


# POLICY

	Policy:	<b>CODE OF CONDUCT FOR MEMBERS OF COUNCIL</b>		
	Department:	Office of the CAO		
	Division:	Municipal Governance	By-Law No.:	2016-34
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### APPENDIX A – FORMAL COMPLAINT PROCEDURE AFFIDAVIT

## 1. POLICY STATEMENT

- 1.1. The Corporation of the Town of Amherstburg is committed to providing its residents, staff, and others the highest standards of conduct from the members elected to local government. Adherence to these standards will protect and maintain the reputation and integrity of the Town of Amherstburg.
- 1.2. The Town commits to appointing an Integrity Commissioner to examine whether a member of Council, has complied with the Code of Conduct for Members of Council Policy and any procedures, rules and policies of the Town and local boards governing the ethical behaviour of Council, Committees or Local Boards should a complaint be filed.

## 2. PURPOSE

- 2.1. Section 223.2 (1) *Municipal Act, 2001*, authorizes the Town to establish codes of conduct for members of the Council of the municipality and of local boards of the municipality.
- 2.2. To improve the quality of municipal governance by encouraging high standards of conduct on the part of all elected municipal officials.

- 2.3. To ensure that Council maintains their commitment to performing their functions with integrity, avoiding the improper use of the influence in their office, and avoiding conflicts of interest, whether apparent or real.
- 2.4. To ensure that official business conducted by the Town of Amherstburg is professional and ethical, and moves the Town forward in a positive and productive manner.
- 2.5. To prevent the creation of a poisoned environment.

### 3. **SCOPE**

- 3.1. This policy applies to every member of Council and Committees of Council in the Town of Amherstburg and local boards of the municipality.

### 4. **DEFINITIONS**

- 4.1. **Accountability** means how Council, Staff, Committees and Local Boards are held to account for their actions.
- 4.2. **Bullying** is a form of aggression that may take place in the following instances:
  - a. Physical Bullying: using physical force or aggression against another person (e.g., hitting)
  - b. Verbal Bullying: using words to verbally attack someone (e.g., name-calling)
  - c. Social/relational bullying: trying to hurt someone through excluding them, spreading rumors, or ignoring them (e.g., gossiping)
  - d. Cyberbullying: using electronic media to threaten, embarrass, intimidate, or exclude someone, or to damage their reputation (e.g., sending threatening emails)
- 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, or received in confidence, 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 or poorly based on certain characteristics or differences such as 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. **Harassment** means statements or actions that are unwelcome to a person of ordinary sensibilities, and should be known to be unwelcome.
- 4.12. **Information** includes a record or document.
- 4.13. **Integrity Commissioner** is the Integrity Commissioner appointed by Council.
- 4.14. **Intellectual Property** is a set of intangible rights held by musicians, authors, artists and inventors 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.
- 4.15. **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.
- 4.16. **Lobbyist** in this policy is an individual, organization, or business who or that:
- a. Lobbies, or causes the lobbying of, any public office holder of the municipality, the Council, the Corporation, or a local board.
  - b. The Council member knows is attempting or intending to lobby the Council member or any of the public persons or bodies listed in paragraph 4.8.a.
  - c. Is maintaining an active lobbyist registration with the municipality, whether or not with respect to any specific or current subject matter.

- 4.17. **Manager** reports directly to a Director (or the CAO in some instances) and who is responsible for a department within a division of the Corporation, as defined on the Town's organizational structure.
- 4.18. **Member** means a member of Council.
- 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. **Person** includes an individual, corporation, partnership, association and any other entity as the context allows.
- 4.21. **Poisoned Environment** is a workplace that is hostile or unwelcoming as a result of insulting or degrading comments or actions that have been made about others, where these comments or conduct has an influence on others and how they are treated.
- 4.22. **Senior Management Team (SMT)** is comprised of the Chief Administrative Officer and the Directors. If a Director is unavailable, a delegate may be assigned.
- 4.23. **Spouse** means a person to whom a person is married or with whom a person is living in a conjugal relationship outside of marriage.
- 4.24. **Town** is the Corporation of the Town of Amherstburg.

