

**THE CORPORATION OF THE TOWN OF KEARNEY**

**By-law No. 2013-12**

*Being a By-law to Establish a Code of Conduct for the Mayor, Councillors', Committee and Board Members of the Corporation of the Town of Kearney*

**WHEREAS** the Municipal Act, 2001, as amended, authorizes municipalities to pass By-laws regarding Accountability and Transparency of the municipality and its operations and of its local boards and their operations;

**AND WHEREAS** the Municipal Act, 2001, as amended, authorizes municipalities to establish codes of conduct for members of the Council of the municipality and of local boards of the municipality;

**AND WHEREAS** the Municipal Act, as amended, authorizes penalties for a contravention of the code of conduct; and

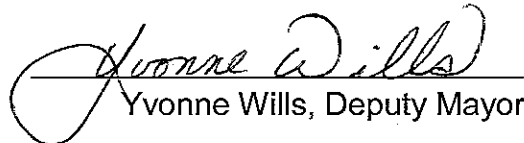
**AND WHEREAS** Council deems it expedient to establish a Code of Conduct for the Mayor, Councillors', Committee and Board Members;


**NOW THEREFORE**, the Council of The Corporation of the Town of Kearney enacts as follows:

1. That the Corporation of the Town of Kearney adopts the Code of Conduct, substantially in the form of Schedule "A", attached hereto and forming part of this By-law.
2. All previous By-laws and resolutions and parts of By-laws and resolutions inconsistent with the provisions of this By-law are hereby repealed.
3. This By-law shall come into force and take effect on the date of its final passing.

**READ A FIRST, SECOND TIME AND THIRD TIME**, passed and signed and the Corporate Seal attached hereto, this the 16<sup>th</sup> day of May, 2013.

THE CORPORATION OF THE  
TOWN OF KEARNEY

  
Yvonne Wills, Deputy Mayor

  
Brenda J. Fraser, Acting Clerk

**SCHEDULE "A" TO BY-LAW NO. 2013-12**

**Code of Conduct**

**For**

**Mayor, Councillors', Committee, Board Members of the Town of Kearney**

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## 1. PURPOSE

The purpose and intent of this policy is to establish guidelines for ethical and interpersonal standards of conduct for Members of Council/Board or Committees by improving the quality of public administration and governance and by encouraging high standards of conduct on the part of all government officials.

## 2. STANDARD OF CONDUCT

- 2.1 Members of Council/Board or Committees shall, at all times, seek to advance the common good of the community which they serve.
- 2.2 Members of Council/Board or Committees shall truly, faithfully and impartially exercise the office to the best of their knowledge and ability.
- 2.3 Members of Council/Board or Committees shall perform the functions of office in good faith, honestly and in a transparent manner.
- 2.4 Members of Council/Board or Committees shall at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

## 3. CONDUCT TO BE OBSERVED

### 3.1 *Statutory Provisions Regulating Conduct*

This *Code of Conduct* is supplemental to the existing statutes governing the conduct of members. Six pieces of provincial legislation govern the conduct of members of Council/Board or Committees:

- 3.1.1 the *Municipal Act, 2001, s.223.2(1) as amended*;
- 3.1.2 the *Municipal Conflict of Interest Act*;
- 3.1.3 the *Municipal Elections Act, 1996*;
- 3.1.4 the *Municipal Freedom of Information and Protection of Privacy Act*
- 3.1.5 the *Criminal Code of Canada* also governs the conduct of members of Council/Board or Committees;
- 3.1.6 the *Public Libraries Act, R.S.O. 1990*

### 3.2 *Municipal Act 2001, as amended – Legislated Responsibilities*

The following are distinct and specialized roles carried out by Council/Board or Committees as a whole and by individual Councillors' and Board Members' when performing their other roles. The key requirements of these roles are captured below.

#### 3.2.1 *Role of Council and Board Members', if applicable*

- i) to represent the public and to consider the well-being and interests of the municipality;
- ii) to develop and evaluate the policies and programs of the municipality;
- iii) to determine which services the municipality provides;
- iv) to ensure that administrative policies, practices and procedures are in place to implement the decisions of the Council;
- v) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- vi) to maintain the financial integrity of the municipality; and
- vii) to carry out the duties of Council/Board or Committees under this or any other Act.

