

Office of the Integrity Commissioner
Town of Gravenhurst
Information Bulletin

DATE: April 17, 2020
TO: Mayor and Members of Council, Town Gravenhurst
FROM: Suzanne Craig, Integrity Commissioner
RE: Role of Members of Council when interacting with the Public and Staff

SUMMARY:

In order to dispel misunderstandings among staff and Members of Council on the difference between general discussions and discussions that may materially advance the business of the Town, I have drafted in consultation with the Town's Chief Administrative Officer (the "CAO"), the best practices set out below.

I have prepared this Information Bulletin to help the Mayor and Members of Council, Town of Gravenhurst Council understand their obligations that are triggered under the Corporate Policy A09-COU – Code of Conduct (the "Code"), when interacting with members of the public and Town staff with respect to other relevant Town policies that intersect with Code rules.

Overarching Purpose of the Code

The rules of the Code provide an ethical framework for Members of Council and Local Boards to facilitate good governance and a high level of public confidence in the administration of the Town by its Members as duly elected and appointed public representative. The Code is in place to encourage high ethical standards among Members of Council and Committees of Council, and to share a common basis for acceptable conduct to which all Members are expected to adhere and comply so that they each operate from a foundation of integrity, transparency, justice, truth, honesty and courtesy.

Identifying the Chain of Command in the Administration

Members should follow the guidelines set out in this Information Bulletin to assist in assessing whether a matter falls within the sphere of day-to-day informal communications, or whether the matter is part of a discussion that may materially advance the business of the municipality. A Member may seek out advice from the Integrity Commissioner to assist in determining if it is appropriate for a matter to be the subject of informal communication or if the discussion should be restricted to official

communications that are carried out in compliance with the rules of the Procedural By-law or in accordance with the Staff Council protocol.

FREQUENTLY ASKED QUESTIONS:

1. Would a Councillor having informal discussions with a staff person place staff in a position of a potential contravention of their obligations under the Employee Code of Conduct?

The March 11, 2020 Employee Code of Conduct Policy states:

"Employees shall not circumvent authority by way of seeking direction from or communicating with Council outside of the administrative and managerial chain of command as outlined above".

This section of the Employee Code of Conduct provides staff with a policy rule upon which to rely and acts as the corollary to the Code provision that requires a Member of Council to avoid any attempt to compel staff to engage in partisan political activities or attempt to coerce any staff member with the intent of interfering in the staff's duties.

This section of the Employee Code of Conduct aligns with municipal governance best practices that seek to promote order and efficiency. Municipal organizations require coordinated and organized input to inform decisions made by subject matter experts, statutory officers and Council.

2. Does the “managerial chain of command” prohibit a Member of Council from speaking to Town staff or to members of the public about Town matters?

Under the rules of the Code, a Member of Council may speak to any constituent, member of the public or staff person generally and also in social settings to the extent that they are not entering into a discussion that materially advances the business of the Town or a live issue that may be currently or imminently before Council for deliberation and decision. If a Member of Council is approached on a staffing issue, personnel issue or other Town business matter that may materially advance the business of the Town, this matter is more appropriately discussed at Committee, Council or at a Town meeting or between a staff person and their Supervisor/Manager/Director.

Rule 7.1 of the Code of Conduct for Members of Council states that:

7.1 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 Town 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.

While a Member of Council is also a private citizen who may be approached by an individual in an informal setting and have a casual conversation about general matters of interest, the moment the conversation becomes about specific Town business (i.e. a personnel matter, a matter that will go before Council for deliberation and decision and may materially advance the business of the Town), the Member and the staff person (both in compliance with their respective Code of Conduct) should refrain from having the discussion, as this may be perceived to be **influencing** a future decision that is more appropriately conducted at the Council table or between a staff person and their supervisor/manager/director.

3. What should a Member do if an individual approaches them to discuss a matter that may materially advance the business of the Town and the Member believes the matter should be discussed by Council?

