

TOWN OF BANFF

BYLAW 429

Code of Conduct for Elected Officials

Being a Bylaw of the Town of Banff to Establish a Code of Conduct for Elected Officials

WHEREAS section 146.1 (1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 requires Council to establish by bylaw a code of conduct governing the conduct of Members of Council;

AND WHEREAS the public is entitled to expect the highest standards of conduct from the Members that it elects to Council for the Town of Banff;

AND WHEREAS the establishment of a code of conduct for Members of Council is consistent with the principles of transparent and accountable government;

AND WHEREAS a code of conduct ensures that Members of Council share a common understanding of acceptable conduct extending beyond the legislative provisions governing the conduct of Councillors;

AND WHEREAS The role of a Councillor is to be independent, impartial and dually responsible to, and engaged with, the electors, community, and region in such a way that demonstrates the shared responsibility of being a Councillor and member of a productive Council;

AND WHEREAS The Town of Banff Council is committed to having an effective mechanism for oversight of the conduct of members of Council;

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF BANFF, IN THE PROVINCE OF ALBERTA, ENACTS AS FOLLOWS:

1.0 CITATION

1.1 This Bylaw may be cited as the Code of Conduct Bylaw 429.

2.0 DEFINITION

2.1 In this Bylaw, words have the meanings set out in the *Municipal Government Act*, R.S.A. 2000, c. M-26, except that:

- a) **Act** means the *Municipal Government Act*, R.S.A. 2000, c. M-26, and associated regulations, as amended;
- b) **Acting Mayor** means the Member of Council appointed as acting chief elected official pursuant to section 152 of the *Municipal Government Act*, R.S.A 2000, c. M-26;

- c) **Administration** means the administrative and operational arm of the Municipality, comprised of the various departments and includes all employees who operate under the leadership and supervision of the Town Manager;
- d) **Confidential Information** means:
 - (i) Information that a Member of Council has a legal duty not to disclose;
 - (ii) Information that is not publicly available; and
 - (iii) Information that disclosure of which could reasonably be expected to harm the interests or organizations, including the Town;
 - (iv) **Confidential Information** does not include information that has been made publicly available;
- e) **Council** means the Mayor and Councillors of the Town of Banff;
- f) **Council Committee** means a committee, board or other body established by Council in accordance with the *Act*, but does not include an assessment review board, a development appeal board, or a joint jurisdiction committee where Council has appointed members;
- g) **Deputy Mayor** means the Member of Council appointed as deputy chief elected official pursuant to section 152 of the *Municipal Government Act*, R.S.A 2000, c. M-26;
- h) **Election Campaign** means activities related to the re-election of a Member of Council and not to their duties under the *Municipal Government Act*, R.S.A. 2000, c. M-26;
- i) **FOIP** means the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, any associated regulations, and any amendments or successor legislation;
- j) **Formal Complaint** means a written request by an individual, including, but not limited to, a Member of Council or a member of the public, that an investigation into an event or series of events alleged to contravene the Council Code of Conduct Bylaw or any other procedures, rules of polices governing the ethical behavior of Council, be conducted;
- k) **Fundraising Activity** means any and all activities undertaken by or on behalf of a Member of Council to raise funds for the purpose of an Election Campaign, taking place at any point during a Member of Council's term of office;
- l) **Immediate Family** means "Councillor's family" as defined in Section 169(b) of the *Municipal Government Act*, R.S.A. 2000, c. M-26, a Member of Council's spouse or adult interdependent partner, children, parents and the parents of the Member of Council's spouse or adult interdependent partner;
- m) **Informal Complaint** mean a request by an individual, including, but not limited to, a Member of Council or a member of the public, that a Member cease activities, behavior, and/or practices that contravene the Council Code of Conduct Bylaw or any other procedures, rules, or policies governing the ethical behavior of Council;
- n) **Investigator** means Council, as a whole, the individual appointed by Council, or the panel, as a whole, established by Council to investigate and report on complaints regarding the conduct of Members of Town Council, but will not include the Town Manager;

