

## COUNCIL POLICY

<b>NAME:</b>	<b>CODE OF CONDUCT</b>	
<b>ISSUED:</b>	November, 2016	<b>INDEX REFERENCE:</b>
<b>AMENDED:</b>	May 27, 2019 June 1, 2020	<b>COUNCIL REFERENCE: 16/CNCL</b>

### PURPOSE:

To set minimum expectations for the behaviour of Council officials in carrying out their functions.

### SCOPE:

All Council officials and the Chief Administrative Officer.

### DEFINITIONS:

**Advisory Body Member:** a person sitting on an advisory committee, task force, commission, board, or other Council-established body.

**Confidential Information:** Confidential Information includes information that could reasonably harm the interests of individuals or organizations, including the District of Saanich, if disclosed to persons who are not authorized to access the information, as well as information to which section 117 of the *Community Charter* applies.

**Council official:** the Mayor and members of Council

**Personal Information:** has the same meaning as in the *Freedom of Information and Protection of Privacy Act*

**Staff:** an employee or contract employee of the District of Saanich, and includes staff that supports Advisory Bodies.

**Municipal Officer:** a member of staff designated as an officer under section 146 of the *Community Charter* or a bylaw under that section.

### INTERPRETATION:

- (a) In this policy, a reference to a person who holds an office includes a reference to the persons appointed as deputy or appointed to act for that person from time to time.
- (b) This Code of Conduct applies to the use of social media by Council officials in relation to District related matters.

**POLICY STATEMENTS:****1. Key Principles**

- 1.1. **Integrity:** Council officials are keepers of the public trust and must uphold the highest standards of ethical behaviour. Council officials are expected to:
  - make decisions that benefit the community;
  - act lawfully and within the authorities of the *Community Charter, Local Government Act* and other applicable enactments; and
  - be free from undue influence and not act, or appear to act, in order to gain financial or other benefits for themselves, family, friends or business interests.
- 1.2. **Accountability:** Council officials are obligated to answer for the responsibility that has been entrusted to them. They are responsible for decisions that they make. This responsibility includes acts of commission and acts of omission. In turn, decision-making processes must be transparent and subject to public scrutiny; proper records must be kept.
- 1.3. **Leadership:** Council officials must demonstrate and promote the key principles of the Code of Conduct through their decisions, actions and behaviour. Their behaviour must build and inspire the public's trust and confidence in local government. Council officials will provide leadership to District staff through the Chief Administrative Officer.
- 1.4. **Respect:** Council officials must conduct public business efficiently and with decorum. They must treat each other and others with respect at all times. This means not using derogatory language towards others, respecting the rights of other people, treating people with courtesy and recognition of the different roles others play in local government decision making.
- 1.5. **Openness:** Council officials have a duty to be as open as possible about their decisions and actions. This means communicating appropriate information openly to the public about decision-making processes and issues being considered; encouraging appropriate public participation; communicating clearly; and providing appropriate means for recourse and feedback.

## 2. General Conduct

- 2.1. Council officials must adhere to the key principles and provisions of the Code of Conduct.
- 2.2. Council officials must act lawfully and within the authorities of the *Community Charter, Local Government Act* and other applicable enactments and exercise a reasonable degree of care and diligence in carrying out their functions.
- 2.3. Council officials have an obligation to consider issues and exercise powers, duties and functions in a manner that avoids arbitrary and unreasonable decisions.
- 2.4. Council officials must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, Council officials must avoid conduct that:
  - contravenes this policy;
  - contravenes the law, including the *BC Human Rights Code*, and other enactments, and District Bylaws; and
  - is an abuse of power or otherwise amounts to improper discrimination, intimidation, harassment or verbal abuse of others.

