



AGENDA

**Council Standing Committee of Code of Conduct Enforcement
to be held on January 30, 2024 at 1 p.m.
977 South Maquinna Drive in Council Chambers and by electronic means**

Remote Access

**To attend this meeting remotely via Microsoft Teams/ phone
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Toronto, Canada
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Call to Order

Land Acknowledgement

Mayor Davis will acknowledge and respect that we are meeting upon
Mowachaht/Muchalaht territory.

Introduction of Late Items

None.

Approval of the Agenda

Business Arising

None

New Business

- M 1 Standing Committee of Code of Conduct Enforcement Terms of Reference**
- M 2 Discussion regarding options for Code of Conduct Enforcement**
- M 3 The Standing Committee of Code of Conduct Enforcement meeting dates.**

Adjournment



STANDING COMMITTEE OF CODE OF CONDUCT ENFORCEMENT

TERMS OF REFERENCE

July 4, 2023 Regular Council Meeting

Joseph/Northcott 0265/2023

THAT a combination of option #1 (that Council strike a Standing Committee pursuant to Council Procedure Bylaw No. 495, 2004 s. 50(1) to consider, inquire into, report and make recommendations on enforcement provisions for inclusion in Council's Code of Conduct) and option #2 (to review other local governments' CARRIED codes of conduct and then reconvene a 2-3 hour Committee of the Whole Meeting with staff and legal counsel to discuss and develop the outline of code of conduct enforcement provisions) be approved.

1. Objective:

The committee shall develop an effective mechanism for the enforcement of the Tahsis Council Code of Conduct .

2. Scope of Work

- a. Review the existing Tahsis Council Code of Conduct
- b. Identify gaps or areas requiring clarification in the current code.
- c. Research code of conduct enforcement mechanisms in similar municipalities.
- d. Propose amendments or additions to enhance the enforceability of the code.

3. Composition

- a. The committee shall consist of 2 council members and 1 staff person and other ad hoc members as needed
- b. Chairperson and Vice-Chairperson shall be appointed by a majority vote of Council.
- c. A quorum is a majority of all of its members.

4. Timeline

- a. The committee is expected to complete its work within 6 months.
- b. The committee must establish a regular schedule of meetings (Council Procedure Bylaw Part 8, s. 52 (1).

January 30, 2024

5. Tasks and Responsibilities

- a. Conduct a thorough review of the existing Code of Conduct.
- b. Engage with legal experts, as needed, to ensure proposed mechanisms align with legal standards.
- c. Consult with the community through public forums or surveys to gather input, as needed.
- d. Develop a clear and actionable enforcement process.

6. Reporting

- a. Regular progress updates shall be provided to Council.
- b. A final report with recommendations and a draft enforcement mechanism shall be submitted.

7. Community Engagement

- a. Conduct public consultations to gather feedback on the proposed code enforcement mechanism.
- b. Committee meetings are open to the public, subject to s. 90 of the *Community Charter*.

8. Legal Compliance:

- a. Seek legal advice to ensure that the proposed mechanism aligns with all applicable statutes and regulations.

9. Implementation

- a. Provide recommendations on the implementation of the code enforcement mechanism.
- b. Identify and request necessary resources, including budgetary requirements, for implementation
- c. Develop a communication plan to inform Council Members and the community about the new code enforcement mechanism

10. Review and Amendments

- a. Periodically review the enforcement mechanism and propose amendments as needed.

11. Conclusion

The committee shall submit a final report and recommendations to the municipal council for approval and implementation.

VILLAGE OF TAHSIS			
Policy Title:	Code of Conduct	Policy No.	2015
Effective Date	August 6, 2019	Supersedes	Policy N/A
Approval	Council	Resolution Number	363/2019
Review Date	August 6, 2023		

Section 1 - PURPOSE

As local elected representatives we recognize that responsible conduct is essential to providing good governance for the Village of Tahsis.

We further recognize that responsible conduct is based on the foundational principles of integrity, accountability, respect, impartiality, inclusion, leadership and collaboration and transparency.

In order to fulfill our obligations and discharge our duties, we are required to conduct ourselves to the highest ethical standards by being an active participant in ensuring that these foundational principles and the standards of conduct set out below, are followed in all of our dealings with every person, including those with other members, staff and the public.

Respectful dialogue fosters effective communication. The Code aims to establish clear boundaries for communication without stifling debate. By implementing the Code, Council will build a safe space for honest, authentic, brave, passionate, and respectful dialogue.

Section 2 - DEFINITIONS

“Accountability”	means an obligation and willingness to accept responsibility or to account for one’s actions. Conduct under this principle is demonstrated when Council, individually and collectively, accepts responsibility for actions and decisions.
“Impartiality”	means when making decisions relying on objective criteria rather than on the basis on bias, prejudice or preferring one person’s views over another for improper reasons.
“Inclusion”	means that Council will have regard to those with disadvantages to ensure that they have seamless access to enjoy the same programs and services as all others.

“Integrity”	means being honest and demonstrating strong ethical principles. Conduct under this principle upholds public interest, is truthful and honourable.
“Leadership and Collaboration”	means an ability to lead, listen to, and positively influence others; it also means coming together to create or meet a common goal through collective efforts. Conduct under this principle is demonstrated when a Council member encourages individuals to work together in pursuit of collective objectives by leading, listening to, and positively influencing others.
“Respect”	means having due regard for others’ perspectives, wishes and rights; it also means displaying deference to the offices of local government, and the role of local government in community decision making. Conduct under this principle is demonstrated when a member fosters an environment of trust by demonstrating due regard for the perspectives, wishes and rights of others and an understanding of the role of the local government
“Transparency”	means a commitment to conducting Council business in open meetings, unless prohibited by statute, sharing information with the public and having an “open door” policy.
“Village of Tahsis”	means the Corporation of the Village of Tahsis

Section 3 – Scope of Policy

- 3.1 The policy applies to all members of Council and the CAO. It is each member’s individual responsibility to uphold the letter and the spirit of this Code of Conduct in their dealings with other members, staff and the public.
- 3.2 Elected officials must conduct themselves in accordance with the law. This Code of Conduct is intended to be developed, interpreted and applied by members in a manner that is consistent with all applicable Federal and Provincial Laws, as well as the bylaws and policies of the local government, the common law and any other legal obligations which apply to members individually or as a collective Council.

Section 4 – Standards of Conduct

Members of Council and the CAO will exhibit the values of:

- Accountability
- Impartiality
- Inclusion
- Integrity
- Leadership and Collaboration
- Respect
- Transparency

as defined above in fulfilling their duties and obligations as elected officials and staff.

Section 5 – General Conduct

5.1 Council members must adhere to the values, principles and provisions of the Code of Conduct.

5.2 Council members must act lawfully and within the authorities of the *Community Charter*, the *Local Government Act* and any other applicable statutes and regulations.

5.3 Council members have an obligation to consider issues and exercise powers, duties and functions in a manner that avoids arbitrary and unreasonable decisions.

5.4 Council members must avoid behavior that could contravene:

- this policy;
- the *BC Human Rights Code*; and
- Village bylaws and policies, including the *Respectful Workplace and Prevention of Harassment, Bullying and Discrimination*

5.5 Council members must treat one another, staff and the public with dignity and respect. They must also refrain from behavior that is an abuse of power or otherwise amounts to discrimination, harassment, personal threats, intimidating or demeaning behavior or verbal attacks upon the character, professionalism or motives of others.

5.6 Council members shall not:

- undermine other members of Council or Council as a whole by making critical, denigrating or derogatory comments about the views, decisions, positions, expressed or approved by Council;
- engage in physical altercations with any person;

- defame, libel or slander a member of Council, staff or the public;
- utter or otherwise make threats of violence aimed at a member of Council, staff or the public; and/or
- utter or otherwise make racist, sexist or homophobic remarks

5.7 Contraventions of the General Conduct rules, as set out this section, may result in sanctions being imposed by Council.

Section 6 – Conduct of Meetings

- 6.1 Council members shall prepare themselves for meetings by reading all materials, and during the meeting listen courteously to all discussions and focus on the business at hand. Council members should refrain from interrupting other speakers while not unnaturally constraining dialogue.
- 6.2 Council members are encouraged to be courageous in bringing forward ideas and in debate while being mindful of the impact of their language on others.
- 6.3 Council members shall further the public interest by keeping an open mind, acting on the best information and being transparent in decision making.
- 6.4 Council members shall not engage in:
- side conversations
 - eye rolling
 - disrespect of the Chair
 - foul language
 - verbal condemnation of other members of Council

VILLAGE OF TAHSIS

Report to Council

To: Mayor and Council

From: Chief Administrative Officer

Date: May 29, 2023

Re: Code of Conduct – Development of Enforcement Provisions

PURPOSE OF REPORT:

To provide Council with key considerations in developing enforcement provisions for Council's Code of Conduct. To also provide Council with procedural options in developing these provisions.

OPTIONS / ALTERNATIVES

1. Strike a Standing Committee pursuant to Council Procedure Bylaw No. 495, 2004 s. 50(1) to "consider, inquire into, report and make recommendations on enforcement provisions for inclusion in Council's Code of Conduct."
2. Council to review other local governments' codes of conduct and then convene a 2-3 hour committee of the whole meeting with staff and legal counsel to discuss and develop the outline of code of conduct enforcement provisions.
3. To satisfy the enforcement provision, add one clause to the Code of Conduct that in the event of an alleged code of conduct breach Council must retain legal counsel to provide on-going legal advice to Council in responding to the allegation and any investigation.
4. Delay this project until 2024.
5. Any other option that Council deems appropriate.

BACKGROUND:

At its March 10, 2023 in camera meeting, Council, in accordance with s. 113.1 of the Community Charter, agreed to review its Code of Conduct, adopted on August 6, 2019, Policy No, 2015 and to amend it by adding a section 7 on enforcement to be developed;
by staff and legal counsel.

1. Key Considerations

As recent experience shows, a Code of Conduct, with or without enforcement provisions, is not necessarily an effective and efficient policy tool to ensure appropriate conduct or to sanction inappropriate conduct. Still, Code of Conduct enforcement could lead to meaningful results in future matters. Moreover, incorporating enforcement processes into the code, instead of using an ad hoc process, has a few advantages:

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- Provides certainty and transparency in the process
- Fairness (ensures everyone is treated fairly)
- Possibly improved compliance (stated sanctions might act as deterrent)
- Administrative efficiencies (do not have to develop new processes each time there is an allegation of a code breach)

Again, as Council has learned, Code of Conduct enforcement does not replace other enforcement approaches that are better suited to address the particular type of off-side conduct. Seeking legal advice early in response to a Code of Conduct issue will help Council make informed decisions on which route(s) to pursue based on the fact specifics, Council's needs and the law.

2. Fair Process

Code of conduct enforcement has two stages: has there been a contravention? and, if so, what sanctions should be imposed? The process in answering each question must be fair.

Fairness is more likely ensured if:

- the person affected by the decision participates in the process before the decision is made (e.g., is notified of the allegations, receives all documents and information relied on by the decision-makers, is given the opportunity to respond and is given the opportunity to be represented by legal counsel);
- the decision-makers are open minded (i.e., have no predetermined bias and have no conflict of interest); and
- the decision is based on relevant evidence and, where applicable, the justification for the decision is given to the person affected by it

Other considerations that can arise:

- If an investigation is required, it is difficult to ensure the person conducting the investigation is free from bias or the perception of bias when investigating a colleague or where there is an employer/employee relationship. Retaining an independent third party investigator can improve fairness and public trust in the process.
- While the Community Charter dictates when a meeting must be closed to the public for privacy or other reasons, there may be opportunities to conduct some parts of the enforcement process in an open meeting to enhance public confidence in the process.
- Financial and human resource capacity are required to support the complaint and investigation process.

In developing an enforcement process, fundamental questions will need to be addressed and answered, such as:

- What triggers the process?
- What informal resolution processes are available?
- Who is appointed to investigate and how are appointments made?
- How are complaints initially dealt with and by whom?

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- How are complaints investigated?
- How are investigation findings and recommendations report and to whom?
- What actions can be taken once findings have been reported and by whom?
- What range of sanctions should be included?
- What are the considerations when imposing sanctions?

