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# City of Kelowna Council Policy No. 388

## Code of Conduct

<b>Responsible Department:</b> Office of the City Clerk	<b>Adopted:</b> 2023/09/11
<b>Amendments:</b> 2025/04/07	<b>Last Reviewed:</b> YYYY/MM/DD

### Guiding Principle

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.

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.

The provisions of this Policy are to be interpreted broadly and in a manner that is consistent with the Community Charter.

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.

### Purpose

This Policy sets out the expectations Council Members are to follow in fulfilling their duties and responsibilities as elected officials.

### Application

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

### Definitions

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

"Corporate Officer" means the person appointed as such by Council, 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 30;

“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.

## **Policy Statements**

### **Part 1 – Conduct**

#### **Comply with all Laws**

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

#### **General Conduct**

2. Council Members will not engage with others, including Residents, Staff, Committee Members and other Council Members, in a manner that is abusive, bullying, intimidating or derogatory.
3. Council Members will not use their office to attempt to gain personal benefits for themselves, their family members or their friends. Without limiting the generality of this section, the following are illustrative examples of behaviour that may constitute a use of office to attempt to gain personal benefits:
  - a) Seeking to influence the outcome of a hiring process for a City staff position;
  - b) Seeking to influence City decision-making with respect to procurement or contracting outside of a Council decision;
  - c) Using confidential information gained in the course of one’s official duties to pursue a financial or other personal interest; or
  - d) Representing one’s self as a Council Member for the purpose of promoting a personal undertaking such as a business or non-profit organization.

#### **Interactions with Staff**

4. Council Members will direct questions and inquiries regarding departmental issues in accordance with protocols established by the City Manager. Council members will not contact Staff directly except to seek administrative clarity, and such inquiries will be directed to the appropriate member of the City’s senior staff.
5. Council Members will not interfere with, hinder, or obstruct Staff in the exercise or performance of their roles, responsibilities, powers, duties, or functions, nor will they impair the ability of municipal officers or Staff to implement Council policy decisions in accordance with section 153 of the Community Charter.
6. Council Members will not request or require that Staff undertake personal or private work for or on behalf of a Council Member.
7. Council Members will 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 Advocacy**

8. 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.
9. Council Members will refrain from making any disparaging comments about other Council Members or members of staff.
10. The Mayor is the designated spokesperson for the City on Council matters. Council Members will represent the official policies or positions of Council to the best of their ability when designated as a delegate of Council.
  - a) When presenting their individual opinions and positions, Council Members will take reasonable steps to avoid confusion as to whether they are speaking on behalf of Council or the City. This includes explicitly stating that it is their own personal view and that they do not represent Council or the City in those views.
  - b) When communicating via a social media account, it will suffice for a Council Member to post a single statement in a routinely viewable location on the account page or profile stating that the views expressed via the account are the personal views of the Council Member only and do not represent the position of Council or the City.

### **Conduct of Meetings**

11. Council Members will prepare themselves for meetings, listen courteously and attentively to all discussions before the body, and focus on the business at hand. Council Members will 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.
12. Council Members will use only the electronic device and systems installed at each Council Member's space in Council Chamber during Council meetings and will not use other electronic devices. This provision does not prohibit a Council Member from using an electronic communications device in the event of an emergency or other urgent matter.

### **Conflict of Interest**

13. Council Members will act in accordance with sections 100 to 104 of the Community Charter and Council Policy No. 313 regarding conflict of interest and influence.

### **Gifts**

14. Council Members will act in accordance with sections 105 and 106 of the Community Charter and Council Policy No. 389 Council Disclosure of Gifts and Personal Benefits.

### **Use of Public Resources**

15. Council Members will not use City public resources such as Staff time, equipment, technology, supplies, facilities, branding or other property for private gain, personal purposes, or election-related purposes.
16. Council Members will not undertake federal, provincial or municipal election campaign activities at City Hall or at other City facilities where the main function of such locations is employee workspaces. Council Members who seek to engage in campaign activities at other City facilities must follow applicable City policies and procedures.

## Leave of Absence

17. A Council Member who is running for elected office outside of a local government election should consider requesting a leave of absence from Council once the writ is dropped for that election to avoid conflicts of interest or perceived conflicts of interest.
18. A Council Member who is running for nomination or is a nominee for elected office outside of a local government election will not act as Deputy Mayor. The Mayor may appoint another Council Member as Deputy Mayor until after general voting day of that election or the end of the Deputy Mayor's scheduled term, if earlier than general voting day.
19. A Council Member who is running for nomination or is a nominee for elected office outside of a local government election will not represent Council on internal or external committees, task forces, or agencies. The Mayor may appoint another Council Member to represent Council until after general voting day of that election.
- 19.1 For certainty, sections 18 and 19 do not apply should the Council Member no longer be running for the nomination or not be nominated. In those instances the Council Member may resume the duties identified in those sections.

