

Town of Portugal Cove-St. Philip's

Code of Conduct for Municipal Councillors

Part 1: Code of Conduct for Municipal Councillors

1. Authority

This Code of Conduct for Municipal Councillors Policy ("Code of Conduct") is required by Section 12 of the *Municipal Conduct Act, 2021* (the "Act"). Pursuant to section 18(9) of the Act, where this code is amended, municipal officials shall be notified within one month of the changes being made.

2. Definitions

- 2.1. "Business day" means a day that is not a Saturday, Sunday, or a holiday.
- 2.2. "Complainant" means any Person making a Complaint including members of the public.
- 2.3. "Confidential information" means: information in the custody and/or control of the municipality that is prohibited from disclosure pursuant to legislation or court order or any other information regarding to the business of the municipality generally considered to be of a confidential nature, including, but not limited to:
 1. information of which the confidentiality is protected by law;
 2. personal information that is protected under the **Access to Information and Protection of Privacy Act, 2015**;
 3. information that could cause financial loss or gain to a person or the town, or could jeopardize negotiations leading to an agreement or contract;
 4. the proposed or pending acquisition or disposition of land;
 5. information that could violate the confidentiality of information obtained from the Government of Canada or from the government of a province or territory;
 6. information concerning legal opinions or advice provided to the town council by its lawyer or privileged communications between lawyer and client in a matter of town business;

7. litigation or potential litigation affecting the town or a municipal service delivery corporation or a matter before a board, commission or tribunal that affects the town or a municipal service delivery corporation;
 8. the access to or security of buildings and other structures occupied or used by the town or access to or security of systems of the town, including computer or communication systems;
 9. information gathered by the Royal Canadian Mounted Police and Royal Newfoundland Constabulary, in the course of investigating any illegal activity or suspected illegal activity, or the source of that information; or
 10. labour and employment matters, including the negotiation of collective agreements.
- 2.4.** “Councillor” means an elected or previously elected member of a town or city council, including, the Mayor and Deputy Mayor.
- 2.5.** “Chief Administrative Officer” (CAO) refers to the person appointed to the position of Manager under the *Municipalities Act, 1999*. In the event a municipality has not established the position of Town Manager/CAO, the duties of the CAO under this Code of Conduct shall be performed by the **Town Clerk**.
- 2.5.1. Where the CAO is unable to perform the functions prescribed in the Code of Conduct Policy, the Town Clerk will act as the CAO for the purposes of the Code of Conduct.
- 2.6.** “External Investigator” means an independent, qualified third party hired to investigate a Complaint and submit a report to council.
- 2.7.** "Harassment" means inappropriate vexatious conduct or comment by a person to a worker that the person knew or ought to have known would cause the worker to be humiliated, offended, or intimidated.
- 2.8.** “Informal resolution” is intended to be an expeditious process which, if successful, may allow for an issue to be resolved for both parties without the need of a formal decision of council. This process would help to restore a professional municipal relationship, and/or allowing both sides to better understand each other.
- 2.9.** “Information Package” contains the submitted complaint, response to the complaint and any other information requested by council.
- 2.10.** “Municipal Official” means, unless the context indicates otherwise, an employee of a municipality, including the CAO and Town Clerk, fire chiefs, fire fighters and all volunteers authorized by the municipality.

2.11. “Respondent” is the councillor to whom the complaint was made against.

2.12. “The Parties” are the complainant or complainants and the councillor or councillors who is/are the respondent(s) to the complaint.

3. Application

This Code of Conduct applies to councillors acting in their official capacity as councillors, as well as a councillors off duty conduct that is sufficiently connected to the office of councillor which could reasonably discredit the reputation of the municipality.

4. Standards of Conduct:

4.1. Standards of Professional Behaviour

Councillors are encouraged to communicate inclusively to promote equity and the equal participation of the general public, council, and all municipal officials.

4.1.1. Councillors must abide by the Council’s Rules of Procedure.

4.1.2. Councillors must be respectful of the presiding officer, their colleagues, staff, and members of the public at all times, including during all council meetings and proceedings of the municipality.

4.1.3. Councillors must be prepared for meetings, aware of agendas, informed of issues, and contribute to debate in a manner that is meaningful, candid, honest, respectful, and equitable.

4.1.4. Councillors must act in a manner which supports respectful, transparent, and informed debate.

4.1.5. Councillors must use language which is inclusive, respectful, and refrain from using language which could be interpreted as abusive or disrespectful.

