

The Municipality of Chatham-Kent Code of Conduct for Members of Council

1. Preamble

The *Municipal Act, 2001*, S.O. 2001, c. 25, at section 223.2, authorizes a municipality to establish a code of conduct for members of the Council of the municipality and of local boards of the municipality. Further, section 223.3 authorizes a municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the code of conduct.

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of government officials. In particular, the public is entitled to expect the highest standards of conduct from those elected to Municipal government. In turn, adherence to these standards will protect and maintain the Municipality of Chatham-Kent's reputation and integrity.

To these ends, the Municipality of Chatham-Kent adopted an original *Code of Conduct* for Members of Council. Due to changes in expectations for Council members, changes in technology and the methods by which members of Council are expected to fulfil their duties, and an increased emphasis on transparency, the Municipality has now revised and updated the original *Code of Conduct*. This revised *Code of Conduct* shall also apply, with necessary modifications, to members of local boards, committees, commissions and boards of wholly owned-corporations, where those persons are appointed by Council.

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

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- Members of Council should be committed to performing their functions with integrity and to avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws of the Federal Parliament and Ontario Legislature, and the laws and policies adopted by Municipal Council.

2. Definitions

In this *Code of Conduct*, the terms "child", "parent" and "spouse" have the same meanings as in the *Municipal Conflict of Interest Act*.

3. Statutory Provisions Regulating Conduct

This Code of Conduct operates with and as a supplement to the existing Municipal, Provincial and Federal statutes including, but not limited to the:

- *Municipal Act, 2001*
- *Municipal Conflict of Interest Act*
- *Municipal Elections Act*
- *Municipal Freedom of Information and Protection of Privacy Act*
- Ontario Human Rights Code
- Municipality of Chatham-Kent By-laws
- Any and all other Municipal, Provincial and Federal statutes that may from time to time govern the conduct of members

4. Application

This *Code of Conduct* applies to all members of Council including the Mayor.

This *Code of Conduct* applies to all members of local boards, committees of council, commissions and boards of wholly owned-corporations, where those persons are appointed by Council from time to time, except where prohibited by law. A complete list of local boards, committees, commissions and boards of wholly owned-corporations, as well as their current membership, is available from the Municipal Clerk's office.

This *Code of Conduct* should be interpreted with modification where necessary to include local boards, committees of council, commissions and boards of wholly owned-corporations.

5. General Principles

The general principles in this section shall be used to govern interpretation of the more specific rules and obligations outlined in this Code of Conduct. These general principles shall also be used to determine issues not specifically addressed in this Code of Conduct.

The general principles are:

- a) Members of Council shall uphold a high standard of ethical behaviour to ensure that their decision making is impartial, transparent and free from undue influence.
- b) Members shall refrain from engaging in conduct that would bring the Municipality or Council into disrepute or compromise the integrity of the Municipality or Council.

6. Gifts and Benefits

No member shall accept a fee, advance, gift, advantage, service or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by exceptions listed below in (a) or those which are disclosed and limited to the rules described below in (b). For these purposes, a fee, advance, gift, advantage, service or personal benefit provided with the member's knowledge to a member's spouse, child, or parent is deemed to be a gift to that member.

- (a) The following are recognized as exceptions and do not require disclosure to the Municipal Clerk:
- i. compensation authorized by Council or otherwise authorized by law;
 - ii. such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
 - iii. a political contribution otherwise reported publicly by law, in the case of members running for office;
 - iv. food, lodging, transportation and entertainment provided by federal, provincial, regional and local governments or political subdivisions of them;
 - v. food, lodging, transportation and entertainment at a conference or seminar where the member is either speaking or attending in an official capacity;
 - vi. food, lodging, transportation and entertainment provided by a private individual, association, partnership, company or foreign government, on the condition that:
 - a. attendance serves a legitimate business purpose;
 - b. the person extending the invitation or a representative of the organization is in attendance;
 - c. the value is reasonable;
 - d. the invitations are infrequent; and
 - vii. communication provided to a member, including subscriptions to newspapers and periodicals.
- (b) Members may personally accept a fee, advance, gift, advantage, service or personal benefit that is connected directly or indirectly with the performance of his or her duties of office subject to the following rules, restrictions and public disclosure:
- i. the total value of all fees, advances, gifts, advantages, services or personal benefits is subject to an annual limitation of \$7,500 per member in money and in kind donations;
 - ii. members shall monthly provide the Municipal Clerk with a list of any gifts, and other benefits obtained, where the fair market value exceeds \$100.00 per gift, sponsorship or donation. The member shall disclose an itemized list for each gift, and benefit received, along with the name of the giver and an estimated fair market value of the gift and benefits received. The member may choose to provide comment for any or each item on the list;
 - iii. annually the Municipal Clerk shall summarize the information received from each member and provide this information to Council in a public report. For clarity, members do not have to disclose any

