



**RESORT MUNICIPALITY OF WHISTLER**

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## STAFF REPORT TO COUNCIL

**PRESENTED:** April 9, 2024 **REPORT:** 24-039  
**FROM:** Legislative Services **FILE:** 3900-20-2397  
**SUBJECT:** CODE OF CONDUCT GUIDELINES – DIRECTION TO PROCEED

### RECOMMENDATION

**That** the recommendation of the Chief Administrative Officer (CAO) be endorsed.

### RECOMMENDATION

**That** Council direct staff to bring “Code of Conduct Bylaw No. 2397, 2023”, attached as Appendix A to Administrative Report No. 24-039, for consideration of first three readings at a future Regular Council Meeting.

### PURPOSE OF REPORT

The purpose of this report is to seek Council direction to proceed with finalizing the new “Code of Conduct Bylaw No. 2397, 2023” (New Code). The New Code will replace the existing Code of Conduct Policy (Appendix A: Code of Conduct and Conflict of Interest Guidelines for Councillors (Existing Code) of *Council Policy A-21: Council Governance Manual*), attached as Appendix B. This report proposes amendments for Council’s consideration based on the discussion at the February 6, 2024 Committee of the Whole Meeting. The associated implications for each proposed amendment are also discussed.

Information Report  Administrative Report (Decision or Direction)

### DISCUSSION

#### Background

A written code of conduct is a tool that enables Council members to develop a shared understanding of the ethical obligations which are essential to good governance. A code of conduct sets the expectation that Council members will conduct their business in accordance with the guiding principles of integrity, accountability, respect, leadership, and collaboration, and, where those standards are not met, that a fair, known and impartial process to rectify the harm caused will be applied. This not only inspires the public’s trust and confidence in local government, but it also provides protection to Council members. Where an alleged breach occurs, a code of conduct can provide an efficient and expedient venue to address this misconduct. Codes of conduct often rely on an independent and impartial third-party to conduct the informal resolution or investigation, to make a final determination with respect to whether a

breach occurred and, in the case that it did, to recommend proportional remedies to address the harm caused.

The Resort Municipality of Whistler's (RMOW) Existing Code was adopted by Council in 2005. In accordance with requirements set out in the *Community Charter (CC)*, Council passed a resolution on [April 3, 2023](#), directing staff to review the Existing Code. Upon reviewing the Existing Code, staff recommended changes to bring the New Code more in line with the modern landscape of municipal government. Importantly, the new legislation requires councils to consider “prescribed principles” when reviewing a code of conduct. These principles are set out by the *Principles for Codes of Conduct Regulation, BC Reg 136/2022* as follows:

- Council members must carry out their duties with integrity;
- Council members are accountable for the decisions that they make, and the actions that they take, in the course of their duties;
- Council members must be respectful of others; and
- Council members must demonstrate leadership and collaboration.

Considering these prescribed principles, Staff worked with the Governance and Ethics Standing Committee (GAESC) and Council to develop a New Code. At the [February 6, 2024](#) Committee of the Whole Meeting, staff received feedback and requests for clarification from Council members regarding the New Code. The analysis section below sets out staff's responses to requests for clarification and eleven proposed amendments. Additionally, implications for each of the proposed amendments are set out. The options section of this report lists each amendment, along with any potential alternatives, for easy reference should Council members wish to move any of these amendments.

## Analysis

### Points of clarification requested from Council members

During the COTW Meeting on February 6, 2024, three points of clarification were raised by members of Council. Staff have researched these points and provide the responses below.

**Mayor and Council Member Roles – Request for clarification as to why the New Code does not contemplate the Mayor and Council member roles differently.** The *CC* outlines separate responsibilities for Mayors and Council members (see section 115 [*Responsibilities of council members*] and section 116 [*Responsibilities of mayor*]), and elected officials must fulfill those statutory obligations. However, a review of other codes of conduct confirms that it is not a common practice to separate or treat these roles differently under the code. Codes of conduct focus on the ethics of how elected officials carry out their responsibilities. Unless there are additional ethical conduct expectations Council would like to place on the Mayor, there is no need to contemplate the Mayor and Council member roles separately in the New Code.

