



TO: Committee of the Whole

FROM: Jennifer Taylor, Chief Administrative Officer

DATE: March 11, 2021

RE: **Code of Ethics Bylaw**

ISSUE:

Government Relations has released a revised Code of Ethics Sample Bylaw (attached).

BACKGROUND:

In accordance with *The Municipalities Act*, section 93.1, Town of Wadena has adopted Code of Ethics Bylaw No. 2017-06.

ALTERNATIVES:

1. Committee of the whole can recommend to council that Administration draft a revised Code of Ethics Bylaw.
2. Committee of the whole can do nothing.

FINANCIAL IMPLICATIONS:

There are no financial implications.

ANALYSIS:

The new sample bylaw provided by Government Relations has many similarities to the Town's existing bylaw but shorter, more succinct, and provides better direction in the process to follow when there is a complaint. In addition, the sample bylaw contains prescribed forms in Schedule A and B. The Town's current bylaw references a Schedule A that forms part of the bylaw, but was adopted without Schedule A as referenced.

If the committee wishes to revise the existing bylaw, some considerations are:

- What information is required in the complaint?
 - Who is the complaint submitted to: the CAO, the mayor What if the CAO is the one submitting the complaint?
 - How is the complaint handled once it is submitted? Does the person receiving the complaint report to council, a committee of council, a third party designated by council to conduct investigations?
 - Which process of the two outlined, should be followed for investigating code of ethics complaints?
 - What consequences should be given to members of council who have contravened the bylaw?
-

ADMINISTRATIVE RECOMMENDATION(S):

That committee of the whole consider adopting a revised code of ethics bylaw. If the committee wishes to have the bylaw revised, direction to Administration is requested on the questions posed both above and in the sample bylaw. In addition, Administration recommends consulting legal counsel on any draft of this bylaw before adoption.

ATTACHMENT:

Government Relations – Code of Ethics Sample Bylaw

Code of Ethics Sample Bylaw

Sample Template – December 2020

SAMPLE

Disclaimer – This sample template is intended to be used as a guide by municipalities to develop a bylaw. The content must be modified and formatted to suit the needs of the municipality. It is strongly encouraged that municipalities work with their legal counsel to ensure the procedures developed address the specific needs and capabilities of their council.

SAMPLE

Explanatory Notes

The Ministry of Government Relations has prepared this document to assist municipalities in developing their Code of Ethics Bylaw. Anything that is **blue font** is optional and council should consider whether they want to have it in their bylaw. Footnotes and this page should be removed when finalizing the bylaw.

All municipalities in Saskatchewan are required to have a Code of Ethics Bylaw (section 66.1 of *The Cities Act*, section 93.1 of *The Municipalities Act* and section 107.1 of *The Northern Municipalities Act, 2010*).

The bylaw must:

- Include at least the model code of ethics prescribed in the appropriate regulations. Council members must comply with these standards and values in their dealings with each other, employees of the municipality and the public;
- Comply with any prescribed requirements regarding adoption, updating and public accessibility; and
- Set out the process for dealing with alleged contraventions of the bylaw.

Having a Code of Ethics Bylaw is an opportunity to educate council members and the public on the topic of good governance. Adopting a code of ethics through a bylaw clearly sets out the expectations of council members as they go about their duties as a member of council. It also makes sure that all members of council are acting with the same values and standards as they approach their municipal duties. Council may make changes to the wording of the prescribed model code of ethics, as long as it does not conflict with the substance and is not misleading. Council has the ability to add additional expectations over and above the ones prescribed. For example, rules regarding gifts and benefits, certifications and training, or any other applicable rules for a member of council's conduct may be included in the bylaw. Council will have to consider if their bylaw applies to committees, controlled corporations and other bodies established by council.

The bylaw must provide the process the municipality will use to handle alleged code of ethics contraventions. This sample bylaw provides a complaint-based process example. Some questions to consider under this process are:

- What information is required in the complaint?
- Who is the complaint submitted to: the administrator, the mayor/reeve? What if the administrator is the one submitting the complaint?
- How is the complaint handled once it is submitted? Does the person receiving the complaint report to council, a committee of council, a third party designated by council to conduct investigations?

There are two potential options outlined here for investigating code of ethics complaints. Council will need to consider the pros and cons of the options and decide which approach is best suited for their municipality. Regardless what council decides, they must ensure that all parties involved, including the complainant and the alleged member(s), are allowed procedural fairness.

Finally, consideration must be given to the consequences to members of council who have contravened the bylaw. The remedial action imposed should be corrective and progressive, and have realistic time frames for completion.

