

The Corporation of the Township of Tiny



Administrative Policy

Code of Conduct for Local Boards

APPROVAL DATE:
03/11/2019

REVISION DATE:
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Part 1

General Introduction, Framework and Interpretation:

This document is a Code of Conduct for members of Local Boards, both adjudicative and non-adjudicative. Local Boards, sometimes referred to as committees or tribunals, are as defined in s.223.1 of the *Municipal Act, 2001* and as identified by the municipality.

Some additional restrictions apply to adjudicative boards and these are specified. The Code of Conduct for Local Boards follows the same organizational structure as the Council Code of Conduct. Definitions and commentary contained in the Council Code of Conduct may apply, where relevant, with necessary modifications and may be referred to for clarification and interpretive assistance in understanding this Code. Provisions of the Council Code of Conduct which are not relevant to members of Local Boards have been eliminated from this document.

Guiding Principles:

Members shall act with honesty and integrity, serving in a diligent manner, and performing their duties in a manner which promotes public confidence.

Definitions

- a. "Family" includes "child", "parent" and "spouse" as those terms are defined in the *Municipal Conflict of Interest Act* (set out below for ease of reference), and also includes
 - step-child and grand-child;
 - siblings and step-siblings;
 - aunt/uncle, niece/nephew, first cousins
 - in-laws, including mother/father, sister/brother, daughter/son
 - any person who lives with the Member on a permanent basis.

"Child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a

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child of his or her family.

“Parent” means a parent who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child.

“Spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside of marriage.

- b. “Member” means a member of a Local Board/Committee, including both adjudicative and non-adjudicative Local Boards/Committees.
- c. “Social Media” means publicly available, third party hosted, interactive web technologies used to produce, post and interact through text, images, video and audio to inform, share, promote, collaborate or network.
- d. “Staff” includes the Chief Administrative Officer, Directors, Managers, Supervisors and all non-union and union staff whether full-time, part-time, contract, seasonal or volunteers.
- e. “Nomination Day” means the last day for filing or withdrawing a nomination as provided for by the *Municipal Elections Act, 1996*.

Specific Rules:

Rule No. 1

Avoidance of Conflicts of Interest

Members shall avoid situations of real or apparent conflict of interest or bias.

Members shall avoid participating in or influencing a proceeding when the member, or another person with whom the member has a close personal or professional relationship, has a financial or other private interest that may be affected by the proceeding or its outcome.

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Members shall not appear before the Local Board or committee on their own behalf or as a representative on behalf of any party.

In this Rule:

- a. “disqualifying interest” means an interest in a matter that, by virtue of the relationship between the Member and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member could not participate impartially in the decision-making processes related to the matter.
- b. “non-disqualifying interest” means an interest in a matter that, by virtue of the relationship between the Member and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member could participate impartially in the decision-making processes related to the matter so long as:

The Member fully discloses the interest so as to provide transparency about the relationship; and

The Member states why the interest does not prevent the Member from making an impartial decision on the matter.

1. Members shall not participate in the decision-making processes associated with their appointment when prohibited to do so by the Municipal Conflict of Interest Act.
2. Members shall not participate in the decision-making processes associated with their appointment when they have a disqualifying interest in a matter.
3. For greater certainty:
 - a. Members shall not participate in the decision-making processes associated with their appointment when they have a direct, indirect or deemed pecuniary interest in a matter, except in compliance with the Municipal Conflict of Interest Act.
 - b. Members shall not participate in the decision-making processes associated with their appointment when they have an interest that though in compliance with the Municipal Conflict of Interest Act, is nevertheless a disqualifying interest by

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virtue of the nature of the relationship between the Board Member and other persons or bodies to be affected by the decision.

4. Treatment of Non-Disqualifying Interests:
 - a. Members may participate in the decision-making processes associated with their appointment when they have a non-disqualifying interest provided they file at their earliest opportunity a Transparency Disclosure in a form and manner established by the Township Clerk acting in consultation with the Integrity Commissioner.
 - b. Transparency Disclosures are public documents and shall be available for public viewing on the Township web site.
 - c. The determination of whether an actual disqualifying interest or an actual non-disqualifying interest exists, when challenged, is subject to the determination by the Integrity Commissioner of whether a reasonable person fully informed of the facts would believe that the Member could not participate impartially in the decision-making processes related to the matter.