4.1.6. Councillors must conduct their official duties in a manner which does not bring disrepute to their position, the Council, or the municipality.

4.1.7. Councillors must not make statements which are oppressive, or discriminatory.

4.2. Use of Influence

4.2.1. Councillors must only use the influence of their position for the exercise of their official duties.

4.2.2. Councillors must not use their authority or influence in a manner that could reasonably be perceived as threatening, coercing, or improperly influencing the

actions of a municipal official or in a manner which interferes with the municipal official's responsibilities.

4.2.3. Councillors are prohibited from accepting gifts, favours, or free or discounted services from any individual, vendor, contractor or others which could reasonably be perceived to show undue favour, bias, or disadvantage to any individual or organization or could reasonably be perceived to place the councillor in a conflict of interest.

4.2.4. Councillors must not communicate on behalf of the Municipality unless authorized by council or by virtue of a position or role the councillor has been authorized to undertake by council.

4.3. Misuse of Public Assets and Fraud

4.3.1. Subject to the **Councillor Remuneration Regulations, 2001**, Councillors must report all expenses promptly, accurately, provide adequate detail, and shall maintain all receipts, invoices, and other relevant financial records and details when claiming expenses.

4.3.2. Councillors must ensure that the business of the municipality is conducted efficiently and must avoid waste, abuse, and extravagance in the provision and use of municipal resources.

4.3.3. Councillors must not request, use, or permit the use of municipal-owned vehicles, land, equipment, materials and other property for personal convenience, profit, or any action in violation of Section 5, Conflict of Interest, of the Act, except where such privileges are granted to the general public.

4.4. Confidentiality

4.4.1. Councillors must keep confidential any matters discussed in privileged/closed meetings of the town council or town council committee meeting, except as required by law or as authorized by the Municipality to do so.

4.4.2. Councillors must not use confidential information or official information which is not in the public domain for personal or private gain, the private gain of others, or a corporation.

4.4.3. The collection, protection, access, use, disclosure, and disposal of personal information, including a submitted complaint, may only occur in compliance with the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*.

4.5. Social Media/Public Commentary

4.5.1. Councillors must not engage in conduct on personal or official social media platforms or otherwise engage in public commentary in a manner which would bring the integrity of themselves, the council, or the Municipality into disrepute.

4.5.2. Councillors must conduct municipal business through official accounts.

4.6. Harassment and bullying

The obligations in this section are not intended to fulfill the requirement of a municipality as an employer to implement and maintain a Harassment Prevention Plan, under Section 24.1 of the **Occupational Health and Safety Regulations**.

If a complaint relates to harassment, the CAO shall refer to the adopted Harassment Prevention Plan and if necessary, contact OHS for guidance. Depending on the outcome of the process, penalties may be applied pursuant to the Act and Regulations.

4.6.1. Councillors must not engage in harassment or bullying. Harassment may be intended or unintended. Harassment may include, but may not be limited to:

1. Abuse of authority – harassment that occurs through a use of authority serving no legitimate work-related purpose or any legitimate exercise of authority permitted by law and duly authorized by Council.
2. Discriminatory harassment – harassment that is based on actual or perceived prohibited grounds of discrimination as outlined in the *Human Rights Act, 2010*, such as race, colour, nationality, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income, or political opinion.
3. Sexual harassment – harassment which is gender-based or of a sexual nature.
4. Bullying – a repeated pattern of mistreatment aimed at a specific person or group.

4.6.2. While conducting municipal business, all members of Council shall treat members of the public, one another, staff, and volunteers appropriately to ensure that their work environment is free from discrimination, bullying, intimidation and harassment.

4.7. Legislative Compliance

4.7.1. A councillor must reasonably comply with all obligations imposed on councillors by legislation, regulation, and municipal policy and procedures.

4.8. No Adverse Actions or Reprisals

4.8.1. Council or councillors must take no action, and must, to the best of their ability, ensure no action is taken, which would be reasonably perceived as a reprisal against any person acting in good faith who brings forward a complaint or information which leads to a complaint.

4.9. Allegations in Bad Faith

4.9.1. A councillor or municipal official shall not file a complaint under this policy, which is retributive, made in bad faith, or with malicious intent. A complaint will not be deemed to be retributive, made in bad faith, or malicious solely because it is ultimately determined to be unfounded.

