

	<h1>POLICY</h1>	Policy No: GOV-COU-005
<p><u>Policy Title:</u> CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS & ADVISORY COMMITTEES</p> <p><u>Policy Type:</u> COUNCIL</p> <p><u>Category:</u> Governance</p> <p><u>Sub-Category:</u> Board & Committee</p> <p><u>Author:</u> City Clerk</p> <p><u>Dept/Div:</u> Finance & Corporate Services Department, Legislated Services</p>	<u>Approval Date:</u> October 6, 2008	
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	<u>Last Amended:</u> August 21, 2021	
	<u>Replaces:</u> I-005, Code of Conduct for Members of Council, Local Boards and Advisory Committees	
	<u>Repealed:</u> <u>Replaced by:</u>	
<u>Related Policies, Procedures and/or Guidelines:</u> To be included at next review.		

1. POLICY PURPOSE:

A written Code of Conduct reinforces the City of Kitchener’s Accountability and Transparency Policy and other relevant legislation within which all members of Council, local boards and advisory committees must operate. It ensures that those members share a common integrity base and through adherence to its principles, the Code of Conduct serves to enhance public trust.

The key principles that underline the Code of Conduct are as follows:

- all members to whom this Code of Conduct applies shall serve in a conscientious and diligent manner;
- members shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;
- members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- members are responsible for making honest statements and no member shall make a statement when they know that statement is false, or with the intent to mislead other members or the public;
- members are responsible for conducting their duties and responsibilities in a manner that is consistent with the City of Kitchener’s commitment to equity, inclusion and anti-racism, whereby racism and oppression are not permissible at either an individual or systemic level, in accordance with policy GOV-COR-XXX (Equity, Inclusion and Anti-Racism); and;
- members shall 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 Kitchener City Council.

2. **DEFINITIONS:**

“Anti-Racism” – shall mean understanding and dismantling racism. It is a change and transformation focused practice and requires action. It’s not anti-racism if a conversation isn’t followed by concrete actions and accountability.

“Code of Conduct” - shall mean the City of Kitchener Code of Conduct for Members of Council, Local Boards and Advisory Committees.

“Complaint” - shall mean a purported contravention of the Code of Conduct.

“Equity” – shall mean the conditions for fair and equal access and opportunity for everyone, by addressing discriminations, exclusions and barriers experienced by distinct groups. Equity is not the same as equality, nor is it the same as inequality.

“Frivolous” - shall mean of little or no weight, worth, or importance; not worthy of serious notice.

“Good faith” - shall mean accordance with standards of honesty, trust, sincerity.

“Inclusion” – shall mean the achievement of a work environment in which all individuals are treated fairly and respectfully, have equal access to opportunities and resources, and can contribute fully to the organization’s success.

“Integrity Commissioner” - shall mean the Integrity Commissioner appointed by the Council of the City of Kitchener to provide independent and consistent complaint investigation and resolution, respecting the application of the Code of Conduct.

“Immediate relative” - shall mean a parent, spouse, child, sister, brother, sister-in-law, brother-in-law, father-in-law, mother-in-law as well as step-relationships;

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

spouse shall mean the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

“Lobby” - shall mean to communicate with a member outside of a public process about matters of interest or benefit to the lobbyist and their client / business / organization. Communication may be about a by-law or resolution on any matter that requires a decision by City Council, a local board or delegated decision maker. This includes matters regarding policies or programs, the purchase of goods and services and the awarding of contracts, applications for a service, grant, planning approval or other licence.

“Lobbyist” - shall mean a person who communicates for payment with public office holders, a person who lobbies on a volunteer basis for a business or a not-for-profit professional, business, industry, trade or labour organization or a consultant or voluntary lobbyist who arranges meetings between a member and any other person for the purpose of lobbying.

“Local board” - for the purposes of the Code of Conduct a local board shall mean one of the following boards / quasi-judicial committees established by Kitchener City Council:

- Belmont Village Business Improvement Area
- Kitchener Downtown Business Association (KDBA)
- Animal / Dog Designation Appeal Committee
- Committee of Adjustment
- Property Standards Appeal Committee

“Oppression” – shall mean the social act of placing restrictions on an individual or group by those in positions of power. The oppressed individual or group is devalued, exploited and/or deprived of rights and privileges by the individual or group who has more power.

