

## RESORT MUNICIPALITY OF WHISTLER

### CODE OF CONDUCT BYLAW NO. 2397, 2023 (OPTION B)

#### A BYLAW TO REGULATE THE CONDUCT FOR COUNCIL MEMBERS

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**WHEREAS** municipalities and their Councils are recognized as an order of government within their jurisdiction that is democratically elected, autonomous, responsible and accountable;

**AND WHEREAS** Council Members recognize that they hold office for the benefit of the public and that their conduct must adhere to the highest ethical standards, exceeding the minimum obligations required by law, in order to build and inspire the public's trust and confidence in local government;

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

**AND WHEREAS** a written Code of Conduct demonstrates that Council Members share a common understanding of the ethical obligations which are essential to the fair and effective operation of government;

**NOW THEREFORE** the Council of the Resort Municipality of Whistler, in open meeting assembled, **ENACTS AS FOLLOWS:**

#### PART 1 – GENERAL

##### CITATION

1. This Bylaw may be cited for all purposes as "Code of Conduct Bylaw No. 2397, 2023".

##### DEFINITIONS

2. In this Bylaw:
  - a) "CAO" means the Chief Administrative Officer for the Resort Municipality of Whistler;
  - b) "Committee Member" means a person appointed to a committee, sub-committee, task force, commission, board, or other Council-established body under the *Community Charter* – Part 5, Division 4 – Committees, Commissions and Other bodies, or the *Local Government Act*, but does not include a Council Member;
  - c) "Council Member" means the Mayor and Councillors for the RMOW;
  - d) "FIPPA" means the *Freedom of Information and Protection of Privacy Act*;

- e) “Investigator” means the person appointed to fulfill the duties and responsibilities assigned in Part 3 of this Bylaw;
- f) “RMOW” means the Resort Municipality of Whistler;
- g) “Staff” means an officer or employee of the RMOW, but does not include contractors; and
- h) “Volunteer” means a person serving the RMOW, without compensation, who is not a Council Member, Committee Member or Staff.

## FOUNDATIONAL PRINCIPLES

- 3. Council Members must uphold the following principles:
  - a) Openness: Council Members must conduct their duties in an open, transparent, and impartial manner, except where this conflicts with their duties to protect confidential information.
  - b) Fairness: Council Members must consider all issues consistently and fairly, considering all relevant facts, opinions, and analysis of which a Council Member should be reasonably aware.
  - c) Respect: Council Members must have due regard for diverse perspectives and treat members of the public, on another, and Staff with respect, kindness, and dignity.
  - d) Integrity: Council Members are keepers of the public trust and must uphold the highest standards of ethical behaviour. Council Members are expected to act lawfully, be free from undue influence and make decisions that benefit the community.
  - e) Accountability: Council Members are trusted to act competently, diligently, and responsibly. They must be held accountable for their actions and decisions.
  - f) Leadership and Collaboration: Council Members are expected to demonstrate behaviour that builds and inspires public trust and confidence in local government. They will demonstrate and promote these foundational principles and the standards of conduct set out in this Bylaw. Council Members will seek to collaborate whenever possible, working towards a common goal that benefits the community.

## PURPOSE AND INTERPRETATION

- 4. This Bylaw sets out the rules Council Members must follow in fulfilling their duties and responsibilities as elected officials, and the powers and procedures of the Investigator in exercising oversight over Council Members.
- 5. The purpose of this Bylaw is not to stifle Council Members or to limit their ability to fully perform the governmental and advocacy functions that their position

- entails, with all the vigour, flair and freedom that is typical of a well-functioning democratic institution, but instead to guide Council Members to undertake those functions in a manner that accords with sound ethical principles.
6. Although the preamble and the foundational principles set out above cannot support a stand-alone basis for a complaint, they provide a helpful framework within which to review the actions of Council Members against the substantive provisions of this Bylaw.
  7. The provisions of this Bylaw are to be interpreted broadly and in a manner that is consistent with the *Community Charter*.
  8. Nothing in this Bylaw is intended to preclude Council Members, prior to the filing of a complaint, from speaking to each other to resolve matters which may otherwise be captured by this Bylaw.
  9. As an expression of the standards of conduct for Council Members expected by the RMOW, this Bylaw is intended to be self-enforcing. This Bylaw becomes most effective when Council Members are thoroughly familiar with it and embrace its provisions. For this reason, this Bylaw will be provided as information to all candidates for Council.