A matter that materially advances the business of the Town, may include:

- Staffing, remuneration issues
- Labour Relations
- Contract negotiations
- Items under litigation, settlement deliberations, or personnel matters
- Information that infringes on the rights of others (e.g. sources of complaints)
- Land transfers or acquisition
- Investigations of a By-law Enforcement Officer

If an individual (member of the public or staff person) approaches a Member of Council in an informal setting (in the workplace or otherwise) to have an informal conversation, the staff person or member of the public may generally discuss everyday matters, including general Town matters. A Member of Council is not prohibited from speaking with the public, a member of staff or other Members of Council. For example, if there is a pothole on someone's street and that individual encounters a Member of Council in a coffee shop or in the corridors of a Town Hall building, they may raise this issue with the Member of Council. Under the Council Code of Conduct, a Member of Council is not prohibited from speaking to individuals about Town issues generally. By way of example, a Member can certainly explain to an individual what processes are in place at

the Town to address a particular issue of concern. The Member may also invite the individual to raise the matter with the appropriate staff person or department.

For example, the Member may say, "you should speak with ____ (name of staff person who deals with road repair or the department) however, I will let ____ (name of employee or department) know about the issue. In the future, I would invite you to raise these types of issues with staff of the Town". However, the moment the conversation becomes about specific Town business (i.e. a personnel matter, a discipline matter, an ongoing complaint about noise that is not a general discussion but that relates to a specific ongoing noise complaint investigation that is currently before the by-law officer or that has been concluded not to the satisfaction of the complainant, or a matter that will go before Council for deliberation and decision), the Member should not continue further discussion because this may interfere with the decision-making authority of the CAO/HR, by-law enforcement officer or other staff with delegated authority. It is important for a Member of Council to understand that participating in a discussion that materially advances the business of the Town in an informal setting (in person or through email) may taint the final decision on the personnel matter/discipline matter/Council decision with bias and the decision may be challenged on the basis of a reasonable apprehension of bias of the decision-maker.

4. What is the appropriate process to be followed for a Member of Council to bring forward questions regarding clarification of existing Town policy or development of new Town Policy?

Only Council as a Whole has authority under the Municipal Act to deliberate on policy changes. A Member of Council may make inquiries of staff, through the appropriate senior staff or the CAO if they seek clarification on the meaning of a policy or its application. Formal requests for clarification on policy documents and/or recommendations on changes, should be made in accordance with the Town's procedural by-law and the Town's delegation of authority by-law.

An individual Member of Council does not have authority to direct staff to change an existing policy. In accordance with Rule 4 of the Code, clarification on corporate policies must be conducted in accordance with the Town's Procedural By-law with a quorum of Council or Committee present at a properly constituted meeting.

When a Member is asked about a matter, the discussion of which may *materially advance* the business of the Town, the Member should adopt the following best practice considerations to ensure compliance with the provisions of the Code:

- Conduct these discussions at duly constituted Committee or Council meetings
- Refrain from attempting to influence the decision-making authority of a supervisor, manager or other staff with delegated authority
- Refer the individual to the staff person responsible for the decision-making or the Department of the Town that has responsibility for the development and implementation of the policy that address the query

5. What are some best practices that a Member should follow when interacting with staff to avoid discussions that may materially advance the business of the Town.

Members should consider adopting the following best practices:

- Proactively determine what rules of the Code, the Procedural By-law the Municipal Act or other statutes¹ may be triggered by a discussion on a matter
- Carefully review meeting Agendas and background documents to become aware of the decision-making history of matters that will be before Committee or Council for discussion
- Seek clarification from the Integrity Commissioner
- Remember to consider that email communications are generally subject to access requests under the *Municipal Freedom of Information and Protection of Privacy Act*.
- If the matter is one that will be discussed at a Town Hall meeting, consider referring the individual to the Department at the Town that has responsibility for the matter (i.e. Street light covers – Public Works) as this demonstrates that the Member is making no attempt to influence the discussion or the outcome of the voting, prior to the matter coming before Committee or Council.

Concluding Remarks

Whether a Member of Council is interacting with other Members of Council, Town staff, Committee Members or the public, the intent of the Code of Conduct for Members of Council is not to curtail a free flow of information or prohibit discussions. The rules of the Code are in place to prohibit conduct or actions that would **unduly influence** or **be perceived to unduly influence** a Town decision or the decision of a staff person with delegated authority, to the advantage of the Member or third parties. If a Member believes that a Town matter should be discussed at a meeting of Council or a Committee of Council, the Member should seek advice from the CAO or Town Clerk to

¹ The Municipal Act, The Municipal Conflict of Interest Act, The Municipal Elections Act, The Municipal Freedom of Information Act, the Occupational Health and Safety Act, the Employment Standards Act

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determine if the matter is more appropriately subject of managerial transactions between an employee and their supervisor and/or manager.

If you have any questions about the application of the rules of the Council Code of Conduct, please contact:

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