“Private advantage” - for the purposes of the Code of Conduct private advantage does not include a matter:

- a) that is of general application or considered to be an interest in common generally with the electors within the jurisdiction of an area; or,
- b) that concerns the remuneration or benefits of a member of Council.

“Racism” – shall mean the marginalization and/or oppression of Black, Indigenous and other racialized people based on a socially constructed racial hierarchy that privileges white people. Racism can be openly displayed in racial jokes and slurs or hate crimes, but it can be more deeply rooted in attitudes, values

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

and stereotypical beliefs. Racism operates at individual, systemic and societal levels.

“**Vexatious**” - shall mean instituted without sufficient grounds and serving only to cause annoyance to the defendant; troublesome; annoying: a vexatious situation.

3. SCOPE:

POLICY APPLIES TO THE FOLLOWING:	
<input type="checkbox"/> All Employees	
<input type="checkbox"/> All Full-Time Employees	<input type="checkbox"/> All Union
<input type="checkbox"/> Management	<input type="checkbox"/> C.U.P.E. 68 Civic
<input type="checkbox"/> Non Union	<input type="checkbox"/> C.U.P.E. 68 Mechanics
<input type="checkbox"/> Temporary	<input type="checkbox"/> C.U.P.E. 791
<input type="checkbox"/> Student	<input type="checkbox"/> I.B.E.W. 636
<input type="checkbox"/> Part-Time Employees	<input type="checkbox"/> K.P.F.F.A.
<input type="checkbox"/> Specified Positions only:	<input type="checkbox"/> Other:
<input type="checkbox"/> Council	<input type="checkbox"/> Local Boards & Advisory Committees

4. POLICY CONTENT:

ROLES AND RESPONSIBILITIES

This Code of Conduct operates along with and as a supplement to the existing statutes governing conduct. Five pieces of Federal and Provincial legislation govern the conduct of members of Council, those being:

- the *Criminal Code of Canada*;
- the *Municipal Conflict of Interest Act*, as amended;
- the *Municipal Elections Act, 1996*, as amended;
- the *Municipal Freedom of Information and Protection of Privacy Act*; and,
- the *Municipal Act, 2001*, as amended.

Part VI (Practices & Procedures) of the *Municipal Act, 2001* prescribes the following as the roles of a municipal council, the head of council and the head of council as chief executive officer:

It is the role of council:

- to represent the public and to consider the well-being and interests of the municipality;
- to develop and evaluate the policies and programs of the municipality;
- to determine which services the municipality provides;

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS
AND ADVISORY COMMITTEES

- to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- to maintain the financial integrity of the municipality; and,
- to carry out the duties of council under this or any other Act.

It is the role of the head of council:

- to act as chief executive officer of the municipality;
- to preside over council meetings so that its business can be carried out efficiently and effectively;
- to provide leadership to the council;
- to provide information and recommendations to the council with respect to the role of council described in Sections 224.(d) and (d.1) of the *Municipal Act, 2001*;
- to represent the municipality at official functions; and,
- to carry out the duties of the head of council under this or any other Act.

As chief executive officer of a municipality, the head of council shall,

- uphold and promote the purposes of the municipality;
- promote public involvement in the municipality's activities;
- act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and,
- participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

APPLICATION

Part 2 of the Code of Conduct shall apply to all members of Council and local boards. In recognizing that advisory committees are comprised largely of citizen volunteers from across the City of Kitchener who have been appointed by Council to provide special advice and expertise; some of the provisions outlined in Part 2 may not be applicable to those members. Accordingly, the conduct of advisory committee members shall be governed by the provisions of the Advisory Committee Members' Code of Conduct, attached hereto as Appendix 'A'.

BUSINESS RELATIONS

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

No member shall act as a lobbyist before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*. A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

This does not prohibit activities in which a member would normally engage on behalf of constituents in accordance with the duties of their office.