## 5. **INTERPRETATIONS**

- 5.1. 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 replacements thereto.

## 6. **GENERAL CONDITIONS**

### 6.1. **Integrity Commissioner**

- 6.1.1. The Town may appoint an Integrity Commissioner to investigate concerns of non-adherence to this policy.
- 6.1.2. The Integrity Commissioner reports to Council and is responsible for performing the following duties in an independent and consistent manner:
- 6.1.2.1. **Complaint Investigation**: having the power to assess and investigate formal written complaints respecting alleged contraventions to this Code of Conduct for Council Members Policy.

- 6.1.2.2. Complaint Adjudication: determining whether a member of Council has in fact violated a protocol, by-law or policy governing their ethical behaviour, with the final decision making authority resting with Council as to whether the recommendation(s) of the Integrity Commissioner are imposed.
- 6.1.2.3. Annual Reporting: providing Council, through the Clerk's Office, with an annual report on findings of complaint cases.
- 6.1.2.4. Advising Council: providing written and oral advice to Council, staff, and members of the public concerning the interpretation of and compliance with, the Code of Conduct for Council Members Policy, and other legislation governing the ethical behaviour of members, and revisions thereto.

## 6.2. **Principles**

- 6.2.1. Significant declarations of principle that emphasize this policy are as follows:
  - 6.2.1.1. Council must serve and be seen to serve their constituents in a conscientious and diligent manner.
  - 6.2.1.2. Council must be committed to performing their functions with integrity. Council must avoid the improper use of their influence of their office.
  - 6.2.1.3. Council must avoid conflicts of interest, both apparent and real.
  - 6.2.1.4. Council is 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.
  - 6.2.1.5. Council must recognize and act upon the principle that democracy is best achieved when the operation of government is made as transparent and accountable to members of the public as possible.
  - 6.2.1.6. Council shall seek to serve the public interest by upholding both the letter and spirit of the laws of the Parliament and the Ontario Legislature, as well as the laws and policies adopted by the municipal Council.

6.3. **Compliance with Declaration of Office**

6.3.1. Every member shall act in accordance with his or her declaration of office.

6.4. **Adherence to Council Policies and Procedures**

6.4.1. Every member of Council shall observe and comply with every provision of this policy, as well as other policies and procedures adopted or established by the municipality, whether or not they are acting in the capacity of a Council member.

6.4.2. It is the responsibility of each member of Council to become familiar with the policies and procedures approved by the municipality.

6.5. **Conduct at Council Meetings**

6.5.1. Every member shall conduct himself or herself properly and in a civil manner at Council, committee and other meetings, and in accordance with the provisions of the Procedural By-law, this policy, and other applicable law.

6.5.2. All Councillors shall prepare themselves in advance of Council meetings and become familiar with items on the agenda.

6.6. **Conduct Respecting Others**

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

6.6.2. Council shall not use indecent, abusive, or insulting words or expressions toward any other member of Council any member of staff, or any member of the public.

6.6.3. Council shall not speak in a manner that is discriminatory to any individual, based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.

6.7. **Conduct Respecting Staff**

6.7.1. Under the direction of SMT, and in accordance with the decisions of Council, municipal staff are required to service the municipal corporation as a whole. Council shall be respectful of the role of staff to provide advice based on political

neutrality and objectivity, and without undue influence from any member or faction of the Council.

- 6.7.2. Council shall not maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff.
- 6.7.3. Council shall show respect for staff, and for their professional capacities and responsibilities.
- 6.7.4. Council 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.
- 6.7.5. Council shall not use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that person's duties, including the duty to disclose improper activity.
- 6.7.6. Any member of Council who makes a request or inquiry of staff shall make said request or inquiry to that employee's Director, who will correspond with the Councillor on behalf of the operating department involved. Council shall not directly make inquiries or requests to any staff other than the CAO, Clerks Department, or Directors.

