



TOWN OF NEWMARKET  
395 Mulock Drive  
P.O. Box 328  
Newmarket, ON L3Y 4X7

www.newmarket.ca

February 26, 2015

## **CORPORATE SERVICES INFORMATION REPORT - #2015-03**

TO: Mayor and Members of Council

SUBJECT: Council Code of Conduct – Request for Clarification

ORIGIN: Commissioner, Corporate Services and Director, Legislative Services

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### **COMMENTS**

Pursuant to the Procedure By-law, Information Reports are circulated directly to Council Members and made available to the public on the Town's website. Information Reports are not published on a Committee of the Whole or Council agenda unless requested by a Member of Council.

At the Committee of the Whole meeting of February 23, 2015 Committee considered CAO Report #2015-02 related to the Council Code of Conduct Update. Committee requested clarification on Recommendation #3 which stated:

- 3) *AND THAT future Code complaints related to matters currently under review be held in abeyance until the review has been completed and reported on to Council.*

Staff have confirmed with the Integrity Commissioner that for any complaint received during the review period, the Member's actions will be adjudicated against the current Code as fairness dictates that no one can be held to a standard that is not yet in place.

As Recommendation #3 states should a complaint relate to an area of the Code that is under review it will be held in abeyance. This permits an opportunity to enhance transparency by being upfront with the community as to the process in these matters on the basis that there is little value in the Integrity Commissioner making recommendations as a result of a complaint investigation, for actions that a Code review will address. Once the Code review process is complete Council can decide on whether to approve the new/updated Code as recommended or with additions or deletions as they deem appropriate. At that point any complaints in relation to portions of the Code under review that were held in abeyance will be adjudicated on the basis of the old (or current at the time of complaint) Code rules. However, the Code complaint would very likely be resolved in a straight forward manner with the knowledge that it had been addressed in the new or updated Code.

Holding complaints in abeyance (but only for those matters recommended for review identified in the February 4, 2015 report of the Integrity Commissioner) and advising the community of such will strike a balance between being accountable/transparent and adjudicating complaints against moving and unclear standards.

By way of background information, attached are the following documents:

- Schedule 1 – Council Extract + Joint CAO/Corporate Services Report – 2014-04 + attachments (which includes a copy of the draft Code)
- Schedule 2 - Illustration of draft Code Complaint Process (Informal and Formal)

Committee also asked questions of staff around what the process entailed for the updated draft Council Code of Conduct and the timing of when the draft Code would be brought forward to Committee for consideration. Extensive consultation did take place previously (see Appendix D1 of the above mentioned staff report) and it is anticipated that consultation will take place again once the research on best practices has been taken into account insofar as further updates to the draft Code. Staff have engaged the services of Ms. Suzanne Craig to assist in the review of the draft Code and to provide advice and recommendations on emerging best practices and other matters that may arise during the review. It is anticipated that the draft Code will be brought forward for Council consideration in Q2 2015 and the tentative process and schedule is set out below.

Timeframe	Activities
March & April, 2015	<ul style="list-style-type: none"> <li>- Review of recent &amp; best practices, Ontario municipal council codes of conduct</li> <li>- Commissioner, Corporate Services &amp;/or Director, Legislative Services to hold interviews with individual Members of Council to provide input on draft Council Code of Conduct</li> <li>- Input on draft Council Code of Conduct by Integrity Commissioner</li> </ul>
April, 2015	<ul style="list-style-type: none"> <li>- Revised draft Council Code of Conduct to be made available to public for input on the Town's website &amp; municipal office</li> <li>- Individuals who provided feedback from previous draft Council Code of Conduct to be provided revised draft Council Code of Conduct for input</li> <li>- Public Information Centre (PIC), to be scheduled</li> </ul>
May 25 Committee of the Whole	<ul style="list-style-type: none"> <li>- Presentation of final report &amp; final revised draft Council Code of Conduct</li> </ul>
June 1, 2015 (Subject to direction by Council)	<ul style="list-style-type: none"> <li>- Approval of final revised draft Council Code of Conduct</li> </ul>
June and ongoing, 2015	<ul style="list-style-type: none"> <li>- Training, communication &amp; related procedures required to implement Council Code of Conduct</li> </ul>

As noted in the chart above, the consultation process will include a web page with an outline of the review process, link to the draft Council Code of Conduct and opportunities to provide input. Web content will be amended to outline the interim process for intake and review of Council Code of Conduct complaints, should Council adopt the recommendations of CAO Report 2015-02.

### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

This report links to Newmarket's key strategic directions in being Well Equipped and Managed through fiscal responsibility and sound and accountable governance.

## **CONSULTATION**

This report has had the input of the CAO, the Commissioner, Corporate Services and the Director, Legislative Services and clarification was sought from Ms. Craig, Integrity Commissioner.

## **HUMAN RESOURCE CONSIDERATIONS**

Not applicable to this report.

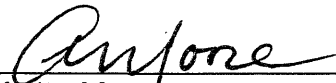
## **BUDGET IMPACT**

### Operating and Capital Budgets

Staff have retained the services of Ms. Craig in the capacity of an Integrity Commissioner and also as an advisor given she has extensive expertise in the area of Council Codes of Conduct and emerging best practices in this area. There will be a small Operating Budget impact related to these services and the associated costs are well within the current budget.

## **CONTACT**

For more information on this report, contact the Director, Legislative Services at 905-953-5300 ext. 2211 or via e-mail at [abrouwer@newmarket.ca](mailto:abrouwer@newmarket.ca)



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Anita Moore  
Commissioner, Corporate Services



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Andrew Brouwer  
Director, Legislative Services

# Schedule 1

TOWN OF NEWMARKET COUNCIL - EXTRACT - MONDAY, FEBRUARY 10, 2014					
	REF'D TO	COPY TO		REF'D TO	COPY TO
Mayor Tony Van Bynen			Development & Infrastructure Services, Commissioner of		
Reg. Councillor Taylor			Community Services, Commissioner of		
Councillor Vegh			Corporate Services, Commissioner of		
Councillor Kerwin			Planning & Building Services, Dir. of		
Councillor Twinney			Recreation & Culture, Dir. of		
Councillor Hempen			Human Resources, Dir. of		
Councillor Sponga			Engineering Services Dir. of		
Councillor Di Muccio			Public Works Services, Dir. of		
Councillor Emanuel			Financial Services, Dir. of		
			Legal Services, Dir. of		
CAO			Legislative Services, Dir. of		
OTHER:			Corporate Communications, Dir. of		
			Chief Building Official		
PENDING AGENDAS: COW			Economic Development Officer		
COUNCIL			Information Technology, Dir. of		
JCC			Fire Chief		
			Purchasing Manager		
Letter: File:			ORIGINAL REPORT IN DEPARTMENT BINDER	√	

28. Joint CAO/Commissioner - Corporate Services Report 2014-04 dated January 23, 2014 regarding the Draft Council Code of Conduct.

THAT Joint CAO/Commissioner – Corporate Services Report 2014-04 dated January 23, 2014 regarding the Draft Council Code of Conduct be received and the following recommendation be adopted:

a) THAT the draft Council Code of Conduct be referred to the new term of Council and an Integrity Commissioner be appointed on an as needed basis.



Corporate Services Commission  
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905.895.5193

January 23, 2014

**JOINT CAO/ COMMISSIONER, CORPORATE SERVICES REPORT - #2014-04**

TO: Committee of the Whole  
SUBJECT: Draft Council Code of Conduct  
ORIGIN: Commissioner, Corporate Services

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**RECOMMENDATIONS**

**THAT Joint CAO/Commissioner Corporate Services Report – 2014-04 dated January 23, 2014 regarding the Draft Council Code of Conduct be received and the following recommendations be adopted:**

- 1) THAT the direction to refer the draft Council Code of Conduct to the new term of Council and the interim process for code complaints as set out in Information Report 2013-06 be approved;**
- 2) AND THAT the draft Integrity Commissioner appointment by-law (By-law #2014-04) be referred to the next Council meeting.**

**COMMENTS**

**Purpose**

This report is as a result of a request made at Council on January 20, 2014 to place Information Reports 2013-06 and 2014-02, draft By-law #2014-04 related to the appointment of an Integrity Commissioner and the draft Council Code of Conduct on the next Committee of the Whole agenda. The Procedure By-law provides that:

*Information Reports are circulated directly to Council Members and made available to the public on the Town's website. Information Reports are not published on a Committee of the Whole or Council agenda unless a Member of Council makes such a request.*

**Background**

The Information Reports noted above were provided to Members of Council via email on January 2 (#2013-06) and on January 16 (#2014-02) and both have been posted to the website. The approach the report set out - that the process would be referred to the new term of Council, took into account administrative and timing considerations such as the start of the election period combined with the significant Code changes. From a project management perspective, staff resources become more limited

leading up to and during an election period and there has recently been some significant matters before Council such as the 2014 budgets, alternate voting methods, the sign by-law review, the Marianneville application and a Code complaint.

