

**THE CORPORATION OF THE TOWNSHIP OF TARBUTT
BY-LAW NO 4 - 2019**

Being a by-law to Establish a Code of Conduct for Members of Council and Local Boards.

WHEREAS Section 11 of the Municipal Act, S.O. 2001, c. 25, as amended, authorizes municipalities to pass by-laws regarding Accountability and Transparency of the municipality and its operations and of its local boards and their operations;

AND WHEREAS Section 223.2 of the Municipal Act, 2001,c. 25, as amended, authorizes a municipality to establish codes of conduct for members of Council for the municipality and of local boards of the municipality;

AND WHEREAS an Integrity Commissioner was appointed by By-law 8-2019

AND WHEREAS Council of the Corporation of the Township of Tarbutt deems it expedient to adopt a Code of Conduct for Members of Council and Local Boards;

NOW THEREFORE the Council of the Corporation of the Township of Tarbutt hereby enacts as follows:

1. That the Council of the Township of Tarbutt does hereby adopt the Code of Conduct for Members of Council and Local Boards attached hereto as "Schedule A" and forming part of this by-law.
2. That this by-law shall come into force and effect upon passage.

Read a first, second, and third and final time and passed, this 20th day of February, 2019.



C. Burton, Mayor



G. Martin, Clerk

SEAL



CODE OF CONDUCT POLICY

Subject: Code of Conduct (Council and Local Boards)

Source: By-law: 4-2019 - Schedule 'A'

Date: February 20th 2019

Purpose:

A written Code of Conduct for Council and local boards helps to ensure that the members of Council, advisory committees, and local boards of the municipality (as defined in the *Municipal Act*) share a common basis for acceptable conduct. This Code is designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate. These standards should enhance public confidence that Tarbutt's elected and appointed representatives operate from a base of integrity, justice and courtesy. The key principles underlining the Code of Conduct are:

- a. All members shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- b. Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;
- c. Members are expected to perform their duties in office in a manner that promotes public confidence and will bear close public scrutiny;
- d. Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature and Municipality Council.

Municipal Council members hold positions of privilege; therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community and regard for the integrity of the Corporation. The purpose of the Code of Conduct is to: protect the public interest; encourage high ethical standards among members of Tarbutt Municipal Council and local boards; provide a universal understanding of the fundamental rights, privileges, and obligations of members of Tarbutt Municipal Council and local boards; provide a means for members of Tarbutt Municipal Council and local boards to obtain information on some contemplated conduct in circumstances where they are uncertain as to the ethical appropriateness of that conduct.

Applications:

This policy shall apply to all members of Tarbutt Municipal Council and members of local boards as defined in section 223.1 of the *Municipal Act*.

Definitions:

"Members" includes the Mayor and members of Tarbutt Municipal Council and members of local boards as defined in section 223.1 of the *Municipal Act*.

"Confidential Information" includes:



- a. Any information in the possession of, or received in confidence by the Municipality, that the Municipality is prohibited from disclosing, or has decided to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* or any other law;
- b. Information of a corporate, commercial, scientific or technical nature received in confidence from third parties (personal information; information that is subject to solicitor-client privilege; information that concerns any confidential matters pertaining to personnel, labour relations, litigation, property acquisition, security of property of the municipality; any other information lawfully determined by the Council or the local board to be confidential or required to remain or be kept confidential by legislation or order);
- c. A matter, the substance of a matter, and information pertaining to a matter, that has been debated or discussed at a meeting closed to the public, unless the matter is subsequently discussed in open Council or it is authorized to be released by Council/local board or otherwise by law;
- d. Reports of consultants, draft documents and internal communications which, if disclosed, may prejudice the reputation of the Municipality, its officers and employees, or its effective operation;
- e. Information concerning litigation, negotiation or personnel matters;
- f. Information the publication of which may infringe on the rights of any person (eg. source of a complaint where the identity of a complainant is given in confidence)

“Integrity Commissioner” means the person appointed by by-law in accordance with section 223.3 of the *Municipal Act, 2001* and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the Code of Conduct for members of Council and local boards.

Gifts and Benefits:

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his / her duties of office, unless permitted by the exceptions listed below. For these purposes, a fee or advance paid to, or a gift or benefit provided with the member’s knowledge to, a member’s spouse, child or parent or to a member’s staff that is connected directly or indirectly to the performance of the member’s duties is deemed to be a gift to that member. The following are recognized as exceptions:

- a. compensation authorized by by-law;
- b. such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c. a political contribution otherwise reported by law;
- d. services provided without compensation by persons volunteering their time;
- e. a suitable memento of a function honouring the member;
- f. food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign country;
- g. food and beverages consumed at banquets, receptions or similar events, if:
 - o attendance is in keeping with his or her representative role; and
 - o the value is reasonable; and
 - o attendance at events sponsored by the same entity is infrequent.