7. Confidential Information

Confidential information includes information in the possession of the Municipality, or received in confidence by the Municipality, which the Municipality is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* (often referred to as "MFIPPA"), or other legislation. Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

Section 239 of the *Municipal Act, 2001* requires meetings of Council to be open to the

public. Some meetings may be closed to the public if the subject matter of the meeting is in regard to specific enunciated subject matters. For the purposes of this *Code of Conduct*, “confidential information” includes information that members of Council know about because of a report or discussion that occurred in a meeting of Council closed to the public.

No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so. This includes, for example, forwarding of emails or sending of instant messaging whether on a municipally owned device, personal device or other.

No member shall use confidential information for personal or private gain, whether for themselves or relatives or any other person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of the Municipality’s property or assets.

A matter that has been discussed at an in-camera (closed) meeting remains confidential. No member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

Confidential information also often extends beyond that which can be discussed at an in-camera (closed) meeting. Such information may not be disclosed by a member.

The following are examples of the types of information that a member of Council must keep confidential:

- items reviewed in an *in camera* meeting as allowed by the *Municipal Act, 2001*;
- information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- price schedules in contract tender or Request For Proposal submissions if so specified;
- economic development files where confidentiality is required;
- information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- statistical data required by law not to be released (e.g., certain census or assessment data).

Members of Council should not access or attempt to gain access to confidential information in the custody of the Municipality unless it is necessary for the performance of their duties.

8. Use of Municipal Property, Services and Other Resources

No member of Council shall use, or permit the use of Municipal property, land, facilities, equipment, computers, phones or other technological devices, supplies, services, staff or other resources (for example, Municipality-owned materials, websites, and member of Council expense budgets) for activities other than the business of the Corporation. This shall not apply to incidental personal use that does not cause the Municipality or Council disrepute.

No member shall utilize Municipal equipment, such as computers, phones or other technological devices for intentionally making, accessing, downloading, uploading or saving inappropriate material which includes, but is not limited to, (i) pornographic, violent or hate material, or (ii) statements which are derogatory, defamatory, harassing, fraudulent or threatening.

No member shall obtain personal financial gain from the use or sale of Municipality-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the Municipality.

9. Election Campaign Work

Members are required to follow the provisions of the *Municipal Elections Act, 1996*. No member shall use the facilities, equipment, supplies, services or other resources of the Municipality (including Councillor newsletters and websites linked through the Municipality's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on Municipality property during regular working hours unless permitted by Municipal policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes during hours in which those persons receive any compensation from the Municipality.

10. Improper Use of Influence

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- that is of general application;
- that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- that concerns the remuneration or benefits of a member of Council.

11. Business Relations

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the Municipality except in compliance with the terms of the *Municipal Conflict of Interest Act*.

In the course of his or her official duties as member of Council, no member shall refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit for oneself, or one's parents, children or spouse, staff members,

friends, or associates, business or otherwise.

12. Conduct Regarding Current and Prospective Employment

No member shall allow the prospect of his or her current or future employment by a person or entity to detrimentally affect the performance of his or her duties to the Municipality.

13. Conduct at Council and Committee Meetings

During Council meetings, members shall conduct themselves with decorum. Respect for deputations and for fellow members and staff requires that all members show courtesy and not distract from the business of Council during presentations and when other members have the floor.