Information Reports are subject to direction from Council and as per the recent request, attached to this report are the following documents:

**Appendix A** – Joint CAO/Corporate Services Information Report #2013-06 – Council Code of Conduct Matters. This report set out an interim process for filing Code complaints providing that the final Code review take place in the new term of Council. During the election year Code complaints would be received up to the end of June and any received before that date for which the investigation had not been concluded would be held until the new term of office. The Information Report also indicated that the residents who commented will be advised of the timeframe and a notice would be posted to the website.

**Appendix B** – Joint CAO/Commissioner Information Report #2014-02 – Public Feedback. This report provided the public feedback received regarding the Draft Code along with staff comments where appropriate and also unless directed otherwise, set out a procedure going forward for soliciting, publishing and/or considering comments about a specific policy or strategic direction.

**Appendix C** – Draft By-law 2014-04 – A draft By-law to Appoint an Integrity Commissioner (“IC”). This by-law relates to the appointment of Ms. Suzanne Craig as IC for the Town setting out certain duties until the end of this term of office or until a successor has been appointed. As was noted in Information Report 2013-06 the by-law appointment would provide continuity and is an efficient means of applying the Code as an IC would not have to be appointed for each assignment. In addition a Member of Council, staff or a member of the public could contact the IC simply for advice or an opinion on any Code related matter.

The draft Code identifies (and the wording is included in the draft IC appointment by-law) that in an election year, Code complaints received on or after June 30<sup>th</sup> are suspended until after the inauguration of the new Council.

An expanded approach with the hiring of an IC will be undertaken in the new term through a Quick Bid Request for Proposal initiative unless directed otherwise. It is suggested that the hiring process be delegated to staff as it enhances the independent, arms-length relationship of the IC who will be responsible for the application of the Code for Members of Council.

**Appendix D** – Draft Council Code of Conduct (including feedback from Members of Council as well as the results of community feedback that are specific to the Code (noted as Appendix D1). This schedule also offers options for consideration.

By way of background, the current Code was adopted by Council in April of 2007. In 2012 staff was directed to remove Part XI – Compliance with Code of Conduct as it relates to complaints between Members of Council. The scope of the review was expanded in March 2013 when Council referred the Integrity Commissioner’s comments on governance to staff for consideration. In addition, staff undertook research relative to best practices. In researching general municipal practices and based on the feedback received, staff would propose that if Council wishes to proceed with adoption of the new Code, further revisions could be considered, such as:

Include a provision to permit Councillor to Councillor Code complaints (as research conducted shows this to be common practice)

Assign a dollar value to what a nominal amount is (for example - \$100 and that concurrent, or on-going gifts from one source be considered to be cumulative).

#### Next Steps

Council may wish to:

1. Continue operating under the current Code with the appointment of an IC occurring as the need arises; or
2. Continue operating under the current Code and proceed with the direction outlined in Information Report 2013-06 that the Draft Code be referred to the next term of office (Council may consider adding a review and final disposition target – e.g. Q2 2015), including the interim process for filing complaints and refer the IC appointment by-law to the Council meeting of February 10; or
3. Proceed with final consideration and adoption of the Draft Code and refer the IC appointment by-law to the Council meeting of February 10 or instruct staff to immediately conduct a procurement proposal process for the hiring of an IC (on the terms as outlined on draft By-law 2014-04).

#### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

A Council Code of Conduct supports the Town's strategic direction of a well-equipped and managed municipality implementing policies and processes that reflect sound and accountable governance.

#### **CONSULTATION**

Community consultation has taken place and the draft Code was reviewed and updated by an internal staff team consisting of the Directors of Legal and Legislative Services, the Municipal Intern and the Commissioner, Corporate Services. The Integrity Commissioner has provided input and comments and the draft Code has been reviewed by the CAO.

#### **HUMAN RESOURCE CONSIDERATIONS**

There are no human resource considerations.

#### **BUDGET IMPACT**

Remuneration for Integrity Commissioners varies throughout the Province. Some municipalities have created a more permanent office; others hire on a retainer basis or retainer plus hourly/daily rate while others hire on an as needed basis. Rates of remuneration can be as high as \$100,000 + for the more permanent office and retainers vary significantly depending upon the size of the municipality. Staff believe that in Newmarket's case, the Integrity Commissioner should be hired on an as needed basis remunerated on an hourly or daily rate both for investigations and advice (similar to the current arrangement with Ms. Craig) and any procurement process would be framed as such.

An amount of \$10,000 has been included in the 2014 budget for the Office of the Integrity Commissioner and staff will review this line item over time to advise Council of any changes in the level of funding that may be required. Any unallocated funds will be carried forward in a reserve to assist in offsetting potential costs in future years.

**CONTACT**

For more information on this report, contact Anita Moore, Commissioner, Corporate Services.



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Anita Moore, Commissioner, Corporate Services



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Bob Shelton, Chief Administrative Officer





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December 23, 2013

**JOINT CAO/CORPORATE SERVICES INFORMATION REPORT – # 2013-06**

TO: Mayor Van Bynen  
Members of Council

SUBJECT: Council Code of Conduct Matters

ORIGIN: Commissioner, Corporate Services

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**COMMENTS**

Purpose

The purpose of this report is to provide information with respect to:

- a) the Draft Council Code of Conduct and timing of its approval
- b) process for filing Council Code of Conduct complaints in the interim, and
- c) requesting reimbursement of associated costs related to the Integrity Commissioner (IC).

Draft Council Code of Conduct (Code)

The draft Code was made available for public comment until the end of October. Comments from the public were received (+/- 12) and staff will review and take these comments into consideration prior to the final draft being brought back.

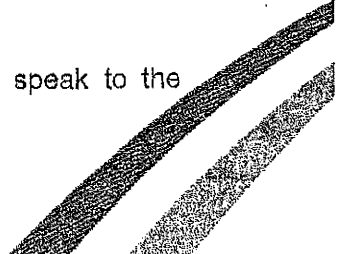
Given that we are in the last year of this term of office, staff suggest that the Draft Code now be held until the next term of Council where it can have fulsome discussion and input from members of the new Council. The residents who submitted comments will be advised of the revised schedule and a notice will be posted on the website.

Interim Process for Filing Council Code of Conduct (Code) Complaints

In the interim, should a Member of Council wish to file a Code complaint against another member then the current practice would continue whereby the request is made to Council who decides whether it proceeds to the Integrity Commissioner (IC) for investigation.

If a member of the public wishes to file a Code complaint against a member of Council then the complaint would be filed with the Director of Legislative Services/Town Clerk who will in turn provide it to the Integrity Commissioner for investigation. Instructions to complainants will be given so that the complaint is filed in a sealed envelope addressed to the IC and marked as confidential.

In either of the above scenarios, the complainant will first be encouraged to speak to the Member as an initial step. This may occur at the CAO's (or designate) level.



Staff propose that a by-law be brought forward to the Council meeting of January 20, 2014 appointing Suzanne Craig as the Integrity Commissioner for the Town of Newmarket for the remainder of the Council term and/or until a successor has been appointed. This provides continuity for the remainder of the term and an efficient means of applying the Code (e.g. not having to appoint an IC upon receipt of a complaint whether initiated by Council or a member of the public).

Using language from the draft Code, complaints will be permitted up to the end of June 2014 and any subsequent ones would be held until the new term of office. A Code complaint received before June 30<sup>th</sup> for which the investigation had not been concluded on or before June 30<sup>th</sup> will be held as well.

At the beginning of the new term of office staff will conduct a Quick Bid RFP (or similar process) for an Integrity Commissioner and make recommendations to the new Council based on the findings. This could be finalized in the early part of 2015.

#### Associated Costs - Integrity Commissioner

Council at its meeting on October 21, 2013, adopted the following recommendation:

*THAT including this complaint and all future complaints:*

*Where a Councillor is not found to be in contravention of the Council Code of Conduct by the Integrity Commissioner, the Councillor who filed the notice of motion for consideration by Council on the matter be requested by Council to pay costs associated with the Integrity Commissioner's investigation; and*

*Where a Councillor is found to be in contravention of the Council Code of Conduct by the Integrity Commissioner, the contravening Councillor be requested by Council to pay the costs associated with the Integrity Commissioner's investigation from their salary.*

Staff have interpreted this to mean that requests of this nature are not automatic (given the motion wording "...be requested *by Council*") and that requests are dependent upon a specific Council motion to that effect being adopted. In the absence of any further direction, staff will proceed on this understanding with the most recent Code complaint.

#### BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

Being well equipped and managed by implementing policy and processes that reflect sound and accountable governance.

#### CONSULTATION

None.

#### HUMAN RESOURCE CONSIDERATIONS

There are no human resource considerations.

**BUDGET IMPACT**

The cost of the IC for the complaint finalized by Council on December 16 was slightly less than \$3,000, and there are sufficient funds in the Corporate Consulting reserve to cover this cost. Council may recall that the approved 2014 Operating Budget includes a \$10,000 line item for costs related to an Integrity Commissioner.

**CONTACT**

For more information on this report, contact Anita Moore, Commissioner, Corporate Services at [amoore@newmarket.ca](mailto:amoore@newmarket.ca) or by phone 905 953-5300, ext. 2202.

  
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Anita Moore, Commissioner, Corporate Services

  
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Bob Shelton, Chief Administrative Officer



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January 15, 2014

**JOINT CAO/COMMISSIONERS INFORMATION REPORT - 2014-02**

TO: Mayor Van Bynen and Members of Council  
SUBJECT: Draft Council Code of Conduct – Public Feedback  
ORIGIN: Commissioner, Corporate Services

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**COMMENTS**

Members of Council will recall that the Draft Council Code of Conduct went through a public consultation period and attached to this report in chart form is the feedback received. In addition to providing the feedback via this information report, staff felt it important to give some context around it and will set out a procedure going forward for reporting on public comments received.

Public Feedback - Draft Council Code of Conduct (Code)

As outlined in Joint CAO/Corporate Services Information Report #2013-06, the Code is being held until the next term of Council where it can have a full discussion and input from Members of the new term of Council.

The Code had been posted on the Town's website and made available for public comment for approximately one month. Individuals who provided comments will be advised of the new timeframe. The feedback received is attached along with where appropriate, staff comments. With little exception, the comments are being provided as submitted.

Public Feedback - Going Forward

There have been many times in the past that a public consultation process has been undertaken – whether staff initiated or Council requested. This has proven to be an extremely valuable exercise however, in some instances the comments received do not relate to the matter under review and/or the comments are frivolous or vexatious (intended to harass as an example). These types of comments are not a productive outcome of seeking public comment on policy and/or strategic direction setting for the municipality and there are more appropriate ways that the public can communicate directly with specific individuals (e.g. via personal meetings or emails) should they wish to.

In keeping with the Procedure By-law (Section 32 - Correspondence) and unless Council deems otherwise, staff will no longer publish and/or consider as part of the matter under review comments that contain statements that are defamatory in nature. This will also be the case with comments that do not relate to the subject matter.

There is an expectation by the public that their comments will be considered as part of the process and staff will via a message or statement at the outset, inform the public (e.g. on the website when the input opportunity is being advertised) that only comments that relate to the subject matter can be considered as part of the public process. In addition, it will include a statement advising that some or all comments

received may be reproduced verbatim (with the name of the commenter removed) in a public session for consideration by Council. This message will provide advance notice to anyone who may submit a comment that could still reveal the commenter's identity even after their name has been removed (should they for example, include the name of their workplace, occupation or affiliation).

### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

This report links to Newmarket's vision of being:

- *Well Equipped and Managed* by implementing policies and processes that reflect sound and accountable governance; and
- *Well Respected* by inspiring partnerships and cooperation with stakeholders that revolve around well-being, synergy and balanced living.

### **CONSULTATION**

Consultation has taken place with the Legal and Legislative Services staff.

### **BUDGET IMPACT**

#### Operating Budget (Current and Future)

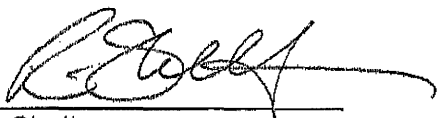
None.

#### Capital Budget

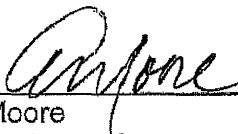
None

### **CONTACT**

For more information on this report, contact: Anita Moore at 905-953-5300, ext. 2202 or via e-mail at [amoore@newmarket.ca](mailto:amoore@newmarket.ca)



Robert N. Shelton  
CAO



Anita Moore  
Commissioner, Corporate Services

Council Code of Conduct – Public Feedback

Date Received	Feedback	Staff Comments / Response
October 25, 2013	<p>-Section D - there is no concrete definition of the term "nominal". I suggest to avoid ambiguity and an on-going valuation of every potential gift, hospitality and benefit, that a set dollar value be included in the code as to what is acceptable for each category.</p> <p>-I further suggest that a section be added to the effect that cumulative gifts from a source for a single gift, event or hospitality not exceed the nominal value. (i.e. There can be more than one component to a gift or benefit; for example multiple tickets to an event, or a one day rental of ski equipment may fall under the nominal value, in combination with a one day pass it would conceivably exceed the amount.)</p> <p>-It has been my experience that nominal is an extremely ambiguous terms that can be defined on an as needed basis to justify any amount; as well by inserting the cumulative clause it avoids the attempt to spread the gifts over a period of time or components to take advantage of this loophole in the accepted amount</p>	<p>Staff conducted research on other municipal practices in this regard. Potential options will include assigning a nominal value and a cumulative value limit.</p>
October 30, 2013	<p>Section F – Confidentiality - I think this policy is too restrictive allowing for too many instances of confidentiality and too wide a range of matters that are kept from the public.</p> <p>Section G - Gifts, Hospitality, Benefits - I think this code as written is too generous. There should be no acceptance at all of gifts, food, beverages or other benefits, no matter how small.</p> <p>The 6 month filing requirement should not be required as it is too restrictive.</p>	
October 21, 2013	<p>Requesting clarification on current Council Code of Conduct:</p> <p>-That the currently effective Code of Conduct is the version that was enacted by bylaw 2007-42, as indicated on the town's webpage referenced above.</p> <p>-That bylaw 2007-42 defines (in part XI) the (currently effective) protocol that Council is to follow whenever there is an alleged contravention of any provision of the Code of Conduct.</p> <p>-That paragraph (e) within part XI stipulates that when council feels a breach of the Code may have occurred, but is unable to make its own determination, Council may pass a resolution requesting an investigation by a judge of the Ontario Superior Court of Justice, but does not provide an option for such matters to be investigated by any other person.</p> <p>-That there is presently a draft Code of Conduct that would grant Council the right to appoint an Integrity Commissioner, instead of a judge.</p> <p>-That, at present, neither this draft Code of Conduct nor any other version of the Code of Conduct has been brought into effect by the enactment of any bylaw, which supersedes or nullifies the provisions of bylaw 2007-42. In particular, that no presently enacted bylaw authorizes Council to deviate from the protocol mandated in part XI of bylaw 2007-42. I would be very grateful if you could confirm the accuracy of my understanding in regard to these five points.</p>	<p>Staff responded to the resident's questions explaining that the Municipal Act created an independent right of council to request an inquiry by an Integrity Commissioner, regardless of whether that right is specifically set out in a Code of Conduct. That right to appoint an Integrity Commissioner was intended to provide municipal councils with a more efficient, cost effective and less complicated way of conducting Code of Conduct investigations.</p>