Commentary:

Members of BIAs will frequently have an 'interest in common' as business owners. Care should be taken to recognize an interest, when the Member stands to gain or otherwise benefit, in a manner that can be differentiated from others in the BIA. Where a Member contributes to an event 'at cost', no 'interest' is deemed to arise by reason only that the Member's business is a sponsor of the event.

Rule No. 2

Gifts, Benefits and Hospitality

No Member shall accept any Gift, except for Gifts that are deemed to have zero value in the Council Code of Conduct (Table 1 – Gift Treatment and Disclosure as attached).

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Rule No. 3 Confidential information

Members shall not disclose to any member of the public any confidential information acquired by virtue of their position.

Confidential information includes any discussion that takes place between members of the Local Board or Committee when it is in a closed meeting.

Rule No. 4 Use of Township Resources

No member should use municipal equipment or staff, or other municipal services or resources for their own private purposes, or for election campaign purposes.

Rule No. 5 Election Campaigns

No member, while identifying themselves as a member of a Local Board, shall undertake any election campaign or election-related activities or work on, fund-raise, endorse or otherwise contribute to the election campaign of any person running in the municipal election for the municipality where the member serves on the Local Board.

Rule No. 6 Improper Use of Influence, Business Prospects

No member shall use the influence of his or her position for any purpose other than the duties as a member of the Local Board.

Rule No. 7 Business Relations

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

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Rule No. 8 Member Conduct

Members shall conduct themselves with decorum at all times.

Members shall maintain proper control over meetings demonstrating respect for everyone who is involved in the meeting.

Members are expected to attend all meetings of the Local Board or Committee. If a member misses more than three (3) meetings during their term without authorization to do so by resolution of Council, the Chair, after hearing and considering any explanation provided by the member, may ask the member to resign, or request that Council remove the member.

Rule No. 9 Media Communications

Members shall accurately communicate recommendations and proceedings of their Local Board.

If a member is contacted directly by the media, the member should refer the media to the Chair, or in the absence of the Chair, to the Vice-Chair.

Rule No. 10 Respect for the Township By-laws and Policies

Members shall adhere to and encourage public respect for the Local Board, the municipality and its by-laws, policies and procedures.

Rule No. 11 Respectful Workplace

Members are governed by the relevant workplace harassment policies in place for staff.

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Rule No. 12 Conduct Respecting Staff

Members shall be respectful of the role of staff to advise based on political neutrality. Members shall respect the professionalism of staff, and not exert undue influence on staff.

Rule No.13 Reprisals and Obstructing

It is a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his/her responsibilities.

It is a violation of this Code of Conduct to engage in any activity in retaliation against any person because he/she has made a complaint to or otherwise communicated with the Integrity Commissioner.

Rule No. 14 Acting on Advice of Integrity Commissioner

Advice given by the Integrity Commissioner is binding on the Integrity Commissioner in the event of a complaint.

Part 2 – Adjudicative Boards Only:

Rule No. 15 Additional Requirements for Members of Adjudicative Boards

In addition to the provisions applicable to Members of Non-adjudicative Local Boards, the following additional requirements are applicable with respect to the referenced rule:

Rule No. 2 - Gifts, Benefits and Hospitality

Members should recuse themselves from any hearing, to avoid any perception of bias or conflict of interest which may arise as a result of a gift, benefit or hospitality provided by any of the parties or participants potentially affected by the decision of the Local Board.

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Rule No. 5 - Election Campaigns

Members of Adjudicative Local Boards are prohibited from fundraising for, endorsing, or otherwise contributing to the election campaign of any person running for a seat on Council.

Rule No. 9 - Media Communications

Members of adjudicative boards should generally not comment to the media in relation to any decision made by the board or the rationale behind such decision. On the rare occasion when a comment may be appropriate, only the Chair shall serve as a media contact and all enquiries shall be referred to him/her.

