


# POLICY

	Policy:	<b>Code of Conduct – Council, Committees and Local Boards</b>		
	Department:	Chief Administrative Office		
	Division:	Clerks Division	By-law No.:	2016-34
	Administered by:	Municipal Clerk	Approval Date:	Nov. 9, 2020
	Replaces:	Code of Conduct Policy for Council Members – March 29, 2016		
	Attachment(s):	<b>1. Appendix A – Code of Conduct Complaint Protocol 2. Appendix B – Formal Complaint Form / Affidavit</b>		

## 1. POLICY STATEMENT

- 1.1. The Corporation of the Town of Amherstburg is committed to providing its residents, staff, and others with the highest standards of conduct from Members elected to local government and those appointed by Council to serve as advisors on local boards and committees. Adherence to these standards will protect and maintain the reputation and integrity of the Town of Amherstburg.
- 1.2. The Town has appointed an Integrity Commissioner to investigate complaints against Members of Council pursuant to the *Code of Conduct – Council, Committees and Local Boards* and any procedures, rules and policies of the Town and local boards governing the ethical behaviour of Members of Council, Committees or Local Boards. In addition, it is expected that the Integrity Commissioner will provide advice on ethical issues to individual Members and Council as a whole and will engage in education and training with all of those subject to the Code of Conduct policy.

## 2. PURPOSE

- 2.1. The *Municipal Act, 2001 Section 223.2 (1)*, requires the Town of Amherstburg to establish codes of conduct for Members of Council, committees and local boards.
- 2.2. This policy ensures the integrity of municipal governance by encouraging high standards of conduct on the part of all Members.
- 2.3. This policy ensures that Members perform their duties with integrity, avoiding the improper use of influence in their office, and avoiding conflicts of interest, whether real or apparent.
- 2.4. This policy ensures that official business of the Town of Amherstburg is conducted in a professional and ethical manner, and moves the Town forward in a positive and productive manner.
- 2.5. This policy ensures the prevention of a poisoned environment.

## 3. SCOPE

- 3.1. This policy applies to every Council Member in the Town of Amherstburg and individuals appointed by Council to committees and local boards.

- 3.2. This policy shall be reviewed every five (5) years from the date it becomes effective, or sooner at the discretion of the Chief Administrator Officer or designate.

#### 4. **DEFINITIONS**

- 4.1. **Accountability** is the manner in which Council, Staff, Committees and Local Boards are held to account for their actions.
- 4.2. **Bullying** is unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated over time. Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose. This includes physical, verbal, social/relational and cyber bullying.
- 4.3. **Chief Administrative Officer (CAO)** is the Chief Administrative Officer for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 229 of the *Municipal Act, 2001*.
- 4.4. **Clerk** is the Municipal Clerk for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 228 of the *Municipal Act, 2001*.
- 4.5. **Confidential Information** includes any information in the possession of, received in confidence, or deemed as such by the Town of Amherstburg, that is prohibited from disclosure.
- 4.6. **Corporation** is the Corporation of the Town of Amherstburg.
- 4.7. **Council** refers to the current elected Council for the Corporation of the Town of Amherstburg. This includes, as an entirety, the Mayor, Deputy Mayor and Councillors.
- 4.8. **Director** is the person responsible for direction and operational control of a division as defined on the Town's organizational structure.
- 4.9. **Discrimination** is treating someone differently and detrimentally based on certain characteristics or differences including age, race, ethnicity, religion, sex, sexual orientation, family status, marital status and/or physical and mental disability.
- 4.10. **Employee/Staff** is a person or group of persons, who supplies services to the Corporation for wages including any union or non-union, regular or temporary, full-time, part-time, seasonal or casual staff member, including but not limited to permanent staff, temporary staff, committee members, students, recreation staff, contract employees, paid work placements, and adult crossing guards.
- 4.11. **Electronic Communications** for the purpose of this policy encompasses social media and other messaging forms that enable users to interact, create, share and communicate information online. Electronic communication includes, but is not limited to, messaging or video chat platforms, websites, apps, email, texting and blogging. It also includes social media networking platforms such as Facebook, Twitter, YouTube and similar entities.
- 4.12. **Harassment** is defined as improper conduct by an individual, that is directed at and is offensive to another individual, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It

comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat.

