



CODE OF CONDUCT

**CITY COUNCILLORS
and
Members of Boards,
Commissions and Committees**

May, 2012.

ACCOUNTABILITY AND TRANSPARENCY

Excerpt from Schedule “A” to By-law No. 5262/17/09 “Policy Statement

The Corporation of the City of Port Colborne is committed to the fundamental principles of accountability and transparency as a matter of good governance and will be guided by the following principles:

- i. Decision-making will be open and transparent
- ii. Municipal operations will be conducted in an ethical and accountable manner
- iii. Financial resources and physical infrastructure will be managed in an efficient and effective manner
- iv. Municipal information will be accessible so that it is consistent with legislative requirements
- v. Inquiries, concerns and complaints will be responded to in a timely manner
- vi. Financial oversight, service standards and performance reporting and all other accountability documents will be made available and accessible, in language that the public can understand, to increase the opportunity for public scrutiny and involvement of municipal operations.
- vii. Every new delegation of power or authority will have a corresponding accountability mechanism.

The City of Port Colborne is committed to creating a culture wherein Council and staff are aware of and understand the principles of accountability and transparency articulated through this policy, and will support and contribute to the spirit and intent of the policy. This requires the leadership of Council and senior management to ensure these principles are practiced and adhered to throughout the corporation.

The City of Port Colborne will foster a safe environment that allows all stakeholders of this policy to participate freely, without fear of reprisal or retribution.

The City of Port Colborne will conduct its business openly, honestly, ethically and with integrity.”

To assist in the implementation of the City’s policy on accountability and transparency, a Code of Conduct for Municipal Councillors and members of Boards and Committees will be implemented.

PREAMBLE

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government and to the members of advisory boards and commissions that it appoints. In turn, adherence to these standards will protect and maintain the City of Port Colborne's reputation and integrity and will provide the citizens of Port Colborne with the knowledge that the conduct of its elected and appointed persons is of the highest ethical standards.

The key statements of principle that underline the *Code of Conduct* are as follows:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws of the Federal Parliament and Ontario Legislature, and the laws and policies adopted by City Council.

DEFINITIONS

In the *Code of Conduct*, the terms "child", "parent" and "spouse" have the same meanings as in the *Municipal Conflict of Interest Act*.

"child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

"parent" means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; and

"spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

STATUTORY PROVISIONS REGULATING CONDUCT

This *Code of Conduct* operates along with and as a supplement to the existing statutes governing the conduct of members. The following provincial legislation governs the conduct of members of Council:

The Municipal Act,

The Municipal Conflict of Interest Act,

The Municipal Elections Act, 1996; and

The Municipal Freedom of Information and Protection of Privacy Act,.

The Criminal Code of Canada.

APPLICATION

This *Code of Conduct* applies to all members of Council (including the Mayor) and to the appointed members of boards, commissions and committees. Reference throughout this document is to a “member” meaning a Councillor, the Mayor or any appointed person.

GIFTS AND BENEFITS

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions listed below.

Definition: for these purposes, a fee or advance paid to or a gift or benefit provided with the member’s knowledge to a member’s spouse, child, or parent, or to a member’s staff that is connected directly or indirectly to the performance of the member’s duties is deemed to be a gift to that member.

The following are recognized as exceptions:

- a. compensation authorized by law;
- b. such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c. a political contribution otherwise reported by law, in the case of members running for office;
- d. services provided without compensation by persons volunteering their time;
- e. a suitable memento of a function honouring the member;
- f. food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
- g. food and beverages consumed at banquets, receptions or similar events, if:
 - attendance serves a legitimate business purpose;

- the person extending the invitation or a representative of the organization is in attendance; and
 - the value is reasonable and the invitations are infrequent;
- h. communication to the offices of a member, including subscriptions to newspapers and periodicals; and
- i. sponsorships and donations for community events organized or run by a member or a third party on behalf of a member.

Except for category (c) (political contributions allowable by law), these exceptions do not apply where such gifts or benefits are provided by lobbyists or their clients or employers. For these purposes, a lobbyist¹ is an individual, organization or business that:

- is lobbying or causing the lobbying of any public office holder at the City or a local board;
- the member knows is intending to lobby.

In the case of categories (b), (e), (f), (g), (h) and (i), if the value of the gift or benefit exceeds \$500, or if the total value received from any one source during the course of a calendar year exceeds \$500, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Clerk of the City of Port Colborne.

The disclosure statement must indicate:

- the nature of the gift or benefit;
- its source and date of receipt;
- the circumstances under which it was given or received;
- its estimated value;
- what the recipient intends to do with any gift; and
- whether any gift will at any point be left with the City.

Any disclosure statement will be a matter of public record and a copy shall be filed with the Council.

Except in the case of categories (a), (c), (f) and (i), a member may not accept a gift or benefit worth in excess of \$1,000 or gifts and benefits from one source during a calendar year worth in excess of \$1,000.

¹ The City does not have a policy on lobbyists at the writing of this draft.