There are multiple answers to each of these questions, all of which have legal, financial, human resource, public accountability, and fairness implications for this council and future councils. To date, Council has not provided guidance on how it wishes to enforce the code of conduct. It is very difficult for staff to anticipate Council's views on the above questions and fundamental questions about the level of detail and the extent of formality to incorporate into an enforcement section in the code.

The options are aimed at generating input from Council to assist staff with developing an enforcement section, assuming Council continues to see value in this.

POLICY/LEGISLATIVE REQUIREMENTS:

Community Charter, SBC 2003, Ch. 26

Requirement to consider code of conduct

- 113.1** (1) Within 6 months after its first regular council meeting following a general local election, a council must decide
- (a) whether to establish a code of conduct for council members, or
 - (b) if a code of conduct for council members has already been established, whether it should be reviewed.
- (2) Before making a decision under subsection (1), the council must
- (a) consider the prescribed principles for codes of conduct,
 - (b) consider the other prescribed matters, if any, and
 - (c) comply with the prescribed requirements, if any, including requirements respecting public notice or consultation.
- (3) If the council decides, under subsection (1), not to establish a code of conduct or review an existing code of conduct, it must make available to the public, on request, a statement respecting the reasons for its decision.

Tahsis Council Code of Conduct Policy, No. 2015, 2019

FINANCIAL IMPLICATIONS:

Unknown.

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STRATEGIC PRIORITY:

N/A

RECOMMENDATION:

No Recommendation

Respectfully submitted:

A handwritten signature in dark ink, consisting of a stylized 'M' followed by a horizontal line.

Mark Tatchell, CAO

CHAPTER 4

Essentials of Code of Conduct Enforcement

When to Consider Enforcement

In most cases local governments find it is worth exerting considerable effort towards informal resolution, and considering enforcement only if those efforts prove unsuccessful. Conduct is often about relationships, and with the collective governance model of local governments, good working relations are critical to good governance. Informal resolution can help to maintain relationships. Enforcement processes – being lengthy, protracted affairs that sometimes pit colleagues against each other – can serve to erode relationships as well as public trust in the process and the local government.

For this reason, local governments generally find informal resolution more effective, and are more satisfied with its outcomes (see Chapter 3, 'Resolving Conduct Issues Informally' for details). If informal resolution is not attainable, local governments may wish to consider enforcement.

A local government can hold its elected officials accountable for their conduct through an enforcement process articulated within its code of conduct, so long as that process is fair. This chapter focuses on characteristics of these code of conduct enforcement processes, and what to consider in their development, but first, it points to enforcement approaches outside of a code of conduct that may be applicable.



Overview of Other Enforcement Approaches

Specific Statutory Processes

Various federal or provincial laws provide specific accountability or enforcement processes for certain conduct matters, for example:

- **Incidents and complaints regarding bullying and harassment of an employee and/or other conduct that affects employees:** Local governments are responsible for the safety of their employees at work. If a complaint relates to matters covered by legislated provisions to address workplace bullying and harassment, the complaint **must** be dealt with in accordance with the *Workers Compensation Act* and Occupational Health and Safety policies established by WorkSafeBC. There may also be other laws, local government policies or employment arrangements that will govern how to respond when an employee indicates they have been subjected to unsafe working conditions or inappropriate behaviour.
- **Application to court for a declaration of disqualification and forfeiture of financial gain for contraventions of conflict of interest and other ethical conduct requirements:** The *Community Charter*, *Local Government Act* and related legislation provide rules for conflicts of interest, inside influence, outside influence, gifts, contracts and insider information. Contraventions result in disqualifications and may result in forfeiture of any financial gain that resulted. Electors or the local government may apply to the Supreme Court for a declaration of disqualification and for an order to forfeit financial gain.

- **Prosecution of an offence:** Some contraventions of legal requirements are offences which may, at the discretion of the provincial Crown Counsel, be prosecuted in court, and convictions may result in fines and/or imprisonment (e.g., unauthorized disclosure of personal information under the *Freedom of Information and Protection of Privacy Act*, and unauthorized disclosure of certain confidential information under the *Community Charter*, *Local Government Act* and related statutes).

LEADING PRACTICE TIPS

This list is not exhaustive. There are numerous other federal or provincial laws that provide enforcement processes (e.g., Court-based prosecutions under the Criminal Code of Canada for contravention of laws related to libel or slander; Human Rights Tribunal determination of discrimination complaints under the BC Human Rights Code). Local governments will want to familiarize themselves with all applicable legislation before initiating a local government enforcement process.

*Public
Body only*

Local Government Process to Decide on a Specific Alleged Conduct Contravention and Impose Related Sanctions

The courts have found that a local government has an ability to control conduct of its members in some circumstances, and local governments have relied on this to impose sanctions for contraventions on a case-by-case basis.

These case-by-case processes are similar to enforcement processes articulated within a code of conduct: both can result in sanctions; both must be undertaken using a high standard of fairness; and both are complex from a legal perspective.

However, an important distinction between them relates to whether the process is established in advance (as it is for processes articulated within a code of conduct), or whether it is developed each time it is needed (as it is for case-by-case processes).

LEADING PRACTICE TIPS

Before getting into a situation where misconduct of a Council or Board member becomes an issue, develop a code of conduct to set standards of conduct, and include within the code the process that will be used to deal with alleged contraventions.

An enforcement process articulated within a code of conduct has several advantages over a case-by-case enforcement process, as illustrated in the graphic, and is strongly recommended.

ADVANTAGES OF CODE OF CONDUCT ENFORCEMENT

ENHANCED CERTAINTY AND TRANSPARENCY IN THE PROCESS

- Everyone understands the process by which officials will be held accountable for their conduct
- Improved public confidence

IMPROVED COMPLIANCE

- Those who are subject to a code may be more likely to comply if there are known consequences for contraventions

ADMINISTRATIVE EFFICIENCIES

- Once the process is developed, using it for a subsequent contravention allegations will eliminate the need to “reinvent the wheel” each time an allegation is made

ENHANCED FAIRNESS

- Consistent use of the same process helps to ensure everyone is treated fairly
- Can help to overcome perceptions of bias in decisions about the process itself

Obtaining Legal, Law Enforcement and Other Advice About Enforcement Processes

Conduct enforcement is a complex and evolving area of law; while this guide is intended to help support local government decision-making in relation to conduct matters, it does not provide legal advice, and it is not a substitute for that advice.

Code of conduct enforcement does not replace other enforcement approaches that may be available or required, such as those described above. As a local government begins to explore what enforcement processes are available for a particular conduct contravention, it may want to consider discussing the matter with their legal advisors and, in some circumstances, with law enforcement or other agencies (e.g., WorkSafe BC for matters in which the conduct affects an employee; Office of the Human Rights Commissioner for matters that may be discriminatory).

Code of conduct enforcement is a complex process and its outcomes can be significant, so it is important for local governments to give considerable thought to how to ensure its process is sound. Articulating an enforcement process within a code of conduct is also a relatively new practice in B.C. and largely untested in the courts, which represents some legal uncertainties. These factors give rise to a critical need to seek legal advice on details of the process as it is being designed and when it is implemented.

This guide should not be used as a template for designing a code enforcement process, because some elements (e.g., what is an appropriate standard of fairness; what would comply with open and closed meeting rules; how to ensure that informal processes do not jeopardize a subsequent enforcement process; what complaints can be dismissed; what sanctions may be imposed) can vary considerably depending on specific circumstances. The considerations and current practice set out in the guide are intended to support a local government's initial thinking about these processes and as a starting point for it to have an informed discussion with its legal advisors about how to design an enforcement process that will meet its unique circumstances and needs.

Code of Conduct Enforcement: Overarching Considerations

Ensuring a Fair Process

Code of conduct enforcement processes have two stages: determining if there has been a contravention (e.g., taking complaints; conducting investigations; making determinations), and if so, making decisions on what, if any, sanctions to impose (e.g., recommendations from investigation and/or a Council/Board decision on sanctions). Fair process in both of these stages is critical.

A local government is obligated to ensure its decision processes are fair, particularly where the decision affects the interests of a specific individual.

Given the significance of these processes to elected officials, local governments need to consider how they can meet a high standard of fairness, including finding ways to ensure throughout the process that:

- The person affected by a decision is able to participate in the process before the decision is made (e.g., is notified of allegations, findings and recommendations and provided all documents and information that will be relied on by decision-makers, is provided with an opportunity to respond and sufficient time to prepare, and is given an opportunity to be represented by legal counsel at the appropriate stage);
- The decision-makers are open-minded (i.e., they have neither a conflict of interest nor a predetermined bias); and
- The decision is based on relevant evidence and, where applicable, the justification for the decision is given to the person(s) affected by it.

LEADING PRACTICE TIPS

Build timelines into the various steps of your enforcement process. This will enhance fairness, and can avoid eroding relationships further as the process drags on.

Build an informal resolution component into your code of conduct enforcement process.

Consider carefully managing the extent to which staff are involved in enforcement processes. Given the nature of these processes, critical staff-elected official working relationships can be significantly affected.

Consider specifically referring to legislated confidentiality requirements in your code of conduct, so members know how they will be held accountable for contraventions of those provisions.

Ensuring the Investigator has Sufficient Independence, Expertise and Authority

It can be extremely challenging to ensure the person conducting an investigation is free from bias or the perception of bias when investigating a colleague (i.e., where a Council/Board or one of its committees is investigating the conduct of a Council/Board member) or when there is an employer/employee relationship (e.g., where a CAO is investigating the conduct of a Council or Board member).

In order to remove this perception of bias, improve fairness, and enhance public trust in the process, investigations are most often assigned to an independent third party.

Balancing Transparency and Confidentiality

Local government legislation provides rules around what must be dealt with in open meetings, and what may or must be dealt with in closed meetings. The *Freedom of Information and Protection of Privacy Act* provide rights of access to certain records, as well as a requirement to protect personal information. A local government will need to ensure compliance with these laws as it develops and implements its enforcement processes.

Within these legislated parameters, there may be some discretion for local governments to make choices about whether to conduct some parts of the enforcement process in open or not. Where there is sufficient discretion, local governments may wish to consider where confidentiality is needed to support a fair process, where transparency is needed to enhance public confidence in the process, and how to balance these two objectives in each step of the process and overall.

For example, to protect the privacy of the individuals involved and ensure investigations are free from bias, most local governments maintain confidentiality throughout the complaint and investigation processes (e.g., notifying only those involved and requiring them to maintain confidentiality). Once the investigation is complete, and if it finds there was a contravention, the balance can sometimes shift towards transparency by providing for consideration of, and decisions on, investigators' reports and sanctions in an open Council or Board meeting. This is typically because the legislation requires this (i.e., the subject matter does not meet the criteria for discussion in a closed meeting) and/or the local government considers the public interest is best served by making these decisions transparently.

Matters of Cost, Capacity, Efficiency and Effectiveness

Decisions around process will have an impact on financial and human resource capacity. For example, decisions about who can make a complaint (e.g., elected officials, staff or the public) can significantly affect the volume of complaints and investigations. This will affect resources that will need to be dedicated to the enforcement process, since investigations can be time consuming and require people with highly specialized skills.

These considerations can help to sharpen the focus on various design elements and implementation strategies, not just for enforcement but for all elements of building and restoring responsible conduct. In addition, they may encourage reconsideration of alternative measures (e.g., prevention activities or informal resolution of conduct issues) that may have been previously discarded because of their associated costs (yet may be much less costly – both financially and in relationship impacts – than code of conduct enforcement).



Code of Conduct Enforcement: Process Steps, Current Practice and Considerations

The inclusion of details of how alleged contraventions will be addressed is a recent trend in B.C. local government codes of conduct. Where processes are articulated, they tend to consist of a number of distinct steps, within which there are both some common elements and some variation.

The following tables are snapshots of these provisions taken from a small sample of current B.C. codes. Readers are cautioned that this does not represent the full extent of existing practice, but rather an overview intended to be generally representative of the range of enforcement approaches articulated currently in B.C. codes of conduct.

As noted earlier, including enforcement provisions in codes of conduct is an emerging area still largely untested in the courts.

The examples provided here are not provided as templates but rather as a starting point; each local government needs to consider its own circumstances and seek its own legal advice as it develops its processes and sanctions.