- o) **Mayor** means the chief elected official of the Town elected by a vote of the electors of the municipality under Section 150 of the *Municipal Government Act*, R.S.A 2000, c. M-26;
- p) **Member of Council** or **Member** means an elected Member of Council, and includes a Councillor or the Mayor;
- q) **Personal Information** means recorded information about an identifiable individual as further specified in the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25;
- r) **Statement** or **Communication** means an account of facts, views, or plans, or an expression of attitude or beliefs. Statements or Communications can encompass a number of forms and include, but not limited to, those comments made on social media (website or applications that enable users to create and share content or to participate in social networking);
- s) **Town of Banff** or **Town** means the Corporation of the Town of Banff and, where the context requires, the land included within the boundaries of the Town of Banff;
- t) **Town Employee** or **Employee** means an individual who operates under the leadership and supervision of the Town Manager and provides services to the Town under an employment agreement or in the capacity of agent or volunteer;
- u) **Town Manager** means a person appointed as Chief Administrative Officer by Council or the person designated by the Town Manager to carry out a particular duty;
- v) **Orientation Training** means training offered by the Town in accordance with Section 201.1 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

3.0 INTERPRETATION

- 3.1 In this Bylaw the headings in the body form no part of the Bylaw and are inserted for convenience and reference only.

4.0 PURPOSE AND APPLICATION

- 4.1 The purpose of this Bylaw is to provide a framework to guide ethical conduct in such a manner that upholds the integrity of the Town of Banff and the high standards of professional conduct the public expects of its elected officials. It also establishes procedure for the investigation, which may incorporate the rules of natural justice, and enforcement of those standards.
- 4.2 This Bylaw applies to all Members of Council in their capacity as elected officials.
- 4.3 If any provision of this Bylaw conflicts with any provision in any other bylaw or Town policy, the provision of this Bylaw prevails.
- 4.4 In addition to the regulations included in Section 18.0, Review, the Town Manager will review this Bylaw on a regular basis to ensure that it reflects governing legislation as well as other legal enactments and relevant case law.

- 4.5 All Members must sign the Code of Conduct, attached as Scheduled A to this Bylaw, affirming that they have read and fully understand the contents of the Code of Conduct and will follow and abide by it in good faith. Members will be asked to review and re-sign the Code of Conduct, as a matter of process, after any amendments have been made to the Code.

5.0 REPRESENTING THE TOWN

- 5.1 In representing the Town, Members of Council shall:
- (a) Act honestly and in good faith, serve the welfare and interests of the Town as a whole;
 - (b) Perform their functions and duties in a conscientious and diligent manner with integrity, accountability and transparency;
 - (c) Conduct themselves in a professional manner with dignity and make every effort to participate diligently in the meetings of Council, Council Committees, and other bodies to which they are appointed by Council; and
 - (d) Conduct themselves in a manner that promotes public confidence and will bear close public scrutiny.

6.0 COMMUNICATING ON BEHALF OF THE TOWN

- 6.1 Council will read, understand, and comply with the Communications Policy, C116.
- 6.2 Unless Council directs otherwise, and as indicated in the Communications Policy, the Mayor is Council's official spokesperson and in the absence of the Mayor it is the Deputy Mayor or Acting Mayor. All inquiries from the media regarding the official Council position on an issue shall be referred to Council's official spokesperson.
- 6.3 A Member who is authorized to act as Council's official spokesperson must ensure that their comments accurately reflect the official position and will of Council as a whole, even if the Member personally disagrees with Council's position.
- 6.4 A Statement or Communication made by a Member is presumed to be made on the Member's own behalf, not the Town's behalf.
- 6.5 No Member shall make a Statement or Communication with the intent to mislead Council or members of the public.

