THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 12/2019

Being a By-law to Adopt an Accountability Framework for the Municipality of Port Hope

WHEREAS Section 223.2 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality shall establish codes of conduct for members of council and local boards of a municipality;

AND WHEREAS Section 223.3 of the Municipal Act, 2001 provides for the appointment of an Integrity Commissioner or for the functions of an Integrity Commissioner to be provided as set out in Section 223.3(1) of the statute;

AND WHEREAS paragraph 2.1 of subsection 270(1) of the Municipal Act, 2001 provides that a municipality shall adopt and maintain a policy respecting the relationship between members of council and the officers and employees of the municipality;

AND WHEREAS the Council will benefit from having a framework that creates an accountability regime to provide for a code of conduct for members of its council and its local boards, the appointment of an Integrity Commissioner and the assignment of all of the functions set out in subsection 223.3(1) of the Municipal Act, 2001 to the Integrity Commissioner and the adoption of a staff and council relations policy;

AND WHEREAS sections 9, 10 and 11 of the *Municipal Act, 2001* authorize the Council to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 2 of subsection 11(2) authorizes by-laws respecting accountability and transparency in the Municipality and its operations;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY HEREBY ENACTS AS FOLLOWS:

1. The Municipal Accountability Framework consisting of the attached Code of Conduct for Members of Council and Local Boards, Complaint Protocol and Staff and Council Relations Policy, is adopted and is attached hereto as Schedule "A".

2. THAT this By-law shall come into force the day it is finally passed.

3. THAT By-laws 119/2011, 41/2010 and 124/2007 are hereby repealed.

READ a FIRST, SECOND and THIRD time and finally passed in Open Council this 5th day of March, 2019.

_____
R.J. Sanderson, Mayor

_____
Brian Gilmer, Clerk

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE
CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

1.0 Application and Purpose

1.1 This Code of Conduct applies to all Members of the Council of the Municipality of Port Hope, including the Mayor and, unless specifically provided, with necessary modifications, to all of the Municipality's Committees, agencies, boards and commissions, which comprise and are defined as Local Boards in subsection 1(1) and section 223.1 of the *Municipal Act, 2001*.

1.2 The purpose of this Code of Conduct is to establish a general standard to ensure that all Members share a common basis for acceptable conduct, and to which all Members are expected to adhere to and comply with. This Code of Conduct operates with and as a supplement to the existing Municipal, Provincial and Federal Statues, including but not limited to:

- *Municipal Act, 2001*
- *Municipal Conflict of Interest Act*
- *Municipal Elections Act, 1996*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Human Rights Code*
- *Occupational Health and Safety Act*
- *Provincial Offences Act*
- *Criminal Code*

2.0 Statement of Principles

2.1 This Code of Conduct is intended to set a high standard of conduct for Members in order to provide good governance and a high level of public confidence in the administration of the Municipality by its Members as duly elected or appointed public representatives to ensure that they each operate from a foundation of integrity, transparency, justice, truth, honesty and courtesy.

2.2 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code of Conduct:

- Members shall serve and be seen to serve the public in a conscientious and diligent manner;
- Members shall observe and act with the highest standard of ethical conduct and integrity;
- Members shall avoid the improper use of the influence of their office and act without self-interest;
- Members shall act and are expected to perform their functions with honesty, integrity, accountability and transparency;
- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;
- Members shall be cognizant that they are at all times representatives of the Municipality and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and maintain and promote the public trust in the Municipality; and
- Members shall uphold the spirit and the letter of the laws of Ontario and Canada and the laws and policies adopted by Council.

The above statements are key principles that are intended to facilitate an understanding, application and interpretation of the Code of Conduct – the principles are *not* operative provisions of the Code of Conduct and are not intended to be enforced independently as such.

3.0 Definitions

3.1 The following terms shall have the following meanings in this Code of Conduct:

(a) "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 child of his or her family;

(b) "Clerk" means the Clerk of the Municipality;

(c) "confidential information" means information or records that are in the possession, in the custody or under the control of the Municipality that the Municipality is either precluded from disclosing under the *Municipal Act, 2001* or other applicable legislation, its Procedural By-law or any of its other by-laws, policies, rules or procedures, or that it is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* or other legislation;

(d) "conflict of interest" means a situation in which a Member has competing interests or loyalties between the Member's personal or private interests and his or her public interests as an elected representative such that it might influence his or her decision in a particular matter;

(e) "Council" means the Council for the Municipality and includes, as the context may require and with all necessary modifications, any of the Municipality's Committees, agencies, boards or commissions, which are defined as Local Boards in subsection 1(1) and section 223.1 of the *Municipal Act, 2001*;

(f) "fiduciary" means the obligation of a person in a position of authority to act on behalf of another, assuming a duty to act in good faith and with care, candour and loyalty in fulfilling this obligation;

(g) "frivolous" means of little or no weight, worth, importance or any need of serious notice;

(h) "local board" means any Committee, agency, board or commission of the Municipality, which is a local board as defined in subsection 1(1) and section 223.1 of the *Municipal Act, 2001* and includes a joint board;

(i) "Mayor" means the head of Council for the Municipality;

(j) "meeting" means a regular, special or other meeting of Council or a Committee of Council where:

(i) a quorum of Members is present, and

(ii) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of Council;

(k) "Member" means a Member of the Council for the Municipality or a member of a local board, including a member of a joint board if appointed by the Council;

(l) "Municipality" means The Corporation of the Municipality of Port Hope;

(m) "non-pecuniary interest" means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member's decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity;

(n) "parent" means a person 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;

(o) “Pecuniary interest” means an interest that relates to money or financial value and includes a direct, indirect or deemed pecuniary interest under the Municipal Conflict of Interest Act;

(p) “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;

(q) “Staff” means the Clerk and all officers, directors, managers, supervisors and all non-union and union employees, whether full-time, part-time, contract, seasonal or volunteer employees, as well as agents and consultants acting in furtherance of the Municipality’s business and interests.

