

CITY OF KELOWNA

BYLAW NO. XXXXX
DRAFT FOR DISCUSSION

A bylaw to regulate Council Member Conduct.

PART 1 – COUNCIL CONDUCT

Purpose and Interpretation

- (1) This Bylaw sets out the rules Council Members must follow in fulfilling their duties and responsibilities as elected officials.
- (2) The Residents of the City of Kelowna are entitled to have a fair, ethical and accountable municipal Council that acts in the public interest, conducting its business with integrity and in a fair, honest and open manner.
- (3) The public expects that Council Members will adhere to the highest standards of professional conduct. Honesty, integrity, respect, transparency, leadership, collaboration, and accountability are the core ethical values reflected in this Code. Council Members are expected to perform their functions of office faithfully and to the best of their knowledge and ability, in accordance with these core ethical values.
- (4) The provisions of this Bylaw are to be interpreted broadly and in a manner that is consistent with the *Community Charter*.
- (5) The intention of Council in enacting this Code is not to stifle Council Members or to limit their ability to fully perform the governmental and advocacy functions that their position entails, with all the vigour, flair and freedom that is typical of a well-functioning democratic institution, but instead to guide Council Members to undertake those functions in a manner that accords with sound ethical principles.

Definitions

- (6) In this Bylaw:

"Chief Administrative Officer (CAO)" means the City Manager or their designate;

"Council Member" means the Mayor and Councillors for the City of Kelowna;

"FIPPA" means the *Freedom of Information and Protection of Privacy Act* (British Columbia);

“**Investigator**” means the investigator appointed in section (41);

“**Resident**” means any person who would be eligible to vote in a municipal election in the City of Kelowna, along with any person holding a valid and subsisting business licence issued by the City of Kelowna; and

“**Staff**” means an officer or employee of the City of Kelowna, but does not include contractors.

Application

- (7) This Code applies to all Council Members, inclusive of their actions in their capacity as members of various boards, committees, and other discretionary appointments.

Comply with all Laws

- (8) Council Members shall comply with all applicable federal, provincial and municipal laws in the performance of their public duties, including but not limited to:
- (a) the *Local Government Act*;
 - (b) the *Community Charter*;
 - (c) FIPPA;
 - (d) the *Financial Disclosure Act*; and
 - (e) all bylaws and policies of the City.

General Conduct

- (9) Council Members shall not engage with others, including Residents, Staff, Committee Members and other Council Members, in a manner that is abusive, bullying, intimidating or derogatory.
- (10) Council Members shall not use their office to attempt to gain personal benefits for themselves, their family members or their friends.

Respect for Process

- (11) Council Members shall perform their duties in accordance with the policies, procedures and rules of order established by Council from time to time.

Interactions with Staff

- (12) Council Members shall direct questions and inquiries regarding departmental issues in accordance with protocols established by the City Manager and shall refrain from contacting Staff directly, unless the communication is for the purpose of seeking administrative clarity.
- (13) Council Members shall not interfere with, hinder, or obstruct Staff in the exercise or performance of their roles, responsibilities, powers, duties, or functions, nor shall they impair the ability of municipal officers or Staff to implement Council policy decisions in accordance with section 153 of the *Community Charter*.
- (14) Council Members shall not request or require that Staff undertake personal or private work for or on behalf of a Council Member.
- (15) Council Members shall not request or require that Staff engage in political activities, or subject them to reprisal of any kind for refusing to engage in such activities.

Interactions with the Public and Media

- (16) In an effort to promote respect and integrity for Council decision-making, Council Members will accurately communicate the decisions of the Council, even if they disagree with the majority decision of Council.
- (17) Council Members shall refrain from making any disparaging comments about other Council Members or individual members of staff.

Advocacy

- (18) Council Members shall represent the official policies or positions of Council to the best of their ability when designated as a delegate of Council. When presenting their individual opinions and positions, Council Members shall explicitly state that it is their own personal view and that they do not represent Council or the City in those views.

Conduct of Meetings

- (19) Council Members shall prepare themselves for meetings, listen courteously and attentively to all discussions before the body, and focus on the business at hand. Council Members shall not interrupt other speakers, make personal comments not germane to the business of the body, or otherwise interfere with the orderly conduct of a meeting.
- (20) Council Members shall not interact or communicate with members of the public during open or closed Council meetings via email, text or other social media applications.

Handling of Confidential Information

- (21) Council Members shall keep information and records prohibited from release under section 117 of the *Community Charter* in strict confidence. This includes information, records, commentary, agendas, staff reports and minutes from Closed ('in-camera') meetings and confidential updates from the City Manager or other City staff
- (22) Council Members shall not use confidential information to advance, directly or indirectly, their own personal, financial or other private interests.

