

## Code of Conduct for Members of Council



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City Council	May 17, 2022	56-2022	1	23
Subsection	Repeals By-Law Number		Policy Number	
	N/A		CC-5-2	

### City of Kenora Council Code of Conduct Policy Statement:

The purpose and intent of the Council Code of Conduct is to establish standards of conduct for Members of Council in the individual conduct of their official duties.

The Code represents general standards. The Code does not replace Council Member's roles, responsibilities, actions and behaviours required by various statutes, by-laws and policies.

#### Statements of Principle:

A written Code of Conduct helps to ensure that the members of Council share a common basis of acceptable conduct. These standards are designed to supplement the legislative parameters within which the members must operate. These standards are intended to enhance public confidence that the City of Kenora's elected and appointed officials operate from a basis of integrity, justice and courtesy.

#### Specific Policy Requirements:

##### Section 1: Overview

1.1 The City of Kenora's Code of Conduct is a general standard that augments the provincial laws and municipal policies and by-laws that govern the members' conduct.

##### Section 2: Procedures and Statutes Regulating Conduct

2.1 This Code of Conduct operates along with and as a supplement to the existing statutes and City policies governing the conduct of members, including but not limited to the following:

- (a) Municipal Act, 2001, S.O. 2001, c. 25;
- (b) Municipal Conflict of Interest Act, R.S.O 1990, c.M. 50;
- (c) Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M. 56;
- (d) Municipal Elections Act, 1996, S.O. 1996, c. 32;

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- (e) The Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009; and
- (f) Human Rights Code.

- 2.2 The City of Kenora Procedural By-law, as amended.
- 2.3 The Criminal Code of Canada also governs the conduct of members.
- 2.4 Other Council policies such as Council Code of Ethics and Council CAO/Staff Relations Policies and associated procedures and programs

### **Section 3: Application**

3.1 This Code of Conduct and the references within it, shall apply to all members of Kenora City Council.

### **Section 4: Definitions**

4.1 For the purpose of this Code of Conduct:

“Child” means a child born within or outside a marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family or as defined under the current Municipal Conflict of Interest Act as amended from time to time.

“City” means The Corporation of the City of Kenora.

“City Property” means items, services or resources which are the property of the City including but not limited to: materials, equipment, vehicles, facilities, technology, City developed computer programs of technological innovations, databases, intellectual property, City-owned images, logos, coat of arms, and supplies.

“Clerk” means the City Clerk of The Corporation of the City of Kenora.

“Code” means this Code of Conduct as it applies to members of Council.

“Complaint” means an alleged contravention of this Code.

“Confidential Information” includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature,

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information that is subject to solicitor-client privilege and information that is deemed to be personal information. Under MFIPPA, "personal information" means recorded information about an identifiable individual, including:

- i. Information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- ii. Information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- iii. Any identifying number, symbol or other particular assigned to the individual;
- iv. The address, telephone number, fingerprints or blood type of the individual;
- v. The personal opinions or views of the individual except if they relate to another individual;
- vi. Correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- vii. The views or opinions of another individual about the individual; and
- viii. The individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

It also means any information that is of a personal nature to City employees or clients or information that is not available to the public and that, if disclosed, could result in loss or damage to the Corporation or could give the person to whom it is disclosed an advantage. Confidential information includes, but is not limited to the following information:

- (i) Disclosed or discussed at a Closed Session meeting of Council;
- (ii) That is circulated to Members of Council and marked "Confidential"; and
- (iii) That is given verbally in confidence in preparation of or following a meeting that is closed to the public and includes, but is not limited to the following types of information:
  1. Personal matters about an identifiable individual(s);
  2. Information about suppliers provided for evaluation which might be useful to other suppliers;
  3. Matters relating to legal affairs of the City; sources of complaints where the identity of the complainant is given in confidence; items under negotiations; and
  4. Matters identified as solicitor-client privileged

"Corporation" means Corporation of the City of Kenora.

"Council" means the Council of the City of Kenora.

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“Employee” means a person employed by The Corporation of the City of Kenora including those employed on a personal services contract, and volunteers, but does not include Members.

“Demonstrably Acting in the Public Interest” means acting to advance a concern, issue, or complaint that involves an issue of importance to some or all citizens of Kenora, as opposed to a private interest, which is mainly of interest to the affected party(ies).

“Elector” means a person who is entitled to vote in a municipal election held in the City of Kenora at the time of making a complaint.

“Frivolous” means something that is not worthy of serious consideration, or that is of little or no importance, due to its lack of seriousness or sense.

“Gifts and Benefits” means any cash or monetary equivalent, fee, object of value, service, travel and accommodation, or entertainment.

“Good Faith” means in accordance with standards of honesty, trust and sincerity.

“Harassment” means harassing behaviour and conduct as indicated by the City of Kenora Respect in the Workplace Policy and the Ontario Human Rights Code.

