

CITY OF NANAIMO

BYLAW NO. 7348

A BYLAW TO REGULATE THE CONDUCT FOR COUNCIL AND COMMITTEE MEMBERS

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WHEREAS Council and Committee Members are keepers of the public trust and must uphold the highest standards of ethical behaviour in order to build and inspire the public's trust and confidence in local government;

AND WHEREAS Council and Committee Members are expected to:

- (a) make decisions that benefit the community;
- (b) act lawfully and within the authorities of the *Community Charter, Local Government Act* and other applicable enactments; and
- (c) be free from undue influence and not act to gain financial or other benefits for themselves, family, friends or business interests;

AND WHEREAS Council and Committee Members wish to conduct its business in a transparent, efficient, accountable and respectful fashion;

AND WHEREAS it is to the benefit of the community for Council and Committee Members to conduct their business in accordance with the City's guiding principles of integrity, accountability, respect, leadership and collaboration;

AND WHEREAS Council and Committee Members intend to demonstrate their leadership in ethical behaviour and to promote the principles of transparency, accountability and civility through their decisions, actions and behaviour;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

**PART I – GENERAL**

1.1 Title

This Bylaw may be cited as "Code of Conduct Bylaw 2022 No. 7348".

1.2 Definitions

In this bylaw:

|                    |                                                                                                                                                                                                                                                                                                                                                                                                             |
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| "CAO"              | Means the Chief Administrative Officer for the City of Nanaimo.                                                                                                                                                                                                                                                                                                                                             |
| "Bully and Harass" | Includes, without limitation, any unwelcome or objectionable conduct or comment by a Council or Committee Member that causes that individual to be humiliated or intimidated, including verbal aggression or insults, making derogatory comments, including questioning the professional competence of a Committee Member, Volunteer, Municipal Officer, or Staff, calling someone derogatory names, hazing |

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|                               | or intimidation practices, vandalizing personal belongings or spreading malicious and untrue rumours.                                                                                                                                                                                                                                                                     |
| "Committee Member"            | Means a person appointed to a committee, sub-committee, task force, commission, board, or other Council established body under the <i>Community Charter</i> – Division 4 – Committees, Commissions and Other Bodies or the <i>Local Government Act</i> .                                                                                                                  |
| "Complaint"                   | Means a formal allegation that a Member has breached this Bylaw in accordance with the complaint procedure set out in Part 4 of this Bylaw.                                                                                                                                                                                                                               |
| "Complainant"                 | Means a person who has submitted a complaint under Part 4 of this Bylaw.                                                                                                                                                                                                                                                                                                  |
| "Confidential Information"    | Means information or records held in confidence by the City, including to which Section 117 of the <i>Community Charter</i> applies.<br><br>For clarity, this includes all information and records from closed meetings of Council until publicly released.                                                                                                               |
| "Conflict of Interest"        | Refers to pecuniary and non-pecuniary conflicts of interest governed by the <i>Community Charter</i> , S.B.C., 2003, c. 36 and the common law.                                                                                                                                                                                                                            |
| "Council Member"              | Means the Mayor and Councillors for the City of Nanaimo.                                                                                                                                                                                                                                                                                                                  |
| "Commissioner"                | Means the person appointed as the Ethics Commissioner by Council to fulfill the duties and responsibilities assigned to that position as set out in this Bylaw or an <i>ad hoc</i> Commissioner appointed by the CAO to administer this Bylaw in respect of an individual complaint.                                                                                      |
| "Gifts and Personal Benefits" | Means an item or service of value that is received by Council and Committee Members for personal use. This would include, but is not limited to, cash, gift cards, tickets to events, items of clothing, jewellery, pens, food or beverages, discounts or rebates on purchases, free or subsidized drinks or meals, entertainment and admission fees to social functions. |
| "Member"                      | Means a Council Member or a Committee Member.                                                                                                                                                                                                                                                                                                                             |
| "Municipal Officer"           | Means a member of Staff designated as an officer under Section 146 of the <i>Community Charter</i> .                                                                                                                                                                                                                                                                      |
| "Personal Information"        | As defined in the <i>Freedom of Information &amp; Protection of Privacy Act</i> .                                                                                                                                                                                                                                                                                         |
| "Respondent"                  | Means a Council or Committee Member whose conduct is the subject of a complaint.                                                                                                                                                                                                                                                                                          |
| "Staff"                       | Means an employee of the City.                                                                                                                                                                                                                                                                                                                                            |
| "Volunteer"                   | Means a person serving the City who is not a Council Member, Committee Member.                                                                                                                                                                                                                                                                                            |

