

CODE OF CONDUCT FOR COUNCIL MEMBERS

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to establish standards for the conduct of elected officials in order to promote responsible governance for the City and create a process for investigating complaints about their conduct by an independent third party.

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Under its statutory powers, including sections 113.1, 115 and 116, and Part 4, Division 6 of the *Community Charter*, the Council of the Corporation of the City of Victoria, in an open meeting assembled, enacts the following provisions:

PART 1 – INTRODUCTION AND INTERPRETATION

Title

1 This Bylaw may be cited as the “Code of Conduct Bylaw”.

Definitions

2 In this Bylaw:

“Acting Mayor” means the member appointed pursuant to section 4 of the Council Procedures Bylaw;

“City Clerk” has the same meaning as in the Council Procedures Bylaw;

“committee member” means a person appointed by Council to a committee, sub-committee, task force, commission, board, or other Council established body under Part 5, Division 4 of the *Community Charter* or the *Local Government Act*;

“complaint” means a formal allegation that a member has breached this Bylaw submitted to the City Clerk in accordance with the complaints procedure set out in Part 6 of this Bylaw;

“complainant” means a person who has submitted a complaint to the City Clerk;

“confidential information” means information that is not publicly available and is treated as confidential by the City and includes information that may or must be considered by Council in a closed meeting pursuant to section 90 of the *Community Charter* including:

- (a) decisions, resolutions or report contents forming part of the agenda for or from a closed meeting of Council until a Council decision has been made for

the information to become public or otherwise released;

- (b) information about the acquisition, disposition or expropriation of land or improvements if disclosure could reasonably be expected to harm the interests of the City;
- (c) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages if disclosure could reasonably be expected to harm the interests of the City;
- (d) advice that is subject to any privilege at law; and
- (e) personal information that is prohibited from disclosure under the provisions of the *Freedom of Information and Protection of Privacy Act*;

"employee" means an employee of the City;

"investigator" means the person selected pursuant to section 10 of this Bylaw;

"member" means a member of Council, including the Mayor;

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; and

"respondent" means a member whose conduct is the subject of a complaint.

Application

- 3 (1) This Bylaw applies to members.
- (2) In the event of a conflict between this Bylaw and another City bylaw or policy governing member conduct, this Bylaw prevails.
- (3) This Bylaw does not apply to conduct that may subject a member to disqualification under the *Community Charter*, including sections 101 to 108.1, 120(1.1), and 125(5).
- (4) This Bylaw does not apply to a member's conduct in their personal life, except to the extent that such conduct reasonably undermines, or has the potential to reasonably undermine, public confidence in City governance.

PART 2 – STANDARDS AND VALUES

General Principles

- 4 A member must uphold the following standards and values:
- (a) integrity: a member must be honest, demonstrate strong ethical principles, act fairly, and respect their duty to maintain confidentiality and privacy when it arises;
 - (b) accountability: a member must be accountable for their decisions and actions, competent and diligent, and act in the best interests of the City as a whole, without regard to the member's personal interests;
 - (c) respect: a member must treat members of the public, other members, committee members, and employees respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment; and
 - (d) leadership and collaboration: a member must lead, listen to, and positively influence others, conduct duties in an open and transparent manner except where authorized by law, and work together with others to create or meet a common goal through collective efforts.

PART 3 – COMMUNICATIONS AND CONFIDENTIALITY

Public Communications by a member

- 5
- (1) A member must not communicate on behalf of the City unless authorized to do so by Council resolution or by virtue of a position or role the member has been authorized to undertake by Council.
 - (2) A member has an obligation to be clear that any statement or communication made is the member's own view, unless the statement or communication is authorized pursuant to subsection (1).
 - (3) Where a member is authorized to communicate on behalf of the City, the member must take reasonable efforts to ensure that the communication is fair and accurate.
 - (4) Without limiting the ability of a member to hold a position on an issue and respectfully express their opinions, a member must:
 - (a) ensure that their communications accurately reflect the facts of Council decisions;
 - (b) ensure that all communications relating to Council business are accurate

and not issue any communication that the member knows, or ought to have known, to be false; and

- (c) ensure that all communications issued by, or on behalf of a member, including communications made via social media, are respectful and do not discriminate, harass, defame, or demonstrate disrespect toward any person or group.

