

P O L I C Y

POLICY NO.: GG.6.15
SECTION: GENERAL GOVERNMENT – PERSONNEL
TITLE/SUBJECT: Code of Conduct-Council and Members of Local Boards
ADOPTED DATE: February 20, 2019 (Resolution #02/20/19-12)
REVISION DATE:

1.0 Coverage

This Code of Conduct applies to all members of the Council of the Municipality of Kincardine and local boards of the Municipality of Kincardine, which includes members of the public appointed to Local Boards as representatives on behalf of the Municipality of Kincardine. It is the responsibility of all members to be aware and comply with this Code and other policies adopted by Municipal Council.

2.0 Purpose

The Council of the Municipality of Kincardine is committed to achieving the highest standards of conduct in its actions which is essential to maintaining and ensuring public trust and confidence in the Municipality's decision-making and operations. The Municipality of Kincardine Council members shall act in an accountable and responsible manner, with integrity and fairness in the decision-making process.

3.0 Definitions

“Clerk” shall mean an employee authorized to act as the Clerk of the Municipality of Kincardine.

“Child” has the same meaning as that in the Municipal Conflict of Interest Act.

“Closed Meeting” shall mean a meeting or part of a meeting not open to the public in accordance with the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended.

“Code” means this Council Code of Conduct as it applies to members of Council of the Corporation of the Municipality of Kincardine.

“Complaint” means an alleged contravention of this Council Code of Conduct.

“Confidential Information” includes any information in the possession of the Municipality that the Municipality is prohibited from disclosing. Confidential information also means any information that is not available to the public and that, if disclosed, could result in loss or damage to the Municipality of Kincardine or could give the person to whom it is disclosed an advantage. Confidential Information also includes items disclosed or discussed at closed sessions of Council and Local Board meetings.

“Council” means The Council of the Corporation of the Municipality of Kincardine.

“Municipality” means The Corporation of the Municipality of Kincardine.

“Municipal Property” means items, services or resources which are the property of the Municipality, including, but not limited to, materials, equipment, facilities, technology, Municipal-developed computer programs or technological innovations, databases, intellectual property and supplies.

“Frivolous” means something that is not worthy of serious consideration, or that is of little or no importance, due to its lack of seriousness or sense.

“Gifts and Benefits” means any cash or monetary equivalent, fee, object of value, service, travel and accommodation, or entertainment.

“Good Faith” means in accordance with standards of honesty, trust and sincerity.

“Hospitality” means instances where there is entertainment of, or by outside parties, for the furtherance of municipal business.

“Integrity Commissioner” means the Integrity Commissioner appointed by the Council of the Corporation of the Municipality of Kincardine.

“Member” means a member of the Council of The Corporation of the Municipality of Kincardine, a member of a local board of the Municipality of Kincardine, which includes any member of the public appointed to a Local Board on behalf of the Municipality of Kincardine.

“Office” means the authority and duties attached to the position of being an elected member.

“Parent” has the same meaning as that in the Municipal Conflict of Interest Act.

“Spouse” has the same meaning as that in the Municipal Conflict of Interest Act.

“Staff” means all full-time and part-time persons hired by the Municipality, including the Chief Administrative Officer, Directors, Senior Managers, Supervisors, Salaried Employees, Administrative Staff, Contract and Temporary Employees, Students and Co-op Placement Staff.

“Vexatious” means without reasonable or probable cause or excuse.

4.0 General Integrity

- a) Members are committed to performing their functions with integrity, accountability and transparency.
- b) Members are responsible for complying with all applicable legislation, by-laws and policies that pertain to their positions as an elected official.
- c) Members recognize that the public has the right to open government and transparent decision-making.
- d) Members shall at all times serve and be seen to serve the interests of their constituents and the Municipality in a conscientious and diligent manner and shall approach decision-making with an open mind.
- e) Members will conduct their dealings with each other in ways that maintain public confidence in the position to which they have been elected or appointed.
- f) Members will be open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.
- g) Members shall refrain from making disparaging remarks about other members of Council, staff, members of the public, or Council's decisions.
- h) Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.
- i) Members shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.
- j) For greater clarity, this Code does not prohibit members from properly using their influence on behalf of constituents.
- k) In accordance with the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*, every member shall exercise his or her power and discharge his or her official duties in accordance with the following guiding principles:
 - i. Seek to advance the common good of Municipality of Kincardine;
 - ii. Exercise care, diligence and skill that a reasonable person would exercise in similar circumstances;
 - iii. Exercise his or her powers only for the purposes for which they were intended; and,
 - iv. Truly, faithfully and impartially exercise his or her office to the best of his or her knowledge and ability.