1.3 Purpose and Interpretation:

- 1.3.1 This Bylaw sets out the rules Members must follow in fulfilling their duties and responsibilities as elected or appointed officials, and the powers and procedures of the Commissioner in exercising oversight over Council Members.
- 1.3.2 The provisions of this Bylaw are to be interpreted broadly and in a manner that is consistent with the *Community Charter* S.B.C. 2003, c. 36.
- 1.3.3 For clarity, the provisions of this bylaw that reference Committee Members only are intended to apply also to Council Members.

1.4 Application:

- (a) This Bylaw applies to Council Members and Committee Members.
- (b) This Bylaw does not apply to a Member's conduct in their personal life, except to the extent that such conduct reasonably undermines public confidence in City governance.
- (c) This Bylaw does not apply to Staff.
- (d) In the event of a conflict between this Bylaw and another City bylaw or Council policy governing Member conduct, this Bylaw prevails.
- (e) In this Bylaw, a reference to a person who holds an office includes a reference to the persons appointed to act for that person from time to time.

1.5 Severability:

If any definition, section, subsection, paragraph, subparagraph, clause or phrase in this Bylaw is held invalid by a Court of competent jurisdiction, the invalid definition, section, subsection, paragraph, subparagraph, clause or phrase must be severed and the remainder of this Bylaw is deemed to have been adopted without the severed definition, section, subsection, paragraph, subparagraph, clause or phrase.

## **PART 2 – STANDARDS AND VALUES**

2.1 Foundational Principles

These guiding principles provide a basis for how Members fulfill their roles and responsibilities, including in their relationships with each other, Staff and with the public.

- (a) Integrity: being honest and demonstrating strong ethical principles.

Members are expected to act with integrity by:

- i. Behaving in a manner that promotes public confidence in the City, including actively avoiding any Conflicts of Interest, improper use of office or unethical conduct.
- ii. Being truthful, honest and open in all dealings.
- iii. Upholding the public interest and making decisions in the best interests of the community.
- iv. Following through on commitments, engaging in positive communication with the community and correcting errors in a timely and transparent manner.

- v. Acting lawfully and within the authority of the *Community Charter, Local Government Act, Workers Compensation Act of B.C. and B.C. Human Rights Code*.

- (b) Accountability: an obligation and willingness to accept responsibility or to account for one's actions.

Members are expected to act with accountability by:

- i. Being transparent in how they individually and collectively conduct business and carry out their duties.
- ii. Ensuring information is accessible, and that citizens can view the process and rationale behind each decision and action, while protecting confidentiality where appropriate or necessary.
- iii. Accepting that they are collectively accountable for local government decisions, and that individual Members are responsible and accountable for the decisions they make in fulfilling their roles.
- iv. Listening to and considering the opinions and needs of the community in all decision making, and allowing for respectful discourse and feedback.

- (c) Respect: having due regard for others' perspectives, wishes and rights; displaying deference to the offices of local government, and the role of local government in community decision-making.

Members are expected to act with respect by:

- i. Treating every person, including other Members, Staff and the public with dignity.
- ii. Showing consideration for colleagues and Staff.
- iii. Creating an environment of trust, including displaying awareness and sensitivity around comments and language that may be perceived as derogatory.
- iv. Valuing the role of diverse perspectives and debate in decision-making.
- v. Acting in a way that is respectful of the roles and responsibilities of the office of Mayor and Council.
- vi. Valuing the distinct roles and responsibilities of local government Staff and the community in local government considerations and operations, and committing to fostering a positive working relationship between Staff, the public and elected officials.

