

The Corporation of the Township of Tyendinaga

Proposed By-law No. 2019-11

Being a By-law to provide a Code of Conduct for Council Members and Committees

WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act;

AND WHEREAS, Section 5 (3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipal power, including a municipality's capacity, rights, powers and privileges under Section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS, Section 223.2 of the Municipal Act, 2001, S.O. 2001, c. 25,

CODES OF CONDUCT - PRESCRIBED SUBJECT MATTERS

Prescribed subject matters

For the purposes of section 223.2 of the Act, the following are the prescribed subject matters that a municipality is required to include in the codes of conduct for members of the council of the municipality and of its local boards:

1. Gifts, benefits and hospitality.
2. Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be.
3. Confidential information.
4. Use of property of the municipality or of the local board, as the case may be.

Commencement

2. This Regulation comes into force on the day section 18 of Schedule 1 to the *Modernizing Ontario's Municipal Legislation Act, 2017* comes into force.

NOW THEREFORE that it be resolved that the Council of the Corporation of the Township of Tyendinaga ENACTS as follows:

1. GENERAL REGULATIONS

1.1- THAT, the Code of Conduct for Council Members and Committees, attached hereto as Schedule "A", be adopted.

2. ULTRA VIRES

2.1- Should any sections of this by-law, including any section or part of any schedules attached hereto, be declared by a court of competent jurisdiction to be ultra vires, the remaining sections shall nevertheless remain valid and binding.

AND THAT this by-law shall be effective as of March 18, 2019 and its short title shall be "Council /Staff Relations";

Read a First, Second and Third Time and finally enacted on this 18th day March 2019.

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Rick Phillips, Reeve

Brad Roach, CAO/Clerk-Treasurer

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Schedule A- The Corporation of the Township of Tyendinaga Code of Conduct for Members of Council and Committees



1. Statement of Intent:

The intent of this policy is to guide those covered by this code in their day to day responsibilities on behalf of the citizens of The Township of Tyendinaga.

2. Application:

This Code of Conduct applies to all members of The Tyendinaga Township. It also applies to citizen appointments to Township advisory committees.

3. Statutory Provisions Regulating Conduct:

This Code of Conduct is a complement to existing legislation governing the conduct of members of Council.

The following federal and provincial legislation also governs conduct of members of Council:

- *The Municipal Act*
- *The Municipal Conflict of Interest Act*
- *The Municipal Elections Act*
- *The Municipal Freedom of Information and Protection of Privacy Act*
- *The Provincial Offences Act*
- *The Ontario Human Rights Code*
- *The Criminal Code of Canada*
- The by-laws and policies of the Township of Tyendinaga as adopted and amended from time to time.

4. Definitions:

In this Code of Conduct, the terms “child”, “parent” and “spouse” have the same meanings as in the *Municipal Conflict of Interest Act*:

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“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;

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

5. General Integrity:

When serving on Township Council or its Committees, members of Council and citizen appointees shall:

1. Be committed to performing their functions with integrity, accountability and transparency.
2. Be responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official or appointed official.
3. Recognize that the public has a right to open government and transparent decision-making.
4. At all times serve and be seen to serve the interests of their constituents and the Township in a conscientious and diligent manner and shall approach decision-making with an open mind.
5. Avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.
6. Not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.
7. Not make statements known to be false or make statements with the intent of misleading Council or the public.

For greater clarity, this Code does not prohibit members of Council from properly using their influence on behalf of constituents.

6. Confidential Information:

1. Members of Township Council have a duty to hold information received at closed meetings in strict confidence for as long as the confidence applies. Councillors must not, either directly or indirectly, release, make public or in any way divulge any such information or confidential aspect of the closed meeting deliberations to anyone, unless authorized by Council or required by law.
2. Members of Council must not disclose, use or release information in contravention of applicable privacy law. Councillors are only entitled to information in the possession of the municipality that is relevant to matters before the Council or a committee. Otherwise, they enjoy the same level of access rights to information as any other member of the public and must follow the same processes as any private citizen.

