



**RESORT MUNICIPALITY OF WHISTLER**

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## STAFF REPORT TO COUNCIL

**PRESENTED:** May 28, 2024 **REPORT:** 24-057  
**FROM:** Legislative Services **FILE:** 3900-20-2397  
**SUBJECT:** CODE OF CONDUCT BYLAW NO. 2397, 2023 REPORT

### RECOMMENDATION

**That** the recommendation of the Chief Administrative Officer be endorsed.

### RECOMMENDATIONS

**That** Council consider giving first, second and third readings to “Code of Conduct Bylaw No. 2397, 2023”.

### PURPOSE OF REPORT

This report seeks Council’s consideration of first three readings for “Code of Conduct Bylaw No. 2397, 2023” (Code Bylaw). The Code Bylaw will replace the existing Code of Conduct Policy (Appendix A: Code of Conduct and Conflict of Interest Guidelines for Councillors of *Council Policy A-21: Council Governance Manual*) (Existing Code). This report also sets out the amendments passed by Council at the [April 9, 2024](#) Council Meeting ([Administrative Report No. 24-039](#)).

Information Report  Administrative Report (Decision or Direction)

### DISCUSSION

#### **Background**

A code of conduct is a written document 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 Province’s prescribed 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.

A detailed timeline of the Governance and Ethics Standing Committee Meetings and Council Meetings focused on the development of the Code Bylaw can be found in Appendix B to this report. Additionally,

Appendix C to this report contains resolutions brought forward from the Closed Council Meetings on the Code Bylaw.

At the [February 6, 2024](#) Committee of the Whole Meeting, staff received feedback and requests for clarification from Council members regarding the Code Bylaw. Staff took that feedback and developed 11 proposed amendments, which were presented to Council at the [April 9, 2024](#) Regular Council Meeting. At that Council Meeting, Council moved the following six amendments to the Code Bylaw:

- **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.
- **3. Interactions with Staff.** Delete section 20 [*Interactions with Staff*] and add a new section to focus on Council members' exercise of good judgement when interacting with staff.
- **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.
- **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 the Chief Administrative Officer (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 Code Bylaw, the investigation report, or a summary, would only be made publicly available subject to that Council member's approval.
- **11. Reimbursement.** Amend section 89 [*Reimbursement*] to remove the \$10,000 claim limit.

The exact wording of the above amendments can be found in [Appendix C](#) of the [April 9, 2024 Administrative Report No. 24-039](#). Staff have incorporated these amendments into the Code Bylaw, which can be viewed in track changes in Appendix A of this report. Staff are now seeking Council's consideration of first three readings for the Code Bylaw.

For further reference, the effects of each of the proposed amendments are set out in detail in the [April 9, 2024 Administrative Report No. 24-039](#).

## **Analysis**

The analysis section of this report reviews each of the amendments and focuses on the effects of the amendments pertaining to harassment and discrimination and complaints outside of jurisdiction.

**2. Harassment and Discrimination.** The effect of this change is to remove all references to harassment and discrimination in the Code Bylaw. In place of this, the general conduct section of the Bylaw now contains the following section:

*18. 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.*

This is in line with the general conduct section in the “City of New Westminster Code of Conduct Bylaw No. 8408, 2023”. Additionally, the general conduct section still contains the following respect and dignity section:

*19. Council Members shall treat other Council Members, Committee Members, Staff, and Volunteers with respect and dignity.*

Therefore, the Code Bylaw still covers disrespectful and inappropriate behaviours, but no longer pertains to conduct that would fall under the broader umbrella of harassment, including conduct that would be considered discriminatory under the *BC Human Rights Code* (Human Rights Code).

It is important to note that Council members’ conduct will continue to be subject to WorkSafe BC legislation, which pertains to bullying and harassment; however, this legislation only protects workers, not Council members. That is, while WorkSafe governs conduct between Council members and Staff, it does not govern conduct between Council members themselves.

WorkSafe BC defines bullying and harassment as follows:

“(a) ... any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated...”.