CONDUCT AT MEETINGS

At all meetings members shall conduct themselves with decorum in accordance with the provisions of *Kitchener Municipal Code Chapter 25 (Procedure)* and in a manner that is consistent with the City's commitment to equity, inclusion and anti-racism, in accordance with policy GOV-COR-XXX (Equity, Inclusion and Anti-Racism) Respect for delegations, fellow members and staff requires that all members show courtesy and not distract from the business of the City during presentations and when other members have the floor.

CONDUCT OF A POLITICAL NATURE

No member shall use City facilities, services, or property for his/her election or re-election campaign. No member shall use the services of City employees for his/her election or re-election campaign, during hours in which the employees are in the paid employment of the City. *Council Policy ADM-ELE-226 (Elections - Use of Corporate Resources for Political Campaign Purposes)* applies.

MANDATORY AND ONGOING EQUITY & ANTI-RACISM TRAINING

Members of City Council and volunteer members of local boards are expected to complete all mandatory equity and anti-racism training required as per their position as outlined in the corporate-wide Equity and Anti-Racism Training Strategy. Members of Council are required to complete all mandatory training within one Council term (4 years). Once all mandatory training is complete, Council members are expected to take part in ongoing training opportunities throughout subsequent Council terms, as provided by the City. Volunteer members of local boards are required to complete all mandatory training within one appointment term (2 years); once all mandatory training is complete, board members are expected to take part in ongoing training opportunities throughout subsequent appointment terms as provided through the City.

CONDUCT RESPECTING STAFF

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

Only Council as a whole has the authority to approve budgets, policies, committee processes and other such matters. Therefore, members are not permitted to individually direct the actions of staff, except as authorized by Council. Members shall be respectful of the fact that staff work for the City as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective, without undue influence from any individual member or group of members. Members shall be respectful of the fact that staff carry out directions of Council and administer the policies of the municipality, and are required to do so without any undue influence from any individual member or group of members. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the City of Kitchener.

Council as a whole directs the business of the City and passes by-laws, or resolutions as appropriate, for decisions adopted by Council. Council has delegated responsibility to the Chief Administrative Officer (CAO) for the administration of the affairs of the City in accordance with the decisions adopted by Council. This means that under the direction of the CAO, staff have the responsibility and the authority to provide consultation, advice and direction to Council and to implement Council approved policy. To fulfill this role, staff establishes the appropriate administrative policies, systems, structures and internal controls to implement the goals and objectives of Council, and to manage implementation within the resources at their disposal. Council therefore should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power, or their personal opinions.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

CONDUCT WHILE REPRESENTING THE CITY

Members shall make every effort to participate diligently in the activities of the agencies, boards, committees and commissions to which they are appointed.

CONFIDENTIAL INFORMATION

Pursuant to *Kitchener Municipal Code Chapter 25 (Procedure)* and authorized under Section 239 of the *Municipal Act, 2001*, where a matter discussed at an in-camera (closed) meeting remains confidential, no member shall disclose the

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

content of that matter, or the substance of the deliberations of an in-camera meeting. Members shall not permit any persons, other than those who are entitled thereto, to have access to confidential information. Members shall not disclose or release by any means to any member of the public either in verbal or written form any confidential information acquired by virtue of their office, except when required to do so by law.

Particular care should be exercised in ensuring the confidentiality of the following types of information:

- the security of the property of the municipality or local board;
- personnel matters about an identifiable individual, including municipal or local board employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations;
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- items under negotiation, or personnel matters;
- information that infringes on the rights of others (e.g. sources of complaints where the identity of a complainant is given in confidence);
- 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 or assessment data);
- information supplied in confidence to the municipality by another level of government;
- third-party information supplied in confidence to the municipality (e.g., a trade secret or scientific, technical, commercial, financial or labour relations information);
- information (e.g., a trade secret or scientific, technical, commercial, or financial information) that belongs to the municipality and has monetary value;

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- a position, plan, procedure, criteria or instruction to be applied to negotiations; and,
- any and all statements that have been provided in confidence or in-camera.

The above list is provided as an example and is not exclusive. Requests for information will be referred to appropriate staff to be addressed as either an informal request for access to municipal records, or as a formal request under the *Municipal Freedom of Information and Protection of Privacy Act*.