It is critical that local governments exercise a high standard of fairness in these processes. Some jurisdictions choose to articulate this extensively in their code in order to provide clarity and certainty, while others do not articulate this in their code, but instead provide fair process as a matter of practice, allowing some flexibility to adapt to specific circumstances. Do not assume that codes that lack explicit fair process provisions mean that the jurisdiction is not practicing fair process. The choice is not whether or not to provide a fair process, but rather how and where to define it.

INITIATION: What triggers the process?

How is the enforcement process initiated and who can make a complaint?

The process is typically initiated by a complaint, and complaints are allowed from any member of the Council or Board. In some cases, committee members and/or staff may also make a complaint, and in a few cases, complaints are accepted from “any person,” which would include all of the above as well as members of the public.

How is the complaint made, and what must it contain?

Typically, the complaint must be in writing, and most require these to be signed and dated by the complainant. There are varying degrees of specificity in the detail to be provided, with some codes saying nothing about this, and others requiring more specifics (e.g., detailed description of the conduct, witnesses and supporting documents).

To whom is the complaint made?

Most are delivered to the mayor/chair and/or a staff official (e.g. CAO), with provision that if the mayor/chair is involved, delivery is to the acting mayor/chair. In a few cases, delivery is to mayor and Council/chair and Board, and in some cases, complaints go to an investigator if one has been appointed.

Considerations:

- **Fair process/cost and capacity:** Fairness would dictate that at a minimum, anyone subject to a code of conduct should be allowed to make a complaint. From a public trust perspective, consideration could be given to allowing complaints from anyone impacted by the conduct (e.g., members of the public who are impacted by the erosion of good governance resulting from the conduct). The volume, and perhaps the complexity, of complaints tends to increase as the number of potential complainants increases, which will have cost and capacity impacts.
- **Fair process:** Consider timelines for making a complaint. Existing practice examples: some codes don't explicitly provide a deadline, while others tie a deadline to the breach (e.g., as soon as possible after, or within six months).
- **Fair process:** Consider how much detail to require in a complaint. Part of a fair process is enabling the respondent to respond, which would be difficult without sufficient detail as to the allegation. To be clear about process, consider explicitly stating that the respondent is to be provided notice of the allegations and an opportunity to respond before a decision to proceed to an investigation is made, perhaps with some deadlines. Existing practice examples: some codes do not provide this explicitly, while others do and provide deadlines (e.g. must respond within 14 days of notification).
- **Confidentiality/transparency:** Consider measures to ensure confidentiality until an investigation of the allegations is complete.

INFORMAL RESOLUTION: What informal resolution processes are available?

When does informal resolution occur and how is it triggered?

Most codes explicitly provide for informal resolution. Some create an informal complaint process, and encourage complainants and respondents to try informal resolution before a formal complaint is made. Some other codes encourage an attempt at informal resolution after a formal complaint has been submitted and before the complaint review process; in these cases, the CAO and/or mayor/chair become involved in that informal resolution step.

What is the informal resolution process?

Some codes that provide for informal resolution are silent as to the process. However, most others call for the complainant to address the issue directly with the respondent to encourage compliance, and/or to request the assistance of the mayor/chair to attempt to resolve the issue. In one case, a senior staff official could be called on to assist the complainant in that process, and third-party mediation is an option if these steps aren't successful in reaching resolution.

What are the timelines and fair process provisions?

There is no deadline for informal resolution where it occurs prior to receiving a formal complaint, because the de facto deadline is when a formal complaint is made. Most codes that encourage informal resolution after a formal complaint is made set a 30-day deadline to attempt informal resolution prior to an investigator being appointed. Most do not have specific fair process or transparency/confidentiality provisions for this informal stage. However, in some cases, there are specific provisions for confidentiality, and where mediation is part of the process, legal or other representation for the complainant and respondent are offered for that part of the process.

Considerations:

- **Cost/capacity/efficiency/effectiveness:** Local governments may want to consider encouraging informal resolution because that can be less costly and lead to better outcomes than investigation and sanction processes (see Chapter 3, Resolving Conduct Issues Informally).
- **Confidentiality/transparency:** Consider measures to keep informal resolution processes confidential.

APPOINTMENT OF INVESTIGATOR: Who is appointed to investigate and how are appointments made?

Who is the investigator, who makes the appointment, and on what basis?

In the majority of cases, the investigator is an independent third party, typically appointed by either the mayor/chair, the person acting in their place, or jointly by the mayor/chair and CAO. Exceptions include when the code assigns investigator duties to a position (e.g., senior staff official), or when the investigator is defined as the Council/Board or an individual or body appointed by the Council/Board. In cases where a senior staff official is assigned in the code as investigator, the code also provides for that individual to appoint an independent third party to investigate instead of the senior staff official.

What duties does the investigator perform?

Typically, investigators undertake the complaint review process, investigation and reporting of findings. In at least one case, a senior staff official is responsible for the complaint review process, and the investigator is appointed only after the complaint review process is complete, if needed. In one case, the investigator is assigned a broader range of responsibilities.⁶

What are the timelines and fair process provisions?

Several jurisdictions require the investigator be appointed within 30 days of receipt of a formal complaint (unless the matter is resolved informally within that time frame). See “Who is the Investigator” above for fair process provisions.

Considerations:

- **Fair process/investigator independence, expertise and authority:** Choosing an investigator who is free from bias is critical. This would indicate a need to appoint an independent third party, and/or ensure other mechanisms are in place to protect investigator independence. Assigning an investigation to a senior staff position, such as a CAO, is not recommended for most investigations as it would be very difficult to achieve the needed level of independence, and because the investigation could harm the staff-Council/Board relationship, compromising both the ability of the Council/Board to provide good governance and the CAO's ability to effectively perform their duties. Providing for input from the complainant and respondent on the choice of investigator can help ensure all parties agree the investigator is unbiased and qualified; this effect can be enhanced by provisions that refer to the need for investigators to have professional skills/expertise.
- **Confidentiality/transparency:** The choice of who appoints the investigator (e.g., Council/Board, mayor/chair and/or CAO) may impact when complaint information becomes public, since Council/Board decisions may need to be made in an open meeting.

⁶ City of Surrey Bylaw 20018 creates an Ethics Commissioner position and assigns a number of roles to the position, including providing advice and delivering training. See link in Chapter 6, Resources.

COMPLAINT-REVIEW PROCESS: How are complaints initially dealt with and by whom?

What is the complaint review process and who carries it out?

If informal resolution is not reached, complaints undergo an initial assessment and are either dismissed or proceed to investigation. Almost always, the investigator is responsible for the initial assessment, although in at least one code of conduct, this role is assigned to a senior staff official.

On what basis can a complaint be dismissed?

Reasons that a complaint may be dismissed are usually provided, but there is some variation on the grounds for dismissal. Many refer to complaints that are frivolous, vexatious and/or not made in good faith. Several also mention complaints that are unfounded, based on insufficient grounds, unlikely to succeed and/or beyond the jurisdiction of the code or other conduct policy.

What is the process if a complaint is dismissed?

Many do not provide a specific process. Where one is provided, there is a requirement to inform the complainant and, in at least one code of conduct, the Council or Board.

What are the timelines and fair process provisions?

Codes don't typically set timelines for this step. Some codes provide that the respondent must be notified and given an opportunity to provide an initial response prior to the complaint review process; of these, a few provide deadlines for the initial response (e.g., within 14 days of notification).

Considerations:

- › **Cost, capacity, efficiency, effectiveness:** Local governments will want to consider some form of complaint-review process, to ensure that investigations aren't required when not warranted by the nature of the complaint.
- › **Fair process:** Both fair process and public trust can be enhanced by being clear about the types of complaints that can be dismissed, while providing some discretion for investigators to make decisions based on their professional judgement and specific circumstance. Local governments may also want to consider whether to provide some deterrents for vexatious complaints (see Other Enforcement-Related Provisions table).
- › **Confidentiality/transparency:** For complaints that are dismissed, local governments will want to consider how to treat the involved parties fairly when making decisions about whether or not to provide notification about the complaint and the reasons it has been dismissed, and the extent of that notification. For complaints that proceed to investigation, fair process would require notification to both the complainant and respondent, and opportunities for the respondent to respond during the investigation (see the Investigation table below).

INVESTIGATION: How are complaints investigated?

What is the purpose of the investigation and how is it conducted?

Investigations tend to be described quite generally (e.g., independent, impartial investigation of complaint; determine the facts, review relevant documents, conduct interviews), which provides considerable room for investigators to use their professional judgement to adapt the investigative process to meet the circumstances. Specific provisions relate to fair process, described below.

What are the timelines?

Some codes do not provide timelines. Where they are provided, timelines can refer to when the investigation begins (e.g., within 10 days, or as quickly as possible), when updates are provided (e.g., updates within 90 days after investigator's appointment) and/or when the investigation finishes (e.g., within 30 days, with extensions possible).

What are the fair process provisions?

Codes typically provide for confidential investigations and require participants to respect that confidentiality. All codes have investigation fair process provisions, that are either general (e.g., investigate in a manner that is fair, timely, confidential and otherwise accords with the principles of due process and natural justice), or more specific (e.g., complainant and respondent are provided notice, and relevant documents, respondents must be given opportunity to respond, and participants may be represented (including legal counsel)).

Considerations:

➤ **Fair process:** Whether or not specific provisions are included in the code, participants must be afforded fair process. Local governments will need to consider how they will provide key fairness elements, like:

- How respondents will be able to effectively participate, including how and when they will be provided with relevant documents, how and when they can respond (ensuring they are given sufficient time to prepare that response); and when are respondents and potentially others given an opportunity to be represented and by whom; and
- How to ensure the decision is based on relevant information (e.g., considerations around things like documentation of evidence, findings and decisions).

In addition, local governments will want to consider how much of this to detail within their code. More detail helps to ensure processes are consistently applied and things don't get missed, but may make the process less flexible and more difficult to adapt to emerging circumstances.

➤ **Confidentiality/transparency:** Considerations typically relate to how to ensure allegations and evidence remain confidential during the investigation process.

REPORTING FINDINGS: How are investigation findings and recommendations reported and to whom?

What must be in the investigator's report?

Reports must provide investigation findings. In some cases, there is a specific requirement to include findings as to whether there has been a contravention, and/or recommendations on resolution of the complaint.

Can sanctions be recommended if there has been a contravention?

There are two approaches: specific authority for the recommendations of sanctions from among a list of potential sanctions in the code; OR no specific mention of the ability to recommend sanctions, even though the code lists potential sanctions.

Can additional recommendations be made in the report?

A number of codes specifically allow any recommendation an investigator deems appropriate and also specifically provide for a recommendation that the complaint be dismissed.

To whom is the report delivered?

There are two general approaches, with some slight variation: to the Council/Board, with some also provided to a staff official; OR to the mayor/chair (with provision for the acting mayor/chair if that person is involved) with most also being provided to a staff official.

What are the timelines and fair process provisions?

There are few timelines for reporting (see Investigation table above for details). In many cases, there are explicit provisions for reports to be provided to both the complainants and respondents. A few state that the report to the mayor/chair is confidential, and in one case, there is explicit provision that if there is insufficient evidence in an investigation, the investigator reports that finding but there is to be no permanent record of the complaint.

Considerations:

- › **Fair process:** Consider how and when the complainant and respondent are informed of the findings of the investigation. Consider whether different approaches are needed if no contravention has been found as opposed to if the findings indicate a contravention.
- › **Confidentiality/transparency:** Consider whether the investigator's report is provided confidentially or not. The choice of who receives the investigator's report may impact the extent to which the report is confidential, since if the report is delivered to the Council/Board, this may be in an open meeting. Where reports are not confidential, consider whether some information must be severed to comply with legislated privacy rules. Consider whether different approaches are needed if no contravention has been found as opposed to if the findings indicate a contravention.

FINAL RESOLUTION: What actions can be taken once findings have been reported and by whom?

If the investigator's report goes to mayor/chair, does it also go to Council or Board?

Some codes require the mayor/chair to provide the report, or a summary of it, to the Council/Board, others allow that person to decide whether it should go to the Council/Board, and the remainder do not give direction to the mayor/chair as to whether or not the report should be provided to the Council/Board.

What happens if the investigation finds a contravention?

Some codes state that the decision about whether there was a contravention rests with the Council/Board. Others are less explicit, stating only that the investigator's report must state whether there has been a contravention.

If there was a contravention, who imposes sanctions and what are the parameters around that?

