

THE CORPORATION OF THE TOWN OF SMITHS FALLS
BY-LAW NO. 9973-2018

**A BY-LAW TO ADOPT A CODE OF CONDUCT FOR
MEMBERS OF COUNCIL AND LOCAL BOARDS**

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;

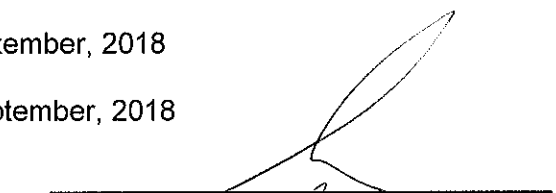
AND WHEREAS, as of March 1, 2019, Section 223.2 (1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality shall establish codes of conduct for members of council of the municipality and its local boards;

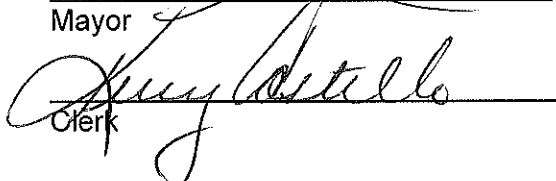
NOW THEREFORE BE IT RESOLVED THAT, the Council of the Corporation of the Town of Smiths Falls enacts as follows:

1. THAT this By-law may be referred to in short as the "Code of Conduct By-law" and that Schedule "A" to this By-law may be referred to in short as the "Code of Conduct".
2. THAT 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.
3. THAT this Code of Conduct shall also apply to all current and future Mayors, Members of Council, Local Board and Committee Members of the Town of Smiths Falls.
4. THAT the Fee By-law (#8142-2008) be amended to reflect the application fee.
5. THAT By-law 7809-2004 is hereby rescinded.
 - 5.1 THAT, all by-laws or parts thereof and resolutions passed prior to this by-law which are in contravention of any terms of this by-law are hereby rescinded.
6. THAT any additions to the code of conduct shall be authorized by an amending by-law.
6. THAT, this by-law shall come into force and effect as of the 1st day of December 2018.

Read a first and second time this 4th day of September, 2018

Read a third time and passed this 4th day of September, 2018



Mayor


Clerk

Code of Conduct for Members of Council and Local Boards

1. The Corporation of the Town of Smiths Falls is committed to achieving the highest quality of municipal administration and governance by encouraging high standards of conduct on the part of all elected officials and members of its Boards and Committees. A code of conduct aims to ensure public trust and confidence in the Municipality's decision making and operations. The public should expect the highest standards of conduct from the members they elect to local government, as well as members serving on Boards and Committees. In turn, adherence to these standards will protect and maintain the Municipality's reputation and the integrity of its decision-making process.

Statutory Provisions Regarding Conduct

2. In addition to the Council Code of Conduct, Members are required to comply with existing provincial and federal legislation, including but not limited to:
 - a) Municipal Act, 2001;
 - b) Municipal Conflict of Interest Act;
 - c) Municipal Elections Act, 1996;
 - d) Municipal Freedom of Information and Protection of Privacy Act;
 - e) Provincial Offences Act;
 - f) Ontario Human Rights Code;
 - g) Ontario Occupational Health and Safety Act; and
 - h) Criminal Code of Canada.

Application

3. This Code of Conduct applies to all Members of Council, including the Head of Council. This Code of Conduct also applies equally to all Members of Boards and Committees of the Municipality, whether or not a Member of that Board or Committee is also a Member of Council.
4. The following Boards and Committees are not subject to this Code of Conduct:
 - a) Police Services Board;
 - b) Library Board;