7.0 RESPECT FOR THE DECISION MAKING PROCESS

- 7.1 Decision making authority lies with Council, and not with any individual Member. Council may only act by bylaw or resolution passed at a Council meeting, held in public, at which there is a quorum present. No Member shall, unless authorized by Council, attempt to bind the Town or give direction to employees in Administration, agents, contractors, consultants or other service providers or prospective vendors to the Town.
- 7.2 A Member must respect and comply with the Town of Banff's Procedures Bylaw 44-7, as amended or replaced from time to time.

- 7.3 Members shall conduct and convey Council business and all their duties in an open and transparent manner other than for those matters which, by law, are authorized to be dealt with in a confidential manner in a closed meeting session, and in so doing, allow the public to view the process and rationale which was used to reach decisions and the reasons for taking certain actions.
- 7.4 Members shall accurately communicate the decisions of Council, even if they disagree with Council's decision, such that respect for the decision-making process of Council is fostered.
- 7.5 Members shall approach decision-making with an open mind that is capable of persuasion.

8.0 ADHERENCE TO POLICIES, PROCEDURES, AND BYLAWS

- 8.1 Council Members shall read, understand, and comply with all policies, procedures, and bylaws that apply to their duties as elected officials. This information will be provided to all Councillors as part of the Orientation Training.

9.0 RESPECTFUL INTERACTIONS

- 9.1 Members shall act in a manner that demonstrates fairness, respect for individual differences and opinions, and an intention to work together for the common good and in furtherance of the public interest.
- 9.2 No Member shall speak in a manner that is discriminatory to any individual based on the person's race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, or sexual orientation.
- 9.3 Members shall treat one another, Employees of the Town, and members of the public with courtesy, dignity and respect and without abuse, bullying or intimidation.
- 9.4 Members shall respect the fact that Employees in Administration work for the Town as a corporate body and are charged with making recommendations that reflect their professional expertise and that Employees are required to do so without undue influence from any Member or group of Members.
- 9.5 Members must not:
- (a) Involve themselves in matters of Administration, which fall within the jurisdiction of the Town Manager;
 - (b) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any Employee of the Town with the intent of interfering in the Employee's duties; or
 - (c) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of Employees of the Town.

10.0 CONFIDENTIAL INFORMATION

- 10.1 A Member must protect Confidential Information. This includes the following duties:
- (a) A Member must not disclose Confidential Information, including to Town Employees, or to persons outside the Town, except as authorized by Council or by a Town Employee empowered to authorize such disclosure;
 - (b) A Member must not use Confidential Information with the intention to cause harm or detriment to Council, the Town, or any other person or body;
 - (c) A Member must protect Confidential Information from inadvertent disclosure, and take reasonable care to prevent examination of Confidential Information by unauthorized persons;
 - (d) A Member must use Confidential Information only for the express purpose for which it was collected; and
 - (f) A Member must not take personal advantage of, or use for their own benefit, corporate or financial opportunities learned about through Confidential Information.
- 10.2 A Member must access and use confidential information at the Town only in the normal course of their duties.
- 10.3 A Member must not change or alter Town records or documents other than in the normal course of their duties.
- 10.4 A Member must retain records and other information in accordance with best practices, and must respond in good faith to all requests for information made pursuant to *FOIP*.
- 10.5 When dealing with Personal Information, a Member must comply with the provisions of *FOIP*. All reasonable and necessary measures must be taken to ensure that the Personal Information of individuals is protected.

11.0 CONFLICTS OF INTEREST

- 11.1 A Member must comply with the requirements of the *Act* with respect to pecuniary interests, including but not limited to:
- a) Abstaining from voting on a matter before Council if the Member has a conflict of interest that is a pecuniary interest as set out in the Act; and
 - b) Voting on a matter before Council if the Member has a conflict of interest that is not pecuniary in nature; this would be where a Member believes a non-pecuniary person or private interest may influence their vote, or where a Member believes another person may perceive that a Member's non-pecuniary personal or private interest may influence their vote.
- 11.2 Members are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, Immediate Family, friends or associates, business or otherwise.