DISCREDITABLE CONDUCT

Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, disability, sexual orientation, marital status, or family status and any other grounds identified under the *Ontario Human Rights Code*.

All members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from racism, discrimination and harassment. The *Ontario Human Rights Code* applies, as does HUM-WOR-120 (*Employment - Human Rights*).

EMPLOYMENT OF COUNCIL RELATIVES

Immediate relatives of elected officials shall not be employed by the City; and to this, the provisions of HUM-HR-110 (*Employment of Relatives of Staff Members and Elected Officials*) applies.

FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES

A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Kitchener City Council. More generally, members are required to observe the terms of all policies and procedures established by Council. However, this provision does not prevent a member from requesting that Council grant an exemption from a policy, other than this Code of Conduct.

GIFTS AND BENEFITS

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his/her duties of office, unless permitted by the exceptions listed below. Notwithstanding the exceptions listed, no member shall accept monies or any instrument that can be converted into monies unless authorized by law. For these purposes, a fee or advance paid to, or a gift

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

or benefit provided by a third party with the member's knowledge to a member's spouse, child (who is under the age of 18 years), is deemed to be a gift to that member.

The following are recognized as exceptions:

- a) compensation authorized by by-law;
- b) gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c) a political contribution otherwise reported by law;
- d) services provided without compensation by persons volunteering their time;
- e) a suitable memento of a function honouring the member;
- f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them; and, by the Federal government or the government of a foreign country;
- g) food, beverages and / or admission fees provided for banquets, receptions or similar events, if:
 - i. attendance is resultant to protocol or social obligations that accompanies the responsibility of office; and,
 - ii. the person extending the invitation or a representative of the organization is in attendance;
- h) communication to the offices of a member, including subscriptions to newspapers and periodicals.

In the case of categories **(b) (e) (f) (g) and (h)**, if the value of the gift or benefit exceeds \$100, or if the total value received from any one source over any 12 month period exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Office of the City Clerk.

The disclosure statement must indicate:

- 1. The nature of the gift or benefit;
- 2. Its source and date of receipt;
- 3. The circumstances under which it was given or received;
- 4. Its estimated value;
- 5. What the recipient intends to do with the gift; and,

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

6. Whether any gift will at any point be left with the City.

All disclosure statements shall be a matter of public record.

IMPROPER USE OF INFLUENCE

No member shall use the influence of his/her office for any purpose other than for the exercise of his/her official duties. No member shall seek or obtain by reason of his/her office any personal privilege or private advantage with respect to City services not otherwise available to the general public and not consequent to his/her official duties.

Examples of prohibited conduct are the use of one's status to improperly influence the decision of another person to the private advantage of oneself, or one's immediate relative, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence in return for present actions or inaction.

USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

No member shall use for personal purposes any City property, equipment, services, supplies or services of consequence other than for purposes connected with the discharge of City duties or associated community activities of which City Council has been advised. No member shall use information gained in the execution of his/her duties that is not available to the general public for any purposes other than his/her official duties. No member shall obtain financial gain from the use of City 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 City of Kitchener.

No member shall use City property, services or other city-funded / city-sponsored / city-supported resources (e.g., Councillor columns, social media accounts) for the purposes of election campaigning, as outlined in *Council Policy ADM-ELE-226 (Elections - Use of City Facilities for Political Campaign Purposes)*. This does not include the use of personal social media/networking accounts registered publicly in the member's name.

COMPLAINT PROTOCOL

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

The complaint protocol shall not retroactively apply to any alleged transgressions occurring prior to the date on which the Code of Conduct was formally adopted by Council.

In accordance with Section 223.4.1 (3) of the *Municipal Act, 2001* no application for an inquiry under this section shall be made to the Commissioner during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996* (the MEA) and ending on voting day in a regular election, as set out in section 5 of the MEA.

In accordance with Section 223.4.1 (4) of the *Municipal Act*, an application may only be made within six weeks after the applicant became aware of the alleged contravention.