October 31, 2013	<p>As you are aware today is the final official day allowing for public input with regards to "Council Code of Conduct" I therefore would like to see a major change regarding paragraph "G". Gifts, Hospitality, Benefits and Prerequisites. I find the clause totally out of line with the norm of today's business practises. I am surprised that Mayor Van Bynen would have ever allowed this clause to be included. Both the Mayor and myself come from similar backgrounds working for major banks. I'm confident he would be aware of these policies in the private sector. If you wish I can given time to go through my old contracts supply you with hard copy of the Bank of Nova Scotia's hardened policy on the receipt of gifts. As well as a sales agent who has practised for the last 25 years in the automotive private and commercial sectors these policies would not be condoned. To give just one example I deal with representatives from (various companies) just to name a few. Their policies regarding their staff or agents is totally plain, clear cut. They are not allowed to accept even token gifts. At the very most around the end of the year they are allowed to be taken out for a year end lunch. I therefore find the proposed policy to be direct conflict with the norm in today's business world. Our members of Council should never be in a position of a possible conflict of interests. This open policy as stated in my opinion should be totally removed from the code. I would honestly like to hear the rationale behind this clause.</p>	
October 23, 2013	<p>As you aware the Council of Newmarket has made two if not three modifications to the Bylaw regarding "Code of Conduct". The latest of these changes were introduced October 17, 2013. in view of these recommendations and modifications to the original proposed Bylaw I am hereby requesting a further extension beyond the October 31, 2013 deadline. This request is made on the grounds that because of these additional amendments the public has <b>not</b> had adequate time to review or study these changes and there implications. These latest changes or modifications have denied the public adequate time for review and input and concerns. On the onset it would appear that there could also be the possibility of infringements on our Charter of Rights Canada. Notwithstanding the possibility that a certain number of these changes may have a direct impact on the Municipal Act itself that lays out very clearly the conduct expected of a Councilor. Without giving the citizens of Newmarket consideration and a proper time frame in which to respond to these changes the Town could be faced with certain legal challenges that ultimately would cost the taxpayers of Newmarket. We are hereby formally requesting an extension of an additional 30 day grace to allow for further and adequate public input and response to this very important document.</p>	<p>Staff responded to the resident outlining opportunities for input including deputations to Committee and Council. Clarified that the changes referenced were not included in the Council Code of Conduct that was currently posted for comments.</p>
October 24, 2013	<p>Regarding the draft code of conduct, can you specifically tell me which part of the new draft amendment relates to matters of serving council members being convicted of a criminal offence, and the sanctions imposed as a result? The draft code mentions "integrity", and "council members being held in the highest standard", but I cannot find specifically where it states being permitted to serve after being arrested or convicted as a result of a criminal act? Is this rule to be applied selectively, or what is the specific criteria? Does it not somehow seem inappropriate to have one member of council that has a criminal record allowed to speak and vote on matters of integrity and professionalism? Most places of work do specifically have rules or policies relating to this, and it would be beneficial to specifically have this mentioned in the current code so very important issues cannot be overlooked. I do have serious concern with a current member of council being criminally convicted of Impaired driving after attending an official town function, and being permitted to continue to serve. I attended the subsequent motion and vote that followed this incident, however the Mayor and majority of Council apparently didn't feel that this was a breach of the code of conduct, and voted that no repercussions would be furthered as a result. Many residents were of course outraged with this decision. My question is, can you let me know specifically which parts of the new draft amendment will deal with such instances in the future. I do agree that all work places do need a code of conduct, however they must be applied equally and without bias.</p>	<p>Staff responded to the resident advising that there isn't any legislative authority for a Code of Conduct or any municipal by-law to require a member of council who may have been charged or convicted of a criminal offence to be faced with a possible removal from office. Staff further outlined the process to lodge a Code of Conduct complaint and the associated penalties that may apply.</p>

October 7, 2013	<p>Let's hope this is not about the cry baby Mr. Mayor to have more of his own way. Make sure this is a legitimate CofC which will look after those that break the law or misrepresent their constituents. It should not be something that the mayor or Regional Councillor hide behind when they don't get their way. I hope the staff are not going to be bullied into this!</p>	
October 8, 2013	<p>As a resident of Newmarket I am concerned that this initiative is taking place at a time when there is so much upheaval within the Council ranks. It is also disturbing to see this Code brought forward now when in 2011 Ward 7 Councillor was charged with DUI after attending a Public event and no mention was made of amending the Code or revisiting it. In my mind this is a ploy by certain members of Council to muzzle Ward 6 Councillor. I am disappointed with most members and suggest that members deal with Business at hand and not frivolous attempts at politicking.</p>	
October 26, 2013	<p>Regarding the proposed changes to the Code of Conduct:  I am opposed to any changes to the code of conduct unless those changes were applied to curtail the use of the code of conduct to silence debate. It is an undemocratic tool when a point of order is called to censure another councillor. A perfect example of this occurred during the Honeywell debate. All councillors were in agreement to proceed with the project but called into question was the accounting procedure that council was implementing. One councillor inquired why the town was loaning itself the money with a 2% interest rate to fund the project, stating that this seemed like creative accounting. The visible anger and venom by another councillor, that seemed to take the comments personally, was channelled into a point of order. He then had the floor and in my view berated the councillor until this councillor apologised. Can you explain to me how the term creative accounting is not acceptable under the circumstance? It was not addressed to anyone nor was it an accusation. It was a question. That sir is my point! Who will decide what is appropriate? A majority of council members? Will a majority be able to silence other council members thus silencing their constituents? Do we blindly trust that a majority will not be more interested in pushing through their agenda's or at worst decide an issue is not worth debating for the sake of expediency? Why then do we continue a charade to elect council members if they cannot openly disagree or debate? This Council seems to be using an enormous amount of time and effort on the code of conduct and the only thing that is very transparent is the effort to silence Ms. Dimuccio. It is an unfortunate choice of words that Ms. Dimuccio used to convey her feelings of frustration. I find this incident not reflective of Ms. Dimuccio behavior in council, and find her to be very respectful and informative. The issues that arise come from Ms. Dimuccio's attempt to be transparent to her constituents. Calling for recorded votes, asking for clarifications and putting into the record her stand, all of which seem to irritate the other council members. While an integrity commissioner can add nothing more than an arbitrary ruling, a mediator may give both sides some perspective. If it is this councils intention to silence opposition, so that they can continue unimpeded, regardless of the concerns of it's citizens then this council has lost it's foothold in the democratic process.</p>	



October 31, 2013	<p>Pursuing Ms DiMuccio, for her comment towards the Mayor, is a waste of taxpayer dollars. While my jury is still out on the misogyny claim, Mr VanBynen's behaviour towards the Councillor, on this and during council meetings, is unacceptable. This is a personal issue, and not one that the taxpayer should have to bear. I have far more names I would use, face to face. BULLY being at the top of my list. She is not our Councillor, but has been very helpful to many outside her ward, and has a growing following around ALL of town. MY Councillor, Chris Emmanuel, SHOULD have resigned upon his drunk driving conviction, or been dismissed. Those with criminal records have NO place representing us. Drunk driving is disgraceful conduct, a bad example for our youth, and, as a footnote, I have lost many friends, and relatives, to drunk drivers over my lifetime, and, my wife, as a 32 year ER Nurse, has witnessed, the results, loss of life, and crippled for life victims. Mr Emmanuel DOES NOT have my vote, and that is echo'ed by most of my neighbours. I give you the "road to nowhere" Davis Dr, and the numbers of businesses that have been lost, forever, to East Gwillimberry. And the damage to the feeder streets, caused by same, to serve, what is acknowledged as "the worst conceived transit system, in the WORLD" , and acknowledged by Councillor Taylor, and anyone I have spoken to, that rides VIVA. Heavy industry virtually GONE 20% + tax increases The highest water rates in Canada Food bank usage growing at an ever increasing rate. Affordable housing, non existent Nothing at all being done for the aging population crisis, that will soon be upon us. Old town hall reno, which is far overpriced, and totally irresponsible spending. A Soccer Club, which WILL end at a net LOSS to taxpayers And a Secondary Plan, which is, a JOKE, and yes, I have attended the meetings. A record number of "in Camera" meetings, unheard of in any other municipality in the Province Newmarket's logo used to be a beehive, representing a busy, growing place. Bring back the beehive.</p>	
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CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2014-04

A BY-LAW TO APPOINT AN INTEGRITY COMMISSIONER FOR THE TOWN OF NEWMARKET. (SUZANNE CRAIG)

WHEREAS Council has adopted a Council Code of Conduct ("Code") through the enactment of By-law 2007-42;

AND WHEREAS the *Municipal Act, 2001*, s.223.3 and 223.4 provides the authority for the Municipality to appoint an Integrity Commissioner and deals with the conduct of an inquiry;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

THAT Suzanne Craig be hereby appointed Integrity Commissioner on an as-needed basis for the Corporation of the Town of Newmarket for the remainder of the 2010-2014 Council term of office or until a successor has been appointed, for the purpose of:

- i) Conducting investigations regarding alleged breaches of the Code provided the complaint was received and concluded prior to June 30, 2014 (a complaint received after or not concluded before this date will be held until the following term of office begins);
- ii) Providing specific opinions and advice to Council as may be required on Town policies regulating the conduct of Members of Council and issues of compliance with those policies and protocols;
- iii) Providing written and oral advice as may be required to individual Council members regarding specific situations as they relate to the application of the Code;
- iv) Providing written and oral advice as may be required to individual Council members on other policies and procedures governing the ethical behaviour of members;
- v) Providing general comments as may be required to individual Members of Council and Town staff on issues of ethics and integrity that bridge the Code and Town policies, protocols and office procedures;
- vi) Providing advice and information as may be required to members of the public regarding the Code and obligations of members under the Code; and
- vii) Performing any other duties that may be assigned by the municipality from time to time.

ENACTED THIS XXTH DAY OF 2014.