CODE OF ETHICS BYLAW

FULL NAME OF MUNICIPALITY

BYLAW NO _____

A BYLAW TO ESTABLISH A CODE OF ETHICS FOR COUNCIL MEMBERS

PART I

GENERAL

Short Title

1. This bylaw may be cited as the “Code of Ethics Bylaw”.

Preamble

2. The members of council of the [City/Town/Village/Resort Village/RM](#) recognize that their actions have an impact on the lives of all residents and property owners in the community. Fulfilling their obligations and discharging their duties responsibly requires a commitment to the highest ethical standards.

The members of council recognize that the quality of the public administration and governance of the [City/Town/Village/Resort Village/RM](#), as well as the reputation and integrity, depends on their conduct as elected officials.

Purpose and Interpretation

3. The purpose of this bylaw is to outline basic ethical standards and values for members of council. It is to be used to guide members of council respecting what their obligations are when fulfilling their duties and responsibilities as elected officials. It also explains the procedure for filing a complaint, investigating a complaint, and enforcing these standards and values.

This bylaw is to be interpreted in accordance with the legislation applicable to the [City/Town/Village/Resort Village/RM](#), the common law and the policies and bylaws of the [City/Town/Village/Resort Village/RM](#).

Neither the law nor this bylaw is to be interpreted as exhaustive. There will be occasions which council will need to adopt additional rules of conduct in order to protect the public interest and to enhance the public confidence and trust in local government. It is the responsibility of each member of council to uphold the standards and values set out in this bylaw.

Definitions

4. In this bylaw:

- a) **Act:** means *The Municipalities Act/The Cities Act/The Northern Municipalities Act, 2010*.
- b) **Complainant:** means an individual/organization/municipal employee/member of council.
- c) **Designated Officer:** means a person designated by council or a person to whom power or authority is delegated by the administrator or, in the absence of a designation by council, the administrator.
- d) **Members of Council:** means the council of the *City/Town/Village/Resort Village/RM*, and includes the *mayor/reeve* and each councillor.

PART II

STANDARDS AND VALUES¹

5. Members of council must uphold the following standards and values:

- a) Honesty
 - i. Members of council shall be truthful and open in their roles as council members and as members of the communities they serve.
- b) Objectivity
 - i. Members of council shall make decisions carefully, fairly and impartially.
- c) Respect
 - i. Members of council shall treat every person, including other members of council, municipal employees and the public, with dignity, understanding and respect;
 - ii. Members of council shall not engage in discrimination, bullying or harassment in their roles as members of council;
 - iii. Members of council shall not use derogatory language towards others;
 - iv. Members of council shall treat people with courtesy; and
 - v. Members of council shall recognize the importance of the different roles others play in local government decision making.
- d) Transparency and Accountability
 - i. Members of council shall endeavour to conduct and convey council business and all their duties in an open and transparent manner, other than those discussions that are authorized to be dealt with in a confidential manner in a closed session, so that stakeholders can view the process and rationale used to reach decisions and the reasons for taking certain actions; and
 - ii. Members of council are responsible for the decisions they make. This responsibility includes acts of commission and acts of omission.
- e) Confidentiality
 - i. Members of council shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or

¹ Prescribed model code of ethics as per the applicable regulations.

- authorized by council to do so; and
- ii. Members of council shall not take advantage of or obtain private benefit from information that is obtained in the course of or as a result of their official duties or position and that is not in the public domain. This includes complying with *The Local Authority Freedom of Information and Protection of Privacy Act* in their capacity as members of council of a local authority.
- f) Leadership and the Public Interest
- i. Members of council shall serve their constituents in a conscientious and diligent manner and act in the best interests of the [City/Town/Village/Resort Village/RM](#);
 - ii. Members of council shall strive, by focussing on issues important to the community and demonstrating leadership, to build and inspire the public's trust and confidence in local government;
 - iii. Members of council are expected to perform their duties in a manner that will bear close public scrutiny and shall not provide the potential or opportunity for personal benefit, wrongdoing or unethical conduct; and
 - iv. [Members of council shall not accept a gift or personal benefit greater than \\$_____ that is connected directly or indirectly with the performance of their duties.](#)
- g) Responsibility
- i. Members of council shall act responsibly and in accordance with the Acts of Parliament of Canada and the Legislature of Saskatchewan, including [The Municipalities Act/The Cities Act/The Northern Municipalities Act, 2010](#);
 - ii. Members of council shall disclose actual or potential conflicts of interest, either financial or otherwise, related to their responsibilities as members of council, following the policies and procedures of the [City/Town/Village/Resort Village/RM](#), and exercising all conferred powers strictly for the purpose for which the powers have been conferred; and
 - iii. Members of council are individually responsible for preventing potential and actual conflicts of interest.

PART III

COMPLAINT PROCESS

Informal Complaint Process²

6. Any person who has witnessed or believes that a member of council has contravened the bylaw may advise the member that they are in contravention of this bylaw and encourage the member to stop.