- 4.13. **Integrity** refers to the consistency of actions, values, methods, measures, principles expectations and outcomes. It denotes a deep commitment to do the right thing for the right reason. The Code of Conduct policy is the embodiment of the Town's commitment to integrity in municipal governance.
- 4.14. **Integrity Commissioner** refers to the Integrity Commissioner appointed by Council with all the powers and duties prescribed by the *Municipal Act*, *Municipal Conflict of Interest Act* and any other applicable law.
- 4.15. **Intellectual Property** is a set of intangible rights held by musicians, authors, artists, inventors, scientists and other individuals who have ownership of their intellectual and creative output. Others are prohibited from using intellectual property without prior and written permission. Intellectual property may have commercial value and encompasses the area of Copyrights, Trademarks, Patents, and Design.
- 4.16. **Intimidation** means to intentionally say or do something which would cause a person of ordinary sensibilities to be fearful of bodily harm or any other reprisal whether physical, psychological, social or economic.
- 4.17. **Meeting** as is defined in subsection 238 (1) of the Act "means any regular, special or other meeting of council, of a local board or of a committee of either of them, where,
  - 4.19.1 A quorum of Members is present, and
  - 4.19.2 Members discuss or otherwise deal with any matter in a way that materially advances the business or decision making of the council, local board or committee."
- 4.18. **Member** means all elected officials and/or any individual appointed by Council to serve in an advisory or legislative capacity on any local Town committee or board.
- 4.19. **Parent** means a person who has demonstrated a settled intention to treat a child as part of his or her family whether or not that person is the natural parent of the child.
- 4.20. **Pecuniary Interest** is as defined by the *Municipal Conflict of Interest Act*.
- 4.21. **Person** includes an individual, corporation, partnership, association and any other entity as the context allows.
- 4.22. **Poisoned Environment** is a workplace that is hostile or unwelcoming as a result of insulting or degrading comments or conduct that has an influence on others and how they are treated.
- 4.23. **Senior Management Team (SMT)** is comprised of the Chief Administrative Officer and the Directors. If a Director is unavailable, a delegate may be assigned.
- 4.24. **Spouse** is a life partner in a marriage, civil union or common-law marriage.
- 4.25. **Town** is the Corporation of the Town of Amherstburg.

4.26. **Transparency** in government implies openness, accountability and honesty.

Other common definitions, acronyms, and terms are available in the Glossary located on the Town's Policies webpage.

## 5. **INTERPRETATIONS**

Any reference in this Policy to any statute or any section of a statute shall, unless expressly stated, be deemed to be reference to the statute as amended, restated or re-enacted from time to time. Any references to a by-law or Town policy shall be deemed to be a reference to the most recent passed policy or by-law and any amendments thereto.

## 6. **PRINCIPLES OF CONDUCT**

### 6.1. **Key Principles**

Members must:

- 6.1.1. Serve and be seen to serve their constituents in a conscientious and diligent manner.
- 6.1.2. Be committed to performing their functions with integrity and to avoid the improper use of the influence of the office, and conflicts of interest, both real and apparent.
- 6.1.3. Uphold a high standard of ethical behaviour to ensure that their decision making is impartial, transparent and free from undue influence.
- 6.1.4. Seek to serve the public interest by upholding both the letter and the spirit of the laws of the Parliament of Canada and Legislature of Ontario, the by-laws and policies adopted by Town Council.
- 6.1.5. Refrain from engaging in activities, financial or otherwise that are inconsistent with the Town's vision, mission and values.
- 6.1.6. Refrain from engaging in conduct that would bring the Town or Council into disrepute or compromise the integrity of the Municipality or Council.
- 6.1.7. Exercise their authority only for the purpose for which they were intended.
- 6.1.8. Comply with the *Canadian Human Rights Act* and the *Ontario Human Rights Code* and ensure the equitable treatment of citizens, employees and other Members of Council, committees and local boards.
- 6.1.9. Remain professional and be cognizant of their position when representing the Town in an official capacity at functions where alcohol is present.