In no case can an investigator impose sanctions. That decision rests with the Council/Board. Codes describe what sanctions may be imposed, and in many cases, a Council/Board can choose from among those provided. In some cases, the only sanctions that can be imposed are some or all of those recommended by the investigator. In at least one case, the Council/Board is directed to consider specified factors (e.g., nature or impact of the conduct).

What are the timelines and fair process provisions?

Some codes do not articulate fair process. Others do, including: notification to the respondent prior to Council/Board consideration, stating that the respondent is entitled to respond and given time to prepare response (e.g., two weeks), stating that the respondent is entitled to be represented, including by legal counsel (some have indemnification; see 'Other Enforcement-related Provisions' table below). Some codes provide for Council/Board consideration in open meetings, while others provide for closed meetings for this.

Considerations:

- › **Fair process:** Whether or not specific provisions are included in the code, participants must be afforded fair process. Local governments will need to consider how they will provide key fairness elements and how much to detail this within their code. **Refer to the fair process discussion in the 'Investigation' table above, which is relevant for this step also.** In addition, consider how to ensure an unbiased decision on sanctions. Some local governments find that limiting Council/Board discretion (e.g. may only impose sanctions recommended by investigator, or must consider specific factors) can help to reduce the potential for bias and/or ensure the decision is based on relevant information.
- › **Confidentiality/transparency:** Consider relevant meeting rules and the nature of the matter. If these matters are dealt with in open meetings, consider whether some personal information should be severed; if dealt with in closed meetings, consider when and how the respondent is informed of decisions, and when and to what extent information is made available to the public (as a void of information can ultimately be filled by misinformation). Consider also whether different approaches are needed if no contravention has been found as opposed to if the findings indicate a contravention.

OTHER ENFORCEMENT-RELATED PROVISIONS: A sample of other key enforcement provisions that may be included in a code.

What enforcement provisions are there for different groups that are subject to a code?

Many codes apply only to members of the Council/Board; some also include committee members and/or staff. Where these other groups are included, codes tend to modify enforcement provisions (e.g., who deals with complaints and how this is done; what sanctions may be imposed) for each group.

Do codes provide for reimbursement of legal costs for a person involved in an enforcement process?

Some codes make provisions for reimbursement of a respondent's legal costs under certain circumstances, and with certain limits (e.g., if the person did not act in a dishonest, grossly negligent or malicious way; for the first occurrence, but not subsequently unless agreed in advance; upon request; only reasonable costs are reimbursed, sometimes with specified dollar limits).

What are the responsibilities of persons subject to the code?

Most codes require that members refrain from discussing allegations at open meetings until after investigations and Council/Board decisions on them.

Some codes require that members endeavour to resolve disputes in good faith, cooperate with informal resolution and/or not obstruct the Council/Board in investigations.

Some also require that members not act or threaten reprisal/retaliation against involved persons (i.e., complainant, respondent, witness, staff). In at least one case, for complaints that are vexatious, malicious or in bad faith, complainants are subject to disciplinary action, including sanctions in the code.

Considerations:

- **When code applies to committee members and/or staff:** All processes must be fair, and all will need to consider the confidentiality/transparency balance, but how these are applied is often different for each group. There may also be different legal or contractual requirements that would guide enforcement processes that must be considered (particularly with respect to staff).
- **Reimbursement:** Fairness can be enhanced by providing clear policy in the code, rather than dealing with reimbursement of legal costs on a case-by-case basis. In considering the potential to offer reimbursement of legal costs and limitations around that, local governments may wish to consider whether their indemnification policy could inadvertently act as a deterrent to trying to work things out informally.
- **Responsibilities:** Local governments may wish to consider whether the fairness and/or effectiveness of their enforcement processes could be enhanced by provisions such as these.

Sanctions

As described in the 'Final Resolution' table above, if the findings of an investigation indicate that there has been a conduct contravention, a Council or Board may consider what, if any, sanctions to impose.

As with other elements of a code of conduct enforcement process, legal advice is recommended as sanctions are being designed and when they are imposed.

Current Practice for Sanctions

Codes of conduct that provide details of an enforcement process also typically set out a range of sanctions that the Council or Board could impose for contraventions.

Sanctions are stated specifically, generally, or as a combination of these. For example, some codes say that the Council/Board "may impose sanctions" and follow this with a few examples, while others provide a specific list of sanctions, sometimes followed with a general provision for "any other sanction considered appropriate" by the investigator in some cases and the Council/Board in others.

Some codes also provide overarching statements that sanctions may only be imposed if they do not prevent the member from fulfilling their legislated duties of elected office.

Specific sanctions included in a sampling of B.C. codes of conduct are:

- Request letter of apology
- Mandatory education, training, coaching or counselling
- Suspension/removal from some or all committees or other bodies
- Public censure
- Letter of reprimand or formal warning
- Publication of reprimand or request for apology and member's response
- Suspension or removal as deputy/acting mayor/chair
- Restrictions on representing the local government or attending events or conferences
- Limits on travel/expenses beyond those in corporate policies
- Limiting access to certain local government facilities
- Requirement to return local government property provided for convenience
- Restrictions on how documents are provided to the member
- Reduction in compensation (in accordance with remuneration bylaw)⁷
- Written pledge promising to comply

Readers are cautioned that this listing merely presents a compilation of sanctions currently included within B.C. local government codes of conduct. They should be considered in the context of evolving law and the legal uncertainty that is discussed above. Given this, legal advice is advised on sanctions as well as other elements of a code of conduct enforcement process.

⁷ This sanction is provided for in the District of North Cowichan's code of conduct, and it is specifically linked to its Council remuneration bylaw. See Chapter 6, Resources for link.

Considerations When Imposing Sanctions

- **Fair process:** Fairness can be enhanced and the potential for bias reduced by providing direction to the Council or Board about what it must consider in making sanction decisions, or limiting Council/Board discretion to only imposing some or all of the sanctions recommended by the third-party investigator.
- **Effectiveness:** While sanctions can be imposed as a way of distancing the Council or Board from the member's conduct (e.g., public rebuke) or to penalize the member for the contravention (e.g., reduction in remuneration, imposing limits on travel or suspension of committee appointments), local governments may also wish to consider how sanctions may be used to support a return to responsible conduct and to prevent conduct issues in the future. For example, providing coaching, skills building or training can help to avoid conduct issues that stem from a misunderstanding about roles and responsibilities, from cultural assumptions or from frustration with not being able to get one's point across at a meeting. Additionally, restricting how documents are provided to the member can help to prevent a recurrence of a contravention of a duty of confidentiality.
- **Legal risk:** Sanctions are not specifically mentioned in B.C. local government legislation but local governments have been found by the courts to have the ability to manage conduct; this may include the ability to sanction in cases of the misconduct of a Council or Board member. The edges of that authority – in terms of what specific sanctions may be imposed – aren't yet clear, but some key questions to think about in imposing sanctions are set out in this graphic. Ensuring that each question can be answered with a "yes" may mean that the legal risk related to the proposed sanction is lower.

Could the sanction fall within the local government's legislated powers?

(e.g. CC/LGA fundamental and included powers; power to rescind appointments.)

If the sanction were imposed, would the elected official still be capable of fulfilling their duties of office?

(e.g., a suspension or disqualification from office would mean the elected official could not fulfill their duties of office; removal from rotation as acting mayor/chair or from a committee would not have that effect.)

Is the sanction consistent with other policies and procedures of the local government?

(e.g., do policies related to compensation allow for reduced remuneration if an elected official is found to have contravened the code of conduct?)

Were processes to determine the contravention and impose sanctions procedurally fair, with due regard to natural justice?

(e.g. notice, opportunity to be heard, open-minded decision-making, and consideration of relevant facts?)

How to Improve the Post-sanction Environment

Disqualification is not a sanction that can be imposed by a local government. Consequently, an elected official found to be in contravention of a code of conduct will continue to be a Council or Board member. By the time formal complaints are made, relationships among Council or Board members may be very strained, and the investigation and sanction process will likely further damage these relationships.

Finding effective ways to work together will become even more important, and local governments may wish to consider what specific support could be provided to the elected official found to be in contravention, and to the collective to facilitate them working effectively together again. In addition, consideration may be given to whether policy or procedure changes could support a return to responsible conduct. Local governments may also wish to consider whether to give the investigator an ability to make these types of restorative and support recommendations, which could help to move away from a singular focus on sanctions.



FOOD FOR THOUGHT

- › Is informal resolution something that would be suitable for the conduct issue at hand? If so, have we attempted that? If not, why not?
- › What enforcement processes and sanctions does our code of conduct include? Are they sufficient?
- › Do we have a process in place to review our code of conduct and what it covers? What can we learn from what we have just gone through for any future situations?
- › Does our code refer to legislated conduct rules? If so, is it clear about which enforcement processes refer to what code provisions? (e.g., court-based processes for conflict of interest, WorkSafe BC processes for bullying and harassment involving an employee, code of conduct enforcement for all others).
- › Have we done everything we can to make sure investigations and decisions are free from bias and administratively fair, and that the entire enforcement process reduces the potential for the process to be used for purely political purposes?
- › Are we providing the same standard of fairness to everyone?

“Justice Crawford sounded one important note of caution on the right of an elected council to take action regarding a council member’s misconduct. The power to decide whether a council member’s conduct falls below the expected standard of conduct must be exercised with great care and discretion:

‘Far too easily, this could turn into an abuse of process for cheap political gain, and any council that sets out in this direction must be careful in what it is doing.’”

(From the Young Anderson paper Controlling Councillor Conduct)

CLICK HERE for links to resources referenced in this chapter.

COUNCIL POLICY

NAME: CODE OF CONDUCT	
ISSUED: November, 2016	INDEX REFERENCE:
AMENDED: May 27, 2019	COUNCIL REFERENCE: 16/CNCL
June 1, 2020	

PURPOSE:

To set minimum expectations for the behaviour of Council officials in carrying out their functions.

SCOPE:

All Council officials and the Chief Administrative Officer.

DEFINITIONS:

Advisory Body Member: a person sitting on an advisory committee, task force, commission, board, or other Council-established body.

Confidential Information: Confidential Information includes information that could reasonably harm the interests of individuals or organizations, including the District of Saanich, if disclosed to persons who are not authorized to access the information, as well as information to which section 117 of the *Community Charter* applies.

Council official: the Mayor and members of Council

Personal Information: has the same meaning as in the *Freedom of Information and Protection of Privacy Act*

Staff: an employee or contract employee of the District of Saanich, and includes staff that supports Advisory Bodies.

Municipal Officer: a member of staff designated as an officer under section 146 of the *Community Charter* or a bylaw under that section.

INTERPRETATION:

- (a) In this policy, a reference to a person who holds an office includes a reference to the persons appointed as deputy or appointed to act for that person from time to time.
- (b) This Code of Conduct applies to the use of social media by Council officials in relation to District related matters.

POLICY STATEMENTS:**1. Key Principles**

- 1.1. **Integrity:** Council officials are keepers of the public trust and must uphold the highest standards of ethical behaviour. Council officials are expected to:
 - make decisions that benefit the community;
 - act lawfully and within the authorities of the *Community Charter*, *Local Government Act* and other applicable enactments; and
 - be free from undue influence and not act, or appear to act, in order to gain financial or other benefits for themselves, family, friends or business interests.
- 1.2. **Accountability:** Council officials are obligated to answer for the responsibility that has been entrusted to them. They are responsible for decisions that they make. This responsibility includes acts of commission and acts of omission. In turn, decision-making processes must be transparent and subject to public scrutiny; proper records must be kept.
- 1.3. **Leadership:** Council officials must demonstrate and promote the key principles of the Code of Conduct through their decisions, actions and behaviour. Their behaviour must build and inspire the public's trust and confidence in local government. Council officials will provide leadership to District staff through the Chief Administrative Officer.
- 1.4. **Respect:** Council officials must conduct public business efficiently and with decorum. They must treat each other and others with respect at all times. This means not using derogatory language towards others, respecting the rights of other people, treating people with courtesy and recognition of the different roles others play in local government decision making.
- 1.5. **Openness:** Council officials have a duty to be as open as possible about their decisions and actions. This means communicating appropriate information openly to the public about decision-making processes and issues being considered; encouraging appropriate public participation; communicating clearly; and providing appropriate means for recourse and feedback.

