

Town of Aylmer

Subject: **Code of Conduct for Members of Municipal Council and Council's Local Board and Committee Members (hereinafter referred to as "Members")**

Human Resources Policy Manual

Policy Number: 2.12A

Code – CNL

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Code of Conduct for Members of Municipal Council and, where applicable Council's Local Board and Committee Members (herein after referred to as "Members")

Preamble:

Members have important obligations and responsibilities to those they represent, service and interact with in connection with carrying out the roles and duties attending a Member's office. A Member's conduct and behaviour in terms of ethics and interpersonal conduct and communications are regulated by legislative acts including the *Municipal Act*, the *Public Inquiry Act*, the *Occupational Health and Safety Act*, the *Ontario Human Rights Code*, *Freedom of Information and Protection of Privacy Act*, and the *Municipal Conflict of Interest Act*.

The purpose and intent of this Code of Conduct is as follows:

- (i) to establish guidelines for ethical conduct required of Members;
- (ii) to establish guidelines to encourage and ensure interpersonal conduct communications and interactions consistent with legal requirements (i.e. *Occupational Health and Safety Act*, *Ontario Human Rights Code*);
- (iii) to provide mechanisms to ensure accountability and compliance with the required ethical and interpersonal conduct standards of this Code of Conduct.

A. GENERAL STANDARDS OF CONDUCT

1. Members shall conduct themselves at all times in a manner that:

- (i) is consistent with and advances the interests of the community they serve;
- (ii) is consistent with the well-being and interests of the Municipality;
- (iii) is consistent with the Municipality's interest in transparency and accountability;
- (iv) reflects a diligent and impartial exercise of the office held to the best of the Member's knowledge and ability;
- (v) reflects the Member's adherence to obligations in connection with avoidance of conflicts of interest;

- (vi) is consistent with the legal deliverables governing interpersonal interactions (*i.e. civil and respectful, free from harassment or discrimination, free from violence or the threat of violence*).

B. ETHICAL BEHAVIOUR: CONDUCT REQUIREMENTS

1. Foster Respect for Decision-Making Process

All Members shall accurately and adequately communicate the attitudes and decisions of the Council, even if they disagree with council's decision, such that respect for the decision-making processes of Council is fostered.

2. Strict Adherence to Obligations Regarding Avoiding Conflict of Interest

Members have strict obligations to avoid conflicts of interest by taking the following steps whenever a member has a direct or indirect pecuniary interest in any matter that is before Council in a meeting where the member is present:

- (i) disclose the general nature of the member's interest prior to any consideration of the matter in the meeting;
- (ii) refrain from participating in the discussion of the matter or in any vote on the matter;
- (iii) refrain from attempting to influence the voting on the matter of question, before, during or after the meeting.

All members have important ethical and statutory obligations to adhere to the steps outlined above to ensure avoidance of any conflict of interest in connection with carrying out the obligations of the Member's office.

While the Integrity Commissioner may provide general interpretation of the Municipal Conflict of Interest Act (MCIA), it is expected that members seek independent legal advice on a specific question for individual compliance with the Act.

3. Release of Confidential Information Prohibited

Members have a duty to hold in strict confidence all information concerning matters dealt with at In-Camera meetings. Members shall not, either directly or indirectly, release, make public or in any way divulge any such information or any aspect of the In-Camera deliberations to anyone, unless expressly authorized by Council or required by law to do so.

Members shall not release information in contravention of the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

Members shall not misuse confidential information (information that they have knowledge of by virtue of their position as Councillor, Board or Committee Member which is not in the public domain, including e-mails and correspondence from other Members of Council, Board or Committee Member or third parties) such that it may cause detriment to the Corporation, Council or others, or benefit or detriment to themselves or others.

4. Release of Information to Public and Media

Members acknowledge that official information related to decisions and resolutions made by Council will normally be communicated to the community and the media by the Council as a whole or the Head of Council or by his or her designate.

5. Acceptance of Gifts Prohibited

The stipend paid to each Member of Council and Council's Local Board and Committee Members; is intended to fully remunerate Members for service to the Corporation. Members shall not solicit, accept, offer or agree to accept a commission, reward, gift, advantage or benefit of any kind, personally or through a family member or friend, which is connected directly or indirectly with the performance or duties of office.

Members are not precluded from accepting:

- (a) personal gifts, normal hospitality among persons doing business, benefits, rewards, commissions or advantages from any person or organization not connected directly or indirectly with the performance of duties of office;
- (b) political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
- (c) food and beverages at banquets, receptions, ceremonies or similar events;
- (d) services provided without compensation by persons volunteering their time;
- (e) food, lodging, transportation and entertainment provided by other levels of governments or by other local governments, boards or commissions;
- (f) a reimbursement of reasonable expenses incurred in the performance of duties or office;
- (g) a reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations;
- (h) token gifts such as souvenirs, mementos and commemorative gifts that are given in recognition of service on a committee, for speaking at an event or representing the Corporation at an event; and
- (i) gifts that are received as an incident of protocol or social obligation that normally and reasonably accompany the responsibility of office.