Definitions

5. In this Code of Conduct, the following terms have the meanings set out below:

- a) **“Chief Administrative Officer”** includes Clerk-Administrator or such other employee who is responsible for exercising general control or management of the administration and affairs of the Municipality and other duties as directed by Council.
- b) **“Child”** includes a child born within or outside of marriage and includes an adopted child and a person to whom the Member has demonstrated a settled intention to treat as a child of his or her family.
- c) **“Closed/In-Camera Meeting”** means any meeting of Council, Committee of the Whole, Standing Committee or Board that is closed to the public in accordance with the *Municipal Act*, 2001.
- d) **“Confidential Information”** includes information in the possession of, or received in confidence by the Municipality, that the Municipality is prohibited from disclosing, that the Municipality is required to refuse to disclose, or that the Municipality chooses not to disclose, under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), or other legislation or policy of the Municipality. Without limiting the generality of the foregoing, Confidential Information also includes all information concerning matters dealt with at closed meetings, information that is marked as "confidential", information obtained by the Member by virtue of their position as a Member that is not in the public domain, or information that is otherwise determined to be confidential by the Chief Administrative Officer, Clerk or as specifically declared by Council.
- e) **“Council”** means the Council of the Town of Smiths Falls;
- f) **“Ethically”** means behaving in a manner characterized by honesty, fairness and equality in interpersonal relationships and with respect for the dignity and rights of other people.
- g) **“Family Member”** includes:
 - i. A Spouse of the Member;
 - ii. A Child of the Member;
 - iii. A Parent of the Member;
 - iv. A Sibling of the Member, whether by birth, marriage or adoption;
 - v. A Grandchild, grandparent, aunt, uncle, niece or nephew of the Member;
 - vi. A Parent-in-law of the Member; and
 - vii. Any person who lives with the Member on a permanent basis.

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- h) **“Gift”** means any cash or monetary equivalent, fee, object of value, service, personal benefit, travel and accommodation or entertainment. A gift does not include remuneration.
- i) **“Harassment”** includes, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted and includes Sexual Harassment as defined in the *Occupational Health and Safety Act*, as amended from time to time.
- j) **“Member”** includes an elected member of the Municipal Council and all members of Boards and Committees of the Municipality, subject only to section 4 of this Code of Conduct;
- k) **“Municipality”** means the Corporation of the Town of Smiths Falls.
- l) **“Parent”** includes those persons who demonstrated a settled intention to treat as a child the Member, whether or not the Member is their natural child.
- m) **“Spouse”** means a person to whom the Member is married or with whom the Member is living in a conjugal relationship outside of marriage.
- n) **“Staff”** includes anyone employed by the Municipality, including full-time, part-time, temporary, casual or seasonal Staff, contract Staff, students and volunteers (in accordance with the *Municipal Act*, Council Members are not considered employees of the Municipality).

Confidentiality

- 6. Every Member must hold in strict confidence all Confidential Information acquired as a direct or indirect result of the Member’s role with the Municipality. Confidential information shall not be disclosed except when required by law, or when authorized by Council or the Chief Administrative Officer.
- 7. Every Member shall keep confidential any information:
 - a) Disclosed or discussed at a meeting of Council, Committee of the Whole or Committee, Board meeting or part thereof, that was closed to the public;
 - b) That is circulated to members of Council that is marked confidential. Any documentation marked confidential shall be kept securely until no longer required in the course of business and shall at that time be destroyed by the member of Council or returned to the office of the Chief Administrative Officer for destruction; and
 - c) That is received in confidence verbally in preparation for an in-camera meeting.
- 8. The obligation to keep information confidential applies even if the Member ceases to be a Member for any reason.

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General Conduct

9. Every Member has the duty and responsibility to treat members of the public, staff and each other in a respectful manner, without abuse, bullying, harassment or intimidation.
10. A Member shall not use indecent, abusive, or insulting words or expressions toward any other Member, any member of Staff, or any member of the public. A Member shall not speak in a manner that is discriminatory to any individual based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status, or disability.
11. Every Member shall abide by the following principles:
 - a) Members shall at all times act ethically;
 - b) Members shall perform their functions with integrity, accountability and transparency;
 - c) Members shall comply with all applicable legislation, by-laws and Municipal policies, including this Code of Conduct;
 - d) Members acknowledge that the public has a right to open government and transparent decision-making;
 - e) Members shall at all times serve the interests of their constituents and the Municipality in a conscientious and diligent manner and shall approach decision-making with an open mind; and
 - f) Members shall not extend preferential treatment to any individual or organization.