## 3. Collection and Handling of Information

- 3.1. Council officials must:
  - Collect and use personal information in accordance with *Freedom of Information and Protection of Privacy Act* legislation and the Protection of Privacy Policy and guidelines as established in Saanich;
  - Protect information that is specifically marked confidential, that is Personal Information and other material identified or understood to be confidential in nature;
  - Refrain from discussing or disclosing any Confidential Information with or to Staff, or with persons outside the organization except as authorized;
  - Refrain from discussing or disclosing any Personal Information with or to other Council Officials, Staff, or with persons outside the organization except in a manner consistent with the duty to protect Personal Information under the *Freedom of Information and Protection of Privacy Act*.

- Take reasonable care to prevent the examination of confidential material or access to Personal Information by unauthorized individuals;
  - Not use Confidential Information except for the purpose for which it is intended to be used;
  - Only release information in accordance with established District policies and procedures and in compliance with the *Freedom of Information and Protection of Privacy Act* (British Columbia);
  - Not disclose decisions, resolutions or report contents forming part of the agenda for or from an in-camera meeting of Council until a corporate decision has been made for the information to become public; and
  - Not disclose details on Council's in-camera deliberations or specific detail on whether individual Councillors voted for or against an issue.
- 3.2. Except in the normal course of duties, Council officials must not in any way change or alter District records or documents.
- 3.3. When dealing with Personal Information, Council officials must comply fully with the provisions of the *Freedom of Information and Protection of Privacy Act*. All reasonable and necessary measures must be taken to ensure that the personal or private business information of individuals is protected. Personal information includes information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

#### **4. Conflict of Interest**

- 4.1. Council officials are expected to make decisions that benefit the community. They are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, family, friends, or business interests.
- 4.2. Council officials must appropriately resolve any conflict or incompatibility between their personal interests and the impartial performance of their duties in accordance with statutory requirements of the *Community Charter*.

#### **5. Interactions of Council officials with Staff and Advisory Body Members**

- 5.1. Council is the governing body of the District of Saanich. It has the responsibility to govern the District in accordance with the *Community Charter* and other legislation.

- 5.2. The Mayor is the head and chief executive officer of the District and has a statutory responsibility to provide leadership to the Council and to provide general direction to municipal officers respecting the municipal policies, programs and other directions of the council as set out in the *Community Charter*.
- 5.3. Council officials are to contact staff including Municipal Officers, according to the procedures authorized by Council and the District Chief Administrative Officer regarding the interaction of Council officials and staff. As a general principle, the District adopts the one employee model where Council's point of contact with staff is the Chief Administrative Officer.
- 5.4. Council officials are to direct inquiries regarding departmental issues or questions to the District's Chief Administrative Officer or the Department Head (Director) of the appropriate department and refrain from contacting other staff without first discussing the issue with the Department Head.
- 5.5. Advice to Council from staff will be vetted, approved and signed by the Chief Administrative Officer.
- 5.6. Council officials will invite the Chief Administrative Officer to be present at any meeting between a Council official and a member of staff where such attendance is requested by the staff member.
- 5.7. Council officials are not to issue instructions to any of the District's contractors, tenderers, consultants or other service providers.
- 5.8. Council officials must not make public statements attacking or disparaging staff or Advisory Body Members and shall show respect for the professional capacities of staff. Council officials must not involve staff in matters for political purposes.
- 5.9. Council officials must not publish or report information or make statements attacking or reflecting negatively on staff or Advisory Body Members except to the Chief Administrative Officer as appropriate to bring a complaint to the attention of the Chief Administrative Officer for follow up.
- 5.10. Significant information provided to any member of Council, which is likely to be used in Council or in political debate, should also be provided to all other Council officials, and to the Chief Administrative Officer.
- 5.11. Council officials must treat members of the public, other Council officials, Advisory Body Members and staff appropriately, and without bullying, abuse or intimidation in order to preserve a workplace free from harassment.

**6. Council Officials Use of Social Media**

- 6.1. It is not the role of individual Council officials to report directly on District related business. Council officials will use caution in reporting decision-making by way of their social media profiles and websites ensuring that any material they publish is accurate, precise and communicates the intent of Council
- 6.2. Council officials will include an "in my opinion", or similar disclaimer, either within the banner of their individual social media site(s) or separately when making follow up posts to the District's social media postings and when creating original posts pertaining to District related business.