Conflict of Interest

- (23) Council Members shall not participate in discussion of a matter, or vote on a question in respect of that matter, if the Council Member has a conflict of interest.
- (24) In respect of each matter before Council, Council Members shall:
 - (a) assess whether they have a conflict of interest; and
 - (b) determine whether it is necessary to seek independent legal advice at their own cost, in accordance with Council Policy 313 Conflict of Interest, with respect to any situation that may result in a conflict of interest.
- (25) If a Council Member believes that they have a conflict of interest in respect of a matter in a Council or Committee meeting, the Council Member shall:
 - (a) prior to the matter's consideration, notify the Mayor or Chair of the meeting that they have a conflict of interest, stating in general terms why they consider that to be the case;
 - (b) leave any meeting if the matter is discussed and not return until the discussion has ended or voting has been concluded;
 - (c) refrain from discussing the matter with any other Council Member publicly or privately; and
 - (d) refrain from attempting in any way to influence the voting on any question in respect of the matter.

Gifts

- (26) Council Members shall not accept a gift or personal benefit, except in accordance with section 105 of the *Community Charter*.

- (27) Council Members shall disclose a gift or personal benefit, received in accordance with section 105 of the *Community Charter*, as per section 106 of the *Community Charter* and in accordance with [draft] Council Policy 354 Council Disclosure of Gifts and Personal Benefits.

Use of Public Resources

- (28) Council Members shall not use City public resources such as Staff time, equipment, technology, supplies, facilities or other property for private gain, personal purposes, or election-related purposes.
- (29) Council Members shall not undertake federal, provincial or municipal election campaign related activities at the City Office or on other premises owned by the City during regular working hours, unless such activities are organized by the City.

Leave of Absence

- (30) A Council Member should consider requesting a leave of absence from Council for a period of 90 days prior to a federal or provincial election to avoid conflicts of interest or perceived conflicts of interest.

PART 2 – INVESTIGATION, COMPLIANCE AND ENFORCEMENT

Implementation

- (31) As an expression of the standards of conduct for Council Members expected by the City, this Code is intended to be self-enforcing. This Code therefore becomes most effective when Council Members are thoroughly familiar with it and embrace its provisions. For this reason, this Code shall be provided as information to candidates for Council.

Informal Resolution

- (32) If a Council Member believes that they have observed another Council Member engaging in conduct that would breach this Bylaw, they must attempt to resolve the complaint directly with the other Council Member, if possible, prior to submitting a complaint under section (35).
- (33) If a Staff member believes that they have observed a Council Member engaging in conduct that would breach this Bylaw, and they wish to file a complaint, they must approach the CAO on a confidential basis and inform the CAO of the alleged breach.
- (34) Upon receipt of the confidential information in section (33), the CAO may:

- (a) determine that no breach has occurred and inform the Staff member of that determination;
- (b) attempt to address the alleged breach with the Council Member and, if the circumstances warrant, the Staff member; or
- (c) request that Staff member file a complaint in accordance with sections (35) and (36).

Complaint Procedure

- (35) Subject to sections (32) to (34), a Council Member, Staff member or Resident may submit a complaint to the CAO. Alternatively, if the complainant is the CAO or the complaint involves the CAO, then complaints may be submitted to the Corporate Officer.
- (36) A complaint must be in writing, must be submitted within 30 days of the alleged breach (or within 30 days of notification to the CAO under section (33), if applicable), and must include, with sufficient detail:
 - (a) the name of the complainant;
 - (b) the name of the respondent Council Member(s);
 - (c) the conduct that the complainant alleges was in breach of the Code;
 - (d) the date of the alleged conduct;
 - (e) the parts of the Code the alleged conduct breached;
 - (f) the basis for the complainant's knowledge of the conduct; and
 - (g) if a complaint is submitted by a Council Member, whether the Council Member attempted to resolve the complaint informally under section (32).
- (37) A complaint may be accepted notwithstanding that it does not comply with all of the requirements of section (36), if the CAO or the Corporate Officer determines that there has been substantial compliance or if the circumstances otherwise warrant acceptance.
- (38) A complaint submitted outside the time limits set out in section (36) must be rejected, except that the CAO or Corporate Officer may grant an extension of no more than 30 further days if the circumstances of the complaint are sufficiently serious.
- (39) In an election year, complaints submitted from the first day of the nomination period to the general voting day must be accepted and held in abeyance until after the new Council has taken office. At that time, complaints shall only proceed if they relate to a Council

Member who was re-elected in that election year. For certainty, if the Council Member who is the subject of the complaint is not re-elected, the complaint must be rejected. The same provision applies to a Council Member who is running in a federal or provincial election beginning 90 days before general voting day. If the Council Member who is the subject of the complaint resigns from Council following the election, the complaint must be rejected.