**Committee Members – Request for clarification as to why committee members are not included in the New Code's application.** Following earlier Council direction, the New Code is drafted such that committee members may not be the subject of a complaint, nor may they file a complaint. However, committee members (members of the community who are appointed to committees but are not Council members) are expected to comply with the standards set out in the New Code. If a committee member breaches the New Code, their appointment to the committee could be rescinded by the Mayor or Council under the existing authority of the *CC*. Terms of reference for all RMOW committees will be updated to incorporate language to this effect.

**Business Relations – Request to make the New Code’s business relations section the same as that in the District of Squamish’s “Code of Conduct Bylaw No. 2919, 2022”.** Section 43 of the New Code sets out conduct expectations with respect to business relations. Staff confirm that this section of the New Code is the same as the equivalent section in the District of Squamish’s “Code of Conduct Bylaw No. 2919, 2022”. Staff recognize the challenges faced by Council members working and living in a small town, and discussion from the associated District of Squamish staff report, with respect to amendments to their business relations section, may be helpful here as well:

“Section 3.11 was amended by removing the subsections that would be automatic breaches. The word ‘materially’ has also been inserted to create a higher standard, recognizing that members in smaller communities may have situations that are difficult to avoid. These amendments will allow the investigator discretion to determine whether conduct at issue amounts to a serious ethical breach. While Section 3.11 is intended to be somewhat broad, capturing behaviour outside of Council meetings, the new amendments attempt to strike an adequate balance between the sections’ objectives and the realities facing members.” (District of Squamish Staff Report to Council, Presented: July 12, 2022, Subject: “District of Squamish Code of Conduct Bylaw No. 2919, 2022 and District of Squamish Remuneration and Expenses Bylaw No. 1503, 1997, Amendment Bylaw No. 2918, 2022”)

#### Proposed amendments based on comments from Council members

These amendments, and associated implications, are set out in the order they appear in the New Code. The specific wording of these amendments is set out in Appendix C. Amendments with an asterisk (\*) include potential alternatives that staff have included for Council’s consideration.

A flow chart for the overall complaint process is included in Appendix D. It is important to note that, at this high-level, the same process applies to the New Code and all proposed amendments. Appendix D also includes several flow charts demonstrating the complaint process under the New Code, as currently drafted, and how it changes under the proposed amendments. The proposed amendments can be classified as either changing the scope of conduct captured by the New Code or as changing the complaint process itself. Scenarios are also provided for two of the proposed changes that impact the scope of conduct captured by proposed amendment #6. Complaint Outside of Jurisdiction: disqualifiable conduct and criminal conduct.

- 1. Personal Life – Questions regarding the boundary between personal life and professional capacities, including how that distinction is drawn on social media.** Amend section 11 [*Application*] to more clearly establish where a Council member’s conduct in their personal life would fall subject to a New Code complaint.

#### *Implications:*

- By adding in a reference to “egregious or criminal conduct” this change will make it clear that yes, there are cases where the New Code would apply in someone’s personal life, but only where it was clearly so egregious that it would need to be addressed and investigated by the investigator. This change makes it easier for the investigator to determine where conduct undertaken in one’s personal life would be subject to the New Code.
- The personal life distinction is not a question that Council would be deciding on. This analysis would be undertaken by the investigator at the preliminary assessment stage.

2. **\*Harassment and Discrimination – Comments regarding Council’s access to RMOW administrative procedures; comments regarding typical human resources processes that would not be the subject of public conversation and that for complaints by staff members about members of Council it does not make a lot of sense to have those be the subject of public conversation.** Replace section 17 [*General Conduct*] with a general conduct section that does not include harassment and amend section 26. B) [*Interactions with the Public and Media*] to remove the references to discrimination and harassment.