4.10. Investigation

4.10.1. A councillor shall not hinder, obstruct, attempt to obstruct, interfere with, threaten, harass, or fail to cooperate with a person investigating under the Act and regulations, and this Code of Conduct.

Part 2: Code of Conduct Complaint Process

Submitting a Complaint

1. Where a person(s) is of the opinion that a councillor(s) has violated the Municipal Councillor Code of Conduct, they may file a complaint under this Code of Conduct with the Chief Administrative Officer (CAO). A person filing a complaint may use the Complaint Form, attached as Form A.
2. Where the complainant is the CAO, the complaint shall be filed with the Town Clerk. In this situation, the Town Clerk will act as the CAO for the purpose of administering the complaint.
3. A complaint shall be in writing and shall include the following information (See Form A):
 - The complainant's name and contact information;
 - The names of the person(s) the complaint is about;
 - A summary of the complaint, and any steps taken to resolve it;
 - The date the alleged breach of the code occurred, applicable legislative sections perceived as violated, if known;
 - A description of how the complaint can be resolved informally (See Option 1, if applicable); and
 - Any other information deemed necessary by the CAO.
4. A CAO may accept a complaint confidentially where, in the CAO's opinion, it is reasonable to do so, considering the public interest. In addition, a complaint may be made by other means where the complainant has a limited ability to read or write English or has a disability or condition that impairs their ability to make a written complaint.
5. A complainant may withdraw their complaint to the CAO, at any time, in writing or by other means as per section 4.
6. A person may file a complaint within 6 months of becoming aware of a Code of Conduct violation. The CAO may accept complaints outside of that timeframe in instances of harassment, bullying, financial impropriety, or where it is reasonable to do so, taking into account the public interest.

Responding to a Complaint:

1. CAO receives complaint.

- 1.1. Where the CAO cannot act on the complaint process due to conflict-of-interest provisions, the Town Clerk will act as the CAO for the purpose of administering the complaint.
- 1.2. Where a complaint alleges criminal behaviour, or at any point it becomes apparent that criminal behaviour may have occurred, the CAO may seek legal guidance. If the CAO forwards the submitted complaint to the appropriate law enforcement agency, then the CAO shall immediately schedule a privileged/closed meeting where council is notified that a complaint has been subsequently referred. The complainant will be notified in the event it has been referred to a law enforcement agency.
- 1.3. If a complaint relates to harassment, the CAO shall refer to the adopted Harassment Prevention Plan and if necessary, contact OHS for guidance. Depending on the outcome of the process, penalties may be applied pursuant to the Act and Regulations.

The complainant will be notified should it be supported by the Harassment Prevention Plan.

2. The CAO shall send a copy of the complaint to the respondent(s) no later than five (5) business days after receipt of the complaint.
3. The respondent(s) may provide a written response respecting the complaint to the CAO no later than 10 business days after receipt of a copy of the confidential complaint. The respondent(s) may use the Councillor Response Form, attached as Form B.
 - 3.1. The respondent(s) may include the following (See Annex B):
 - The respondents name and contact information;
 - A response to the complaint;
 - Supportive of an informal resolution: See Option 1 (Internal);
 - If applicable, a description of how the complaint can be resolved informally; and
 - Any other information deemed necessary by the respondent(s).
4. The CAO may extend the timeline for a written response and shall ensure the parties are aware of the extension.
5. Where the respondent(s) provides a written response, the CAO shall send a copy of the written response to the complainant(s) within five (5) business days after receipt of the written response.
6. CAO may decide to group similar code of conduct complaints and shall notify the parties.

Code of Conduct Complaint Resolution:

Option 1: Informal Resolution (Internal)

The informal resolution applies to internal disputes. If the parties consent, then the CAO may initiate informal dispute resolution. **This is the preferred option to support internal complaints.** External complaints would typically be addressed under Option 2: Referral to Council.

The CAO should refrain from providing a recommendation to the council regarding the merits of a Code of Conduct complaint.

1. Informal resolution efforts shall be concluded within 20 business days of the initial complaint and may be extended for additional business days with consent of the parties and approval of the CAO.
2. Informal resolution must not be used where there is a significant power imbalance between a complainant and a respondent, where there is a reasonable apprehension of harm, where the allegations involve issues of financial impropriety, sexual harassment, violence, criminality, where either party does not consent, or where other circumstances would prevent the success of informal resolution.
3. If the complainant is satisfied by the outcome of the informal steps taken to resolve the matter, then the complainant may confirm the complaint was successfully resolved, otherwise refer to Option 2.
4. As per sections 14(2) of the Act, where a complaint is successfully resolved the CAO shall inform council during a privileged/closed meeting that a complaint was made but was successfully resolved through the informal resolution process.
5. If the complaint has been withdrawn, the respondent(s) should be notified.