### 6.2. **Integrity Commissioner**

- 6.2.1. Section 223.3 of the *Municipal Act*, as amended, requires the appointment of an Integrity Commissioner to ensure compliance with the Code of Conduct for

Members. In addition, the legislation provides that the Integrity Commissioner can be delegated any or all of the policy matters surrounding the enforcement of Codes of Conduct for the municipality.

- 6.2.2. The Integrity Commissioner shall provide advice to any Members seeking clarification of this policy as it relates to the Member.
- 6.2.3. The Integrity Commissioner shall provide advice to any Members with regards to possible conflicts of interest pursuant to the *Municipal Conflict of Interest Act*, as amended.
- 6.2.4. The Integrity Commissioner has the power to deal with requests to investigate suspected contraventions of the Code of Conduct and has the right of free access to all records of a municipality, and any Member that the Integrity Commissioner believes is necessary to investigate an inquiry.
- 6.2.5. Council can terminate the Integrity Commissioner only by a two-thirds vote of all Members.

### 6.3. **Policies and Procedures**

All Members are responsible to familiarize themselves with the terms of all established policies and related procedures.

All Members shall observe and comply with the terms of all established policies and related procedures.

### 6.4. **Discrimination and Harassment**

- 6.4.1. No form of harassment will be tolerated, whether it involves a Member, staff or the public.
- 6.4.2. All Members have a duty to treat the public, other Members and staff with respect.
- 6.4.3. Any Member confronted with, or aware of discrimination or harassment of any nature, will immediately report said behaviour to the Mayor, CAO and/or Clerk.

## 7. **CODE OF CONDUCT RULES**

### 7.1. **Gifts and Benefits**

- 7.1.1. For the purpose of this policy, a gift or benefit provided to a Member, spouse, child, or parent, that is connected either directly or indirectly to the performance of the Member's duties, is deemed a gift to that Member.
- 7.1.2. No Member shall accept a fee or advance, gift, gift certificate, bonus, reward, or personal benefit that is connected directly or indirectly with the performance of his or her duties.

- 7.1.3. The following are recognized as exceptions:
- 7.1.3.1. Compensation authorized by legislation.
  - 7.1.3.2. A gift or benefit of the kind that normally accompanies the responsibilities of office and is received as an incident of protocol or social obligation.
  - 7.1.3.3. A political contribution otherwise authorized and reported as required by law, in the case of a Council Member running for office.
  - 7.1.3.4. Services provided without compensation by a person volunteering his or her time.
  - 7.1.3.5. An appropriate memento of a function honouring the Member.
  - 7.1.3.6. Food, lodging, transportation, or entertainment lawfully provided by any Provincial, regional, or local government or board or political subdivisions of any of them, by the Federal government, a foreign government, or by those organizing a conference, seminar, or event where the Member is speaking or attending in an official capacity.
  - 7.1.3.7. Food and beverages consumed at a banquet, reception, or similar event, if all of the following is applicable:
    - a. Attendance by the Member is for legitimate Town purpose;
    - b. The person extending the invitation, or a representative of the organization holding the event, is in attendance; and,
    - c. The value is considered reasonable and the invitation infrequent.
  - 7.1.3.8. Communications to the office of a Member, including subscriptions to a newspaper or periodicals.
- 7.1.4. Except in the case of 7.1.3.6, a Member may not accept a gift or benefit worth in excess of \$500.00 or gifts and benefits from one source during a calendar year worth in excess of \$500.00.

7.1.5. Disclosure Statement:

If the value of the gift or benefit exceeds \$300, or if the total value of the gifts or benefits received from any one source during the course of a calendar year exceeds \$300, the Member shall file a disclosure statement with the Integrity Commissioner, within 30 days of receipt of the gift or benefit, or of reaching a total value in excess of \$300.00. Every disclosure statement filed under this policy shall be made a public record.

- 7.1.5.1. The disclosure statement must identify the following:
- a) The nature of every gift or benefit received;

- b) The source and date of receipt;
- c) The circumstances under which it was given and received;
- d) The estimated value;
- e) What the recipient intends to do with the gift; and,
- f) Whether any gift will at some point remain with the Town.