- 11.3 In the event a Council Member believes they have a conflict of interest that is not pecuniary, or where they believe another person may perceive them to have a conflict of interest that is not pecuniary, the Council Member may declare the interest before they vote on the matter, and that declared interest will be recorded in the minutes of the meeting.
- 11.4 Council will read, understand, and comply with the Acceptance of Gifts Policy, C1006.
- 11.5 A Member will not accept or provide any gift, benefit, or favour in exchange for special consideration or influence, or where it may be perceived by a reasonable person to be in exchange for special consideration or influence.
- 11.6 A Member is encouraged to seek advice from the Town Manager, Municipal Clerk, or other member of Administration should there be a question with respect to individual pecuniary interest. It is the individual responsibility of each Member to seek independent legal advice, at the Member's sole expense, with respect to any situation that may result in a pecuniary or other conflict of interest.

12.0 IMPROPER USE OF INFLUENCE

- 12.1 A Member must only use the influence of their office for the exercise of their official duties.
- 12.2 A Member must be independent and impartial and must not provide preferential treatment to any person or organization except as warranted by the ordinary and lawful discharge of the Member's duties.
- 12.3 A Member must not use, or attempt to use, their authority or influence for the purpose of directing the work of any Town employee.
- 12.4 A Member:
- (a) Must not act as an agent to advocate on behalf of any individual, organization, or corporate entity before Council, a Council Committee, or any other body established by Council;
 - (b) Shall not contact or otherwise attempt to influence members of any adjudicative body, Council Committee, or any other body established by Council on any matter before it, relating to the Town of Banff; and
 - (c) Subsections (a) and (b) do not impede a Councillor's ability to sit and serve as a Member on Council, a Council Committee, or any other body to which Councillors may be assigned.
- 12.5 A Member must comply with the *Local Authorities Election Act*, R.S.A. 2000, c. L-21 in undertaking Election Campaign activities and Fundraising Activities.

13.0 USE OF MUNICIPAL ASSETS AND SERVICES

- 13.1 A Member may not use, or permit the use of, Town land, facilities, equipment, supplies, services, Employees, or other resources for activities other than for Town business, subject to the following exceptions:
- (a) Municipal property, equipment, service, supplies, and staff resources that are available to the general public may be used by a Member for personal use upon the same terms and conditions as members of the general public, including booking and payment of any applicable fees or charges; and
 - (b) Electronic communication devices, including but not limited to desktop computers, laptops, tablets and smartphones, which are supplied by the Town to a Member, may be used by the Member for personal use, provided that the use is not for personal gain, offensive, or inappropriate.
- 13.2 A Member must not use any facilities, equipment, supplies, services, Town logos, or any other resources of the Town for any Election Campaign or campaign-related activity.
- 13.3 Members are stewards of public resources and shall avoid waste, abuse and extravagance in the use of public resources.
- 13.4 Members shall be transparent and accountable with respect to all expenditures and strictly comply with all municipal bylaws, policies and procedures regarding claims for remuneration and expenses.

14.0 ORIENTATION AND OTHER TRAINING ATTENDANCE

- 14.1 Unless excused by Council, Members must attend:
- (a) Orientation Training offered by the Town in accordance with the *Act*; and
 - (b) Any training organized at the direction of Council for the benefit of Members throughout the Council term.

15.0 COMPLAINTS AND INVESTIGATIVE PROCESS

Informal Complaint Process

- 15.1 Individuals, including a Member, who have witnessed or experienced conduct by a Member that they believe to be in contravention of this Bylaw may address the prohibited conduct by:
- (a) Advising the Member that the conduct violates this Bylaw and encouraging the Member to stop;
 - (b) Requesting that the Mayor assists in informal discussions of the alleged complaint with the Member to resolve the issue; and
 - (c) Documenting the incidents, including dates, times, locations, other persons present, and any other relevant information.

If the Mayor is the subject of, or is implicated in a complaint, the person may request the assistance of the Deputy Mayor or the Acting Mayor if the Deputy Mayor has also been implicated.