(Sample Disclaimer – “Opinions expressed are my own and do not reflect the view or opinions of the District of Saanich”)

- 6.3. Council officials will refrain from using or permitting use of their social media accounts for purposes that include generating or recirculating:
- defamatory remarks, obscenities, profane language or sexual content;
  - negative statements disparaging other members of council;
  - negative statements disparaging staff or calling into question the professional capabilities of staff;
  - content that endorses, promotes, or perpetuates discrimination or mistreatment on the basis of race, religion or belief, age, gender, marital status, national origin, physical or mental disability or sexual orientation;
  - statements that indicate an actual attitudinal bias in relation to a matter that is to be the subject of a statutory or other public hearing;
  - promotion of illegal activity;
  - information that may compromise the safety or security of the public or public systems.
- 6.4. Council officials must regularly monitor their social media accounts and immediately take measures to remove messages or postings by others that violate this Code of Conduct.

## 7. Interactions with the Public and the Media

- 7.1. Council officials will accurately communicate the decisions of the Council, even if they disagree with the majority decision of Council, and by so doing affirm the respect for and integrity in the decision-making processes of Council.
- 7.2. When discussing the fact that he/she did not support a decision, or voted against the decision, or that another Council official did not support a decision or voted against a decision, a Council official will refrain from making disparaging comments about other Council officials or about Council's processes and decisions.

## 8. Gifts and Personal Benefits

The receipt and reporting of gifts and personal benefits is dealt with under sections 105 and 106 of the *Community Charter*. Ultimately, the interpretation of those sections is a matter for the courts. However, the general language used in those sections creates some level of uncertainty and this Code of Conduct is intended to provide some guidance to Council officials.

### 8.1. What are Gifts and Personal Benefits?

- 8.1.1. Gifts and personal benefits are items or services of value that are received by Council officials for personal use. These would include, but are not limited to, cash, gift cards, tickets to events, items of clothing, jewellery, pens, food or beverages, discounts or rebates on purchases, free or subsidized drinks or meals, entertainment, invitations to social functions, etc.
- 8.1.2. The following are not to be considered gifts or personal benefits:
  - Compensation authorized by law (see section 105(2)(b) of the *Community Charter*).
  - Reimbursement for out of pocket costs incurred for authorized travel, living and accommodation expenses associated with attendance at an event or in connection with an authorized travel.
  - A lawful contribution made to a Council official who is a candidate for election conducted under the *Local Government Act*.

## 8.2. What Gifts and Personal Benefits may be Accepted?

- 8.2.1. Section 105(1) of the *Community Charter* prohibits Council officials from directly or indirectly accepting a fee, gift or personal benefit connected with the official's performance of the duties of office.
- 8.2.2. In accordance with section 105(2), a Council official may accept gifts and personal benefits received as an incident of the protocol or social obligations that normally accompany the responsibilities of elected office.
- 8.2.3. Gifts and personal benefits received in accordance with section 105(2)(a) of the *Community Charter* as referenced in section 8.2.2 must be reported and disclosed in accordance with section 106 to the Corporate Officer.
- 8.2.4. Where a gift or personal benefit that may be accepted under the *Community Charter* has a value in excess of \$100.00, the Council official who receives the gift will do so on behalf of the District and turn over the gift to the District, except as otherwise permitted by Council.
- 8.2.5. Council officials must not accept a gift or personal benefit that could reasonably be expected to result in a real or perceived conflict of interest, and to assist in avoiding that situation, Council officials will not accept gifts or personal benefits from business or commercial enterprises having a value that exceeds \$50.00 or, where the total value of such gifts and benefits, received directly or indirectly from one source in any twelve (12) month period, would exceed \$250.00.