### 3.2.2 *Head of Council*

- i) to act as Chief Executive Officer of the municipality;
- ii) to preside over Council meetings so that its business can be carried out efficiently and effectively;
- iii) to provide leadership to the Council;
- iv) without limiting clause (iii), to provide information and recommendations to the Council with respect to the role of Council described in 3.2.2 (i);
- v) to represent the municipality at official functions; and
- vi) to carry out the duties of the head of Council under this or any other Act.

### 3.2.3 *Officers and Employees*

- i) to implement Council's/Board decisions and establish administrative practices and procedures to carry out Council's decisions;
- ii) to undertake research and provide advice to Council/Board or Committees on the policies and programs of the municipality; and
- iii) to carry out other duties required under this or any Act and other duties assigned by the municipality.

#### *Town Business*

- iv) Members of Council/Board or Committees shall not individually nor collectively, by virtue of their position as Councillor/Board Member(s), relay or request information via e-mail or other method that will further the business of the Town, as such methods are outside of the public domain and not within the requirements of accountability and transparency in accordance with the *Municipal Act, 2001*, as amended.

## **3.3 Confidentiality**

- 3.3.1 Members of Council/Board or Committees have a duty to hold in strict confidence all information concerning matters dealt with in "Closed Session" meetings. A Member of Council/Board or Committees shall not, either directly or indirectly, release, make public or in any way divulge any such information (verbal or written) or any aspect of the in "Closed Session" deliberations to anyone, unless expressly authorized by Council/Board or Committees or required by law to do so.
- 3.3.2 Members of Council/Board or Committees shall not release information in contravention of the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.
- 3.3.3 Members of Council/Board or Committees shall not release information subject to solicitor-client privilege unless expressly authorized by Council/Board or Committees or required by law to do so.
- 3.3.4 Members of Council/Board or Committees shall keep confidential any information that is circulated to members of Council/Board or Committees marked "Confidential". Any documentation marked confidential shall be kept securely until no longer required in the course of business and shall as that time be

destroyed by the member of Council/Board or Committees or returned to the office of the Clerk Administrator for destruction.

3.3.5 Members of Council/Board or Committees shall not misuse confidential information (information that they have knowledge of by virtue of their position as Councillor/Board Member that is not in the public domain, including e-mails and correspondence from other Members of Council/Board or Committees or third parties) such that it may cause detriment to the Corporation, Council or others, or benefit or detriment to themselves or others.

3.3.6 Members of Council/Board or Committees have the obligation to keep all information confidential as it applies to the "Closed Session" meetings, even if the member ceases to be a member of Council/Board or Committees.

### **3.4 Personal Gain**

3.4.1 A Member of Council/Board or Committees may not use their position, privileges, or confidential information obtained as the Mayor, a Councillor, Board or Committee Member for private gain or to improperly benefit another person.

3.4.2 The Mayor, Councillor or Board Member may not be a party to or beneficiary under a contract for:

- i) the provision of goods or services to the municipality; or
- ii) the performance of any work otherwise than as a Councillor/Board Member for the municipality;

3.4.3 The Mayor, Councillor or Board Member may not obtain a financial interest in any business of the municipality;

3.4.4 The Mayor, Councillor or Board Member may not appear on behalf of any other person before the Council/Board or Committees for a fee or other consideration.

### **3.5 Respect the Decision Making Process**

All Members of Council/Board or Committees shall communicate accurately the decision of Council/Board or Committees, in such a manner that shows respect for the decision making process of Council/Board or Committees whether they agree or not.

### **3.6 Conduct Respecting Staff**

3.6.1 Only Council as a whole or Board, where applicable, has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council/Board or Committees' approved budget, process or policy to the appropriate Department Head or Advisory Committee;

3.6.2 Under the direction of the Clerk/Administrator or designate, staff serves the Council/Board or Committees as a whole and the combined interests of all members as evidenced through the decisions of Council/Board or Committees.