Conduct at Meetings

12. Every Member shall conduct themselves with decorum and professionalism at all Council, Committee, Board and other meetings in accordance with the provisions of the applicable Procedure by-law, this Code, and other applicable law.

Conduct at Public Events

13. Members may be requested to make public presentations outside of Council, Committee, Board and other meetings or to attend public events as representatives of the Municipality. At any such event, every Member shall conduct themselves with dignity and decorum, in a manner befitting of a representative of the Municipality.

Conflict of Interest

14. Members must be familiar with and comply with the *Municipal Conflict of Interest Act*, as amended. It is the responsibility of each Member, not Staff, to determine whether they have a direct or indirect pecuniary interest with respect to matters arising before Council, a Board or Committee. Each Member shall determine whether he or she has a direct or indirect pecuniary interest and shall at all times comply with the Act.
15. For purposes of this Code, a pecuniary interest, direct or indirect, of a Family Member of the Member shall be deemed to also be the personal/pecuniary interest of the Member. All Members shall declare a conflict of interest where they or their Family Member has a pecuniary interest in a matter and shall take all of the actions prescribed in the *Municipal Conflict of Interest Act* as if the Act applied to that interest.
16. In addition to pecuniary interests, Members must perform their duties impartially, such that an objective, reasonable observer would conclude that the Member is exercising their duties objectively and without undue influence. Each Member shall govern their actions using the following as a guide:
 - a) in making decisions, always place the interests of the taxpayers and the Municipality first and, in particular, place those interests before your personal interests and the interests of other Members, staff, friends, business colleagues or Family Members;
 - b) interpret the phrase "conflict of interest" broadly and with the objective of making decisions impartially and objectively;
 - c) if there is doubt about whether or not a conflict exists, seek the advice of the Integrity Commissioner or legal counsel;
 - d) do not make decisions that create an obligation to any other person who will benefit from the decision;
 - e) do not make decisions or attempt to influence any other person for the purpose of benefitting yourself, other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals;
 - f) do not put yourself in the position where a decision would give preferential treatment to other Members, Staff, friends, business colleagues or Family Members, or any organization that might indirectly benefit such individuals; and
 - g) do not promise or hold out the prospect of future advantage through your influence in return for a direct or indirect personal interest.

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17. Direct or indirect personal interests do not include:

- a) a benefit that is of general application across the Municipality;
- b) a benefit that affects a Member or his or her Family Members, friends or business colleagues as one of a broad class of persons; or
- c) the remuneration of Council, a Member or benefits available to Council or Members.

18. Every Member has the following obligations:

- a) To make reasonable inquiries when there is reason to believe that a conflict of interest may exist;
- b) To make Council or the Board or Committee aware of the potential conflict of interest and where appropriate declare the interest;
- c) To refuse to participate in the discussion of Council, the Board or Committee and to not vote on the matter or seek to influence the vote of any other Member where a conflict of interest exists;
- d) To refuse to be involved in any way in the matter once the conflict is identified, including without limitation participating in meetings, facilitating meetings or introductions to Staff or Members or providing advice to any person that would materially advance the matter; and
- e) If the matter which creates the conflict of interest is discussed in closed session, the Member may not attend that portion of the closed session where that matter is discussed.

Communications and Media Relations

- 19. Members, when communicating with the public and media, will accurately and adequately communicate the attitudes and decisions of the Council, Board or Committee, even if a Member disagrees with a majority decision, so that there is respect for and integrity in the decision-making process.
- 20. Information related to decisions and resolutions of Council, a Board or Committee, as the case may be, will normally be communicated to the community by the head of Council, the Board or the Committee, as the case may be, or his or her designate.
- 21. It is not the intent of this Code of Conduct to restrict the ability of a Member to express a personal opinion on matters of general interest. In such cases, the Member must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. In no event should a Member express a position that is disrespectful of the decision of the majority of Council, a Board or a Committee.
- 22. Any use of social media in any form by a Member constitutes communication with the public that is governed by this section. Members shall identify in any social

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media communication that the views expressed by the Member are the views of that Member personally, and do not represent the views of the Municipality.