- (d) Leadership and Collaboration: an ability to lead, listen to, and positively influence others; coming together to create or meet a common goal through collective efforts.

Members are expected to demonstrate leadership and collaboration by:

- i. Demonstrating behaviour that builds and inspires public trust and confidence in local government.
- ii. Calmly facing challenges and providing considered direction of the issues of the day, and enabling colleagues and Staff to do the same.
- iii. Creating space for open expression by others, taking responsibility for one's own actions and reactions and accepting the decisions of the majority.
- iv. Accepting that it is the equal responsibility of the Council and Committee Members individually and collectively to work together to achieve common goals.
- v. Being an active participant in ensuring these Foundational Principles and the standards of conduct are followed.

### 2.1.1 Interpretation

The standards and values above are to inform the interpretation of the substantive provisions of this Bylaw and are not to be standalone bases for Complaints.

### 2.2 Roles and Responsibilities

- (a) Council is the governing body of the City. It has the responsibility to govern the City in accordance with Part 5 of the *Community Charter* and other applicable legislation.
- (b) The Mayor is the head and chief executive officer of the City and has a statutory responsibility to provide leadership to the Council and to provide general direction to Municipal Officers respecting City policies, programs and other directions of the Council as set out in Part 5 of the *Community Charter*.
- (c) Staff provide professional advice to the Council and carry out decisions in an effective, efficient and non-partisan manner. The CAO is Council's one employee.



## **PART 3 – CONDUCT OF ELECTED OFFICIALS**

### 3.1 General Conduct

3.1.1 A Member shall not:

- (a) contravene this Bylaw, as amended or replaced from time to time;
- (b) contravene any other City bylaw or policy, as amended or replaced from time to time;

- (c) contravene a law of British Columbia or Canada, including the British Columbia *Human Rights Code* or the *Freedom of Information and Protection of Privacy Act*;
- (d) Bully or Harass a Member, Staff, or Volunteer;
- (e) defame a Member, Staff, or Volunteer.

3.1.2 A Member shall treat other Council Members, Committee Members, Staff, and Volunteers with respect and dignity.

3.1.3 A Council Member shall not:

- (a) breach their oath sworn upon taking office as a Council Member; or
- (b) abuse their office.

### 3.2 Interactions with Staff, Volunteers and Committee Members

3.2.1 A Member must direct inquiries regarding departmental issues or questions to the CAO, General Manager, or department Director of the appropriate department and refrain from contacting Staff directly unless the communication is minor and of a day-to-day operational nature.

3.2.2 Members must not interfere with, hinder or obstruct Staff, Volunteers or Committee Members in the exercise or performance of their roles, responsibilities, powers, duties or functions, nor shall they impair the ability of Municipal Officers and Staff to implement Council policy decisions in accordance with Section 153 of the *Community Charter*.

3.2.3 Members must not request or require Staff to undertake personal or private work on behalf of a Member.

3.2.4 If a Council Member has information about Staff or a Volunteer that the Council Member wishes to bring to the attention of the City for the purposes of a review or investigation into the conduct or an omission of the individual, the Council Member may only do so by delivering the information in writing to the CAO. On receipt of such information, the CAO shall conduct a review or investigation and address the matter in accordance with the City's employment agreements, bylaws and policies and with the applicable employment law or professional responsibility enactments.

3.2.5 Members must not publish statements attacking Members, Staff, or Volunteers.

3.2.6 Information obtained by any Council Member, which is likely to be used in a Council or political debate, must be provided to all other Council Members, and to the CAO.

### 3.3 Interactions with the Public and Media

3.3.1 Members must not communicate on behalf of the City unless authorized to do so by Council resolution or by virtue of a position or role the Member has been authorized to undertake by Council.