#### **APPLICATION**

10. This Bylaw applies to all Council Members, inclusive of their actions in their capacity as members of RMOW boards, committees, and other discretionary appointments.
11. Unless otherwise provided, this Bylaw does not apply to a Council Member's conduct in their personal life, except to the extent that such conduct reasonably undermines public confidence in RMOW governance.
12. For clarity, the provisions of this Bylaw apply without limitation to a Council Member's use of personal and professional social media accounts.
13. In the event of a conflict between this Bylaw and another RMOW bylaw or policy governing Council Member conduct, this Bylaw prevails.
14. In this Bylaw, a reference to a person who holds an office includes a reference to the persons appointed to act for that person from time to time.

#### **SEVERABILITY**

15. If any part of this Bylaw is held invalid or unenforceable by a Court of competent jurisdiction, the invalid part must be severed, and the balance of the Bylaw is not affected.

## **PART 2 – COUNCIL MEMBER CONDUCT**

### **COMPLY WITH ALL LAWS**

16. Council Members shall comply will all applicable federal, provincial and municipal laws in the performance of their public duties, including but not limited to:
- a) the *Local Government Act*;
  - b) the *Community Charter*;
  - c) FIPPA;
  - d) the British Columbia *Human Rights Code*; and
  - e) all bylaws and policies of the RMOW.

### **GENERAL CONDUCT**

17. Council Members shall not harass or defame other Council Members, Committee Members, Staff, or Volunteers.
- a) Harassment includes:
    - i. any conduct that would be contrary to the RMOW's Administrative Procedures F-13: Respectful Workplace and F-5: Prevention of Workplace Harassment, as those Administrative Procedures would apply to Staff;
    - ii. any unwelcome or objectionable conduct or comment that would be considered discriminatory under the British Columbia *Human Rights Code* if the conduct or comment was in respect of any of the following protected characteristics or grounds of discrimination:
      1. race,
      2. conviction for an offence,
      3. colour,
      4. ancestry,
      5. physical disability,
      6. place of origin,
      7. mental disability,
      8. political belief,
      9. sex,
      10. religion,
      11. age,
      12. marital status,
      13. sexual orientation,
      14. family status;
    - iii. any objectionable or unwelcome sexual solicitations or advances;

and

- iv. any unwelcome or objectionable conduct or comment that causes an individual to be humiliated or intimidated, including but not limited to:
  1. verbal aggression or insults,
  2. making derogatory comments, including questioning the professional competence of another Council Member, Committee Member, Volunteer, or Staff member,
  3. calling someone derogatory names,
  4. hazing or intimidation practices,
  5. vandalizing personal belongings,
  6. bullying, or
  7. spreading malicious and untrue rumours.
18. Council Members shall treat other Council Members, Committee Members, Staff, and Volunteers with respect and dignity.
19. Council Members shall not use their office to attempt to gain personal benefits for themselves, their family members, their friends, or business interests.

#### **INTERACTIONS WITH STAFF**

20. Council Members shall direct questions and inquiries regarding departmental issues to the CAO and shall refrain from contacting Staff directly, unless the communication is minor and for the purpose of seeking administrative clarity.
21. Council Members shall not interfere with, hinder, or obstruct Staff in the exercise or performance of their roles, responsibilities, powers, duties, or functions, nor shall they impair the ability of Staff to implement Council policy decisions in accordance with section 153 of the *Community Charter*.
22. Council Members shall not request or require that Staff undertake personal or private work on behalf of a Council Member.
23. Council Members shall not request or require that Staff engage in political activities or subject them to reprisal of any kind for refusing to engage in such activities.
24. Information obtained by any Council Member, which is likely to be used in a Council or political debate, must be provided to all other Council Members, and to the CAO.