“Hospitality” means instances where there is entertainment of or by outside parties for the furtherance of municipal business.

“In-law” means a relative by marriage.

“Integrity Commissioner” means the Integrity Commissioner appointed by Council pursuant to the Municipal Act, 2001.

“Local Board” means a local board as defined in section 223.1 of the Municipal Act, 2001.

“Member” means a member of Council.

“Office” means the authority and duties attached to the position of being an elected member of Council.

“Official Duties” means the public duties of a Member and includes functions performed by Members necessary to demonstrate responsible and accountable government with respect to matters within the City and which are done for the purpose of providing good government with respect to those matters.

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“Parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child or as defined under the current Municipal Conflict of Interest Act as amended from time to time.

“Pecuniary Interests” are interests that have a direct or indirect financial impact or as defined under the current Municipal Conflict of Interest Act as amended from time to time they include:

- (i) Any matter in which the member has a financial interest;
- (ii) Any matter in which the member is a shareholder, director or senior officer of or holds a controlling interest in a corporation that does or does not offer its securities to the public, and such corporation has a financial interest;
- (iii) Any matter in which the member is a partner of a person or is in the employment of a person that has a financial interest; and
- (iv) Any matter in which a parent, spouse, same sex partner or any child of the member has a financial interest, if known to the member.

“Personal Benefit” means forms of advantage other than financial such as seeking an appointment, promotion or transfer within the Corporation on behalf of a family member and includes the private interests of a Member.

“Private interest” means all of the activities of a Member not included in the term defined as “Official Duties”.

“Sibling” means one of two or more children having one or both parents in common; a brother or sister.

“Spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage or as defined in the current Municipal Conflict of Interest Act as defined from time to time.

“Vexatious” means without reasonable or probable cause or excuse.

### Section 5: General Standards of Conduct

5.1 Members are responsible for making honest statements. No member shall make a statement when they know that statement is false. No member shall make a statement with the intent to mislead Council or members of the public.

5.2 Members shall at all times serve and be seen to serve their constituents in a conscientious and diligent manner.

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5.3 Members will conduct their dealings with each other in ways that maintain public confidence in the office to which they have been elected, are open and honest, focus on issues rather than personalities, avoid aggressive, offensive or abusive conduct.

5.4 Members should be committed to performing their functions with integrity, accountability and transparency.

5.5 Members shall perform official duties and arrange their public affairs in a temperate and abstemious manner that promotes public confidence and respect and will bear close public scrutiny.

5.6 It shall be the duty of all Members to abide by all applicable legislation, policies and procedures pertaining to their position as a Member.

5.7 Members shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of Official Duties to the City.

5.8 Every Member in exercising his or her powers and in discharging his or her Official Duties shall, in accordance with the Municipal Act, 2001, and Municipal Conflict of Interest Act:

- (a) Seek to advance the common good of the City of Kenora;
- (b) Truly, faithfully and impartially exercise his or her office to the best of his or her knowledge and ability;
- (c) Exercise care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (d) Exercise his or her powers only for the purpose for which they were intended; and
- (e) Competently exercise his or her office by educating themselves either formally or informally, in matters pertaining to their official duties.

### Responsibilities of Council, the Mayor and Councillors

5.9 Council as a whole has the authority to approve budget, policy or processes, including the structures and procedures for committees. Authority to act on behalf of Council, including through a committee, can only be delegated by Council or through law.

5.10 Council is responsible for and dedicated to providing good and effective government for the public in an open, accountable and transparent manner.

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5.11 A fiduciary relationship exists between the Council and inhabitants of the municipality.

5.12 Members of Council:

- (a) May not impugn or malign a debate or decision or otherwise erode the authority of Council;
- (b) When appointed to committees and other bodies as part of their duties must make every effort to participate diligently in these bodies with good faith and care;
- (c) Must uphold the law and conduct themselves with the highest degree of ethical behavior and integrity;
- (d) Must avoid conflict of interest;
- (e) Must seek to advance the public interest with honesty and treat members of the public with dignity, understanding and respect;
- (f) May not make statements known to be false or make a statement with the intent to mislead Council or the public;
- (g) Are responsible in this Code for the actions of their staff, volunteers, agents or other representatives working on their behalf.

### Section 6: Respect For Decision Making Process

6.1 Members shall accurately and adequately communicate the decisions of Council such that respect for the decision and decision-making process is fostered.

6.2 Members shall not attempt directly or indirectly, to influence the decision-making process, as it relates to the award of contracts or settlement of claims. This includes but is not limited to direct or indirect personal contact or interaction with the parties administering or directly involved in such processes.

### Section 7: Avoidance of Waste

7.1 Members shall avoid waste, abuse and extravagance in the provision or use of public resources or any other City Property.

### Section 8: Gifts and Benefits

8.1 No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions listed below.

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8.2 For these purposes, a fee or advance, gift or benefit provided with the member's knowledge to a member's spouse, child, parent, brother, sister, father-in-law, mother-in-law, sister-in-law and brother-in-law or to a member's staff that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.