(r) “Senior Management” means Director of Corporate Services, Director of Finance, Director of Works & Engineering, Director of Parks, Recreation and Culture, Director of Community Development, and Director of Fire and Emergency Services and Municipal Project Staff Team Lead.

(s) “vexatious” means troublesome or annoying in the case of being instituted without sufficient grounds and serving only to cause irritation and aggravation to the person who is the subject of the complaint.

4.0 General Obligations

4.1 In all respects, a Member shall:

(a) make every effort to act with good faith and care;

(b) conduct themselves with integrity, courtesy and respectability at all meetings of the Council or any Committee and in accordance with the Municipality’s Procedural By-law or other applicable procedural rules and policies;

(c) seek to advance the public interest with honesty;

(d) seek to serve their constituents in a conscientious and diligent manner;

(e) respect the individual rights, values, beliefs and personality traits of any other person, recognizing that all persons are entitled to be treated equally with dignity and respect for their personal status regarding gender, sexual orientation, race, creed, religion, ability and spirituality;

(f) refrain from making statements known to be false or with the intent to mislead Council, staff or the public;

(g) recognize that they are representatives of the Municipality and that they owe a duty of loyalty to the residents of the Municipality at all times;

(h) accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings; and

(i) refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member.

5.0 The Role of Staff

5.1 Council as a whole approves the budget, policies and governance of the Municipality through its by-laws and resolutions. An individual Member does not direct nor oversee the functions of the staff of the Municipality.

5.2 The Municipality's staff serve Council and work for the Municipality as a body corporate under the direction of Senior Management. Inquiries of Staff from Members should be directed to the appropriate Senior Staff.

5.3 A Member shall comply with the Municipality's Council and Staff Relations Policy.

5.4 A Member shall not publicly criticize staff. If a Member has any issue with respect to any staff member, such issue shall be referred the particular staff member's appropriate Supervisor.

5.5 A Member shall respect the role of staff in the administration of the business and governmental affairs of the Municipality, and acknowledge and appreciate that staff:

(a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that a Member must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise;

(b) work within the administration of justice and that a Member must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of justice and, therefore, a Member shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties, including any duty to disclose improper activity; and

(c) carry out their duties based on political neutrality and without undue influence from any individual Member and, therefore, a Member must not invite or pressure any member of staff to engage in partisan political activities or be subjected to discrimination or reprisal for refusing to engage in such activities.

6.0 Municipal Property

6.1 Council is the custodian of the assets of the Municipality. The community places its trust in Council and those it appoints to make decisions for the public good in relation to these assets.

6.2 By virtue of their office or appointment, a Member must not use or permit the use of the Municipality's land, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the Municipality. No Member shall seek financial gain for themselves, family or friends from the use or sale of the Municipality's intellectual property, computer programs, technological innovations, or other patent, trademarks or copyright held by the Municipality.

7.0 Gifts and Benefits

7.1 Any gift to a Member risks the appearance of improper influence. Gifts may improperly induce influence or create an incentive for a Member to make decisions on the basis of relationships rather than in the best interests of the Municipality. A Member shall not accept a fee, advance, gift, gift certificate, cash, hospitality or any form of personal benefit connected directly or indirectly with the performance of his or her duties except as provided in Section 7.2. A gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member. Any doubt concerning the propriety of the gift should be resolved by the Member not accepting or keeping it.

7.2 For greater clarity, notwithstanding Section 7.1, a Member is entitled to accept any compensation, remuneration or benefits authorized by law but shall not accept any gift or benefit other than in the following circumstances:

(a) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;

(b) a political contribution otherwise reported by law, in the case of a Member running for office;

(c) services provided without compensation by persons volunteering their time for a charitable or non-profit event;

(d) nominal tokens, mementos or souvenirs received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office or at a function honouring the Member;

(e) food, lodging, transportation and entertainment provided by provincial, regional and local governments or any agencies or subdivisions of them or by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity as a representative of the Municipality;

(f) entrance fees or food and beverages consumed at banquets, receptions or similar events, if:

(i) attendance serves a legitimate municipal business purpose related to the normal business of the Municipality,

(ii) the person extending the invitation or a representative of the organization is in attendance, and

(iii) the value is reasonable and the invitations are infrequent;

(g) gifts not having a value greater than $300;

(h) benefits received as a door prize, raffle or similar draw at an event, conference or seminar attended by the Member; and

(i) any gift or benefit, if the Integrity Commissioner is of the opinion, before the gift or personal benefit has been accepted, that it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.