#### **INTERACTIONS WITH THE PUBLIC AND MEDIA**

25. Council Members must not communicate on behalf of the RMOW unless authorized to do so:
  - a) by Council resolution; or

- b) by virtue of a position or role the Council Member has been authorized to undertake by Council.
26. Without limiting the ability of the Council Member to hold a position on an issue and respectfully express their opinions, a Council Member must ensure that:
- a) their communications relating to Council business are accurate and not issue any communication that the Council Member knows, or ought to have known, to be false;
  - b) all communications by, and on behalf of a Council Member, are respectful and do not discriminate against, harass, or defame any Council Member, Committee Member, Staff, or Volunteer; and
  - c) they will not misrepresent the decisions of the Council, even if they disagree with that decision of Council.

### **PUBLIC MEETINGS**

27. Council Members must act with decorum at Council and Committee meetings and in accordance with the "Council Procedure Bylaw No. 2207, 2018".

### **HANDLING OF CONFIDENTIAL INFORMATION**

28. Council Members must comply with the provisions of FIPPA and the policies and guidelines established by the RMOW.
29. Council Members shall keep information and records prohibited from release under section 117 of the *Community Charter* in strict confidence.
30. Without limiting the generality of section 29, Council Members shall not disclose:
- a) information or records concerning the property, personnel, legal affairs or other information of the RMOW distributed for the purposes of, or considered in, a closed Council meeting;
  - b) resolutions or Staff report contents from a closed meeting of Council unless and until a Council decision has been made for the information to become public; or
  - c) details on Council's closed meeting deliberations or how individual Council Members voted on a question in a closed meeting.
31. Council Members shall not use confidential information to advance, directly or indirectly, their own personal, or other private interests.

### **USE OF INFLUENCE**

32. Council Members must not use their office to provide preferential treatment to any person or organization except as warranted by the ordinary and lawful

discharge of their duties.

33. Council Members must not intimidate, improperly influence, threaten, or coerce Staff.

### **USE OF PUBLIC RESOURCES AND ELECTION ACTIVITIES**

34. Council Members shall not use any RMOW property or assets or any other public resources such as Staff time, equipment, technology, supplies, facilities or other property for private gain, personal purposes, or election-related purposes.
35. Council Members shall not undertake municipal election campaign related activities at Municipal Hall or on other premises owned by the RMOW during regular working hours, unless such activities are organized by the RMOW.

### **BUSINESS RELATIONS**

36. Council Members who engage in another profession, business or occupation concurrently while holding elected office shall not allow such activity to materially affect the Council Member's integrity, independence or competence.

## **PART 3 – APPOINTMENT OF INVESTIGATOR**

### **APPOINTMENT OF INVESTIGATOR**

37. The CAO shall, upon receipt of a complaint, appoint an Investigator to fulfill the duties and responsibilities described in sections 38 to 40.

### **DUTIES AND RESPONSIBILITIES**

38. The duties and responsibilities of the Investigator are as follows:
- a) to receive and assess a complaint to determine if the complaint must be rejected, closed, resolved informally or investigated;
  - b) to assist with informal resolution of a complaint;
  - c) to investigate and conduct inquiries into alleged violations of this Bylaw;
  - d) to report to Council as to whether a Council Member has breached this Bylaw; and
  - e) to make recommendations on an appropriate remedy if a Council Member has breached this Bylaw.
39. The Investigator must perform the duties and responsibilities under this Bylaw in an independent manner.
40. An Investigator may only be dismissed for cause.

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

### **PRELIMINARY STEPS**

41. If a Council Member believes that they have observed another Council Member engaging in conduct that would breach this Bylaw, they must attempt to resolve the complaint directly with the other Council Member, if possible, prior to submitting a complaint under section 42.

### **COMPLAINT PROCEDURE**

42. Subject to section 41, a Council Member or Staff member may submit a complaint to the CAO, or if the complaint involves the CAO, then to the Corporate Officer.
43. Upon receipt of a complaint, the CAO (or Corporate Officer, if the complaint involves the CAO) shall retain an Investigator.
44. A complaint must be in writing, must be submitted within 60 days of the alleged breach, and must include, with sufficient detail:
  - a) the name of the complainant;
  - b) the name of the respondent Council Member(s);
  - c) the conduct that the complainant alleges was in breach of this Bylaw;
  - d) the date of the alleged conduct;
  - e) the parts of this Bylaw the alleged conduct breached;
  - f) the basis for the complainant's knowledge about the conduct; and
  - g) whether, if the complainant is a Council Member, there was any attempt to resolve the complaint informally under section 41.
45. The CAO (or Corporate Officer, if the complaint involves the CAO) may accept a complaint notwithstanding that it does not comply with all the requirements of section 44 if there has been substantial compliance or the circumstances warrant acceptance.
46. A complaint submitted outside the time limits set out in section 44 must be rejected, except that the Investigator may grant an extension of no more than 30 further days if the circumstances of the complaint are sufficiently serious.
47. In an election year, complaints submitted from the first day of the nomination period to the general voting day must be accepted and held in abeyance until after the new Council has taken office. At that time, complaints shall only proceed if they relate to a Council Member who was re-elected in that election year.



