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REPORT TO GOVERNANCE COMMITTEE MEETING OF WEDNESDAY, FEBRUARY 01, 2023

SUBJECT **Consideration of a Board Code of Conduct**

ISSUE SUMMARY

To assist the Board in considering whether it wishes to adopt a Code of Conduct to establish expectations for how Directors should conduct themselves while carrying out their duties as elected officials at the CRD.

BACKGROUND

In June of 2022 the province introduced legislative amendments to the *Community Charter* and *Local Government Act* that municipal councils and regional district boards must consider developing or updating a code of conduct within 6 months of the first regular meeting following the General Local Election. This requirement comes from a recommendation made by the Working Group on Responsible Conduct, which was a joint initiative of the UBCM, the Local Government Management Association and the Ministry of Municipal Affairs and Housing and follows the UBCM endorsement of Resolution SR3 to strengthen responsible conduct of local government elected officials.

The CRD Board does not currently have a code of conduct. The Board previously considered whether to adopt a code of conduct in its last term and prior to that in 2017 and 2018, and ultimately determined that the CRD had sufficient tools in place through existing policies and bylaws to regulate the conduct of Directors.

ALTERNATIVES

Alternative 1

The Governance Committee recommends to the Capital Regional District Board:

1. That the CRD Board endorse development of a code of conduct to establish shared expectations of responsible conduct and behavior of CRD Directors; and,
2. That staff be directed to report back to Governance Committee with resources and examples to facilitate development of the code of conduct.

Alternative 2

The Governance Committee recommends to the Capital Regional District Board:

1. That the CRD Board not adopt a code of conduct after consideration of the principles set out in section 2 of the *Principles for Codes of Conduct Regulation*, B.C. Reg. 136/2022;
2. That the reasons for deciding not to adopt a code of conduct be made publicly available; and,
3. That the Board reconsider its decision before January 1, 2026.

IMPLICATIONS

The requirement to consider a code of conduct is in sections 113.1 and 113.2 of the *Community Charter*, and applies to Regional Districts through section 205(1)(b.1) of the *Local Government*

Act. These sections do not make it mandatory to adopt a code of conduct; rather, it is mandatory for Boards and Councils to consider adoption of a code of conduct, in light of the principles of expected conduct set out in the *Principles for Codes of Conduct Regulation* (Appendix A).

Implications of Alternative 1

The UBCM Working Group on Responsible Conduct has produced resources for local elected officials to assist in the development of a code of conduct:

- Model code of conduct (Appendix B); and,
- UBCM Companion Guide: Getting Started on a Code of Conduct for your Council/Board (Appendix C).

The Guide provides some useful information to be considered by elected officials in the process of creating a code of conduct, and highlights that engaging in the process itself is a useful way to facilitate a discussion between board members about shared values and expectations and how members would like to work together.

It's important to note that a code of conduct is just one component in a larger responsible conduct framework. There are existing legal and legislative controls, primarily in the *Community Charter*, that address standards of conduct on the following issues:

- Conflict of interest;
- Use of inside and outside influence;
- Receipt of gifts;
- Public disclosure of any related party transactions;
- Restriction on the use of insider information;
- Mandatory Oath of Office.

In addition, the CRD has policies and bylaws that apply to board members and employees, including:

- Respectful Workplace Policy – defines expectations of a respectful workplace and includes a dispute resolution process for complaints of disrespectful behavior;
- Reporting of Serious Misconduct Policy – sets out guidelines for the reporting and investigation of serious misconduct, such as fraud, embezzlement, and deliberate unethical behavior;
- Roberts Rules of Order and the Board Procedures Bylaw address the rights and expectations of board members in meetings;

While legislated standards and existing policies set a baseline of expected behavior, a code of conduct can expand upon the requirements and go further by including value statements that effectively set a higher standard. A code of conduct, particularly when enacted by bylaw, can also include potential enforcement mechanism and sanctions for non-compliance, though the efficacy of such mechanisms is limited.

The process for developing a code of conduct should be iterative and include input from board members, rather than being developed by staff. Staff anticipate providing resources and examples, as well as options and analysis to facilitate workshopping sessions with Governance Committee in development of the code of conduct. At the request of the committee, staff could also engage the services of a facilitator or external legal counsel for specialized advice, if required.

Implications of Alternative 2

Section 113.2 of the *Community Charter* includes a requirement that if the Board chooses not to adopt a code of conduct it must first consider the following principles set out in the *Principles for Codes of Conduct Regulation*:

- a. [Board] members must carry out their duties with integrity;
- b. [Board] members are accountable for the decisions that they make, and the actions that they take in the course of their duties;
- c. [Board] members must be respectful of others;
- d. [Board] member must demonstrate leadership and collaboration.

A further requirement in the *Charter* is that the Board must issue a statement respecting the reasons not to adopt a code of conduct and make it available for public inspection. If the Board elects to move Alternative 2, choosing to rely on existing legislation and policy to regulate board member conduct, board members will need to have a discussion considering the principles set out above and meet the legislated requirement to provide public reasons for the decision.

CONCLUSION

With the recent changes to the *Local Government Act* and the *Community Charter*, the Province has demonstrated a clear intention to promote greater awareness of the need for responsible conduct by local elected officials. To comply with the new requirements, the Board must resolve whether it wishes to endorse development of a code of conduct or choose instead to rely on existing tools to govern its conduct, currently set out in policy, bylaw and legislation. A decision not to develop a code of conduct requires documented consideration of the criteria set out in the *Principles for Codes of Conduct Regulation* and must be revisited prior to the final year of the Board's term.

RECOMMENDATION

The Governance Committee recommends to the Capital Regional District Board:

- 1. That the CRD Board endorse development of a code of conduct to establish shared expectations of responsible conduct and behavior of CRD Directors; and,
- 2. That staff be directed to report back to Governance Committee with resources and examples to facilitate development of the Code of Conduct.

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

ATTACHMENT(S)

Appendix A: *Principles for Codes of Conduct Regulation*, B.C. Reg. 136/2022

Appendix B: UBCM Model Code of Conduct

Appendix C: UBCM Companion Guide: Getting Started on a Code of Conduct for your Council/Board