#### 6.8. **Conduct Regarding Media and Other Communications**

- 6.8.1. The Mayor is the official spokesperson for Council.
- 6.8.2. The Mayor shall be responsible for communicating the Town's position on all municipal matters and those decisions of Council.
- 6.8.3. Town letterhead may be used when members of Council are representing the Town and the Town's official position through correspondence, with the exception of communications with the media, which is restricted per 6.8.1.

#### 6.9. **Alcohol and Drug Use**

- 6.9.1. Council shall not attend to their responsibilities while under the influence of alcohol, drugs, or other similar substances, which might adversely affect performance.
- 6.9.2. Council members representing the Town in an official capacity at functions where alcohol is present, must maintain professional and appropriate behavior, keeping alcohol consumption to a reasonable level.

6.9.3. Members of Council shall abide by applicable laws and regulations governing possession or use of alcohol and drugs.

6.10. **Harassment**

6.10.1. No form of harassment will be tolerated, whether it involves Council, staff, or members of the public.

6.10.2. Any member of Council confronted with, or aware of, harassment of any nature will report said harassment to the Mayor and/or CAO.

6.11. **Gifts and Benefits**

6.11.1. For the purpose of this policy, a gift or benefit provided, with a Council member's knowledge, to a member of Council's spouse, child, or parent, or to his or her staff, that is connected directly or indirectly to the performance of the Council member's duties, is deemed to be given or benefit to that Council member.

6.11.2. Council shall not accept a fee, advance, gift, or personal benefit that is connected directly or indirectly with the performance of his or her duties in office, unless permitted under any one or more of the exceptions listed below:

6.11.2.1. Compensation authorized by law.

6.11.2.2. 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.

6.11.2.3. A political contribution otherwise authorized and reported as required by law, in the case of a Council member running for office.

6.11.2.4. Services provided without compensation by a person volunteering his or her time.

6.11.2.5. A suitable memento of a function honouring the Council member.

6.11.2.6. 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.

6.11.2.7. Food and beverages consumed at a banquet, reception, or similar event, if all of the following is applicable:



- a. Attendance by the member of Council is for a legitimate municipal purpose.
  - b. The person extending the invitation, or a representative of the organization holding the event, is in attendance.
  - c. The value is considered reasonable.
- 6.11.2.8. Communications to the office of a Council member, including subscriptions to newspapers or periodicals.
- 6.11.2.9. A sponsorship or donation for a community event organized or run by a Council member, or a third party on behalf of the Council member, subject to the limitations set out in any applicable municipal policy.
- 6.11.3. Except for exception 6.11.2.3., these exemptions do not apply where a gift or benefit is provided by a lobbyist or a lobbyist's client or employer.
- 6.11.4. In the case of any of the recognized exceptions contained in 6.11.2.2, 6.11.2.5, 6.11.2.6, 6.11.2.8, and 6.11.2.9, if the value of the gift or benefit exceeds \$300.00, or if the total value of the gifts or benefits received from any one source during the course of a calendar year exceeds \$300.00, the Council member shall file, within 30 days receipt of the gift or benefit, or of reaching the annual limit, a disclosure statement with the Clerk. This disclosure statement shall be provided to the Integrity Commissioner by the Clerk. Every disclosure statement filed under this policy shall be made a public record. The disclosure statement must identify all of the following:
- 6.11.4.1. The nature of every gift or benefit received.
  - 6.11.4.2. The source and date of receipt.
  - 6.11.4.3. The circumstances under which it was given and received.
  - 6.11.4.4. The estimated value.
  - 6.11.4.5. What the recipient intends to do with the gift.
  - 6.11.4.6. Whether any gift will at some point be provided to the Town.
- 6.11.5. 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 Council member to justify receipt of the gift or benefit.