8.3 The following are recognized as exceptions:

- (a) Compensation or benefit authorized by Council;
- (b) Such 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, by the federal government or by a foreign government within a foreign country;
- (g) Food and beverages consumed at banquets, receptions or similar events, if:
  - (i) Attendance serves a legitimate business purpose;
  - (ii) The Person extending the invitation or a representation of the organization is in attendance; and
  - (iii) The value is reasonable and the invitations infrequent.
- (h) Communication to the offices of a member, including unpaid subscriptions to newspapers and periodicals.

8.4 Except in the case of category (a) or (f), a member may not accept a gift or benefit worth in excess of \$250 or gifts and benefits from one source during a calendar year worth in excess of \$250.

### Section 9: Disclosure Statement

9.1 In the case of categories 8.3(b), (e), (f), (g) and (h), if the value of the gift or benefit exceeds \$150, or if the total value received from any one source during the course of a calendar year exceeds \$150, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner. The disclosure statement must indicate:

- (a) The nature of the gift or benefit;
- (b) Its source and date of receipt;
- (c) The circumstances under which it was given or received;
- (d) Its estimated value;
- (e) What the recipient intends to do with any gift; and
- (f) Whether any gift will at any point be left with the City.

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9.2 A disclosure statement must be filed even if the gift or benefit is immediately returned. Any disclosure statement will be a matter of public record.

9.3 On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in the Integrity Commissioner's opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes the preliminary determination that the receipt of the gift may create a conflict, he or she shall call upon the member of Council to justify the receipt of the gift or benefit.

9.4 Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, "request" or forfeit the gift or remit the value of any gift or benefit already consumed to the City.

### **Section 10: Confidential Information**

10.1 No member shall disclose or release by any means to any member of the public, or in any way divulge any confidential information, including personal information or any aspect of deliberations acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council resolution to do so.

10.2 Members shall not release information subject to solicitor-client privilege, unless expressly authorized by Council, Local Board resolution (if so empowered), or required by law to do so.

10.3 Nor shall members use confidential information including information that they have knowledge of by virtue of their position that is not in the public domain, including e-mails and correspondence from other members, or third parties, for personal or private gain, or for the gain of relatives or any person or corporation or cause detriment to the City, Council, Local Board, or others. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

10.4 Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

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Members shall not disclose, use or release information in contravention of applicable privacy law.

10.5 The Municipal Act, 2001, permits information that concerns personal matters about an identifiable individual; labour relations or employee negotiations; litigation; property acquisitions/dispositions; the security of the property of the City or a local board; advice subject to solicitor-client privilege; information explicitly supplied in confidence to the municipality by Canada, a province or territory or a Crown agency; trade secrets or scientific, technical, commercial, financial or labour relations information supplied in confidence to the municipality or belonging to the municipality/local board; positions, plans or instructions to be applied to any negotiations carried on by the municipality/local board, and matters authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, "confidential information" also includes this type of information.

10.6 Under the City of Kenora Procedural By-law as amended from time to time a matter that has been discussed at an in-camera meeting remains confidential. Members have a duty to hold information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. Members shall not either directly or indirectly, release, make public or in any way divulge the content of any such matter, or the substance of deliberations, of the in-camera meeting including memorandums and staff reports that are distributed for consideration during the in camera meeting to anyone, unless specifically authorized by City Council resolution or required by law.

10.7 Examples of the types of information that a member of Council must keep confidential include but are not limited to the following:

- (a) Items under litigation, negotiation, or personnel matters;
- (b) Information that infringes on the rights of others (e.g., sources of complaints);
- (c) Price schedules in contract tender or Request for Proposal submissions if so specified;
- (d) Information deemed to be "personal information" under the Municipal Conflict of Interest Act; and
- (e) Statistical data required by law not to be released (e.g. certain census or assessment data).

10.8 Members of Council shall not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

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10.9 Members are only entitled to information in the possession of the City that is relevant to matters before the Council or a committee. Otherwise, they enjoy the same level of access rights to information as any other member of the community and must follow the same processes as any private citizen. As one example, no member should have access to documents or receive any information related to a particular procurement process while the process is ongoing.

### **Section 11: Use of City Property, Services and Other Resources**

11.1 No member of Council shall use, or permit the use of City Property, including land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, computers, networks, websites, Corporate transportation) for activities other than the business of the Corporation. Nor should any member obtain personal benefit or financial gain from the use or sale of City Property, including City-developed intellectual property (for example, inventions, creative writings, computer programs and drawings), technical innovations, City owned images, logos, coat of arms, or other items capable of being patented, since all such property remains exclusively that of the City.

11.2 Members shall conduct themselves in accordance with the provisions of the City of Kenora Technology Use Policy. The City of Kenora licenses the use of computer software from a variety of vendors. The City of Kenora does not own the software or its documentation. Software is normally copyrighted, and no individual may copy or distribute the software unless expressly permitted to do so under the applicable licence. This policy applies to the use of blackberries, personal computers, fax machines, printers, etc.