5.0 Conduct at Council and Local Board Meetings

Members shall conduct themselves with decorum at all Municipal Council and Local Board meetings in accordance with the provisions of the Municipality of Kincardine's Procedure By-law.

6.0 Discrimination and Harassment

All members have a duty to treat members of the public, one another, and staff with respect and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. The Ontario Human Rights Code applied and, where applicable, the Municipality's Workplace Harassment Policy.

7.0 Conduct Respecting Staff

- a) Members shall acknowledge the fact that staff work for the Municipality as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate objectives. Municipal Council has the authority to approve budget, policy, governance, and other such matters. Under the direction of the Chief Administrative Officer, Municipal staff serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council as recorded in the minutes and resolutions.
- b) Members shall acknowledge and respect the fact that staff carry out directions of Council as a whole and administer the policies of the Municipality, and are required to do so without any undue influence from any individual member or group of members.
- c) Members shall refrain from publicly criticizing individual members of staff in a way that casts aspersions on their professional competence and credibility. The role of staff is to provide advice and services based on political neutrality, objectivity and professional judgement which may not necessarily reflect the opinion or position of a single member of Council.
- d) Members of Council have no individual capacity to direct staff to perform specific functions. Inquiries of staff from members of Council should be directed to the Chief Administrative Officer or the appropriate Senior Manager.
- e) The Municipal Act, 2001 sets out the roles of members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer and the Integrity Commissioner.
- f) Members of Council are expected to:
 - i. Represent the public and to consider the well-being and interests of the Municipality;
 - ii. Develop and evaluate policies and programs of the Municipality;

- iii. Determine which services the Municipality provides;
- iv. Ensure the administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of Council;
- v. Ensure the accountability and transparency of the operations of the Municipality, including the activities of the senior management of the Municipality;
- vi. Maintain the financial integrity of the Municipality; and,
- vii. Carry out the duties of Council under the Municipal Act, 2001 or any other Act.

g) Municipal staff is expected to:

- i. Implement Council's decisions and establish administrative practices and procedures to carry out Council's decisions;
- ii. Undertake research and provide advice to Council on the policies and programs of the Municipality; and
- iii. Carry out other duties required under the Municipal Act, 2001 or any Act and other duties assigned by the Municipality.

h) Members shall be respectful of the role of staff to provide advice based on political neutrality, professional judgement and objectivity.

i) Members should not:

- i. Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
- ii. Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
- iii. 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 in staff's duties.

8.0 Improper Use of Influence

- a) As elected officials, members are expected to perform the duties of their office with integrity, accountability and transparency.
- b) Members should not use the status of their position to influence the decision of another individual to the private advantage of oneself, one's parents, children, or spouse, staff members, friends, or business or other associates.
- c) In the same manner and as outlined in the Provincial Offences Act, members shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the Provincial Offences Act.

9.0 Use of Municipal Property and Resources

- a) Members have access to municipal resources such as property, equipment, services, staff and supplies, in order to fulfill their roles as elected representatives.
- b) No member shall use, or permit the use of Municipal property, equipment, services, staff or other resources (such as the Municipal website) for any activity other than purposes connected with the discharge of Municipal Council duties or Municipal Council business.
- c) No member shall obtain financial gain from the use or sale of Municipal-developed intellectual property, computer programs, technological innovations, or other kinds of property, while they are an elected official or thereafter.

10.0 Conduct Respecting Lobbying

Members, as elected representatives, are often approached by various individuals attempting to influence Council decisions. While lobbying is an acceptable practice, Council members must be aware that it is their responsibility to make decisions based on impartial and objective assessment of each situation, free from the influence of vendor for approval or decision-making.

11.0 Gifts, Benefits and Hospitality

- a) Members are expected to represent the public and the interests of the Municipality, and to do so with impartiality and objectivity. The acceptance of a gift, benefit or hospitality can imply favoritism, bias, or influence on the part of the member. At times, the acceptance of a gift, benefit or hospitality occurs as part of the social protocol or community events linked to the duties of an elected official and their representative role of the Municipality.
- b) Members shall not accept gifts that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence or otherwise to go beyond the necessary and appropriate public functions involved. For these purposes, a gift, benefit or hospitality provided with the member's knowledge to a member's spouse, child or parent that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.
- c) Members are not precluded from accepting:
 - i. Personal gifts, benefits, rewards, commissions or advantages from any person or organization which are wholly unconnected with the performance of the member as an elected representative;
 - ii. Political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
 - iii. Services provided without compensation by persons volunteering their time;
 - iv. Invitations from charity or not-for-profit organizations to attend their events;
 - v. Communication to the offices of a member, including subscriptions to newspapers and periodicals;