Formal Complaint Process

7. To report an alleged contravention of the bylaw, the complainant shall submit the Complaint Form found in Schedule A, personally or by sending the form directly to the designated officer by mail, email, fax or courier.

² The informal complaint process should be the initial means of remedying an alleged code of ethics complaint.

8. As soon as possible after receiving the complaint, the designated officer will issue the Receipt of Complaint form, found in Schedule B, to the complainant, personally or by sending the form by mail, email, fax or courier.
9. Within ____ days of issuing the Receipt of Complaint, the designated officer will review the complaint to ensure the following:
 - a) The complaint meets the scope of the code of ethics bylaw³; and
 - b) The complaint form is filled out completely and in detail.
10. After review of the complaint, the designated officer shall within ____ days notify:
 - a) The complainant in writing that the complaint does not meet the scope of this bylaw or that the complaint form is not filled out completely. If applicable, the designated officer will direct the complainant to another process for addressing the complaint; or
 - b) The complainant in writing that the complaint meets the requirements of this bylaw; and
 - c) The alleged council member(s) in writing that a complaint has been filed pursuant to this bylaw.
11. The designated officer shall inform all parties of the following:
 - a) Who will be investigating the complaint;
 - b) The investigation process;
 - c) When the investigation will be initiated⁴; and
 - d) How the investigation's findings will be communicated.
12. At the next council meeting, upon being informed by the designated officer, council will acknowledge by resolution that a code of ethics complaint has been filed and will initiate the investigation process⁵.

Investigation - Option 1: Council is the Investigator

13. Council shall establish a committee to investigate, report and to make recommendations based on the findings of the complaint to council.
14. The council member(s) who the complaint is made against shall not participate in conducting the investigation.
15. If the complainant is a council member, that council member shall not participate in conducting the investigation.
16. The investigation shall be done in a confidential, objective and impartial way.
17. The investigation must, as is reasonably possible, protect the names of all parties involved.

³ The designated officer should think about: Does the complaint outline a contravention of this bylaw or is there a better avenue to file the complaint? If the complaint fits better elsewhere, provide other options i.e. Nuisance Bylaw. This is not the time to judge whether it is a legitimate allegation, just if it fits the scope of the bylaw.

⁴ The investigation will be initiated when council passes a motion as per section 12 of the bylaw.

⁵ At this point council does not review the complaint, only acknowledges that a complaint was made. Best practice would be to acknowledge the complaint by reference number to protect all parties involved. If council wishes to discuss further, they should do so in a closed meeting. Remember that if a council member is a party to the complaint, they should not participate in the discussion and should declare a Conflict of Interest.

18. The investigative committee shall review the complaint and clarify any information with the complainant, if required.
19. The investigative committee shall serve a copy of the complaint and supporting documents to the alleged council member(s) and request a written response to the claim within ____ days of receiving complaint⁶.
20. If the alleged council member(s) provide a written response, that response is to be provided to the complainant with a request for a written response within ____ days.
21. The investigation committee must verify the information provided from all parties, which may include speaking to anyone relevant to the complaint.
22. The investigation committee must determine what section(s), if any, of this bylaw was contravened.
23. When the investigative committee is satisfied that all the relevant information has been provided, they will prepare a written report summarizing the allegations, the findings and their recommendation as to whether or not the complaint is substantiated.
24. The complainant and alleged council member(s) shall be provided a copy of the written report.
25. The investigating committee will provide the report to council in a closed meeting.
26. The council member(s) who the complaint is made against shall not participate in the closed meeting.
27. If the complainant is a council member, that council member shall not participate in the closed meeting.
28. If council is satisfied with the report from the investigation committee, in an open meeting, council shall pass a resolution stating that the complaint is either unsubstantiated or substantiated.
29. If the complaint is unsubstantiated, it is deemed dismissed and council shall notify all parties involved of the following:
 - a) The reasons the complaint is dismissed; and
 - b) The ability to contact Ombudsman Saskatchewan if they feel they have been treated unfairly in the handling of the complaint.
30. If the complaint is substantiated, council shall provide all parties involved the following:
 - a) The reasons for the substantiation;
 - b) What remedial action(s), if any, will be imposed as per section 31; and
 - c) Information about the ability to contact Ombudsman Saskatchewan if they feel they have been treated unfairly in the handling of the complaint.

Investigation - Option 2 - Third Party is the Investigator⁷

13. The investigation must, as is reasonably possible, protect the names of all parties involved.
14. The investigation shall be done in a confidential, objective and unbiased way.

⁶ Identifying and/or personal information may need to be redacted from the copy of complaint and documents being served.

⁷ Best practice is to appoint the investigating third party annually by resolution.

