

TOWNSHIP OF NIPIGON

CODE OF CONDUCT

DECEMBER 2018

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Introduction:

Democracy is an active process which requires ongoing engagement between citizens and their elected officials. It is the responsibility of elected officials to uphold the integrity and ethical accountability which are the foundation of public confidence in government and the political process.

There has been a general trend at the municipal level of government in Ontario, to develop rules around ethical conduct for elected officials so that it is clear that they are to carry out their duties with impartiality and equality of services to all, recognizing that as community leaders, they are accountable to a certain standard of behaviour and conduct.

A written Code of Conduct (“Code”) helps to ensure that Members share a common understanding of acceptable conduct.

Statutory Provisions Regulating Conduct

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

The following federal, provincial legislation governs the conduct of Members of Council:

- the Municipal Act, 2001
- the Municipal Conflict of Interest Act
- the Municipal Elections Act, 1996
- 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 Council as adopted and amended from time to time

Purpose:

The Code of Conduct for Council Members (“Member or Members”) and related policies identify the Township of Nipigon’s expectations of Members and establishes guidelines for appropriate conduct to ensure that:

- Nipigon residents have confidence in the integrity of their elected Members and local government;
- The decision-making process of Council is open, transparent, equitable and accountable;
- Decisions are made through appropriate channels of government structure;

- Public office is not used for personal gain;
- There is a fairness and respect for differences and a duty to work together for the common good of the community and the residents;
- Members behave in a manner that is both ethically responsible and accountable at all times in upholding the public interest and will withstand public scrutiny;
- Members demonstrate an understanding of the fundamental rights, privileges and obligations of their elected position;
- Members are provided with and able to obtain information on the ethical propriety of conduct in different situations;
- Members seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the Township of Nipigon

Policy Statement

This Code is designed to provide a clear guideline and a supplement to the legislative requirements within which Members must operate. These standards serve to enhance public confidence that the Township of Nipigon's Council operate from a basis of integrity, justice and accountability.

The key principles that underline the Code are as follows:

- Council shall serve and be seen to serve constituents in a conscientious and diligent manner;
- Council shall be committed to performing their functions with integrity, honesty and accountability, and to avoid the improper use of the influence of their office, and conflicts of interest, both real and apparent;
- Council is expected to perform their duties in a manner that promotes public confidence and will bear close public scrutiny.

Practices and Procedures

Although areas of ethical exposure are generally consistent and understood in municipal governance, the following areas and guidelines have been specifically identified as being paramount to the municipal political process:

1. Roles and Obligations
2. Confidentiality
3. Communications/Media Relations/Promotion
4. Relations with Employees
5. Gifts, Hospitality, and Benefits
6. Conflict of Interest – Pecuniary Interest

7. Conduct at Meetings
8. Elections – Corporate Resources/Campaign Material/Promotion
9. Use of Corporate Resources
10. Compliance with the Code – Complaint Protocol
11. Initial Classification by Integrity Commissioner
12. Integrity Commissioner Investigation
13. Refusal to Conduct Inquiry or No Penalty Imposed
14. Non-Compliance with the Code
15. Copy of the Report
16. Report to Council
17. Annual Report
18. Implementation

1. Roles and Obligations

1.1 Council must recognize their responsibility to:

- Represent the diversity of community views in a fair and equitable manner, while developing an overall strategy for the future of the Township of Nipigon;
- Endeavour to demonstrate sound financial management, planning and accountability;
- Be aware of and understand statutory obligations imposed upon individual Council members as a statutory body

1.2 The onus is on Council members to ensure that they adhere to and uphold the Code.

2. Confidentiality

2.1 Confidential Information includes any information that is of a personal nature to the Township employees, clients or information in the custody or under the control of the Township that is not available to the public and that, if disclosed, could result in loss or damage to the Township or could give the person to whom it is disclosed an advantage.

2.2 Members shall not disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, or by means of electronic technology, except when required by law or authorized by Council.