3.6.3 Council/Board or Committees shall be respectful of the role of staff to advise, based on political neutrality and objectivity and without

due influence from any individual member or faction of the Council/Board or Committees.

- 3.6.4 No member of Council/Board or Committee shall maliciously or falsely harm the professional or ethical reputation or the prospects or practice of staff. All members shall show respect for the professional capacities of the staff of the Town of Kearney.
- 3.6.5 No member of Council/Board or Committee shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing such activities.
- 3.6.6 Council/Board or Committees Members shall not use, attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with the person's duties including the duty to disclose improper activity.

#### **4. INTERPERSONAL BEHAVIOUR OF MEMBERS OF COUNCIL/BOARD OR COMMITTEES**

##### **4.1 *Treat Every Person with Dignity, Understanding and Respect***

Members of Council/Board or Committees shall abide by the provisions of the *Human Rights Code* and, in doing so, shall treat every person including other Members of Council/Board or Committees, corporate employees, individuals providing services on a contract basis, students on placements and the public with dignity, understanding and respect for the right to equality and the right to an environment that is safe and free from harassment and discrimination. No member or Council/Board or Committee shall maliciously or falsely harm the professional or ethical reputation or the prospects or practice of staff or board members. All members shall show respect for the professional capacities of the staff of the Town of Kearney.

##### **4.2 *Not to Discriminate***

In accordance with the *Human Rights Code*, Members of Council/Board or Committees shall not discriminate against anyone on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability. "Age", "disability", "family status", "record of offences", "same sex partnership status" shall be as defined in the *Human Rights Code*.

##### **4.3 *Not to Engage in Harassment***

4.3.1 In accordance with the *Human Rights Code*, harassment shall mean engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Without limiting the generality of the foregoing, Members of Council/Board or Committees shall not:

- i) make racial, homophobic, sexist or ethnic slurs;
- ii) display pornographic, homophobic, sexist, racist or other offensive or derogatory material;
- iii) make leering (suggestive staring) or other offensive gestures;

- iv) make written or verbal abuse or threats, use indecent, threatening, abusive, belittling, insulting or offensive words or gestures, profanity or unparliamentary language in or against the Council or against any member, staff, guest or individual;
- v) behave in an aggressive manner;
- vi) vandalize the personal property of others;
- vii) commit physical or sexual assault;
- viii) make unwelcome remarks, jokes, innuendos or taunting statements about a person's physical appearance, racial background, colour, ethnic origin, place of origin, citizenship, ancestry, creed (religion or belief), sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability (physical or mental);
- ix) make unwelcome remarks, insulting gestures or jokes which cause embarrassment or awkwardness;
- x) refuse to converse or interact with anyone because of their racial or ethnic background, colour, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or disability;
- xi) make unnecessary or unwanted physical contact, including touching, patting, or pinching; and
- xii) demand sexual favors or requests.

4.3.2 Harassment which occurs in the course of, or related to the performance of duties by Members of Council/Board or Committees is subject to *Section 6* of this policy.

4.3.3 A good faith exercise of performance management with respect to corporate employees for legitimate purposes by Council/Board or Committees is not harassment.

## **5. GIFTS, HOSPITALITY AND OTHER BENEFITS**

- 5.1 The objective of these policies is to ensure that Councillors and Board Members make Council/Board or Committee decisions based on impartial and objective assessment of each situation free from influence of gifts, favours, hospitality or entertainment.
- 5.2 In this policy, gifts, commission, hospitality, reward, advantage or benefit of any kind, may be interchanged and shall be deemed to include all of the aforementioned.
  - 5.2.1 The stipend paid to each Member of Council is intended to fully remunerate the Member of Council for service to the Corporation.
  - 5.2.2 Members of Council/Board or Committees are prohibited from soliciting, accepting, offering or agreeing to accept any gifts, commission, hospitality, reward, advantage or benefit of any kind, personally or through a family member or business connection, that is connected directly or indirectly with the performance of duties of office or dealings with the municipality or could reasonably be construed as being given in anticipation of future or recognition of past "special consideration".
- 5.3 The above policy does not preclude Members of Council/Board or Committees from accepting:

- 5.3.1 Token gifts, souvenirs, mementoes or hospitality received in recognition for service on a committee for speaking at an event or for representing the Corporation at an event;
  - 5.3.2 Political contributions that are otherwise offered, accepted and reported in accordance with applicable law;
  - 5.3.3 Food and beverages at meetings, banquets, receptions, ceremonies or similar events;
  - 5.3.4 Food, lodging, transportation, entertainment provided by other levels of government, by other local governments or by local government boards or commissions;
  - 5.3.5 A stipend from a board or commission that the Councillor/Board Member serves on as a result of an appointment by Council/Board or Committees;
  - 5.3.6 Reimbursement of reasonable expenses incurred in the performance of office;
  - 5.3.7 Reimbursement of reasonable expenses incurred and honorariums received in the performance of activities connected with municipal associations;
  - 5.3.8 Gifts of a nominal value that are received as an incident of protocol or social obligation that normally and reasonably accompany the responsibility of the office;
  - 5.3.9 Services provided without compensation by persons volunteering their time for election campaign.
- 5.4 Where it is not possible to decline unauthorized gifts, hospitality or other benefit, Councillors/Mayor/Board Members shall report the matter to the Clerk/Administrator.
- 5.5 The Clerk/Administrator may require that the gift be returned to the sender with an acknowledgement of the return and reference to this Code of Conduct or be retained by the Corporation or be disposed for charitable purposes.
- 5.6 Members of Council/Board or Committees shall not place themselves in a position of obligation to any person or organization which might reasonably benefit from special consideration or may seek preferential treatment.

## **6. BREACH OF POLICY**

- 6.1 Where an alleged contravention of any policy in this Code of Conduct occurs, it is a precondition or a prerequisite that, prior to pursuing the formal complaint procedure, the informal complaint procedure is pursued as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct.
- 6.2 Any member of the public, including Members of Council or Town employees, or any organization who has identified or witnessed a behaviour or an activity by a Member of Council/Committee or Board that they believe is in contravention of the Code of Conduct may address the prohibited behaviour or activity themselves as follows:
- 6.2.1 Advise the Member of Council/Board or Committee that the behaviour or activity contravenes the Code of Conduct;
  - 6.2.2 Encourage the Member to stop the prohibited behaviour or activity;
  - 6.2.3 Keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;



- 6.2.4 Advise someone else (for example, another Member of Council/Board, Committee or a senior staff member of the Town) about your concern, your comments to the Member and the response of the Member;
  - 6.2.5 If applicable, confirm to the Member your satisfaction with the response of the Member or, if applicable, advise the Member of your dissatisfaction with the response; and
  - 6.2.6 Consider the need to pursue the matter at a meeting with the Council/Board or Committee in accordance with Section 6.3.
- 6.3 Where an alleged contravention of any policy in this Code of Conduct occurs, Council/Board or Committees shall, upon request of any member of Council/Board or Committees hold a special Council/Board or Committee meeting to determine if the Council/Board or Committee member has breached this policy. The meeting shall be closed to the public, unless otherwise determined by the majority of Council/Board or Committee Members present at the meeting.
- 6.3.1 The Parties (Mayor, Councillor/Board or Committee Member) shall be given opportunity to address Council/Board or Committee at the meeting and will be provided with sufficient time to explain the alleged breach. The Party shall be permitted to introduce other evidence including witnesses to support his or her position, and shall have the option of attending with legal counsel. Should the Party have legal counsel, the municipality shall have the right to legal representation. Also
- i) The complaint shall be in writing and shall be signed by the complainant(s).
  - ii) A complaint shall set out the grounds for the belief and the contravention alleged and include a supporting affidavit that sets out the evidence in support of the complaint. For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.
- 6.3.2 Should the Council/Board or Committee determine that there are reasonable and probable grounds to believe that a member has contravened the Code of Conduct the Council/Board or Committee shall rise and report that such a determination has been made, and shall, at a special open Council/Board or Committee session called for that purpose, pass a resolution that shall require the member to appear in a closed session meeting. The breach shall be ratified by resolution at a regular session of Council/Board or Committee.
- 6.3.2(i) Should the complainant and the violator be members of Council, they shall individually be given time to address Council/Board or Committee without the other party present and both shall be excluded from the process for determining whether or not a violation has occurred.
- 6.3.3 Should the Council/Board or Committee feel that a breach may have occurred, but is unable to make a determination, the Council/Board or Committee may pass a resolution under Section 223 of the Municipal Act requesting an Integrity Commissioner conduct an investigation of the members conduct.