23. If Council has taken a position in a Local Planning Appeals Tribunal, or other tribunal or court, and instructed the Municipal Solicitor to appear at a hearing in support of such position, no Member who disagrees with such position shall give evidence at such hearing or otherwise work against the will of Council expressed in its direction to the Municipal Solicitor in such matter.

Interaction with Staff

24. Over the past number of years, the Municipality has worked diligently at creating a positive working relationship between Members and Staff. To a large degree this has been successful due to a mutual respect for each other's' roles and responsibilities.

25. Members shall not:

- a) maliciously or falsely injure the professional or ethical reputation of Staff;
- b) compel Staff to engage in partisan political activities or be subjected to threats of discrimination for refusing to engage in such activities; or
- c) use their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any Staff member with the intent of interfering with Staff duties.

26. Operational inquiries and complaints received from the public will be addressed by Members as follows:

- a) Members who are approached by the public with inquiries/complaints regarding operational matters should encourage the party to contact the appropriate department for review/resolution.
- b) where the Member of the public is reluctant to contact the department directly, the Member should take the person's name, phone number and details of the inquiry/complaint and advise them that the matter will be referred to the Chief Administrative Officer for review/resolution.
- c) members of the public should be encouraged to provide their issue/matters of concern in writing to the appropriate department.
- d) where the inquiry/complaint is not resolved to the satisfaction of the member of the public, then the Member shall refer the member of the public to the Municipality's complaint policy for any further action.

27. Members shall recognize and respect that many members of Staff are bound by professional associations to a code of ethics and professional conduct and that they provide their reports and recommendations objectively, in the best interests of the Municipality and within the requirements of their profession.

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28. Municipal Council, acting as a body, can dictate that Staff perform such duties as are necessary for the efficient management of the affairs of the community, and/or research such matters as the Council deems necessary. Individual Council members do not have authority to direct Staff. Council shall direct Staff through the Chief Administrative Officer.
29. Board and Committee Members do not have the authority to direct Staff. Ultimately, Council retains the discretion to assign, remove and direct Staff who provide assistance to any Board or Committee. Requests for Staff changes shall be directed to the Chief Administrative Officer who shall make Staffing determinations, and consult with Council as necessary.
30. The role of the Chief Administrative Officer and Department Heads is to direct the day to day management of the Municipality and assign duties to the Staff placed under their supervision. To encourage the efficient management of the Municipality, individual Members must be cognizant of that fact and are advised of the following:
 - a) Members will respect and adhere to the Policies set by Council, and will under no circumstances take it upon themselves, individually, to circumvent established Policies.
 - b) Council, as a body, and Members, as individuals, will liaise with the Chief Administrative Officer, Department Heads, or Supervisors only. This requirement is not designed to interfere with the normal flow of information with those Staff members (Administrative Assistants, Clerk, Committee Secretaries) who have been assigned the responsibility of providing information to Members such as meeting times, copies of documents, information on standard operating procedures, etc.
 - c) Questions or issues surrounding operational concerns or complaints, excluding the basic issues covered in s. 26 above, should be directed to the Department Head or Supervisor.
 - d) Members who still have concerns about operational issues, after addressing them with the Department Head or Supervisor, should raise these concerns with the Chief Administrative Officer.
 - e) Members who still have concerns about operational issues after addressing them with the Chief Administrative Officer should raise these concerns at the appropriate Committee.
 - f) Should information be required by individual Members, a request must be made of the appropriate Department Head who will then decide which Staff member will obtain the data. In the extended absence of the Department Head, or in the case of an urgent matter where the Department Head or Supervisor is not available, inquiries should be directed through the Chief Administration Officer.

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- g) Members should respect the fact that Staff are busy and should not engage them in conversations, emails or phone calls that may take an excessive amount of time or otherwise divert Staff from their duties.