In accordance with Section 223.4.1 (5) of the *Municipal Act*, despite subsection (4), an application may be made more than six weeks after the applicant became aware of the alleged contravention if **both** of the following are satisfied:

- (1) The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that Act.
- (2) The applicant applies to the Commissioner under subsection (2) within six weeks after the day after voting day in a regular election, as set out in section 5 of the *Municipal Elections Act, 1996*.

INTEGRITY COMMISSIONER

Pursuant to Section ~~233~~ 223.3 (1) of the *Municipal Act, 2001*, the City of Kitchener shall appoint an Integrity Commissioner who reports to Council and is responsible for performing the following duties in an independent and consistent manner:

- (i) Advice: providing written advice to members of council, upon request, on their obligations under the Code; procedures, rules or policies of the municipality; and, the *Municipal Conflict of Interest Act*.
- (ii) Complaint Investigation: having the power to assess and investigate formal written complaints respecting alleged contraventions of the Code of Conduct;
- (iii) Complaint Adjudication: determining whether a member of Council or local board has in fact violated a protocol, by-law or policy governing their ethical behaviour; with the final decision making authority resting with Council as

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

to whether the recommendation(s) of the Integrity Commissioner are imposed;

- (iv) Annual Reporting: providing Council, through the City Clerk, with an annual report on findings of complaint cases;
- (v) Launch Proceedings: having the power to launch its own proceedings to a judge against a member with respect to section 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*; and,
- (vi) Education: providing educational information to members, the municipality and the public about the municipality's code of conduct and the *Municipal Conflict of Interest Act*.

REQUESTS FOR ADVICE/EDUCATIONAL INFORMATION

A request by a member of Council or of a local board for advice from the Commissioner shall be made in writing and emailed to integrity@adr.ca.

If the Commissioner provides advice to a member of Council or of a local board, the advice shall be in writing and emailed to the member.

If the Commissioner provides educational information to the public, the Commissioner may summarize advice he or she has provided but shall not disclose confidential information that could identify a person concerned. Requests for educational information for the public should be made to the City Clerk.

INFORMAL COMPLAINT PROCEDURE

Individuals (e.g., municipal employees, members of the public, members of Council or local boards) or organizations, who have identified or witnessed behaviour or an activity by a member of Council, local board or advisory committee that they believe is in contravention of the Code of Conduct could address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that their behaviour or activity appears to contravene the Code of Conduct;
- (2) encourage the member to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- (4) if applicable, confirm to the member that you are satisfied with the response you received; or advise the member of your dissatisfaction with the response;
- (5) consider the need to pursue the matter in accordance with the formal complaint procedure, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct.

Note: A person is not required to undertake the informal complaint procedure prior to pursuing the formal complaint procedure.

FORMAL COMPLAINT PROCEDURE

1. Application

- (1) All the provisions of this Section apply to a request for an inquiry by an individual or an organization other than a local board or Council as a whole.
- (2) Subsection 1(1) does not preclude individual members of Council or individual members of a local board from filing a formal written complaint.
- (3) Sections 5 to 11, except Subsections 6(1) (b) and 7(3), apply to a request for an inquiry made by a local board or Council as a whole.

2. Complaint

- (1) A request for an investigation of a complaint that a member has contravened the Code of Conduct (the "complaint") shall be in writing.
- (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct and includes a supporting affidavit (attached hereto as Appendix 'B') that sets out the evidence in support of the complaint.
- (4) Any commissioners for taking affidavits are authorized to take the supporting affidavit.

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

3. File with Clerk

- (1) The request for an investigation shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance of the Code of Conduct; and not covered by other legislation or other Council policies as described in Subsection 3(3).

Deferral

- (2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.
- (3) 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 a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing as follows:
 - a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if they wish to pursue any such allegation, they must pursue it with the appropriate police force;
 - b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with their own legal counsel;
 - c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Manager of Corporate Records for review;
 - d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and,
 - e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate. For example, a complaint regarding a member of Kitchener City Council relating to their actions while serving on Regional Council would not be within the jurisdiction of the Integrity

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

Commissioner, as the Region of Waterloo is a separate level of government; and the Integrity Commissioner will advise accordingly.