11.3 Members shall conduct themselves in accordance with the City of Kenora's Use of Corporate Resources for Election Purposes Policy.

### **Section 12: Election Campaign Work**

12.1 Members are required to follow the provisions of the Municipal Elections Act, 1996 and Council's Policy with respect to the Use of Corporate Resources for Election Purposes.

12.2 No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters and Councillor websites linked through the City's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on City property. No member shall use the services of persons during hours in which those persons receive any compensation from the City.

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**Section 13: Municipal Conflict Of Interest Act**

13.1 Members shall conduct themselves in accordance with the Municipal Conflict of Interest Act as amended from time to time.

**Section 14: Improper Use of Influence**

14.1 No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

14.2 Examples of prohibited conduct are the use of one’s status as a member to improperly influence the decision of another person to the private advantage of oneself, or one’s parents, children or spouse, 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 within Council in return for present actions or inaction.

14.3 For the purposes of this provision “private advantage” does not include a matter:

- (a) That is of general application;
- (b) That affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- (c) That concerns the remuneration or benefits of a member of Council as authorized by Council.

**Section 15: Business Relations**

15.1 No member shall act as a paid agent 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 as amended from time to time.

15.2 A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

**Section 16: Expenses**

16.1 Members shall comply with the provisions of the Council Reimbursement of Expenses Policy as amended from time to time.

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### **Section 17: Conduct Respecting Current and Prospective Employment**

17.1 No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.

### **Section 18: Conduct at Meetings of Council**

18.1 Members shall conduct themselves with decorum at Council and Committee meetings in accordance with the provisions of the City of Kenora's Procedural By-law 90-01 as amended from time to time.

### **Section 19: Conduct Respecting Staff**

19.1 Mutual respect and cooperation are required to achieve the Council's corporate goals and implement the Council's strategic priorities through the work of staff.

19.2 Employees have an obligation to recognize that members of Council have been duly elected to serve the residents of Kenora and respect the role of Council in directing the actions of the City.

19.3 Employees serve Council and work for the municipal corporation under the direction of the Chief Administrative Officer. Council directs staff through its decisions as recorded in the minutes and resolutions of Council. Members have no individual capacity to direct members of staff to carry out particular functions.

19.4 Inquiries of staff from Members should be directed to the Chief Administrative Officer or the appropriate senior staff as directed by the Chief Administrative Officer.

19.5 Only Council as a whole and no single member including the Mayor has the authority to direct staff, approve budget, policy, committee processes and other such matters, unless specifically authorized by Council.

19.6 Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. 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.

19.7 Employees have a duty and obligation to act impartially, and in accordance with prescribed regulations or standards of conduct. Similarly, Employees with professional qualifications have an additional duty and obligation to act in accordance with standards of conduct prescribed for their profession. Members shall refrain from any conduct which may deter, interfere or unduly influence Employees in the performance of such duties and obligations.

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19.8 Certain Employees are employed within the administration of justice. Members shall refrain from making requests or statements or taking actions which may be construed as an attempt to influence the independent administration of justice.

19.9 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.

19.10 In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles are captured in the Code of Conduct and include dealing with constituents and the general public, participating as Committee members, participating as Chairs of Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.

### **Section 20: Discreditable Conduct (Interpersonal Behaviours)**

20.1 All members of Council have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation. All members of Council shall ensure that their work environment is free from discrimination and of personal and sexual harassment.

20.2 The Ontario Human Rights Code and the Occupational Health and Safety Act apply, as do the City of Kenora's Respect in the Workplace Policy, Code of Conduct for Employees and associated procedures and programs addressing a Harassment-free and Discrimination-free Workplace adopted by Council.

20.3 Members shall abide by the provisions of the Human Rights Code, as amended, and, in doing so, shall treat every person, including other Members, employees, and individuals providing services on a contract for service, students on placements, and the public, with dignity, understanding and respect.

20.4 In accordance with the Human Rights Code, as amended, Members shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability.

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20.5 In accordance with the Human Rights Code and the Occupational Health and Safety Act, as amended, harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

20.6 Without limiting the generality of the foregoing, Members shall not:

- (a) Make inappropriate comments or gestures to or about an individual where such conduct is known or ought reasonably to be known to be offensive to the person(s) to whom they are directed or are about;
- (b) Display materials or transmit communications that are inappropriate, offensive, insulting or derogatory;
- (c) Make threats or engage in any abusive activity or course of conduct towards others;
- (d) Vandalize the personal property of others;
- (e) Commit assault of any kind, including making unwanted physical contact, including touching, patting, or pinching; or
- (f) Refuse to converse or interact with anyone based on any ground listed in the Human Rights Code, as amended.