## 8.3. How Must Gifts and Personal Benefits be Reported?

- 8.3.1. Council officials must disclose to the Corporate Officer gifts and personal benefits in accordance with section 106 of the *Community Charter*.
- 8.3.2. If a Council official receives a gift or personal benefit that they do not wish to accept, regardless of value, they may immediately relinquish the gift or personal benefit to the District, in which case a disclosure form would not be required. If the gift or personal benefit is not immediately relinquished to the District, then the Council official must file a disclosure form.
- 8.3.3. The content of the disclosure must comply with section 106(2) of the *Community Charter* and must be filed "as soon as reasonably practicable".

- 8.3.4. It is the responsibility of Council officials to be familiar with the provisions in the *Community Charter* relating to acceptance and disclosure of gifts and to ensure that they comply with these requirements as contemplated by the statute.
- 8.4. How are Gifts and Personal Benefits Valued?
- 8.4.1. For the purposes of this Code, the value of each gift or personal benefit shall be determined by its replacement cost, i.e., how much it would cost to replace the item?
- 8.5. Procedure for Dealing with Relinquished Gifts and Personal Benefits
- 8.5.1. Where a gift or personal benefit is relinquished to the District, the Corporate Officer will record the receipt of the item, nature of the gift or personal benefit, source (including the addresses of at least two individuals who are directors, in the case of a corporation), when the gift was received, and the circumstances under which it was given and accepted.

## **9. Breaches, Complaint Handling and Disciplinary Action**

### **General**

- 9.1. This section, Breaches, Complaint Handling and Disciplinary Action, is for internal use only. Council officials and staff within the District of Saanich can use this section to lodge a complaint against a member of Council in relation to their own interactions with that Council official.
- 9.2. Council officials are to abide by the requirements of the *Community Charter* and this Code of Conduct, and shall endeavour to resolve interpersonal disputes in good faith, recognizing that interpersonal rancour does not facilitate good governance.

### **Council Officials**

- 9.3. Alleged breaches of this Code of Conduct by Council Officials shall be submitted in a written complaint (as per the Breach Template (Template1)) addressed to the Mayor and the Chief Administrative Officer within six (6) months of the last alleged breach

In the event that the Mayor is the subject of, is in a conflict of interest related to the complaint or is implicated in the complaint, the complaint shall be addressed

to the current Acting Mayor unless that individual is the subject of, or implicated in the complaint.

In the event that the Chief Administrative Officer is the subject of, is in a conflict of interest related to the complaint or is implicated in the complaint, the complaint shall be addressed to the Director of Corporate Services unless that individual is the subject of or implicated in the complaint.

- 9.4. Upon receipt of a complaint under section 9.3, the Mayor or designated Councillor, and the Chief Administrative Officer or designate (Director, Corporate Services) shall review the Policy and the details of the alleged breach.

The role of the Mayor and CAO (or designates) is to be the keeper of the process, not to adjudicate the complaint. Their role is to facilitate and seek a mutually beneficial resolution between the parties. Information from both parties should be obtained, reviewed and options for resolution canvassed. There is no ability for the Mayor / CAO or designates to give advice about the processing or quality of resolution of the complaint.

- 9.5. If the situation is not able to be resolved through the informal process within thirty (30) days, the Mayor and the Chief Administrative Officer or designates will work to appoint an independent third party. Numerous third party investigators will be identified. The Complainant(s) and Respondent(s) will be provided with the resumes of the identified parties. The Complainant(s) and Respondent(s) have the ability to agree or disagree that the proposed parties have the necessary professional skills, knowledge and experience to investigate the complaint (the "Third Party Investigator").

The Complainant(s) and Respondent(s) will notify the Mayor and CAO or designated if they have a conflict of interest with any of the proposed Third Party Investigators.

The Third Party Investigators will then be contacted and the individual with the next available opening in their schedule will be appointed to the matter.

