

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, requires 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 provincial legislation, 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*.

2. Definitions

The definitions in this section shall apply throughout this Code of Conduct. Definitions shall apply regardless of whether a word or term is capitalized.

"Child", "parent" and "spouse" shall have the same meanings as in the *Municipal Conflict of Interest Act*.

"Member" shall mean a current member of Council and a former member of Council if the complaint is filed during their term of Council. Member shall also mean any member of local boards, committees of council, commissions and boards, as described in Section 4 below.

"Confidential Information" shall mean any of the following:

- (a) 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*, *Personal Health Information Protection Act*, or other legislation;
- (b) Any discussion or information shared with Council in an *in camera* (closed) meeting of Council, unless Council has voted in a public and open meeting of Council to allow public disclosure of the discussion or information from the *in camera* (closed) meeting;
or
- (c) Any information which staff have provided to a member and clearly indicated that the information is confidential, unless (i) Council has voted in a public and open meeting to allow public disclosure of the information or (ii) the staff member who provided the information to Council has subsequently indicated that the information is no longer

confidential.

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,

- *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 elected members of the Council, including the Mayor.

This *Code of Conduct* also applies to all members of local boards, committees of council, commissions and boards, unless prohibited by statute or regulation. This *Code of Conduct* should be interpreted with modification where necessary to include local boards, committees of council, commissions and boards.

For clarity, this *Code of Conduct* does not apply to members of:

- a) a school board;
- b) conservation authority;
- c) a society as defined in subsection 2 (1) of the Child, Youth and Family Services Act, 2017;
- d) a board of health as defined in subsection 1 (1) of the Health Protection and Promotion Act;
- e) a committee of management established under the Long-Term Care Homes Act, 2007;
- f) a police services board established under the Police Services Act;
- g) a board as defined in section 1 of the Public Libraries Act;
- h) a corporation established in accordance with section 203; and
- i) any other local board prescribed by statute or regulation.

5. Principles of General Application

The principles of general application 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;

and

- 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, benefit or hospitality 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, fee, advance, gift, advantage, service, benefit or hospitality 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. gifts or benefits of nominal value that 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 or municipal 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 or 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
 - e. the private individual, association, partnership, company or foreign government is not bidding on a tender, RFP, or obtaining other contract or any financial benefit or relationship with the Municipality, within a 12 month period before and after the food, lodging, transportation or entertainment is provided; and
 - vii. communication provided to a member, including subscriptions to newspapers and periodicals.
- (b) Members may personally accept a fee, advance, gift, advantage, service, benefit or hospitality 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; and
- iii. annually the Municipal Clerk shall summarize the information received from each member and provide this information to Council in a public report.

7. Confidential Information

No member shall disclose or release by any means to anyone any confidential information acquired by virtue of their office, in either oral or written form, except when required to do so by a Court of competent jurisdiction. This includes, for example, forwarding of emails, sending of instant messages, or communications via social media, 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. This includes, for example, that no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of the Municipality's property, assets, or purchasing of goods or services.

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

- items reviewed in an *in camera* (closed) meeting;
- personal, contractual or employment related information of employees of the Municipality or local boards;
- labour relations information of individual employees and trade unions of the Municipality or local boards;
- confidential negotiation information of the Municipality or local boards;
- 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; 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. Some information in the possession of staff (eg. medical or tax records that identify individual citizens) cannot be disclosed to individual members of Council.

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 and that does not exceed a nominal expense to the Municipality (eg. use of municipal cell phone for incidental personal phone calls).

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 employees or contractors for election-related purposes during hours in which those persons receive any compensation or payment 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 a member's position as a member of Council or local board or committee to improperly influence the decision of another person to the private advantage of the member, or the member's parents, children or spouse, 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 or broad application or that concerns the remuneration or benefits of a member.

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 a 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 show respect and conduct themselves with decorum and mutual respect at all times during presentations by staff, public and fellow members. Respect for deputations and for fellow members and staff requires that all members show courtesy, respect and not distract from the business of Council during presentations and when other members have the floor to speak.

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.

Individual members shall not give direction to staff. Council shall give direction to staff, through the Chief Administrative Officer, in a meeting of Council (either *in camera* or in an open public meeting, as appropriate and as permitted by legislation) and through a vote of the majority members 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.

Members shall not maliciously or falsely injure the professional or ethical reputation of staff, or the prospects or practice of staff, whether in public or in private, and all members shall show respect for the professional capacities of staff.