CONFIDENTIAL INFORMATION

Confidential information includes information in the possession of, or received in confidence by the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* (often referred to as “MFIPPA”), or other legislation. Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The provisions of Section 239 of the Municipal Act, 2001 says

“Meetings open to public

239. (1) *Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).*

Exceptions

(2) *A meeting or part of a meeting may be closed to the public if the subject matter being considered is,*

(a) the security of the property of the municipality or local board;

(b) personal matters about an identifiable individual, including municipal or local board employees;

(c) a proposed or pending acquisition or disposition of land by the municipality or local board;

(d) labour relations or employee negotiations;

(e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

(f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

(g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act. 2001, c. 25, s. 239 (2).

Other criteria

(3) *A meeting shall be closed to the public if the subject matter relates to the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act if the council, board, commission or other body is the head of an institution for the purposes of that Act. 2001, c. 25, s. 239 (3).”*

Where information that is made available, during an in camera meeting in accordance with Section 239 (2), of a confidential nature and concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, such confidential information shall not be released by any member and shall remain confidential until so released to the public by the Council.

For the purposes of the *Code of Conduct*, and in addition to the foregoing, “confidential information” also means that no member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of his or her office, in either oral or written form, except when required by law or authorized by Council to do so. Members shall not use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

Under the Procedure By-law, a matter that has been discussed at an in-camera (closed) meeting remains confidential. No member shall disclose the content of any such matter, or the substance of deliberations of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or otherwise releases the information to the public.

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

- items under litigation, negotiation, or personnel matters;
- 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;
- information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*, and
- statistical data required by law not to be released (e.g. certain census or assessment data).

Members shall not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy. Council shall be informed of the release of any confidential information to any individual member.

USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

No member shall use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, Council transportation delivery services and member of Council expense budgets) for activities other than the business of the Corporation; nor should any member obtain personal financial gain from the use or sale of City-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 owned by the City.

ELECTION CAMPAIGN WORK (Elected Officials)

Members of Council are required to follow the provisions of the *Municipal Elections Act*. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters and websites linked through the City's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on City property during regular working hours unless permitted by City policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes during hours in which those persons receive any compensation from the City. The Clerk will provide all candidates with a detailed policy in respect of election campaign work.

IMPROPER USE OF INFLUENCE

No member 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 one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, 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, board or committee in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- that is of general application;
- that affects a member, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- that concerns the remuneration or benefits of a member.

BUSINESS RELATIONS

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*.

A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

CONDUCT REGARDING CURRENT & PROSPECTIVE EMPLOYMENT

No member shall allow the prospect of his or her future employment, any person or entity to detrimentally affect the performance of his or her duties to the City.

CONDUCT AT COUNCIL AND COMMITTEE MEETINGS

Members shall conduct themselves with decorum at Council and committee meetings in accordance with the provisions of By-law 4314/150/02 as amended, being a By-law to govern the proceedings of the Council and Committee meetings.

CONDUCT RESPECTING STAFF

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee or Council. Under the direction of the Chief Administrative Officer, staff serves the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. 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. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

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 members when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.

DISCREDITABLE CONDUCT

All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. All applicable Federal and Provincial law such as the *Ontario Human Rights Code*, the *Occupational Health and Safety Act* for example, and the City's policies on *Human Rights and Anti-harassment Policy* or *5C Service Policy* to name a few applies if applicable.

FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES

A number of the provisions of this *Code of Conduct* incorporate policies and procedures adopted by Council. More generally, members are required to observe the terms of all policies and procedures established by City Council.

This provision does not prevent a member from requesting that Council grant an exemption from a policy.

REPRISALS AND OBSTRUCTION

Members should 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 Commissioner² is therefore prohibited. It is also a violation of the *Code of Conduct* to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents, the erasing of electronic communications etc.

ACTING ON ADVICE OF THE CITY'S INTEGRITY COMMISSIONER

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 known to the member were disclosed to the Integrity Commissioner.

COMPLIANCE WITH THE CODE OF CONDUCT

Members of Council are accountable to the public through the four-year election process and members of boards, commissions and committees to the Council. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act* or should their seat be declared vacant by a Court.

In addition, subsection 223.4(5) of the *Municipal Act, 2001*, authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Conduct*

- A reprimand; or

² The Municipal Act, 2001, S.O. 2001, c. 25, section 223.3, Council may appoint an Integrity Commissioner whose duties are outlined in section 223.3.

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- Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.

Other Actions

The Integrity Commissioner may also recommend that Council or a local board take one or more of the following actions as penalty to one or more of its members:

- Removal from membership of a Committee or local board.
- Removal as Chair of a Committee or local board.
- Require the member to repay or reimburse monies received.
- Require the member to return property or reimburse its equivalent value.
- Require the member to make public apology to Council, the complainant, or both.

ACKNOWLEDGE RECEIPT OF CODE OF CONDUCT

Every member of Council and every appointed member to a City Board or Commission or Committee shall be provided with a copy and shall acknowledge that they have reviewed, understand and agree to abide by this Code and acknowledge receipt thereof by signing in their respective capacity.