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3. Members of Council must not release information that is subject to solicitor-client privilege, unless expressly authorized to do so by Township Council or required by law.

7. Conduct at Meetings:

Members of Council shall conduct themselves with decorum at all Township Council sessions and Committee meetings in accordance with the provisions of the Township Procedural By-Law.

8. Discrimination and Harassment:

All members of Council have a duty to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation, and to ensure that their work environment is free from Harassment in The Workplace Policy, related to the Township's Health and Safety Policy and Procedures Manual (#31) also applies.

9. Improper Use of Influence:

Members of Council are expected to perform their duties of office with integrity, accountability and transparency. Members of Council should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parent, children or spouse, staff members, friends, or associates, business or otherwise.

10. Use of Municipal Property:

Members of Council have access to municipal resources such as property, equipment, services, staff and supplies. Members of Council shall not use these resources for personal gain or for other activities or purposes not connected with Township business.

11. Conduct Respecting Staff:

1. Mutual respect and cooperation are required to achieve the Council's corporate goals and implement the Council's strategies through the work of staff. The role of Council is to lead through setting policy and budget. It is not to manage or administer.
2. Staff members serve Council and work for the municipal corporation under the direction of the Chief Administrative Officer. Council directs staff through its decisions as recorded in the minutes and resolutions of Council and its Committees. Members of Council have no individual capacity to direct members of staff to carry out particular functions.
3. Inquiries of staff from members of Council should be directed through the Chief Administrative Officer or the appropriate senior staff as directed by the Chief Administrative Officer.
4. Members of Council must respect that:
 - Staff provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations. Councillors must not willfully injure the

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reputation, impugn the integrity or question the capabilities or performance of staff in a manner that is inappropriate.

- Staff undertake their duties based on political neutrality without undue influence. Councillors may not invite or pressure any member of staff to engage in partisan political activities.

5. Members of Council must not 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 in staff's duties.

12. Expenses:

1. Councillors may submit bi-monthly expense claims for meeting, mileage and conference expenses. The approved limits for these expenses are approved/adjusted annually or as required by Township Council.

2. The approved conference per diem includes payment of costs associated with hotel rooms, parking, and meals.

13. Gifts, Benefits & Hospitality:

1. Members of Council shall not accept gifts or benefits that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise go beyond the necessary and appropriate public function involved. For these purposes, a gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child or parent that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to the Member.

2. To enhance transparency and accountability, if a Member of Council receives a gift or benefit and the value of the gift or benefit exceeds \$200.00, or if the value received from any one source during the course of a calendar year exceeds \$200.00 the Member of Council shall within 30 days of receipt of the gift or benefit or of reaching the annual limit, file a disclosure statement with the Township Clerk. 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 the gift
- whether the gift will at any point be left with the Township

3. Any disclosure statement made under this section will be a matter of public record.

14. Compliance with the Code of Conduct:

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1. Members of Council are expected to adhere to the provisions of the Code of Conduct. The *Municipal Act* authorizes Council, where it has received a report by its Integrity Commissioner that, in his or her opinion, there has been a violation of the Code of Conduct, to impose one of the following sanctions:

- A reprimand; and
- Suspension of the remunerations 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.

2. The Integrity Commissioner may also recommend that Council impose one of the following sanctions:

- Written or verbal public apology;
- Return of property or reimbursement of its value or of money spent;
- Removal from membership of a committee; and
- Removal as chair of a committee.

3. The Integrity Commissioner has the final authority to recommend any of the sanctions above or other remedial action at his or her discretion.

