

DATE: September 12, 2022

FILE: 0340-50

TO: Chair and Directors
Regional District Board

FROM: James Warren
Deputy Chief Administrative Officer

Supported by James Warren,
Deputy Chief Administrative Officer

J. Warren

RE: Board Code of Conduct Policy Review and Update

Purpose

To provide an update on recent legislative changes concerning codes of conduct for Elected Officials and to propose an amendment to the existing Board Code of Conduct Policy to include a complaints and enforcement process.

Recommendation from the Deputy Chief Administrative Officer:

THAT the proposed amendment to Board Code of Conduct Policy, (P78) to include provisions concerning complaints and enforcement as per the staff report dated September 12, 2022, be approved in principle and referred to the Comox Strathcona Waste Management Board for review and feedback.

Executive Summary

- In 2021 the provincial legislature introduced amendments to the *Community Charter* to add new requirements for municipal councils and regional district boards to consider developing or updating codes of conduct. This legislation followed considerable investigation by a multi-party working group as well as the endorsement of Union of British Columbia Municipalities (UBCM) Resolution SR3 (Strengthening Responsible Conduct).
- A code of conduct is intended to be an additional aspect of responsible conduct principles, supplementing the existing legislative parameters within which Elected Officials must operate. Conduct by Elected Officials is recognized as a central component of good governance, supporting collective decision making, the fulfilment of local government responsibilities and ensuring public trust.
- Prior to the introduction of provincial legislation the Comox Valley Regional District (CVRD) Board adopted Policy P78 Board Code of Conduct (Appendix A) which was developed based on a composite of provisions and content from other similar-sized local governments and the broad recommendations from the above-noted working group.
- Local governments have limited powers to impose measures for non-compliance for those matters outside of provincial legislation. For this reason, many codes, including the CVRD's omit any detailed provisions regarding compliance and enforcement. However, based on feedback during the last term as well as court judgements and best practice guidance, the inclusion of accountability provisions with a process for complaints and disciplinary action is being proposed.
- Given the potential complexities, costs and implications of such processes staff have sought to create an accountability framework that ensures fairness through the exercise of care and discretion and strongly features informal resolution efforts prior to the engagement of a third-party.

- This report is focussed on the proposed updates respecting an accountability framework, however the review also enables the board to consider any other desired changes or updates to the policy. As the policy also applies to the Comox Strathcona Waste Management Board a referral to the broader board is recommended prior to consideration of adoption.

Prepared by:

J. Martens

Jake Martens
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Government and Community Interests Distribution (Upon Agenda Publication)

N/A	✓
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Background/Current Situation

Policy P78 Board Code of Conduct was adopted August 25, 2020 following an omnibus review of the Regional District’s policy framework. P78 replaced the previous policy entitled “An Effective Board/Chief Administrative Officer Relationship” which provided for a mutual commitment between members of the board and the Chief Administrative Officer (CAO) respecting agreed upon conduct and behaviour.

A code of conduct is intended to be an additional aspect of responsible conduct principles, supplementing the existing legislative parameters within which Elected Officials must operate. Codes of conduct for Elected Officials have become commonplace within local governments and help to strengthen the public’s confidence that Elected Officials are operating and conducting their business with integrity, respect, honesty and courtesy.

P78 was drafted based on a composite of provisions and content from the previous related policy, as well as the broad recommendations from 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.

The Board Code of Conduct Policy provides for an annual review at the inaugural meeting of the Board. During the most recent review the board expressed interest in considering an amendment to the policy to include provisions regarding a process for complaints and enforcement. While municipal councils and regional district boards have limited powers to impose measures for non-compliance for those matters outside of provincial legislation, a complaints process and identification of potential enforcement measures may still be provided.

On February 28, 2022 Bill 26 became provincial law and brought about a number of changes for local governments in BC through amendments to the *Local Government Act* and the *Community Charter*. Such changes included requirements for local governments to consider developing or updating codes of conduct for Elected Officials. The new provisions provide that within six months of its first regular meeting following the civic election, councils/boards are required to consider developing a code of conduct for Elected Officials or review current codes of conduct if any already exist. If a council/board ultimately decides not to establish a new code, or declines to review an existing code, reasons for this decision must be made publicly available. In both situations, the council/board must consider the prescribed principles for codes of conduct; consider any other prescribed matters; and comply with any prescribed requirements. The prescribed principles,

matters, and requirements are not yet known as the associated regulation(s) and any supporting guidance is yet to be released by the province.