Use of Municipal Property

- 31. No Member shall for personal purposes or profit, use or permit the use of any Municipal property, equipment, services, or supplies other than for purposes connected with the discharge of Municipal duties or associated community activities of which Council has been advised, unless the use is reasonable and incidental personal use of equipment such as computers, fax machines, cell phones, blackberries, etc., where the Municipality incurs no additional costs relating to such use, and the use is of limited duration and frequency.
- 32. This policy does not apply to the use of Municipal property and facilities where such use is universally known to be available to other residents upon request and on equal terms.
- 33. No Member shall obtain financial gain from the use of Municipally developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the Municipality.
- 34. Municipal property and resources, including facilities, purchasing provisions, equipment, supplies, Staff and services will not be used for any election campaign activities, before or after Nomination Day.
- 35. Members will not undertake campaign-related activities on municipal property unless permitted by the Returning Officer or their designate.
- 36. Members will not use the services of Staff for election-related purposes during hours in which those persons receive compensation from the Municipality. For purposes only of this provision, Staff shall include any person under contract with the Municipality or receiving remuneration from the Municipality for any service.

Expenses

- 37. Members are required to adhere to any relevant policies, procedures and guidelines with respect to any expenses included in the budget (such as, but not limited to: mileage reimbursement, conference and seminar attendance, and corporate promotional products).
- 38. Falsifying of receipts or signatures by a Member is a serious breach of this Code of Conduct and the Criminal Code of Canada and could lead to prosecution.

Gifts and Hospitality and other Benefits

39. The objective of these policies is to ensure that Members make council decisions based on impartial and objective assessments of each situation, free from influence of gifts, favours, hospitality or entertainment.
40. In this policy, gifts, commissions, hospitality, rewards, advantages or benefits of any kind, may be interchanged and shall be deemed to include all of the aforementioned.
41. Any stipend paid to a Member is intended to fully remunerate the Members for service to the Municipality.
42. Members are prohibited from soliciting, accepting, offering or agreeing to accept any gifts, commissions, hospitality, rewards, advantages or benefits of any kind, personally or through a Family Member or associate (business or otherwise), that is connected directly or indirectly with the performance of duties of office or could reasonably be construed as being given in anticipation of future, or recognition of past, special consideration by the Member.
43. Members are prohibited from accepting, directly or indirectly, any gifts, hospitality or other benefits that are offered by persons, groups or organizations having dealings with the Municipality.
44. The above policy does not preclude Members from accepting:
 - a) Token gifts, souvenirs, mementoes or hospitality received in recognition for service on a committee, for speaking at an event or for representing the Municipality at an event;
 - b) Political contributions that are otherwise offered accepted and reported in accordance with applicable law.
 - c) Food and beverages at meetings, banquets, receptions, ceremonies or similar events.
 - d) Food, lodging, transportation, entertainment provided by other levels of governments, by other local governments or by local government boards or commissions;
 - e) A stipend from a board or commission that the Member serves on as a result of an appointment by Council;
 - f) Reimbursement of reasonable expenses incurred in the performance of office;
 - g) Reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations;
 - h) Gifts of a nominal value that are received as an incident of protocol or social obligation that normally and reasonably accompany the responsibility of the office.

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- i) Services provided without compensation by persons volunteering their time for election campaign, provided the services are properly valued in accordance with the *Municipal Elections Act*.
45. Where it is not possible to decline unauthorized gifts, hospitality or other benefit, Members shall report the matter to the Chief Administrative Officer. The gift shall become the property of the Municipality and the Chief Administrative Officer may require that the gift be retained by the Municipality or be disposed of for charitable purposes in the Chief Administrative Officer's sole discretion.

Advice and Opinions

46. Members may request advice or opinions from the Integrity Commissioner with respect to:
- a) The obligations of the Member under the *Municipal Conflict of Interest Act*;
 - b) The obligations of the Member under this Code; and
 - c) The obligations of the Member under a procedure, rule or policy of the Municipality governing the ethical behavior of the Member.
47. Every request for advice or opinion shall be submitted in writing to the Clerk, who shall forward the request to the Integrity Commissioner for a response.
48. The Integrity Commissioner shall not provide to any Member any advice or opinion with respect to the obligations of another Member.
49. Members shall be mindful of the cost to the Municipality to obtain the advice or opinion of the Integrity Commissioner and shall not abuse this entitlement.
50. The advice and opinions received by any Member are personal to the Member and are considered confidential. No opinion or advice may be shared by the Integrity Commissioner without the written permission of the Member who requested the opinion or advice. The Member may grant permission to share part of an opinion or advice, but in circumstances where the member shares only a portion of an opinion or advice the Integrity Commissioner may release all or a part of the opinion or advice without the consent of the Member.
51. Council may require any Member to undertake training with the Integrity Commissioner where Council determines that the Member has requested opinions and advice more frequently than is reasonable in the circumstances. The nature of the training will be to better explain the Member's obligations under this Code and the *Municipal Conflict of Interest Act* to better enable the Member to govern his or her conduct without seeking advice unnecessarily.