Reports

- (4) The Integrity Commissioner may report to Council or a local board that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (5) The Integrity Commissioner shall report annually to Council on complaints within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.
- (6) Should no complaints be received within a calendar year, the Clerk shall report to Council accordingly and no annual report shall be made by the Integrity Commissioner.

4. Refusal to Conduct Investigation

- (1) 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, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- (2) Complaints referred that are repetitious in nature, not germane to the Code of Conduct, deemed frivolous, vexatious, or without substance in the opinion of the Integrity Commissioner; shall not be advanced to an investigation stage.
- (3) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council or a local board on any complaint described in Subsections 4(1) and 4(2) except as part of an annual or other periodic report.

5. Investigations

- (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under Section 4, the Integrity Commissioner shall investigate and may attempt to settle the complaint.

Public Inquiries Act

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- (2) Under Section 223.4(2) of the *Municipal Act, 2001*, the Integrity Commissioner may elect to investigate a complaint by exercising the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- (3) When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this complaint protocol, but, if there is a conflict between a provision of the complaint protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.

Complaint - Gifts and Benefits

- (4) Upon receiving a formal written complaint, not deemed to be frivolous or vexatious, that a gift or benefit was received contrary to the conditions set out herein, the Integrity Commissioner shall examine the disclosure statement to ascertain whether the receipt of the gift or benefit might, in his/her opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes that preliminary determination, he/she shall call upon the member to justify receipt of the gift or benefit.
- (5) Should the Integrity Commissioner determine that receipt of the gift or benefit was inappropriate, he/she may recommend that Council direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, forfeit the gift or remit the value of the gift or benefit already consumed to the City; or such other action as the Integrity Commissioner deems to be appropriate.

6. Opportunity to Comment

- (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
 - a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten days; and,
 - b) serve the complainant with a copy of the member's written response with a request that the complainant provide a written reply within ten days.
- (2) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in Section 223.4(2) of the *Municipal Act, 2001* and may enter any municipal or local board work location relevant to the complaint for the purposes of investigation and settlement.

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- (3) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had 10 days notice of the basis for the proposed finding and any recommended sanction and an opportunity to respond in writing, within the same said 10 days, to the Integrity Commissioner on his/her findings and any recommended sanction.

Interim Reports

- (4) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of delay, interference, obstruction or retaliation encountered during the investigation; or as otherwise deemed necessary by the Integrity Commissioner.

7. Final Report

- (1) The Integrity Commissioner shall report the general findings of his/her investigation to the complainant and the member no later than 90 days after the making of the complaint. That report shall indicate when the Integrity Commissioner anticipates presenting his/her recommended corrective action(s) for Council's consideration.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council or the local board, or both, outlining the findings, and/or recommended corrective action(s).
- (3) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council or the local board except as part of an annual or other periodic report.

Lawful recommendations

- (4) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
- (5) Section 223.3 of the *Municipal Act, 2001* authorizes Council to impose either of two penalties on a member of Council or local board following a report by the Integrity Commissioner that, in his/her opinion, there has been a violation of the Code of Conduct:
 - a) a reprimand; or,

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- b) suspension of the remuneration paid to the member in respect of his or her services as a member of Council or local board, as the case may be, for a period of up to 90 days.

The Integrity Commissioner may also recommend that Council or a local board take the following actions:

- c) removal from membership from an advisory committee or local board;
- d) removal as Chair of a Committee or local board;
- e) repayment or reimbursement of moneys received;
- f) return of property or reimbursement of its value; or,
- g) a request for an apology to Council, the complainant, or both.

8. Member not Blameworthy

If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct 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 shall so state in the report and shall recommend that no penalty be imposed.

9. Report to Council

The City Clerk shall process the Integrity Commissioner's report for the next meeting of Council or local board, or both. Said report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been reported out to the members of Council through the City Clerk.

10. Duty of Council / Local Board

Council or a local board shall consider and respond to the report within 90 days after the day the report is laid before it.