Rule No. 16 Communications with Parties

Written communication to an adjudicative board shall take place only through the board secretary or the appropriate municipal staff assigned to such board, and shall be copied to all parties or their representatives as appropriate. Oral communications with the adjudicative board about current proceedings shall take place only in the presence of or with the consent of all parties.

Where a party is represented by a representative, all communication between the adjudicative board and the party shall be through the representative, with the exception of notices of hearing, which shall be served upon all parties and their representatives known to the adjudicative board as appropriate.

Rule No. 17 Independent Nature of Adjudicative Boards

The Chairs of adjudicative boards should ensure that the actions of any member, as well as Council members and staff attending adjudicative board meetings, are consistent with the arm's-length, quasi-judicial nature of the adjudicative board. Any actions compromising this position should be immediately dealt with by the Chair or panel chair.

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Members of adjudicative boards operating at arm's-length from Council should refrain from seeking advice on their roles and responsibilities from Council members. In clarifying their roles and responsibilities, members should seek advice from appropriate staff.

An adjudicative board is required by the applicable laws to operate at arm's-length from and independently of Council. Members should therefore not request members of Council to intervene on applications considered by the adjudicative board. Under the Council Code of Conduct, members of Council are only permitted to communicate to the adjudicative board regarding a matter before the board by a letter addressed to the Secretary of the board, which is available to all parties.

Part 3 – Complaint Protocol:

The complaint protocol contained in the Council Code of Conduct, as provided below, applies with necessary modifications to complaints regarding members of Local Boards.

Part A: Informal Complaint Procedure

Any person or representative of an organization who has identified or witnessed behaviour or an activity by a member of a Local Board that they believe is in contravention of the *Code of Conduct for Local Boards* (the "Code") may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that the behaviour or activity contravenes the Code;
- (2) encourage the member to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) 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
- (5) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

All persons and organizations are encouraged to initially pursue this informal

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complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the the Formal Complaint Procedure in Part B.

Part B: Formal Complaint Procedure:

Initial Complaint

1. (1) A request for an investigation of a complaint that a member has contravened the Code (the “complaint”) shall be sent directly to the Integrity Commissioner by e-mail substantially in the form attached to this Policy as Schedule “A”.
- (2) All complaints shall be submitted by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code.

The complaint should include the name of the member, the provision of the Code allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.

- (4) **Election Blackout Period:**
No investigation shall be commenced or continued, nor shall the Integrity Commissioner report to Council respecting an investigation, within the election period described within s.223.4 and 223.4.1 of the *Municipal Act*, except as described in those sections.

Classification by Integrity Commissioner

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2. (1) Upon receipt of the request, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation, a complaint with respect to the *Municipal Conflict of Interest Act* or other relevant Council policies.
- (2) If the complaint, on its face, is not a complaint with respect to non-compliance with the Code or another Council policy governing ethical behaviour or the *Municipal Conflict of Interest Act*, or if the complaint is covered by other legislation, the Integrity Commissioner shall advise the complainant in writing as follows:
 - (a) if the complaint on its face is 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 appropriate police force;
 - (b) if the complaint on its face is 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 for review to the Township Clerk; and
 - (c) 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. The Integrity Commissioner may proceed with that part of the complaint that is within jurisdiction.
- (3) The Integrity Commissioner may assist the complainant in restating, narrowing or clarifying the complaint so that the public interest will be best served were the complaint to be pursued.

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- (4) The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (5) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but, where possible, shall not disclose information that could identify a person concerned.

Investigation

3. (1) The Integrity Commissioner is responsible for performing the duties set out in this Protocol independently and shall report directly to Council in respect of all such matters. In applying this Protocol, the Integrity Commissioner shall retain the discretion to conduct investigations applying the principles of procedural fairness, and any deviation from the provisions of this Protocol for that purpose shall not invalidate the investigation or result in the Integrity Commissioner losing jurisdiction.
- (2) If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, or that the pursuit of the investigation would not, in the opinion of the Integrity Commissioner be in the public interest, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- (3) The Integrity Commissioner shall file an annual report to Township Council respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the Integrity Commissioner. Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in subsection (2) except as part of an annual or other periodic report.
- (4) Where the Integrity Commissioner rejects or terminates an investigation pursuant to this section, reasons shall be provided.