20.7 Harassment or discrimination which occurs in the course of, or is related to, the performance of Official Duties by Members is subject to this Code. If an Employee, a member of the public or any individual brings forward a harassment or discrimination complaint against a Member, the complaint will be referred to the Integrity Commissioner and the complaint procedure under this Code will apply. Upon receipt of a complaint that relates to harassment or discrimination, if the Integrity Commissioner determines that a formal investigation is required, the Integrity Commissioner may forward the information subject of the complaint to Human Resources who will engage the services of a qualified third-party investigator to conduct the HR investigation. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall utilize the investigator's findings to make a determination under the application of the Code and decide whether to conduct a further investigation on the ethical conduct of the Member subject of the complaint. Depending upon the circumstances, the Integrity Commissioner may recommend that appropriate interim measures be implemented while the investigation is in progress. Such interim measures may include physically and/or operationally separating the complainant and the respondent until the investigation has been completed.

### **Section 21: Failure to Adhere to Council Policies and Procedures**

21.1 A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, Members are required to observe the terms of all policies and procedures established by City Council.

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21.2 This provision does not prevent a Member from requesting that Council grant an exemption from a policy.

### **Section 22: Reprisals and Obstruction**

22.1 Members of Council shall respect the integrity of the Code of Conduct. 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 or her responsibilities, as, for example, providing inaccurate or misleading information to the Integrity Commissioner, refusing to answer inquiries or by the destruction of (records) documents or the erasing of electronic communications.

22.2 A refusal to comply with a decision of Council in respect of a recommendation of the Integrity Commissioner is a violation of the Code of Conduct.

### **Section 23: Acting On Advice of the Integrity Commissioner**

23.1 Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner, and the information or facts have not changed in the interim.

### **Section 24: Compliance With the Code of Conduct**

24.1 Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the Criminal Code of Canada or for failing to declare a conflict of personal interest under the Municipal Conflict of Interest Act.

24.2 In addition to any other consequence imposed by law, Members found to have breached this Code may be subject to discipline, including return of a gift or benefit, removal from a Local Board or committee, loss of Chairmanship, removal from a Local Board or committee, censure, a reprimand or, where applicable, suspension of remuneration paid for his or her services as a Member, for a period of up to ninety (90) days.

24.3 The Council shall appoint an Integrity Commissioner to investigate alleged breaches of this Code.

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24.4 Any individual, including members of the public, City employees, and members of Council, who has reasonable grounds to believe that a Member has breached a provision of the Code, may proceed with a complaint.

24.5 An organization, Employee, Member or member of the public having reasonable grounds to believe that a Member has breached this Code, may proceed with a complaint. Complaints must be submitted no more than one year after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines.

24.6 A complainant does not have to pursue the informal complaint process set out in section 25.1 prior to proceeding with the formal complaint process set out in section 25.2.

### Section 25: Procedure – Complaints

#### Informal Complaints

25.1 Any individual who has identified or witnessed behaviour or activity by a member that appears to be in contravention of the Code may address their concerns in the following manner:

- (a) Advise the member that their behaviour or activity contravenes the Code;
- (b) Encourage the member to stop the prohibited behaviour or activity;
- (c) If applicable, confirm to the member your satisfaction or dissatisfaction with his or her response to the concern identified;
- (d) Keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information, including steps taken to resolve the matter.
- (e) If not satisfied with the response received through the informal process, an individual may proceed with a formal complaint through the Integrity Commissioner as outlined in section 25.2.

#### Formal Complaints

25.2 Any individual who has identified or witnessed behaviour or activity by a member that appears to be in contravention of the Code or sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act ("MCIA") in the case of Council members, may address their concerns through the formal complaint process set out below.

- (a) All formal complaints must be made using the City's Complaints Form / Affidavit (see Appendix "B") and shall be dated and signed by the complainant;
- (b) The complaint must include an explanation as to why the issue raised may be a contravention of the Code and any evidence in support of the allegation must be included with the Complaints Form/Affidavit;
- (c) Any witnesses in support of the allegation must be identified on the Complaint Form/Affidavit;

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(d) The Complaint Form/Affidavit must include the name of the member alleged to have breached the Code, the section of the Code allegedly contravened, the date, time and location of the alleged contravention and any other information as required on the Complaint Form/Affidavit;

(e) The complaint shall be filed with the Integrity Commissioner who shall confirm that the information is complete as to (a), (b), (c) and (d) of this section. The Integrity Commissioner will determine whether the matter is, on its face, a complaint with respect to noncompliance with the Code and not covered by other legislation or policies; and

(f) The Integrity Commissioner may request additional information from the complainant.