- 6.11.6. Except in the case of exceptions 6.11.2.1, 6.11.2.3, 6.11.2.6, and 6.11.2.9, no Council member shall accept a gift or benefit worth in excess of \$500.00, or gifts or benefits from one source during a calendar year which together are worth in excess of \$500.00.

## 6.12. **Confidential Information**

- 6.12.1. 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.
- 6.12.2. “Confidential Information” also includes:
- 6.12.2.1. Information of a corporate, commercial, scientific, or technical nature received in confidence from third parties.
- 6.12.2.2. Personal information.
- 6.12.2.3. Information that is subject to solicitor-client privilege.
- 6.12.2.4. 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.
- 6.12.3. No Council 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.
- 6.12.4. 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.

- 6.12.5. 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 maintained as confidential, unless authorized by the Council or legislation to be released, generally or subject to conditions, and such are 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.
- 6.12.6. A Council member may disclose the content of any matter referred to in the preceding paragraph or the subject matter of deliberations, at an in camera 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.
- 6.12.7. 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:
- 6.12.7.1. Information concerning litigation, negotiation, or personnel matters.
- 6.12.7.2. 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).
- 6.12.7.3. Price schedules in any contract, tender, or proposal document while such remains a confidential document.
- 6.12.7.4. Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*.
- 6.12.7.5. Any information or statistical data required by law not to be released.
- 6.12.8. No member of Council 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.

### 6.13. **Use of Town Property, Services and Other Resources**

- 6.13.1. No member of Council shall use, or permit the use of, municipal land, facilities, equipment, supplies, services, staff, or other resource, including any municipally owned information, the website, funds allocated for Council expenses for any purpose or activity other than the lawful business of the municipality.
- 6.13.2. No Council 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.

#### 6.14. **Conduct of Election Campaigns**

- 6.14.1. Every Council member shall comply with all applicable requirements of the *Municipal Elections Act, 1996*.
- 6.14.2. No Council member shall use confidential information, 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.
- 6.14.3. No Council member shall undertake campaign-related activities on municipal property at anytime, unless authorized by the Town.
- 6.14.4. No Council member shall use the services of any person for election-related purposes during hours in which that person receives any compensation from the Town.

#### 6.15. **Improper Use of Influence**

- 6.15.1. No member of Council shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes.
- 6.15.2. No member of Council shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Council member's private advantage or that of the Council member's parent, child, spouse, staff member, friend or associate, business or otherwise.
- 6.15.3. No Council member shall attempt to secure preferential treatment beyond activities in which Council members normally engage on behalf of their constituents as part of their official duties.
- 6.15.4. No member shall hold out the prospect or promise of future advantage through the Council member's supposed influence within Council, in return for any action or inaction.
- 6.15.5. In this policy, "private advantage" does not include:
  - 6.15.5.1. A matter that is of general application.

6.15.5.2. A matter that affects a member of Council, his or her parents, children, spouse, staff members, friends or associates, business or otherwise, as one of a broad class of persons.

6.15.5.3. A matter that concerns the remuneration or benefits of a member of Council.

6.15.6. This provision does not prevent a member of Council from requesting that Council grant a lawful exemption from a policy.

## 6.16. **Filing Fee**

6.16.1. The Town shall charge a fee, as designated in the Town's User Fee By-law, to file a written complaint under the Code of Conduct for Council Members Policy.

6.16.2. Fees shall be subject to reimbursement if it is determined that the complaint is not frivolous or vexatious.

## 7. **PROTOCOLS**

### 7.1. **Complaint Protocol**

7.1.1. The informal complaint protocol shall not retroactively apply to any alleged transgressions occurring prior to the date on which the Code of Conduct for Council Members Policy was formally adopted by Council.