7.3 A Member who has received and accepted a gift or benefit pursuant to Section 7.2 (a), (f), (g), (h) and (i) shall file a disclosure of the gift or benefit indicating the person, body or entity from which it was received together with the estimated value of the gift or benefit in accordance with the Disclosure Statement set out in Appendix "A". The list shall be provided to the Clerk on an annual basis commencing on March 31 of every year and shall be a matter of public record.

7.4 A Member shall not seek or obtain by reason of his or her office any personal privilege or advantage with respect to municipal services not otherwise available to the general public and not connected directly or indirectly to the performance of the Member's duties.

8.0 Confidential Information

8.1 Members receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the Municipality that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and other applicable privacy laws and information received during closed meetings of Council. Examples of types of information that a Member must keep confidential, unless expressly authorized by Council or as required by law, include, but are not limited to:

(a) matters related to ongoing litigation or negotiation, or that is the subject of solicitor-client privilege;

(b) information provided in confidence, for example, the identity of a complainant where a complaint is made in confidence;

(c) price schedules in contract tender or Request for Proposal submissions if so specified;

(d) personnel matters about an identifiable individual;

(e) "personal information" as defined in the *Municipal Freedom of Information and Protection of Privacy Act*; and

(f) any census or assessment data that is deemed confidential.

8.2 A Member shall not disclose the content of any confidential information, or the substance of deliberations, of a closed meeting. A Member has a duty to hold any information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. All confidential documents received at a closed meeting are to be turned into the Clerk or designate at the end of the closed meeting. A Member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.

8.3 A Member shall not disclose, use or release confidential information in contravention of applicable privacy laws. Members are only entitled to information in the possession of the Municipality that is relevant to matters before the Council, or a Committee. Otherwise, Members enjoy the same access rights to information as any other member of the community or resident of the Municipality and must follow the same processes as any private citizen to obtain such information.

8.4 A Member shall not misuse confidential information in any way or manner such that it may cause detriment to the Municipality, Council or any other person, or for financial or other gain for themselves or others.

8.5 A Member shall respect the right to confidentiality and privacy of all clients, volunteers and staff, and should be aware of their responsibilities under applicable legislation, Municipality policies, procedures and rules, ethical standards and, where appropriate, professional standards.

8.6 A Member shall not disclose any confidential information received by virtue of his or her office, even if the Member ceases to be a Member.

9.0 Discrimination and Harassment

9.1 A Member shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that their work environment is free from discrimination and harassment.

9.2 A Member shall not use indecent, abusive or insulting words, phrases or expressions toward any member of the public, another Member or staff. A Member shall not make comments or conduct themselves in any manner that is discriminatory to any individual based on the individual's race, colour, ancestry, citizenship, ethnic origin, place of origin, creed or religion, gender, sexual orientation, marital status, family status, disability, age or record of offences for which a pardon has not been granted.

9.3 A Member shall comply with the Municipality's Workplace Violence Harassment and Discrimination Policy

10.0 Improper Use of Influence

10.1 A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

10.2 A Member shall not use the status of their position to influence the decision of another person to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.

11.0 Conflicts of Interest

11.1 A Member shall seek to avoid conflicts of interest, both pecuniary and non-pecuniary. A Member shall comply with the requirements of the *Municipal Conflict of Interest Act* with respect to obligations relating to pecuniary interests. A Member shall take proactive steps to mitigate any non-pecuniary conflicts of interest in order to maintain public confidence in the Municipality and its elected officials.

11.2 Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.

12.0 Council Policies and Procedures

12.1 A Member shall observe and adhere to the policies, procedures and rules established from time to time by Council.

13.0 Election Activity

13.1 A Member is required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and any of the Municipality's policies pertaining to elections. The use of the Municipality's resources, both property and staff time, for any election-related activity is strictly prohibited. Election-related activity applies to the Member's campaign and any other election campaigns for municipal, provincial or federal office.

14.0 Respect for the Code of Conduct

14.1 A Member shall respect the process for complaints made under the Code of Conduct or through any process for complaints adopted by the Municipality. A Member shall not act in reprisal or threaten reprisal against a person who makes a complaint or provides information to the Integrity Commissioner during an investigation. A Member shall interact courteously and respectfully with the Integrity Commissioner and with any person acting under the direction of the Integrity Commissioner.

14.2 A Member shall cooperate with requests for information during any investigations or inquiries under the Code of Conduct. A Member shall not destroy or damage documents or erase electronic communications or refuse to respond to the Integrity Commissioner where a complaint has been filed under the Code of Conduct or any process for complaints adopted by the Municipality.

15.0 Penalties for Non-Compliance with the Code of Conduct

15.1 Where Council receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member, Council may impose the following penalties on the Member:

(a) a reprimand; or

(b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period up to ninety (90) days, or as amended through applicable legislation.

16.0 Remedial or Corrective Measures or Actions

16.1 Council may, on the basis of a recommendation from the Integrity Commissioner, also take any or all of the following corrective or remedial actions, and require that the Member:

(a) provide a written or verbal apology;

(b) return property or make reimbursement of its value or of money spent;

(c) be removed from or not be appointed to the membership on a Committee of Council;

(d) be removed from or not be appointed as chair of a Committee of Council; and

(e) comply with any other remedial or corrective action or measure deemed appropriate by the Integrity Commissioner.

