use such information to advance their personal, financial or other private interests. Privileged or confidential information should not be shared with others that may give rise to conflict of interest or cause harm to the Town.

**10. Use of Public Resources**

Members shall not use public resources not generally available to the public – such as staff time, equipment, supplies or facilities – for private gain or for personal purposes.

**11. Advocacy**

Members shall represent the official policies or positions of Council or committee to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent Council, their committee or the Town of Lake Cowichan, nor will they allow the inference that they do.

**12. Policy Role of Members**

Members shall respect and adhere to the Council-Chief Administrative Officer structure of government as practiced in the Town of Lake Cowichan. In this structure, the Council determines the policies of the Town with the advice, information and analysis provided by the public, committees, and staff.

Members, therefore, shall not interfere with the administrative functions of the Town or with the professional duties of Town staff; nor shall they impair the ability of staff to implement Council policy decisions.

**13. Positive Workplace Environment**

Members shall treat other members, the public and staff, with respect and shall be supportive of the personal dignity, self-esteem, and well-being of those with whom they come in contact during the course of their professional duties. Members shall be aware of and act in accordance with the Workplace Harassment Policy.

**14. Implementation and Enforcement**

The Town of Lake Cowichan Code of Conduct is intended to be self-enforcing. It, therefore, becomes most effective when members are thoroughly familiar with the Code and embrace its provisions. Council may impose sanctions on members whose conduct does not comply with the Town's ethical standards, such as motion of censure. The Council may also rescind the appointment of a member to a committee for breaching the Code of Conduct.

To ensure procedural and administrative fairness, a member who is accused of violating any provision of the Code of Conduct with the exception of paragraph 14 shall have two weeks to prepare to respond to these allegations. Before considering a sanction, Council must ensure that a member has received a written copy of the case against him or her and have an opportunity to be heard.

Where a member of Council has been found to have breached this policy, the remuneration to which this member would otherwise be entitled, shall be adjusted in accordance with the following:

- i. Where the member has been found to have breached this policy for the first time, the remuneration to which the Member would be entitled shall be reduced by 10% for a period of twelve months from the date of the breach;
- ii. Where the member has been found to have breached this policy for the second time, the remuneration to which the Member would be entitled shall be reduced by 15% for a period of twelve months from the date of the breach;
- iii. Where the member has been found to have breached this policy for the third time, the remuneration to which the Member would be entitled shall be reduced by 25% for a period of twelve months from the date of the breach;
- iv. For certainty, where a member has been found to have breached the Policy more than once in a twelve month period, the reductions in the remuneration to which the Member would otherwise be entitled to shall be cumulative for any period of overlap in the duration of overlap in the duration of each reduction (e.g. if a Member is found to be in breach of a calendar year, and is subsequently found to have breached the Policy again on July 1 of that year) the remuneration to which the Member would otherwise be entitled shall be reduced by 10% from January 1<sup>st</sup> to June 30<sup>th</sup> of that year, by 25% from July 1<sup>st</sup> to December 30<sup>th</sup> of that year, by 15% from January 1<sup>st</sup> to June 30<sup>th</sup> by 15% from January 1<sup>st</sup> to June 30<sup>th</sup> of the following year, and thereafter be fully reinstated; and
- v. any other sanction recommended by the Commissioner, so long as that sanction is within the authority of Council.

## 15. Other Sanctions

Sanctions that may be imposed for a violation of this Policy include the following:

- a) a letter of reprimand from the Town addressed to the Member;
- b) a request from the Council that the Member issue a letter of apology;
- c) the publication of the letters contemplated in subsections (a) and (b), along with the Member's written response, if any;
- d) directions to the CAO regarding the provision of documents, including documents containing Confidential Information, to the Member;
- e) a recommendation that the Member attend specific training or counselling;
- f) limitations on access to certain Town facilities;
- g) suspension or removal of the Member from some or all Committees and bodies to which the Member was appointed;
- h) prohibition from representing the Town at events and/or attending conferences and seminars;
- i) suspension or removal of the appointment of a Member as the Deputy Mayor; and
- j) public censure of a Member;

**MEMBER’S COVENANT**

As a member of the Town of Lake Cowichan Council or of a Town committee, I agree to uphold the Code of Conduct adopted by the Town and conduct myself by the following model of excellence. I will:

- Recognize the diversity of backgrounds, interests and views in our community;
- Help create an atmosphere of open and responsive government;
- Conduct public affairs with integrity, in a fair, honest, and open manner;
- Respect one another and the unique role and contribution each of us has in making the Town of Lake Cowichan a better place to work, live and play;
- Strive to keep the decision-making processes open, accessible, participatory, understandable, timely, just and fair;
- Not use public office to benefit me, or my friends, or family;
- Respect and uphold confidentiality requirements;
- Respect one another and the unique role and the contribution each has in making the Town a better place to work and live in;
- Not make disparaging remarks of the Town or express displeasure with decisions duly made;
- Avoid conduct which is contrary to the best interests of the Town; and
- Treat all people in the same manner as I wish to be treated.

I affirm that I have read and understand the Town of Lake Cowichan Code of Conduct Policy.

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Signature

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Date

\_\_\_\_\_  
Name

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Office Held

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Name of Witness

\_\_\_\_\_  
Date

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Signature of Witness