Members shall return any gifts or benefits which exceed these limits, along with an explanation why the gifts or benefits cannot be accepted.

6. Engaging in Incompatible Activity Prohibited

Members shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of official duties in the public interest.

Without limiting the generality of the foregoing, Members shall not:

- (a) use any influence of office for any purpose other than official duties;
- (b) act as an agent before Council or any committee, board or commission of council;
- (c) solicit, demand or accept the services of any corporate employee, or individual providing services on a contract for service, for re-election purposes during hours

- in which the employee, or individual providing services under a contract for service, is in the paid employment of the Corporation;
- (d) use any information gained in the execution of office that is not available to the general public for any purpose other than for official duties;
 - (e) place themselves in a position of obligation to any person or organization which might reasonably benefit from special consideration or may seek preferential treatment;
 - (f) give preferential treatment to any person or organization in which a Member or Members of Council have a financial interest;
 - (g) influence any administrative or council decision or decision-making process involving or affecting any person or organization in which a Member or Members of Council have a financial interest; and
 - (h) use Corporate materials, equipment, facilities or employees for personal gain or for any private purpose.

7. Avoidance of Waste

Members shall avoid waste, abuse and extravagance in the provision of use of public resources, and shall expose fraud and corruption of which the Member of Council and Council's Local Board and Committee Member is aware.

C. INTERPERSONAL CONDUCT AND COMMUNICATIONS: REQUIREMENTS

General:

Members have important legal responsibilities and accountabilities in connection with the tone and substance of interpersonal interactions, conduct or communications pursued in the context of carrying out the activity attending a Member's office.

The purpose of this section of the *Code of Conduct* and the appended policies is to ensure that Members governed by this *Code of Conduct* understand and comply with standards of conduct required at law in terms of their interpersonal interactions, communications and conduct.

The Municipal Corporation and Members, as agents of the Municipal Corporation share important obligations for ensuring compliance with required standards of interpersonal conduct and interactions. A failure to adhere to the required Standards of Conduct can expose both the Municipality and individual Members to potential liabilities.

1. Human Rights Guarantees: *The Obligation to Treat Every Person with Dignity, Understanding and Respect and Avoid Harassment and Discrimination*

The *Ontario Human Rights Code* extends equality rights guarantees in the context of employment and the delivery of services. A Municipal Government is both an employer and service provider. As a result the interactions and conduct of Members governed by this *Code of Conduct* generally occur in the context of providing services or interacting with employees.

In connection with such interactions, Members have a legal obligation to ensure adherence to equality rights guarantees. Members have an obligation to ensure that all individuals dealt with are treated with dignity and respect, and not exposed to harassment or discrimination as prohibited by the *Human Rights Code*.

As a Member your obligations in this regard extend to anyone you deal with in the context of employment or delivery of services; including but not necessarily limited to the following: other Members of Council, Committee Members, Local Board Members, Corporate Employees, individuals providing services, contractors, students and the public.

(i) Not to Discriminate

In compliance with the *Human Rights Code*, Members shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability. “age”, “disability”, “family status”, “record of offences”, “same-sex partnership status” shall be defined in the *Human Rights Code*.

(ii) Not to Engage in Harassment

In accordance with the *Human Rights Code*, Members shall not expose anyone to conduct representing harassment. Harassment includes engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

Without limiting the generality of the definition of “*harassment*”, Members shall not:

- (a) make racial, homophobic, sexist or ethnic slurs;
- (b) display pornographic, homophobic, sexist, racist or other offensive or derogatory material;
- (c) make leering (suggestive staring) or other offensive gestures;
- (d) make written or verbal abuse or threats;
- (e) vandalize the personal property of others;
- (f) commit physical or sexual assault;
- (g) make unwelcome remarks, jokes, innuendoes or taunting statements about a person’s physical appearance, racial background, colour, ethnic origin, place or origin, citizenship, ancestry, creed (religion or belief), sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability (physical or mental);
- (h) make unwelcome remarks, insulting gestures or jokes which cause embarrassment or awkwardness;
- (i) refuse to converse or interact with anyone because of their racial or ethnic background, colour, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability;
- (j) make unnecessary or unwanted physical contact, including touching, patting or pinching; and

- (k) demand sexual favours or requests.

Harassment which occurs in the course of or related to the performance of duties by Members is subject to this policy and appended policies.

