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**REPORT TO GOVERNANCE COMMITTEE
MEETING OF WEDNESDAY, FEBRUARY 07, 2024**

SUBJECT **Board Code of Conduct – Draft Bylaw Review**

ISSUE SUMMARY

To conduct a review of the draft Board Code of Conduct Bylaw.

BACKGROUND

On December 13, 2023, the CRD Board endorsed the development of a Code of Conduct bylaw that includes the following provisions:

- a. Standards of conduct will be applicable to Board Directors, Alternate Directors, and elected members of CRD Committees and Commissions;*
- b. Allows for complaints to be made by Directors, Alternate Directors, and elected members on CRD Committees and Commissions;*
- c. Includes a clear process for filing complaints;*
- d. Allows for complaints to be referred to and adjudicated by a third-party investigator;*
- e. Has a preliminary screening mechanism, an informal and formal resolution process;*
- f. Allows for the imposition of remedies and sanctions;*
- g. Includes guidelines for confidentiality in investigations and provides for the public release of investigative reports;*
- h. Provides for the discretionary reimbursement of legal expenses.*

Attached at Appendix A is a draft Code of Conduct bylaw (the “Code”) that incorporates the Board’s direction for final review prior to adoption. In developing this draft, staff consulted with external counsel to ensure it meets current best practices and addresses the most frequent and problematic types of conduct that are being experienced by local governments across the province.

ALTERNATIVES

Alternative 1

The Governance Committee recommends to the Capital Regional District Board:

1. That staff be directed to finalize the Board Code of Conduct Bylaw inclusive of the terms set out in the draft attached at Appendix A, and;
2. That the Board Code of Conduct Bylaw go directly to the Regional Board for readings and adoption at the March Board meeting.

Alternative 2

The Governance Committee recommends to the Capital Regional District Board:

That staff amend the draft Code of Conduct Bylaw as directed and return to Governance Committee with an amended draft bylaw for review.

IMPLICATIONS

The purpose of this report is to engage the Committee and Board in a facilitated discussion on the provisions included in the draft Code prior to its adoption. The intent of the Code is to create shared standards of conduct amongst Board members. For that reason, the discussions leading to the adoption of the Code are fundamental in establishing and refining what those shared expectations are. This report is intended to highlight the foundational components included in the draft Code. Directors are encouraged to reference the Code at Appendix A while reading this report to understand the full context of the comments.

Scope and Application

The provisions of the Code apply to elected officials at the CRD that come under the definition of “Board Member” which includes, Directors, Alternate Directors, Municipal Elected Officials appointed to a CRD committee or commission, and Local Community Commissioners on Salt Spring Island.

Section 3 includes statements that explain how the Code provisions should be interpreted, clarifying that it does not conflict or replace legislative provisions, it is not intended to stifle democratic discussion and participation, and should not preclude or replace informal one-on-one conflict resolution between Directors.

Section 4 sets out foundational principles for responsible conduct that establish the tone for the more specific provision that follow. There are 6 principles included: integrity; accountability; leadership; respect; transparency; collaboration.

Section 5 provisions address application of the Code, clarifying that it applies to Board Members on all bodies to which they have been appointed by the Regional Board, for example, on recreation commissions or water and wastewater commissions. In section 5(2) the Code states that the provisions do not apply to Board Member’s personal life, however, this is qualified by “except to the extent that it brings the reputation of the Regional District into disrepute or reasonably undermines public confidence in local governance”. Section 5(3) clarifies that the Code applies to use of both personal and professional social media accounts. This provision is further clarified in section 10, with direction on how Board Members may provide opinion and commentary in public and on social media, provided it is clearly stated as such and not represented as the position of the CRD.

Conduct Regulations

Division 2 of the Code outlines the standards of conduct that apply to Board Members in sections 6 to 15. The baseline standard is ensuring compliance with all federal, provincial and municipal laws, as well as policies of the Regional District. Section 8 reinforces compliance with the established bylaws and policies that guide the rules of procedure at CRD. Section 9 focuses on Board Member interactions with staff and expands upon the provisions of section 153 of the *Community Charter*, which provides that elected officials cannot interfere with, hinder, or obstruct staff in the exercise or performance of their job duties.

With respect to staff, it should be noted that staff are not able to register a conduct complaint under the Code so any alleged infraction would have to be brought forward by a Board Member

who observed the behavior. While this may limit the enforceability of this section, keeping it in the Code still establishes the standard of conduct expected in staff interactions. Staff who wish to engage in a formal process to address problematic behavior by Board Members still have the option of pursuing a complaint under the Respectful Workplace Policy.

Section 10 addresses Board Member interaction with the public and media when speaking about other Board Members and discussing Board decisions. Section 10(2) provides direction to Board Members that an explicit disclaimer is required when expressing personal opinions on matters within the Board's jurisdiction.

Sections 12 through 14 expand upon legislative provisions that apply to elected officials conduct including the handling of confidential information, conflict of interest, and receipt of gifts. These provisions are consistent with the legislation and the Code does not alter or restrict the application of these rules.

