

Appendixes

Appendix A :Code of Conduct and Conflict of Interest Guidelines for Councillors

A. Purpose

The commitment of the Resort Municipality of Whistler (the Corporation) is to excellent local government by engaging in relationships that:

- i.** Are ethical and transparent;
- ii.** Will withstand the highest degree of public scrutiny; and
- iii.** Will assure public confidence in the Corporation and the process(es) by which it will achieve its vision.

This commitment requires that the affairs of the Corporation be managed in an environment that ensures stringent standards of ethical behaviour, demonstrating honesty, integrity, and fairness in everything we do.

The purpose of this guideline is to establish standards of conduct expected and required of all Councillors of the Corporation, consistent with this overriding commitment.

The following standards are not intended to be exhaustive. If questions arise, they should be settled in accordance with the general principles in this document, the exercise of sound business and ethical judgment, and consultation with the Chair of the Governance Ethics Committee and CAO.

These standards consist of principles, duties, ethical and conflict of interest standards, and requirements for implementation. All of these elements are of equal importance.

B. Standards of Conduct Imposed By Law

Standards of conduct and duties of Councillors emanate from common law obligations and the Community Charter. In general, these duties can be described as follows:

- i.** Duty of Loyalty

A Councillor must act in what they believe to be the best interests of the Corporation as a whole so as to preserve its assets, further its business and promote the purposes for which it was formed, and in such a manner as a faithful, careful, and ordinarily skilled

Councillor would act in the circumstances.

A Councillor must avoid situations where the Councillor could personally gain or profit from the Corporation, appropriate a business opportunity of the Corporation, or otherwise put themselves in a position of conflict, real or apparent, between their own private interests and the best interests of the Corporation.

(Please Note: A private interest is not limited to a pecuniary or economic advantage and can include any real or tangible interest that personally benefits the Councillor, a member of their household, or an organization with which the Councillor is affiliated. A private interest does not include an interest that applies to the general public or affects an individual as one of a broad class of the public. An apparent conflict exists when there is a reasonable perception, which a reasonably well informed person could have that a Councillor's ability to exercise his duty was or will be affected by the Councillor's private interest.

A Councillor must maintain the confidentiality of information received by themselves in their capacity as a Councillor.

ii. Duty of Care

Councillors owe a duty of care to the Corporation and must exercise the degree of skill and diligence expected from an ordinary person of his or her knowledge and experience. This means:

- a. The standard of behaviour expected of a Councillor will depend upon the particular skills or experience that the Councillor brings to the Corporation in relation to the particular matters under consideration.
- b. The Councillor must be proactive in the performance of his or her duties by:
 1. Attending meetings
 2. Participating in a meaningful way; and
 3. Being vigilant to ensure the Corporation is being properly managed and is complying with laws affecting the Corporation.
- c. In fulfilling their duty of care, Councillors have a responsibility to the Corporation to ensure that systems are in

place to provide Councillors with the information they need to make informed decisions.

iii. Duty to Disclose

The duty of loyalty requires a Councillor to avoid situations that place them in a position of conflict, real or perceived, between their private interests and the interests of the Corporation. However, if a conflict of interest should arise, a Councillor has a duty to disclose fully and properly the nature and extent of the interest to the Mayor and CAO and to declare the general nature of any direct or indirect pecuniary or other interest in a matter at a Council or Committee meeting before participating in respect of the matter and leave the meeting during consideration of the matter.

iv. Other Duties

Federal and provincial legislation extends to Councillors for various actions or omissions (e.g. environmental protection legislation). Councillors should be familiar with the relevant legislation applicable to the Corporation and Corporation Officials and should be satisfied that appropriate safeguards are in place to ensure the Corporation's compliance with the legislation.

C. Appropriate Conduct

i. Avoid Conflict of Interest

- a. Councillors shall avoid situations a) that may result in a conflict or perceived conflict between their personal interests and the interest of the Corporation, and b) where their actions as Councillors are influenced or perceived to be influenced by their personal interests.
- b. In general, a direct or indirect pecuniary interest exists for Councillors who use their position as elected officials to benefit themselves, friends or families. As well, a common law conflict of interest or bias may exist when Councillors consider matters at Council or Committee Meetings.
- c. Full disclosure enables Councillors to resolve unclear situations and gives an opportunity to address conflicting interests before any difficulty arises.

ii. Compliance with the Law

- a. Each Councillor must at all times fully comply with

applicable law and should avoid any situation, which could be perceived as improper or unethical. As well, a Councillor should avoid displaying a cavalier attitude toward compliance with the law.