\_\_\_\_\_  
Tony Van Bynen, Mayor

\_\_\_\_\_  
Andrew Brouwer, Town Clerk



## CORPORATE POLICY

Sub Topic:		Policy No.	
Topic:	Council Code of Conduct	Covered:	All Members of Council
Section:	CAO	Council Adoption Date:	
Effective Date:		Revision No.	Date:

### A. Policy Statement

Municipal Council Members hold positions of privilege. Therefore, they must discharge their duties in a respectful manner that recognizes a fundamental commitment to the well-being of the community, and regard for the integrity of the Town. In order to strengthen the role of Council and to enhance public trust, this Code of Conduct supplements existing statutes, by-laws and policies that govern the conduct of Members.

### B. Purpose

The Council Code of Conduct helps to ensure that the Members of Council share a common basis for acceptable conduct. The Code and related policies identify the Town of Newmarket's expectations of Members and establishes guidelines for appropriate conduct to ensure that:

- Decisions are made through appropriate channels of government structure
- Public office is not to be used for personal gain
- Members perform their duties in office and arrange their private affairs, in a manner that promotes public confidence and will bear close public scrutiny;
- Newmarket residents have confidence in the integrity of their local government
- The conduct of Members of Council is of the highest standard
- Members advance the common good of the Town as a whole while representing their constituents in a conscientious and diligent manner
- There is fairness and respect for differences and a duty to work together for goodwill and common good

### C. Scope of Policy

This policy applies to all Members of the Council of the Town of Newmarket.

**D. Definitions**

- a) **Code** - means this Code of Conduct as it applies to Members of Council
- b) **Committee** – means a Committee, Board, Task Force or other body constituted and appointed by Council, including the Committee of the Whole
- c) **Confidential Information** - includes the following:
  - 1. Any information in the possession of, or received in confidence by the Town, that the Town 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 applicable law.
  - 2. 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 matters, labour relations, litigation, negotiation, property acquisition, the security of the property of the municipality, or a local board; any other information lawfully determined by Council or a Committee to be confidential, or required to remain or be kept confidential by legislation or order.
  - 3. 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 an open session of Council or open session of a Committee meeting or it is authorized to be released by Council or a Committee or otherwise by law.
  - 4. Reports of consultants, draft documents and internal communications, which, if disclosed may prejudice the reputation of the Town, its officers and employees, or its effective operation.
  - 5. Information, the publication of which may infringe on the rights of any person (e.g., source of a complaint where the identity of a complaint is given in confidence).
- d) **Integrity Commissioner** – means the person appointed by a by-law of Council in accordance with Section 223.3 of the *Municipal Act, 2001*, as amended from time to time, and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the Code.
- e) **Gifts, Hospitality, Benefits & Perquisites** - means items, invitations, articles, services, offers, entrance fees or vouchers of more than a nominal value.
- f) **Member** – means a Member of the Council of the Town of Newmarket
- g) **Town** – means the Corporation of the Town of Newmarket
- h) **Town Clerk** – means the Clerk of the Town of Newmarket or his/her designate
- i) **Town Property**- includes, but is not limited to all real property, municipal vehicles, equipment, material, supplies, intellectual property and documents

**E. Statutory Provisions Regulating Conduct**

This Code operates as a supplement to existing statutes governing the conduct of Members, including, but not limited to the following, as amended from time to time:

- *the Criminal Code of Conduct*
- *the Ontario Human Rights Code*
- *the Municipal Act, 2001*
- *the Municipal Conflict of Interest Act, 1990*
- *the Municipal Elections Act, 1996*
- *the Municipal Freedom of Information and Protection of Privacy Act, 1990*
- *the Occupational Health and Safety Amendment Act, 1990*
- Town of Newmarket By-laws and Policies
- Any and all other Municipal, Provincial and Federal statutes that may from time to time govern the conduct of Members.

**F. Confidentiality**

No Member shall disclose, release or publish by any means to any person, corporate third party or to the public any confidential information, including personal information or any aspect of deliberations acquired by virtue of his or her office, in any form, except where Council or a Committee has determined or has been advised by staff that the matter or any part of the matter can be made public or as required by law.

Members shall abide by the provisions contained in the Town's Procedural By-law, as amended from time to time, addressing the confidentiality of matters discussed or materials distributed to Council or a Committee in closed session. Confidential information shall only be disclosed to the extent authorized by Council or a Committee.

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.

Members shall not access, or attempt to gain access, to confidential information in the custody of the municipality, except to the extent that such access is necessary for the performance of their duties and such access is not prohibited by Council or otherwise by law.

**G. Gifts, Hospitality, Benefits and Perquisites**

Members may only receive tokens, mementos, souvenirs, or similar gifts that are received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office. Tokens, mementoes, souvenirs or gifts with a value of greater than nominal value, if accepted, shall be the property of the Town.

Members may accept hospitality or entertainment if the offer is infrequent and appropriate to the occasion.

Nothing in this section prevents the receipt of:

- Personal gifts, benefits, rewards, commissions or advantages from any person or organization not connected directly or indirectly with the performance or duties of office.

Members may also accept the following:

- Political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
- Food and beverages at banquets, receptions, ceremonies or similar events;
- Services provided without compensation by persons volunteering their time;
- Food, lodging, transportation and entertainment provided by other levels of government or by other local governments, boards or commissions;
- A reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations;

Any gifts, benefits, hospitality or perquisites that exceed these guidelines shall be returned with an explanation of this Code.

#### **H. Use of Town Property**

Members must respect the use of Town property, acting in accordance with the following policies, as amended from time to time.

- Council-Staff Request for Information and Use of Resources Policy, CAO 1-01
- Use of Corporate Resources and Election Campaign Activities Policy, CORP 1-01
- Internet & Email Acceptable Use Policy & Guidelines, IT 1-01
- Technology Equipment Acceptable Use, IT 1-02

No Member shall use, or permit the use of, municipal land, facilities, equipment, supplies, services, staff or other resource, including any municipally-owned information, website or funds allocated for Member of Council expenses, for any purpose or activity other than the lawful business of the municipal corporation or associated community activities having the sanction of Council or its Committees.

Members shall not obtain financial gain from the use of Town 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 Town.

#### **I. Political Activity**

Members must ensure compliance with all legislative requirements related to political activity including the *Municipal Elections Act, 1996* and the Use of Corporate Resources and Election Campaign Activities Policy Corp 1-01, as amended from time to time.

#### **J. General Conduct**

As a representative of the Town, 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 in a manner that is discriminatory to any individual based on a person's race

## **SCHEDULE "A"**

ancestry, place of origin, citizenship, ethnic origin, creed, gender, sexual orientation, age, colour, marital status, family status or disability.

Any complaints of harassment in the workplace will be investigated in accordance with the procedures set out in the Harassment and Discrimination Free Workplace Policy, HR 13-04, as amended from time to time. The pursuit of a complaint under the above policy does not preclude a Member of staff from requesting that the complaint be dealt with in accordance with the complaint protocol in Appendix A of this Code.

### **K. Conduct While Representing the Town**

Members shall make every effort to participate diligently in the activities of the Committees to which they are appointed.

### **M. Respect for Town By-laws and Policies**

Every Member shall observe and comply with every provision of this Code as well as all other policies and procedures adopted or established by Council.

Members shall at all times encourage the public to abide by the Town's by-laws and policies.

### **N. Conduct at Meetings**

Every Member shall conduct themselves with decorum in accordance with the provisions of the Town's Procedure By-law, as amended from time to time.

### **O. Staff Relations**

Under the direction of the senior municipal administration, and in accordance with the decisions of Council, municipal staff are required to serve the municipal corporation as a whole. Mutual respect and cooperation are required to achieve Council's corporate goals and implement Council's strategic priorities through the work of staff.

Every Member shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff. Members shall show respect for staff, and for their professional capacities and responsibilities.

No Member shall compel any member of staff to engage in partisan political activities, or subject any staff member to threats or discrimination for refusing to engage in any such activity. Accordingly, no Member shall use or attempt to further his or her authority to influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member or interfering with that person's duties, including the duty to disclose improper activity.

Requests for information from Members to staff shall follow the protocols set out in the Council-Staff Request for Information and Use of Resources Policy, CAO 1-01, as amended from time to time.

**P. Business Relations**

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

No Member shall allow the prospect of his or her current or future employment by a person or entity to detrimentally affect the position of the Town.

**Q. No Improper Use of Influence**

No Member shall use the influence of his or her office for any purpose other than for the lawful exercise of his or her official duties and for municipal purposes

No Member shall use his or her office or position to influence or attempt to influence the decision of any other person, for the Member's private advantage or that of the Member's parent, child, spouse, staff member, friend or associate, business or otherwise. Members shall not attempt to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. No Member shall hold out the prospect or promise of future advantage through the member's supposed influence within Council, in return for any action 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 or her parents/children or spouse, 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.

**R. Compliance with the Code of Conduct**

All Members shall be aware of and comply with this Code.