Option 2: Referral to Council

The CAO should refrain from providing a recommendation to the council regarding the merits of a Code of Conduct complaint. **Option 2 should reasonably address most submitted code of conduct complaints.**

1. Where informal resolution was not an option or one of the parties was not satisfied with the outcome.
2. Then, within 30 business days of receiving the initial complaint, the CAO shall:
 - 2.1. prepare a confidential information package regarding the complaint;
 - 2.2. refer the complaint to council during a privileged/closed meeting;
 - 2.3. provide a copy of the information package to the council during a privileged/closed meeting; and
 - 2.4. provide written notice of the referral to the parties.
3. A referral to the council may be reasonably extended for additional business days. The parties shall be notified of the extension.
4. No later than 10 business days after council receives the confidential information package, the council shall schedule a privileged meeting and a regular or special public meeting. The information package is discussed during a privileged/closed meeting of council.
 - 4.1 While recognizing legislated conflict of interest provisions, the council may allow a statement from either of the parties in a privileged/closed meeting.
5. Following the review of the information package during a privileged/closed meeting, the council shall open the meeting to the public and shall, by resolution:
 - 5.1. re-direct to the CAO for additional information. This new information package re-starts the process again at step 4.
 - 5.2. proceed with Option 3: order a third-party investigation via a motion of council;
 - 5.3. dismiss the complaint; or
 - 5.4. decide if the respondent violated the Municipal Councillor Code of Conduct.
6. If the council finds the respondent(s) contravened the code, the council shall, during the same public council meeting, by resolution, take an action as set out in Section 15 (Penalties) of the Act.
7. The CAO shall notify the parties with the decision of council.

Option 3: Formal Investigation, if required

The CAO should refrain from providing a recommendation to the council regarding the merits of a Code of Conduct complaint. **This option is typically reserved for serious complaints in which council requires an External Investigator to support the decision-making process.**

1. Where the complaint was not resolved utilizing Option 1 or 2, then council can decide to engage an external investigator through a motion of council.
2. There shall be 40 business days to conclude an investigation from the date the informal resolution period has expired, if applicable. The 40 business days start when an investigator is contracted.
 - 2.1. Upon request of the external investigator, the CAO may approve up to 30 more business days for the investigation.
3. The external investigator will prepare a written report for the council. The report should outline the investigative process, facts, analysis, test (an assessment of the information relative to the Code of Conduct), conclusion, and recommendations. The format is determined by the investigator.
4. The council shall review the report at a privileged/closed meeting.
 - 4.1 While recognizing legislated conflict of interest provisions, the council may allow a statement from either of the parties in a privileged/closed meeting.
5. Following the review of a report, the council shall open the meeting to the public and shall, by resolution:
 - 5.1. Dismiss the complaint; or
 - 5.2. Make a determination that the respondent(s) contravened the Code of Conduct.
8. If the council finds the respondent(s) contravened the code, the council shall, during the same public council meeting, by resolution, take an action as set out in Section 15 (Penalties) of the Act.
9. The CAO shall notify the parties with the decision of the Council.

Signature of Mayor:

A handwritten signature in cursive script, appearing to read "Paul H. ...", written over a horizontal line.

Signature of CAO:

A handwritten signature in cursive script, appearing to read "Jan ...", written over a horizontal line.

FORM A: Complaint Form

Part 1: The complainant's name and contact information.	
Part 2: The names of the person or persons the complaint is about.	
Part 3: A summary of the complaint, and any steps taken to resolve it.	
Part 4: The date that the alleged breach of the code occurred, applicable legislative sections which were perceived to be violated, if known.	
Part 5: A description of how the complaint can be resolved informally, if applicable.	
Part 6: Any other information deemed necessary by the CAO.	
Name of Complainant:	
Date of Complaint:	Click or tap here to enter text.

FORM B: Councillor Response Form

Part 1: The Councillor's name and contact information.	
Part 2: A response to the complaint.	
Part 3 (Internal only): Supportive of an informal resolution to resolve complaint (YES/NO)	
Part 4: Any other information deemed necessary by the CAO.	
Date of Response:	Click or tap here to enter text.