## 6.4 **Formal Complaint with the Integrity Commissioner**

### 6.4.1 *Initial Classification by Integrity Commissioner*

The complaint shall be filed with the Town Clerk (or his/her designate) who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies.

- i) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.
- ii) If the complaint, including any supporting affidavit, is found to not be a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:
  - a) If the complaint appears to be an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the Ontario Provincial Police;
  - b) If the complaint appears to be with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
  - c) If the complaint appears to be with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Privacy Commissioner for review;
  - d) If the complaint appears to be with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
  - e) In other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

### 6.4.2 *Integrity Commissioner Investigation*

If a complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Commissioner shall investigate and may attempt to settle the complaint.

The Integrity Commissioner will proceed as follows:

- i) Serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten (10) days; and  
Serve a copy of the response provided upon the complainant with a request for a written reply within ten (10) days.
- ii) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, examine any documents relevant to the complaint and may enter any Town office relevant to the complaint for the purposes of investigation and settlement.
- iii) The Integrity Commissioner may make interim reports to Council as required to address any instances of interference,

obstruction or retaliation encountered during the investigation.

- iv) The Integrity Commissioner shall submit a final report on the complaint to the Town Clerk, no later than ninety (90) days after the making of the complaint, outlining the findings, the terms of any settlement, or recommended corrective action.
- v) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.

#### 6.4.3 **Refusal to Conduct Inquiry**

- i) If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Integrity Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report.
- ii) If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

6.4.4 Should the Integrity Commissioner determine that a breach has occurred, the consequences for such breach shall include, but are not limited to the following:

- i) removal from Committee assignments either permanently or for an interim period;
- ii) "barring" the member from attendance at closed session meetings either permanently or for an interim period;
- iii) "barring" the member from being circulated/informed of confidential materials/matters;
- iv) demand of an apology;
- v) immediate expulsion from meetings or be subject to an immediate vote of censure and expulsion from the meeting;

6.4.5 All breach's under this By-law will be fair and in keeping with the severity of the infraction giving due regard to the individual's previous conduct.

6.4.6 Nothing in this section restricts or attempts to countermand a Council/Board/Committee Members' legal right to challenge a decision by Council/Board or Committee through established legal channels.

#### 6.5 **Copy of the Report**

The Integrity Commissioner shall file a copy of the final report with the Town Clerk who will then provide a copy of the report to the complainant and the Member whose conduct is concerned.

#### 6.6 **Report to Council**

The Town Clerk shall include the report on the next regular meeting agenda of Council.

#### 6.7 **Duty of Council**

6.7 **Duty of Council**

Council shall consider and respond to the report within ninety (90) days after the day of the Council meeting where the report was tabled.

**7. ACKNOWLEDGEMENT**

**SIGNATURE**

The undersigned member of Council/Board or Committee hereby acknowledges receipt of a copy of By-law 2013-12 being the Mayor, Councillors, Board and Committee Members' "Code of Conduct By-law":

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**Signature of Member of Council, Board  
or Committee**

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**Date of Signature**

*Acknowledgement of Receipt of Code of Conduct Policies*

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*PRINTED NAME*

**NOTE:** The member of Council, Board or Committee acknowledges that two copies of the By-law were provided to the member. One signed copy of the By-law was returned to the Clerk and the duplicate copy was retained by the member of Council, Board or Committee.