11. Confidentiality

A complaint will be processed in compliance with the confidentiality requirements in Section 223.5 of the *Municipal Act, 2001*, which are summarized in the following subsections:

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- a) the Integrity Commissioner and every person acting under his/her instructions shall preserve secrecy with respect to all matters that come to his/her knowledge in the course of any investigation except as required by law in a criminal proceeding or in accordance with the provisions of Section 223.5(1) of the *Municipal Act, 2001*.
- b) pursuant to Section 223.5(3) of the *Municipal Act, 2001*, this Section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.
- c) if the Integrity Commissioner reports to the municipality or to a local board his/her opinion about whether a member of Council, a local board or advisory committee has contravened the applicable Code of Conduct, the Integrity Commissioner may disclose in the report such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.
- d) the municipality and each local board shall ensure that reports received from the Integrity Commissioner by the municipality or by the board, as the case may be, are made available to the public upon the matter being reported out to the members of Council. Neither the Integrity Commissioner nor any person acting under the instructions of the Integrity Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part.
- e) if the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code of Canada*, the Integrity Commissioner shall 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 through the City Clerk.

12. Integrity Commissioner Vacancy

Should the office of Integrity Commissioner become vacant, the Code of Conduct remains in effect and all members shall abide by the provisions set out therein. When a vacancy occurs, all formal complaints shall be held in abeyance until such time as a new Integrity Commissioner has been appointed; or an interim measure enacted to enable the complaint to be addressed within a reasonable amount of time. For example the City could engage the services of an Integrity Commissioner from another local municipality as a potential interim measure.

REPRISALS AND OBSTRUCTION

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS
AND ADVISORY COMMITTEES

Members shall respect the integrity of the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is therefore prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his/her responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications.

5. **HISTORY OF POLICY CHANGES**

Administrative Updates

2016-06-01 - I-005 policy template re-formatted to new numbering system and given number GOV-COU-005.

Formal Amendments

2009-11-02 - As per Council directive.

2019-06-24 - As per Council directive.

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

APPENDIX 'A'

Advisory Committee Members' Code of Conduct

The purpose of an advisory committee is to provide informed advice and guidance, as well as to facilitate public input to City Council on programs and policies. In recognition of the impartial and objective advice received from advisory committees, as well as the challenges and inherent restrictions placed upon these same individuals in assessing and recommending various options in a conscientious and ethical manner, the following Code of Conduct is provided as a general standard for all advisory committee members to ensure they are acting in a manner that is appropriate with regard to his/her committee.

The Advisory Committee Members' Code of Conduct shall be applicable to all members of the City of Kitchener's advisory committees, being:

- Arts and Culture Advisory Committee;
- Compass Kitchener;
- Cycling and Trails Advisory Committee;
- Downtown Action and Advisory Committee;
- Economic Development Advisory Committee;
- Environmental Committee;
- Equity and Anti-Racism Advisory Committee;
- Heritage Kitchener; and
- Safe and Healthy Community Advisory Committee.

1. Advisory committee members shall, when conducting committee business, preparing written correspondence, interacting with the media, members of Council, staff or members of the public, act in a manner that accomplishes the following:

- a) fulfils the mandate and mission statement of his or her advisory committee;
- b) respects due process and the authority of the Chair, Vice-Chair or Presiding Officer;
- c) demonstrates respect for all fellow committee members, Council, staff and the public;
- d) respects and gives fair consideration to diverse and opposing viewpoints;
- e) demonstrates due diligence in preparing for meetings, special occasions, or other committee-related events;