7.1.5.2. Upon receipt of a disclosure statement, the Integrity Commissioner shall examine to ascertain whether the receipt of the gift or benefit might, in his or her opinion, constitute a contravention of this policy or create a conflict between a private interest and the public duties or responsibilities of the Council Member. In the event that Integrity Commissioner makes such a determination, he or she shall call upon the Member to justify receipt of the gift or benefit.

## 7.2. **Conduct of Members**

### 7.2.1. **At Council and Committee/Board Meetings**

- 7.2.1.1. Every Member shall conduct themselves with decorum and respect at council, committee, local board and other meetings, and in accordance with the provisions of the Procedural By-law, this policy, and other applicable laws.
- 7.2.1.2. All Members shall take steps to prepare in advance of meetings and become familiar with items on the agenda.
- 7.2.1.3. Members shall demonstrate attentiveness and respect to speakers, presenters, staff and the public by turning their mobile devices to vibrate and responding only to emergencies.

### 7.2.2. **Respecting Staff**

- 7.2.2.1. Under the direction of the SMT, and in accordance with the decisions of Council, staff are required to serve the Town as a whole. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity, and without undue influence from any Member.
- 7.2.2.2. Members shall show respect for staff, and for their professional capacities and responsibilities.
- 7.2.2.3. Members shall not maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
- 7.2.2.4. Members shall not compel any member of staff to engage in partisan political activities, or subject any member of staff to threat or discrimination for refusing to engage in any such activity.

7.2.2.5. A Member shall not use or attempt to exercise his or her authority or influence by intimidating, threatening, coercing, commanding or improperly influencing any staff member or interfering with that person's duties, including the duty to disclose improper activity.

7.2.3. Respecting Others

7.2.3.1. Every Member has the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation, and to ensure that the work environment is free from discrimination and harassment.

7.2.3.2. Members shall not use indecent, abusive, or insulting words or expressions toward any other Member, any staff, or the public.

7.2.3.3. Members shall communicate in a manner that is respectful to any individual, regardless of race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or mental or physical disability.

7.2.4. During Election Campaigns

7.2.4.1. Every Member shall comply with all applicable requirements of the *Municipal Elections Act*, 1996, as amended.

7.2.4.2. No Member shall use confidential information for any election campaign or campaign-related activity.

7.2.4.3. No Member shall use facilities, equipment, supplies, services, or other resources of the Town, including any Councillor newsletter or website linked through the Town's website, for any election campaign or campaign-related activity.

7.2.4.4. No Member shall undertake campaign-related activities on Town property at any time.

7.2.4.5. No Member shall use the services of any person for election-related purposes during hours in which that person receives any compensation from the Town.

7.3. **Media and Communication Protocols**

7.3.1. The Mayor is the official spokesperson for Council and shall be responsible for communicating the Town's position on all municipal matters including decisions of Council.

7.3.2. Media releases will be sent to Members of Council prior to public release.



- 7.3.3. Members of Council are welcome to speak to traditional media outlets and to use social media to engage and communicate with residents. Members of Council are free to speak their conscience and for constituents. Members of Council shall accurately communicate the decisions of Town 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 process of Council.
- 7.3.4. Members of Council may directly make inquiries or requests to management staff.
- 7.3.5. Any Member who makes a request or inquiry of a staff member not in accordance with this policy will be redirected to that employee's Director who will correspond with the Member on behalf of the department involved.

#### 7.4. **Electronic Communication and Social Media**

- 7.4.1. Members must recognize their professional boundaries and responsibilities in the appropriate use of electronic communications and social media.
- 7.4.2. When communicating with Administration, Members must:
  - 7.4.2.1. Respect the access to information and privacy rights of citizens and employees alike, in accordance with applicable legislation.
  - 7.4.2.2. Refrain from posting or forwarding links or comments that might be considered offensive, discriminatory or inconsistent with this Code of Conduct Policy or the laws of Ontario and Canada.
- 7.4.3. Communications to Administration should be constructed with professionalism and decorum while providing information that is timely and accurate.
- 7.4.4. Email, faxes and other written correspondence used in the capacity of an appointed position may be considered documents of the Town and may be kept as an official record.