Role of the Integrity Commissioner

52. The Integrity Commissioner shall be appointed by By-law of the Municipality.
53. The Integrity Commissioner shall operate independently of Council in accordance with all of the authority and powers granted by the *Municipal Act*.
54. The Integrity Commissioner may delegate his or her duties and powers to any person, other than a Member. The delegation shall be in writing, shall be disclosed to the Clerk and shall set out the precise delegation, including the duration of the delegation.
55. Any delegation shall be at the sole discretion of the Integrity Commissioner, provided that the delegate is qualified and capable of independently undertaking the work.
56. The Integrity Commissioner shall make an assessment prior to undertaking any investigation as to whether the complaint gives rise to the need for another entity to undertake an investigation. In those circumstances where the allegations disclose a potential Criminal Code offence or the breach of other legislation (other than the *Municipal Conflict of Interest Act*), the Integrity Commissioner shall refer the investigation to the appropriate entity and shall not conduct his or her own investigation unless the entity determines that no investigation is required.
57. The Integrity Commissioner shall prepare and submit to Council an Annual Report that shall include at a minimum:
 - a) A break-down of costs incurred for the following categories of work performed (advice/investigations/dispute resolution/training);
 - b) A summary of the nature of requests made and the resolution of the matters, without providing any confidential information in the Report; and
 - c) Any recommendations for improvements to this Code or processes or any procedure, rule or policy of the Municipality governing the ethical behavior of the Member.

Enforcement and Sanctions

58. Every Member shall comply with this Code. Any breach of this Code may be investigated by the Integrity Commissioner in accordance with this Code and Council shall determine whether to impose any penalty or sanction on a Member found to have breached any provision of this Code.
59. Every Member has an obligation to cooperate with any investigation.
60. The *Municipal Act* authorizes Council to impose one or more of the penalties listed below, if so desired, on a Member that has contravened this Code of Conduct:

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- a) A reprimand; or
 - b) Suspension of the remuneration paid to the Member in respect to his or her services as a Member of Council, local Board or Committee, as the case may be, for a period of up to 90 days.
61. The Integrity Commissioner may also recommend that Council impose one of the following sanctions:
- a) Written and/or verbal public apology;
 - b) Return of property or reimbursement of its value or of monies spent;
 - c) Removal from membership of any Committee or Board;
 - d) Removal as chair of a Committee or Board; and
 - e) Other sanctions that are reasonably connected to the breach of this Code of Conduct and which the Integrity Commissioner believes in his or her sole discretion are necessary to modify the behavior of the Member.

No Reprisal or Obstruction in the Enforcement of the Code

62. Every Member must respect the integrity of this Code of Conduct and inquiries and investigations conducted under it, and shall co-operate in every way possible in securing compliance with its application and enforcement. Any reprisal or threat of reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person is prohibited. It is also a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of any of his or her responsibilities, including without limitation destroying relevant communications.

Complaint Protocol

63. Any person who has reasonable grounds to believe that a Member has breached this Code may proceed with a complaint and request an investigation. Complaints must be submitted within ninety (90) days after the alleged violation occurred or the alleged violation came to the attention of the complainant. No complaint may be filed under any circumstances where the alleged violation occurred more than six (6) months prior to the complaint being filed.

Appendix I outlines the informal and formal complaint procedure that shall be followed.