15. At a minimum, the investigation must:

- a) Clarify what the complaint is about;
- b) Verify the information provided in the complaint is relevant and accurate;
- c) Provide an opportunity for all parties involved to review the preliminary findings and to provide contrary and/or additional information that may be relevant;
- d) Determine what section(s), if any, of this bylaw was contravened; and
- e) Summarize the results of the investigation into a written report.

16. The investigator will provide the report to council in a closed meeting.

17. The council member(s) who the complaint is made against shall not participate in the closed meeting.

18. If the complainant is a council member, that council member shall not participate in the closed meeting.

19. Upon the report from the investigator, in an open meeting, council shall pass a resolution stating that the complaint is either unsubstantiated or substantiated.

20. If the complaint is unsubstantiated, it is deemed dismissed and council shall notify all parties involved the following:

- a) The reasons the complaint is dismissed; and
- b) The ability to contact Ombudsman Saskatchewan if they feel they have been treated unfairly in the handling of the complaint.

21. If the complaint is substantiated, council shall provide all parties involved the following:

- a) The reasons for the substantiation;
- b) What remedial action(s), if any, will be imposed as per section 22; and
- c) Information about the ability to contact Ombudsman Saskatchewan if they feel they have been treated unfairly in the handling of the complaint.

Remedial Action⁸

31/22. The remedial action(s) imposed should be corrective and progressive and have a realistic time frame for completion. Council should take into consideration the nature and severity of the violation as well as whether the council member(s) has previously violated this bylaw.

32/23. The remedial action(s) imposed by council shall be decided by resolution, at a meeting open to the public. The remedial action may include, but is not limited to⁹:

- An apology, either written and/or verbal, by the member of council to the impacted individual(s), council and/or the general public.
- Educational training on ethical and respectful conduct¹⁰.
- Repayment of moneys/gifts received.
- Removal of the member from council committees and/or bodies.

⁸ The numbering of the sections for remedial action will depend on the investigation process decided on, Option 1 or Option 2.

⁹ These are examples only and represent possible options. It is important that council discuss appropriate courses of action before passing a bylaw AND consult their legal counsel. Any actions chosen for your bylaw must be allowed by the applicable legislation and regulations.

¹⁰ Be specific as to what course, when it is available and who is responsible for paying it.

- Dismissal of the member from a position of chairperson of a committee.
- Reduction in remuneration and/or benefits and/or expenses.

33/24. Failure to comply with the course(s) of action set out by council may lead to further remedial action and possibly to suspension.

Dispute Resolution

34/25. If council believes it to be desirable, council may offer the parties to a complaint an opportunity to mediate the complaint.

35/26. Mediation must be agreed upon by all parties¹¹.

36/27. Mediation shall be handled by a neutral third-party who has experience in the mediation process.

37/28. Mediation shall be confidential.

PART IV

MISCELLANEOUS

38/29. This bylaw shall also apply to members of committees, boards, controlled corporations and other bodies established by council who are not members of council.

PART V

COMING INTO FORCE

39/30. This bylaw shall come into effect on the day of its final passing.

{Seal}

(Reeve/Mayor Signature)

(Administrator Signature)

Read a third time and adopted
this ____ day of _____.

(Administrator Signature)

¹¹ The municipality may want to consider including how mediation would be paid for, as it would be less expensive as a full investigation, the municipality may decide to pay for these services

(SAMPLE ONLY: Municipalities may develop their own form.)

Schedule A

Complaint Form

Complainant Name: _____ (Print name)

Complainant Address: _____ (Mailing address)

Complainant Phone Number(s): _____

Complainant Email: _____

I have reasonable and probable grounds to believe that council member(s):

_____ (List name(s) of council member(s) whom the complaint is against)

has (have) contravened the Code of Ethics Bylaw by reason(s) of the following:

1. Insert date(s), time and location of conduct

2. Include the sections of the Code of Ethics Bylaw that have been contravened

3. Provide the particulars and names of all persons involved and of all witnesses

4. Provide contact information for all people

5. Number of exhibits attached (if applicable): _____

6. If more space is required, please attach additional pages if needed.

I declare that the information given by me with respect to the above statements is true in all respects. I understand that signing a false affidavit may expose me to prosecution under the Criminal Code of Canada.

Dated this _____ day of _____, 20_____.

(Signature of Complainant)

For Office Use Only

(Date received)

(Reference number)

(Signature of _____ (i.e. Designated Officer, Administrator, City Clerk, or other applicable position pursuant to subsection 4 of bylaw))

(SAMPLE ONLY: Municipalities may develop their own form.)

Schedule B

Receipt of Complaint

I acknowledge that I have received a completed Complaint Form as prescribed in the Code of Ethics Bylaw, Schedule A from

_____, dated on the _____.
(Name of complainant) (Date the complainant signed)

Dated at _____, on _____.
(Location) (Date of issuing the Receipt of Complaint)

(Signature of Designated Officer)