17.0 Legal Fees

17.1 A Member of Council is responsible for his or her own legal costs if he or she retains a lawyer or paralegal to provide counsel, advice or representation on any matter related to the Code of Conduct, including, but not limited to, an investigation and the imposition of penalties or remedial or corrective measures or actions by the Integrity Commissioner.

18.0 Complaint Protocol

18.1 The Complaint Protocol – Code of Conduct is Appendix “B” to the Code of Conduct.

Appendix ‘A’ to the Code of Conduct

DISCLOSURE STATEMENT FOR GIFTS OR BENEFITS

Member’s Name:_____

Gift Received or Nature of Benefit:_____

_____

Received From:_____

Date of Receipt:_____ Value or Estimate of Gift:_____

Please describe the circumstances under which the Gift or Benefit was received:

_____

_____

Please describe your intentions with respect to the Gift or Benefit:

_____

_____

_____

Do you anticipate transferring the Gift or Benefit described above to the municipality or the local board?

Yes _____ Date transferred _____ To Whom_____
No _____

_____ _____
Member’s Signature Date

Appendix 'B'

COMPLAINT PROTOCOL APPENDIX "B" TO CODE OF CONDUCT

PART A - INFORMAL COMPLAINT PROCEDURE

1. Any individual who identifies or witnesses behaviour or activity by a Member that they believe contravenes the Code of Conduct may seek to address the prohibited behaviour or activity themselves in the following manner by following the Informal Complaint Procedure:

   (a) document the incident(s) where the Member may have contravened the Code of Conduct including dates, times, locations, other persons present, and any other relevant information;

   (b) advise a third party about the concerns regarding the Member's actions;

   (c) advise the Member that the behaviour or activity appears to contravene the Code of Conduct;

   (d) identify to the Member the specific provision(s) of the Code of Conduct that may have been contravened;

   (e) encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to undertake to refrain from future occurrences of the prohibited behaviour or activity;

   (f) request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to settle or resolve the issue;

   (g) if applicable:

      (i) confirm to the Member that his or her response is satisfactory, or

      (ii) advise the Member that his or her response is unsatisfactory;

   (h) consider the need to pursue the matter in accordance with the Formal Complaint Procedure set out in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

2. Individuals are strongly encouraged to pursue the Informal Complaint Procedure as the first means of remedying behaviour or activity of a Member that they believe violates the Code of Conduct.

3. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator on issues relating to a complaint.

4. The Informal Complaint Procedure is not a precondition or a prerequisite to pursuing the Formal Complaint Procedure related to the Code of Conduct set out in Part B.

PART B - FORMAL COMPLAINT PROCEDURE

Formal Complaints

1.(1) Any individual who identifies or witnesses behaviour or activity by a Member that they reasonably believe contravenes the Code of Conduct may file a formal complaint to request an inquiry by the Integrity Commissioner as to whether a Member has contravened the Code of Conduct in accordance with the following requirements:

(a) all complaints shall be in writing on the prescribed form (Formal Complaint Form # 1) and shall be dated and signed by an identifiable individual (the "complainant");

(b) the complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct and must be accompanied by a supporting sworn affidavit setting out the evidence in full in support of the allegation; and

(c) Council may also file a complaint against any of its Members of an alleged contravention of the Code of Conduct by passing a resolution requesting the Integrity Commissioner to undertake an inquiry.

(2) An elector, as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest (collectively, a "complainant") may file a formal request that the Integrity Commissioner carry out an inquiry concerning an alleged contravention of section 5, 5.1 or 5.2 of that statute by a Member in accordance with the following requirements:

(a) all requests (also referred to as "complaints") shall be in writing on the prescribed form (Complaint Form # 2), dated and signed by an identifiable individual (the "complainant");

(b) the request shall include a statutory declaration attesting to the fact that:

(i) the complainant became aware of the contravention not more than six (6) weeks before the date of the complaint, or

(ii) in the case where the complainant became aware of the alleged contravention during the period of time described in paragraph 1 of subsection 223.4.1(5) of the *Municipal Act, 2001*, that the complainant became aware of the alleged contravention during that period of time;

(c) Council may also pass a resolution requesting the Integrity Commissioner to undertake an inquiry respecting an alleged contravention of sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by a Member and provide a statutory declaration as required by Section 1(2).

(3) Complainants who file a formal complaint under Sections 1(1) or 1(2) must provide a full and complete record of evidence to the Integrity Commissioner who is under no obligation whatsoever to, but may, seek additional information to supplement or complete the evidentiary record to substantiate or support the allegations set out in the complaint or request.

Filing of Complaint and Classification by Integrity Commissioner

2.(1) The complaint may be filed with:

(a) the Clerk by hard copy or by e-mail, or

(b) directly with Integrity Commissioner by a sealed hard copy or email,

to the address and/or email address(es) set out on the Municipality's website.