48. For certainty, if the Council Member who is the subject of the complaint held in abeyance pursuant to section 47 is not re-elected, the complaint must be rejected.

#### PRELIMINARY ASSESSMENT

49. On receipt of a complaint, the Investigator shall conduct a preliminary assessment. If the Investigator determines that any of the following circumstances apply, then they must notify the complainant and respondent Council Member in writing that the complaint will be closed, stating the reasons for the closure:
- a) the complaint is not with respect to a breach of this Bylaw;
  - b) the complaint is frivolous, vexatious, or not made in good faith;
  - c) the complaint is being addressed through another process, including if the complaint is with respect to:
    - i. non-compliance with FIPPA;
    - ii. non-compliance with a more specific Council policy or bylaw with a separate complaint procedure;
    - iii. a matter that is subject to another outstanding process, such as a court proceeding or human rights complaint; or
    - iv. any conduct that may subject a Council Member to disqualification proceedings pursuant to section 110 of the *Community Charter*;
  - d) the complaint was not in compliance with section 44, and the respondent Council Member will be prejudiced by the complainant's failure to comply;
  - e) the complaint concerns the same subject matter as a previous complaint that has already been accepted under this section, and it is not necessary to expand that original complaint or add the new complaint;
  - f) the complainant wishes to withdraw the complaint, and it would be appropriate to allow the complaint to be withdrawn;
  - g) the complaint was submitted by a Council Member, and the Council Member ought to have first attempted to resolve the complaint informally under section 41; or
  - h) there are no possible grounds on which to conclude that a violation of this Bylaw has occurred.
50. In completing the preliminary assessment, the Investigator may request further information from the complainant before determining whether there are

sufficient grounds for believing that a breach of this Bylaw may have occurred.

## CRIMINAL CONDUCT

51. If, at any stage in the complaint procedure, the Investigator determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code*, or learns that there is an ongoing police investigation into the conduct that gave rise to the complaint, then they must refer the matter to the appropriate authorities and immediately suspend any investigation into the complaint until any resulting police investigation or charges have been finally disposed of, and shall report the suspension to Council, the complainant, and the respondent Council Member.
52. For certainty, a complaint must be suspended while the respondent Council Member is on a mandatory leave of absence under section 109.3(1) of the *Community Charter*, and may be re-commenced only once the mandatory leave of absence ends pursuant to section 109.3(1)(b) of the *Community Charter*.

## INFORMAL RESOLUTION

53. If the Investigator determines that none of the circumstances in section 49 apply, they must determine whether the complaint requires formal investigation or whether the complaint may be resolved informally.
54. When determining whether the complaint may be resolved informally, the Investigator:
  - a) may consider culturally appropriate or transformative, restorative or Indigenous justice approaches and may engage a third-party mediator or facilitator to assist in the informal resolution of the complaint; and
  - b) shall give strong preference to the informal resolution process wherever possible.
55. The third-party assisting in the informal resolution of a complaint will assess the suitability of the complaint for settlement or resolution on an on-going basis and may decline to assist at any point.
56. The complainant or the respondent Council Member may decline to participate in an informal resolution at any time.
57. If the complaint is resolved informally by someone other than the Investigator, the third-party assisting in resolving the complaint must notify the Investigator in writing of the terms of the resolution, upon receipt of which, the Investigator must close the complaint.
58. If the third-party assisting in resolving the complaint determines at any time that the complaint cannot be resolved informally, they must refer the complaint back to the Investigator for a formal investigation.