- h. communication to the offices of a member, including subscriptions to newspapers and periodicals.

In the case of categories (b) (e) (f) (g) and (h), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Municipality Clerk. The disclosure statement must indicate:

- a. the nature of the gift or benefit;
- b. its source and date of receipt;
- c. the circumstances under which it was given or received;
- d. its estimated value;
- e. what the recipient intends to do with the gift; and,
- f. whether any gift will at any point be left with the Municipality.

Disclosure statements will be a matter of public record.

Except in the case of category (f), a member may not accept a gift or benefit worth in excess of \$500 or gifts or benefits from one source during a calendar year worth in excess of \$500. No member shall seek or obtain by reason of his / her office any personal privilege or advantage with respect to Municipal services not otherwise available to the general public and not consequent to his or her official duties.

Confidentiality

No member shall disclose, release, or publish by any means to any person or to the public any confidential information acquired by virtue of his or her office in any form, except when required or authorized by Council or otherwise by law to do so. No member shall use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body.

Use of Municipal Property

No member shall, for personal purposes or profit, permit the use of any Municipal property, equipment, services, or supplies other than for purposes connected with:

- a. the discharge of Municipality duties; or
- b. associated community activities of which Council has been advised

Unless such use is permitted by one of the following exceptions:

- a. reasonable and incidental personal use of office space, equipment such as computers, fax machines, cell phones, etc., where the Municipality incurs no additional costs relating to such use, and the use is of limited duration and frequency.
- b. use of Municipality property and facilities where such use is universally known to be available to other residents upon request and on equal terms.

No member shall obtain financial gain from the use of Municipality-developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the Municipality of Tarbutt.



No member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

Work of a Political or Personal Nature

Members are required to follow the provisions of the *Municipal Elections Act, 1996*. No member shall use the facilities, equipment, supplies, services or other resources of the Municipality (including Councillor newsletters and websites linked through the Municipality's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities in any Municipal facility for the purpose of seeking the support of Municipal employees working in that facility. No member shall use the services of persons for his or her election campaign purposes during the working hours for which those persons receive compensation from the Municipality.

No member shall use Municipal facilities, services or property for his or her personal or business use.

No member shall use the services of persons for his or her personal or personal business use during the working hours for which those persons receive compensation from the Municipality.

Conduct Respecting Current and Prospective Employment

No member shall allow the prospect of his / her future employment by a person or entity to detrimentally affect the performance of his / her duties to the Municipality.

Business Relations

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the Municipality. A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

Conduct

As a representative of the Municipality, every member has the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, any member of staff or any member of the public. A member shall not speak or communicate in a manner that is discriminatory to any individual based on that person's race ancestry, place of origin, creed, gender, sexual orientation, age colour, marital status or disability.

Influence on Staff

Only Council as a whole has the authority to approve budget, policy, committee processes and other such matters. Members shall be respectful of the fact that staff work for the Municipality as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective, without undue influence from any individual member or group of members. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of Municipality staff.



Council directs the business of the Municipality and passes by-laws or resolutions, as appropriate, for decisions adopted by Council. Council has delegated responsibility to the Clerk/Chief Administrative Officer (CAO) for the administration of the affairs of the Municipality in accordance with decisions adopted by Council. This means that under the direction of the Clerk/CAO, staff have the responsibility and the authority to provide consultation, advice and direction to Council and to implement Council approved policy. Accordingly, staff establishes the appropriate administrative policies, systems, structures and internal controls to implement the goals and objectives of Council, and manage implementation within the resources at their disposal. Council should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power, or their personal opinions. No member shall compel any staff member to engage in activities that are contrary to the directions of Council or the policies of the municipality.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

Improper Use of Influence

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's immediate relatives, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision "private advantage" does not include a matter:

- a. that is of general application;
- b. that affects a member of Council, his / her immediate relatives, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- c. that concerns the remuneration or benefits of a member of Council.

Members should not advocate on behalf of any person at a hearing of an adjudicative board and should not contact any member of such a board regarding any application before it.

Complaints Alleging Violation of This Code

Where an elector or a person acting demonstrably in the public interest has reasonable grounds to believe that a member has breached this Code, a complaint may be submitted to the Clerk's Office in the prescribed form which will be forwarded to the Municipality's Integrity Commissioner who will process it in accordance with the Complaint Protocol attached hereto as Appendix "A".

Appendix "A" – Complaint Protocol



Appendix "B" – Request for Investigation
Appendix "C" – Request for Advice

Appendix "A"

Complaint Protocol for Code of Conduct (Council and Local Boards)

Application:

This process applies to members of Tarbutt Council and its local boards as defined in section 223.1 of the *Municipal Act* (members).