2. General Conduct

- 2.1. Council officials must adhere to the key principles and provisions of the Code of Conduct.
- 2.2. Council officials must act lawfully and within the authorities of the *Community Charter, Local Government Act* and other applicable enactments and exercise a reasonable degree of care and diligence in carrying out their functions.
- 2.3. Council officials have an obligation to consider issues and exercise powers, duties and functions in a manner that avoids arbitrary and unreasonable decisions.
- 2.4. Council officials must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, Council officials must avoid conduct that:
 - contravenes this policy;
 - contravenes the law, including the *BC Human Rights Code*, and other enactments, and District Bylaws; and
 - is an abuse of power or otherwise amounts to improper discrimination, intimidation, harassment or verbal abuse of others.

3. Collection and Handling of Information

- 3.1. Council officials must:
 - Collect and use personal information in accordance with *Freedom of Information and Protection of Privacy Act* legislation and the Protection of Privacy Policy and guidelines as established in Saanich;
 - Protect information that is specifically marked confidential, that is Personal Information and other material identified or understood to be confidential in nature;
 - Refrain from discussing or disclosing any Confidential Information with or to Staff, or with persons outside the organization except as authorized;
 - Refrain from discussing or disclosing any Personal Information with or to other Council Officials, Staff, or with persons outside the organization except in a manner consistent with the duty to protect Personal Information under the *Freedom of Information and Protection of Privacy Act*.

- Take reasonable care to prevent the examination of confidential material or access to Personal Information by unauthorized individuals;
 - Not use Confidential Information except for the purpose for which it is intended to be used;
 - Only release information in accordance with established District policies and procedures and in compliance with the *Freedom of Information and Protection of Privacy Act* (British Columbia);
 - Not disclose decisions, resolutions or report contents forming part of the agenda for or from an in-camera meeting of Council until a corporate decision has been made for the information to become public; and
 - Not disclose details on Council's in-camera deliberations or specific detail on whether individual Councillors voted for or against an issue.
- 3.2. Except in the normal course of duties, Council officials must not in any way change or alter District records or documents.
- 3.3. When dealing with Personal Information, Council officials must comply fully with the provisions of the *Freedom of Information and Protection of Privacy Act*. All reasonable and necessary measures must be taken to ensure that the personal or private business information of individuals is protected. Personal information includes information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

4. Conflict of Interest

- 4.1. Council officials are expected to make decisions that benefit the community. They are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, family, friends, or business interests.
- 4.2. Council officials must appropriately resolve any conflict or incompatibility between their personal interests and the impartial performance of their duties in accordance with statutory requirements of the *Community Charter*.

5. Interactions of Council officials with Staff and Advisory Body Members

- 5.1. Council is the governing body of the District of Saanich. It has the responsibility to govern the District in accordance with the *Community Charter* and other legislation.

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- 5.2. The Mayor is the head and chief executive officer of the District and has a statutory responsibility to provide leadership to the Council and to provide general direction to municipal officers respecting the municipal policies, programs and other directions of the council as set out in the *Community Charter*.
 - 5.3. Council officials are to contact staff including Municipal Officers, according to the procedures authorized by Council and the District Chief Administrative Officer regarding the interaction of Council officials and staff. As a general principle, the District adopts the one employee model where Council's point of contact with staff is the Chief Administrative Officer.
 - 5.4. Council officials are to direct inquiries regarding departmental issues or questions to the District's Chief Administrative Officer or the Department Head (Director) of the appropriate department and refrain from contacting other staff without first discussing the issue with the Department Head.
 - 5.5. Advice to Council from staff will be vetted, approved and signed by the Chief Administrative Officer.
 - 5.6. Council officials will invite the Chief Administrative Officer to be present at any meeting between a Council official and a member of staff where such attendance is requested by the staff member.
 - 5.7. Council officials are not to issue instructions to any of the District's contractors, tenderers, consultants or other service providers.
 - 5.8. Council officials must not make public statements attacking or disparaging staff or Advisory Body Members and shall show respect for the professional capacities of staff. Council officials must not involve staff in matters for political purposes.
 - 5.9. Council officials must not publish or report information or make statements attacking or reflecting negatively on staff or Advisory Body Members except to the Chief Administrative Officer as appropriate to bring a complaint to the attention of the Chief Administrative Officer for follow up.
 - 5.10. Significant information provided to any member of Council, which is likely to be used in Council or in political debate, should also be provided to all other Council officials, and to the Chief Administrative Officer.
 - 5.11. Council officials must treat members of the public, other Council officials, Advisory Body Members and staff appropriately, and without bullying, abuse or intimidation in order to preserve a workplace free from harassment.

6. Council Officials Use of Social Media

- 6.1. It is not the role of individual Council officials to report directly on District related business. Council officials will use caution in reporting decision-making by way of their social media profiles and websites ensuring that any material they publish is accurate, precise and communicates the intent of Council
- 6.2. Council officials will include an "in my opinion", or similar disclaimer, either within the banner of their individual social media site(s) or separately when making follow up posts to the District's social media postings and when creating original posts pertaining to District related business.

(Sample Disclaimer – "Opinions expressed are my own and do not reflect the view or opinions of the District of Saanich")

- 6.3. Council officials will refrain from using or permitting use of their social media accounts for purposes that include generating or recirculating:
- defamatory remarks, obscenities, profane language or sexual content;
 - negative statements disparaging other members of council;
 - negative statements disparaging staff or calling into question the professional capabilities of staff;
 - content that endorses, promotes, or perpetuates discrimination or mistreatment on the basis of race, religion or belief, age, gender, marital status, national origin, physical or mental disability or sexual orientation;
 - statements that indicate an actual attitudinal bias in relation to a matter that is to be the subject of a statutory or other public hearing;
 - promotion of illegal activity;
 - information that may compromise the safety or security of the public or public systems.
- 6.4. Council officials must regularly monitor their social media accounts and immediately take measures to remove messages or postings by others that violate this Code of Conduct.

7. Interactions with the Public and the Media

- 7.1. Council officials will accurately communicate the decisions of the Council, even if they disagree with the majority decision of Council, and by so doing affirm the respect for and integrity in the decision-making processes of Council.
- 7.2. When discussing the fact that he/she did not support a decision, or voted against the decision, or that another Council official did not support a decision or voted against a decision, a Council official will refrain from making disparaging comments about other Council officials or about Council's processes and decisions.

8. Gifts and Personal Benefits

The receipt and reporting of gifts and personal benefits is dealt with under sections 105 and 106 of the *Community Charter*. Ultimately, the interpretation of those sections is a matter for the courts. However, the general language used in those sections creates some level of uncertainty and this Code of Conduct is intended to provide some guidance to Council officials.

8.1. What are Gifts and Personal Benefits?

- 8.1.1. Gifts and personal benefits are items or services of value that are received by Council officials for personal use. These would include, but are not limited to, cash, gift cards, tickets to events, items of clothing, jewellery, pens, food or beverages, discounts or rebates on purchases, free or subsidized drinks or meals, entertainment, invitations to social functions, etc.
- 8.1.2. The following are not to be considered gifts or personal benefits:
 - Compensation authorized by law (see section 105(2)(b) of the *Community Charter*).
 - Reimbursement for out of pocket costs incurred for authorized travel, living and accommodation expenses associated with attendance at an event or in connection with an authorized travel.
 - A lawful contribution made to a Council official who is a candidate for election conducted under the *Local Government Act*.

8.2. What Gifts and Personal Benefits may be Accepted?

- 8.2.1. Section 105(1) of the *Community Charter* prohibits Council officials from directly or indirectly accepting a fee, gift or personal benefit connected with the official's performance of the duties of office.
- 8.2.2. In accordance with section 105(2), a Council official may accept gifts and personal benefits received as an incident of the protocol or social obligations that normally accompany the responsibilities of elected office.
- 8.2.3. Gifts and personal benefits received in accordance with section 105(2)(a) of the *Community Charter* as referenced in section 8.2.2 must be reported and disclosed in accordance with section 106 to the Corporate Officer.
- 8.2.4. Where a gift or personal benefit that may be accepted under the *Community Charter* has a value in excess of \$100.00, the Council official who receives the gift will do so on behalf of the District and turn over the gift to the District, except as otherwise permitted by Council.
- 8.2.5. Council officials must not accept a gift or personal benefit that could reasonably be expected to result in a real or perceived conflict of interest, and to assist in avoiding that situation, Council officials will not accept gifts or personal benefits from business or commercial enterprises having a value that exceeds \$50.00 or, where the total value of such gifts and benefits, received directly or indirectly from one source in any twelve (12) month period, would exceed \$250.00.

8.3. How Must Gifts and Personal Benefits be Reported?

- 8.3.1. Council officials must disclose to the Corporate Officer gifts and personal benefits in accordance with section 106 of the *Community Charter*.
- 8.3.2. If a Council official receives a gift or personal benefit that they do not wish to accept, regardless of value, they may immediately relinquish the gift or personal benefit to the District, in which case a disclosure form would not be required. If the gift or personal benefit is not immediately relinquished to the District, then the Council official must file a disclosure form.
- 8.3.3. The content of the disclosure must comply with section 106(2) of the *Community Charter* and must be filed "as soon as reasonably practicable".

- 8.3.4. It is the responsibility of Council officials to be familiar with the provisions in the *Community Charter* relating to acceptance and disclosure of gifts and to ensure that they comply with these requirements as contemplated by the statute.

8.4. How are Gifts and Personal Benefits Valued?

- 8.4.1. For the purposes of this Code, the value of each gift or personal benefit shall be determined by its replacement cost, i.e., how much it would cost to replace the item?

8.5. Procedure for Dealing with Relinquished Gifts and Personal Benefits

- 8.5.1. Where a gift or personal benefit is relinquished to the District, the Corporate Officer will record the receipt of the item, nature of the gift or personal benefit, source (including the addresses of at least two individuals who are directors, in the case of a corporation), when the gift was received, and the circumstances under which it was given and accepted.

9. Breaches, Complaint Handling and Disciplinary Action

General

- 9.1. This section, Breaches, Complaint Handling and Disciplinary Action, is for internal use only. Council officials and staff within the District of Saanich can use this section to lodge a complaint against a member of Council in relation to their own interactions with that Council official.
- 9.2. Council officials are to abide by the requirements of the *Community Charter* and this Code of Conduct, and shall endeavour to resolve interpersonal disputes in good faith, recognizing that interpersonal rancour does not facilitate good governance.

Council Officials

- 9.3. Alleged breaches of this Code of Conduct by Council Officials shall be submitted in a written complaint (as per the Breach Template (Template1)) addressed to the Mayor and the Chief Administrative Officer within six (6) months of the last alleged breach

In the event that the Mayor is the subject of, is in a conflict of interest related to the complaint or is implicated in the complaint, the complaint shall be addressed

to the current Acting Mayor unless that individual is the subject of, or implicated in the complaint.

In the event that the Chief Administrative Officer is the subject of, is in a conflict of interest related to the complaint or is implicated in the complaint, the complaint shall be addressed to the Director of Corporate Services unless that individual is the subject of or implicated in the complaint.

- 9.4. Upon receipt of a complaint under section 9.3, the Mayor or designated Councillor, and the Chief Administrative Officer or designate (Director, Corporate Services) shall review the Policy and the details of the alleged breach.

The role of the Mayor and CAO (or designates) is to be the keeper of the process, not to adjudicate the complaint. Their role is to facilitate and seek a mutually beneficial resolution between the parties. Information from both parties should be obtained, reviewed and options for resolution canvassed. There is no ability for the Mayor / CAO or designates to give advice about the processing or quality of resolution of the complaint.

- 9.5. If the situation is not able to be resolved through the informal process within thirty (30) days, the Mayor and the Chief Administrative Officer or designates will work to appoint an independent third party. Numerous third party investigators will be identified. The Complainant(s) and Respondent(s) will be provided with the resumes of the identified parties. The Complainant(s) and Respondent(s) have the ability to agree or disagree that the proposed parties have the necessary professional skills, knowledge and experience to investigate the complaint (the "Third Party Investigator").

The Complainant(s) and Respondent(s) will notify the Mayor and CAO or designate if they have a conflict of interest with any of the proposed Third Party Investigators.

The Third Party Investigators will then be contacted and the individual with the next available opening in their schedule will be appointed to the matter.