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3. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and may attempt to settle the complaint.
 - (2) The Integrity Commissioner may in exceptional circumstances elect to exercise the powers of a Commission under Parts I and II of the *Public Inquiries Act*, as contemplated by Subsection 223.4(2) of the Act.
 - (3) If the Integrity Commissioner elects to conduct an inquiry under the Public Inquiries Act, he/she shall report to Council before proceeding, setting out the reasons for the investigation, and providing an estimate of the expected cost and time that the investigation will require, and providing an opportunity for Council to respond to the reasonableness of the expenditure of public funds for the purpose of such Commission.
 - (4) When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.
4. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the Public Inquiries Act and/or in the context of a particular situation, the principles of procedural fairness:
 - (a) provide the complaint and supporting material to the member whose conduct is in question and provide the member with a reasonable opportunity to respond.
 - (2) Except where the Integrity Commissioner determines that it is not in the public interest to do so, the name of the complainant shall be provided as part of the complaint documents.
 - (3) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3)

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and (4) of the *Municipal Act*, and may enter any Township work location relevant to the complaint for the purposes of investigation and settlement.

- (4) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable notice of the basis for and an opportunity to comment on the proposed findings.
 - (5) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
5. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the making of the complaint.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.
 - (3) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other periodic report.
 - (4) 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. 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 judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
7. The Township Clerk shall process the report for the next meeting of Council.

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Confidentiality

8. (1) A complaint will be processed in compliance with the confidentiality requirements in sections 223.5 and 223.6 of the *Municipal Act*, which are summarized in the following subsections.
- (2) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding.
- (3) All reports from the Integrity Commissioner to Council will be made available to the public.
- (4) Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.
- (5) The Integrity Commissioner in a report to Council on whether a member has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

Consequences of failure to adhere to Code of Conduct for Local Boards:

Members who are found by the Integrity Commissioner to have failed to comply with the Code of Conduct for Local Boards may be subject to the following sanctions:

- a) a reprimand; or
- b) suspension of remuneration paid to the member in respect of his or her services as a member of the Local Board (if any).

Members may also be subject to other remedial actions recommended by the Integrity Commissioner that directly flow from the action or behaviour of the member of the Local

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Board. Members are subject to removal from the Local Board or removal as Chair of the Local Board by Council.

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Schedule "A"

The Corporation of the Township of Tiny Code of Conduct for Local Boards Complaint

Any individual who has identified or witnessed behavior or activity by a member that appears to be in contravention of the Code, may address their concerns through this formal complaint process.

I, _____, hereby request the Integrity Commissioner for the Township of Tiny to conduct an inquiry about whether or not the following Local Board member(s) has contravened the Code of Conduct for Local Boards or the *Municipal Conflict of Interest Act*:

I have reasonable and probable grounds to believe that the above member(s) has contravened the Code of Conduct for Local Boards and/or the *Municipal Conflict of Interest Act* by reason of the following (please include date, time and location of conduct, the Rules contravened, and particulars, including names of all persons involved, and of all witnesses, and information as to how they can be reached - attach additional pages as needed):

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I hereby request the Integrity Commissioner to conduct an inquiry with respect to the above conduct. Attached are copies of documents and records relevant to the requested inquiry.

Date: _____

Signature: _____

Name (please print): _____

Address: _____

Email: _____

Phone: _____

Integrity Commissioner for the Township of Tiny – Mr. Jeffrey A. Abrams and Ms. Janice Atwood-Petkovski, Principles *Integrity*, 30 Haddon Street, Toronto, ON, M5M 3M9.

Email completed Complaint Form to Principles *Integrity*

postoffice@principlesintegrity.org

Personal information contained on this form is collected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* and will be used for the purposes of responding to your complaint. Questions about this collection should be directed to the Township Clerk, Township of Tiny, 130 Balm Beach Road West, Tiny, ON, L0L 2J0, 705-526-4204.