Similarly, Council members are expected to comply with the Resort Municipality of Whistler’s (RMOW’s) internal Administrative Procedure F-13 2011: Respectful Workplace (Respectful Workplace Procedure), attached as Appendix D to this report; however, the intention of the Respectful Workplace Procedure is not to address inappropriate conduct between Council members. The Respectful Workplace Procedure covers three categories of inappropriate workplace behaviour: disrespectful behaviour (including bullying), discrimination/harassment and damage to people or property and captures conduct between Council members and Staff.

It is important to highlight the distinction between bullying and discrimination. Under the Human Rights Code, “human rights” refers to the right to be free from discrimination in certain areas of daily life. The Human Rights Code only applies in certain areas of life, such as employment and tenancy, and lists the protected traits, such as race and sex. For example, if you are being bullied in your place of employment (area of life) based on your sexual orientation (protected trait), you have a human rights complaint. Conversely, if you are being bullied at work based on your clothing preferences, you would not have a human rights complaint for discrimination.

With this amendment in the Code Bylaw to remove harassment and discrimination and given that Council members are not protected under WorkSafe BC or our internal Respectful Workplace Procedure when it comes to harassment or discrimination between Council members, there are fewer options available for Council members to address this misconduct. The available avenues for a Council member to address such conduct are the BC Human Rights Tribunal, if the alleged conduct violates a right protected from discrimination, or the RMOW may retain a mediator to help resolve the dispute. The latter option is not set out in any formal policy or procedure and would be determined on a case-by-case basis. This means that the complainant and respondent would not know the process for handling the complaint or the possible remedies or outcomes ahead of initiating a discrimination complaint. Alternatively, Council may wish to consider the development of a new Council Policy aimed at

addressing these types of complaints. However, Staff note that this moves away from the benefit of having conduct expectations for Council members set out in one document (i.e., the Code Bylaw).

On Staff's review of comparison code of conduct bylaws (See [Materials Related to Agenda Item 6.2](#) from the February 6, 2024 Committee of the Whole Meeting), the only city that does not include harassment or discrimination in its code of conduct is the City of New Westminster.

Staff recommend that if harassment and discrimination are kept out of the Code Bylaw that the RMOW's Human Resources procedures and policies are updated to cover harassment between Council members.

**3. Interactions with Staff.** This amendment removes the requirement that Council members must direct all inquiries to the CAO and in place requires that Council members exercise good judgment and respect the roles and responsibilities of Staff.

**6. Complaint Outside of Jurisdiction, Preliminary Assessment, Criminal Conduct and Disqualification Proceedings.** The effect of these changes is to align the Code Bylaw with the process set out for dismissing complaints under the City of Vancouver's "Code of Conduct By-law No. 12886". The new section sets out that the following types of complaints are outside of the Code Bylaw's 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* (CC) (disqualifiable conduct),
- non-compliance with a more specific Council policy, or
- conduct subject to another outstanding process, such as a court proceeding or a Human Rights Code complaint.

This change is felt most acutely with respect to disqualifiable conduct and complaints of a criminal nature.

#### *Disqualifiable Conduct*

In terms of disqualifiable conduct, this change requires that complainants must wait to file their complaint until the 45-day window to bring an application for disqualification has expired under the CC. The intention behind this is to avoid parallel proceedings from occurring under the Code Bylaw and the CC. An associated amendment that was approved by Council is that the limitation period to submit a complaint under the Code Bylaw changes from 60 to 90 days to allow a reasonable time for such complaints to be made.

Council asked about elections offences. Any election offences under the *Local Government Act* (LGA) or the *Local Elections Campaign Financing Act* that may subject a Council member to disqualification would be treated the same as any other type of disqualifiable conduct under the Code Bylaw. That is, the complaint could only be filed after the 45-day window to file an application for disqualification had expired or the complaint would be dismissed by the investigator if brought within that window.

#### *Criminal Nature*

This change requires the investigator to reject a complaint if the complaint is an allegation of a criminal nature consistent with the *Criminal Code*. With this amendment, the investigator no longer retains the ability to recommence a complaint after the criminal charges have been disposed of. This was an effective tool in the metaphorical responsible conduct toolkit to address misconduct that, even though it

had not met the criminal standard, was still harmful and the allegations, if true, would constitute a violation of the Code Bylaw.