3.3.2 Without limiting the ability of the Council Member to hold a position on an issue and respectfully express their opinions, a Council Member must:

- (a) ensure that their communications relating to Council business are accurate and not issue any communication that the Member knows, or ought to have known, to be false; and
- (b) ensure that all communications by, and on behalf of a Member, including communications made via social media, are respectful and do not discriminate against, harass, or defame any Member, Staff, or Volunteer.

3.3.3 Members are not to issue instructions to any of the City's contractors, tenderers, consultants or other service providers unless expressly authorized to do so.

3.3.4 Outside of a Council or committee meeting, a Member shall not communicate with a tenderer or proponent regarding the subject matter of the procurement.

### 3.4 Public Meetings

3.4.1 A Member must act with decorum at Council and Committee meetings in accordance with the Council Procedure Bylaw 2018 No. 7272, as amended or replaced from time to time.

### 3.5 Collection and Handling of Information

3.5.1 A Member must:

- (a) comply with the provisions of the *Freedom of Information and Protection of Privacy Act* and the policies and guidelines as established by the City;
- (b) comply with section 117 of the *Community Charter*, including by protecting, and not disclosing publicly, Confidential Information;
- (c) only access information held by the City for City business, and not for personal purposes; and
- (d) not alter City records unless expressly authorized to do so.

### 3.6 Use of Social Media

3.6.1 The provisions of this Bylaw apply, without limitation, to the use of a Member's personal and official social media accounts.

3.6.2 Members must regularly monitor their social media accounts and immediately take measures to deal with the publication of messages or postings made by others on their behalf that violate the terms of this Code of Conduct Bylaw.

### 3.7 Conflict of Interest

3.7.1 A Member shall not participate in discussion of a matter, or vote on a question in respect of that matter, where the Member has a Conflict of Interest.

3.7.2 In respect of each matter before Council, a Council Member shall:

- (a) assess whether they have a Conflict of Interest, if necessary, with the advice of the Commissioner; and
- (b) determine whether it is necessary to seek independent legal advice, at their own cost except where the CAO approves the cost, with respect to any situation which may result in a Conflict of Interest.

3.7.3 If a Member believes they have a Conflict of Interest in respect of a matter in a Council or Committee meeting, the Member shall:

- (a) notify the Mayor or the Chair of the meeting that the Member has a Conflict of Interest prior to the matter being considered, and the Member shall restate the Conflict of Interest each time the matter arises before Council;
- (b) refrain from discussing the matter with any other Member publicly or privately; and
- (c) leave the meeting room if the matter is discussed and not return until the discussion has ended or voting on the matter has been concluded.

3.8 Use of Influence

3.8.1 A Member must not attempt to influence a decision of Council, a Committee, Municipal Officer, or Staff if the Member has a pecuniary Conflict of Interest in relation to that decision.

3.8.2 A Member must not use their office to provide preferential treatment to any person or organization except as warranted by the ordinary and lawful discharge of their duties.

3.8.3 A Member must not intimidate, improperly influence, threaten, or coerce Staff.

3.9 Gifts and Personal Benefits

3.9.1 A Council Member must not accept a Gift or Personal Benefit, unless accepted in accordance with section 105 of the *Community Charter*.

3.9.2 A Council Member must disclose a Gift or Personal Benefit, received in accordance with section 105 of the *Community Charter*, as per section 106 of the *Community Charter*.

3.9.3 Committee Members must comply with 3.9.1 and 3.9.2 as though they were Council Members.

## **PART 4 – COMPLAINT AND RESOLUTION PROCEDURES**

4.1 Council Members

4.1.1 Confidential Requests

- (a) If a Council Member, Committee Member, or Staff believes that they have been subject to conduct by a Council Member in breach of this Bylaw, that person may approach the Commissioner on a confidential basis, without the need to file a Complaint, to request that the Commissioner inform the Council Member of the alleged breach. Upon receipt of the confidential request, the Commissioner may attempt to address the conduct with the Council Member.
- (b) The Commissioner must protect the confidentiality of a person making a request under 4.1.1(a) unless the person making the request consents to disclosure.