## ***Part 2 – Investigation, Compliance And Enforcement Implementation***

20. This Code is intended to be self-enforcing and becomes most effective when Council Members are thoroughly familiar with it and embrace its provisions. For this reason, this Code will be provided as information to candidates for Council.

## Informal Resolution

21. If a Council Member believes that they have observed another Council Member engaging in conduct that would breach this Policy, they must attempt to resolve the complaint directly with the other Council Member, if possible, prior to submitting a complaint under section 24.
22. If a Staff member believes that they have observed a Council Member engaging in conduct that would breach this Policy, and they wish to file a complaint, they must approach the CAO and the Corporate Officer on a confidential basis and inform the CAO and Corporate Officer of the alleged breach.
23. Upon receipt of the confidential information in section 22, the CAO and the Corporate Officer 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 24 and 25.

## Complaint Procedure

24. Subject to sections 21 to 23, a Council Member, Staff member or Resident may submit a complaint to the CAO and Corporate Officer. Alternatively, if the complainant is the CAO or Corporate Officer or the complaint involves the CAO or Corporate Officer, the complaint may be submitted to the other position alone.
25. 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 and Corporate Officer under section 22, 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(s) of the alleged conduct;
  - e) the part(s) 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 21.
26. A complaint that does not comply with all of the requirements of section 25 may be accepted if the CAO and Corporate Officer determine that there has been substantial compliance or if the circumstances otherwise warrant acceptance.
27. A complaint submitted outside the time limits set out in section 25 must be rejected, except that the CAO and Corporate Officer or City Solicitor may extend the time limits as follows:
- a) by up to 30 days if the circumstances of the complaint are, based on the assessment of the CAO and Corporate Officer or City Solicitor, sufficiently serious; or
  - b) by up to 60 days if the complainant is a Council Member and they have made a good faith effort to informally resolve the complaint pursuant to section 21.
28. During a general local election, 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 will only proceed if they relate to a Council Member who was re-elected in that election. 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 City by-election, or in a federal or provincial election beginning at the time the writ is dropped. If the Council Member who is the subject of the complaint resigns from Council following the election, the complaint must be rejected.

### **Preliminary Assessment**

29. On receipt of a complaint, the CAO and Corporate Officer will 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 reason(s) for the closure:
- a) the complaint is not with respect to a breach of this Policy;
  - 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 24 and 25, 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;
  - f) the complaint was submitted by a Council Member, and the Council Member ought to have first attempted to resolve the complaint informally under section 21; or
  - g) there are no reasonable grounds on which to conclude that a violation of this Policy has occurred.

### **Referral to Third-Party Investigator**

30. If the CAO, Corporate Officer or Solicitor determines that the complaint should be accepted for investigation, they will refer the complaint to a neutral and independent third-party Investigator of their choosing to conduct an investigation and they will notify the complainant and respondent Council Member of the referral.

31. The Investigator will have the same ability to close a complaint on preliminary assessment when one or more of the circumstances set out in section 29 applies.
32. An Investigator, once retained, may only be dismissed for cause.

### **Criminal Conduct**

33. 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 will report the suspension to Council, the complainant, and the respondent Council Member.
34. 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 re-commenced only once the mandatory leave of absence ends pursuant to section 109.3(1)(b) of the Community Charter.

### **Formal Resolution**

35. Once retained, the Investigator will 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.
36. 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.
37. The Investigator may:
  - a) speak to anyone relevant to the complaint;
  - b) request disclosure of documents relevant to the complaint;
  - 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; and
  - d) extend the timelines established in sections 35 and 36, at their discretion.
38. 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**

39. The Investigator must conclude the investigation and make a determination regarding the alleged breach within 90 days of referral under section 30, 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.
40. If, after reviewing all the material information, the Investigator determines that a Council Member did not violate this Policy, then the Investigator will:
  - a) prepare a written investigation report providing reasons for their determination, which will 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.
41. If, after reviewing all the material information, the Investigator determines that a Council Member did violate this Policy, then the Investigator will:
- 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 Policy, 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**

- 42. 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 Policy;
- 43. 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.
- 44. 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.
- 45. 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**

46. Remedies that may be imposed by Council for a violation of this Policy 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 and Corporate Officer 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) a temporary reduction in remuneration;
  - j) public censure of the respondent Council Member; or
  - k) any other sanction recommended by the Investigator, so long as that sanction is within the authority of Council.

47. 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.

### **Confidentiality of Investigation**

48. The CAO, Corporate Officer, Solicitor and Investigator must make all reasonable efforts to process and investigate complaints in a confidential manner.
49. 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 and Frivolous and Vexatious Complaints**

50. No Council Member, Staff or Resident will obstruct the Investigator, Solicitor, CAO or Corporate Officer in relation to the administration of this Policy or the investigation of a complaint. Without limitation, the following will 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.
51. A person who is found to have obstructed the Investigator, CAO, Corporate Officer, or Solicitor or any individual covered by this Policy 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 Policy;
  - 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.

### **Reimbursement of Costs**

52. 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 Policy. 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.