APPENDIX I
COMPLAINT PROTOCOL FOR COUNCIL AND LOCAL BOARD
CODE OF CONDUCT

Part A: Informal Complaint Procedure

1. Informal complaints can be addressed by any person who believes that the activity of a Member has breached this Code of Conduct or the *Municipal Conflict of Interest Act*, but the person does not want to initiate a formal complaint. Any person may:
 - a) Advise the Member that his or her behavior or activity appears to constitute a contravention;
 - b) Encourage the Member to acknowledge and agree to stop the prohibited behavior or activity and avoid future occurrences of the prohibited behavior or activity;
 - c) Where the Member agrees to cease the behavior, confirm in writing that the agreement is satisfactory;
 - d) Where the Member's response is not satisfactory, advise the Member of your dissatisfaction with the response; and
 - e) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B.
2. Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behavior or an activity that they believe violates the Code of Conduct.

Part B: Formal Complaint Procedure

Formal Complaints

3. Any individual who identifies or witnesses behavior or an activity by a Member that they believe is in contravention of this Code of Conduct or the *Municipal Conflict of Interest Act*, may file a formal complaint.
4. Any person may file a complaint with the Municipality by submitting in writing the prescribed Complaint Form to the Clerk (attached). The form must contain an attestation from the complainant that they believe that the facts as set out in the complaint are true to the best of their knowledge and belief and that they make those statements as if they were under oath.
5. Every complaint must be accompanied by the prescribed fee in the amount of \$150.00.

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6. In the event that the Integrity Commissioner determines that a complaint is frivolous, vexatious or does not disclose a breach of this Code of Conduct or the *Municipal Conflict of Interest Act*, at any point after the submission of the complaint, the complainant shall forfeit the fee. If the result of the complaint is a negotiated resolution or a finding that the Member breached this Code of Conduct or the *Municipal Conflict of Interest Act*, the fee shall be refunded in part, up to 100%, based on the recommendation of the Integrity Commissioner.
7. Every complaint shall include the following:
 - a) The complaint must set out reasonable and probable grounds for the allegation that the Member has contravened this Code of Conduct or the *Municipal Conflict of Interest Act*.
 - b) Any witnesses in support of the allegation must be identified in the complaint.
 - c) The Integrity Commissioner may request additional information from the complainant prior to making an assessment.
8. The complaint shall be filed with the Clerk, who shall forward the matter to the Integrity Commissioner. The Clerk shall also provide notice to Council by way of confidential internal communication that a complaint has been filed, but no details of the complaint shall be provided other than the fact of a complaint and whether it is a complaint under this Code of Conduct, the *Municipal Conflict of Interest Act* or other policy.
9. If the complaint is not, on its face, a complaint with respect to non-compliance with this Code of Conduct or the *Municipal Conflict of Interest Act* or the complaint is covered by other legislation or complaint procedure under another policy, the Integrity Commissioner shall refer the complaint to the appropriate entity for investigation, advise the complainant in writing, suspend the investigation until after the matter has been finally disposed of, and report the suspension of the investigation to Council.

Refusal to Conduct Investigation

10. 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. The Integrity Commissioner shall communicate this position in writing to the complainant and the Member identified in the complaint.

Opportunities for Resolution

11. 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, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution at the discretion of the Integrity Commissioner.

Investigation

12. The Integrity Commissioner will proceed as follows, except where otherwise required by the Public Inquiries Act:
- a) Provide the complaint and supporting material to the Member whose conduct is in question with a request that a written response to the allegation be provided within 10 business days.
 - b) Provide a copy of the response provided to the complainant with a request for a written reply within 10 business days.
 - c) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any Municipal work location relevant to the complaint for the purpose of investigation and potential resolution.
 - d) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.
 - e) The Integrity Commissioner shall retain all records related to the complaint and investigation.

Timing of Complaints in Relation to Municipal Elections

13. Complaints must be investigated and a report submitted to Council on or before Nomination Day in the year of a municipal election.
14. Investigations of complaints that are not completed as of Nomination Day in an election year shall be terminated on Nomination Day.
15. The complainant may re-commence the complaint within six (6) weeks of Voting Day by submitting a written request to the Integrity Commissioner, who shall, provided the request is received on or before six (6) weeks from Voting Day, recommence the investigation.
16. In addition, on or after Nomination Day in the year of a municipal election:
- a) no complaint shall be filed;

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- b) the Integrity Commissioner shall not report to the Municipality about an ongoing investigation; and
- c) the Municipality shall not consider whether to impose any penalty on a Member subsequent to an investigation.