Integrity Commissioner

The Municipal of Tarbutt Integrity Commissioner shall be responsible for the provision of services as established by Council which will include the following:

1. To provide written and oral advice to members and Municipal staff concerning the interpretation of and compliance with the Code of Conduct for Council and Local Boards governing the ethical behaviour of the members (the "Code");
2. To provide Council and its local boards with specific and general opinions and advice on the interpretation of the Code, including revisions thereto;
3. To conduct inquiries into a request made by Council, a local board, a member, a member of Municipal staff or any person demonstrably acting in the public interest into whether a member has contravened any application provision of the Code;
4. To attempt to settle any complaint between the complainant and the member before commencing an inquiry.

Procedure for Making a Complaint

Informal Complaints

Any individual who identifies or witnesses behaviour or activity by a member of Council that appears to be in contravention of the Code of Conduct for Council and Local Boards may address the prohibited behaviour or activity themselves in the following manner:

1. advise the member in writing that the behaviour or activity appears to contravene the Code of Conduct identifying the specific provision of the Code of Conduct that is alleged to have been contravened;
2. encourage the member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
3. document the incident(s) including dates, times, locations, other persons present and any other relevant information, including steps taken to resolve the matter;
4. if applicable, confirm to the member satisfaction with the response of the member; or, if applicable, advise the member of dissatisfaction with the response; and
5. if applicable, consider the need to pursue the matter in accordance with the formal complaint procedure.

Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying behaviour or an activity that they believe violates the Code of Conduct; however, the informal process is not a precondition or a prerequisite to pursuing the formal complaint procedure.

Formal Complaints

1. All complaints or requests for inquiries shall be submitted to the Municipal Clerk office and sworn before a commissioner of oaths in the form provided in Appendix "B" and the Clerk shall forthwith forward the complaint to the Integrity Commissioner.
2. All complaints or requests for inquiries must clearly state:
 - a. The member to whom the complaint relates
 - b. The nature of the alleged contravention
 - c. The specific provision(s) of the Code allegedly contravened;
 - d. Names of any witnesses to the alleged contravention; and
 - e. Written material in support of the alleged contravention.
3. Upon receipt of a complaint or request for inquiry, the Integrity Commissioner shall first determine if it is within his/her jurisdiction and whether there is a procedure under other legislation or Municipal policy to deal with the

complaint. If it is determined that other procedures apply, the Integrity Commissioner shall refer the complainant to the appropriate person or agency to follow that process. This would include such matters as:

- a. The grievance provisions of a collective agreement;
- b. The complaint provisions under the *Ontario Human Rights Code*;
- c. A complaint of alleged criminal activity;
- d. Procedures under the *Municipal Act*, the *Municipal Conflict of Interest Act* or the *Municipal Elections Act*;
- e. The complaint provisions of the *Workplace Violence and Harassment Prevention Policy*.

Where it has been determined that a complaint should be dealt with under one of the above processes, it will no longer be considered or dealt with by the Integrity Commission and the time limits within the above processes will apply accordingly.

4. Upon receipt of a complaint or request to conduct an inquiry within his/her jurisdiction the Integrity Commissioner will deliver a preliminary information report to an open meeting of Council including the following:
 - a. The opinion of the Commissioner as to whether the inquiry is appropriate and whether it can be conducted within the law applicable to such an inquiry;
 - b. An indication as to whether it is the Commissioner's intention to conduct the inquiry under sections 33 and 34 of the *Public Inquiries Act*;
 - c. A preliminary indication of the members of staff and/or consultations needed to assist the Commissioner;
 - d. An estimated cost of the inquiry;
 - e. The estimated time required to complete the inquiry and prepare a final report;
 - f. Where appropriate, the Commissioner may recommend that the alleged infraction be reported to the police and that the inquiry be suspended until the police investigation is completed.
5. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith or that there are no grounds or insufficient grounds for an inquiry, the Integrity Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the preliminary report.

Procedure for Obtaining Advice

Where a member or employee is seeking to obtain advice from the Integrity Commissioner he/she shall submit to the Municipal Clerk the completed form provided (Appendix "C").

All advice of the Integrity Commissioner to members or employees shall be confirmed in writing. No solicitor/client relationship will exist in the giving of such advice.

Where the Integrity Commissioner learns of a violation through the request for advice from any member, he or she is required to report such a violation to Council.

The Integrity Commissioner may decline to give advice if he/she determines that it will put him/her in conflict with his/her duty to Council as a whole.

Confidentiality

The Integrity Commissioner shall carry out all inquiries in a manner which will ensure that the individual to whom the complaint relates is treated fairly and all complaints shall be treated as confidential to the extent possible and in accordance with the *Municipal Act*.