- vi. Gifts of a nominal value (e.g. baseball cap, t-shirt, book, etc.);
 - vii. Food and beverages at banquets, receptions, ceremonies or similar events;
 - viii. A memento received by a member of Council at a function honouring the member;
 - ix. A memento received as a result of being a speaker, participant or representative of the Municipality at an event;
 - x. Gifts or benefits received as a result of social protocol, customs or social obligations that normally accompany the performance of official duties;
 - xi. Food, lodging, transportation and entertainment provided by other levels of government or other local governments, boards or commissions; and
 - xii. Sponsorships and donations for community events organized or run by a member or a third party on behalf of a member.
- d) Those gifts received by members which have significance or historical value for the Municipality of Kincardine shall be left with the Municipality of Kincardine Archives when the member ceases to hold office.
- e) It is recognized that the extension and acceptance of forms of hospitality (including invitations to events, outings, engagements, performances, etc.) is within the activity suite of members. Any hospitality should fall within the following parameters:
- i. Members do not allow themselves to reach a position whereby they might be, or deemed by others to have been, influenced in making a decision as a consequence of the offering or acceptance of such hospitality;
 - ii. It serves a legitimate business purpose related to the responsibilities of the member;
 - iii. The person extending the invitation or a representative of the organization, is in attendance; and,
 - iv. The value and frequency are reasonable.
- f) Members shall return any gifts or benefits or not accept hospitality, which does not comply with these guidelines, along with an explanation of why the gifts, benefits, or hospitality cannot be accepted.

12.0 Election-Related Activity

Members are required to conduct themselves in accordance with the *Municipal Elections Act*. The use of municipal resources, both actual municipal property and staff time, for election-related activity is strictly prohibited. The prohibition applies to both the promotion and opposition to the candidacy of a person for elected office. Election-related activity applies not only to a member's personal campaign for office, but also other campaigns for municipal, provincial and federal office.

13.0 Compliance with the Code of Conduct

- a) Members are expected to adhere to the provisions of the Code of Conduct.
- b) Where Council has received a report by its Integrity Commissioner that in his or her

opinion there has been a violation of the *Code of Conduct*, the *Municipal Act, 2001* provides Council with the authority to impose the following sanctions:

- i. A reprimand; and,
- ii. 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.

14.0 Enforcement of the Code of Conduct – Integrity Commissioner

- a) The Council shall appoint an Integrity Commissioner to investigate alleged breaches of this Code.
- b) Any person, including members of the public, Municipal employees and members of Council, who has reasonable grounds to believe that a member has breached a provision of the Code may proceed with a complaint.
- c) Complaints must be submitted within 6 weeks of the matter becoming known to the individual and no more than 6 months after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines.
- d) A complainant may wish to pursue the informal complaint process as established by this Code, but is not required to prior to proceeding with the formal complaint process set out in this Code.
- e) No member shall obstruct the Integrity Commissioner in the carrying out of his or her responsibilities.
- f) Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is prohibited.

15.0 Other Duties of the Integrity Commissioner

- a) In addition to conducting investigations regarding alleged breaches of the Code of Conduct and other related policies adopted by Municipal Council, the Integrity Commissioner shall have the following responsibilities:
 - i. Provide information to Council as to their obligations under the Code.
 - ii. Provide advice to individual members regarding specific situations as they relate to the application of the Code.
 - iii. Provide advice to Council on other policies and procedures that relate to the ethical behavior of members.
 - iv. Provide general advice on conflict of interest issues, noting that this advice may not be used in defense of an allegation related to a conflict of interest.
 - v. Provide information to the public regarding the Code and the obligations of members under the Code.
 - vi. Provide an annual report to Council on activities of the Integrity Commissioner.

- b) Where an individual member is seeking to obtain advice from the Integrity Commissioner, the member shall submit to the Clerk a completed Request for Advice Form (see Appendix A) which shall be forwarded to the Integrity Commissioner for response.
- c) The Integrity Commissioner shall provide his or her advice in writing to the member. Any written advice given by the Integrity Commissioner to a member, as it relates to the Code, binds the Integrity Commissioner in any subsequent consideration of the member's conduct in the same matter provided the relevant facts known to the member were disclosed to the Integrity Commissioner.
- d) Any written requests for advice and responses to such requests are covered under the *Municipal Freedom of Information and Privacy Act*.
- e) The Integrity Commissioner's annual report to Council shall include information on the nature and volume of activity for the past year and provide anonymized examples with respect to the advice provided and the nature of complaints received and responded to.
- f) The annual report of the Integrity Commissioner shall be provided to Council for information. The report is a public document.
- g) The Integrity Commissioner shall file his or her annual report no later than six months after his or her initial appointment and annually thereafter.