Preliminary Assessment

- (40) On receipt of a complaint, the CAO or Corporate Officer shall conduct a preliminary assessment of the complaint or forward the complaint to the City's Solicitor to conduct a preliminary assessment. If the CAO, Corporate Officer or Solicitor determines that any of the following circumstances apply, then they must notify the complainant and respondent Council Member in writing that the complaint will be closed, stating the reasons for the closure:
- (a) the complaint is not with respect to a breach of this Bylaw;
 - (b) the complaint is frivolous, vexatious, or not made in good faith;
 - (c) the complaint would be more appropriately addressed through another process;
 - (d) the complaint was not in compliance with sections (35) and (36), and the respondent Council Member will be prejudiced by the complainant's failure to comply;
 - (e) the complainant wishes to withdraw the complaint, and it would be appropriate to allow the complaint to be withdrawn;
 - (h) the complaint was submitted by a Council Member, and the Council Member ought to have first attempted to resolve the complaint informally under section (32); or
 - (f) there are no possible grounds on which to conclude that a violation of this Bylaw has occurred.

Referral to Third-Party Investigator

- (41) If the CAO, Corporate Officer or Solicitor determines, after conducting a preliminary assessment, that the complaint should be accepted for investigation, they shall refer the complaint to a neutral and independent third-party Investigator of their choosing to conduct an investigation and notify the complainant and respondent Council Member of the referral.
- (42) The Investigator shall, at all times during an investigation, have all of the same powers to dismiss a complaint on a preliminary basis as set out in section (40).

(43) An Investigator, once retained, may only be dismissed for cause.

Criminal Conduct

(44) If, at any stage in the complaint procedure, the CAO, Corporate Officer, Solicitor or Investigator determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code*, or learns that there is an ongoing police investigation into the conduct that gave rise to the complaint, then they must immediately refer the matter to the appropriate authorities and suspend any investigation into the complaint until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council, the complainant, and the respondent Council Member.

(45) For certainty, a complaint must be suspended while the respondent is on a mandatory leave of absence under section 109.3(1) of the *Community Charter*, and may be recommenced only once the mandatory leave of absence ends pursuant to section 109.3(1)(b) of the *Community Charter*.

Formal Resolution

(46) Once retained, the Investigator shall deliver the complaint to the respondent Council Member, along with a request that the respondent Council Member provide a written response to the complaint, together with any submissions that the respondent Council Member chooses to make, within 10 days, subject to the Investigator's discretion to reasonably extend the timeline.

(47) The Investigator may, at their discretion, deliver the respondent Council Member's written response and submissions to the complainant and request a reply in writing within 10 days, subject to the Investigator's discretion to reasonably extend the timeline.

(48) The Investigator may:

(a) speak to anyone relevant to the complaint;

(b) request disclosure of documents relevant to the complaint; and

(c) access any record in the custody or control of the City, within the meaning of FIPPA, with the exception of records subject to solicitor-client privilege.

(49) The Investigator has discretion to conduct the investigation as they see fit, but must ensure that the investigation complies with the rules of procedural fairness and natural justice required in the circumstances of the complaint.

Adjudication and Reporting

- (50) The Investigator must conclude the investigation and make a determination regarding the alleged breach within 90 days of referral under section (41), unless the Investigator determines that doing so is not practicable, in which case the Investigator must notify the complainant and respondent Council Member of the delay and provide a revised decision date. The revised decision date may be extended by periods of up to 30 days at a time on provision of written notice to the complainant and respondent Council Member.
- (51) If, after reviewing all the material information, the Investigator determines that a Council Member did not violate this Bylaw, then the Investigator shall:
- (a) prepare a written investigation report providing reasons for their determination, which shall include a determination of whether the complaint was submitted frivolously, vexatiously or in bad faith; and
 - (b) deliver a copy of the investigation report to the complainant, respondent Council Member, and Council.
- (52) If, after reviewing all the material information, the Investigator determines that a Council Member did violate this Bylaw, then the Investigator shall:
- (a) prepare a written investigation report providing reasons for their determination, which must include:
 - i. a summary of the factual findings of the Investigator;
 - ii. an application of the Bylaw, and any other applicable law, to the facts;
 - iii. a recommendation of the appropriate sanction, subject to subsection (iv); and
 - iv. if applicable, a determination of whether the respondent Council Member took all reasonable steps to avoid the breach or whether the breach was trivial, inadvertent or due to an error in judgment made in good faith, in which case the Investigator may recommend that no sanction be imposed;
 - (b) deliver a copy of the investigation report to the respondent Council Member; and
 - (c) 48 hours after the delivery of the investigation report to the respondent Council Member, deliver a copy of the investigation report to Council.