Complaints Under the Municipal Conflict of Interest Act

17. After March 1, 2019, an elector as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest, may submit a request to the Integrity Commissioner to conduct an investigation concerning an alleged contravention of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by filing with the Clerk a completed and signed complaint form and paying the prescribed fee of \$ 150.00.
18. No request may be submitted more than six (6) weeks after the complainant became aware of the alleged contravention.
19. A request for an investigation in an election year may only be submitted prior to Nomination Day or after Voting Day.
20. In the event that a complainant becomes aware of the alleged contravention within the period of time starting six (6) weeks before Nomination Day in an election year, the complainant may apply to the Integrity Commissioner within six (6) weeks after the day after Voting Day, provided that the complainant includes in their written request for an investigation a statutory declaration attesting to the fact that the complainant became aware of the contravention not more than six (6) weeks before the date of the request, or in the case where a complainant became aware of the alleged contravention prior to Nomination Day, a declaration that the facts were not known to the complainant more than six (6) weeks prior to Nomination Day.
21. The Integrity Commissioner has all the powers set out in the *Municipal Act* when undertaking an investigation under this section and shall follow the investigation process established in paragraph 12 above.
22. Where an investigation has not been completed before Nomination Day in an election year, the Integrity Commissioner shall terminate the investigation on that day.
23. An investigation terminated pursuant to paragraph 22 above shall not be recommenced unless the person who made the request, or the Member whose conduct is at issue, applies in writing to the Integrity Commissioner to recommence the investigation.

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24. The Integrity Commissioner shall complete the investigation within 180 days of receipt of the complaint, unless the investigation is terminated in accordance with paragraph 22 above.
25. The Integrity Commissioner may, after completing an investigation, apply to a judge in accordance with the *Municipal Conflict of Interest Act* for a determination under the Act. Prior to making an application to court, the Integrity Commissioner shall present to Council a request to make the application and allow Council to provide recommendations to the Integrity Commissioner as to whether such an application should be made. The Integrity Commissioner is not bound by the advice or recommendation of Council and shall refer the matter to a judge in his or her sole discretion.

Recommendation Report

26. The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the official receipt of the complaint (180 days in the case of a complaint under the *Municipal Conflict of Interest Act*). If the investigation process takes more than 90 (180) days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.
27. After completing the investigation, the Integrity Commissioner shall prepare a report which shall make findings of fact and conclusions as to whether a breach of this Code of Conduct or the *Municipal Conflict of Interest Act* occurred, as the case may be, make recommendations to Council, and in the case of a *Municipal Conflict of Interest Act* investigation, make a determination as to whether or not the matter will be referred to the court, and include written reasons for the decision.
28. The report of the Integrity Commissioner shall be published by posting the report on the Municipal website and making a copy available to all Members of Council and the Members of the Board or Committee, as applicable.

Member Not Blameworthy

29. If the Integrity Commissioner determines that there has been no contravention of this Code of Conduct or the *Municipal Conflict of Interest Act*, or that 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 judgment made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations.
30. Where a Member has sought and followed advice from the Integrity Commissioner and is subsequently the subject of a complaint, the Integrity Commissioner may refer to the earlier advice and, provided that the facts as set out in the earlier



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advice are still applicable, determine in a summary manner that there has been no breach of this Code of Conduct or the *Municipal Conflict of Interest Act*.

Public Disclosure

31. 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.
32. The Integrity Commissioner shall retain all records related to the complaint and investigation.
33. 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 it is necessary to disclose that person's identity.

CONFIDENTIAL

SCHEDULE "A"



REQUEST FOR INQUIRY FORM:

CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

Email address: _____

[illegible]

CONFIDENTIAL

Please deliver your request in person to:

Town Clerk
77 Beckwith Street North
Smiths Falls, ON K7A 2B8

(Date)

(Signature of Complainant)