#### 7.5. **Conflict of Interest**

- 7.5.1. Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.
- 7.5.2. The *Municipal Conflict of Interest Act* endorses the following principles in relation to the duties of Members:
  - 7.5.2.1. The importance of integrity, independence and accountability in local government decision-making.

- 7.5.2.2. The importance of certainty in reconciling the public duties and pecuniary interests of Members.
- 7.5.2.3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
- 7.5.3. A conflict of interest exists when an individual is, or could be, influenced, or appear to be influenced by a pecuniary (financial) interest when carrying out their public duty. Members shall take appropriate steps to avoid conflicts of interest, both real and apparent.
- 7.5.4. Members are encouraged to seek guidance from the Integrity Commissioner when becoming aware that they may have a conflict between their responsibilities to the public and any pecuniary interest as defined by the *Municipal Conflict of Interest Act*.
- 7.5.5. Members shall disclose a pecuniary interest at the public meeting where the matter will be discussed, or as soon thereafter as possible. Absence from a public meeting where the matter is discussed does not relieve a Member from disclosing the interest.
- 7.5.6. Pursuant to the *Municipal Conflict of Interest Act*, upon disclosing a pecuniary interest, the member shall:
  - 7.5.6.1. Immediately withdraw from the discussion;
  - 7.5.6.2. Refrain from participating in the debate or voting on the matter; and,
  - 7.5.6.3. Not attempt to influence Members of Council, Committees, Local Boards, staff or any other public person.
- 7.5.7. A Member shall within 30 days of disclosing an interest publicly, submit the interest in writing to the Clerk on a Pecuniary Interest Disclosure Form and the Clerk shall maintain an interest registry as a public record in the Clerk's Office.
- 7.5.8. Contravention of the *Municipal Conflict of Interest Act* is subject to the sanctions under the Act and/or the Code of Conduct.

## 7.6. Confidential Information

- 7.6.1. In this policy, "confidential information" includes any information in the possession of, or received in confidence by the Town that the Town is prohibited from disclosing, or has decided to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*, or any other law.
- 7.6.2. "Confidential Information" also includes:
  - 7.6.2.1. Information of a corporate, commercial, scientific, or technical nature received in confidence from third parties.

- 7.6.2.2. Personal information.
- 7.6.2.3. Information that is subject to solicitor-client privilege.
- 7.6.2.4. Information that concerns any confidential matters pertaining to:
  - a) Personnel.
  - b) Labour relations.
  - c) Litigation.
  - d) Property acquisition.
  - e) The security of property of the Town or a local board.
  - f) Any other information determined by Council to be confidential, or required to remain or be kept confidential by legislation or order.
- 7.6.3. No Member shall disclose, release, or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so.
- 7.6.4. No Member shall use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body.
- 7.6.5. A matter, the substance of a matter, and information pertaining to a matter, that has been debated or discussed at a meeting closed to the public shall be confidential, unless authorized by the Council or legislation to be released, generally or subject to conditions, and such have been complied with. No information pertaining to such a matter, the manner in which it was dealt with at the meeting, or any part or description of the debate, shall be disclosed unless authorized by the Council or otherwise by law.
- 7.6.6. A Member may disclose the content of any matter referred to in the preceding paragraph or the subject matter of deliberations, at an in-camera (closed) meeting, only after the Council or committee lawfully and knowingly discusses the information at a meeting that is open to the public or releases the information to the public.
- 7.6.7. Without limiting the generality of the foregoing, no Member shall, without lawful authority, disclose, or make personal use of, any of the following types of confidential information:
  - 7.6.7.1. Information concerning litigation, negotiation, or personnel matters.
  - 7.6.7.2. Information which may infringe on the rights of any person (e.g. source of a complaint where the identity of the complainant is given in confidence).
  - 7.6.7.3. Price schedules in any contract, tender, or proposal document while such remains a confidential document.
  - 7.6.7.4. Information deemed to be "personal information" under the *Municipal Freedom of Information and Protection of Privacy Act*.
  - 7.6.7.5. Any information or statistical data required by law not to be released.