## FORMAL RESOLUTION

59. If the complaint is not rejected, closed, or resolved informally within 45 days of the decision in section 53 to resolve informally, the Investigator must proceed with a formal investigation.
60. The Investigator shall deliver the complaint to the respondent Council Member, along with a request that the respondent Council Member provide a written response to the complaint, together with any submissions that the respondent Council Member chooses to make, within 10 days, subject to the Investigator's discretion to reasonably extend that timeline.
61. The Investigator may, at their discretion, deliver the respondent Council Member's written response and submissions to the complainant and request a reply in writing within 10 days, subject to the Investigator's discretion to reasonably extend the timeline.
62. The Investigator may:
  - a) speak to anyone relevant to the complaint;
  - b) review any documents relevant to the complaint, including closed meeting agendas and minutes; and
  - c) access any record in the custody or control of the RMOW, within the meaning of FIPPA, with the exception of records subject to solicitor-client privilege.
63. The Investigator has discretion to conduct the investigation as they see fit, but must ensure that the investigation complies with the rules of procedural fairness and natural justice required in the circumstances of the complaint.

## ADJUDICATION AND REPORTING

64. The Investigator must conclude the investigation and make a determination regarding the alleged breach within 90 days of making the determination to proceed with a formal investigation, unless the Investigator determines that doing so is not practicable, in which case the Investigator must notify the complainant and respondent Council Member of the delay and provide a revised decision date. The revised decision date may be extended by periods of up to 30 days at a time on provision of written notice to the complainant and respondent Council Member.
65. If, after reviewing all the material information, the Investigator determines that a Council Member did not violate this Bylaw, then the Investigator shall:
  - a) prepare a written investigation report providing reasons for their determination, which shall include a determination of whether the complaint was submitted frivolously, vexatiously or in bad faith;
  - b) deliver a summary of the investigation report to the complainant;

- c) deliver a copy of the investigation report to the respondent Council Member and Council; and
  - d) in consultation with Staff, make the investigation report, or a summary, publicly available in compliance with FIPPA.
66. If, after reviewing all the material information, the Investigator determines that a Council Member did violate this Bylaw, then the Investigator shall:
- a) prepare a written investigation report providing reasons for their determination, which must include:
    - i. a summary of the factual findings of the Investigator;
    - ii. an application of the Bylaw, and any other applicable law, to the facts;
    - iii. a recommendation of the appropriate remedy, subject to subsection iv; and
    - iv. if applicable, a determination of whether the respondent Council Member took all reasonable steps to avoid the breach or whether the breach was trivial, inadvertent or due to an error in judgment made in good faith, in which case the Investigator may recommend that no remedy be imposed;
  - b) notify the complainant that the investigation is complete and inform them that the investigation report, or a summary thereof, will be subsequently released by Council in accordance with section 70;
  - c) deliver a copy of the investigation report to the respondent Council Member; and
  - d) 48 hours after the delivery of the investigation report to the respondent Council Member, deliver a copy of the investigation report to Council.

#### **FINAL DETERMINATION BY COUNCIL**

67. Council must, within 45 days of the Investigator's delivery of the investigation report pursuant to section 66.d), decide on the appropriate measures, if any, that are warranted by a breach of this Bylaw.
68. Prior to Council making any decision regarding the findings and recommendations set out in the investigation report, the respondent Council Member must be provided with an opportunity, in person and in writing, to comment to Council on the Investigator's determinations and recommendations.
69. While an investigation report may be considered in a closed meeting, if the circumstances warrant and there is a valid reason to close the meeting under section 90 of the *Community Charter*, when Council deliberates and votes on

- the Investigator's recommendation, it will generally do so in an open meeting.
70. Within 30 days of Council's final decision about an investigation, it must, subject to the RMOW's obligations under FIPPA, release to the public the investigation report, or a summary thereof, along with a summary of Council's decision.