Members shall not unduly influence staff members who have delegated authority from Council, or statutory authority under legislation, to make a decision or provide a service.

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 individual members when performing their duties. The key requirements of these duties include dealing with constituents and the general public, participating as Committee members, and participating as Council representatives on agencies, boards, commissions and other bodies.

Members may choose to advocate for a particular political position and/or on behalf of their constituents. Members must remember that municipal employees have distinct and specialized roles. Some employees have duties and obligations that require them to make decisions independent of Council and free of influence from Council members. Some employees also have obligations to professional associations, which are separate

from the municipality, and which govern the way in which these employees can respond to members and the public. Members must be respectful of these obligations and the professional obligations of employees.

15. Discreditable Conduct

All members of Council have a duty to treat members of the public, one another, and staff in a civilized way 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 Human Resource 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

The Municipality of Chatham-Kent shall appoint an Integrity Commissioner who reports directly to Council and who is responsible for performing the duties outlined in this *Code of Conduct* and the *Municipal Act, 2001*, in an independent manner. The Integrity Commissioner shall not be an employee of the Municipality and shall not report to any staff member including the Chief Administrative Officer.

19. Complaint Protocol

a. Informal Complaint Procedure

Individuals or organizations who have identified or witnessed behaviour or an activity by a member 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; and
- if desired, ask the Municipal Clerk to contact the Integrity Commissioner who may choose to mediate or assist the parties.

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

b. Filing a Formal Complaint

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

- made in writing on a prescribed form (Attachment A) 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 (or the authorized signing officer of an organization);
- filed, along with a filing fee of \$25, with the Municipal Clerk who shall forward the matter to the Integrity Commissioner. The Municipal Clerk, at his or her sole discretion, may waive the filing fee if the complainant is suffering financial hardship.

c. Investigation Process for a Formal Complaint

(i) Jurisdiction

The Integrity Commissioner shall review the complaint and determine if the complaint appears, *prima facie*, to be a complaint within the jurisdiction of the Integrity Commissioner.

If the Integrity Commissioner determines that the complaint is not a matter within the jurisdiction of the Integrity Commissioner, the Integrity Commissioner shall advise the complainant and the Municipal Clerk in writing. The Integrity Commissioner may, at her or his sole discretion, refer the matter to another agency or person who has jurisdiction (or who might have jurisdiction) over the matter. The Municipal Clerk shall post the written decision of the Integrity Commissioner on the Municipal website within ten days of receiving the decision.

If the Integrity Commissioner determines that the complaint is within the jurisdiction of the Integrity Commissioner, the Integrity Commissioner shall proceed to sub-step (ii) under this "Investigation Process for a Formal Complaint".

(ii) Frivolous, vexatious, not made in good faith, *de minimus*, or if there are insufficient grounds for an investigation

The Integrity Commissioner shall review the complaint and determine if the complaint is frivolous, vexatious, not made in good faith, *de minimus*, or if there are insufficient grounds for an investigation.

If the Integrity Commissioner determines that the complaint is frivolous, vexatious, not made in good faith, *de minimus*, or that there are insufficient grounds for an investigation, the Integrity Commissioner shall advise the complainant and the Municipal Clerk in writing. The Municipal Clerk shall post the written decision of the Integrity Commissioner on the Municipal website within ten days of receiving the

decision.

If the Integrity Commissioner determines that the complaint is not frivolous, not vexatious, is made in good faith, is not *de minimus*, and that there sufficient grounds for an investigation, the Integrity Commissioner shall proceed to sub-step (iii) under this “Investigation Process for a Formal Complaint”.

(iii) Investigation

If the Integrity Commissioner has decided to commence an investigation, the Integrity Commissioner shall first interview the complainant (in person or by telephone). The Integrity Commissioner shall then interview the member and other parties, as he/she deems relevant (in person or by telephone). The member who is the subject of the complaint will be advised of the complaint and provided with a fair opportunity to respond. The member shall be entitled to be represented by legal counsel at the member’s own expense.

The Integrity Commissioner shall be entitled to any documents in the possession of the Municipality, except where prohibited by law. Members and staff shall cooperate by providing any requested documents and otherwise shall cooperate with the investigation.

The Integrity Commissioner shall be entitled to amend or end the investigative process when, in her or his sole discretion, it is necessary to do so for the purposes of achieving a just and fair result. If the Integrity Commissioner ends the investigation during this stage of the investigation process, the Integrity Commissioner shall provide a final investigation report as outlined in sub-step (iv) under this “Investigation Process for a Formal Complaint”.