- b. Councillors are expected to be sufficiently familiar with any legislation and bylaws that apply to their position as members of Council and to recognize potential liabilities, seeking legal advice where appropriate.

iii. Corporate Information and Opportunities

- a. Each Councillor shall ensure that the confidentiality of confidential information is maintained.
- b. A Councillor must not engage in any financial transactions, contracts, or private arrangements for personal profit, which accrue from or are based upon confidential or non-public information, which the Councillor gains by reason of their position as a Councillor.
- c. Confidential information that Councillors receive through their office must not be divulged to anyone other than persons who are authorized by Council to receive the information. A Councillor must not use information that is gained due to his or her position or authority, which is not available to the general public, in order to further the Councillor's private interest. Councillors must also not offer such information to spouses, associates, immediate family, friends, or persons with whom the Councillor is connected by frequent or close association.

iv. Preferential Treatment

Councillors must not act in their official role to assist organizations in their dealings with the Corporation if this may result in preferential treatment to that organization or person.

v. Corporate Property

Councillors must not use corporate property to pursue their private interests or the interests of their spouse, their minor children, or a private corporation controlled by any of these individuals. Corporate property includes real and tangible items such as land, buildings, furniture, fixtures, equipment, and vehicles and also includes intangible items such as data, computer systems, reports,

information, proprietary rights, patents, trademarks, copyrights, logos, name, and reputation.

vi. Gifts, Benefits, and Entertainment

- a. Councillors must not solicit or accept benefits, entertainment, or gifts in any way related to the Councillor's duties or responsibilities with the Corporation.
- b. A Councillor generally may only accept gifts, hospitality, or other benefits associated with their official duties and responsibilities if such gifts, hospitality or other benefits:
 1. Are received as an incident of the protocol or social obligation that normally accompany the responsibilities of office;
 2. Are a lawful representation,;
 3. Are a lawful campaign contribution; and
 4. Subject to the requirement to disclose permitted gifts worth more than \$250 each or \$250 accumulated during a 12 month period.
- c. Any other benefit should be returned to the person offering it as soon as practicable. If there is no opportunity to return an improper gift or benefit, or where the return may be perceived as offensive for cultural or other reasons, the gift must immediately be disclosed and turned over to the Mayor who will make a suitable disposition of the item.
- d. Councillors will comply with all laws relevant to their conduct in relation to Corporation activities. These laws include, without limiting the generality of the foregoing, the Community Charter, Criminal Code and the Competition Act.

vii. Working Relationships

Councillors and individuals who are direct relatives or who permanently reside together may be employed or hold office but Council must ensure that sufficient safeguards are in place to ensure that the Corporation's interests are not compromised.

viii. Allegations of Wrongdoing

- a. Councillors have a duty to report any activity which:

1. They believe contravenes the law;
 2. Represents a real or apparent conflict of interest, a breach of these standards, or a breach of the Corporation's Code of Conduct;
 3. Represents a misuse of Corporation funds or assets; or
 4. Represents a danger to public health, safety, or the environment.
- b. The Corporation will treat any reports of wrongdoing in confidence unless disclosure of the information is authorized and permitted by law. Councillors will not be subject to discipline or reprisals for bringing forward, in good faith, allegations of wrongdoing

D. Implementation

i. Administration and Enforcement of the Code of Conduct and Conflict of Interest Guidelines

The Corporation has designated the Manager of Legislative Services as responsible for the administration and monitoring of these guidelines. They have the responsibility to:

- a. Act as a resource to provide central responsibility for administering this Code of Conduct and Conflict of Interest Guidelines; and
- b. Monitor the degree of compliance with these guidelines and report thereon to the Governance and Ethics Committee.