15. Informal Complaint Procedure:

Any individual who identifies or witnesses behavior or activity by a sitting Member of Township Council that appears to be in contravention of the Code of Conduct for Members of Council may address the prohibited behavior or activity themselves in the following manner:

1. Advise the Member that the behavior or activity appears to contravene the Code of Conduct;
2. Encourage the Member to acknowledge and agree to stop the prohibited behavior or activity and to avoid future occurrences of the prohibited behavior or activity;
3. Document the incidents including dates, times, locations, other persons present, and any other relevant information;
4. Advise someone else (for example, another Member of Council or a senior staff member of the Township) about their concern, their comments to the Member of Council and the response of the Member of Council;
5. If applicable, confirm to the Member of Council their satisfaction or dissatisfaction with the response from the Member of Council;
6. Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in the Code of Conduct or in accordance with any other judicial or quasi-judicial process.

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Individuals are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behavior or activity that they believe to be prohibited by the Code of Conduct. However, it is not a precondition or a prerequisite that they pursue the informal complaint procedure prior to pursuing the formal complaint procedure.

16. Formal Complaint Procedure – Integrity Commissioner:

Any individual who identifies or witnesses behavior or activity by a sitting Member of Township Council that they believe is in contravention of the Code of Conduct for Members of Council may file a formal complaint with the following conditions:

1. All complaints shall be in writing and shall be dated and signed by an identifiable individual.
2. The complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct. A supporting sworn affidavit setting out the evidence in support of the allegation must also be included.

17. Filing a Complaint and Initial Classification:

1. The complaint shall be filed with the Township Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another Township policy.
2. If the complaint does not include a supporting sworn affidavit, the Integrity Commissioner may defer the classification until the affidavit is received.
3. If the complaint, including the supporting affidavit, is not on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:
 - a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the Ontario Provincial Police or other appropriate law enforcement agency;
 - b) If the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - c) If the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Privacy Commissioner for review;

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d) If the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and

e) In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

18. Refusal to Conduct an Investigation:

If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation and, where this becomes apparent in the course of an investigation, shall terminate the investigation, without providing a formal report to Council.

19. Opportunities for Resolution:

Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution. Complaints resolved without a formal investigation will be reported to Township Council by way of the Integrity Commissioner's annual report.

20. Integrity Commissioner's Investigation:

If the complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Commissioner will proceed as follows:

1. Provide the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegations be provided within 10 business days.
2. Provide a copy of the response received from the member to the complainant with a request for a written reply within 10 business days.
3. If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, examine any documents or electronic material and may enter any Township worksite relevant to the complaint for the purpose of investigation and potential resolution.
4. The Integrity Commissioner may make interim reports to Council as required to address any instance of interference, obstruction or retaliation encountered during the investigation.

21. Municipal Support for Member of Council:

Members of Council who are subject to a complaint may consult a lawyer and the Township will upon provision of an original invoice marked paid, reimburse the Member for legal cost up to \$1,000. If the

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complaint is determined to have merit, the Integrity Commissioner may recommend and the Council may require the Member to reimburse all or a portion of the cost of the legal fees paid by the Township.

22. Integrity Commissioner's Report:

1. The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the official receipt of the complaint and affidavit. If the investigation takes more than 90 days, the Integrity Commissioner shall provide an interim report and advise the parties of the date the report will be available.
2. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended corrective action.
3. Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to Council the results of the investigation except as part of an annual or other periodic report.
4. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that the a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act*.

23. Report to Council:

1. The Integrity Commissioner shall file a copy of the final investigation report with the Township Clerk, who will then provide a copy of the report to the complainant and the Member of Council whose conduct it concerns.
2. Upon receipt of the report the Clerk shall place the report on the next regular agenda for the next regular meeting of Township Council.
3. The Integrity Commissioner shall report annually to The Township of Tyendinaga Council on complaints filed with the Integrity Commissioner concerning Members of Township Council.

24. Duty of Council:

Council shall consider and respond to the report within 90 days after the report is laid before it.

25. Public Disclosure:

1. The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
2. The Integrity Commissioner shall retain all records related to the complaint and investigation.

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3. At the time of the Integrity Commissioner's report to Council, the identity of the person who is the subject of the complaint shall not be treated as confidential information if the Integrity Commissioner finds that a breach has occurred.
4. All reports of the Integrity Commissioner to Council will be made available to the public through the Clerk's office.