All records of investigations shall be kept confidential and access limited to those in the Municipality with a need to know for the purposes of conducting a full investigation.

Intake Procedures

Upon receipt of a complaint involving a member other than the Mayor, the Clerk shall immediately advise the Mayor.

Upon receipt of a complaint involving the Mayor, the Clerk shall immediately advise the individual who was acting mayor at the time of the allegation who is authorized to act in the place of the Mayor.

The Integrity Commissioner may attempt to settle any complaint. Except where otherwise required by the *Public Inquiries Act*, the Commissioner shall provide a copy of the complaint and supporting material to the member with a request for a written response to the allegation within ten days and provide a copy of such response to the complainant with a request for a written response also within ten days.

Investigations

After the presentation of the information report to Council, the Integrity Commissioner shall take all steps necessary to promptly investigate the complaint within his or her jurisdiction, including entering any Municipal office for such purpose and consultation with Municipal staff with access to all information and records described in subsections 3 and 4 of section 223.4 of the *Municipal Act* and may retain independent professional services if required.

The Integrity Commissioner shall make every effort to complete an investigation within 30 days.

If the Integrity Commissioner requires more than 30 days to complete an investigation, the following shall be notified accordingly:

1. The complainant;
2. The individual to whom the complaint relates
3. The Mayor in the case of a complaint concerning another member; or the individual who was acting mayor at the time of the allegation in the case of a complaint concerning the Mayor.

A complaint involving an alleged contravention that has already been thoroughly investigated will not be re-investigated unless new evidence is presented.

Reporting the Results of an Investigation

The Integrity Commissioner shall report his/her findings to an open meeting of Council. Where the inquiry relates to a local board the report will be submitted both to Council and to the local board.

If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

The Commissioner shall give a copy of the final report to the complainant and the member whose conduct is concerned 15 days prior to the Council meeting at which it will be considered.

At the time of the Integrity Commissioner's report to Council the identity of the person who is the subject of the complaint shall not be treated as confidential information if the Integrity Commissioner finds that a breach has occurred.

Actions by Council

In reviewing the final report Council will determine whether it will impose any of the following penalties on a member if the Integrity Commissioner reports that it is his/her opinion that the member has contravened the Code:

1. Issue a motion of reprimand;
2. Suspension of the remuneration paid to the member in respect of his or her services as a member for a period of up to 90 days;
3. Request the member involved to return any gift or benefit received in contravention of the Code of Conduct;
4. Request the member involved to repay the value of the benefit;
5. Remove the member from committee or local board appointments;
6. Request an apology; or
7. Withhold confidential materials/matters for a period of time.

All reports to Council by the Integrity Commissioner on the investigation of complaints are public documents.

The Integrity Commissioner shall be responsible for ensuring the above procedures are followed with respect to requests for inquiries and for conducting investigations. Municipal Council shall be responsible for determining penalties where appropriate.

Protection from Retaliation

Any employee who files a complaint of a contravention of the Code of Conduct will not be subjected to any form of penalty or reprisal provided the complaint is made in good faith and in the reasonable belief of the complainant that a contravention of the Code has occurred.

Limitation Period

The Integrity Commissioner shall not proceed with an inquiry in regard to a complaint more than 60 days after the event or series of events which are the subject matter of the complaint were discovered by the complainant. An event or series of events is discovered on the earlier of the date upon which the complainant first knew:

- that the event(s) had occurred and by whom; and
- that the event(s) may have constituted a contravention of the Code.

The onus of proof as to the date of discovery lies with the complainant.

Where the Integrity Commissioner decides not to proceed with an investigation of a complaint received more than 60 days after the date when the event(s) occurred, the Integrity Commissioner shall prepare and file a report setting out that decision.

Complaints in Municipal Election Years

Despite any other provision of this process, if the Commissioner has not completed an inquiry before nomination day for a regular election as set out in section 31 of the *Municipal Elections Act, 1996*, the Commissioner shall terminate the inquiry on that day.

If an inquiry is so terminated, the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election, as set out in section 5 of the *Municipal Elections Act, 1996*, the person or entity who made the request or the member or former member whose conduct is concerned makes a written request to the Commissioner that the inquiry be commenced.

The following rules apply during the period of time starting on nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996*, and ending on voting day in a regular election, as set out in section 5 of that Act:

1. There shall be no requests for an inquiry about whether a member of council or of a local board has contravened the code of conduct applicable to the member.
2. The Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a member of council or of a local board has contravened the code of conduct applicable to the member.
3. The municipality or local board shall not consider whether to impose the penalties referred to in subsection (5) on a member of council or of a local board.