- 9.6. If the parties cannot agree on the choice of investigator, a nominee of the Complainant(s) and the Respondent(s) shall jointly select a suitable Third Party Investigator.
- 9.7. If the Complainant(s) or Respondent(s) refuse to participate in a formal investigation, the investigation may continue without that individuals' participation. The Third Party Investigator will make their determination based on the information they are provided.

Not participating in the processes as outlined in sections 9.3 and 9.5 may also be considered grounds for a complaint under the policy.

9.8. Throughout both the informal or formal investigation, either party can have legal counsel present to assist them. This legal counsel will be required to follow any rules of in-camera or procedural bylaw process that are applicable.

9.9. As confidentiality is key, information provided to the Respondent(s) will be limited to the Breach Template completed by the Complainant.

9.10. The Third Party Investigator:

9.10.1. May conduct a preliminary assessment of the complaint, at the conclusion of which the investigator may determine to continue the investigation or make a written recommendation that the complaint be dismissed as unfounded, beyond jurisdiction or unlikely to succeed;

If the Third Party Investigator determines to continue the complaint, the Third Party Investigator shall:

9.10.2. Conduct an independent and impartial investigation of the complaint in a manner that is fair, timely, confidential and otherwise accords with the principles of due process and natural justice;

9.10.3. Provide an investigation update within ninety (90) days of his or her appointment to the Mayor and the Chief Administrative Officer or designates, as applicable, and to the Complainant and the Respondent;

9.10.4. Provide a written, confidential report (the "Report") of the findings of the investigation, including findings as to whether there has been a breach of this Code of Conduct, to the Mayor and the Chief Administrative Officer or designates, as applicable;

9.10.5. Provide recommendations regarding if a copy of or selected sections of the final Report should be provided to the Complainant and the Respondent; and

9.10.6. Provide recommendations in the Report as to the appropriate resolution of the complaint, which recommendations may include:

- dismissal of the complaint; or
- public censure of the Council Official or Officials for misbehaviour or a breach of this Code of Conduct;¹

-
- a recommendation that a Council Official or Officials apologize to any person adversely affected by a breach of this Code of Conduct;
 - counselling of a Council Official or Officials; and/or
 - such other recommendations as are deemed appropriate in the professional judgment of the Third Party Investigator.
- 9.11. The Mayor and the Chief Administrative Officer or designates shall consider whether the Report or an executive summary of the Report should be presented to Council.
- 9.12. The Director of Corporate Services will receive and retain all reports prepared related to the complaint.
- 9.13. At the conclusion of the process the Third Party Investigator will destroy all notes that were taken or documents that were provided throughout the process of the investigation.
- 9.14. Where a Council Official alleges a breach of this Code of Conduct by a fellow Council Official, all Council Officials shall refrain from commenting on such allegations at open meetings of Council pending the conclusion of the Report and any decision of Council on the Report.
- 9.15. Council Officials who retain legal counsel to represent them in proceedings under this section may request in writing that the District indemnify them for their reasonable costs of representation, in accordance with section 740 of the *Local Government Act*.
- 9.16. Staff who retain legal counsel to represent themselves in proceedings under this section may request, in writing, reimbursement of reasonable costs from the District.

1. There is no defined or prescribed process related to public censure. The common law rules of natural justice would apply, meaning the right to a fair hearing, which includes the right to know the case against oneself, the right to be heard, the right to have an impartial adjudicator, and sometimes (but not always) the right to be represented by legal counsel.

10. Attachments

10.1. Attached to this document are two templates that could be utilized as part of the information resolution process:

- Proactive Apology by Council Member (Template 2)
- Apology by Council Member if held by Council to have violated the Code of Conduct (Template 3)

10.2. Please note: British Columbia's Apology Act provides that an "apology" made by or on behalf of a person in connection with any matter does not constitute an express or implied admission or acknowledgement of fault or liability. "Apology" is defined as "an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault." The Act further provides that an apology does not void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available to the person in connection with the matter. Evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter and must not be taken into account in any determination of fault or liability.

Council Policy

Code of Conduct

TEMPLATE 1 – Complaint

DATE OF COMPLAINT: _____

NAME OF COUNCIL OFFICIAL MAKING THE COMPLAINT: _____

NAME OF COUNCIL OFFICIAL WHO THE COMPLAINT IS AGAINST: _____

DATE OF THE BREACH: _____

SECTIONS OF THE COUNCIL CODE OF CONDUCT THAT HAVE BEEN BREACHED:

DETAILED DESCRIPTION OF INCIDENT AND HOW THE CODE OF CONDUCT WAS BREACHED

HAVE YOU APPROACHED THE OTHER COUNCIL OFFICIAL TO LET THEM KNOW ABOUT YOUR CONCERNS?

Y____ N____

WHAT IS THE RESOLUTION THAT YOU ARE SEEKING?

TEMPLATE 2 – Proactive Apology by Council Member

[DATE]

PERSONAL AND CONFIDENTIAL

[Name of Recipient]

[Title]

District of Saanich

[Address]

[City, Province Postal Code]

Dear [title] [last name]:

Re: **Apology** [subject]

As you know, on *[date]*, I *[briefly set out the nature of the offending conduct. It is recommended you provide dates, times and a description of the conduct at issue as you understand it]*.

On *[date]*, you confronted me about my behaviour/conduct and expressed *[describe briefly the conduct complained of and how it affected the offended person]*. I acknowledge that my conduct / actions made you feel *[describe how it affected the offended person]* and I admit that my *[actions / conduct]* were *[reformulate why your actions were wrong in your own words – ex: offensive, derogatory, belittling, in poor taste, defamatory, wrong, discriminatory, callous, harmful to your reputation etc.]*.

Having reflected on *[your complaint / our conversation]*, I take full responsibility for my *[actions / conduct]* and wish to apologize for the harm that I have caused you. My behaviour was not in keeping with the key principles of our Council's Code of Conduct. In particular, I acknowledge that my conduct was in violation of *[identify the section(s) of the Code of Conduct breached]*.

Going forward, I commit to being more careful in my *[words / actions]* and to making better efforts to respect and abide by my obligations set out in the Code of Conduct. Please accept my heartfelt apology.

Sincerely,

*[name]**[title]*

TEMPLATE 3 - If held by Council to have violated the Code of Conduct

[DATE]

PERSONAL AND CONFIDENTIAL

[Name of Recipient]

[Title]

District of Saanich

[Address]

[City, Province Postal Code]

Dear [title] [last name]:

Re: Apology [subject]

As you know, on [date], I ***[briefly set out the nature of the offending conduct. It is recommended you provide dates, times and a description of the conduct at issue as you understand it].***

On [date], you confronted me about my behaviour/conduct and expressed ***[describe briefly the conduct complained of and how it affected the offended person].*** In light of Council having concluded that my conduct constituted a violation of the District's Council Code of Conduct, I acknowledge that my conduct / actions made you feel ***[describe how it affected the offended person]*** and I admit that my ***[actions / conduct]*** were ***[reformulate why your actions were wrong in your own words – ex: offensive, derogatory, belittling, in poor taste, defamatory, wrong, discriminatory, callous, harmful to your reputation etc.]***

Having reflected on ***[the decision of Council]***, I take full responsibility for my ***[actions / conduct]*** and wish to apologize for the harm that I have caused you. My behaviour was not in keeping with the key principles of our Council's Code of Conduct. In particular, I acknowledge that my conduct was in violation of ***[identify the section(s) of the Code of Conduct breached]***.

Going forward, I commit to being more careful in my ***[words / actions]*** and to making better efforts to respect and abide by my obligations set out in the Code of Conduct. Please accept my heartfelt apology.

Sincerely,

[name]***[title]***

DISTRICT OF SQUAMISH

BYLAW NO. 2919, 2022

A BYLAW TO REGULATE THE CONDUCT FOR COUNCIL AND COMMITTEE MEMBERS

WHEREAS Council and Committee Members are keepers of the public trust and must uphold the highest standards of ethical behaviour in order to build and inspire the public's trust and confidence in local government;

AND WHEREAS Council and Committee Members are expected to:

- (a) make decisions that benefit the community;
- (b) act lawfully and within the authority granted by the *Community Charter, Local Government Act* and other applicable enactments; and
- (c) be free from undue influence and not act to gain financial or other benefits;

AND WHEREAS Council and Committee Members wish to conduct their business in a transparent, efficient, accountable and respectful fashion;

AND WHEREAS it is to the benefit of the community for Council and Committee Members to conduct their business in accordance with the guiding principles of integrity, accountability, respect, leadership and collaboration;

AND WHEREAS Council and Committee Members intend to demonstrate their leadership in ethical behaviour, while promoting the principles of transparency, accountability and civility through their decisions, actions and behaviour;

AND WHEREAS a Code of Conduct Bylaw expresses standards of conduct expected for members of District Council and Committees;

AND WHEREAS Council and Committee Members have primary responsibility for ensuring that the standards of conduct herein are understood and met, thereby fostering public confidence in the integrity of the government of the District of Squamish.

THEREFORE BE IT RESOLVED that the Council of the District of Squamish in open meeting assembled, hereby ENACTS AS FOLLOWS:

PART I – GENERAL

1.1 Title

This Bylaw may be cited as "District of Squamish Code of Conduct Bylaw No. 2919, 2022".

1.2 Definitions

In this bylaw:

"CAO"	Means the Chief Administrative Officer for the District of Squamish.
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“Committee Member”	Means a person appointed to a committee, sub-committee, task force, commission, board, or other Council established body under the <i>Community Charter</i> – Part 5, Division 4 – Committees, Commissions and Other Bodies or the <i>Local Government Act</i> .
“Complaint”	Means a formal allegation, in accordance with the complaint procedure set out in Part 4 of this Bylaw, that a Member has breached this Bylaw.
“Complainant”	Means a person who has submitted a Complaint.
“Confidential Information”	Means information or records held in confidence by the District, including information or records to which Section 117 of the <i>Community Charter</i> applies. For certainty, this includes all information and records from closed meetings of Council until publicly released.
“Conflict of Interest”	Refers to pecuniary and non-pecuniary conflicts of interest governed by the <i>Community Charter</i> and the common law.
“Council Member”	Means the Mayor and Councillors for the District of Squamish.
“Gifts and Personal Benefits”	Means an item or service of value that is received by a Member for personal use or enjoyment.
“Investigator”	Means the person appointed to fulfill the duties and responsibilities assigned in Part 5 of this Bylaw.
“Member”	Means a Council Member or a Committee Member
“Municipal Officer”	Means a member of Staff designated as an officer under Section 146 of the <i>Community Charter</i> .
“Personal Information”	Has the same meaning as in the <i>Freedom of Information & Protection of Privacy Act</i> .
“Respondent”	Means a Council or Committee Member whose conduct is the subject of a Complaint.
“Staff”	Means an employee or contractor of the District.
“Volunteer”	Means a person serving the District who is not a Council Member or Committee Member.

1.3 Purpose and Interpretation:

1.3.1 This Bylaw sets out the rules Members must follow in fulfilling their duties and responsibilities as elected or appointed officials, and the powers and procedures of the Investigator in exercising oversight over Council Members.

1.3.2 The provisions of this Bylaw are to be interpreted broadly and in a manner that is consistent with the *Community Charter* S.B.C. 2003, c. 36.

1.4 Application:

- (a) This Bylaw applies to Council Members and Committee Members.
- (b) For clarity, the provisions of this bylaw that reference Committee Members only are intended to apply also to Council Members acting in their capacity as Committee Members.
- (c) Unless otherwise provided, this Bylaw does not apply to a Member's conduct in their personal life, except to the extent that such conduct reasonably undermines public confidence in District governance.
- (d) This Bylaw does not apply to Staff.
- (e) In the event of a conflict between this Bylaw and another District bylaw or Council policy governing Member conduct, this Bylaw prevails.
- (f) In this Bylaw, a reference to a person who holds an office includes a reference to the persons appointed to act for that person from time to time.
- (g) Nothing in this bylaw is intended to preclude Members, prior to the filing of a Complaint, from speaking to each other in order to resolve matters which may otherwise be captured by this Bylaw.