Final Determination by Council

- (53) Council must, within 45 days of the Investigator's delivery of the investigation report, decide on the appropriate measures, if any, that are warranted by a breach of this Bylaw;
- (54) Prior to making any decision regarding the findings and recommendations set out in the investigation report, the respondent Council Member must be provided with an opportunity, either in person or in writing, to comment to Council on the Investigator's determinations and recommendations.
- (55) While an investigation report may be considered in a closed meeting, if the circumstances warrant, when Council deliberates and votes on the Investigator's recommendation, it will generally do so in an open meeting.
- (56) Within 30 days of Council's final decision about an investigation, it must, subject to the City's obligations under FIPPA, release to the public the investigation report, or a summary thereof, along with a summary of Council's decision.

Remedies

- (57) Remedies that may be imposed by Council for a violation of this Bylaw include the following:
 - (a) a letter of reprimand from Council, addressed to the respondent Council Member;
 - (b) a request from the Council that the respondent Council Member issue a letter of apology;
 - (c) the publication of the letters contemplated in subsections (a) and (b), along with the respondent Council Member's response, if any;
 - (d) directions to the CAO regarding the method of providing documents that contain confidential information to the respondent Council Member;
 - (e) a recommendation that the respondent Council Member attend specific training or counselling;
 - (f) limitations on access to certain City facilities;
 - (g) prohibition from representing the City at events and/or attending conferences;
 - (h) suspension or removal of the respondent Council Member from the Deputy Mayor rotation;
 - (i) public censure of the respondent Council Member; or

- (j) any other sanction recommended by the Investigator, so long as that sanction is within the authority of Council.
- (58) Council must consider the following factors when determining whether to impose a sanction on a Council Member:
- (a) the degree and nature of the conduct;
 - (b) whether the contravention was a single or repeated act;
 - (c) whether the Council Member knowingly contravened the Code;
 - (d) whether the Council Member took steps to mitigate or remedy the contravention;
 - (e) the Council Member's history of other contraventions; and
 - (f) if applicable, the Investigator's finding that the respondent Council Member took all reasonable steps to avoid the breach, or that the breach was trivial or done inadvertently or because of an error in judgment.

Remuneration

- (59) Where the Investigator finds that a Council Member:
- (a) breached this Bylaw; or
 - (b) submitted a complaint that was frivolous, vexatious, or made in bad faith,
- the remuneration to which that Council Member would otherwise have been entitled shall be reduced in accordance with *Council Remuneration and Expense Bylaw No. 7547*, as amended from time to time.
- (60) Notwithstanding section (59), the remuneration of a Council Member shall not be reduced if the Investigator makes a finding that:
- (a) the Council Member took all reasonable steps to prevent the breach;
 - (b) the breach was trivial or inadvertent; or
 - (c) the breach was because of an error in judgment made in good faith.

Confidentiality of Investigation

- (61) The CAO, Corporate Officer, Solicitor and Investigator must make all reasonable efforts to process and investigate complaints in a confidential manner.
- (62) 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 otherwise required by law.

Obstruction

- (63) No Council Member, Staff or Resident will obstruct the Investigator, Solicitor, CAO or Corporate Officer in relation to the administration of this Bylaw or the investigation of a complaint. Without limitation, the following shall constitute obstruction:
 - (a) uttering of threats against any person involved in the complaint;
 - (b) destruction of relevant records or documents; and
 - (c) refusal to cooperate with the Investigator.
- (64) A person who is found to have obstructed the Investigator, CAO, Solicitor or Corporate Officer will be subject to appropriate disciplinary action, which may include, but is not limited to:
 - (a) sanctions and remedies described above in section (57);
 - (b) termination of employment for just cause; or
 - (c) prohibition against filing a complaint under this Code for a specified and reasonable period of time.

Reimbursement of Costs

- (65) A Council Member may make a request to Council for reimbursement of the costs of legal advice and representation in responding to the formal complaint process outlined in this Bylaw. If appropriate, after considering all of the circumstances, Council may resolve to reimburse legal fees reasonably incurred by a Council Member, provided that all of the following are met:
 - (a) the Council Member has not previously been found to have breached the Code; and
 - (b) the amount claimed does not exceed \$10,000.

Frivolous and Vexatious Complaints

- (66) Any individual covered by this Bylaw who makes a complaint that is subsequently found to have been made in a deliberately frivolous, vexatious or malicious manner, or otherwise made in bad faith, will be subject to appropriate disciplinary action, which may include, but is not limited to:
- (a) in the case of Council Members, sanctions and remedies as described in this Bylaw;
 - (b) in the case of Staff, disciplinary action or termination of employment for just cause, as applicable;
 - (c) in the case of any complainant, prohibition from filing complaints under this Code for a specified period of time.