Investigation, Compliance and Enforcement

Part 2 of the Code sets out the process for filing complaints, through to investigation, adjudication, final decision, and post-decision release of reports. There is an emphasis throughout this section that the Code is intended to be self-enforcing. Board members are required in the Code to attempt to resolve complaints directly and informally wherever possible, prior to engaging the formal resolution process as set out in section 17.

The complaint intake process is described in section 18. Only those subject to the Code, i.e. Board Members as defined, can make a complaint under the Code. Complaints are initially filed with the CAO or Corporate Officer and must include the elements in section 18(2). There is a timeline of 60 days within which to file a complaint. Sections 18(5) and (6) address complaints received within 90 days of the General Local Election which will be held in abeyance until after the election.

The process for handling complaints has three phases: preliminary assessment; informal resolution; and formal resolution. The goal is that most complaints will be dealt with in the first two stages and rarely progress to a formal resolution.

Preliminary assessment can be conducted by the CAO or Corporate Officer, or can be referred to an external solicitor. Complaints may be dismissed at the preliminary assessment stage if warranted and based on the conditions outlined in section 19(2), including frivolous or vexatious complaints; complaints better addressed through another process; or where the conduct complained of is not a breach of the Code provisions. Complaints that allege criminal conduct will be referred to the police per section 20. Complaints that are the subject matter of a parallel disqualification proceeding against the respondent under section 111 of the *Community Charter* will be suspended while the proceeding is ongoing.

If a complaint is not resolved at preliminary assessment, it must be referred to an external solicitor (if not already referred) to assess whether the complaint will proceed to an informal or formal resolution process. If undertaking an informal process, the external solicitor may engage a third party such as a mediator to assist and may consider non-traditional restorative justice approaches. The solicitor may also seek the assistance of the Board Chair or Board Vice-Chair in resolving the complaint. Pursuant to section 23(5), if the parties choose not to participate or the

informal resolution process is not resolved in 30 days it must be referred to a third-party investigator in section 24.

The powers of a third-party investigator are set out in section 24 and 25. Section 24(3) provides that once appointed, an investigator can only be dismissed for cause. This provision is to preserve their independence and impartiality. The formal resolution process is outlined at section 25 and includes powers for the investigator to undertake an investigation. The provisions of this part of the Code are drafted to ensure it meets the requirements of procedural fairness to respondents of a complaint, namely that they have an opportunity to know the case against them and respond to the allegation. Other measures in place to protect the integrity of the process are included in sections 26 to 28. Section 26 mandates that anyone assisting in an investigation make reasonable efforts to keep it confidential. Section 27 is a no obstruction clause, and section 28 allows remedies to be imposed on those who obstruct the process or make frivolous or vexatious complaints.

Investigators have 90 days to complete an investigation, with potential for one 30-day extension. The investigation report will determine if there was a breach of the Code and must include the requirements of Section 29 in the written report. The findings must be provided to the complainant and respondent and must also be provided to the Board.

Final Determination by the Board

Sections 30 and 31 address the role of the Board after receiving an investigation report. The Board must convene a meeting to consider the report within 30 days and, if a breach has been found, must determine whether to impose any sanctions or remedies on the respondent.

A report may be received in an open meeting, however, the information disclosed would have to comply with the requirement to protect the respondent's personal privacy under the *Freedom of Information and Protection of Privacy Act* (FIPPA) which may necessitate a need to close the meeting under section 90 of the *Community Charter*. To balance the need for the Board to receive all relevant information with the need to be transparent to the public, section 30(4) requires that the Board publicly disclose the report (or a summary of it) along with the Board's decision 30 days after receipt.

Section 31 lists the potential remedies the Board may impose and outlines the factors that should be considered prior to imposing a remedy. The goal of imposing a remedy should be restorative, not punitive. The Code does not include a provision to reduce remuneration, however imposition of some of the listed remedies would have a financial consequence, such as being removed from standing committees or from a Chair or Vice-Chair role.

Section 32 provides discretion to the Board to consider reimbursement to the respondent for the cost of legal advice, subject to the limitations set out subsection 3.

Implementation of the Code

If the draft Code is approved, staff can advance a final copy for adoption to the March Regional Board meeting. Staff will also prepare a statement of commitment for Board Members to sign on adoption of the Code. Once adopted, staff intend to seek expressions of interest for investigators to create a roster of pre-qualified individuals who will be retained under a standing offer agreement

and can act in the event that a complaint is submitted.

CONCLUSION

Attached at Appendix A is a draft Code of Conduct bylaw for review and comment, developed in accordance with the Board’s previous direction.

RECOMMENDATION

The Governance Committee recommends to the Capital Regional District Board:

1. That staff be directed to finalize the Board Code of Conduct Bylaw inclusive of the terms set out in the draft attached at Appendix A, and;
2. That the Board Code of Conduct Bylaw go directly to the Regional Board for readings and adoption at the March Board meeting.

Submitted by:	Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer
Concurrence:	Ted Robbins, B. Sc., C. Tech., Chief Administrative Officer

ATTACHMENT(S)

Appendix A: Board Code of Conduct Bylaw (DRAFT)