4.1.2 Complaint Procedure:

- (a) Any Council Member, Committee Member, or Staff may submit a Complaint to the Commissioner.
- (b) A Complaint must be in writing and describe with sufficient detail:
  - i. the name of the Complainant;
  - ii. the name of the Respondent;
  - iii. the conduct that the Complainant alleges to have breached the Code;
  - iv. the date of the alleged conduct;
  - v. the part or parts of this Bylaw that the Complainant alleges has or have been breached; and
  - vi. the basis for the Complainant's knowledge about the conduct.
- (c) A Complainant may specify in the Complaint if they are willing to participate in an informal resolution of the Complaint.
- (d) The Commissioner may accept a Complaint notwithstanding that the form of the Complaint does not comply with all of the requirements set out in Section 4.1.2 (b) if, in the Commissioner's opinion, the circumstances warrant.
- (e) The Commissioner must not accept multiple Complaints concerning the same matter. In the event that the Commissioner receives multiple Complaints concerning the same matter, the Commissioner must proceed with the first Complaint accepted, but may expand the Complaint and/or add Complainants for the purpose of conducting the investigation and preparing the investigation report.
- (f) The Commissioner must reject a Complaint received more than 90 days after the Complainant knew or reasonably ought to have known of the alleged breach of this Bylaw. The Commissioner is authorized to extend this 90 day deadline up to a further 90 days if circumstances warrant an extension.
- (g) The Commissioner must reject a Complaint received regarding a Council Member seeking re-election in the period from the first day of the nomination period to the general voting day.
- (h) In the 90 days prior to general voting day, the Commissioner may suspend any investigation underway.

#### 4.1.3 Dismissal or Suspension of Complaint

- (a) If a Complaint is submitted that, on its face, is not made with respect to a breach of this Bylaw, or if a Complaint would be more appropriately addressed through another process, including if the Complaint is:
- i. with respect to non-compliance with the *Freedom of Information and Protection of Privacy Act*;
  - ii. with respect to non-compliance with a more specific Council policy or bylaw with a separate Complaint procedure; or
  - iii. with respect to a matter that is subject to another outstanding process, such as a court proceeding or human rights complaint,
- the Commissioner may reject the Complaint, or part of the Complaint, and must notify the Complainant in writing that the Complaint is not within the jurisdiction of this Bylaw, or that the Complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Commissioner thinks appropriate.
- (b) If the Commissioner, at any stage in the Complaint procedure, determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code* (Canada), the Commissioner must immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council.
- (c) Where a Complaint is made against a Council Member who, during the course of the Complaint procedure, ceases to hold office, the Commissioner may close the Complaint and notify the Complainant and Respondent of this decision.

#### 4.1.4 Preliminary Assessment

- (a) On receipt of a Complaint, the Commissioner must conduct a preliminary assessment and if at that time, or any time thereafter, the Commissioner is of the opinion that:
- i. the statement is not with respect to a breach of this Bylaw;
  - ii. the Complaint is frivolous, vexatious, or not made in good faith;
  - iii. the investigation is, or might be, hampered, or the Council Member might be prejudiced by the Complainant's failure to provide a Complaint in compliance with Section 4.1.2(b), or otherwise cooperate with the investigation;
  - iv. the Complainant wishes to withdraw the Complaint, and it would be appropriate in the circumstances to allow the withdrawal; or
  - v. there are no grounds or insufficient grounds for concluding that a violation of this Bylaw has occurred,

the Commissioner must notify the Complainant and the Respondent in writing that the Commissioner is closing the Complaint, set out the reasons therefore, and close the Complaint.

- (b) Notwithstanding Section 4.1.4 (a), the Commissioner may request further information from the Complainant before determining whether or not there are sufficient grounds for believing that a breach of this Bylaw may have occurred.