(2) The Integrity Commissioner shall initially classify the complaint 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 Council procedures, policies or rules as set out in Section 3 or whether it is a request under sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

Complaints Outside Integrity Commissioner's Jurisdiction or Not for Investigation

3.(1) If the complaint, including the supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint relates to matters addressed by other legislation under another of the Municipality's procedure, policy or rule, or the request in relation to sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Integrity Commissioner shall advise the complainant in writing as follows:

Criminal Matter

(a) if the complaint is, on its face, an allegation of a criminal nature consistent with the *Criminal Code*, the complainant shall be advised that:

(i) the Integrity Commissioner will refer it to the appropriate police service, or

(ii) the complainant may pursue it with the appropriate police service if the complainant wishes to pursue any such allegation;

Municipal Freedom of Information and Protection of Privacy Act

(b) if the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the Clerk to deal with under its access and privacy policies under that statute;

Other Procedure, Policy or Rule Applies

(c) if the complaint appears to fall within the scope of another procedure, policy or rule of the Municipality, the complainant shall be advised to pursue the matter under such procedure, policy or rule with the appropriate municipal official or staff member; and

Lack of Jurisdiction

(d) if the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner (for example, it relates to a decision of Council or a Local board as a whole and not one or more individual Members), the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

(2) If the complaint with respect to non-compliance with the Code of Conduct or the request in relation to sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, relates to any of the following matters, the Integrity Commissioner shall advise the complainant in writing as follows:

Matter Already Pending

(a) if the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, a human rights or workplace violence or harassment complaint or similar process, or to a civil matter that is pending before the courts, the Integrity Commissioner may, in his/her sole discretion, suspend any investigation, in whole or in part, pending the result of the other process;

Similar Matter Already Pending

(b) if the complaint is in relation to a similar matter which is subject to an outstanding complaint before the Integrity Commissioner, the Integrity Commissioner may, in his/her sole discretion, consider the matter in conjunction with the similar matter or deal with it separately, including not undertaking an inquiry if the matter can be adequately addressed in any report and/or recommendations made with respect to the complaint in the similar matter; and

Other Ethical Code or Policy Applies

(c) if the complaint is in relation to a matter which is governed by a Code of Conduct, ethical code or similar procedure or policy of another body or entity which also governs the Members (for example, another board, body or Committee to which the Member has been appointed), the Integrity Commissioner shall consider the most appropriate forum for the complaint and may, in his/her sole discretion, defer consideration of the matter pending any determination made by the other body or entity and shall so advise the complainant and, if necessary, the Member.

(3) Nothing in Section 3 precludes the Integrity Commissioner from reporting to Council any matter summarily dismissed or not otherwise investigated.

Limitation Period

4.(1) The Integrity Commissioner shall not accept a complaint under the Code of Conduct for which the event giving rise to the complaint occurred or came to the attention of the complainant more than six (6) months prior to the date of the filing of the complaint. The complainant must establish that the event giving rise to the complaint occurred and/or came to the complainant's attention within six (6) months of the complaint being filed in accordance with Section 2.

(2) The Integrity Commissioner shall not accept a request relating to section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* except in accordance with the requirements of subsections 8(2)-(6) of that statute and section 223.4.1 of the *Municipal Act, 2001*.

Refusal to Conduct Investigation

5. The Integrity Commissioner has discretion as to whether to carry out an investigation. If the Integrity Commissioner is satisfied, after considering the information contained in the complaint, that a complaint:

(a) is frivolous or vexatious,

(b) is not made in good faith,

(c) constitutes an abuse of process,

(d) discloses no grounds or insufficient grounds for an investigation, or

(e) does not warrant a full investigation,

the Integrity Commissioner shall not be required to conduct an investigation and may summarily dismiss the complaint, and, where this becomes apparent during the course of an investigation, the Integrity Commissioner shall terminate the inquiry and provide notice to the complainant and, if necessary, to the Member. The Integrity Commissioner may report the refusal to conduct an investigation to Council.

Opportunities for Resolution

6. Following receipt and review of a formal complaint or at any time during the investigation where the Integrity Commissioner, in his or her discretion, believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution.

Investigation

7.(1) The Integrity Commissioner may proceed as follows, except where the Integrity Commissioner has a full factual record and believes, in his or her sole discretion, that no additional information is required, or where otherwise required by the *Public Inquiries Act, 2009*, or where the Integrity Commissioner has not otherwise terminated the inquiry:

(a) provide the Member with an outline of the complaint with sufficient particularity to allow the Member to understand the complaint against him or her but the Integrity Commissioner shall not have any obligation to disclose:

(i) the identity of the complainant, or

(ii) the identity of any witnesses set out in the complaint or persons that are questioned/interviewed by the Integrity Commissioner,

unless it is essential for the Member to adequately respond to the complaint, which determination shall be made in the Integrity Commissioner's sole and absolute discretion;

(b) request that the Member provide a written response to the allegations in the complaint to the Integrity Commissioner within ten (10) days;

(c) provide a copy of the Member's response to the complainant with a request that any written reply be provided by the complainant to the Integrity Commissioner within ten (10) days; and

(d) extend the timelines set out above if the Integrity Commissioner deems it necessary to do so in his or her sole and absolute discretion.

(2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may contact and speak to or correspond with any other persons, access and examine any other documents or electronic materials, including any materials on the Municipality's computers and servers, and may enter any municipal work location relevant to the complaint for the purpose of investigation and potential resolution.