2.3 Members shall not disclose the content of a matter that has been discussed or the substance of deliberations of a closed session, except for content that has been authorized by Council to be released to the public.

Examples of the types of content that Council members must keep confidential under this section include but are not limited to:

- Items under litigation, negotiation, or personnel matters;
- The source of a complaint;
- Price schedules in contract tender or Request for Proposal submissions if so specified;
- Information deemed to be personal information under the Municipal Freedom of Information and Protection of Privacy Act;
- Statistical data required by law not to be released (e.g. certain census/assessment data)

2.4 Council members shall not access or attempt to gain access to confidential information in the possession of the Township unless it is necessary for the performance of their duties and not prohibited by law or Council policy.

2.5 The obligation to keep information confidential is a continuing obligation even after the Council members cease to be Council members.

3. Communications/Media Relations/Promotion

3.1 Council shall show respect for the decision-making process of Council. Information concerning adopting policies, procedures and decisions of the Council shall be conveyed openly and accurately.

3.2 Council shall accurately communicate the decisions of Council even if they disagree with the decision.

3.3 Confidential information may be communicated only when and after determined by Council.

3.4 Council shall not use his/her office to promote or sponsor commercial products or events other than Township of Nipigon sponsored products or events.

4. Relations with Employees

4.1 Council members are elected legislators for the municipality. Employees are accountable to the Chief Administrative Officer (“CAO”) or their designate and are responsible for implementing the decisions of Council, ensuring the efficient and effective operation of municipal services.

4.2 Council members shall acknowledge and respect the fact that employees work for the Township of Nipigon as a corporate body and are responsible for making recommendations that reflect their professional expertise and corporate objectives, without undue influence from any member of Council.

- 4.3 In addition, Council shall acknowledge and respect the fact that the Township of Nipigon employees carry out directions of Council as a whole and administer the policies of the Township of Nipigon. Members of Council shall refrain from using their position to improperly influence employees in their duties or functions to gain an advantage for themselves or others.
- 4.4 Council shall refrain from publicly criticizing employees, in a way that cast aspersions on their professional competence and credibility.
- 4.5 Council shall not compel employees to engage in partisan political activities.
- 4.6 Employees will provide support to Council required by Provincial statutes, Township of Nipigon By-laws and special meetings when approved by Council.
- 4.7 In the event that Council desires a public meeting, which supplements a public meeting required by Provincial statute, or a municipal by-law, a Council member shall make the request through Council or the CAO.

5. Gifts, Hospitality and Benefits

- 5.1 The Township of Nipigon recognizes that moderate hospitality is an accepted courtesy of a business relationship. However, Council members shall not accept any gift, benefit, service, entertainment or hospitality which could be seen to compromise their decision on a matter or create any obligation or special consideration by an individual, group or organization.
- 5.2 Council may only receive a gift, hospitality or entertainment that is received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office.
- 5.3 Council shall submit to the Township of Nipigon any gift received which:
- a) is not an incident of protocol or social obligation; or
 - b) is not a token of appreciation for attending or speaking at an event; or
 - c) is not a perishable.
- The Township of Nipigon will provide the gift to a registered charity within the municipality. Administration will log the gifts received and a letter of appreciation will be sent to the donor, where appropriate, advising that their gift will benefit a local charity.
- 5.4 Council may claim expenses normally incurred in the conduct of their responsibilities in accordance with the Council Expense Policy.

6. Conflict of Interest – Pecuniary Interest

- 6.1 Council will recognize their obligations to follow and respect the provisions of the Municipal Conflict of Interest Act. Members of Council must publicly declare their direct or indirect pecuniary interest.
- 6.2 When a pecuniary interest exists, members of Council must withdraw from direct involvement and refrain from any comment at any time, whether in a Council or Committee meeting, or elsewhere, on the issue which might influence the decision.
- 6.3 Council must refrain from influencing and discussing the matter. They are not eligible to vote on the matter.
- 6.4 Council shall vacate the Council table when the matter on which they have declared a direct or indirect pecuniary interest is debated.
- 6.5 If the matter is of a confidential nature, Council shall retire from the Closed meeting for the duration of the discussion and voting on the matter.