#### 4.1.5 Informal Resolution:

- (a) When the Commissioner has decided to proceed with a Complaint, the Commissioner must determine whether the Complaint requires a formal investigation, or whether the Complaint may be resolved informally. In the latter case, the Commissioner may either attempt to resolve the Complaint directly, or refer the Complaint to the CAO.
- (b) When determining whether the Complaint may be resolved informally, the Commissioner may consider culturally appropriate, or transformative or restorative justice approaches, and may engage a third party to assist the Commissioner for this purpose.
- (c) Where the Commissioner refers the Complaint in accordance with Section 4.1.5(a) the CAO may agree to assist in resolving the Complaint directly, or may appoint a third party to assist in resolving the Complaint at their discretion.
- (d) The person assisting in the informal resolution of a Complaint will assess the suitability of the Complaint for settlement or resolution on an on-going basis and may decline to assist at any point.
- (e) The Complainant, or the Respondent, can decline to participate in an informal resolution at any time.
- (f) If a Complaint is resolved informally, the person assisting in resolving the Complaint must notify the Commissioner in writing of the terms of the resolution, upon receipt of which, the Commissioner must close the Complaint.
- (g) If a Complaint cannot be resolved informally, the person assisting in resolving the Complaint must refer the Complaint back to the Commissioner for a formal investigation.

#### 4.1.6 Formal Resolution:

- (a) If a Complaint is not rejected, closed, or resolved informally, the Commissioner must proceed with a formal investigation.
- (b) The Commissioner must serve the Complaint on the Respondent with a request that the Respondent provide a written response to the Complaint together with any submissions the Respondent chooses to make within 10 days, subject to the Commissioner's discretion to extend the timeline.
- (c) The Commissioner may serve the Complainant with the Respondent's written response together with any submissions, on a strictly confidential basis, and request a reply in writing within 10 days, subject to the Commissioner's discretion to extend the timeline.

- (d) The Commissioner may:
  - i. speak to anyone relevant to the Complaint;
  - ii. request disclosure of documents relevant to the Complaint; or
  - iii. access any record in the possession or control of the City, except a record that is subject to privilege.
- (e) The Commissioner must ensure that the formal investigation complies with the rules of procedural fairness and natural justice required in the circumstances.
- (f) Notwithstanding 4.1.6(a), nothing prohibits the Commissioner from summarily dismissing a Complaint where it becomes apparent, after some investigation, that the Complaint has no chance of success.
- (g) If the Commissioner summarily dismisses a Complaint at the Formal Resolution stage, the Commissioner shall report to the Complainant and Respondent in the manner set out in 4.1.4(a).

4.1.7 Adjudication and Reporting:

- (a) The Commissioner must make a decision within 90 days of making the determination to proceed with a formal investigation, unless the Commissioner determines that doing so is not practicable, in which case the Commissioner must notify the Complainant and Respondent of the delay and provide a revised decision date. The revised decision date may be extended by periods of up to 30 days on provision of written notice to the Complainant and the Respondent.
- (b) A notification issued pursuant to sections 4.1.3(a), 4.1.3(b), 4.1.4(a), or 4.1.7(a) is confidential and must not be disclosed except in the following circumstances:
  - i. to Council for the purpose of considering a resolution for reimbursement of legal fees pursuant to section 4.4.2; and
  - ii. the Respondent may disclose the fact that the Complaint has been closed, or that a finding has been made that the Respondent did not breach this Bylaw.
- (c) If after reviewing all material information, the Commissioner determines that the Respondent did not violate this Bylaw, then:
  - i. the Commissioner must prepare a written investigation report providing reasons for their determination that the Council Member did not breach the Bylaw;
  - ii. the Commissioner must deliver a copy of the investigation report or, where appropriate, a summary thereof, to the Complainant, Respondent and Council; and
  - iii. in consultation with Staff, the Commissioner shall produce and make publicly available a summary of the investigation report, in compliance with the *Freedom of Information and Protection of Privacy Act*.