(g) If the complaint relates to an alleged violation of sections 5, 5.1, or 5.2 of the MCIA, the complaint must be made within six weeks after the applicant became aware of the alleged contravention. The complainant must also provide a statutory declaration to this effect in their application. Response of Integrity Commissioner of Complaint outside Jurisdiction

25.3 If the complaint received by the Integrity Commissioner is deemed not to be a complaint with respect to non-compliance with the Code, or sections 5, 5.1, or 5.2 of the MCIA in the case of Council members, the Integrity Commissioner shall advise the complainant in writing as follows:

(a) Criminal Matter – if the complaint is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that pursuit of such an allegation must be made through the appropriate police service;

(b) Municipal Conflict of Interest – if the complaint is an allegation with respect to matters under the Municipal Conflict of Interest Act, save an except sections 5, 5.1, and 5.2, the complainant shall be advised to review the matter with their own legal counsel;

(c) Municipal Freedom of Information and Protection of Privacy – if the complaint is more appropriately addressed under the Municipal Freedom of Information and Protection of Privacy Act, the complainant shall be referred to the Clerk to have the matter reviewed under that Act; and

(d) Discrimination or Harassment – if the complaint is an allegation of discrimination, violence or harassment, the complainant shall be advised to file a complaint directly to the Human Resources Department under the City of Kenora’s Workplace Human Rights Program or Violence in the Workplace Policy, as appropriate. The complainant will also be advised of his or her right to advance an application to the Ontario Human Rights Tribunal.

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25.4 In the event that a resolution of the complaint is not achieved, any complainant or member may request the complaint be dealt with in accordance with Section 25.1 or 25.2 of this Code.

25.5 If the matter is covered by other policies with a complaint procedure or legislation, the complainant will be advised and directed to proceed in a manner as considered appropriate by the Integrity Commissioner.

25.6 If the Integrity Commissioner has already reviewed and rendered a decision or has investigated the subject matter of the complaint, the complainant will be advised that the matter cannot be further pursued through Code complaint process.

### **Refusal to Conduct an Investigation**

25.7 If upon review of a complaint, the Integrity Commissioner is of the opinion that the complaint is frivolous, vexatious or not made in good faith, or that there are no or insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation and shall communicate this position in writing to the complainant and the member identified in the Complaint Form/Affidavit.

### **Opportunity for Resolution**

25.8 If at any time, following the receipt of a formal complaint or during the investigation process, the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the member agree, efforts may be made to achieve an informal resolution.

### **Public Registry and Periodic Reports to Council**

25.9 The Integrity Commissioner shall report to Council annually. In his/her report to Council, he/she shall report on all complaints received and on their disposition. In addition, the Integrity Commissioner shall post all decisions of Formal Complaints regarding whether to conduct an inquiry, and the outcome of any inquiry, on a public registry established by the City for such purpose.

### **Section 26: Investigation**

26.1 If the Integrity Commissioner determines that a formal investigation is required he or she shall proceed in the following manner, subject to the Integrity Commissioner's ability to elect to exercise the powers of a commissioner under Parts I and II of the Public Inquiries Act.

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26.2 The Integrity Commissioner shall provide a copy of the complaint and any supporting materials to the member whose conduct is in question with a request that a written response to the allegation be provided to the Integrity Commissioner within fourteen days.

26.3 The Integrity Commissioner shall give a copy of the response provided by the member to the complainant with a request for a written reply within fourteen days.

26.4 If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials, and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

26.5 The Integrity Commissioner may make interim reports to Council where necessary and as required to address any issues of interference, obstruction, delay or retaliation encountered during the investigation.

26.6 At any time the complainant may abandon the request for an investigation and the Integrity Commissioner will cease his or her investigation.

### **Section 27: Recommendation Report**

27.1 Upon completion of an investigation, the Integrity Commissioner shall report to the complainant and the member on the results of his or her review within ninety days of receiving a complete Complaint Form/Affidavit. If the investigation process is going to take more than ninety days, the Integrity Commissioner shall provide an interim report to the complainant and member indicating when the complete report will be available.

27.2 If during the investigation process, the complaint is sustained, the Integrity Commissioner shall report to Council, outlining the findings, the terms of any resolution and any recommended action within thirty days of the completion of the investigation. If the complaint is withdrawn or resolved, the Integrity Commissioner, within her/his discretion, may decide not to report to Council.

27.3 (a) If upon completion of the investigation the Integrity Commissioner finds that a breach of the Code has occurred, the Commissioner shall report his or her findings to Council including a recommendation:

(i) as to the imposition of a penalty as set out in the Municipal Act of: a reprimand; suspension of remuneration paid to the member for a period of up to ninety days, and/or

(ii) As to remedial action which may include but is not limited to:

1. Return of a gift or benefit;
2. Removal from a Local Board or committee;

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3. Loss of Chairmanship;
4. A verbal and/or written apology;
5. Any other remedial action recommended by the Integrity Commissioner.

27.3 (b) Upon Council's decision on the recommendations, the Member who is the subject of the Integrity Commissioner's investigation and recommendations, shall comply with the Council decision. Failure to comply with Council's decision requiring the Member to carry out an action set out as a penalty or set out as a remedial action, shall constitute a contravention of this Code, without the requirement for a separate Code complaint.