7. Conduct at Meetings

- 7.1 During Council, Committee or any other advisory committee meeting, or a working group meeting, members of Council shall conduct themselves with decorum and in accordance with the Township of Nipigon's Procedural By-law. Respect for a delegate, a fellow Council member, employees and for the public requires Council members to be courteous and not disrupt business during any portion of the meeting including presentations and when another individual has the floor.

Further to the provisions contained in the Township of Nipigon's Procedural By-law, cell phones, blackberries or similar devices shall be:

- a) on vibrate or silent when in open session;
- b) turned off while in closed session.

8. Elections – Corporate Resources

- 8.1 Members of Council are required to conduct themselves in accordance with the Municipal Elections Act, 1996. The use of municipal resources, both actual municipal property and staff time, for election-related activity is strictly prohibited. The prohibition applies to both the promotion and opposition to the candidacy of a person for elected office. Election-related activity applies not only to a Council member's personal campaign for office, but also other campaigns for municipal, provincial and federal office.

9. Use of Corporate Resources

For the purpose of this Code:

“Corporate Resource” includes but is not limited to Township of Nipigon equipment, supplies, services, tools, property (both physical and intellectual), systems, software systems, website, domain name, logo, blackberry, cell phone, phone, address, voicemail, email address, email, facility and staff while undertaking duties as an employee.

9.1 Council may only use Corporate Resources for:

- a) activities connected with the discharge of their official duties;
- b) associated community activities having the sanction of Council or its committees; and were applicable, in accordance with the Township of Nipigon’s Council Expense policy.

10. Compliance with the Code – Complaint Protocol

10.1 Council, Township of Nipigon employees or members of the public who have reasonable grounds to believe that a member of Council has contravened the Code, may proceed through an Informal Complaint Procedure (Option A) or a Formal Complaint Procedure (Option B).

Option A – Informal Complaint Procedure

Any individual who identifies or witnesses' behaviour or activity by a member of Council, that appears to be in contravention of the Code of Conduct for Members of Council may address the prohibited behaviour or activity themselves in the following manner:

10.2 The Complainant shall:

- a) Advise the member of Council that his/her behaviour or activity appears to contravene the Code;
- b) Request that the member of Council immediately discontinues the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
- c) Keep a written record of the incident including date, time, location, other persons present, and any other relevant information;
- d) If applicable, advise the member of Council regarding his/her satisfaction with the response, or, if applicable; advise the member of Council of his/her dissatisfaction with the response; and,
- e) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Option B, or in accordance with an applicable judicial process.

10.3 An individual is encouraged to initially pursue the informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. However, it is not a precondition or a prerequisite that the informal complaint procedure be initiated or completed prior to pursuing the formal complaint procedure in Option B.

Option B: Formal Complaint Procedure – Integrity Commissioner – Complaint Review Request

- 10.4 Any individual who identifies or witnesses' behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct for Members of Council, may file a formal complaint in accordance with the following conditions:
- a) All complaints shall be made in writing and shall be dated and signed by an identifiable individual.
 - b) The complaint must set out reasonable and probable grounds for the allegation that the member of Council has contravened the Code of Conduct. A supporting affidavit setting out the evidence in support of the allegation must also be included.
 - c) If the complainant is a member of Council, their identity shall not be protected if the Integrity Commissioner finds that the complaint was not made in good faith.

Filing of Complaint and Classification by Integrity Commissioner

- 10.5 The complaint shall be filed with the CAO or his/her designate 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 and not covered by other legislation or other Council policies.

If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.

Complaints Outside Integrity Commissioner Jurisdiction

- 10.6 If the complaint, including any 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 complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

Criminal Matter

- 10.7 If the complainant, 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 appropriate Police Service.

Municipal Conflict of Interest Act

- 10.8 If the complaint on its face is regarding non-compliance with the Municipal Conflict of Interest Act as opposed to the Code of Conduct, the complainant shall be advised to review the matter with the complainant's own legal counsel.