- (d) If after reviewing all the material information, the Commissioner determines that a Council Member did violate this Bylaw, then:
  - i. the Commissioner must prepare a written investigation report providing reasons for their determination that the Council Member breached this Bylaw;
  - ii. the investigation report must make recommendations as to the appropriate sanction for the breach;
  - iii. if the Commissioner determines that a Council Member did breach this Bylaw, but that the Council Member took all reasonable steps to prevent it, or that it was trivial or done inadvertently or because of an error in judgment made in good faith, the Commissioner will so state in the investigation report and may recommend that no sanction be imposed;
  - iv. the Commissioner must deliver, on a strictly confidential basis, a copy of the investigation report to the Respondent; and
  - v. the Commissioner must deliver a copy of the investigation report to the Complainant and Council forty eight (48) hours after delivery of the investigation report to the Respondent.

#### 4.1.8 Report to be Public

- (a) Where the Commissioner has determined that a Council Member did violate this Bylaw, after the Commissioner has delivered a copy of the investigation report to the Complainant and Council, the City must make the investigation report available to the public.
- (b) The City will ensure that the investigation report complies with the City's obligations regarding disclosure of personal information set out in the *Freedom of Information and Protection of Privacy Act*, and ensure that appropriate redactions are applied prior to release to the public.

#### 4.1.9 Final Determination by Council

- (a) Council must, within 30 days of delivery of the investigation report pursuant to Section 4.1.7(d)(v), or a longer period if approved by a 2/3 vote of Council, decide on the appropriate measures, if any, that are warranted by the breach of this Bylaw, and will take such actions as Council considers appropriate in the circumstances.
- (b) Prior to Council making any decision regarding the findings and recommendations set out in the investigation report, the Respondent must be provided with an opportunity, either in person or in writing, to comment on the decision and any recommended censure, sanctions or corrective actions.
- (c) While an investigation report provided to Council may be considered in a closed meeting for the purpose of receiving legal advice, or other valid reason, when Council deliberates and votes on the investigation report, it will do so in a public meeting and the investigation report must be made available to the public in a form that complies with section 4.1.8 (b).

- (d) Notwithstanding section 4.1.9(c), Council may deliberate on and vote on a report in a closed meeting where there is a valid reason to close the meeting under section 90 of the *Community Charter*.

#### 4.1.10 Remedies

Sanctions that may be imposed for a violation of this Bylaw include the following:

- (a) a letter of reprimand from Council addressed to the Council Member;
- (b) a request from Council that the Council Member issue a letter of apology;
- (c) the publication of the letters contemplated in subsections (a) and (b), along with the Council Member's written response, if any;
- (d) directions to the CAO regarding the provision of documents, including documents containing Confidential Information, to the Council Member;
- (e) a recommendation that the Council Member attend specific training or counselling;
- (f) limitations on access to certain City facilities;
- (g) suspension or removal of the Council Member from some or all Council committees and bodies to which the Council Member was appointed by Council;
- (h) prohibition from representing the City at events and/or attending conferences and seminars;
- (i) suspension or removal of the appointment of a Council Member as the Acting Mayor;
- (j) public censure of a Council Member;
- (k) reduction in compensation in accordance with the Council Spending and Amenities Policy; and
- (l) any other sanction recommended by the Commissioner, so long as that sanction is within the authority of Council.

#### 4.1.11 Confidentiality of the Investigation

The Commissioner must make all reasonable efforts to investigate Complaints in confidence.

- (a) The Commissioner and every person acting under the Commissioners' instructions must preserve confidentiality with respect to all matters that come into the Commissioner's knowledge in the course of any investigation or Complaint except as required by law.
- (b) An investigation report must only disclose such matters as, in the Commissioner's opinion, are necessary for the purpose of the investigation report.
- (c) At the conclusion of the process, the Commissioner will destroy all the notes that were taken throughout the process of the investigation.

#### 4.1.12 Interpretation

For clarity, and despite section 4.2, the procedure in section 4.1 is to apply to all allegations against Council Members including in their capacity as Committee Members.

#### 4.2 Committee Members

4.2.1 Alleged breaches of this Bylaw by Committee Members shall be submitted simultaneously in writing addressed to the Mayor and CAO within 90 days of the last alleged breach.

4.2.2 A Complaint must comply with the standards set out at section 4.1.1.

4.2.3 The Mayor shall consider alleged breaches of this Code by Committee Members, direct that any enquiries they consider appropriate or desirable be undertaken, including a referral to the Commissioner, and recommend appropriate disciplinary action to Council.