The concern of “Double Jeopardy” was raised at the Council Meeting and Staff would like to reiterate that that would not have been a concern under the former version of the draft Code Bylaw. Double Jeopardy is the protection against being tried for the same criminal offence more than once. For example: Council member A tells Council member B that they will burn down Council member B’s shed. Double Jeopardy would arise where Council member A is charged with the criminal offence of uttering threats, found not guilty, and then charged again with the same offence of uttering threats for the same shed comment. The former version of the Code Bylaw would have picked up this same (“burn your shed down”) conduct, after Council member A was acquitted of the offence, but it would have investigated it as an alleged breach of the Code Bylaw, not the *Criminal Code*. An investigation under the Code Bylaw could only occur where the conduct at issue is also a potential breach of the Code Bylaw. Following this example, this conduct could have been investigated as a potential breach of the Code Bylaw’s general conduct section which requires that Council members not engage with others in a manner that is abusive, bullying, or intimidating. The investigation would then take place under the processes set out in the Code Bylaw and would not engage any criminal court processes or penalties. The intention behind the Code Bylaw was not to create a second shot at criminal convictions, but rather to ensure that certain types of conduct deemed irresponsible by Council could be addressed. It should also be noted that being found not guilty under the *Criminal Code* is not synonymous with being innocent of all wrongdoing and the Code Bylaw could capture and remediate the harassment that occurred.

**7. Informal Resolution.** 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. This change gives a greater role for the Mayor and CAO in the resolution of a complaint.

**8. Investigator’s Report.** Where the investigator finds that a Council member did not breach the Code Bylaw, this change requires the approval of the respondent Council member prior to the publication of the investigator’s report. This amendment still allows for the investigator’s impartial report to be published where the respondent Council member wishes to correct the record.

**11. Reimbursement.** 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 the Code Bylaw. This amendment removes the \$10,000 claim limit, meaning that a Council member may request reimbursement of legal fees in any amount.

Staff have incorporated the above amendments into the Code Bylaw for Council’s consideration of first three readings. Appendix A to this report contains the Code Bylaw with the amendments showing in tracked changes.

### *Next Steps*

At a subsequent Council Meeting, Staff will seek Council’s adoption of the Code Bylaw and Council’s consideration of related responsible conduct policies including the introduction of the “Elected Officials Oath of Office Bylaw, No. 2414, 2023” and updates to “Council Procedure Bylaw, No. 2207, 2018”, *Council Policy A-21: Council Governance Manual* and *Council Policy A-30: Council Remuneration Policy*, which will be reintroduced as a bylaw to align with the Code Bylaw.



## 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

- Appendix D: Administrative Procedure F-13 2011: 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 November 21, 2023: 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](#)
- [April 9, 2024: Administrative Report No. 24-039, Code of Conduct Guidelines – Direction to Proceed](#)

#### 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 LGA 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*

This regulation 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 Code Bylaw that is 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, Lílwat 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.

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## **BUDGET CONSIDERATIONS**

The costs associated with a complaint could range from \$10,000 to \$40,000 or more 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 Code Bylaw'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 Code Bylaw are estimated at \$2,000 per year and will be funded through the Council budget.

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## LÍLWAT NATION & SQUAMISH NATION CONSIDERATIONS

The RMOW is committed to working with the Lílwat People, known in their language as *L'il'wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumixw* 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 Code Bylaw will lead to clear expectations for conduct of Councillors. 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

Following adoption of the Code Bylaw, staff will work with the General Manager of Community Engagement and Cultural Services to ensure that the public is adequately informed of the Code Bylaw. With respect to all RMOW elections, the Code Bylaw and other related policies and bylaws 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 – “Code of Conduct Bylaw No. 2397, 2023” as amended with track changes  
Appendix B – Timeline for Development of the Code Bylaw  
Appendix C – Closed Council Meeting Resolutions  
Appendix D – Administrative Procedure F-13 2011: Respectful Workplace

“Code of Conduct Bylaw No. 2397, 2023” included in Council package.

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## SUMMARY

At the April 9, 2024 Regular Council Meeting, staff sought direction to proceed with the Code Bylaw. At that Council Meeting, Council passed several amendments to the Code Bylaw. Staff have incorporated those amendments into the Code Bylaw and staff are now seeking Council's consideration of first, second and third readings of the Code Bylaw.

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**SIGN-OFFS**

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