- 15.2 Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying conduct that they believe violates this Bylaw. However, an individual is not required to complete this informal complaint procedure prior to pursuing the formal complaint procedure outlined below.

Formal Complaint Process

- 15.3 Any individual, including a Member, who has witnessed or experienced conduct by a Member that they believe to be in contravention of this Bylaw may file a formal complaint in accordance with the following procedure:
- (a) All complaints shall be made in writing and shall be dated and signed by an identifiable individual;
 - (b) All complaints shall be addressed to the Director, Corporate Services, and will be forwarded to Council for consideration as part of a closed meeting Agenda; and
 - (c) The complaint must set out reasonable and probable grounds, in detail, for the allegation.
- 15.3 If the complaint includes one or more Members who are alleged to be responsible for the breach of this Bylaw, the Member, or Members, concerned shall receive a copy of the complaint. The Director, Corporate Services, may withhold the name of the person who submitted the complaint should they deem that it could reasonably be expected to threaten the safety or mental or physical health of the individual or interfere with public safety.
- 15.4 Upon receipt of a complaint, the Director, Corporate Services, shall schedule the complaint as a confidential item on the next regularly scheduled meeting of Council.
- 15.5 Council may appoint a panel of up to three (3) Members, who are not implicated in the complaint, to review the contents of the complaint or may choose to appoint a third party as the Investigator.
- 15.6 Should a panel be appointed, the panel may review the contents of the complaint to determine the need for an investigation and may act as the Investigator or choose to appoint a third party as the Investigator.
- 15.7 The Investigator may request further information from the person who submitted the complaint before determining whether there are reasonable grounds for believing that a violation of this Bylaw may have occurred.
- 15.9 If the Investigator, on receipt of the complaint or at any time thereafter, is of the opinion that:
- (a) A complaint is frivolous or vexatious;
 - (b) There are no grounds or insufficient grounds for investigating; or
 - (c) The matter is not within the Investigator's authority to investigate;

The Investigator may choose not to investigate or may terminate any investigation. The Investigator shall advise the person who submitted the complaint and the Member who is subject of the complaint in writing setting out the reasons and shall close the file. In that event, Council shall also be notified in writing of the Investigator's decision.

- 15.10 If the Investigator decides to proceed with an investigation, they shall:
- (a) Within 10 days of receiving the complaint, notify the Member who is the subject of the complaint, either personally or by email, that an investigation has been initiated; and
 - (b) Take such measures as the Investigator considers appropriate to investigate the complaint.
- 15.11 The Investigator may, should they deem it appropriate, attempt to resolve the complaint through mediation with the person who submitted the complaint and the Member who is the subject of the complaint.
- 15.12 If the complaint is resolved through mediation, the Investigator shall:
- (a) Terminate the investigation and close the file;
 - (b) Provide written notice of the termination of the investigation to the person who submitted the complaint and to the Member who is the subject of the complaint; and
 - (c) Report to Council on the findings and any recommendations.
- 15.13 The Investigator shall report to the individual making the complaint and the Member involved upon completion of the Investigator's report no later than ninety (90) days after receiving the formal complaint.
- 15.14 The ninety (90) day timeline may be extended by the Investigator depending on the nature and complexity of the investigation. Reasonable notice of the extension must be provided, in writing, to all individuals involved and to Council.
- 15.15 When the Investigator finds the complaint to be substantiated, in whole or in part, the Investigator shall:
- (a) Allow the Member who is the subject of the complaint to submit a response, either in person or in writing, on the proposed finding(s) and recommended sanction(s); and
 - (b) Provide a written report, which shall include the Member's response and may include potential recommendations, to Council for decision.

15.16 If the Investigator determines that there has been no contravention of the Bylaw, 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 judgement made in good faith, the Investigator shall report these findings, in writing, and shall recommend that no penalty be imposed., to:

- (a) The individual who made the complaint;
- (b) The Member who is subject of the complaint; and
- (c) Council.

There will be no report to the public.