(3) The Integrity Commissioner may, but is under no obligation, to provide the Member with a draft of the proposed draft report on the complaint.

(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 an opportunity to comment to the Integrity Commissioner in writing on any preliminary or proposed finding(s).

(5) The Integrity Commissioner may, but is under no obligation, to advise either the Member or the complainant of any proposed sanction or recommendation the Integrity Commissioner may include in the report to Council.

(6) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, intimidation, delay, reprisal or retaliation by the Member or by any other person encountered during the formal complaint investigation.

(7) The Integrity Commissioner is entitled to make such additional inquiries and provide such additional reports to Council where necessary and as required to address any instances of non-compliance with any decision of Council including the failure to comply with any penalties or corrective measure or actions imposed by Council.

(8) The Integrity Commissioner shall retain all records related to the complaint and investigation but may provide copies of certain records, in confidence, to Municipality administrative staff who are required to ensure that any such records are securely and confidentially retained.

No Complaint Prior to Municipal Election

8.(1) Notwithstanding any other provision of this Complaint Protocol, no complaint may be filed with the Integrity Commissioner, and no report shall be made by the Integrity Commissioner to Council during the period of time starting on nomination day for a regular municipal election year, as set out in section 31 of the *Municipal Elections Act, 1996* and ending on the voting day in a regular election as set out in section 5 of the *Municipal Elections Act, 1996*.

(2) If the Integrity Commissioner has received a complaint and has commenced an inquiry but has not completed the inquiry before nomination day in a regular municipal election year, the Integrity Commissioner shall terminate the inquiry on nomination day but may commence an inquiry in respect of the same complaint if within six (6) weeks after the voting day in a regular municipal election the individual who made the request makes a written request to the Integrity Commissioner in accordance with subsection 223.4(8) of the *Municipal Act, 2001*.

Advice Provided to Member by Integrity Commissioner

9.(1) Subject to Section 9(2), a Member is entitled to rely upon any written advice given by the Integrity Commissioner to the Member respecting the Code of Conduct in any subsequent consideration of the conduct of the Member in the same matter provided that the Member fully disclosed in writing all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.

(2) If the Integrity Commissioner applies to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, the Member is entitled to advise the judge of any written advice given by the Integrity Commissioner provided that the Member fully disclosed in writing all relevant facts known to him or her to the Integrity Commissioner and acted in accordance with the written advice provided by the Integrity Commissioner.

(3) A Member under investigation by the Integrity Commissioner shall not request advice from the Integrity Commissioner as to the Member's rights under the Code of Conduct, the *Municipal Conflict of Interest Act* or generally at law with respect to any matter that the Integrity Commissioner is investigating or reviewing with respect to the Member, nor is the Member entitled to rely upon any statement(s) made by the Integrity Commissioner during the course of any investigation or review that may impact the Member's rights under the Code of Conduct, the *Municipal Conflict of Interest Act* or generally at law.

Authority to Abridge or Extend

10.(1) Notwithstanding any requirement, obligation or timeline, set out in the Code of Conduct or this Complaint Protocol, the Integrity Commissioner shall retain the right to abridge or extend any provision therein in the public interest.

Investigation Report

11.(1) The Integrity Commissioner shall report to the complainant and the Member no later than ninety (90) days after the official receipt of any complaint under the Code of Conduct. If the investigation process is anticipated to or takes more than ninety (90) days, the Integrity Commissioner shall provide an interim report to Council and must advise the parties of the approximate date the report will be available. The Integrity Commissioner may also, at his or her discretion, advise any witnesses or other persons of the approximate date the report will be available.

(2) Where the complaint is substantiated in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended remedial or corrective measure or action.

(3) The Integrity Commissioner may provide a copy of the report to the complainant and the Member whose conduct has been investigated in advance of the public release of the report, in strict confidence until the report is publicly released. The Member shall have the right to address the report if it considered by Council.

(4) Where the complaint is not substantiated, the Integrity Commissioner is not obligated to report to Council on the result of the investigation or any findings but may do so at his/her discretion and may also include such information as he/she deems necessary in a report or as part of an annual or other periodic report by the Integrity Commissioner.

(5) The Integrity Commissioner shall complete the investigation under the *Municipal Conflict of Interest Act* no later than one hundred and eighty (180) days after the official receipt of any complaint validly made under Section 1(2) of this Part.

Findings

12.(1) If the Integrity Commissioner determines that:

(a) there has been no contravention of the Code of Conduct, or section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, or

(b) a contravention occurred but:

(i) the Member took all reasonable measures to prevent it, including having sought and followed the advice of the Integrity Commissioner;

(ii) it was trivial,

(iii) it was committed through inadvertence, or

(iv) it resulted from an error in judgment made in good faith,

the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*, including but not limited to, a recommendation of no penalty.

(2) If the Integrity Commissioner:

(a) considers it appropriate, once he or she has concluded the investigation under Section 1(2) of this Part, he or she may apply to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the Member has contravened section 5, 5.1 or 5.2 of that statute; or

(b) does not proceed with an application to the judge, he or she shall so advise the complainant and the Member in writing.

(3) The Integrity Commissioner shall provide a written report to Council providing the reasons for his or her decision under Section 12(2).