(a) The Mayor may recommend that Council take any actions provided for in the Code that the Mayor considers reasonable in the circumstances.

(b) Where Council finds that a Committee Member has breached this Code, Council may decide by resolution to:

- i) Require the Committee Member to apologize to any person adversely affected by the breach;
- ii) Counsel the Committee Member;
- iii) Terminate the Committee Member's appointment; or
- iv) Implement such other measures as Council deems appropriate.

#### 4.3 Reprisals and Obstruction

4.3.1 No Council Member, Committee Member, or Staff will obstruct the Commissioner in the carrying out of their duties or responsibilities.

4.3.2 No Council Member, Committee Member, or Staff will threaten or undertake any active reprisal against a Complainant or against a person who provides information to the Commissioner in the context of an investigation.

4.3.3 No Council Member, Committee Member, or Staff will tamper with or destroy documents or electronic records related to any matter under investigation under this Bylaw or refuse to respond to the Commissioner when questioned regarding an investigation.

4.3.4 Any individual covered by this Bylaw who is found to have engaged in any reprisal or retaliation in violation of this Bylaw will be subject to appropriate disciplinary action, which action may include, and is not limited to, the sanctions and remedies described above, or in the case of Staff, disciplinary action up to and including the termination of employment for just cause, as applicable.

4.4 Reimbursement of Costs

4.4.1 For clarity, actions by Council Members as outlined in Indemnification Bylaw 2005 No. 7002, as replaced or amended from time to time, do not apply to this Bylaw.

4.4.2 A Council Member may make a request to Council for reimbursement for the costs of legal advice and representation in responding to the formal complaint process outlined in this Bylaw. If appropriate after considering all circumstances, Council may resolve to reimburse legal fees reasonably incurred by a Council Member, provided that all of the following are met:

- (a) It is the Council Member's first formal complaint process; and
- (b) The amount does not exceed \$10,000.

4.5 Vexatious Allegations and Complaints

4.5.1 Any individual covered by this Bylaw who makes an allegation or Complaint under this Bylaw that is subsequently found to have been made in a deliberately vexatious or malicious manner, or otherwise to have been made in bad faith, will be subject to appropriate disciplinary action, which action may include, but is not limited to:

- (a) in the case of Council Members, sanctions and remedies described in Section 4.1.7.
- (b) in the case of Committee Members, termination of the Committee Member's appointment.
- (c) in the case of Staff, the termination of employment for just cause, as applicable.

**PART 5 – ENACTMENT**

Effective Date

This bylaw comes into force and effect on 2022-OCT-15.

PASSED FIRST READING: 2022-MAY-16  
PASSED SECOND READING: 2022-MAY-16  
PASSED THIRD READING: 2022-MAY-16  
ADOPTED: 2022-MAY-30

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
DEPUTY CITY CLERK

## **SCHEDULE A**

### **COMMITTEE MEMBER STATEMENT**

As a City of Nanaimo Committee Member, I agree to uphold the Code of Ethics adopted by the City of Nanaimo and conduct myself by the following model of excellence. I will:

- Recognize the diversity of backgrounds, interests and views in our community;
- Help create an atmosphere of open and responsive government;
- Conduct public affairs with integrity, in a fair, honest and open manner;
- Respect one another and the unique role and contribution each of us has in making the City of Nanaimo a better place to work, live, and play;
- Strive to keep the decision making processes open, accessible, participatory, understandable, timely, just and fair;
- Avoid and discourage conduct which is not in the best interests of the City of Nanaimo;
- Avoid any real or perceived Conflict of Interest and declare at the earliest opportunity, any interest that is or may be in conflict with the business of the body of the City of Nanaimo in which I am participating;
- Respect and uphold confidentiality requirements; and
- Treat all people with whom I come in contact in the way I wish to be treated.

I affirm that I have read and understand the City of Nanaimo Code of Conduct Bylaw.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Committee: \_\_\_\_\_