*Implications:*

- This change does not remove the obligation on Council members not to harass staff as Council members would remain subject to the RMOW’s Administrative Procedure F-13: Respectful Workplace (Respectful Workplace Procedure), and WorkSafe BC legislation; however, the horizontal relationship, or protection from harassment, between Council members would no longer be covered if removed.
- Unfortunately, harassment between Council members is commonly experienced in our province and removing important conduct expectations amongst Council members creates a gap in the protective elements of the New Code.
- There is a benefit to having all RMOW conduct expectations set out in one place, where they can be easily accessed and acknowledged. Additionally, as RMOW administrative procedures are internal documents, members of the public, including prospective Council candidates, would not have the benefit of familiarizing themselves with all the conduct expectations of elected officials, if removed.
- Additionally, many instances of harassment take place over social media. Removing harassment from the New Code makes it more challenging to address this type of conduct when it occurs over social media. The New Code would capture this; however, the RMOW’s Respectful Workplace Procedure, as currently drafted, does not contemplate social media as part of the “workplace”, and would only be enforced in very specific circumstances.

*Potential alternative if Council wishes to keep harassment and discrimination within the New Code:*

2. **A** - Keep section 17 as is and delete section 17. a) i. which refers to internal RMOW administrative procedures and add a new subsection 17. b) which would set out what harassment does not include.

*Implications:*

- Deleting section 17. a) i. removes all references to internal administrative procedures, which are not accessible by the public. This allows for members of the public, and prospective candidates, to have a full understanding of the conduct expectations Council members are held to under the New Code.
  - Adding in a new subsection 17. b) works towards addressing concerns around the weaponization of codes of conduct by clearly setting out the types of conduct that would not equate to the legal definition of harassment, helping to distinguish harassment from conduct that is often colloquially referred to as “harassment”.
3. **Interactions with Staff – Request to follow the New Westminster model with a focus on exercising good judgement, and respecting the process, rather than having an**

**expectation that Council members cannot communicate with any staff other than the CAO.** Delete section 20 [*Interactions with Staff*] and add two new sections to focus on Council members' exercise of good judgement when interacting with Staff and to also allow for Council members to direct inquiries to the CAO, Corporate Officer or a General Manager.

*Implications:*

- This change allows Council members to direct inquiries to staff other than the CAO, so long as the CAO is made aware of these inquiries at the time they are made. The intention of this section is to permit Council members to request information from staff; it should not be interpreted as an ability to provide direction to staff.
4. **Social Media – Questions regarding the boundary between personal life and professional capacities, including how that distinction is drawn on social media.** Add a new subsection to section 26 [*Interactions with the Public and Media*] to help delineate the line between personal and Council or RMOW views expressed on social media.

*Implications:*

- Requiring Council members to state when they are expressing their own views, and not those of Council or the RMOW, helps to distinguish actions taken in a personal versus professional capacity.
  - For a social media account, it is common practice to have Council members achieve this through a statement to this effect on the Council member's personal profile.
5. **\*Ethics Commissioner – Request to have Council appoint the investigator, or a pool of investigators, rather than having the complaint go through the CAO.** Amend Part 3 – Appointment of Investigator and Part 4 – Complaint and Resolution Procedures to have Council make the ethics commissioner appointment.

*Implications:*

- Council members expressed a desire to appoint the investigator, as opposed to the CAO; however, it is not practical, largely from a timing perspective, to have Council make the appointment after a complaint has been submitted. Another proposed option was to have Council appoint a pool of investigators; yet, to ensure that someone would be available when a complaint is made, Council would need to appoint a very big pool of investigators and, given that there are only so many investigators in the province, those appointments would not be very meaningful.
- If Council's desire is to make the appointment itself, as opposed to the CAO appointing an investigator when a complaint is made, the suggested approach is to follow an ethics commissioner model.
- Under the ethics commissioner model, Council appoints an ethics commissioner for a term of two years and complaints are submitted directly to the ethics commissioner.
- The ethics commissioner model establishes consistency and familiarity; however, there would no longer be the ability to select an investigator best suited to the type of complaint based on their specific skillset.

- Like the investigator, the ethics commissioner is only paid for time spent (staff estimate an hourly rate of \$450). There may be a potential increase in costs under this model, depending on the breadth of duties and responsibilities assigned to the ethics commissioner. Given this, Council may wish to define a narrow breadth of responsibilities, like those currently set out for the investigator, i.e. just to focus on investigation and adjudication of complaints.

*Potential alternative if Council wishes to move to an ethics commissioner model with a broader scope of duties and responsibilities:*

**5. A** – Amend Part 3 – Appointment of Investigator and Part 4 – Complaint and Resolution Procedures to have Council make the ethics commissioner appointment and define a broader scope for the duties and responsibilities of the ethics commissioner.

*Implications:*

- This achieves the goal of a Council-made appointment and introduces a broader scope of duties and responsibilities that can be taken advantage of under the ethics commissioner model, including duties such as providing advice to Council members, training and the publication of an annual report.
- Given that the ethics commissioner is paid for their time spent, broadening this scope results in higher costs.

6. **\*Complaint Outside of Jurisdiction, Preliminary Assessment, Criminal Conduct and Disqualification Proceedings – Request to follow the City of Vancouver model (specifically section 6.13) with respect to what types of complaints fall outside the jurisdiction of the New Code.** Add a new section after section 14 [*Application*], add a new section [*Complaint Outside of Jurisdiction*], amend section 51 [*Complaint Procedure*], amend section 56 [*Preliminary Assessment*], delete sections 58 and 59 [*Criminal Conduct*], and delete sections 60 and 61 [*Disqualification Proceedings*] to align with the City of Vancouver’s process for dismissing complaints.

*Overview of changes:*

- Adding a new section under the Application section (sections 10-14) sets out that the New Code does not apply to any conduct that may subject a member to disqualification under the *Community Charter*.
- Amending section 51 [*Complaint Procedure*] extends the time to submit a complaint from 60 to 90 days.
- Introducing a new section [*Complaint Outside of Jurisdiction*] mirrors the process set out for dismissing complaints under the City of Vancouver’s “Code of Conduct By-law No. 12886” (Vancouver’s Code). The new section sets out that the following types of complaints are outside of jurisdiction:
  - an allegation of a criminal nature,
  - non-compliance with the *Freedom of Information and Protection of Privacy Act*,
  - conduct that may subject a Council member to disqualification under the *Community Charter*,
  - non-compliance with a more specific Council policy, or

- subject to another outstanding process, such as a court proceeding or a Human Rights complaint.
- Section 56. c) [*Preliminary Assessment*] “the complaint is being addressed through a separate process or should be directed to a more appropriate process;” is deleted because this wording is reflected in the new Complaint Outside of Jurisdiction section.
- Sections 58 and 59 [*Criminal Code*] are deleted because the new Complaint Outside of Jurisdiction section requires that the investigator must reject the complaint if the complaint is an allegation of a criminal nature consistent with the *Criminal Code*.
- Sections 60 and 61 [*Disqualification Proceedings*] are deleted because the new Complaint Outside of Jurisdiction section requires that the investigator must reject the complaint if the complaint is with respect to conduct that may subject a Council member to disqualification pursuant to the *Community Charter*.

*Implications:*

*Disqualifiable Conduct*

- Staff have confirmed with the City of Vancouver’s Integrity Commissioner team and external legal counsel that Vancouver’s Code does not act as a complete ban on the acceptance of complaints made about disqualifiable conduct. Given that the time-limit to file an application for disqualification under the *Vancouver Charter* (and the *Community Charter*) is 45 days, the Integrity Commissioner will accept complaints in relation to disqualifiable conduct after 45 days, so long as no application for disqualification under the *Vancouver Charter* has been made. The complaint must still be submitted before the limitation period in Vancouver’s Code to file a complaint is up, which is 180 days.
- Additionally, it is important to note that only conflicts of interest with a pecuniary (financial) interest may subject a Council member to disqualification under the *Vancouver Charter* or the *Community Charter*. Therefore, “another interest in the matter that constitutes a conflict of interest”, which is a non-pecuniary interest, may be accepted at any time under the Vancouver Code. Appendix E contains investigation reports from the City of Vancouver’s Integrity Commissioner relating to these types of conflict of interest.
- What’s the difference between the Complaint Outside of Jurisdiction section and the current Disqualification Proceedings sections (ss. 60 and 61)? Under the former, complainants must wait to file their complaint until the 45-day window to bring an application for disqualification has expired. Under the latter, complaints may still be submitted, but they will be suspended until the 45-day window has expired or the proceeding under the *Community Charter* has concluded.
- If the model under the Vancouver Code is adopted, staff also propose extending the New Code’s limitation period to submit a complaint from 60 to 90 days. This means that complaints related to disqualifiable conduct may be submitted after the 45-day window to bring a disqualification application has expired and the 90-day deadline to submit a complaint under the New Code (i.e. between days 46 and 90).

*Criminal Code*

- What’s the difference between the Complaint Outside of Jurisdiction section and the current Criminal Code sections (ss. 58 and 59)? Under the former, a complaint of a criminal nature consistent with the *Criminal Code* must be rejected by the investigator. Under the latter, the

investigator is required to suspend the complaint until any charges have been finally disposed of.

- This change means that the investigator loses the ability to re-commence a complaint where the conduct has not met the threshold of criminal conduct. While the conduct at issue may be the same, the decision-makers, decisions and consequences are very different in the criminal and code of conduct contexts. In the former, a judge must make a finding beyond a reasonable doubt and, when someone is found to be criminally liable, the applied remedy would impact that person's liberties. On the other hand, under a code of conduct, an investigator would not be asked to find intent behind the harm, nor would they have to meet such a high burden of proof, and they would make their decision knowing that they could apply a remedy proportional to the harm caused, that would not impact someone's personal liberties.
- As noted above, an important distinction between criminal misconduct and other forms of misconduct is the requirement of ill intent; however, even in the absence of ill intent, harm can still result. In such a case, a code of conduct complaint could be a more appropriate venue to address this conduct and apply a proportional remedy to rectify that harm.

*Potential alternative if Council wishes to follow the Vancouver model regarding complaints outside of jurisdiction, but then rely on the current Criminal Code section with respect to conduct of a criminal nature:*

**6. A** – Follow the Vancouver model with respect to complaints outside of jurisdiction, but do not include paragraph “a) an allegation of a criminal nature consistent with the *Criminal Code*,” in the new Complaint Outside of Jurisdiction section and keep the current Criminal Code sections 58 and 59.

*Implications:*

- This allows for complaints of misconduct that fall short of criminal conduct to still be investigated under the New Code.
- 7. Informal Resolution – Request to have the complaint go to both the Mayor and the CAO, not just the CAO.** Add two new sections to the Informal Resolution section (ss. 62-67) to allow the investigator to refer the informal resolution process to the Mayor or CAO.

*Implications:*

- *Note:* this change could be applied to the ethics commissioner model as well. Please also note that staff reviewed several codes of conduct and only found this process to be applied in the informal resolution process of reviewing code complaints, it is not implemented at the complaint intake stage.
- Where the complaint may be resolved informally, this change allows the investigator to refer the informal resolution process to the Mayor, in the case of a complaint made by a Council member, or to the CAO if the complaint is made by staff.
- The Mayor or CAO may appoint a third-party to assist in resolving the complaint.
- This change gives a greater role for the Mayor and CAO in the resolution of the complaint and goes against initial direction received at the GAESC workshops to keep the Mayor, CAO and Corporate Officer removed from the complaint process. Concerns have also been expressed at the Council table around being “both the judge and the jury” through this process and staff have

endeavored to guard against that. This amendment removes the separation previously established under the New Code and is not supported by the CAO or staff.

8. **Investigator’s Report – Request to not publicly release the investigator’s report, where there’s been a finding that a Council member did not violate the New Code, unless that Council member approves the report’s publication.** Amend section 74 [*Adjudication and Reporting*] such that, in the case of a determination by the investigator that a Council member did not violate the New Code, the investigation report, or a summary, would only be made publicly available subject to that Council member’s approval.

*Implications:*

- This change requires the approval of the respondent Council member prior to the publication of the investigator’s report.
  - This change still allows for the investigator’s impartial report to be published where the respondent Council member wishes to correct the record.
  - Publishing a report, or summary, even in cases where the Council member was found to have not breached the New Code, demonstrates leadership and openness by providing an opportunity for members of the public to understand the New Code’s application in practice. This opportunity is missed whenever the report is not made publicly available.
9. **Restorative Justice Remedies – Request to use the term “restorative justice” in the remedies section of the New Code.** Amend section 80 [*Remedies*] to incorporate restorative justice approaches.

*Implications:*

- Section 80 currently gives broad discretion to the investigator to recommend any other remedy, so long as it is within the authority of Council, but this change brings restorative justice to front of mind.
- While normally implemented in informal resolution processes, examples of restorative justice approaches could include meetings or dialogues between the complainant and respondent Council member and would focus on repairing the specific harm caused by the breach of the New Code.

10. **Remuneration – Questions with respect to how Council member remuneration is impacted by the New Code.** Delete sections 82 and 83 [*Remuneration*] so that a Council member’s remuneration will not be reduced where the investigator finds that that Council member breached the New Code, or submitted a complaint that was frivolous, vexatious, or made in bad faith.

*Implications:*

- Removing this section moves the New Code away from goals achieved by tying a breach of the New Code to a reduction in a Council member’s remuneration, including the following:
  - It signals the importance of following the conduct captured in the New Code.
  - It demonstrates that Council members are willing to be held accountable for their actions and decisions.

- A reduction in remuneration also acts as a deterrent for the submission of complaints that are frivolous, vexatious, or made in bad faith, which addresses Council's concerns around the potential weaponization of the New Code.

11. **\*Reimbursement – Question whether the reimbursement amount should be limited to \$10,000.** Amend section 89 [*Reimbursement*] to remove the \$10,000 claim limit.

*Implications:*

- Removing the \$10,000 claim limit means that a Council member may request reimbursement of legal fees in any amount.

*Potential alternative if Council wishes to remove this dollar limit and introduce another requirement instead:*

**11. A** – Amend section 89 [*Reimbursement*] to remove the \$10,000 claim limit and add in a requirement that only a Council member who has not previously been reimbursed under this section may make a request for reimbursement.

*Implications:*

- This amendment removes the dollar limit and introduces an additional check and balance to ensure that this section achieves its goal, which is to reimburse Council members for costs reasonably incurred in relation to responding to a complaint.

## OPTIONS

Based on the feedback staff received, Council may wish to put forward motions to make the following amendments to the New Code:

1. **Personal Life.** Amend section 11 [*Application*] to more clearly establish where a Council member's conduct in their personal life would fall subject to a New Code complaint.
2. **\*Harassment and Discrimination.** Replace section 17 [*General Conduct*] with a general conduct section that does not include harassment and amend section 26. b) [*Interactions with the Public and Media*] to remove the references to discrimination and harassment.

## OR

2. **A** – Keep section 17 as is and delete section 17. a) i. which refers to internal RMOW administrative procedures and add a new subsection 17. b) which would set out what harassment does not include.
3. **Interactions with Staff.** Delete section 20 [*Interactions with Staff*] and add two new sections to focus on Council members' exercise of good judgement when interacting with staff and to also allow for Council members to direct inquiries to the CAO, Corporate Officer or a General Manager.
4. **Social Media.** Add a new subsection to section 26 [*Interactions with the Public and Media*] to help delineate the line between personal and Council or RMOW views expressed on social

media.

5. **\*Ethics Commissioner.** Amend Part 3 – Appointment of Investigator and Part 4 – Complaint and Resolution Procedures to have Council make the ethics commissioner appointment.

**OR**

**5. A** – Amend Part 3 – Appointment of Investigator and Part 4 – Complaint and Resolution Procedures to have Council make the ethics commissioner appointment and define a broader scope for the duties and responsibilities of the ethics commissioner.

6. **\*Complaint Outside of Jurisdiction, Preliminary Assessment, Criminal Conduct and Disqualification Proceedings.** Add a new section after section 14 [*Application*], add a new section [*Complaint Outside of Jurisdiction*], amend section 51 [*Complaint Procedure*], amend section 56 [*Preliminary Assessment*], delete sections 58 and 59 [*Criminal Conduct*], and delete sections 60 and 61 [*Disqualification Proceedings*] to align with the City of Vancouver’s process for dismissing complaints.

**OR**

**6. A** – Follow the Vancouver model with respect to complaints outside of jurisdiction, but do not include paragraph “a) an allegation of a criminal nature consistent with the *Criminal Code*,” in the new Complaint Outside of Jurisdiction section and keep the current Criminal Code sections 58 and 59.

7. **Informal Resolution.** Add two new sections to the Informal Resolution section (ss. 62-67) to allow the investigator to refer the informal resolution process to the Mayor or CAO.
8. **Investigator’s Report.** Amend section 74 [*Adjudication and Reporting*] such that, in the case of a determination by the investigator that a Council member did not violate the New Code, the investigation report, or a summary, would only be made publicly available subject to that Council member’s approval.
9. **Restorative Justice Remedies.** Amend section 80 [*Remedies*] to incorporate restorative justice approaches.
10. **Remuneration.** Delete sections 82 and 83 [*Remuneration*] so that a Council member’s remuneration will not be reduced where the investigator finds that that Council member breached the New Code, or submitted a complaint that was frivolous, vexatious, or made in bad faith.
11. **\*Reimbursement.** Amend section 89 [*Reimbursement*] to remove the \$10,000 claim limit.

**OR**

**11. A** – Amend section 89 [*Reimbursement*] to remove the \$10,000 claim limit and add in a requirement that only a Council member who has not previously been reimbursed under this section may make a request for reimbursement.

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## POLICY CONSIDERATIONS

### **Relevant Council Authority/Previous Decisions**

#### Council Policies

- Appendix A: Code of Conduct and Conflict of Interest Guidelines for Councillors of *Council Policy A-21: Council Governance Manual* (Existing Code)
- *Council Policy A-21: Council Governance Manual*
- *Council Policy A-30: Council Remuneration Policy*

#### Administrative Procedure

- Administrative Procedure F-13: Respectful Workplace

#### Bylaw

- “Council Procedure Bylaw, No. 2207, 2018”

#### Previous Council Decisions and Reports

- [April 3, 2023: Administrative Report No. 23-040, Code of Conduct Review](#)
- Resolutions brought forward from previous Closed Council Meetings on the Code of Conduct (Appendix D to [Administrative Report No. 23-118](#))
  - Special Closed Meeting - May 30, 2023
  - Closed Council Meeting - June 20, 2023
  - Special Closed Council Meeting - June 27, 2023
  - Closed Council Meeting - July 18, 2023
- [November 21, 2023: Administrative Report No. 23-118, Code of Conduct Bylaw and Related Respectful Conduct Policies](#)
- [February 6, 2024: Committee of the Whole, Materials Related to Agenda Item 6.2 – Code of Conduct Bylaw](#)

#### Legislation

##### *Community Charter*

Section 113.1 of the CC requires a council to decide whether a code of conduct should be reviewed. This section also requires that, in making this decision, the council consider the prescribed principles. Additionally, section 113.2 states that should a council decide not to review an existing code of conduct, the council must reconsider that decision before January 1 of the year of the next general local election.

Sections 109.1 to 109.3 of the CC provide for mandatory leaves of absence for Council members charged with any offence under the *Criminal Code* or an indictable offence under the *Controlled Drugs and Substances Act*.

### *Local Government Act*

Section 82.1 of the *Local Government Act* provides that a person who is convicted of an indictable offence is disqualified from holding or being nominated for local government office from the date of conviction until they are sentenced.

### *Principles for Codes of Conduct Regulation, BC Reg 136/2022*

Sets out the prescribed principles that must be considered by Councils when deciding whether to renew a code of conduct.

### **2023-2026 Strategic Plan**

The 2023-2026 Strategic Plan outlines the high-level direction of the RMOW to help shape community progress during this term of Council. The Strategic Plan contains four priority areas with various associated initiatives that support them. This section identifies how this report links to the Strategic Plan.

### **Strategic Priorities**

Housing

*Expedite the delivery of and longer-term planning for employee housing*

Climate Action

*Mobilize municipal resources toward the implementation of the Big Moves Climate Action Plan*

Community Engagement

*Strive to connect locals to each other and to the RMOW*

Smart Tourism

*Preserve and protect Whistler's unique culture, natural assets and infrastructure*

Not Applicable

*Aligns with core municipal work that falls outside the strategic priorities but improves, maintains, updates and/or protects existing and essential community infrastructure or programs*

### **Community Vision and Official Community Plan**

The Official Community Plan (OCP) is the RMOW's most important guiding document that sets the community vision and long-term community direction. This section identifies how this report applies to the OCP.

This report moves the RMOW toward our Community Vision, particularly by valuing our relationships and working together as partners and community members. A New Code, that is more in line with best

practices and the province’s prescribed principles, will help the RMOW promote the following Community Vision Characteristics:

- **INCLUSIVE:** Residents and visitors of all ages, abilities and incomes are welcome, included, and share our love for nature, active recreation, human connections and innovation.
- **CONDUCT:** Everyone is treated with fairness, respect and care, and as a result we enjoy high levels of mutual trust and safety.
- **PARTICIPATION:** We are able to meaningfully participate in community decisions, collaborating to achieve our Community Vision.
- **PARTNERSHIPS:** We have established strong partnerships with the Squamish Nation, Líl’wat Nation, other levels of government and community stakeholders based on open dialogue, honesty, respect and collaboration, resulting in the achievement of mutual goals and shared benefits.

### **BUDGET CONSIDERATIONS**

The costs associated with a complaint could range from \$10,000 to \$40,000 based on the complexity of the investigation. Staff do not expect that there would be more than one complaint submitted in the first year of the New Code’s operation. It is anticipated that costs can be accommodated within the existing Legislative Services legal budget.

Costs associated with the necessary training on the New Code are estimated at \$2,000 per year and will be funded through the Council budget.

There are also budget implications associated with the ethics commissioner model as set out above in the report.

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### **LÍL’WAT NATION & SQUAMISH NATION CONSIDERATIONS**

The RMOW is committed to working with the Líl’wat People, known in their language as *L’il’wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumíxw* to: create an enduring relationship; establish collaborative processes for Crown land planning; achieve mutual objectives; and enable participation in Whistler’s resort economy. This section identifies areas where RMOW activities intersect with these relationships.

Adopting the New Code will lead to a more accountable Council. Establishing an expectation that fellow Council members will be held accountable for a broad range of conduct matters will hopefully encourage participation on Council from a more diverse candidate pool, which may also attract candidates from *L’il’wat7úl* and *Skwxwú7mesh*.

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### **COMMUNITY ENGAGEMENT**

Level of community engagement commitment for this project:

- Inform     Consult     Involve     Collaborate     Empower

Comment(s):

Following adoption of the New Code, staff will work with the General Manager of Community Engagement and Cultural Services to ensure that the public is adequately informed of the New Code. With respect to all RMOW elections, the New Code will be included as part of the nomination package. This will ensure that all prospective candidates are informed of the standards and expectations of all Council members.

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## REFERENCES

Appendix A – Draft “Code of Conduct Bylaw No. 2397, 2023”

Appendix B – Appendix A of the Code of Conduct and Conflict of Interest Guidelines for Councillors of *Council Policy A-21: Council Governance Manual* (Existing Code)

Appendix C – Proposed Amendments

Appendix D – Flow Charts

Appendix E –Office of the Integrity Commissioner for the City of Vancouver, Investigation reports and Bulletins dealing with conflict of interest:

- Bulletin 2023-01: Personal Interests and Conflict of Interest
  - December 15, 2023 – Complaint against Mayor Sim, Councillor Kirby-Yung, Councillor Klassen, and Councillor Meiszner (Vancouver Code, Part 4 – Conflicts of Interest, section 4.5 [*Use of city resources*])
  - February 17, 2023 – Complaint against Councillor Sarah Kirby-Yung (Vancouver Code, Part 4 – Conflicts of Interest, section 4.1 [*Conflicts of interest*])
  - July 5, 2022 – Complaint against Mayor Stewart (Vancouver Code, Part 4 – Conflicts of Interest, section 4.7 [*Use of influence*])
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## SUMMARY

Given legislative changes from the province, Council directed staff to review the RMOW’s Existing Code. Following thorough discussion with GAESC and Council, and consideration of the province’s prescribed principles, staff presented a draft New Code for discussion at the February 6, 2024 Committee of the Whole Meeting. Staff are now seeking direction to proceed with finalizing the New Code. In this report, staff have also taken what they heard from individual Council members at the COTW and have drafted proposed amendments for all of Council’s consideration.

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## SIGN-OFFS

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