- 9.6. If the parties cannot agree on the choice of investigator, a nominee of the Complainant(s) and the Respondent(s) shall jointly select a suitable Third Party Investigator.
- 9.7. If the Complainant(s) or Respondent(s) refuse to participate in a formal investigation, the investigation may continue without that individuals' participation. The Third Party Investigator will make their determination based on the information they are provided.

Not participating in the processes as outlined in sections 9.3 and 9.5 may also be considered grounds for a complaint under the policy.

9.8. Throughout both the informal or formal investigation, either party can have legal counsel present to assist them. This legal counsel will be required to follow any rules of in-camera or procedural bylaw process that are applicable.

9.9. As confidentiality is key, information provided to the Respondent(s) will be limited to the Breach Template completed by the Complainant.

9.10. The Third Party Investigator:

9.10.1. May conduct a preliminary assessment of the complaint, at the conclusion of which the investigator may determine to continue the investigation or make a written recommendation that the complaint be dismissed as unfounded, beyond jurisdiction or unlikely to succeed;

If the Third Party Investigator determines to continue the complaint, the Third Party Investigator shall:

9.10.2. Conduct an independent and impartial investigation of the complaint in a manner that is fair, timely, confidential and otherwise accords with the principles of due process and natural justice;

9.10.3. Provide an investigation update within ninety (90) days of his or her appointment to the Mayor and the Chief Administrative Officer or designates, as applicable, and to the Complainant and the Respondent;

9.10.4. Provide a written, confidential report (the "Report") of the findings of the investigation, including findings as to whether there has been a breach of this Code of Conduct, to the Mayor and the Chief Administrative Officer or designates, as applicable;

9.10.5. Provide recommendations regarding if a copy of or selected sections of the final Report should be provided to the Complainant and the Respondent; and

9.10.6. Provide recommendations in the Report as to the appropriate resolution of the complaint, which recommendations may include:

- dismissal of the complaint; or
- public censure of the Council Official or Officials for misbehaviour or a breach of this Code of Conduct;<sup>1</sup>

- a recommendation that a Council Official or Officials apologize to any person adversely affected by a breach of this Code of Conduct;
  - counselling of a Council Official or Officials; and/or
  - such other recommendations as are deemed appropriate in the professional judgment of the Third Party Investigator.
- 9.11. The Mayor and the Chief Administrative Officer or designates shall consider whether the Report or an executive summary of the Report should be presented to Council.
- 9.12. The Director of Corporate Services will receive and retain all reports prepared related to the complaint.
- 9.13. At the conclusion of the process the Third Party Investigator will destroy all notes that were taken or documents that were provided throughout the process of the investigation.
- 9.14. Where a Council Official alleges a breach of this Code of Conduct by a fellow Council Official, all Council Officials shall refrain from commenting on such allegations at open meetings of Council pending the conclusion of the Report and any decision of Council on the Report.
- 9.15. Council Officials who retain legal counsel to represent them in proceedings under this section may request in writing that the District indemnify them for their reasonable costs of representation, in accordance with section 740 of the *Local Government Act*.
- 9.16. Staff who retain legal counsel to represent themselves in proceedings under this section may request, in writing, reimbursement of reasonable costs from the District.

1. There is no defined or prescribed process related to public censure. The common law rules of natural justice would apply, meaning the right to a fair hearing, which includes the right to know the case against oneself, the right to be heard, the right to have an impartial adjudicator, and sometimes (but not always) the right to be represented by legal counsel.

**10. Attachments**

10.1. Attached to this document are two templates that could be utilized as part of the information resolution process:

- Proactive Apology by Council Member (Template 2)
- Apology by Council Member if held by Council to have violated the Code of Conduct (Template 3)

10.2. Please note: British Columbia's Apology Act provides that an "apology" made by or on behalf of a person in connection with any matter does not constitute an express or implied admission or acknowledgement of fault or liability. "Apology" is defined as "an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault." The Act further provides that an apology does not void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available to the person in connection with the matter. Evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter and must not be taken into account in any determination of fault or liability.