Municipal Freedom of Information and Protection of Privacy Act

- 10.9 If the complaint is more appropriately addressed under the Municipal Freedom of Information and Privacy Act, the complainant shall be advised that the matter must be referred to the CAO or his/her designate for Access and Privacy review.

Other Policy Applies

- 10.10 If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

Lack of Jurisdiction

- 10.11 If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Matter Already Pending

- 10.12 If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to the Municipal Conflict of Interest Act, a Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

11. Refusal to Conduct Investigation

- 11.1 If the Integrity Commissioner is of the opinion that the referral of a matter 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.

12. Opportunities for Resolution

- 12.1 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 of Council agrees, efforts may be pursued to achieve an informal resolution.

13. Investigation

- 13.1 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 of Council whose conduct is in question with a request that a written response to the allegation be provided within ten (10) business days; and

(b) Provide a copy of the response provided to complainant with a request for a written reply within ten (10) business days.

- 13.2 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 Township of Nipigon work location relevant to the complaint for the purpose of investigation and potential resolution.

- 13.3 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.

- 13.4 The Integrity Commissioner shall retain all records related to the complaint and investigation.

No Complaint Prior to Municipal Election

- 13.5 Notwithstanding any other provision of this procedure no complaint may be referred to the Integrity Commissioner or forwarded by the CAO or his/her designate for review and/or investigation after the last meeting of Council in July, in any year in which a regular municipal election will be held.

14. Reports to Council

- 14.1 The Integrity Commissioner shall report to Council annually and shall report on all complaints received and, on their disposition, including complaints deemed not to be within the jurisdiction of the Integrity Commissioner.

Recommendation Report

- 14.2 The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the official receipt of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.
- 14.3 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.
- 14.4 The CAO or his/her designate shall give a copy of the report to the complainant and the member of Council whose conduct is concerned. Subject to the conditions in paragraph 14.6, that member of Council shall have the right to reply when the report is considered by Council.
- 14.5 Where the complainant is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to Council the result of the investigation except as part of an annual report.
- 14.6 If the report of the Integrity Commissioner includes sanctions of a pecuniary nature, such as the replacement of property or its value, of monies spent or suspension of remuneration paid to the member of Council, then the member of Council shall not have a right of reply. In lieu of a right of reply, the Integrity Commissioner shall invite the member of Council to submit written response to the report.

Member not Blameworthy

- 14.7 If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member of Council 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 pursuant to the Municipal Act, 2001.

No Reports Prior to Municipal Election

- 14.8 Notwithstanding any other provision of this Procedure, the Integrity Commissioner shall not make any report to Council or to any other person after the last Council meeting of June in any year in which a regular municipal election is to be held, until the first official meeting of Council following the election.

15. Duty of Council

- 15.1 The CAO or his/her designate shall submit the report to Council at its next meeting and the report shall be considered in Open Session.

16. Public Disclosure

- 16.1 The Integrity Commissioner, CAO or his/her designate 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.
- 16.2 The Integrity Commissioner shall retain all records related to the complaint and investigation.
- 16.3 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.
- 16.4 All report from the Integrity Commissioner to Council will be made available to the public on the Township of Nipigon's website.

17. Non-Compliance with the Code

- 17.1 Where the Integrity Commissioner decides that a member of Council has contravened this Code, he/she is authorized to:
- a) Censure the member of Council;
 - b) Reprimand the member of Council;
 - c) Recommend that Council remove the member of Council from an advisory committee or local board;
 - d) Recommend that the appropriate Committee or local board remove the member of Council as Chair of a Committee or local board;
 - e) Require the member of Council to repay or reimburse monies received;
 - f) Require the member of Council to return the property or item, or reimburse the value;
 - g) Request the member of Council to apologize to Council, the complainant, or both;
 - h) Suspend the remuneration paid to the member of Council in respect of their services as a member of Council for a period of up to ninety (90) days.