27.4 If upon completion of the investigation, the Integrity Commissioner finds that there has been no contravention of the Code, or that a contravention occurred, however, the member took all reasonable measures to prevent it, or the contravention committed was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall set this out in its report to Council.

27.5 With respect to alleged violations of sections 5, 5.1, or 5.2 of the MCIA, if the Integrity Commissioner determines that, on a balance of probabilities, there has been a violation of the MCIA, or is otherwise of the opinion that it is in the City's interest for a judge to determine if there has been a violation of the MCIA, the Commissioner may apply to a judge for such a determination. For greater certainty, nothing in this Protocol shall prevent a complainant from bringing their own application to a judge for a determination of whether there has been a violation of sections 5, 5.1, or 5.2 of the MCIA.

### **Section 28: Duty of Council**

28.1 The Council shall consider the report of the Integrity Commissioner within 30 days of it being received by the Clerk and shall take the action it considers appropriate with regard to the recommendation(s) of the Integrity Commissioner.

28.2 In circumstances where the alleged breach of trust or other misconduct is serious in nature, Council may pass a resolution, pursuant to the Municipal Act, 2001, requesting a judicial investigation into the Member's conduct.

#### **No Complaints or Reports Prior to Election**

28.3 No complaint regarding a Member of Council or Local Board regarding a Code contravention or sections 5, 5.1, or 5.2 of the MCIA in the case of Council members, whether the Member is a candidate in an election or not, may be referred to the Integrity Commissioner for review and/or investigation between regularly scheduled Nomination Day and Voting Day in any year in which a regular municipal election will be held. Any complaint received after Nomination Day shall be deemed received by the Integrity Commissioner on November 15th in a regular election year and the complainant shall be

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so advised of this process. The time elapsed between Nomination Day in a regular election year and the inaugural meeting of the newly elected Council shall not be included in the time calculation referred to in section 9.0.

28.4 Notwithstanding section 9.7 of the Code, the Integrity Commissioner shall not make any report to General Committee or any other person after the regularly scheduled General Committee meeting immediately preceding Nomination Day in any year in which a regular municipal election is to be held.

28.5 If the Commissioner has not completed an inquiry before regular nomination day for a regular election the Commissioner shall terminate the inquiry on Nomination Day.

28.6 If an inquiry is terminated in accordance with section 28.5, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after Voting Day in a regular election, the person who made the application or the member or former member whose conduct is concerned applies in writing to the Commissioner for the inquiry to be commenced.

28.7 Where an inquiry has been terminated, and the complainant, member or former member has requested the inquiry be carried out, the Integrity Commissioner shall be permitted to use any information and evidence obtained prior to the termination. If no request is made to carry out the inquiry, no review of investigation shall be made.

28.8 Council shall not consider whether to impose the penalties referred to in 27.3 on a Member during the period starting on Nomination Day for a regular election and ending on Voting Day in a regular election.

### **Section 29: Confidentiality of Complaint Documents**

29.1 The Integrity Commissioner and every person acting under his or her instructions shall preserve the confidentiality of all documents, material or other information, whether belonging to the City or not, that come into their possession or to their knowledge during the course of their duties as required by section 223.5 of the Municipal Act.

29.2 Pursuant to section 223.5(3) of the Municipal Act, this section prevails over the Municipal Freedom of Information and Protection of Privacy Act.

29.3 If the Integrity Commissioner reports to the Council on an investigation into an alleged breach of the Code, the report shall only disclose such information that in the Integrity Commissioner's opinion is required for the purposes of the report.

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29.4 If the Integrity Commissioner issues an annual or other periodic report to Council on his or her activities, the Integrity Commissioner shall summarize the advice he or she has given but shall not disclose confidential information that could identify a person concerned.

### **Section 30: Other Duties of the Integrity Commissioner**

30.1 In addition, to conducting investigations regarding alleged breaches of the Code, the Integrity Commissioner shall have the following responsibilities:

- (a) Provide information to Council as to their obligations under the Code;
- (b) Provide advice to individual members regarding specific situations as they relate to the application of the Code;
- (c) Provide advice to Council on other policies and procedures that relate to the ethical behavior of members;
- (d) Provide general advice on conflict of interest issues noting that this advice may not be used in defense of allegations related to conflict of interest;
- (e) Provide information to the public regarding the Code and the obligations of members under the Code; and
- (f) Provide an annual report to Council on the activities of the Integrity Commissioner.

### **Section 31: Requests for Advice**

31.1 Where an individual member is seeking to obtain advice from the Integrity Commissioner, the member shall submit to the Integrity Commissioner a completed Request for Advice Form (see Appendix "C") which shall be forwarded to the Integrity Commissioner for response.

31.2 The Integrity Commissioner shall provide his or her advice in writing to the member.

31.3 Any written advice given by the Integrity Commissioner to a member, as it relates to the Code, binds the Integrity Commissioner in any subsequent consideration of the member's conduct in the same matter provided the relevant facts known to the member were disclosed to the Integrity Commissioner.