### 7.2. **Informal Complaint Process**

7.2.1. Individuals (members of the public, municipal employees, members of Council or local boards, etc.) or organizations who have identified or witnessed behaviour or an activity by a member of Council, or Committee of Council that they believe is in contravention of this policy could address the prohibited behaviour or activity themselves as follows:

7.2.1.1. Advise the member that their behaviour or activity appears to contravene this Code of Conduct for Council Members policy.

7.2.1.2. Encourage the member to stop the prohibited behaviour or activity.

7.2.1.3. Keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information.

- 7.2.1.4. If applicable, the complainant shall confirm to the member that they are satisfied with the response they received, or advise the member of their dissatisfaction with the response.
- 7.2.1.5. The complainant shall consider the need to pursue the matter in accordance with the formal complaint procedures as included in Section 7.3 of this document, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.
- 7.2.2. Individuals or organizations are encouraged to initially pursue the Informal Complaint Process as a means of stopping and remedying a behaviour that is prohibited by the Code of Conduct for Council Members policy.
- 7.2.3. A person is not required to undertake the Informal Complaint Process prior to pursuing the Formal Complaint Process.

### 7.3. **Formal Complaint Process**

#### 7.3.1. **Application**

- 7.3.1.1. All provisions of this Section apply to a request for an inquiry by an individual or an organization other than Council or a Committee of Council as a whole.
- 7.3.1.2. Section 7.3.1.1. does not preclude individual members of Council or individual members of Committees of Council from filing a formal written complaint.

#### 7.3.2. **Complaint**

- 7.3.2.1. A request for an investigation of a complaint that a member of Council has contravened the Code of Conduct (the “complaint”) shall be in writing.
- 7.3.2.2. All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization)
- 7.3.2.3. A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened this policy and includes a supporting affidavit, as provided in Appendix A, that sets out the evidence in support of the complaint.
- 7.3.2.4. Any commissioners for taking affidavits are authorized to take the supporting affidavit.

### 7.3.3. File with the Clerk

7.3.3.1. The request for an investigation shall be filed with the Municipal Clerk, who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on appearance, a complaint with respect to non-compliance of the Code of Conduct for Council Members policy, and not covered by other legislation or other Council policies.

### 7.3.3.2. Deferral

- a. If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.
- b. If the complaint, including any supporting affidavit, is not, on appearance, a complaint with respect to non-compliance with the Code of Conduct for Council Members policy, or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the Clerk to advise the complainant in writing as follows:
  - i. If the complaint, on its face, is an allegation of criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if they wish to pursue such allegation, they must pursue it with the appropriate police force.
  - ii. If the complaint, on its face, is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with their own legal counsel.
  - iii. 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 reviewed by the Municipal Clerk.
  - iv. If the complaint, on its face, is with respect to non-compliance with a more specific Council policy with a separate complaint process, the complainant shall be advised that the matter will be processed under that procedure.

- v. 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 to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

#### 7.3.3.3. Reports

- a. The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- b. The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.
- c. Should no complaints be received within a calendar year, the Clerk shall report to Council accordingly and no annual report shall be made by the Integrity Commissioner.

#### 7.3.4. **Refusal to Conduct Investigation**

- 7.3.4.1. If the Integrity Commissioner is of the opinion that the referral of a matter is frivolous, vexatious, or not made in good faith, or that there are 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.
- 7.3.4.2. Complaints referred that are repetitious in nature, not relevant to the Code of Conduct, deemed frivolous, vexatious, or without substance in the opinion of the Integrity Commissioner, shall not be advanced to an investigation stage.
- 7.3.4.3. Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in 7.3.4.1 and 7.3.4.2 except as part of an annual or other periodic report.

#### 7.3.5. **Investigation**

- 7.3.5.1. If a complaint has been classified within the Integrity Commissioner's jurisdiction and not rejected under Section 7.3.4, the Integrity Commissioner shall investigate and may attempt to settle the complaint



#### 7.3.5.2. Public Inquiries Act

- a. Under Section 223.4(s) of the *Municipal Act, 2001*, the Integrity Commissioner may elect to investigate a complaint by exercising the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- b. 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.