Confidential Information

- 6 (1) A member must:
 - (a) not disclose or release any confidential information acquired by virtue of their office, except as authorized by Council, or required by law;
 - (b) not use confidential information with the intention to cause harm or detriment to Council, the City or any other person or body;
 - (c) protect confidential information from inadvertent disclosure;
 - (d) use confidential information only for the purpose for which it is intended to be used;
 - (e) take reasonable care to prevent the examination of confidential information by unauthorized individuals; and
 - (f) not take advantage of, or obtain private benefit from, confidential information acquired by virtue of their office.
- (2) A member must access and use City information only in the normal course of their duties.
- (3) A member must retain records and other information in accordance with the procedures, standards, and guidelines established by the City, and must assist the City in good faith in responding to all requests for information made pursuant to the *Freedom of Information and Protection of Privacy Act*.

PART 4 – USE OF INFLUENCE OR CITY ASSETS

Use of Municipal Assets and Services

- 7 (1) A member may not direct the work of employees, other than employees assigned to assist a member, and should follow the processes established by the City Manager when communicating with employees.

- (2) A member must respect that it is the role of employees to provide neutral and objective information without undue influence and interference.
- (3) A member must not request or require employees to undertake personal or private work on behalf of a member, or accept an offer to perform such work from an employee.
- (4) A member must not use, or permit the use of, City land, facilities, equipment, supplies, services, employees or other resources for activities other than the business of the City, except in accordance with City policies permitting reasonable personal use.
- (5) A member must not contact, instruct, or direct any of the City's contractors, tenders, consultants or other service providers regarding City business.
- (6) A member does not contravene this Bylaw merely by participating in an event held in a City-owned facility in accordance with policies applicable to its use.

Use of Influence

- 8 (1) A member must only use the influence of their office for the exercise of their duties.
- (2) A member must be independent and impartial, and must not provide preferential treatment to any person or organization except as warranted by the ordinary and lawful discharge of their duties.
- (3) A member must not use the prospect of future employment by a person or entity, or other future economic opportunities, to detrimentally affect the performance of their duties.
- (4) A member must not use, or attempt to use, their office for the purpose of intimidating, improperly influencing, threatening, or coercing anyone.
- (5) A member must not interfere with, hinder, or obstruct employees, contractors, committee members, or other volunteers associated with the City in the exercise or performance of their roles, responsibilities, powers, duties or functions.

Election Activities

- 9 (1) A member must not use, or permit the use of, City land, facilities, equipment, supplies, services, employees or other resources for any election campaign or campaign-related activities, unless those resources are similarly available to all candidates and any associated fees have been paid for with election campaign funds.

- (2) A member must not compel employees to engage in partisan political activities or subject employees to threats or discrimination for refusing to engage in such activities.

PART 5 – SELECTION OF INVESTIGATOR

Selection of an Investigator

- 10 (1) Council must select an investigator to undertake the duties and responsibilities set out in this Bylaw.
- (2) The duties and responsibilities of the investigator are as follows:
- (a) assist with informal resolution of complaints;
 - (b) assess all complaints they are assigned to determine if the complaint must be rejected, closed, resolved or investigated;
 - (c) investigate and conduct inquiries as to violation of this Bylaw;
 - (d) report to Council as to whether a member has breached this Bylaw; and
 - (e) make recommendations on an appropriate remedy if a member has breached this Bylaw.
- (3) The investigator must perform the duties and responsibilities of their office in an independent manner.
- (4) The selection of an investigator must be for a set period of three (3) years.
- (5) The selection of an investigator may only be made by a unanimous vote of all Council members.

Interim or Ad Hoc Appointment

- 11 (1) Subject to subsection (2), an ad hoc investigator may be appointed in the following circumstances:
- (a) if the City has not yet formally selected an investigator;
 - (b) in the interim period between the expiry of the selection of one investigator and the selection of a new investigator; or
 - (c) if the selected investigator is unable or unwilling to act, and there is no roster of investigators pursuant to section 12.
- (2) The Mayor will be responsible for selecting an ad hoc investigator.