Report to Council

13. (1) Upon receipt of a report from the Integrity Commissioner with respect to the Code of Conduct, the Clerk shall place the report on the next regular agenda of Council for consideration by Council and Council must consider the report at that meeting and may accept or refuse the recommendations set out in the report and accept, refuse or vary any penalties or sanctions contained in the report.

(2) A report from the Integrity Commissioner may also be considered by Council in advance of its next regular meeting should Council agree to hold a special or other meeting before its next regular meeting to consider the report.

Duty of Council

14. Council shall consider and make a determination on the Integrity Commissioner's report under Section 13 at the same meeting at which the report is tabled.

Public Disclosure

15. (1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where it does not interfere with the course of any investigation, except as required by law and as required by this Complaint Protocol.

(2) The Integrity Commissioner shall retain all records related to the complaint and investigation although copies may be provided to the Municipality's administrative staff, subject to the duty of confidentiality under subsection 223.5 of the *Municipal Act, 2001*.

(3) The identity of the Member who is the subject of the complaint shall not be treated as confidential information in the Integrity Commissioner's report to Council. The identity of the complainant and of any other person, including any witnesses, may be disclosed if deemed appropriate and necessary by the Integrity Commissioner or if consented to by the complainant or any other person.

(4) All reports from the Integrity Commissioner to Council shall be made available to the public by the Clerk.

Delegation by Integrity Commissioner

16. The Integrity Commissioner may delegate in writing to any person, other than a Member of Council, any of the Integrity Commissioner's powers and duties under Part V.1 of the *Municipal Act, 2001*.**Complaint Protocol Applicable to Local Boards and Members**

17. The provisions of this Complaint Protocol shall apply, *mutatis mutandis*, to all Local Boards of the Municipality and their members.

Code of Conduct — Formal Complaint Form # 1

AFFIDAVIT

I, _____ (first and last name), of the

Municipality of _____ in the Province of Ontario.

MAKE OATH AND SAY (or AFFIRM):

1. I have reasonable and probable grounds to believe that:

_____ (specify name of Member),

a member of the Council of The Corporation of the Municipality of Port Hope or a Local board of the Municipality, has contravened section(s) _____of the Code of Conduct of the Municipality of Port Hope. The particulars of which are attached hereto.

2. Facts constituting the alleged contravention (use separate page if required)

_____

_____

_____

_____

_____

This affidavit is made for the purpose of requesting that this matter be reviewed and/or investigated by the Municipality of Port Hope's Integrity Commissioner and for no other improper purpose.

SWORN (or AFFIRMED) before me at the)
the _____ of _____ on)
_____ (date))
)

_____

(Signature)

A Commissioner for taking affidavits etc.

Please note that signing a false declaration may expose you to prosecution under ss. 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46 and also to civil liability for defamation.

STATUTORY DECLARATION

I, _____ (first and last name), of the

Municipality of _____ in the Province of Ontario.

I SOLEMNLY DECLARE THAT:

1. I have reasonable and probable grounds to believe that:

_____ (specify name of Member),
a member of the Council of The Corporation of the Municipality of Port Hope or a Local board of the Municipality, has contravened section(s) _____ of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50. The particulars of which are are attached hereto.

2. I became aware of the facts constituting the alleged contravention not more than six (6) weeks ago and they comprise the following: (use separate page if required)

_____

_____

_____

_____

_____

This declaration is made for the purpose of requesting that this matter be investigated by the Municipality of Port Hope's Integrity Commissioner and for no other improper purpose.

DECLARED before me at the)
the _____ of _____ on)
_____ (date))
)

_____

(Signature)

A Commissioner for taking affidavits etc.

Please note that signing a false declaration may expose you to prosecution under ss. 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46 and also to civil liability for defamation.

Appendix 'C'

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE COUNCIL AND STAFF RELATIONS POLICY

1.0 Application and Purpose

1.1 This Council and Staff Relations Policy applies to all Members of the Council of the Municipality of Port Hope, including the Mayor, and all members of Staff of the Municipality of Port Hope.

1.2 The purpose of this Policy is to set out a general standard to ensure that Council and Staff share a common understanding of their respective roles and responsibilities as well as a common basis of their Relationship, and to set out acceptable standards to govern their Relationship and to which all Members and Staff are expected to adhere to and comply with.

1.3 The purpose of this Policy is to establish a policy to govern the Relations between Members of Council and Staff of the Municipality in accordance with paragraph 2.1 of subsection 270(1) of the *Municipal Act, 2001*.

2.0 Statement of Principles

2.1 This Policy is intended to set a high standard for Relations between Council and Staff in order to provide good governance and instill a high level of public confidence in the administration of the Municipality by its Members as duly elected public representatives and its Staff as public administrators.

2.2 The following key statements of principle are intended to guide Council and Staff and to assist with the interpretation of the Policy:

- Council and Staff shall recognize that positive internal Relations are central to the collective ability of Members and Staff to provide good governance and instill a high level of public confidence in the administration of the Municipality;

- Members and Staff shall relate to one another in a respectful, professional and courteous manner;

- Members and Staff shall understand and respect each other's respective roles and responsibilities; and

- Members and Staff shall work together in furtherance of the common goal of serving the public good.

The above statements are key principles that are intended to facilitate an understanding, application and interpretation of the Policy – these principles are not operative provisions of the Policy.