14. Conduct Respecting Staff

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Under the direction of the Chief Administrative Officer, staff serve Council as a whole and the combined interests of all members as evidenced through the decisions of Council.

Members shall not give direction to individual staff, save and except for the Chief Administrative Officer who shall receive his or her direction from Council as a whole or as specifically delegated by the whole of Council to the mayor or a committee of Council.

When interacting with staff, members shall use generally accepted practices of respectful interaction.

Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as Committee members, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of Municipality staff in both the carrying out of their responsibilities and in dealing with the Council.

15. Discreditable Conduct

All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies, in addition to other federal and provincial laws.

16. Failure to Adhere to Council Policies and Procedures

This *Code of Conduct* is designed and intended to work together with other policies and procedures adopted by Council and intended to apply to Council (e.g., Procedure Bylaw).

More generally, members of Council are required to observe the terms of all bylaws, policies and procedures established by Municipal Council that are intended to apply to members of Council.

This provision does not prevent a member of Council from requesting that Council grant an exemption from a policy or procedure.

17. Reprisals and Obstruction

Members of Council must respect the integrity of the *Code of Conduct* and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner, Chief Legal Officer, Chief Administrative Officer or anyone else tasked with investigating a Municipal matter, including violations of this *Code of Conduct* or any other matter, is therefore prohibited. It is also a violation of the *Code of Conduct* to obstruct an investigation, for example, by the destruction of documents or the erasing of electronic communications.

18. Integrity Commissioner

Pursuant to Section 223.3 of the *Municipal Act, 2001*, the Municipality of Chatham- Kent may appoint an Integrity Commissioner who reports to Council and who is responsible for performing the following duties in an independent and consistent manner:

- assessing and investigating formal written complaints respecting alleged contraventions of this *Code of Conduct*,
- determining whether a member of Council or local board has in fact violated a protocol, by-law or policy governing their ethical behavior, including this *Code of Conduct*, with the final decision-making authority resting with Council as to whether the recommendation(s) of the Integrity Commissioner are imposed; and
- providing Council, through the Municipal Clerk, with written reports which the Clerk shall include on the next public meeting agenda of Council.

19. Complaint Protocol

a. Informal Complaint Procedure

Individuals or organizations who have identified or witnessed behaviour or an activity by a member of Council, local board or advisory committee that they believe is in contravention of the *Code of Conduct* could address the prohibited behaviour or activity themselves as follows:

- advise the member that their behaviour or activity appears to contravene the *Code of Conduct*;
- encourage the member to stop the prohibited behaviour or activity;
- keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- if applicable, confirm to the member that you are satisfied with the response you received, or advise the member of your dissatisfaction with the response.

Individuals 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 of Conduct*.

A person is not required to undertake the informal complaint procedure prior to pursuing the formal complaint procedure.

b. Formal Complaint Procedure

A request for an investigation that a member has contravened the *Code of Conduct* shall be:

- made in writing on a prescribed form provided by the Municipal Clerk setting out reasonable and probable grounds for the allegation that a member has contravened the *Code of Conduct*;
- signed by an identifiable individual (which includes the authorized signing officer of an organization), but the identity of the complainant shall be disclosed only to the Integrity Commissioner and Municipal Clerk;
- filed, along with a filing fee of \$25, with the Municipal Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is a complaint with respect to non-compliance with the *Code of Conduct*. The Municipal Clerk may waive the filing fee if the complainant is suffering financial hardship as determined by the Municipal Clerk.

c. Complaint Classification / Referral

If, after reviewing the complaint, the Integrity Commissioner determines that it does not appear to be a complaint with respect to non-compliance with the *Code of Conduct*, the Integrity Commissioner shall instruct the Municipal Clerk to advise the complainant in writing that if the complaint is an allegation of:

- a criminal nature under the *Criminal Code of Canada*, the complainant must pursue such allegation with the appropriate police force;
- non-compliance with the *Municipal Conflict of Interest Act*, the complainant should review the matter with their own legal counsel;
- non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the matter will be referred to the Municipal Clerk or the Office of the

- Information & Privacy Commissioner for review;
- non-compliance with a more specific Council or corporate policy with a separate complaint procedure, the matter will be processed under that procedure.

d. Investigation Process

If a complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Integrity Commissioner shall investigate and may attempt to resolve the complaint.