Where Council, an employee of the Town or a member of the public has reasonable grounds to believe that a Member has breached this Code, a complaint may be filed in accordance with Complaint Protocol attached hereto as Appendix A.

In addition to any other consequence imposed by law, once the Integrity Commissioner has concluded the investigation and made a final determination, Council may impose the following penalties:

- A reprimand, or,
- Suspension of remuneration paid for his or her services as a Member, for a period of up to ninety (90) days.

The Integrity Commissioner may, at his or her sole discretion, make remedial recommendations to Council, which may include:

- return of a gift or benefit



- removal from a Committee, with the exception of Committee of the Whole
- removal of the member as chair of a Committee, with the exception of Committee of the Whole
- censure

**S. Integrity Commissioner**

Council shall appoint an Integrity Commissioner by by-law once per term of Council. The Integrity Commissioner shall be responsible for performing the following duties as established by Council, in an independent and consistent manner:

1. Assessing and investigating formal written complaints with respect to alleged contraventions of the Code;
2. Providing Council with specific and general opinions and advice on the Town's policies and protocols regulating the conduct of Members and issues of compliance with those policies and protocols;
3. Acting as a mediator as requested under the informal complaint process.
4. Providing written and oral advice to individual Members about their own situation under the Code of Conduct and other policies and protocols governing the ethical behaviour of Council;
5. Determining whether a Member has in fact violated a protocol, by-law or policy governing their ethical behaviour; with the final decision-making authority resting with Council as to whether the recommendations of the Integrity Commissioner are imposed; and
6. Providing Council, through the Town Clerk, with reports resulting from investigations by the Integrity Commissioner and annual and other reports as deemed necessary by the municipality.

**T. Reprisals and Obstruction**

Every Member must respect the integrity of the Code and inquiries and investigations conducted under it, and shall co-operate in every way possible in securing compliance with its application and enforcement. Any reprisal or threat of reprisal against a complainant or any other person for providing relevant information to the Integrity Commissioner or any other person is prohibited.

It is also a violation of the Code to obstruct the Integrity Commissioner, or any other municipal official involved in applying or furthering the objectives or requirements of this Code, in the carrying out of such responsibilities (e.g. providing inaccurate or misleading information to the Integrity Commissioner, refusing to answer inquiries or by the destruction of (records) documents or the erasing of electronic communications) or pursuing any such objective.

**U. Code of Conduct Complaint Protocol**

The Integrity Commissioner may provide for informal and formal complaint protocols and procedures, as required from time to time, attached hereto as Appendix A.

**V. Cross-References**

Council-Staff Request for Information and Use of Resources Policy, CAO 1-01  
Procedure By-law 2013-46  
Use of Corporate Resources and Election Campaign Activities Policy, Corp 1-01  
Elected Officials Expenses Policy, CORP 1-07  
Harassment and Discrimination Free Workplace Policy, HR 13-04  
Internet & Email Acceptable Use Policy & Guidelines, IT 1-01  
Technology Equipment Acceptable Use, IT 1-02

**X. Appendices**

Appendix A – Council Code of Conduct Complaint Protocol  
Appendix B – Council Code of Conduct - Complaint Form/Affidavit

**DRAFT**



**Town of Newmarket  
Council Code of Conduct Complaint Protocol**

This document entitled the Town of Newmarket Code of Conduct Complaint Protocol refers to the procedure to be followed when an individual has witnessed or identified behaviour by a Member of Council and/or who has reasonable grounds to believe a Member is in contravention of the Code of Conduct. Where the individual is a member of staff, they are encouraged to contact the Chief Administrative Officer to communicate their concerns regarding the prohibited behaviour prior to pursuing a complaint under the informal or formal process. This does not preclude a member of staff from pursuing a complaint under the informal or formal process.

No action will be taken on a complaint unless the alleged violation took place within 6 months of the filing of the complaint. Commentary in this Complaint Protocol will follow the Complaint Protocol rule and will be in italicized font. Commentary and examples are meant to be illustrative and not exhaustive. From time to time, additional commentary and examples may be added to this Complaint Protocol by the Integrity Commissioner, as he or she deems appropriate.

**I. Informal Complaint Process**

1. An individual (including Town employees, members of the public) who has witnessed or identified behaviour or activity by a Member of Council that they have reasonable grounds to believe is in contravention with the Code of Conduct may address the prohibited behaviour or activity themselves, by speaking to a Member, and participating in an informal process as follows:
  - i) Advise the Member in writing that the behaviour or activity they witnessed or identified appears to contravene the Code of Conduct;
  - ii) Identify, where possible, what rules in the Code of Conduct the behaviour or activity appears to contravene;
  - iii) Document the incident(s) including the date(s), time(s), location(s), other persons present and any other relevant information.
  
2. An individual may:
  - i) Contact the Integrity Commissioner to communicate their original concerns regarding the prohibited behaviour and, their satisfaction with the response of the Member, or if applicable; and
  - ii) In the absence of a successful resolution, discuss the matter with the Integrity Commissioner, who will advise whether the matter must be addressed in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

## Commentary

*Individuals are encouraged to pursue the informal complaint process as a first step towards stopping and remedying behaviour or an activity that they believe contravenes the Code of Conduct. Where the Complainant and the Member of Council agree, the Integrity Commissioner may act in the role of a mediator with the parties to reach an informal settlement of the matter.*

*Often, the impetus of the alleged prohibited behaviour is unknown to the Complainant and an informal mediated discussion assists both parties to understand the purpose and application of the Code rule and the context of the behaviour or activity of the Member of Council.*

*However though the Integrity Commissioner will always recommend that the informal process be followed, participation in the informal process is not a pre-condition for an individual to file a formal complaint in relation to a Member of Council.*

*If an informal complaint is brought to the attention of the Integrity Commissioner on or after June 30<sup>th</sup> in any year in which a regular municipal election will be held, the Integrity Commissioner may answer questions regarding Code rules, however, the informal process will be suspended until after the inauguration of the newly elected Council.*

## II. Formal Complaint Process

1. An individual (including Town employees, members of the public) who has witnessed or identified behaviour or activity by a Member of Council that they have reasonable grounds to believe is in contravention with the Code of Conduct, may file a formal complaint. All formal complaints shall be filed with the Town Clerk who shall forward the complaint documents to the Integrity Commissioner for an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Town policies.
  
2. All formal complaints received by the Integrity Commissioner shall be screened upon receipt to determine if on its face it meets the preliminary requirements of a Code complaint. The Integrity Commissioner shall dismiss a formal complaint on a summary basis if, based on the complaint affidavit and any supporting documentation, it is the view of the Integrity Commissioner that:
  - i) The Complainant has not established a reasonable basis that there has been a Code violation; and/or,
  - ii) The issue subject of the complaint is frivolous or vexatious, or has already been resolved, or in the view of the Integrity Commissioner, can be more appropriately addressed through another applicable judicial or quasi-judicial process or complaint procedure; and/or,
  - iii) The subject of the complaint is a question regarding the administration or a decision of Council, a Committee of Council or a Local Board.

Where the Integrity Commissioner concludes that no investigation shall be commenced, the Integrity Commissioner shall notify the Complainant in writing and no report will be issued.

3. A formal complaint must be filed with the Town Clerk, together with the required information on the Complaint Form Affidavit, attached as Appendix B, in accordance with the following guidelines:
- i) A request for an investigation of a complaint that a Member has contravened the Code of Conduct shall be on a Complaint Form Affidavit and shall be dated and signed by an identifiable individual.
  - ii) The complaint must include an explanation of why the behaviour or activity of the Member may be a contravention of the Code of Conduct, the rule or rules to which the contraventions applies and evidence in support of the allegation.
  - iii) The name and contact information of any witnesses that the Complainant wants to use in support of the complaint must be listed.
  - iv) The Integrity Commissioner may provide the name of the Complainant to the Respondent upon receipt of the complaint and include the name of the Complainant in the formal report to Town Council, unless the Integrity Commissioner decides, in her discretion, that the name of the Complainant should be confidential.
  - v) Despite subsection (i), the Integrity Commissioner may waive the requirement for a Complaint Form Affidavit if the complaint is from Council. A request for an investigation from Council will come to the Integrity Commissioner by way of a formal motion of Council.
  - vi) The Integrity Commissioner shall give the complaint and supporting material to the Member whose conduct is in question, with a request that a written response be provided within 14 days, and give a copy of the Member's response to the Complainant with a request for a written reply within 14 days.
  - vii) Upon completion of the investigation, the Integrity Commissioner shall provide a copy of the complaint investigation report to the Member and the Complainant and provide a copy to the Town Clerk for inclusion on the next available Committee of the Whole agenda.
  - viii) In a municipal election year, any Code of Conduct complaint received after June 30<sup>th</sup> will be held in abeyance until the date of inauguration of the new Council. Any Code of Conduct complaint received before June 30<sup>th</sup> for which the investigation has not been concluded on or before June 30<sup>th</sup> will be held in abeyance until the inauguration of the new Council.