Based on best practice guidance and the interests of the board, the primary changes proposed respect the inclusion of a general process for complaints and the imposition of sanctions where contravention of the policy has been found. In reviewing such provisions from other local governments, it is noted that some jurisdictions have extensively articulated these matters while many others have not. While the absence of a defined process provides flexibility to adapt to specific circumstances, it is generally felt that there is greater benefit from having a clear set of expectations and process. Staff have researched and reviewed the available best practices guidance and the approaches taken by a number of municipalities and regional districts, including: City of Vancouver, City of Surrey, City of Port Moody, City of Pitt Meadows, City of Prince George, City of Nanaimo, Regional District of Okanagan-Similkameen, Cowichan Valley Regional District, and Cariboo Regional District.

From this review a few key issues were identified in the development of the proposed amendments concerning the process for complaints, investigations and the imposition of sanctions. These matters are summarized below with brief rationale for staff's proposed approach. In this regard, the board could consider alternative approaches within any of the noted topics.

- Process trigger:
Consideration has been given to who specifically may file complaints under the policy. While some local governments allow complaints from anyone (e.g. board/council members, staff, members of the public) others limit complaints to only board/council members and staff. Best practice guidance suggests that the volume and the complexity of complaints can increase with the expansion of potential complainants and this in turn can result in cost and capacity impacts. Staff have proposed limiting complaints to only board members and staff in light of the potential costs and capacity issues which could result from a large number of potential complainants. In addition, members of the public will continue to have the ability to report concerns regarding ethical conduct, wrongdoing or inappropriateness by contacting the Board, the CAO or submitting a claim through the CVRD's third party Integrity Counts service which serves as a portal for such complaints and allegations.
- Informal dispute resolution procedures:
Informal dispute resolution processes are widely recognized as being more effective in finding solutions that are satisfactory to all parties at the least cost. To encourage such processes, the proposed approach includes a basic informal complaint procedure and a similar process within the formal complaint procedure at the initial stage after a complaint has been submitted. In this case, the CAO and the Chair become involved in the informal resolution step by requesting basic details and meeting with the complainant and respondent. Through this the parties can be brought together to try and work towards solutions and repair relationships before a third party is engaged. This approach is generally in line with other smaller local governments while most larger municipalities engage an ethics commissioner or officer to field all complaints and manage the entire process instead of the Mayor/Chair and senior staff member.
- Investigator/Ethics Commissioner:
Of the large municipalities (Vancouver, Surrey) reviewed most are retaining independent integrity commissioners/officers to adjudicate disputes and undertake other duties on an ongoing basis, while smaller local governments are drawing upon independent investigators or empowering their own council/board to handle complaints and investigations. While the ongoing retention of an integrity or ethics commissioner would provide considerable value in

developing and delivering a comprehensive ethics program, significant costs would be anticipated for compensation of the individual, likely through a retainer fee. It is noted that the City of Vancouver estimated the annual costs in the range of \$200,000. The City of Nanaimo has structured their code to either have a Council appointed ethics commissioner, or utilize a third-party ad hoc commissioner hired by the CAO. This approach presents considerable merit given the flexibility for the local government to either appoint one individual to handle all code of conduct complaints or to engage qualified individuals as needed. Under both scenarios the costs would be limited to the instances in which they are engaged by the CVRD. This approach also aligns with the potential for a shared resource amongst a number of smaller or mid-sized local governments, should that occur.

Another alternative is empowering the board or a select committee of the board to investigate and report on code of conduct complaints. While cost effective, this approach is not recommended as the investigation of a colleague could give rise to challenges on the basis of bias or the perception of bias.

To minimize costs, provide flexibility and ensure a fair process, the approach proposed by staff reflects that of the City of Nanaimo in which a commissioner is either appointed by the board or engaged on a case by case basis by the CAO. Further, the proposed approach includes a mechanism for preliminary vetting by the commissioner before proceeding with a formal investigation. This latter topic is generally consistent with the approach of other local governments and provides the ability to limit the expenditure of resources on complaints that are not made in good faith, that would be more appropriately addressed through another process or for other reasons. Board appointment of a commissioner is not proposed as part of this staff report so for the time being the CAO would be responsible for hiring the commissioner when required.