## **REMEDIES**

71. Remedies that may be imposed by Council for a violation of this Bylaw include the following:
- a) a letter of reprimand from Council, addressed to the respondent Council Member;
  - b) a request from Council that the respondent Council Member issue a letter of apology;
  - c) the publication of letters contemplated in subsections a) and b), along with the respondent Council Member's response, if any;
  - d) directions to the CAO regarding the method of providing documents that contain confidential information to the respondent Council Member;
  - e) a recommendation that the respondent Council Member attend specific training or counselling related to the conduct at issue;
  - f) limitations on access to certain RMOW facilities;
  - g) prohibition from representing the RMOW at events and/or attending conferences;
  - h) suspension or removal of the respondent Council Member from the Acting Mayor rotation or any committee and board appointments;
  - i) public censure of the respondent Council Member; or
  - j) any other remedy recommended by the Investigator, so long as that remedy is within the authority of Council.
72. Council must consider the following factors when determining whether to impose a remedy on a Council Member:
- a) the degree and nature of the conduct;
  - b) whether the contravention was a single or repeated act;
  - c) whether the respondent Council Member knowingly contravened this Bylaw;
  - d) whether the respondent Council Member took steps to mitigate or remedy the contravention;

- e) the respondent Council Member's history of other contraventions; and
- f) if applicable, the Investigator's finding that the respondent Council Member took all reasonable steps to avoid the breach, or that the breach was trivial or done inadvertently or because of an error in judgment.

## REMUNERATION

73. Where the Investigator finds that a Council Member:
- a) breached this Bylaw; or
  - b) submitted a complaint that was frivolous, vexatious, or made in bad faith
- the remuneration to which that Council Member would otherwise be entitled shall be reduced in accordance with *Council Policy A-30: Council Remuneration Policy*.
74. Notwithstanding section 73.a), the remuneration shall not be reduced if the Investigator makes a finding under section 66.a)iv that the respondent Council Member took all reasonable steps to avoid the breach or that the breach was trivial, inadvertent or due to an error in judgment made in good faith.

## CONFIDENTIALITY OF THE INVESTIGATION

75. The CAO, Corporate Officer and Investigator must make all reasonable efforts to process and investigate the complaints in a confidential manner.
76. The Investigator and every person acting under the Investigator's instructions must preserve confidentiality with respect to all matters that come into the Investigator's knowledge in the course of any investigation or complaint, except as otherwise required by law.
77. Council Members must make all reasonable efforts to keep complaints under this Bylaw, at any stage, confidential, except as otherwise provided in this Bylaw.

## REPRISALS AND OBSTRUCTION

78. No Council Member or Staff member will obstruct the Investigator, CAO or Corporate Officer in relation to the administration of this Bylaw or the investigation of a complaint. Without limitation, the following shall constitute obstruction:
- a) uttering of threats or undertaking any reprisal against any person involved in a complaint;
  - b) destruction of relevant records or documents; and
  - c) refusal to cooperate with the Investigator.

## **FRIVOLOUS AND VEXATIOUS COMPLAINTS**

79. Any individual who is found to have obstructed the Investigator, contrary to section 78, or who makes a complaint that is subsequently found to have been made in a deliberately frivolous, vexatious or malicious manner, or otherwise made in bad faith, will be subject to appropriate disciplinary action, which may include, but is not limited to:
- a) in the case of Council Members, the remedies described above in section 71;
  - b) in the case of Staff, disciplinary measures or termination of employment for just cause, as applicable; or
  - c) in the case of any complainant, prohibition against filing a complaint under this Bylaw for a specified and reasonable period of time.

## **REIMBURSEMENT OF COSTS**

80. A Council Member may make a request to Council for reimbursement of the costs of legal advice and representation in responding to the formal complaint process outlined in this Bylaw. If appropriate, after considering all the circumstances, Council may resolve to reimburse legal fees reasonably incurred by a Council Member, provided that all of the following are met:
- a) the Council Member has not previously been found to have breached this Bylaw;
  - b) the Council Member did not engage in dishonest, grossly negligent, or malicious conduct; and
  - c) the amount claimed does not exceed \$10,000.

**PART 5 – ENACTMENT**

**EFFECTIVE DATE**

81. This Bylaw comes into force and effect on adoption.

GIVEN FIRST, SECOND and THIRD READINGS this \_\_\_\_ day of \_\_\_\_, 2023.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jack Crompton,  
Mayor

\_\_\_\_\_  
Pauline Lysaght,  
Corporate Officer

I HEREBY CERTIFY that this is a true copy of "Code of Conduct Bylaw No. 2397, 2023".

\_\_\_\_\_