- 7.6.8. No Member shall obtain, access, or attempt to gain access, to confidential information in the custody of the municipality except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.

## **7.7. Use of Town Property and/or Other Resources**

- 7.7.1. No Member shall use, or permit the use of, municipal land, facilities, equipment, supplies, services, staff, or other resource, including any municipally owned information, the website, and funds allocated for expenses for any purpose or activity other than business of the Town.
- 7.7.2. No Member shall seek or acquire any personal financial gain from the use or sale of any confidential information, or of any municipally-owned intellectual property, including any invention, creative writing or drawing, computer program, technical innovation, or any other information or item capable of being patented or copyrighted, of which property remains exclusively that of the Town.

## **7.8. Improper Use of Influence**

- 7.8.1. Members are expected and required to perform their duties with integrity, accountability and transparency.
- 7.8.2. Members shall not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.
- 7.8.3. No Member shall attempt to secure preferential treatment beyond activities in which Members normally engage as part of their official duties.
- 7.8.4. No Member shall hold out the prospect or promise of future advantage through the Member's supposed influence within the municipality, in return for any action or inaction.
- 7.8.5. In this policy, "private advantage" does not include:
- 7.8.5.1. A matter of general application.
  - 7.8.5.2. A matter that affects a Member, their parents, children, spouse, staff members, friends or associates, business or otherwise, as one of a broad class of persons.
  - 7.8.5.3. A matter that concerns the remuneration or benefits of a Member.

## **8. NON-COMPLIANCE WITH THIS CODE OF CONDUCT**

- 8.1. A Member who has been found by the Integrity Commissioner, to have contravened any provision of this policy, is subject to one or more of the following sanctions imposed by Council, as referred to in the following two paragraphs:
  - 8.1.1. The *Municipal Act, 2001* authorizes Council, where it has received a report by the Town's Integrity Commissioner that, in his or her opinion, there has been a violation of this Code of Conduct policy, to impose upon the offending Member:
    - 8.1.1.1. A reprimand.
    - 8.1.1.2. Suspension of the remuneration paid to the Member (where applicable) in respect of his or her services as a Member for a period of up to 90 days.
  - 8.1.2. The Integrity Commissioner may, for remedial purposes, also recommend that Council take one or more of the following actions:
    - 8.1.2.1. Removal from membership on a committee or local board.
    - 8.1.2.2. Removal as chair of a committee or local board.
    - 8.1.2.3. Request an apology to Council, the complainant, and/or the community.
    - 8.1.2.4. Any other or additional action deemed by Council to be appropriate, and which is within its powers.

## **9. REFERENCES AND RELATED DOCUMENTS**

- 9.1. In addition to this policy, the following Ontario legislation also governs the conduct of Members in Council:
  - 9.1.1. Code of Conduct Complaint Protocol – Informal and Formal Complaint Procedure (attached)
  - 9.1.2. *The Municipal Act, 2001* as amended.
  - 9.1.3. *The Municipal Conflict of Interest Act, R.S.O. 1990, c M.50*
  - 9.1.4. *The Municipal Elections Act, 1996.*
  - 9.1.5. *The Municipal Freedom of Information and Protection of Privacy Act.*
  - 9.1.6. *The Public Inquiries Act, 2009*
  - 9.1.7. *Ontario Human Rights Code, R.S.O. 1990*
  - 9.1.8. *Ontario Accessibility Act, 2005*
  - 9.1.9. *Criminal Code of Canada, as amended*
- 9.2. A Council Member may become disqualified and lose his or her seat by operation of law, including being convicted of an offence under the *Criminal Code of Canada* or being found to have failed to comply with the *Municipal Conflict of Interest Act*, whether or not the conduct in question involves contravention of this policy.
- 9.3. In the case of any inconsistency between this policy and Federal or Provincial statute or regulation, the statute or regulation shall prevail.