Use of a Roster to Select Investigator

- 12 For the purposes of section 10(1), Council may establish a roster of individuals who are to undertake the duties and responsibilities of an investigator on a rotating basis, in which case:
- (a) the roster will be arranged in alphabetical order (A-Z) based on surname;
 - (b) the first complaint received will be referred to the first individual on the roster, the second complaint to the second individual on the roster, and so on;
 - (c) if the individual referred a complaint is unable or unwilling to act as investigator, then the complaint will be referred to the next individual on the roster; and
 - (d) notwithstanding paragraphs (b) and (c), if a complaint is of a very similar nature to a previous complaint, or is related to a previous complaint such that both complaints should be dealt with together, then the new complaint may be referred to the same investigator as the previous complaint.

PART 6 – COMPLAINT AND RESOLUTION PROCEDURES

Complaint Procedure

- 13 (1) Any member, committee member, or employee may submit a complaint to the City Clerk.
- (2) A complaint must be in writing and describe with sufficient detail:
- (a) the name of the complainant;
 - (b) the name of the respondent;
 - (c) the conduct that allegedly breached this Bylaw;
 - (d) the date of the alleged conduct;
 - (e) the part or parts of this Bylaw that the complainant alleges has or have been breached; and
 - (f) the basis for the complainant's knowledge about the conduct.
- (3) A complainant may specify in the complaint if they are willing to participate in an informal resolution of the complaint.
- (4) The City Clerk may prescribe a form for submitting a complaint.

- (5) The City Clerk must not accept multiple complaints concerning the same matter and, in the event that the City Clerk receives multiple complaints concerning the same matter, they must process the first complaint accepted, but this does not prevent the investigator from later expanding the complaint and adding complainants for the purpose of conducting the investigation and preparing the investigation report.
- (6) On receipt of a complaint, the City Clerk must conduct a preliminary screening and if at that time, the City Clerk is of the opinion that:
- (a) the complaint was received more than 180 days after the last alleged breach of this Bylaw occurred;
 - (b) the complaint is not with respect to a breach of this Bylaw;
 - (c) the complaint would be more appropriately addressed through another process, including if the complaint is:
 - (i) an allegation of a conduct covered in the Criminal Code;
 - (ii) with respect to non-compliance with the *Freedom of Information and Protection of Privacy Act*;
 - (iii) with respect to conduct that may subject a member to disqualification pursuant to section 101 to 108.1, 120(1.1), or 125(5) of the *Community Charter*;
 - (iv) with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure; or
 - (v) with respect to a matter that is subject to another outstanding process, such as a court proceeding or a Human Rights complaint; or
 - (d) the complaint was received in the period 90 days prior to the general voting day,

then the City Clerk must notify the complainant in writing that the City Clerk is rejecting the complaint, or part of the complaint, as the case may be, set out the reasons therefore, set out any additional referrals the City Clerk considers appropriate, and close the complaint, or part of the complaint.

- (7) The City Clerk must submit all complaints that are not rejected to the investigator.

Dismissal and Suspension of Complaints

- 14 (1) The investigator has the authority to investigate a complaint alleging that a member is in breach of this Bylaw.

- (2) On receipt of a complaint from the City Clerk, or any time thereafter, if the investigator is of the opinion that:
- (a) any of the grounds for rejection listed in sections 13(6)(a) - (d) are applicable;
 - (b) the complaint is frivolous, vexatious, or not made in good faith;
 - (c) an investigation of the complaint would not further the purposes of this Bylaw;
 - (d) the investigation is, or might be, hampered, or the member might be prejudiced by the complainant's failure to provide a complaint in compliance with section 13(2), or otherwise cooperate with the investigation;
 - (e) the complainant wishes to withdraw the complaint, and it would be appropriate in the circumstances to allow the withdrawal; or
 - (f) there are no grounds or insufficient grounds for concluding that a violation of this Bylaw has occurred,

then the investigator must notify the complainant in writing that the investigator is rejecting the complaint, or part of the complaint, as the case may be, set out the reasons therefore, set out any additional referrals the investigator considers appropriate, and close the complaint, or part of the complaint.

- (3) Where a complaint is made against a member and the complaint procedure overlaps with a municipal election and the member is not re-elected in that election, the investigator must notify the complainant and the member in writing that the investigator is closing the complaint on this basis and close the complaint.
- (4) In the period 90 days prior to general voting day until the day after the general voting day:
- (a) the investigator may suspend any investigation underway, and
 - (b) the investigator will not release any investigation reports.
- (5) Prior to proceeding with an investigation, the investigator may request further information from the complainant in order to determine whether or not there are sufficient grounds for believing that any of the grounds for rejection in section 14(2)(a) – (f) is applicable.