#### 7.3.6. **Opportunity to Comment**

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

- a. Serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten days; and:
- b. Serve the complainant with a copy of the member's written response with a request that the complainant provide a written reply within ten days.

7.3.6.2. 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 Section 223.4(s) of the *Municipal Act, 2001* and may enter any municipal work location relevant to the complaint for the purposes of investigation and settlement.

7.3.6.3. The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had 10 days' notice of the basis for the proposed finding and any recommended sanction and an opportunity to respond in writing, within the same said ten days, to the Integrity Commissioner on their findings and any recommended sanction.

#### 7.3.6.4. Interim Reports

- a. The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of delay,

interference, obstruction or retaliation encountered during the investigation, or as otherwise deemed necessary by the Integrity Commissioner.

### **7.3.7. Final Report**

7.3.7.1. The Integrity Commissioner shall report the general findings of their investigation to the complainant and the member no later than 90 days after the making of the complaint.

- a. That report shall indicate when the Integrity Commissioner anticipates presenting their recommended corrective action(s) for Council's consideration.

7.3.7.2. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings and/or recommended corrective action(s).

7.3.7.3. 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.

#### **7.3.7.4. Lawful Recommendations**

- a. Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
- b. Permitted corrective actions are provided in Section 8 – Non-Compliance With This Code of Conduct – Sanctions.

### **7.3.8. Member Not Blameworthy**

7.3.8.1. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct for Council Members Policy, 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.

### **7.3.9. Report to Council**

7.3.9.1. The Clerk shall process the Integrity Commissioner's report for the next meeting of Council. Said report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been reported out to the members of Council through the Clerk

**7.3.10. Duty of Council**

7.3.10.1. Council shall consider and respond to the report within 90 days after the day the report is laid before it.

**7.3.11. Confidentiality**

7.3.11.1. A complaint will be processed in compliance with the confidentiality requirements in Section 223.5 of the *Municipal Act, 2001* which are summarized in the following subsections:

- a. The Integrity Commissioner and every person acting under their instructions shall preserve secrecy with respect to all matters that come to their knowledge in the course of any investigation except as required by law in a criminal proceeding or in accordance with the provisions of Section 223.5(1) of the *Municipal Act, 2001*.
- b. Pursuant to Section 223.5(3) of the *Municipal Act, 2001* this Section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.
- c. If the Integrity Commissioner reports to the town their opinion about whether a member of Council has contravened the Code of Conduct for Council Members Policy, the Integrity Commissioner may disclose in the report such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.
- d. The Town shall ensure that reports received from the Integrity Commissioner by the Town are made available to the public upon the matter being reported out to the members of Council.
  - i. Neither the Integrity Commissioner nor any person acting under the instructions of the Integrity Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this part.
- e. If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code of*

*Canada*, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council through the Municipal Clerk.

#### 7.3.12. **Integrity Commissioner Vacancy**

7.3.12.1. Should the appointment of an Integrity Commissioner expire or be non-existent for whatever reason, the Code of Conduct for Council Members Policy remains in effect and all members shall abide by the provisions set out therein.

7.3.12.2. When a vacancy occurs, all formal complaints shall be held in abeyance until such time as a new Integrity Commissioner is appointed, or an interim measure is enacted to enable the complaint to be addressed within a reasonable amount of time.

#### 7.4. **Disputes Between Members of Council – Resolution Process**

7.4.1. Before commencing any formal dispute resolution process, members of Council who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognizing that they have been elected to represent the best interests of the community.

7.4.2. In the event of any dispute that occurs where the members of Council are unable to resolve interpersonal conflicts that adversely affect the Operation of the Council, the parties to the dispute agree to work together to try to resolve the dispute.

7.4.2.1. The parties agree to the appointment of a mediator nominated by the Clerk and who is acceptable to both parties.

a. Failing agreement within 14 days, the mediator shall be appointed by the CAO.