15.17 All reports from the Investigator to Council are strictly confidential and shall be considered by Council during a closed meeting.

15.18 The Investigator's reports will be made available to the public only if Council determines it is necessary to discuss the matter in a public Council meeting.

15.19 The records in the custody and control of the Investigator are considered property of the Town and so are subject to *FOIP* and the Town's Information Governance and Records Management Program Policy, C8001.

15.20 Members are expected to cooperate in every way possible in securing compliance with the application and enforcement of this Bylaw.

15.21 No Members shall:

- (a) Undertake any act of reprisal or threaten reprisal against the individual making the complaint or any other person for providing relevant information to Council or the any other person; or
- (b) Obstruct Council, or any other person, in carrying out the objectives of requirements of this Bylaw.

15.22 A Member who is the subject of an investigation is entitled to be represented by legal counsel, at the Member's sole expense.

16.0 REMEDIES OR SANCTIONS

- 16.1 Nothing in this Bylaw requires Council to impose a remedy or sanction for any complaint or contravention.
- 16.2 If the Investigator finds that a Member has failed to adhere to this Bylaw, Council may impose, by resolution, one or more of the following sanctions:
- (a) Mandatory training;
 - (b) A letter of reprimand addressed to the Member;
 - (c) Requesting the Member to issue a letter of apology;
 - (c) Publication of a letter of reprimand or request for apology and the Member's response;
 - (e) Suspension or removal of the appointment of a Member as the deputy chief elected official or acting chief elected official under Section 152 of the *Act*;
 - (f) Suspension or removal of the chief elected official's presiding duties under Section 154 of the *Act*;
 - (g) Suspension or removal from some or all Council Committees and bodies to which Council has the right to appoint Members;
 - (h) Reduction or suspension of remuneration as defined in Section 275.1 of the *Act* corresponding to a reduction in duties, excluding allowances for attendance at Council meetings;
 - (i) Any other sanction Council deems reasonable and appropriate in the circumstances provided that the sanction does not prevent a Member from fulfilling the legislated duties of a councillor and the sanction is not contrary to the *Act*.

17.0 COMPLAINT PARAMETERS

- 17.1 In the period of 90 days prior to the date of a municipal election, the Investigator may suspend any investigation underway or decline to commence an investigation.
- 17.2 The Investigator may reject any complaints received:
- (a) More than 180 days after the date of the alleged bylaw contravention;
 - (b) More than 180 days after the person submitting the complaint became aware of the alleged bylaw contravention; or
 - (c) After the date of a municipal election which intervenes between the alleged bylaw contravention and the date the investigator receives the complaint.

18.0 REVIEW

- 18.1 To ensure that it remains current and continues to accurately reflect the standards of ethical conduct expected of Members, this Bylaw shall be brought forward for review:
- (a) At the beginning of each term of Council;
 - (b) When relevant legislation is amended; and
 - (c) At any other time that Council considers appropriate.

19.0 SEVERABILITY

19.1 If any clause in this Bylaw is found to be invalid, it shall be severed from the remainder of the Bylaw and shall not invalidate the whole Bylaw.

20.0 SCHEDULE

20.1 Schedule “A” forms part of this Bylaw.

21.0 ENACTMENT

21.1 This Bylaw comes into force on the day it is passed and signed.

READ A FIRST TIME this 08th day of September, 2020.

READ A SECOND TIME, AS AMENDED, this 08th day of September, 2020.

READ A THIRD TIME, AS AMENDED, this 08th day of September, 2020.

SIGNED AND PASSED this 08th day of September, 2020.

On Original
Karen Sorensen
Mayor

On Original
Kelly Gibson
Town Manager

Schedule A

ACKNOWLEDGEMENT

I, _____(print name), Member of Council for the Town of Banff, acknowledge that I have been provided with a copy of the Code of Conduct for Elected Officials, Bylaw 429, (the Code of Conduct Bylaw). I have read and understood the Code of Conduct and I agree to abide by its terms.

(Member's Signature)

(Date)