**Appendix A**  
**Code of Conduct Council, Committees and Local Boards**



**COMPLAINT PROTOCOL**

**PART A: INFORMAL COMPLAINT PROCEDURE**

1. Any person or a representative of an organization who has identified or witnessed behaviour or an activity by a Member that they believe is in contravention of the Code of Conduct (the “Code”) may wish to address the prohibited behaviour or activity themselves as follows:
  - a) Advise the Member that the behaviour or activity contravenes the Code;
  - b) Encourage the Member to stop the prohibited behaviour or activity;
  - c) Keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
  - d) If applicable, confirm to the Member your satisfaction with the response of the Member; or, if applicable, advise the Member of your dissatisfaction with the response; and,
  - e) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.
2. All persons and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. With the consent of the complaining individual or organization and the Member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

**PART B: FORMAL COMPLAINT PROCEDURE:**

**Integrity Commissioner Requests for Inquiries**

1.
  - a. A request for an investigation of a complaint that a Member has contravened the Code of Conduct (the “complaint”) shall be filed with the Municipal Clerk. **A CODE OF CONDUCT - FORMAL COMPLAINT FORM / AFFIDAVIT** must be completed and submitted along with a \$125.00 deposit. Once received, the Clerk will send the complaint directly to the Integrity Commissioner by mail, E-mail, fax or courier in the form attached to this Protocol as Schedule “A”.
    - i. All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
    - ii. A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code.
    - iii. The complaint shall include:

- the name of the alleged violator,
  - the provision of the Code allegedly contravened,
  - facts constituting the alleged contravention,
  - the names and contact information of witnesses; and,
  - contact information for the complainant during normal business hours.
- b. For any Inquiry which has not been completed before nomination day for a regular election, as set out in section 31 of the Municipal Elections Act, 1996, as amended, the Commissioner shall terminate the inquiry on that day.
- c. If an Inquiry is terminated due to non-completion before the nomination day, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the Municipal Elections Act, 1996, as amended, the person or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.

### **Initial Classification by Integrity Commissioner**

#### **2.**

- a. Upon receipt of the request, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or other Council policies as described in subsection (3).
- b. If the complaint is not, on its face, a complaint with respect to non-compliance with the Code, or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:
- i. If the complaint, on its face, is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if they wish to pursue any such allegation, the complainant must pursue it with the appropriate police force;
  - ii. If the complaint, on its face, is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Municipal Clerk;
  - iii. If the complaint, on its face, is with respect to non-compliance with a more specific Council policy, with a separate complaint procedure, the complainant shall be advised to pursue the matter under that procedure; and,
  - iv. In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

- c. The Integrity Commissioner shall determine whether a report to Council is warranted for a specific complaint that is not within the jurisdiction of the Integrity Commissioner.
- d. The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but, where possible, shall not disclose information that could identify a person concerned.

### **Integrity Commissioner Investigation**

#### **3.**

- a. The Integrity Commissioner is responsible for performing the duties set out in this Protocol independently, and shall report directly to Council in respect of all such matters. The Integrity Commissioner shall file an annual report to Town Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Integrity Commissioner.
- b. If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- c. Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in subsection (b) except as part of an annual or other periodic report.

#### **4.**

- a. If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and may attempt to settle the complaint.
- b. Upon receipt of a formal complaint pursuant to the Code, and where the Integrity Commissioner determines that the complaint meets the criteria to be investigated, the Integrity Commissioner may elect to conduct an informal investigation or alternatively to exercise the powers of a Commission under Parts I and II of the *Public Inquiries Act*, as contemplated by Subsection 223.4(2) of the Act.
- c. If the Integrity Commissioner elects to conduct an inquiry under the *Public Inquiries Act*, he/she shall report to Council and seek instructions before proceeding, setting out the reasons for the investigation and providing an estimate of the expected cost and time that the investigation will require.
- d. When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.

#### **5.**

- a. The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:



- i. Serve the complaint and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten business days; and,
    - ii. The Integrity Commissioner may serve a copy of the response provided upon the complainant with a request for a written reply within ten business days.
  - b. If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act*, and may enter any Town work location relevant to the complaint for the purposes of an investigation and settlement.
  - c. The Integrity Commissioner may make interim reports to Council where necessary and as required, to address any instances of interference, obstruction or retaliation encountered during the investigation.
- 6.**
- a. The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the making of the complaint.
  - b. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.
  - c. Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other periodic report.
  - d. Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
- 7.** If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
- 8.** The Municipal Clerk shall process the report for the next meeting of Council.
- 9.** Once the report is final and the Integrity Commissioner has determined that the complaint was not frivolous or vexatious, the Municipal Clerk shall return the \$125.00 deposit to the complainant. The deposit will be returned in cash to maintain the confidentiality of the complainant.