Except where otherwise required by the *Public Inquiries Act*, the Integrity Commissioner shall:

- serve the complaint and supporting material upon the member whose conduct is in question with a request that the member file a written response to the allegation with the Integrity Commissioner within ten (10) days of the date of service upon the member;
- on receipt of the member's response, serve the complainant with a copy of the member's written response with a request that the complainant provide a written reply within ten (10) days;
- interview any individuals or examine any documents relevant to the complaint.

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 shall terminate the investigation if it becomes apparent in the course of an investigation.

e. Investigation Report

Unless the Integrity Commissioner has terminated the investigation for reasons outlined above, the Integrity Commissioner shall:

- report the general findings of his/her investigation to the complainant and the member no later than ninety (90) days after the making of the complaint;
- allow the member at least ten (10) days to respond in writing to the Integrity Commissioner on his or her findings and any recommended corrective actions or sanctions;
- indicate when the Integrity Commissioner anticipates presenting his or her final report to Council;
- file his or her final report in writing with the Municipal Clerk.

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

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 judgment made in good faith, the Integrity Commissioner shall so state in the report and recommend that no penalty be imposed.

20. Acting on Advice of Integrity Commissioner

Members of Council shall be permitted to seek confidential advice from the Integrity Commissioner with respect to interpretation of this *Code of Conduct*.

Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.

21. Compliance with the Code of Conduct

Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the *Criminal Code of Canada* or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*.

In addition, the *Municipal Act, 2001*, authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Conduct*:

- A reprimand; or
- Suspension of the remuneration paid to the 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.

The Integrity Commissioner may also recommend that Council or a local board take the following actions:

- Removal from membership of a Committee or local board
- Removal as Chair of a Committee or local board
- Repayment or reimbursement of moneys received.
- Return of property or reimbursement of its value.
- A request for an apology to Council, the complainant, or both.

22. Council Consideration of Integrity Commissioner's Investigation Report & Recommendations

Within 30 days of receipt of an investigation report from the Integrity Commissioner, the Municipal Clerk shall submit the report to Council for consideration at a public meeting.

The Integrity Commissioner's report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been submitted to the members of Council by the Municipal Clerk.

Council or a local board shall consider and respond to the report within 90 days after the day the report is submitted to Council.

Neither the person who filed the complaint, nor the Council member who is the subject of the report, shall be present during that portion of the Council meeting when the report is considered and responded to by Council

23. Interim, Annual & Other Reports

a. Interim Reports

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 an investigation, or as otherwise deemed necessary by the Integrity Commissioner.

b. Annual Reports

The Integrity Commissioner shall report annually to Council on:

- complaints received but determined to be not within the jurisdiction of the Integrity Commissioner,
- complaints deemed to be frivolous, vexatious, not made in good faith, or where there are no or insufficient grounds,
- complaints investigated and number of reports written,
- total costs of investigations annually, including all fees and disbursements by the Integrity Commissioner,

but shall not disclose information that could identify a person concerned.

Should no complaints be received within a calendar year, the Municipal Clerk shall report to Council accordingly and no annual report shall be made by the Integrity Commissioner.

c. Other Reports

In exceptional circumstances, the Integrity Commissioner may report to Council or local boards on complaints described in the formal complaint procedure.

24. Integrity Commissioner Vacancy

Should the Office of the Integrity Commissioner become vacant, the *Code of Conduct* shall remain in effect and all members shall abide by the provisions set out therein. When a vacancy occurs, all formal complaints shall be held in abeyance until such time as an Integrity Commissioner has been appointed.

25. No Retroactivity

This *Code of Conduct* shall not apply retroactively to any alleged transgressions occurring prior to the date on which this *Code of Conduct* is approved by Council.