3.0 Definitions

3.1 The following terms shall have the following meanings in this Policy:

(a) "Clerk" means the Clerk of the Municipality;

(b) "Council" means the Council for the Municipality;

(c) "Mayor" means the head of Council;

(d) "Member" means a Member of Council;

(e) "Municipality" means The Corporation of the Municipality of Port Hope;

(f) "Policy" means this Council and Staff Relations Policy; and

(g) "Staff" means the Clerk and all officers, directors, managers, supervisors and all non-union and union employees, whether full-time, part-time, contract, seasonal or volunteer employees, as well as agents and consultants acting in furtherance of the Municipality's business and interests.

(h) "Senior Management" means Director of Corporate Services, Director of Finance, Director of Works & Engineering, Director of Parks, Recreation and Culture, Director of Community Development, and Director of Fire and Emergency Services, and Municipal Project Staff Team Lead.

4.0 General Obligations

4.1 In all respects, Members and Staff shall:

(a) relate to one another in a courteous, respectful and professional manner;

(b) maintain formal working relationships in order to promote equality and discourage favouritism, which includes but is not limited to using proper titles and avoiding first names during public meetings or formal business dealings;

(c) understand their respective roles and responsibilities, and appreciate and respect the roles and responsibilities of the other;

(d) work together to produce the best results and outcomes for the Municipality and always for the collective public interest of the Municipality; and

(e) act in a manner that enhances public confidence in local government..

5.0 Roles and Responsibilities of Staff

5.1 Staff acknowledge and agree that:

(a) Council is the collective decision-making and governing body of the Municipality and is ultimately responsible to the electorate for the good governance of the Municipality;

(b) they shall implement Council's decisions and establish administrative practices and procedures to carry out Council's decisions and any duties specifically assigned to them by Council;

(c) they shall assist Council in their decision-making process with respect to its decision, policies and programs by providing Council with information based on professional expertise, research and good judgment in a professional and timely manner;

(d) they shall serve the whole of Council rather than any individual Member;

(e) all Members are equal and shall be treated as such and always with courtesy, respect and professionalism;

(f) Senior Management shall respond to inquiries from Council and provide appropriate and timely follow-up to such inquiries as necessary;

(g) they shall refrain from becoming involved in the policy and decision-making process of Council, outside of ensuring that Council is provided with the information necessary in order to make their decisions and that Council is aware of any issues that may impact such decisions;

(h) they shall diligently and impartially implement Council's decisions;

(i) they shall notify Senior Management or Director, as appropriate, of any issues that may impact the Municipality and of ongoing activities in each department;

(j) they shall not speak publicly on any matter respecting any Council decisions or policies without authorization to do so, and without limiting the generality of the foregoing, shall not publicly criticize any decision or policy of Council;

(k) they shall refrain from publicly criticizing decisions of Council or Members in relation to their intelligence, integrity, competence or otherwise; and

(l) they shall at all times comply with any policies relating to Staff that the Council may implement from time to time.

6.0 Roles and Responsibilities of Members

6.1 Members acknowledge and agree that:

(a) Council as a whole is the governing body of the Municipality and that it comprises a collective decision-making body;

(b) they are representatives of the entire Municipality;

(c) Staff serve the whole of Council rather than any individual Member;

(d) they govern, provide political direction and make decisions as Council;

(e) they will respect the administrative and managerial chain of command by:

(i) directing any questions or concerns in relation to the administration or management of the Municipality to the Mayor or Senior Management for their consideration,

(ii) giving direction to Staff only as Council and through the Clerk as recorded in the Minutes of the meeting; and

(iii) refraining from becoming involved in the management of Staff;

(f) they shall use Staff time effectively, which includes but is not limited to only referring essential matters to Staff for reports;

(g) they understand that Staff will undertake significant projects only if they have been directed to do so by Council through a motion recorded in the Minutes of the meeting clearly directing Staff and defining the scope of the project;

(h) they shall notify Staff, whenever possible, if an action or position of Staff is to be questioned or criticized at a public meeting to ensure Staff has sufficient time to formulate an intelligent, informed and helpful response for the consideration of Council and that any such questioning or criticism shall be undertaken with courtesy, respect and professionalism, and in no event shall there be any attempt to humiliate, berate, disparage or denigrate Staff and that they shall refrain from publicly criticizing members of Staff in relation to their intelligence, integrity, competence or otherwise;

(i) they shall request advice from the Clerk about the appropriate wording of motions, amendments, and formal directions of Staff;

(j) they shall request information regarding meeting agendas or minutes from the Clerk;

(k) as individual Members, they have no greater access to records or information held by the Municipality than any member of the public and that they cannot access records or information otherwise protected from disclosure by the *Municipal Freedom of Information and Protection of Privacy Act* or in accordance with the process set out in that statute;

(l) they shall recognize Staff are not expected to provide information or take action outside of regular administrative business hours, except in extenuating circumstances;

(m) certain members of Staff are statutory officers and have specific statutory authorities, duties, powers and responsibilities that cannot be interfered with or derogated from;

(n) they shall at all times comply with the Municipality's Code of Conduct for Members of Council; and

(o) they shall at all times comply with any policies relating to Council that the Council may implement from time to time.