1.5 Severability:

If any definition, section, subsection, paragraph, subparagraph, clause or phrase in this Bylaw is held invalid by a Court of competent jurisdiction, the invalid definition, section, subsection, paragraph, subparagraph, clause or phrase must be severed and the remainder of this Bylaw is deemed to have been adopted without the severed definition, section, subsection, paragraph, subparagraph, clause or phrase.

PART 2 – STANDARDS AND VALUES

2.1 Foundational Principles

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

- (a) Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- (b) Members shall be committed to performing their duties and functions with integrity and avoiding improper use or influence of their office, and conflicts of interest;
- (c) Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- (d) Members shall seek to serve the public interest by upholding both the letter and spirit of the laws of the Federal Parliament and British Columbia Legislature, and the laws and policies adopted by the District Council.

2.1.1 Interpretation

The foundational principles above are to inform the interpretation of the substantive provisions of this Bylaw and are not stand-alone bases for Complaints.

2.2 Roles and Responsibilities

- (a) Council is the governing body of the District. It has the responsibility to govern the District in accordance with Part 5 of the *Community Charter* and other applicable legislation.
- (b) The Mayor is the head and chief executive officer of the District and has a statutory responsibility to provide leadership to the Council and to provide general direction to Municipal Officers respecting District policies, programs and other directions of the Council as set out in Part 5 of the *Community Charter*.
- (c) Staff provide professional advice to the Council and carry out decisions in an effective, efficient and non-partisan manner.

PART 3 – CONDUCT OF ELECTED OFFICIALS

3.1 General Conduct

3.1.1 A Member shall not:

- (a) contravene this Bylaw, as amended or replaced from time to time;
- (b) contravene any other District bylaw or policy, as amended or replaced;
- (c) contravene a law of British Columbia or Canada, including the *British Columbia Human Rights Code* or the *Freedom of Information and Protection of Privacy Act*; or
- (d) defame a Member, Staff, or Volunteer.

3.1.2 A Member shall treat other Council Members, Committee Members, Staff, and Volunteers with respect and dignity.

3.1.2 A Council Member shall not:

- (a) breach their oath sworn upon taking office as a Council Member; or
- (b) abuse their office.

3.2 Interactions with Staff, Volunteers and Committee Members

3.2.1 A Member must direct inquiries regarding departmental issues or questions to the CAO, General Manager, or department Director of the appropriate department and refrain from contacting Staff directly unless the communication is minor and for the purpose of seeking administrative clarity.

3.2.2 A Member must not interfere with, hinder or obstruct Staff, Volunteers or other Committee Members in the exercise of performance of their roles, responsibilities, powers, duties or functions, nor shall they impair the ability of Municipal Officers and Staff to implement Council policy decisions in accordance with Section 153 of the *Community Charter*.

- 3.2.3 A Member must not request or require Staff to undertake personal or private work on behalf of a Member.
- 3.2.4 A Member must not compel Staff to engage in partisan political activities or subject them to reprisal of any kind for refusing to engage in such activities.
- 3.2.5 A Member must not publish, on social media or otherwise, statements attacking Members, Staff, or Volunteers.
- 3.2.6 A Member must not directly or indirectly request, induce, encourage, aid, or permit Staff to do something which, if done by the Member, would be a breach of this Code of Conduct.

3.3 Interactions with the Public and Media

- 3.3.1 A Member must not communicate on behalf of the District unless authorized to do so:
 - (a) pursuant to the Communication and Media Policy;
 - (b) by Council resolution;
 - (c) or by virtue of a position or role the Member has been authorized to undertake by Council.
- 3.3.2 Without limiting the ability of the Council Member to hold a position on an issue and respectfully express an opinion, a Council Member must ensure that:
 - (a) their communications relating to Council business are accurate and not issue any communication that the Member knows, or ought to have known, to be false; and
 - (b) all communications by, and on behalf of a Member, including communications made via social media, are respectful and do not discriminate against, harass, or defame any Member, Staff, or Volunteer.
- 3.3.3 A Member shall not issue instructions to any of the District's contractors, tenderers, consultants or other service providers unless expressly authorized to do so.
- 3.3.4 Outside of a Council or committee meeting, a Member shall not communicate with a tenderer or proponent regarding the subject matter of the procurement.

3.4 Public Meetings

- 3.4.1 A Member must act with decorum at Council and Committee meetings and in accordance with District of Squamish Procedure Bylaw No. 2099, 2009, as amended or replaced from time to time.

3.5 Collection and Handling of Information

- 3.5.1 A Member must:
 - (a) comply with the provisions of the *Freedom of Information and Protection of Privacy Act* and the policies and guidelines as established by the District;

- (b) comply with section 117 of the *Community Charter*, including by protecting, and not disclosing publicly, Confidential Information;
- (c) only access information held by the District for District business, and not for personal purposes; and
- (d) not alter District records unless expressly authorized to do so.

3.6 Use of Social Media

- 3.6.1 The provisions of this Bylaw apply, without limitation, to the use of a Member's personal and official social media accounts.
- 3.6.2 Members must regularly monitor their social media accounts and immediately take measures to deal with the publication of messages or postings by others that violate the provisions of this Bylaw.
- 3.6.3 For clarity, section 3.6 applies only to social media accounts in respect of which a Member has primary moderation control.

3.7 Conflict of Interest

- 3.7.1 A Member shall not participate in a discussion of a matter, or vote on a question in respect of that matter, in respect of which the Member has a Conflict of Interest.
- 3.7.2 In respect of each matter before Council, a Council Member shall:
 - (a) assess whether they have a Conflict of Interest; and
 - (b) determine whether it is necessary to seek independent legal advice, at their own cost except where the CAO approves the cost, with respect to any situation which may result in a Conflict of Interest.
- 3.7.3 If a Member believes they have a Conflict of Interest in respect of a matter in a Council or Committee meeting, the Member shall:
 - (a) notify the Mayor or the Chair of the meeting that the Member has a Conflict of Interest prior to the matter being considered, and the Member shall restate the Conflict of Interest each time the matter arises before Council;
 - (b) refrain from discussing the matter with any other Member publicly or privately; and
 - (c) leave any meeting if the matter is discussed and not return until the discussion has ended or voting on the matter has been concluded.

3.8 Use of Influence

- 3.8.1 A Member must not attempt to influence a decision of the Council, a Committee, a Municipal Officer, or Staff if the Member has a pecuniary Conflict of Interest in relation to that decision.
- 3.8.2 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.
- 3.8.3 A Member must not intimidate, improperly influence, threaten, or coerce Staff.

3.9 Gifts and Personal Benefits

- 3.9.1 A Council Member must not accept a Gift or Personal Benefit, unless accepted in accordance with section 105 of the *Community Charter*.
- 3.9.2 A Council Member must disclose a Gift or Personal Benefit, received in accordance with section 105 of the *Community Charter*, as per section 106 of the *Community Charter*.
- 3.9.3 Committee Members must comply with 3.9.1 and 3.9.2 as though they were Council Members.

3.10 Campaign Activities

- 3.10.1 A Council Member shall not use District facilities, equipment, supplies, services, or other resources of the District for any election-related activities.
- 3.10.2 A Member must not use the services of Staff for election-related purposes during the hours in which those Staff Members are in the paid employment of the District or paid by the use of District resources.
- 3.10.2 A Council Member shall comply with all applicable election legislation including, but without limitation, the *Local Government Act* and *Local Elections Campaign Financing Act*.

3.11 Business Relations

- 3.11.1 A Council Member who engages in another profession, business, or occupation concurrently while holding elected office shall not allow such activity to materially affect the Council Member's integrity, independence or competence.

PART 4 – COMPLAINT AND RESOLUTION PROCEDURES

4.1 Council Members

4.1.1 Confidential Requests

- (a) If a Council Member, Committee Member, or Staff believes that they have been subject to conduct by a Council Member in breach of this Bylaw, that person may approach the CAO on a confidential basis, without the need to file a Complaint, to request that the CAO inform the Council Member of the alleged breach. Upon receipt of the confidential request, the CAO may attempt to address the conduct with the Council Member.
- (b) The CAO must protect the confidentiality of a person making a request under 4.1.1(a) unless the person making the request consents in writing to disclosure.

4.1.2 Complaint Procedure

- (a) A Member, Staff, or Volunteer may submit a Complaint to the CAO or, if the Complainant is the CAO or the Complaint involves or is about the CAO, then to the Corporate Officer.
- (b) Upon receipt of a Complaint, the CAO (or Corporate Officer if the Complainant is the CAO or the Complaint involves or is about the CAO) shall retain an Investigator.
- (c) A Complaint must be in writing and describe with sufficient detail:
 - i. the name of the Complainant;
 - ii. the name of the Respondent;
 - iii. the conduct that the Complainant alleges to have been breached;
 - iv. the date of the alleged conduct;
 - v. the parts of this Bylaw that the Complainant alleges have been breached; and
 - vi. the basis for the Complainant's knowledge about the conduct.
- (d) A Complainant may specify in the Complaint if they are willing to participate in an informal resolution of the Complaint.
- (e) The CAO (or Corporate Officer, if the CAO is the Complainant or the Complaint involves or is about the CAO) may accept a Complaint notwithstanding that the form of the Complaint does not comply with all of the requirements set out in Section 4.1.2 (c) if the circumstances warrant.
- (f) The Investigator must not accept multiple Complaints concerning the same matter. In the event that the Investigator receives multiple Complaints concerning the same matter, the Investigator must proceed with the first Complaint accepted, but may expand the Complaint and/or add Complainants for the purpose of conducting the investigation and preparing the investigation report.
- (g) The Investigator must reject a Complaint received more than 90 days after the Complainant knew, or reasonably ought to have known, of the alleged breach of this Bylaw. The Investigator is authorized to extend this 90 day deadline up to an additional 90 days if circumstances warrant an extension.
- (h) The Investigator must reject a Complaint received regarding a Council Member seeking re-election in the period from the first day of the nomination period to the general voting day.
- (i) In the 90 days prior to general voting day, the Investigator may suspend any investigation that is underway.

4.1.3 Dismissal or Suspension of Complaint

- (a) If a Complaint is submitted that, on its face, is not made with respect to a breach of this Bylaw, or if a Complaint would be more appropriately addressed through another process, including if the Complaint is:

- i. with respect to non-compliance with the *Freedom of Information and Protection of Privacy Act*;
- ii. with respect to non-compliance with a more specific Council policy or bylaw with a separate Complaint procedure; or
- iii. with respect to a matter that is subject to another outstanding process, such as a court proceeding or human rights complaint,

the Investigator may reject the Complaint, or part of the Complaint, and must notify the Complainant in writing that the Complaint is not within the jurisdiction of this Bylaw, or that the Complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Investigator thinks appropriate.

- (b) If the Investigator, at any stage in the Complaint procedure, determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code* then the Investigator must immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council.
- (c) Where a Complaint is made against a Council Member who, during the course of the Complaint procedure, ceases to hold office, the Investigator may close the Complaint and notify the Complainant and Respondent of this decision.

4.1.4 Preliminary Assessment

- (a) On receipt of a Complaint, the Investigator must conduct a preliminary assessment and if at that time, or any time thereafter, the Investigator is of the opinion that:
 - i. the Complaint is not with respect to a breach of this Bylaw;
 - ii. the Complaint is frivolous, vexatious, or not made in good faith;
 - iii. the investigation is or might be hampered, or the Council Member might be prejudiced, by the Complainant's failure to comply with Section 4.1.2(c), or otherwise cooperate with the investigation;
 - iv. the Complainant wishes to withdraw the Complaint, and it would be appropriate in the circumstances to allow the withdrawal; or
 - v. there are no grounds or insufficient grounds to conclude that a violation of this Bylaw has occurred,

the Investigator must notify the Complainant and the Respondent in writing that the Investigator is closing the Complaint, set out the reasons therefore, and close the Complaint.

- (b) Notwithstanding Section 4.1.4 (a), the Investigator may request further information from the Complainant before determining whether or not there are sufficient grounds for believing that a breach of this Bylaw may have occurred.