The Chair of the Governance and Ethics Committee and Manager of Legislative Services will ensure Councillors receive appropriate guidance and training on ethical subjects, as well as the content and meaning of these guidelines.

ii. Reporting an Alleged Breach

- a. A Councillor shall report an alleged breach of these guidelines first to the Governance and Ethics Committee, with a copy to the Manager of Legislative Services.
- b. The role of the Governance and Ethics Committee will be to:

1. Ensure a copy of the report is immediately provided to the Councillor who is the subject of the report, with an invitation to provide a response;
2. Review the documents which describe the report and response;
3. Identify the issues which are raised in these documents;
4. In conjunction with management, facilitate an opportunity for cooperative dialogue among management, the Councillor(s) who has lodged the report and the Councillor(s) who is the subject of the report in an effort to satisfactorily resolve the matter; or alternatively, reach a common understanding of the facts; narrow and define the unresolved issues, and refer them, together with specific questions to the Ethics Commissioner for adjudication and response.
5. The Ethics Commissioner may inspect documents and interview individuals regarding matters, which, in their discretion, are or may be relevant to a report of an alleged breach of these Guidelines.
6. The Ethics Commissioner shall submit their conclusions regarding the alleged breach of these Guidelines with recommendations as to the appropriate course of action to the Chair of the Governance and Ethics Committee who will, in turn, refer such report and recommendations to the next meeting of Council.
7. Time will always be of the essence in dealing with any report of an alleged breach of these Guidelines.

iii. Disclosure of Interests

The following outlines the procedures for disclosure of interests by Councillors:

- a. Completion, upon election as a Councillor, and annually thereafter, of a formal written declaration of interests of the Councillor. Such interests should include all corporations or other legal entities of which such Councillor is an officer, a director, a significant investor, or is in some manner able to exercise, directly or indirectly, influence over the affairs of

such entity. Indirect influence includes, in this context, influence through the Councillor's spouse, a member of their household or a private corporation controlled by any of these individuals;

- b. Supplementary written declarations of interest by Councillors when and if they have a change in their circumstances;
- c. In the case where a real or apparent conflict of interest arises that has not previously been realized or disclosed in the Councillor's written declaration of interests, the legal requirement is that the Councillor declare the conflict at the meeting of Council at which the question of entering into the contract is first taken into consideration, or if the Councillor is not at the date of that meeting interested in the proposed contract, at the next meeting of the Council after they becomes so interested, and in a case where the Councillor becomes interested in a contract after it is made, the declaration is to be made at the first meeting of Council held after the Councillor becomes so interested.
- d. The Municipal Clerk will ensure declarations of interest and/or declared conflicts of interest are shared with all members of Council and that they are regarded as confidential to the extent they contain personal information provided by Councillors.

It is understood and agreed that completion and delivery by a Councillor of the formal written declaration of interests described herein is intended to assist the Councillor in carrying out their obligation to disclose a real or apparent conflict of interest. However, it does not relieve the Councillor from their personal legal obligations to disclose and remedy a specific conflict and potential consequences or sanctions for breach thereof.

- e. Compliance with the Financial Disclosure Act.
- iv.** Actions where a Councillor Identifies a Conflict of Interest Involving Themselves
- a. The minimum first step is to ensure the interest has been disclosed fully and properly to Council in accordance with section D. ii. above;
 - b. If the conflict of interest is one that involves a contract for

pecuniary gain with the Corporation that is subject to the procedure set forth in Section D. iii. c. above, then the Councillor must notify management and/or the Mayor, and, if the contract is approved by Council, submit their resignation forthwith;

- c. If the conflict of interest is not one that requires the Councillor to resign and they are present at a meeting considering the matter, then the Councillor will:
 - 1. Disclose the conflict and the general nature of their interest and/or remind the meeting participants of their previous disclosure of the interest;
 - 2. Withdraw from deliberations or debates, avoid giving recommendations or advice or in any way assuming responsibility for or participation in the decision-making relating to the matter;
 - 3. Remove themselves, for the period of time during which the matter is being discussed and decided, from the meeting room; and
 - 4. Abstain from voting on the matter.

v. Consequences/Sanctions for a Breach

In the event of a breach of these Guidelines, appropriate actions should reflect the nature, magnitude, and seriousness of the breach. The Ethics Commissioner will recommend appropriate action for approval by Council.

The following are examples of consequences a Councillor may face if found to be in breach of these Guidelines:

- a. The Councillor may be required to make full restitution to the Corporation;
- b. The Councillor may be offered the opportunity to resign their position with the Corporation;
- c. The Corporation or member of the public may consider taking legal action against the Councillor to recover moneys or to disqualify the Councillor;
- d. Council or the Mayor may remove the Councillor from a Committee or Acting Mayor duties; and

e. The council may pass or motion of censure.

The foregoing is not an exhaustive list and does not preclude any other sanctions or courses of action that might be available.