### **Council Review**

- 10.**
- a. Council shall consider and respond to the report within 90 days after the day the report is laid before it.

- b. In responding to the report, Council may vary a recommendation that imposes a penalty, subject to Section 223.4, subsection (5) of the *Municipal Act*, but shall not refer the recommendation other than back to the Integrity Commissioner.
- c. Upon receipt of recommendations from the Integrity Commissioner, Council may, in circumstances where the Integrity Commissioner has determined there has been a violation of the Code of Conduct, impose either of two penalties:
  - i. a reprimand; or,
  - ii. suspension of the remuneration paid to the Member in respect of his/her services as a Member of Council or a local board, as the case may be, for a period of up to 90 days.
- d. The Integrity Commissioner may also recommend that Council take the following actions for remedial purposes:
  - i. removal from membership of a committee;
  - ii. removal as chair of a committee;
  - iii. repayment or reimbursement of monies received;
  - iv. return of property or reimbursement of its value;
  - v. a written and/or verbal request for an apology to Council, the complainant, or, both.

## **Confidentiality**

### **11.**

- a. A complaint will be processed in compliance with the confidentiality requirements in sections 223.5 and 223.6 of the *Municipal Act*, which are summarized in the following subsections.
  - i. The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding.
  - ii. All reports from the Integrity Commissioner to Council will be made available to the public.
  - iii. Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.
  - iv. The Integrity Commissioner, in a report to Council on whether a Member has violated the Code of Conduct, shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

**Appendix B**

**Town of Amherstburg  
Code of Conduct - Formal Complaint Form / Affidavit**

**AFFIDAVIT OF:** \_\_\_\_\_ (full name)

I, \_\_\_\_\_ (full name), of  
\_\_\_\_\_ (municipality of residence) in the Province of Ontario

**MAKE OATH AND SAY (or AFFIRM):**

1. I have personal knowledge of the facts as set out in this Affidavit, because:

\_\_\_\_\_  
\_\_\_\_\_ (insert  
reasons i.e.: I work for....., I attended a meeting at which, etc.)

2. I have reasonable and probable grounds to believe that a Member, namely:

\_\_\_\_\_ (name of Member), has  
contravened section(s) \_\_\_\_\_ (specify sections)  
of the Code of Conduct Policy. The particulars of which are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
*(If more room is required, please use Schedule "A" to set out the statement of facts in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit.)*

This affidavit is made for the purpose of requesting that this matter be reviewed by the Town of Amherstburg's Integrity Commissioner and for no other purpose.

I further agree that should the complaint be deemed frivolous or vexatious by the Integrity Commissioner, my \$125.00 deposit will be surrendered to the municipality:

**SWORN (or AFFIRMED)** before me at the **TOWN OF AMHERSTBURG**

in the Province of Ontario on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature of Commissioner)

\_\_\_\_\_  
(Signature of Complainant)

***Please note: Signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the Criminal Code, R.S.C. 1985, c. C-46, and also to civil liability for defamation.***



I hereby request the Integrity Commissioner to conduct an inquiry pursuant to the provisions of section 223.4 of the *Municipal Act, 2001* with respect to the above conduct.

Please submit the complaint and include copies of all documents and records relevant to the requested inquiry. Mail, fax, e-mail, or otherwise deliver this request, along with the required \$125.00 deposit to:

Town of Amherstburg  
**C/O Municipal Clerk**  
271 Sandwich Street South  
Amherstburg, ON  
N9V 2A5

Phone: 519 736 0012 ext. 2238  
Fax: 519 736 5403  
E-mail: pparker@amherstburg.ca

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Name

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Address

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Telephone:

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Cell Number:

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Email:

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Signature:

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Date: