

## Appendix C – Proposed Amendments

- 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.**

Replace section 11 with the following:

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 with the exception of egregious or criminal conduct that~~ reasonably undermines public confidence in RMOW governance.

- 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.**

Delete section 17:

~~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.~~

Replace with the following section:

17. Council Members shall not engage with others, including Staff, members of the public and other Council Members, in a manner that is abusive, bullying, intimidating or derogatory.

Replace section 26. b) [*Interactions with the Public and Media*] with the following:

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

**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.**

~~17. — 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;~~

17. b) Harassment is not:

- i. This Bylaw is not intended to interfere with normal workplace social interaction.
- ii. Workplace banter in any work group is accepted as a normal part of a well-functioning workplace, but care needs to be taken to ensure that the bounds of respect and courtesy are not crossed, that the conduct does not contravene this Bylaw or any other applicable policy of the RMOW.
- iii. As a general rule where the affected individual(s) of actions/comments considers such actions/comments offensive, they should be regarded as such.

- 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.**

Delete section 20:

~~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.~~

Add two new sections:

S. X Council Members shall exercise good judgement and treat Staff professionally and respect the role and responsibilities that each Staff member carries out in the performance of their duties.

S. X If a Council Member is unsure where to direct a question or inquiry regarding a departmental issue or other work-related item, or regarding a personal item that requires interactions with the regulatory functions of the RMOW, they shall direct the question or inquiry to the CAO or to a General Manager or the Corporate Officer with a copy to the CAO.

- 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.**

26. d) when presenting their individual opinions and positions, Council Members shall explicitly state that it is their own personal view and that they do not represent Council or the RMOW in those views. For a social media account, this may be accomplished through a statement on the Council Member's profile.

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

### **PART 3 – APPOINTMENT OF ETHICS COMMISSIONER**

#### **Appointment of Ethics Commissioner**

S. X Council must appoint an Ethics Commissioner to undertake the duties and responsibilities set out in this Bylaw.

S. X The appointment of an Ethics Commissioner must be for a set period of two years. An Ethics Commissioner may be appointed for more than one term.

S. X At the request of the Ethics Commissioner, Council may suspend the appointment for a mutually agreed period of time.

S. X Council will not terminate an Ethics Commissioner except for cause.

S. X The appointment of an Ethics Commissioner may only be made, suspended, or terminated by a 2/3 vote of all Council Members.

### **Interim or Ad Hoc Appointment**

S. X The CAO may appoint an ad hoc Ethics Commissioner in the following circumstances:

- a) if the RMOW has not yet entered into a contract for the appointment of an Ethics Commissioner;
- b) in the interim period between the expiry of the appointment of one Ethics Commissioner and the appointment of a new Ethics Commissioner; or
- c) if the appointed Ethics Commissioner is unable or unwilling to act.

### **Duties and Responsibilities**

S. X The duties and responsibilities of the Ethics Commissioner are as follows:

- a) receive and assess all complaints to determine if the complaint must be rejected, closed, resolved informally or investigated;
- b) assist with informal resolution of complaints;
- c) investigate and conduct inquiries into violations of this Bylaw;
- d) report to Council as to whether a Council Member has breached this Bylaw; and
- e) make recommendations on an appropriate remedy if a Council Member has breached this Bylaw.

S. X The Ethics Commissioner must perform the duties and responsibilities of their office in an impartial and independent manner.

**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.**

### **Duties and Responsibilities**

S. X The duties and responsibilities of the Ethics Commissioner are as follows:

- a) provide advice and recommendations to a member on questions of compliance with this Bylaw, where requested to do so by a Council Member;
- b) provide advice and recommendations to a Council Member, regarding their compliance or disclosure obligations under a provincial statute, such as the *Financial Disclosure Act*, or other such statute that imposes an express compliance or

disclosure obligation on the Council Member due to their position as an elected official, where requested to do so by a Council Member;

c) prepare written materials and content for the RMOW's website for distribution to, and use by, the public, to aid in their understanding of the role of the Ethics Commissioner and the ethical obligations and responsibilities of Council Members under this Bylaw;

d) deliver educational programs regarding the role of the Ethics Commissioner and the ethical obligations and responsibilities of Council Members under this Bylaw;

e) adopt procedures, policies and protocols as necessary to aid in the resolution of complaints under this Bylaw;

f) receive and assess all complaints to determine if the complaint must be rejected, closed, resolved informally or investigated;

g) assist with informal resolution of complaints;

h) investigate and conduct inquiries into violations of this Bylaw;

i) report to Council as to whether a Council Member has breached this Bylaw;

j) make recommendations on an appropriate remedy if a Council Member has breached this Bylaw;

k) submit an annual budget for approval by Council; and

l) publish an annual report by December 1 each year that includes a summary of the work of the Ethics Commissioner and any advice or recommendations that the Ethics Commissioner has to improve the text or operation of this Bylaw or any other policies, procedures, best practices or protocols governing Council Members' ethical conduct.

*\*Note: amendments to Part 4 – Complaint and Resolution Procedures will be drafted if Council elects to proceed with the ethics commissioner model.*

- 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.**

Add a new section after section 14 [Application]:

S. X This Bylaw does not apply to conduct that may subject a member to disqualification under section 111 the Community Charter.

Add a new *Complaint Outside of Jurisdiction* section after the *Complaint Procedure* sections:

## COMPLAINT OUTSIDE OF JURISDICTION

S. X. The Investigator has the authority to investigate a complaint alleging that a Council Member is in breach of this Bylaw.

S. X. If a complaint is submitted that, on its face, is not made with respect to a breach of this Bylaw, or if a complaint would be more appropriately addressed through another process, including if the complaint is:

- a) an allegation of a criminal nature consistent with the *Criminal Code*;
- b) with respect to non-compliance with FIPPA;
- c) with respect to conduct that may subject a Council Member to disqualification pursuant to section 111 of the *Community Charter*;
- d) with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure; or
- e) with respect to a matter that is subject to another outstanding process, such as a court proceeding or a Human Rights complaint.

the Investigator must reject the complaint, or part of the complaint, and must notify the complainant in writing that the complaint is not within the jurisdiction of this Bylaw, or that the complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Investigator considers appropriate.

Amend section 51 [*Complaint Procedure*]:

51. A complaint must be in writing, must be submitted within ~~60~~90 days of the alleged breach, and must include, with sufficient detail: ...

Delete section 56. c) [*Preliminary Assessment*]:

~~e) the complaint is being addressed through a separate process or should be directed to a more appropriate process;~~

Delete sections 58 and 59 [*Criminal Conduct*]:

## ~~CRIMINAL CONDUCT~~

~~58. 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.~~

~~59. 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 recommenced only once the mandatory leave of absence ends pursuant to section 109.3(1)(b) of the Community Charter.~~

Delete sections 60 and 61 [*Disqualification Proceedings*]:

#### ~~DISQUALIFICATION PROCEEDINGS~~

~~60. If, at any stage of the complaint procedure, the Investigator determines that:~~

- ~~a) the subject matter of the complaint is being addressed in a disqualification proceeding commenced under section 111 of the Community Charter; or~~
- ~~b) the complainant could commence a disqualification proceeding under section 111 of the Community Charter in relation to the matter that is the subject of the complaint~~

~~the complaint must immediately be suspended until the proceeding under subsection a) has concluded or the time-period within which the complaint could commence a proceeding under subsection b) has expired.~~

~~61. If the Investigator has suspended a complaint under section 60, they may re-commence the complaint upon the conclusion of a disqualification proceeding, or the time-period within which a disqualification proceeding could be filed has expired, if:~~

- ~~a) the Council Member who is subject to the complaint has not been disqualified from the office by the British Columbia Supreme Court; and~~
- ~~b) it would be in the public interest to do so.~~

**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.**

#### **COMPLAINT OUTSIDE OF JURISDICTION**

S. X. The Investigator has the authority to investigate a complaint alleging that a Council Member is in breach of this Bylaw.

S. X. If a complaint is submitted that, on its face, is not made with respect to a breach of this Bylaw, or if a complaint would be more appropriately addressed through another process, including if the complaint is:

- a) with respect to non-compliance with FIPPA;

b) with respect to conduct that may subject a Council Member to disqualification pursuant to section 111 of the *Community Charter*;

c) with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure; or

d) with respect to a matter that is subject to another outstanding process, such as a court proceeding or a Human Rights complaint,

the Investigator must reject the complaint, or part of the complaint, and must notify the complainant in writing that the complaint is not within the jurisdiction of this Bylaw, or that the complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Investigator considers appropriate.

**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.**

Add two new sections after section 63:

S. X. Where the Investigator has determined that the complaint may be resolved informally, the Investigator may, at their discretion, either attempt to resolve the complaint directly, or refer the complaint to:

a) the Mayor, if the complaint is made by a Council Member, unless the complaint is against the Mayor, in which case the complaint will be referred to the Acting Mayor; or

b) the CAO, if the complaint is made by Staff.

S. X Where the Investigator refers the complaint in accordance with section X (above), the Mayor, Acting Mayor or the CAO, as the case may be, may agree to assist in resolving the complaint directly, or may appoint a third-party to assist in resolving the complaint at their discretion.

**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.**

Amend section 74. d) as follows:

d) in consultation with Staff, and subject to the respondent Council Member's written approval, make the investigation report, or a summary, publicly available in compliance with FIPPA.

**9. Restorative Justice Remedies. Amend section 80 [Remedies] to incorporate restorative justice approaches.**

Amend section 80. k) as follows:

k) any other remedy recommended by the Investigator, including restorative justice approaches, so long as that remedy is within the authority of Council.

**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.**

Delete sections 82 and 83 [Remuneration]:

~~REMUNERATION~~

~~82. 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.~~

~~83. Notwithstanding section 82.a), the remuneration shall not be reduced if the Investigator makes a finding under section 75.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.~~

**11. \*Reimbursement. Amend section 89 [Reimbursement] to remove the \$10,000 claim limit.**

Delete section 89. c):

~~c) the amount claimed does not exceed \$10,000.~~

**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.**

Amend section 89 as follows:

89. 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 has not previously been reimbursed under this section; and
- ~~c) the Council Member did not engage in dishonest, grossly negligent, or malicious conduct; and~~
- ~~e) the amount claimed does not exceed \$10,000.;~~