16.0 Procedure – Informal Complaint

Any individual who has identified or witnessed behavior or activity by a member that appears to be in contravention of the Code may address their concerns as follows:

- a) Advise the member that their behavior or activity contravenes the Code of Conduct.
- b) Encourage the member to stop the prohibited behavior or activity.
- c) If applicable, confirm to the member satisfaction or dissatisfaction with his or her response to the concern identified.
- d) Keep a written record of the incident(s), including dates, times, locations, other persons present and any other relevant information, including steps taken to resolve the matter.
- e) If not satisfied with the response received from the member through the informal process, an individual may proceed with a formal complaint through the Integrity Commissioner as outlined in Part 16. Procedure – Formal Complaint.

17.0 Procedure – Formal Complaint

Any individual who has identified or witnessed behavior or activity by a member that appears to be in contravention of the Code may address their concerns through the formal

complaint process as follows:

- a) All formal complaints must be made using the Municipality's Complaints Form/Affidavit (see Appendix B) and shall be dated and signed by the complainant.
- b) The complaint must include an explanation as to why the issue raised may be a contravention of the Code and any evidence in support of the allegation must be included with the Complaints Form/Affidavit.
- c) Any witnesses in support of the allegation must be identified on the Complaint Form/Affidavit.
- d) The Complaint Form/Affidavit must include the name of the member alleged to have breached the Code, the section of the Code allegedly contravened, the date, time and location of the alleged contravention and any other information as required on the Complaint Form/Affidavit.
- e) The complaint shall be filed with the Clerk who shall confirm that the information is complete as to steps a, b and d of this section. The Clerk will forward the Complaint Form/Affidavit to the Integrity Commissioner who will determine whether the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or policies.
- f) The Integrity Commissioner may request additional information from the complainant.

18.0 Refusal to Conduct Investigation

- a) 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.
- b) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described above, except as part of an annual or other periodic report.

19.0 Response to Complaint Outside of the Jurisdiction of the Integrity Commissioner

- a) If the complaint received by the Integrity Commissioner is deemed not to be a complaint with respect to non-compliance with the Code, the Integrity Commissioner shall advise the complainant in writing, as follows:
 - i. Criminal Matter – if the complaint is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service.
 - ii. Municipal Conflict of Interest – if the complaint is an allegation with respect to matters under the *Municipal Conflict of Interest Act*, the complainant shall be

advised to review the matter with their own legal counsel.

iii. Municipal Freedom of Information and Protection of Privacy – if the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be referred to the Clerk to have the matter reviewed under that Act.

b) If the matter is covered by other Municipal policies or legislation, the complainant will be advised and directed to proceed in a manner that is considered appropriate by the Integrity Commissioner.

20.0 General Provisions

Appendix A, being the Request for Advice Form, Appendix B, being the Council Code of Conduct – Formal Complaint Form/Affidavit and its Schedule A, Additional Information Form and which are attached.

Appendix A

Council Code of Conduct – Request for Advice

Form Municipality of Kincardine

Name of Member: _____

Telephone Number: _____

Email Address: _____

Advice Requested: (Please provide as much detail as possible. Attach additional pages if required.)

Signature of Requestor

Date

Date Received by Integrity Commissioner

Date Reply Issued

Appendix B

Council Code of Conduct – Formal Complaint

Form/Affidavit Municipality of Kincardine

Affidavit of _____(full name)

I, _____(full name), of the _____ (City, Town, etc.)

_____ (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 e.g. I work for... I attend a meeting at which.....etc.)

2. I have reasonable and probable grounds to believe that a member of the Municipality of Kincardine Council _____ (specify name of member)

Has contravened section (s) _____(specify section(s)) of the Council Code of Conduct of the Municipality of Kincardine.

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 (Additional Information form). If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this Affidavit)

This Affidavit is made for the purpose of requesting that this matter be reviewed by the Municipality of Kincardine appointed Integrity Commissioner and for no other purpose.

Sworn (or affirmed) before me at)
_____(City, Town, etc.) of)
In the Province of Ontario on)
_____(date))_____

_____) (Signature)
(Signature of Commissioner)
A Commissioner for taking affidavits etc.

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