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**TEMPLATE 1 – Complaint**

**DATE OF COMPLAINT:** \_\_\_\_\_

**NAME OF COUNCIL OFFICIAL MAKING THE COMPLAINT:** \_\_\_\_\_

**NAME OF COUNCIL OFFICIAL WHO THE COMPLAINT IS AGAINST:** \_\_\_\_\_

**DATE OF THE BREACH:** \_\_\_\_\_

**SECTIONS OF THE COUNCIL CODE OF CONDUCT THAT HAVE BEEN BREACHED:**

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**DETAILED DESCRIPTION OF INCIDENT AND HOW THE CODE OF CONDUCT WAS BREACHED**

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**HAVE YOU APPROACHED THE OTHER COUNCIL OFFICIAL TO LET THEM KNOW ABOUT YOUR CONCERNS?**

Y\_\_\_\_ N\_\_\_\_

**WHAT IS THE RESOLUTION THAT YOU ARE SEEKING?**

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**TEMPLATE 2 – Proactive Apology by Council Member**

[DATE]

**PERSONAL AND CONFIDENTIAL**

[Name of Recipient]

[Title]

District of Saanich

[Address]

[City, Province Postal Code]

Dear [title] [last name]:

**Re: Apology [subject]**

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As you know, on **[date]**, I **[briefly set out the nature of the offending conduct. It is recommended you provide dates, times and a description of the conduct at issue as you understand it].**

On **[date]**, you confronted me about my behaviour/conduct and expressed **[describe briefly the conduct complained of and how it affected the offended person].** I acknowledge that my conduct / actions made you feel **[describe how it affected the offended person]** and I admit that my **[actions / conduct]** were **[reformulate why your actions were wrong in your own words – ex: offensive, derogatory, belittling, in poor taste, defamatory, wrong, discriminatory, callous, harmful to your reputation etc.].**

Having reflected on **[your complaint / our conversation]**, I take full responsibility for my **[actions / conduct]** and wish to apologize for the harm that I have caused you. My behaviour was not in keeping with the key principles of our Council's Code of Conduct. In particular, I acknowledge that my conduct was in violation of **[identify the section(s) of the Code of Conduct breached].**

Going forward, I commit to being more careful in my **[words / actions]** and to making better efforts to respect and abide by my obligations set out in the Code of Conduct. Please accept my heartfelt apology.

Sincerely,

**[name]****[title]**

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**TEMPLATE 3 - If held by Council to have violated the Code of Conduct**

[DATE]

**PERSONAL AND CONFIDENTIAL**

[Name of Recipient]

[Title]

District of Saanich

[Address]

[City, Province Postal Code]

Dear [title] [last name]:

**Re: Apology [subject]**

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As you know, on **[date]**, I **[briefly set out the nature of the offending conduct. It is recommended you provide dates, times and a description of the conduct at issue as you understand it]**.

On **[date]**, you confronted me about my behaviour/conduct and expressed **[describe briefly the conduct complained of and how it affected the offended person]**. In light of Council having concluded that my conduct constituted a violation of the District's Council Code of Conduct, I acknowledge that my conduct / actions made you feel **[describe how it affected the offended person]** and I admit that my **[actions / conduct]** were **[reformulate why your actions were wrong in your own words – ex: offensive, derogatory, belittling, in poor taste, defamatory, wrong, discriminatory, callous, harmful to your reputation etc.]**

Having reflected on **[the decision of Council]**, I take full responsibility for my **[actions / conduct]** and wish to apologize for the harm that I have caused you. My behaviour was not in keeping with the key principles of our Council's Code of Conduct. In particular, I acknowledge that my conduct was in violation of **[identify the section(s) of the Code of Conduct breached]**.

Going forward, I commit to being more careful in my **[words / actions]** and to making better efforts to respect and abide by my obligations set out in the Code of Conduct. Please accept my heartfelt apology.

Sincerely,

**[name]****[title]**