### Commentary

*Subsection 223.5(1) of the Municipal Act provides that the "Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part". Subsection 223.6(2) states that if the Commissioner reports her opinion about whether there has been a contravention of the Code of Conduct, "the Commissioner may disclose in the report such matters as in the commissioner's opinion are necessary for the purposes of the report".*

*The Integrity Commissioner may elect to investigate a complaint by exercise of the powers of a commission under sections 33 and 34 of the Public Inquires Act.*

III. No Jurisdiction

1. If, in the sole discretion of the Integrity Commissioner, the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is, in the view of the Integrity Commissioner, more appropriately addressed by other legislation or a complaint procedure or Town policy, the Integrity Commissioner shall advise the complainant in writing, that the complaint is with reference to an allegation or matter consistent with non-compliance with a separate procedure or legislation and that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process. The Integrity Commissioner may provide additional reasons and referrals to appropriate areas of the Town, as appropriate.
2. The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner and provide recommendations in the report for appropriate referral and/or disposition of the matter.

IV. Refusal to Conduct an Investigation

1. If, in the sole discretion of the Integrity Commissioner, the complaint is found to be frivolous, vexatious or not made in good faith, or that there are insufficient grounds for an investigation or that the matter has been resolved or may be more appropriately addressed by a separate procedure or legislation, the Integrity Commissioner shall not conduct an investigation, or, where the above becomes apparent in the course of an investigation, terminate the investigation and close the file, without a requirement of a report to Council.



**Council Code of Conduct - Complaint Form/Affidavit**

**AFFIDAVIT OF**

\_\_\_\_\_ [Full Name]

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in  
[Full Name] [City, Town, etc.] [Municipality of Residence]  
the Province of Ontario

MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this affidavit, because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [Insert reasons e.g. I work for... I attended the meeting at which ... etc]

2. I have reasonable and probable grounds to believe that a member of Town of Newmarket Council,

\_\_\_\_\_ has contravened section(s) \_\_\_\_\_ of the Code of Conduct  
[specify name of Member]

for Members of Council (the "Code of Conduct"). The particulars of which are as follows:

*[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule A form and check the box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit.]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I acknowledge that at the time of the Integrity Commissioner's report to Council in this matter, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.

Please see Schedule "A" attached

4. I make this Affidavit for the purpose of requesting that this matter be reviewed and for no other purpose; and

5. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

\_\_\_\_\_  
Signature

SWORN [or AFFIRMED] by the said \_\_\_\_\_ at \_\_\_\_\_  
[City of, Town of, etc.]

In the Province of Ontario on \_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Signature of Commissioner] A Commissioner for taking Affidavits, etc.

**Code of Conduct Complaint Protocol s. II. Formal Complaint Process. Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the Criminal Code, R.S.C. 1985, c. C-46, and also to civil liability for defamation.**

Personal information on this form is collected to determine any concerns with the conduct of members of Council. This information is collected in accordance with 223.5 of the *Municipal Act*. Section 223.5 of the *Municipal Act* prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. Questions about this collection can be directed to the Town Clerk, 395 Mulock Drive, Newmarket, Ontario L3Y 4X7 (905) 895-5193

**Schedule A**

**Additional Information**

To the Affidavit required under subsection 2(3) of the Formal Complaint Procedure.

[If more than one page is required, please reproduce this blank page and mark each additional page as 2 of 2, 2 of 3, etc. at the bottom right corner.]

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This is Schedule 'A' referred to in the Affidavit of:

\_\_\_\_\_ [Full Name]

Sworn [or Affirmed] before me on this \_\_\_\_\_ [Day] of

\_\_\_\_\_ [Month] \_\_\_\_\_ [Year]

\_\_\_\_\_  
(Signature of Commissioner) A Commissioner for taking Affidavits, etc.



Council Code of Conduct

Summary of Comments, Comparative Research and Options

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
<b>C. Scope of Policy</b>				
Special COW Meeting September 9, 2013	Clarify scope of code application; forum, venue, circumstances (i.e. social media)	Social Media Consultant will be addressing Council in Q1 2014 regarding the Organization's Social Media Policy. Council may wish to engage the consultant at this time in a discussion around guidelines for the use of social media by Members of Council.	<ul style="list-style-type: none"> <li>Scope of the code is largely undefined in most Ontario municipalities, as to provide for broad application. The code could be enhanced to include wording that speaks directly to its application:  "A member must comply with this Code whenever they act, claim to act or give the impression they are acting in their official capacity as a Member of Council"</li> </ul>	Include an additional provision such as "A member must comply with this Code whenever they act, claim to act or give the impression they are acting in their official capacity as a Member of Council"
<b>D. Definitions</b>				
Public Feedback October 25, 2013	There is no definition included for the word "Nominal" used in relation to Section G -- Gifts, Benefits and Perquisites	See options outlined in Section "G"		
<b>F. Confidentiality</b>				
Public Feedback October 30, 2013	Section is too restrictive, allowing too many instances of confidentiality and too wide a range of matters that are kept from the public	<i>Municipal Act</i> provides a framework for open/closed meetings.		

Council Code of Conduct

Summary of Comments, Comparative Research and Options

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
<b>G. Gifts, Hospitality, Benefits and Perquisites</b>				
Special COW Meeting September 9, 2013	Compare wording in Code pertaining to the receipt of Gifts, Hospitality and Benefits, to that contained in the Members of Council Expenses Policy. Consider amending current wording i.e. Nominal is very subjective		The common practice among comparative municipalities is to set a limit per gift and cumulative value limit for individual donors. Any gift in excess of the limits up to a maximum allowable limit must be reported within 30 days of receipt on a disclosure statement to be filed with the Clerk. The disclosure statement sets out: 1 the nature of the gift or benefit 2 its source and date of receipt 3 the circumstances under which it was given or received 4 its estimated value 5 what the recipient intends to do with the gift and, 6 whether any gift will at any point be left with the Municipality	1. Assign a nominal value and cumulative value limit to the term "nominal". Code would remain the same with respect to gifts/benefits/perquisites that exceed this limit (i.e. return of gifts or assumption by the Town).  2. Assign a nominal value and cumulative value limit to the term "nominal". Require a disclosure statement to be filed with the Clerk within 30 days of receipt of gifts that exceed the value limits.
Public Feedback October 25, 2013	A set dollar value limit should be included to mitigate ambiguity from the use of the term "nominal" and to indicate what is acceptable for each category. A limit should also be established for cumulative gifts from one source.		<i>City of Kitchener:</i> Nominal value limit \$100.00 Cumulative value limit \$300.00 per source. Where gift received exceeds limits, a disclosure statement must be filed with the Clerk within 30 days of receipt of the gift.  <i>City of Guelph:</i> Nominal value limit and cumulative value limit \$300.00 Any value in excess of these limits must be reported through a disclosure statement up to the maximum allowable \$500 from anyone source per year.	
Public Feedback October 31, 2013	Receipt of gifts by Council members should not be permitted under Code. Proposed policy is in direct conflict with norms of corporate organizations.		<i>City of Vaughan:</i> Nominal Value limit and cumulative value limit \$500.00 Disclosure statement required within 30 days of receipt if value of gift exceeds limit.	