31.4 Any written requests for advice and responses to such requests are covered under the Municipal Freedom of Information and Protection of Privacy Act.

### **Section 32: Annual Report to Council**

32.1 In completing its annual report to Council, the Integrity Commissioner shall include information on the nature and volume of activity for the past year and provide examples, anonymized in respect of advice provided and the nature of complaints received and responded to.

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32.2 The annual report of the Integrity Commissioner shall be provided to General Committee for information purposes. The report is a public document.

32.3 The Integrity Commissioner shall file his or her annual report no later than 6 months after his or her initial appointment and by March 31 annually thereafter.

#### Related Policies:

- Procedural By-law
- All Council Policies contained within the City's comprehensive Policy Manual
- Any applicable Human Resources and Health and Safety Policies contained within the City's comprehensive Policy Manual
- Procurement Policy

#### Related Legislation:

- Municipal Act, 2001, S.O. 2001, c. 25;
- Municipal Conflict of Interest Act, R.S.O 1990, c.M. 50;
- Municipal Elections Act, 1996, S.O. 1996, c. 32;
- Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M. 56;
- Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009
- The Human Rights Code; and
- The Criminal Code of Canada.

**Appendix "A" –  
Council Code of Conduct Policy #CC-5-2**

**Disclosure Statement**

Section 8 of the Council Code of Conduct regarding the acceptance of gifts and benefits, requires members to disclose the receipt of certain gifts and benefits if the dollar value of a single gift or benefit exceeds \$150 or if the total value of gifts and benefits received from one source in a calendar year exceeds \$150. This Disclosure Statement is to be used to report on such gifts and benefits and shall be filed with the Integrity Commissioner (per Section 9) within 30 days of receipt of such gift or benefit, or upon reaching the annual limit. Disclosure Statements are a matter of public record.

Nature of Gift or Benefit Received: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Source of Gift or Benefit: \_\_\_\_\_

\_\_\_\_\_

Circumstances Under Which Gift or Benefit Received: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Intended Use of the Gift or Benefit (i.e. will it be donated/provided to the City): \_\_\_\_\_

\_\_\_\_\_

Estimated Value of Gift or Benefit: \$ \_\_\_\_\_

Date Gift or Benefit Received: \_\_\_\_\_

Signature of Member \_\_\_\_\_ Date \_\_\_\_\_

Date Statement Received by Integrity Commissioner \_\_\_\_\_

**Appendix "B"**  
**Council Code of Conduct Policy #CC-5-2**

**Formal Complaint Form / Affidavit**

I, (full name) \_\_\_\_\_

of the(municipality) \_\_\_\_\_ in the Province of Ontario

do solemnly swear/(affirm and declare) that the following contents of this affidavit as subscribed are true and correct:

Permanent place of residence: \_\_\_\_\_

\_\_\_\_\_

Mailing address (if different from above): \_\_\_\_\_

\_\_\_\_\_

I have personal knowledge of the facts as set out in this Affidavit because (insert reasons e.g. I work for... I attended a meeting at which... etc.)

\_\_\_\_\_

\_\_\_\_\_

I have reasonable and probable grounds to believe that (specify name of member) has contravened section(s) of the Council Code of Conduct of the City of Kenora. 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 add additional pages and number them and check the box "additional pages" at bottom. 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.)

This affidavit is made for the purpose of requesting that this matter be reviewed by the City of Kenora appointed Integrity Commissioner and for no other purpose.

Identification # (of Identification provided) \_\_\_\_\_

Sworn (or Affirmed) before me at the City of Kenora, in the District of Kenora, in the Province of Ontario on the \_\_\_\_ day, \_\_\_\_\_, month, \_\_\_\_\_, year

Signature (to be witnessed by Commissioner) \_\_\_\_\_

A Commissioner, etc. \_\_\_\_\_ signature of Commissioner  
Stamp of Commissioner

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

**Note:** This is a sworn (affirmed) affidavit of the deponent only. No investigation has been conducted by this authority to confirm or verify the above sworn information. THE CRIMINAL CODE OF CANADA provides that: everyone commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation by affidavit, solemn declaration or deposition or orally, knowing that the statement is false, is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years (Section 131, 132), or by summary conviction (Section 134). 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.

**City of Kenora Council Code of Conduct  
Acknowledgment of Compliance Form**

I, \_\_\_\_\_ acknowledge and confirm that I received a copy of the City of Kenora Council Code of Conduct, and have continual access to electronic copies of the Policy. I have read and understand the City of Kenora Council Code of Conduct, acknowledge that I must comply with its provisions, and that knowingly violating the City of Kenora Council Code of Conduct Policy may result in complaints being submitted to and investigated by the Integrity Commissioner, with possible recommendations being submitted to Council on penalties or remedial action to be imposed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date