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

- f) demonstrates professionalism, transparency, accountability and timeliness in completing any tasks or projects undertaken by the committee;
 - g) conducts their duties and responsibilities in a manner that is consistent with the City of Kitchener's commitment to equity, inclusion and anti-racism, whereby racism and oppression are not permissible at either an individual or systemic level, in accordance with policy GOV-COR-XXX (Equity, Inclusion and Anti-Racism)
 - h) conforms with all relevant legislation, by-laws, policies and guidelines; and,
 - i) contributes in a meaningful manner, offering constructive comments to Council, staff and fellow committee members.
2. A member of an advisory committee shall not:
- a) place them self in a position where the member is under obligation to any person who might benefit from special consideration or favour on their part or who might seek in any way preferential treatment;
 - b) accord, in the performance of his or her official duties, preferential treatment to relatives or to organizations in which the member, his or her relatives have an interest, financial or otherwise;
 - c) deal with an application to the City for a grant, award, contract, permit or other benefit involving the member, his or her immediate relative;
 - d) place them self in a position where the member could derive any direct benefit or interest from any matter about which they can influence decisions; and,
 - e) benefit from the use of information acquired during the course of his or her official duties which is not generally available to the public.
3. Advisory committee members shall complete all mandatory equity and anti-racism training required as per their position as outlined in the corporate-wide Equity and Anti-Racism Training Strategy. Volunteer members of advisory committees are required to complete all mandatory training within one appointment term (2 years); once all mandatory training is complete, advisory committee members are expected to take part in ongoing training opportunities throughout subsequent appointment terms as provided through the City.
4. A member of an advisory committee shall disclose immediately to the committee or the Committee Administrator, who would disclose to the committee, that the member could be involved in either a real or perceived conflict of interest as prohibited by the Code; and shall abide by any decision

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

made by the committee, with respect to such conflict of interest without recourse.

If a member is perceived or known to have a conflict of interest as prohibited by the Code and has not disclosed this to the committee; then that matter may be brought forward for the committee's consideration. When such a matter has been brought forward, the committee, through a majority vote, would determine if the member is in a conflict position in accordance with the provisions of Section 2 of this Code.

4. Where an advisory committee member believes or has been advised by the committee that they have a conflict of interest in a particular matter, he/she shall:
 - a) prior to any consideration of the matter, disclose his or her interest and the general nature thereof;
 - b) leave the room for the duration of time that the matter is being considered;
 - c) not take part in the discussion of, or vote on any question or recommendation in respect of the matter; and,
 - d) not attempt in any way whether before, during or after the meeting to influence the voting on any such question or recommendation.
5. Where the number of members who, by reason of conflict, are incapable of participating in a meeting such that the remaining members no longer constitute a quorum, as set out in *Kitchener Municipal Code Chapter 25 (Procedure)*; then the remaining members shall be deemed to constitute a quorum provided there are not less than two members present.
6. Notwithstanding Section 2(c), members of Heritage Kitchener who own property designated under Part IV or Part V of the *Ontario Heritage Act* and are seeking consideration of a Heritage Permit Application (HPA) for said property are permitted to address the committee regarding their HPA; but, are prohibited from taking part in the committee's deliberation and / or voting regarding that matter.
7. Should a member of an advisory committee breach any of the clauses set out herein, the City Clerk may refer the matter to Council who will consider whether to take any of the possible corrective actions, as outlined under Part 3 Subsection 7(5) of the Code of Conduct for Members of Council, Local Boards and Advisory Committees.

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS AND ADVISORY COMMITTEES

APPENDIX 'B'

FORMAL COMPLAINT PROCEDURE AFFIDAVIT

Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the Criminal Code, R.S.C. 1985, c. C-46, and also to civil liability for defamation.

AFFIDAVIT OF _____
[Please print full name]

I, _____, of the _____
[Full name] [City, Town, etc of]

in the _____
[Municipality of residence]

in the Province of Ontario MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this affidavit, because

[Insert reasons - e.g. I work for . . . or I attended the meeting at which . . . etc].

2. I have reasonable and probable grounds to believe that a member of Kitchener City

Council or local board, _____
[Specify name of member],

has contravened section(s) _____ of the Code of Conduct.
[Specify section(s)]

The particulars of which are as follows:

[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule 'A' form and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit.]

Policy No: GOV-COU-005

Policy Title: CODE OF CONDUCT FOR MEMBERS OF COUNCIL, LOCAL BOARDS
AND ADVISORY COMMITTEES

Please see the attached Schedule 'A' ()

This affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

SWORN [or AFFIRMED] before me at the
[City, Town, etc of] _____)
_____ in the)
Province of Ontario on this _____ day of)
_____, _____)
_____)

[Signature of Complainant]

[Signature of commissioner])
A Commissioner for taking affidavits, etc.)