(iv) Investigation Reports and Recommendations

The Integrity Commissioner shall provide a final investigation report in writing, with reasons, to the Clerk, the member, and the complainant within 90 days of the Integrity Commissioner receiving the complaint. The investigation report shall include findings of fact based on the balance of probabilities and with consideration given to the credibility of all concerned persons and witnesses. The investigation report may contain a recommendation to Council.

The Clerk shall make the investigation report available to the public on the municipal website within ten days of receiving the decision. Within 30 days the Clerk shall also put the investigation report on a Council agenda.

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.

(v) Confidentiality

Names and facts identifying members, complainants and witnesses will be made public through any reports or decisions issued by the Integrity Commissioner, which will then be posted to the municipal website and/or included in any public and open Council agenda package. However, the Integrity Commissioner shall have the

authority to keep confidential any names or facts that would identify members, complainants and/or witnesses where it is in the interest of a just and fair result to do so. Relevant criteria for determining whether the identity of members, complainants and/or witnesses will include, but is not limited to, the nature of the complaint and the power imbalance between the parties (including for example municipal employees who can be subject to reprisals from members of Council). In such an instance, the Integrity Commissioner may use initials, code or other means of protecting the identity of complainants and witnesses and may also black out any identifying information on relevant documents.

d. Council Decision

Within 60 days of receipt of a final investigation report from the Integrity Commissioner, the report shall be considered by Council in a regularly scheduled open and public meeting of Council. Council shall decide, and the Municipal Clerk shall record the vote of each member of Council, with respect to each recommendation made by the Integrity Commissioner.

Council may ask the Integrity Commissioner to appear before Council, in an open and public meeting of Council, to answer questions or provide information to Council about the investigation or investigation report.

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.

No person shall be entitled to make a deputation to Council with respect to any investigation report or any matter related thereto.

Council is entitled to receive *in camera* advice as permitted under the *Municipal Act, 2001* from relevant staff.

20. Acting on Advice of Integrity Commissioner

Members of Council shall be permitted to seek 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 and information known to the member were disclosed to the Integrity Commissioner.

21. Annual Reports

The Integrity Commissioner shall provide an annual report to Council which shall include:

- the number of instances in which the Integrity Commissioner provided written advice to a member with respect to interpretation of this *Code of Conduct*,
- complaints received but determined to be not within the jurisdiction of the Integrity Commissioner,
- complaints deemed to be frivolous, vexatious, *de minimus*, not made in good faith, or where there were insufficient grounds to investigate,
- complaints investigated and number of reports written, and

- 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.

22. 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. Staff shall forthwith issue a Request for Proposal for the services of an Integrity Commissioner and make a recommendation to Council, in an open and public meeting of Council, for the appointment of a new Integrity Commissioner.

Should a formal complaint be filed while the office of the Integrity Commissioner is vacant, the Municipal Clerk shall refer the matter for handling to the Integrity Commissioner of a nearby neighbouring municipality.

23. 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.

24. No Appeal

Any decision of the Integrity Commissioner, Municipal Clerk, or any other official acting under the authority of this Code of Conduct, shall be final and without right of appeal to Council or any other person.

Submit completed complaint and \$25.00 filing fee in a sealed envelope to: Judy Smith, Municipal Clerk, 315 King Street West, P.O. Box 640, Chatham ON N7M 5K8. 519.360.1998 Ext # 3200. email: judys@chatham-kent.ca

REQUESTER'S INFORMATION:

Last Name:	First Name:
Street Address:	Municipality / City:
Postal Code:	Phone #:
E-mail Address:	

DETAILS OF ALLEGED CONTRAVENTION OF COUNCIL CODE OF CONDUCT:

*Facts constituting the alleged contravention of the Council Code of Conduct. As much as possible clearly indicate names, dates, time and any other information available.	
*Name(s) and contact information of any witnesses:	
*Please use additional paper and attach to this form if necessary.	
Signature:	Date: Year: Month: Day:

FOR OFFICE USE ONLY:

Date Received by: Year: Month: Day:	Complaint #:	Comments:
Personal information contained on this form is collected under the authority of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> and will be used for the purpose of responding to a complaint review.		
Names and facts of this process will be made public through reports and decisions issued by the Integrity Commissioner. As per section 19 (c) (v) of the Code of Conduct for Members of Council, the Integrity Commissioner has the authority to keep confidential any names or facts that would identify witnesses where it is in the interest of a just and fair result to do so.		