7.4.2.2. If a mediator is appointed, all members of Council agree to cooperate with the dispute resolution process and use their best efforts to assist the mediator when requested.

7.4.3. In the event that a dispute cannot be resolved through the setting aside of differences of opinions, or through the use of a mediator, or if the members of Council do not participate in any related processes, it may be referred to a group of Councillors or to a resolution of Council.

- 7.4.4. If the dispute relates to an apparent offence under the Code of Conduct or other policy relating to the ethical behaviour of members of Council, it shall be referred to the Integrity Commissioner who will serve as mediator.
- 7.4.5. This resolution process is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and Committee Meetings.

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

- 8.1. A Council member found by the Integrity Commissioner, to have contravened any provision of this policy, is subject to one or more of the following consequences 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 of Council:
    - 8.1.1.1. A reprimand.
    - 8.1.1.2. Suspension of the remuneration paid to the Council member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.
  - 8.1.2. The Integrity Commissioner, or Council by way of official motion, may also recommend that Council or a local board 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, or both.
    - 8.1.2.4. Any other or additional action deemed by Council to be appropriate, and which is within its powers to take.

## **9. NO REPRISAL OR OBSTRUCTION IN THE APPLICATION OR ENFORCEMENT OF THIS POLICY**

- 9.1. Every member of Council must respect the integrity of the Code of Conduct for Council Members Policy and inquiries and investigations conducted under it, and shall cooperate in every way possible in securing compliance with its application and enforcement.

- 9.2. Any reprisal or threat of reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner, or any other person, is prohibited.
- 9.3. It is also a violation of this policy to obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this policy, in the carrying out of such responsibilities, or pursuing any such objective.

## **10. STATUTES REGULATING THE CONDUCT OF COUNCIL**

- 10.1. In addition to this policy, the following Ontario legislation also governs the conduct of members in Council:
  - 10.1.1. The *Municipal Act, 2001* as amended.
  - 10.1.2. The *Municipal Conflict of Interest Act*.
  - 10.1.3. The *Municipal Elections Act, 1996*.
  - 10.1.4. The *Municipal Freedom of Information and Protection of Privacy Act*.
  - 10.1.5. The *Public Inquiries Act*.
- 10.2. The *Criminal Code of Canada* also governs the conduct of members of Council.
- 10.3. 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.
- 10.4. In the case of any inconsistency between this policy and Federal or Provincial statute or regulation, the statute or regulation shall prevail.

**APPENDIX A - FORMAL COMPLAINT PROCESS AFFIDAVIT**

*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*

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 the meeting at which, ...etc.]*

2. I have reasonable and probable grounds to believe that a member of Amherstburg Council has

contravened section(s) \_\_\_\_\_ [specify sections]

of the Code of Conduct for Council Members Policy. The particulars of which are as follows:

*[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule 'A' form and check the appropriate box below. 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]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ **Please see the attached Schedule 'A'**

This affidavit is made for the purpose of requesting that this matter be reviews and for no other purpose

**SWORN** [or *AFFIRMED*] before me at the

\_\_\_\_\_ [City, Town, etc.]

in the Province of Ontario on this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Signature of Commissioner]

\_\_\_\_\_  
[Signature of Complainant]

Page \_\_\_\_ of \_\_\_\_

**SCHEDULE 'A'**  
**To the affidavit required under the Formal Complaint Process**

*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.*

*[If more than one page is required, please photocopy this blank page and mark each additional page as 2 of 2, 2 of 3, etc. at the top right corner of this page.]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Schedule 'A' referred to in the affidavit of:

\_\_\_\_\_ [Full Name]

**SWORN** [or *AFFIRMED*] before me at the

\_\_\_\_\_ [City, Town, etc.]

in the Province of Ontario on this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Signature of Commissioner]

\_\_\_\_\_  
[Signature of Complainant]