2. Personal and Psychological Harassment: OHSA

General: Prohibition of Psychological and Personal Harassment

Health and Safety Legislation has identified and prohibited the potential health risk of “**personal harassment**” or “**psychological harassment**” in workplaces. Members must ensure that their interaction and personal communications and conduct are constructive, civil and respectful; devoid of any content or tone that would constitute “**personal harassment**” or “**psychological harassment**”.

(i) Avoid Personal or Psychological Harassment

Personal and Psychological Harassment includes unwelcome words and/or actions that are known or should have been known to be *embarrassing, humiliating or demeaning*. Such conduct can include but is not limited to the following:

- *remarks, jokes, comments, innuendo that demean, ridicule, intimidate or offend;*
- *bullying;*
- *repeated offensive or intimidating phone calls, e-mails, verbal outbursts;*
- *yelling and screaming, rude demeaning remarks;*
- *volatile displays of temper or anger;*
- *exposing people to foul, abusive or obscene language.*

Members are required to ensure that they interact and communicate in a manner that is respectful and consistent with the well being of those they deal with. Members must ensure that their interactions and communications are free of any conduct that would be considered *personal or psychological harassment*.

3. Prohibition of Violence

General: Obligation to Avoid any Conduct Representing Violence or a threat of Violence to a Worker

Health and Safety Legislation has introduced serious and significant obligations to ensure the removal of the risk of violence and threat of violence in Ontario workplaces. Members must ensure that they avoid any interactions, communications or conduct with employees that would constitute “**Workplace Violence**”. Municipal employees have significant rights and recourse if exposed to any threat of violence or act of violence in connection with work or work related activity; including conduct by or interactions with Members of Council, Council’s Local Board or Committee Members.

(i) Avoid Violence or Conduct Constituting a Threat of Violence

Workplace violence is defined as *the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker*. To appreciate the broad

nature of the definition of violence, it is important to understand that violence includes the following:

- **an attempt to exercise force that could cause physical injury** (*Note: does not have to cause injury*);
- **a statement or behaviour that could reasonably be interpreted as a threat to exercise physical force** (*Note: verbal threats will constitute violence*).

Examples:

- *a verbal threat, attack or physical conduct*
- *threatening notes, e-mails, voice mail communications*
- *shaking a fist or other threatening physical gestures*
- *wielding an object such as a weapon at an individual*

Members are required to ensure that they avoid any interactions, communications, conduct or gestures that would constitute a threat of violence or violence.

D. COMPLIANCE / ACCOUNTABILITY / ENFORCEMENT

General:

The Town has important obligations and interests in ensuring compliance with the ethical and interpersonal conduct standards required of Members by this Code of Conduct.

The Town has an interest and obligation to respond to all allegations, complaints or incidents of alleged conduct inconsistent with the standards outlined in this *Code of Conduct (and appended policies)* in a manner consistent with the interests and legal obligations of the County.

The Town recognizes that the Town and the Members have a mutual interest in providing and encouraging access to compliance/enforcement mechanisms in connection with the conduct required by this *Code* that deliver objective, independent, skilled and efficient determinations in connection with alleged misconduct by any Member.

The Town shall appoint an Integrity Commissioner pursuant to Section 223.3(1) of the Municipal Act to inquire into and determine any alleged non-compliance with the standards of conduct defined in the *Code of Conduct* by a Member.

(Note #1: The referral of alleged breaches of the Code of Conduct to the Integrity Commissioner under this Code does not preclude the rights of potential claimants/complainants at law or pursuant to County policies.)

(Note #2: See Appendix 2 for duties of Integrity Commissioner)

In all circumstances where the Town becomes aware of an allegation that a Member has engaged in any prohibited activity or breached any standard of conduct outlined in this *Code of*

conduct, whether by informal communications or formal complaints, the matter will be addressed as follows:

- (i) The “informal” complaint procedure attached as *Appendix 1* may be followed but is not mandatory;
- (ii) Any issue of non-compliance with the *Code of Conduct* shall be referred to the Integrity Commissioner through the Complaint Protocol attached as *Appendix 3*;
- (iii) The Integrity Commissioner shall conduct an Inquiry to determine whether the Member has engaged in conduct in contravention of the *Code of Conduct*;
- (iv) In planning and pursuing the relevant inquiry the Integrity Commissioner may proceed consistent with the procedural aspects of any policies addressing the subject of the alleged infringement and exercise his/her powers under Section 33 and Section 34 of the *Public Inquiries Act*;
- (v) The inquiry pursued by the Integrity Commissioner shall be an independent inquiry; independent of the County or any of its agents, employees or members;
- (vi) Where the Integrity Commissioner determines that he/she has reasonable grounds to believe that there has been a contravention of any other act or the *Criminal Code*, the Integrity Commissioner shall refer the matter to the appropriate authority; suspend his/her inquiry and report the suspension to Council. In these circumstances Council will pursue the necessary steps to ensure that the matter is addressed consistent with the Town’s obligations at law and any relevant Town policies;
- (vii) Where the Integrity Commissioner completes an inquiry and determination of the matter, he/she shall prepare a written report of his/her findings as to whether a Member has contravened the *Code of Conduct*. Where a contravention of the Code is substantiated, the Report shall disclose the Penalty determined by the Integrity Commissioner. In preparing the report, the Integrity Commissioner may disclose such matters as are necessary for the reporting to Council. The Report shall be delivered to Council;
- (viii) Where the Integrity Commissioner determines that a Member has contravened the *Code of Conduct*, the Integrity Commissioner shall determine the penalty; such penalty shall be within the remedial parameters defined in the *Municipal Act*;
- (ix) **Penalties:** Where a Member is found to have breached any standard of conduct required by the *Code of Conduct*, the penalty will be determined by the Integrity Commissioner. In determining the penalty the Integrity Commissioner shall take into consideration the nature and degree of the current breach of the Code and any prior non-compliance with the *Code of Conduct* by the Member.