4.1.5 Informal Resolution:

- (a) When the Investigator has decided to proceed with a Complaint, the Investigator must determine whether the Complaint requires a formal investigation, or whether the Complaint may be resolved informally. In the latter case, the Investigator may either attempt to resolve the Complaint directly or refer the Complaint to the CAO.
- (b) In making a determination under subsection (a), the Investigator shall give a strong preference to the informal resolution process wherever possible.
- (c) When determining whether the Complaint may be resolved informally, the Investigator may consider culturally appropriate, transformative or restorative justice approaches, and may engage a third party to assist the Investigator for this purpose.
- (d) Where the Investigator refers the Complaint in accordance with Section 4.1.5(a) the CAO may agree to assist in resolving the Complaint directly, or may appoint at their discretion a third party to assist in resolving the Complaint.
- (e) The third party assisting in the informal resolution of a Complaint will assess the suitability of the Complaint for settlement or resolution on an on-going basis and may decline to assist at any point.
- (f) The Complainant, or the Respondent, can decline to participate in an informal resolution at any time.
- (g) If a Complaint is resolved informally, the third party assisting in resolving the Complaint must notify the Investigator in writing of the terms of the resolution, upon receipt of which, the Investigator must close the Complaint.
- (h) If a Complaint cannot be resolved informally, the third party assisting in resolving the Complaint must refer the Complaint back to the Investigator for a formal investigation.

4.1.6 Formal Resolution:

- (a) If a Complaint is not rejected, closed, or resolved informally, the Investigator must proceed with a formal investigation.
- (b) The Investigator must deliver the Complaint to the Respondent with a request that the Respondent provide a written response to the Complaint together with any submissions the Respondent chooses to make within 10 days, subject to the Investigator's discretion to extend the timeline.
- (c) The Investigator may deliver the Complainant with the Respondent's written response together with any submissions, on a strictly confidential basis, and request a reply in writing within 10 days, subject to the Investigator's discretion to extend the timeline.
- (d) The Investigator may:

- i. speak to anyone relevant to the Complaint;
 - ii. request disclosure of documents relevant to the Complaint; or
 - iii. access any record in the possession or control of the District, except a record that is subject to solicitor-client privilege.
- (e) The Investigator must ensure that the formal investigation complies with the rules of procedural fairness and natural justice required in the circumstances.
- (f) Notwithstanding subsection (a) above, nothing prohibits the Investigator from summarily dismissing a Complaint where it becomes apparent, after some investigation, that the Complaint has no chance of success.
- (g) If the Investigator summarily dismisses a Complaint in the Formal Resolution stage, the Investigator shall report to the Complainant and Respondent in the manner similar to that as set out in 4.1.4(a).

4.1.7 Adjudication and Reporting:

- (a) The Investigator must make a decision within 90 days of making the determination to proceed with a formal investigation, unless the Investigator determines that doing so is not practicable, in which case the Investigator must notify the Complainant and Respondent of the delay and provide a revised decision date. The revised decision date may be extended by periods of up to 30 days on provision of written notice to the Complainant and the Respondent.
- (b) A notification issued pursuant to sections 4.1.3(a), 4.1.3(b), 4.1.4(a), or subsection (a) is confidential and must not be disclosed except in the following circumstances:
 - i. to Council for the purpose of considering a resolution for reimbursement of legal fees pursuant to section 4.4.2; and
 - ii. the Respondent may disclose the fact that the Complaint has been closed, or that a finding has been made that the Respondent did not breach this Bylaw.
- (c) If after reviewing all material information, the Investigator determines that the Respondent did not violate this Bylaw, then:
 - i. the Investigator must prepare a written investigation report providing reasons for their determination that the Council Member did not breach the Bylaw;
 - ii. the Investigator must deliver a copy of the investigation report to the Complainant, Respondent and Council; and
 - iii. the Investigator must make the investigation report or a summary publicly available on the next available Council agenda after delivery of the investigation report to the Complainant, Respondent and Council.
- (d) If after reviewing all the material information, the Investigator determines that a Council Member did violate this Bylaw, then:

- i. the Investigator must prepare a written investigation report providing reasons for their determination that the Council Member breached this Bylaw;
 - ii. the investigation report must make recommendations as to the appropriate sanction for the breach;
 - iii. if the Investigator determines the Council Member took all reasonable steps to prevent the breach, or that the breach was trivial or done inadvertently or because of an error in judgment made in good faith, the Investigator will so state in the investigation report and may recommend that no sanction be imposed;
 - iv. the Investigator must deliver, on a strictly confidential basis, a copy of the investigation report to the Respondent; and
 - v. the Investigator must deliver a copy of the investigation report to the Complainant and Council forty eight (48) hours after delivery of the investigation report to the Respondent.
- (e) In all circumstances, the Investigator may choose to distribute the investigation report to Council through the Corporate Officer.

4.1.8 Final Determination by Council

- (a) Council must, within 30 days of delivery of the investigation report pursuant to Section 4.1.7(d)(v), or a longer period if approved by a 2/3 vote of Council, decide on the appropriate measures, if any, that are warranted by the breach of this Bylaw, and will take such actions as Council considers appropriate in the circumstances.
- (b) Prior to Council making any decision regarding the findings and recommendations set out in the investigation report, the Respondent must be provided with an opportunity, either in person or in writing, to comment on the decision and any recommended censure, sanctions or corrective actions.
- (c) While an investigation report provided to Council may be considered in a closed meeting for the purpose of receiving legal advice, or for another valid reason, when Council deliberates and votes on the investigation report, it will do so in a public meeting and the investigation report, or a summary, must be made available to the public in a form that complies with section 4.1.10(b).
- (d) Notwithstanding subsection (c), Council may deliberate on and vote on a report in a closed meeting where there is a valid reason to close the meeting under section 90 of the *Community Charter*. For certainty, this means the investigative report or summary may not be publicly released.

4.1.9 Remedies

- (a) Sanctions that may be imposed for a violation of this Bylaw include the following:
 - i. a letter of reprimand from Council addressed to the Council Member;

- ii. a request from Council that the Council Member issue a letter of apology;
- iii. the publication of the letters contemplated in subsections (i) and (ii), along with the Council Member's written response, if any;
- iv. directions to the CAO regarding the provision of documents, including documents containing Confidential Information, to the Council Member;
- v. a recommendation that the Council Member attend specific training or counselling;
- vi. limitations on access to certain District facilities;
- vii. suspension or removal of the Council Member from some or all Council committees and bodies to which the Council Member was appointed;
- viii. prohibition from representing the District at events and/or attending conferences and seminars;
- ix. suspension or removal of the appointment of a Council Member as the Acting Mayor;
- x. public censure of a Council Member;
- xi. any other sanction recommended by the Investigator, so long as that sanction is within the authority of Council.

- (b) The Investigator may recommend that Council consider commencing an application for disqualification under section 111 of the *Community Charter* or for damages under section 117 of the *Community Charter*, as applicable.

4.1.10 Report to be Public

- (a) Unless deliberations have, pursuant to section 4.1.8(d), taken place in a closed Council meeting, the District must, after delivering a copy of the investigation report to the Complainant and Council, make the investigation report, or a summary of the report, available to the public.
- (b) In all circumstances, the District will ensure that the investigation report or a summary complies with the District's obligations regarding disclosure of personal information set out in the *Freedom of Information and Protection of Privacy Act*, and ensure that appropriate redactions are applied prior to any release to the public.

4.1.11 Remuneration

- (a) Where the Investigator finds that a Council Member:
- i. breached this Bylaw; or
 - ii. submitted a complaint that was frivolous, vexatious, or made in bad faith

the remuneration to which that Council Member would otherwise be entitled shall be reduced in accordance with the Remuneration and Expenses Bylaw No. 1503, 1997, as amended or replaced from time to time.

(b) Notwithstanding subsection (a)(i), the remuneration of a Council Member shall not be reduced if the Investigator makes a finding under section 4.1.7(d)(iii) that:

- i. the Council Member took all reasonable steps to prevent the breach;
- ii. the breach was trivial or inadvertent; or
- iii. the breach was because of an error in judgment made in good faith.

4.1.12 Confidentiality of the Investigation

- (a) The Investigator must make all reasonable efforts to investigate Complaints in confidence.
- (b) The Investigator and every person acting under the Investigators' instructions must preserve confidentiality with respect to all matters that come into the Investigator's knowledge in the course of any investigation or Complaint except as required by law.
- (c) An investigation report must only disclose such matters as, in the Investigator's opinion, are necessary for the purpose of the investigation report.

4.1.13 Interpretation

For clarity, and despite section 4.2, the procedure in section 4.1 is to apply to all allegations against Council Members including in their capacity as Committee Members.

4.2 Committee Members

- 4.2.1 A Complaint of an alleged breach of this Bylaw by a Committee Member shall be submitted simultaneously in writing addressed to both the Mayor and CAO and within 90 days of the last alleged breach.
- 4.2.2 A Complaint must comply with the standards set out at section 4.1.2.
- 4.2.3 The Mayor shall consider the Complaint and direct that any enquiries considered appropriate or desirable be undertaken, including a referral to the CAO or the Investigator. For certainty, if the Complaint is referred to the CAO or the Investigator, then the processes and procedures in section 4.1 of this Bylaw may be utilized to the extent deemed necessary and appropriate.
- 4.2.4 Nothing in this Code is intended to abrogate the power of the Mayor or Council, as applicable, to remove, at their pleasure and at any time, any Committee Member from any committee to which they have been appointed.

4.3 Reprisals and Obstruction

- 4.3.1 No Council Member, Committee Member, or Staff will threaten, interfere with, or otherwise obstruct the Investigator in relation to the Investigator carrying out the duties and responsibilities under this Bylaw.
- 4.3.2 No Council Member, Committee Member, or Staff will threaten or undertake any reprisal against a Complainant or against a person who provides information to the Investigator in the context of an investigation.
- 4.3.3 No Council Member, Committee Member, or Staff will tamper with or destroy documents or electronic records related to any matter under investigation under this Bylaw or refuse to respond to the Investigator when questioned regarding an investigation.
- 4.3.4 Any individual covered by this Bylaw who is found to have engaged in any reprisal or retaliation in violation of this Bylaw will be subject to appropriate disciplinary action, which action may include, and is not limited to, the sanctions and remedies described above or the termination of employment for just cause, as applicable.

4.4 Reimbursement of Costs

- 4.4.1 A Council Member may make a request to Council for reimbursement for the costs of legal advice and representation in responding to the formal complaint process outlined in this Bylaw. If appropriate after considering all circumstances, Council may resolve to reimburse legal fees reasonably incurred by a Council Member, provided that all of the following are met:
 - (a) it is the Council Member's first formal complaint process; and
 - (b) the amount does not exceed \$10,000.
- 4.4.2 For clarity, the provisions of the Indemnification Bylaw No. 2373, 2015, as replaced or amended from time to time, do not apply to requests for reimbursement under this Bylaw.

4.5 Vexatious Allegations and Complaints

- 4.5.1 Any individual covered by this Bylaw who makes an allegation or Complaint under this Bylaw that is subsequently found to have been made in a deliberately vexatious or malicious manner, or otherwise to have been made in bad faith, will be subject to appropriate disciplinary action, which action may include, but is not limited to:
 - (a) in the case of Council Members, sanctions and remedies described in Section 4.1.9;
 - (b) in the case of Committee Members, termination of the Committee Member's appointment;
 - (c) in the case of Staff, disciplinary action or the termination of employment for just cause, as applicable.

PART 5 – APPOINTMENT OF INVESTIGATOR

5.1 Appointment of Investigator

5.1.1 The CAO shall, upon receipt of a Complaint, appoint an Investigator to fulfill the duties and responsibilities described in section 5.2.

5.2 Duties and Responsibilities

5.2.1 The duties and responsibilities of the Investigator are as follows:

- (a) to assist with informal resolution of a confidential request or Complaint;
- (b) to receive and assess a Complaint to determine if the Complaint must be rejected, closed, resolved or investigated;
- (c) to investigate and conduct inquiries as to alleged violations of this Bylaw;
- (d) to report to Council as to whether a Member has breached this Bylaw;
and
- (e) to make recommendations on an appropriate remedy, if the Investigator determines that a Member has breached this Bylaw.

5.2.2 The Investigator must perform the duties and responsibilities under this Bylaw in an independent manner.

5.2.3 An Investigator may only be dismissed for cause.

PART 6 – ENACTMENT

6.1 Effective Date

This bylaw comes into force and effect on adoption.

READ A FIRST, SECOND and THIRD time this 12 day of July, 2022.

ADOPTED this 19 day of July, 2022.

Karen Elliott, Mayor

Robin Arthurs, Corporate Officer