Confidentiality of the Investigation

- 15 (1) The investigator must make all reasonable efforts to investigate complaints in confidence.

- (2) The investigator and every person acting under the investigator's instructions must preserve confidentiality with respect to all matters that come into the investigator's knowledge in the course of any investigation or complaint except as required by law.
- (3) An investigation report must only disclose such matters as in the investigator's opinion are necessary for the purpose of the investigation report.

Reprisals and Obstruction

- 16 (1) No person may obstruct the investigator in the carrying out of the investigator's duties or responsibilities.
- (2) No person may threaten or undertake any active reprisal against a complainant or against a person who provides information to the investigator in the context of an investigation.
- (3) No person may tamper with or destroy documents or electronic records related to any matter under investigation under this Bylaw or refuse to respond to the investigator when questioned regarding an investigation.

Informal Resolution

- 17 (1) When the investigator has decided to proceed with a complaint, the investigator must determine whether the complaint requires a formal investigation, or whether the complaint may be resolved informally and, in the latter case, the investigator may, at their discretion, either attempt to resolve the complaint directly, or refer the complaint to the Mayor.
- (2) When determining whether the complaint may be resolved informally, the investigator may consider culturally appropriate, or transformative or restorative justice approaches, and may engage a third party to assist the investigator for this purpose.
- (3) Where the investigator refers the complaint in accordance with subsection (1), the Mayor may agree to assist in resolving the complaint directly, or may appoint a third party to assist in resolving the complaint at their discretion.
- (4) The person assisting in the informal resolution of a complaint will assess the suitability of the complaint for settlement or resolution on an ongoing basis and may decline to assist at any point.
- (5) The complainant or the respondent can decline to participate in an informal resolution at any time.
- (6) If a complaint is resolved informally, the person assisting in resolving the

complaint must notify the investigator in writing of the terms of the resolution, upon receipt of which, the investigator must close the complaint.

- (7) If a complaint cannot be resolved informally, the person assisting in resolving the complaint must refer the complaint back to the investigator for a formal investigation.

Formal Resolution

- 18 (1) If a complaint is not rejected, closed, or resolved informally, the investigator must proceed with a formal investigation.
- (2) The investigator must serve the complaint on the respondent with a request that the respondent provide a written response to the complaint together with any submissions the respondent chooses to make within 10 days, subject to the investigator's discretion to extend the timeline.
- (3) The investigator may serve the complainant with the respondent's written response together with any submissions, on a strictly confidential basis, and request a reply in writing within 10 days, subject to the investigator's discretion to extend the timeline.
- (4) The investigator may do any of the following:
- (a) speak to anyone relevant to the complaint;
 - (b) request disclosure of documents relevant to the complaint;
 - (c) access any record in the possession or control of the City, except a record that is subject to solicitor-client privilege; and
 - (d) hold an inquiry or receive evidence in any form that the investigator deems appropriate.
- (5) The investigator must ensure that the formal investigation complies with the rules of procedural fairness and natural justice required in the circumstances.

Determination and Reporting

- 19 (1) The investigator must complete the investigation within 90 days of making a decision to proceed with a formal investigation, unless section 14(4) applies, or the investigator determines that doing so is not practicable, in which case the investigator must notify the complainant and respondent of the delay and provide a revised completion date, which may be extended by periods of up to 30 days on provision of written notice to the complainant and the respondent.

- (2) A notification issued pursuant to section 13(6), 14(2), 14(3), or 19(1) is confidential and must not be disclosed except in the following circumstances:
 - (a) the investigator may use information in the notice in an annual report in the form of context and statistics, if an annual report is requested by the City; and
 - (b) the respondent may disclose the fact that the complaint has been closed, or that a finding has been made that the respondent did not breach this Bylaw.
- (3) If after reviewing all material information, the investigator determines that the respondent did not violate this Bylaw, then:
 - (a) the investigator must prepare a written investigation report providing reasons for their determination that the member did not breach the Bylaw;
 - (b) the investigator must deliver a copy of the investigation report to the complainant, respondent, City Clerk and Council; and
 - (c) the City Clerk must make the investigation report available to the public forty-eight (48) hours after receipt.
- (4) If after reviewing all material information the investigator determines that a member did violate this Bylaw then:
 - (a) the investigator must prepare a written investigation report providing reasons for their determination that the member breached this Bylaw and include a recommendation for a sanction under section 21;
 - (b) if the investigator determines that a member did breach this Bylaw, but that the member took all reasonable steps to prevent it, or that it was trivial or done inadvertently or because of an error in judgment made in good faith, the investigator will so state in the investigation report and may recommend that no sanction be imposed;
 - (c) the investigator must deliver, on a confidential basis, a copy of the investigation report to the respondent;
 - (d) the investigator must deliver a copy of the investigation report to the complainant, the City Clerk, and Council forty-eight (48) hours after delivery of the investigation report to the respondent; and
 - (e) the City Clerk must make the investigation report available to the public after delivery of the investigation report to the complainant and Council.