Penalties imposed in connection with breaches of the *Code of Conduct* pursuant to the Code may include:

1. A written reprimand; and or
2. Suspension of remuneration paid to a Member with respect to services up to 90 days; and or;

3. Censure including removal from appointed Committees, Boards and/or liaison roles.

Refusal to Conduct Investigation

- (1) If the Integrity Commissioner is of the opinion that the referral of a matter to him or her 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.
- (2) Complaints referred that are repetitious in nature, not germane to the Code of Conduct in the opinion of the Integrity Commissioner, deemed frivolous and without substance in the opinion of the Integrity Officer, OR, where the complaint is deemed vexatious in the opinion of the Integrity Commissioner, complaints shall not be advanced to an investigation stage.
- (3) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council or a local Board (restricted definition) on any complaint described in subsections (1) and (2) except as part of a annual or other periodic report.

E. OTHER COMPLIANCE / ENFORCEMENT RIGHTS BEYOND THE REFERRAL TO THE INTEGRITY COMMISSIONER

While the Town encourages complainants, Members and all parties to access and support the use of the Integrity Commissioner as the means of addressing any issues of non-compliance with the *Code of Conduct* by Members, the Town has an obligation and commitment to support complainants or potential complainants access to the following processes in connection with allegations of prohibited activity, conduct or communications.

1. Complaints of Harassment (*Code or Personal*), Discrimination, Violence by Employees, Members of Council

- Access to the procedures committed to in the Town's relevant Policies (*i.e. informal resolution, mediation, complaint procedures*);
- Complainants also have a right to file complaints with *the Ontario Human Rights Tribunal (in connection with human rights allegations)* and complaints with the *Ministry of Labour (in connection with allegations of violence, threats of violence or personal harassment)*.

2. Complaints Regarding Allegations of conduct Regulated by the Criminal Code

- Complaints can be directed to Aylmer Police Services to pursue an investigation under Section 122 of the *Criminal Code of Canada* where allegations of fraud or breach of trust are made in connection with a Member carrying out the duties of the office;

- Complaints can be directed to Aylmer Police Services to pursue an investigation under Section 122 of the Criminal Code of Canada regarding allegations of a Member's involvement in demands for, acceptance of, offering or agreement to accept a loan, reward, benefit or other advantage from any person, in connection with the performance of the duties of the Member in office;

3. Complainant's Direct Dealings with Members in Connection with Concerns of Non-Compliance with the *Code of Conduct*

- Any person who believes that a Member has infringed any standard under this *Code of Conduct* can advise the Member of the concern directly (*verbally or in writing*) that their activity infringes the *Code of Conduct*;
- Such person (*complainant*) may directly encourage the Member to stop the offending activity;
- Such person (*complainant*) should keep a record of the incident, including date, time, location, persons present and any other relevant information.

F. JUDICIAL INVESTIGATION

In circumstances where liability is denied and the alleged misconduct is serious in nature, Council may pass a resolution, pursuant to s. 274 (1) of the *Municipal Act*, requesting a judicial investigation into the Member of Council, or Council's Local Board or Committee Member's conduct.

SUMMARY

The Town and all Members of Council share an important interest and responsibility in ensuring that the standards of conduct required under this *Code of Conduct* are understood, maintained and where necessary enforced by holding Members accountable.

The standards reflect the ethical and legal contest in which the Town and Members must deliver services to the community served by the Council and Members.

Deviations from the standards of conduct outlined in this *Code of Conduct* leave the Town, Council and individual Members exposed to the following:

- Reputational risk;
- Loss of credibility in the community;
- Risks of significant liabilities.

All Members of Council are expected to be knowledgeable of the contents of this *Code of Conduct* and of the appended Town policies, and to adhere to the standards of conduct defined in the *Code of Conduct* and policies.