Council Code of Conduct

Summary of Comments, Comparative Research and Options

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
Public Feedback October 30, 2013	No acceptance of gifts, benefits, food, beverages or other benefits should be permitted.			
<b>H. Council Expenses</b>				
Special COW Meeting September 9, 2013	Remove reference to Use of Council Expenses in this section. Guidelines for use of Council expenses should be provided in Members of Council Expenses Policy.	Section has been removed in final draft of the Code. Cross-reference to Elected Officials Expenses Policy to remain in the Code.		
<b>I. Use of Town Property</b>				
Special COW Meeting September 9, 2013	<p>Request to expand provisions under Use of Town Property Section. Does this section apply to charity work?</p> <p>Provide clear wording about charities that Council Members may be a part of and the ability of those charities to rent and use Town facilities</p>		<p><i>City of Brampton:</i> includes a section under Use of Corporate Resources heading respecting charitable association involvement:</p> <p>As community leaders, Members of Council are called upon to assist and support various charities, service clubs, and other non-profit and community-based associations. For example, Members support their communities in a variety of ways including, but not limited to: accepting honorary roles in organizations lending their names to organizations and events to assist in fundraising; and encouraging community donations to registered charitable, not-for-profit, or other community-based groups.</p> <p>Members supporting these community endeavours will respect the need for transparency with respect to their involvement, performing their community service in a manner that promotes public confidence.</p>	<p>1. Include section respecting charitable association involvement under Use of Town Property section.</p> <p>2. Revise wording of section to speak to broad categories of City property, equipment, services or supplies.</p>

Council Code of Conduct

Summary of Comments, Comparative Research and Options

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
			<p><i>City of Guelph:</i>                      No member shall for personal purposes or profit, permit the use of any City property, equipment, services, or supplies other than for purposes connected with the discharge of City duties or associated community activities of which City Council has been advised, unless such use is permitted by one of the following exceptions:</p> <ul style="list-style-type: none"> <li>• Reasonable and incidental personal use of equipment such as computers, fax machines, cell phones, blackberries, etc., where the City incurs no additional costs relating to such use, and the use is of limited duration and frequency.</li> <li>• Use of City property and facilities where such use is universally known to be available to other residents upon request and on equal terms.</li> </ul>	
<b>O. Staff Relations</b>				
Special COW Meeting September 9, 2013	Is there a provision within the Employee Code of Conduct that addresses the political neutrality of staff?	See Employee Code of Conduct:  Employee Behaviour (Professionalism) – Section 2b)		
<b>P. Business Relations</b>				
Special COW Meeting September 9, 2013	Clarify Business Relations Section specifically provision addressing the referral of third parties by members in exchange for payment or other personal benefit	This section applies to situations in which a referral of a third-party results in payment or other personal benefit. Therefore in circumstances where the member is simply referring a party to a process		

Council Code of Conduct

Summary of Comments, Comparative Research and Options

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
		and not deriving any sort of benefit from such referral, they would be acting in compliance with the code.		
<b>S. Integrity Commissioner</b>				
<b>Special COW Meeting September 9, 2013</b>	<b>Consider the cost implications of Section S Duty 4 enabling the Integrity Commissioner to provide advice to Members of Council, on an as requested basis.</b>	In conversation with a municipality which has employed this approach, specifically the City of Waterloo, it has been found that regular access/contact with the integrity commissioner can assist in reducing the number of formal complaints, as questions of conflict are better understood by elected officials, pre-empting the need for formal action.	Procedure for obtaining advice from Integrity Commissioner varies. Some municipalities formalize process – request for advice must be submitted on a written form. Others including the City of Guelph recognize the potential immediacy of these requests and provide the option of requesting more expedient advice without the requirement of the form.  The Cities of Guelph, Mississauga, Kitchener and Town of Richmond Hill are examples of municipalities who have assigned an advisory function to their Integrity Commissioner.	
	<b>Consider cost control measures (i.e. periodic reporting to advise Council of costs to date)</b>	Integrity Commissioner is required to provide annual reports and other reports as requested by Council. Periodic reporting could be implemented to monitor costs.	None of the municipalities researched imposed access limits to Integrity Commissioner (set number of times that Members of Council can access free advice from Integrity Commissioner). Advisory capacity is communicated as a tool to assist in clarifying issues around appropriate conduct and has demonstrated results in reducing the number of formal complaints.	

Council Code of Conduct

Summary of Comments, Comparative Research and Options

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
<b>U. Code of Conduct Complaint Protocol</b>				
Public Feedback October 30, 2013	The six month filing requirement should not be included as it is too restrictive.			
Special COW Meeting September 9, 2013	Suggested consideration to revisit the eligibility of Councillor to Councillor complaints under the Code		Staff conducted research on codes across provincial and national jurisdictions. No codes were found to restrict the ability for members to file a complaint against another member, where a perceived contravention has taken place.	Include the provision for a Councillor to file a complaint.
	Explore alternative processes for Councillor to Councillor complaints (i.e. refundable deposit where the return of funds is contingent upon the complaint meeting the complaint pre-qualification criteria)	Council adopted a motion (October 21, 2013) that in certain circumstances Members be requested by Council to pay costs associated with an IC's investigation.	At the Special Council Meeting a suggestion was made to investigate the merits of instituting a refundable deposit exclusively for members of council who wish to file a complaint against another member. Staff have conducted further research on this approach and can conclude that while some municipalities charge a refundable fee for code complaints it is not limited to applications related to member to member conflicts.  In jurisdictions that impose a refundable application fee the typical amount ranges from \$100.00 - \$125.00. All fees are refundable subject to the application meeting all pre-qualification criteria. Municipalities who actively employ this approach include the City of Hamilton, Town of Caledon, Town of Fort Erie and Township of South Stormont.	
Special COW Meeting September 9, 2013	What checks and balances are in place within the formal process to prevent abuse of process and vexatious complaints?	The pre-screening process which is undertaken independently by the Integrity Commissioner provides the mechanism through which abuse of process can be		

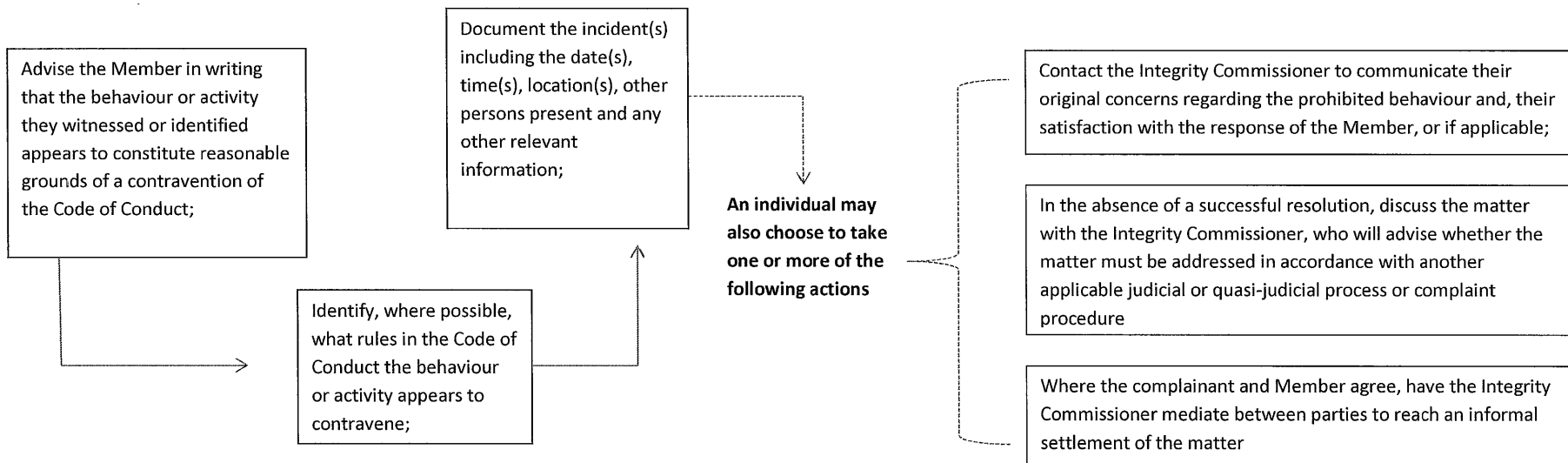
**Council Code of Conduct**

**Summary of Comments, Comparative Research and Options**

Date Received	Feedback Received	Comments	Comparative Research	Potential Options (other than status quo)
		addressed. The Integrity Commissioner will apply the criteria as provided in the Code, which includes determining whether or not the complaint is vexatious, has already been resolved, addresses a decision made by the administration or other local board, etc. prior to initiating a formal investigation. Where a complaint does not meet all of the designated criteria it will be dismissed and the complainant will be notified.		
<b>Other Comments</b>				
Special COW Meeting September 9, 2013	Did Integrity Commissioner's comments address 1) social media and/or 2) Councillor to Councillor conduct disputes?	1) Comments received from IC indicate that Members are generally held to a higher standard with the test being "is it reasonable that the rules of public office apply?" 2) IC's comments support research conducted	Research indicates that Councillor to Councillor conduct disputes are permitted in other jurisdictions.	Include the provision for a Councillor to file a complaint.

**Draft Code of Conduct Complaint Protocol**  
**Informal Complaint Process** (for illustrative purposes only)

An individual (including Town employees, members of the public) who has witnessed or identified behaviour or activity by a Member of Council and/or who has reasonable grounds to believe a Member is in contravention with the Code of Conduct may address the prohibited behaviour or activity themselves, by speaking to a Member, and participating in an informal process as follows:



Participation in the informal process is not a pre-condition for an individual to file a formal complaint in relation to a Member. An individual may elect to file a formal complaint at any time during the informal process.



**Draft Code of Conduct Complaint Protocol**  
Formal Complaint Process (for illustrative purposes only)