- (5) The City Clerk must ensure that the investigation report as drafted complies with the City's obligations regarding disclosure of personal information set out in the *Freedom of Information and Protection of Privacy Act*, or ensure that appropriate redactions are applied prior to release to the public.

Final Determination by Council

- 20 (1) Council must, within 30 days of delivery of the investigation report pursuant to section 19(4)(d), or a longer period if approved by a vote of Council, decide on the appropriate measures, if any, that are warranted by the breach of this Bylaw, and take such actions as Council considers appropriate in the circumstances.
- (2) Prior to Council making any decision regarding the findings and recommendations set out in the investigative report, the respondent must be provided with an opportunity, either in person or in writing, to comment on the decision and any recommended censure, sanctions or corrective actions.
- (3) While an investigation report provided to Council may be considered in a closed meeting for the purpose of receiving legal advice, or other valid reason, when Council deliberates and votes on the investigation report, it will do so in a public meeting and the investigation report must be made available to the public in a form that complies with section 19(5).

Remedies

- 21 Sanctions that may be imposed for violating this Bylaw include the following:
- (a) a letter of reprimand from Council addressed to the member;
- (b) a request from Council that the member issue a letter of apology;
- (c) the publication of a letter of reprimand and a request for apology, and the member's written response;
- (d) a recommendation that the member attend specific training or counselling;
- (e) suspension or removal of the appointment of a member as the Acting Mayor;
- (f) suspension or removal of the member from some or all Council committees and bodies to which the member was appointed by Council;
- (g) termination of the member's appointment to any advisory committee, task force, commission, board, or other Council-established body to which the member was appointed by Council;
- (h) public censure of a member;

- (i) restrictions on the member's access to documents, City resources, or equipment; and
- (j) restrictions on member's communications with committee members or employees.

PART 7 – GENERAL

Mayor Unable to Act

- 22 Where this Bylaw provides that the Mayor is to take any action,
- (a) if the complaint is about the Mayor or the Mayor is otherwise unable to act, then the responsibility to take the action falls on the Acting Mayor, and
 - (b) if the responsibility has passed to the Acting Mayor pursuant to subsection (a) but the complaint is about the Acting Mayor or the Acting Mayor is otherwise unable to act, then the responsibility to take the action falls on the next scheduled Acting Mayor, and so on.

Severability

- 23 If any provision or part of this Bylaw is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, it shall be severed from the Bylaw and the balance of the Bylaw, or its application in any circumstances, shall not be affected and shall continue to be in full force and effect.

Offences

- 24 (1) Section 5 of the *Offence Act* does not apply to this Bylaw.
- (2) Notwithstanding subsection (1), a person commits an offence and is subject to the penalties imposed by this Bylaw and the *Offence Act* if that person:
- (a) contravenes section 15 or 16 of this Bylaw,
 - (b) consents to, allows, or permits an act or thing to be done contrary to section 15 or 16 of this Bylaw, or
 - (c) neglects or refrains from doing anything required by section 15 or 16 of this Bylaw.
- (3) Each day that a contravention pursuant to subsection (2) continues is a separate offence.

Penalties

25 A person found guilty of an offence under this Bylaw is subject to a fine of not less than \$100 and not more than \$50,000 for every instance that an offence occurs or each day that it continues.

Force and effect

26 This Bylaw comes into force on adoption.

READ A FIRST TIME the	day of	2023
READ A SECOND TIME the	day of	2023
READ A THIRD TIME the	day of	2023
ADOPTED on the	day of	2023

CITY CLERK

MAYOR