- Legal costs:

Given the potential repercussions from a formal complaint process, it is reasonable that Board members may wish to seek some legal counsel to assist them in their participation. Section 740 of the *Local Government Act* provides that a board may provide indemnification of regional district officials by bylaw and by resolution in a specific case. Bylaw No. 237 being “Comox Valley Regional District Elected Officials, Directors, Officers and Employees Indemnification Bylaw No. 237” provides broad indemnification for board members against claims for damages, prosecutions or statutory penalties arising out of the performance of their duties as well as payment of associated legal fees. As breaches of the code of conduct are not court or trial processes, the proposed policy provides that related legal costs would not be covered under the Indemnification Bylaw. A provision, however, has been included whereby a member of the board may submit a request to the board for reimbursement for the costs of legal representation and advice. Aligned with other local governments, staff’s proposal provides that the board may provide for such reimbursement under certain circumstances (first formal complaint process), and with certain limits (maximum \$10,000).

- Fairness:

Local governments are obligated to ensure a high standard of procedural fairness when conducting investigations and undertaking enforcement of codes of conduct. This has been confirmed numerous times by the courts due to the impact such processes can have on an individual member. The proposed process for the CVRD includes use of the Chair and the CAO in the initial informal resolution process but where not resolved, a commissioner with the necessary skills and expertise would investigate. This separates the board and staff from parts of the process that have often produced procedural fairness challenges. Staff have also suggested a

short timeframe of 30 days for the commissioner to produce a report summarizing their formal investigation. This is aligned with the best practices guidance which suggests that a shorter process can avoid further erosion of relationships from a drawn-out process. Finally, staff have also proposed in the policy specific direction to the Board about what it must consider in making any decisions on sanctions. This is recognized as enhancing fairness and reducing the potential for bias.

- Election period:
Some local government codes of conduct restrict complaints during a period prior to local government elections. Such provisions may help to reduce politically motivated complaints while also recognizing the potential added challenges in seeking resolution of complaints during this time. The date range for such restrictions are varied in the reviewed local governments but staff have proposed August 1st in consideration of the overall complaint process timeline and its proximity to the legislated election date of the third Saturday in October every four years.
- Sanctions:
While sanctions are not specifically outlined in the *Community Charter* or the *Local Government Act*, the courts have found that local governments have the ability to manage conduct and to sanction in cases of misconduct. Although the sanctions imposed by a council or board cannot prevent a member from fulfilling their legislated duties of elected office, the scope of this authority has not been defined, leading to some uncertainty about what specific sanctions may be imposed. Given this, the proposal from staff does not limit the board to only impose sanctions from the list provided but provides them as options. Best practice guidance suggests that, aside from enhanced transparency, noting potential sanctions helps ensure awareness of potential consequences for contraventions, thereby contributing to improved compliance. The proposed policy also provides that the commissioner's report may also include considerations respecting the imposition of sanctions.
- Transparency and Confidentiality:
Striking an appropriate balance of transparency and confidentiality is recognized as a complex undertaking respecting code of conduct enforcement. Put simply, confidentiality during the complaint and investigation phase is central to ensuring a process free from bias. Alternatively, transparency during the deliberation and decision-making phase of the process is central to ensuring accountability. Provincial legislation encourages public transparency through their legislative meeting framework that provides that council and board meetings are generally open by default and closed by exception. Where a subject matter does not meet with criteria for consideration in a closed session, the council or board must consider it in an open meeting. For these reasons the proposed process by staff includes a requirement that when the board deliberates and votes on the investigation report, it will do so in a public meeting and the investigation report must be made available to the public. This does not preclude the board from discussing the report in closed session but it would need to be for a valid reason, such as potential litigation or the receipt of legal advice.

Options

The following options are identified respecting this matter:

1. The board may proceed with amending the policy as described and recommended through this report.
2. The Board may direct alternative changes to the Board Code of Conduct or direct staff to undertake further investigation of specific interests or considerations.
3. The board may take no action and thereby refrain from making changes to the existing policy.

Financial Factors

Administering complaints under the Code of Conduct Policy will accrue costs for the regional district; however, even if such matters were omitted any complaints would still incur similar costs given the need for individuals with specialized skills to investigate complaints under the policy. Ultimately, costs in any given year will depend on the number of complaints that arise and their complexity. To minimize the potential cost impacts staff have proposed a number of measures (e.g. limit who can make a complaint, informal resolution processes, limited cost reimbursement) to try and ensure such costs are minimized as much as possible.

It is noted that any costs associated with such processes would be funded through Function 100 - Member Municipality Administration and Function 130 - Electoral Area Administration.

Strategic Considerations: Strategic Drivers and Regional Growth Strategy

CVRD Board Strategic Drivers:					
Fiscal Responsibility		Climate Crisis and Environmental Stewardship and Protection		Community Partnerships	Indigenous Relations

Responsible conduct and adherence to ethical standards are recognized as important elements of good overall governance. Conflicts and misconduct can easily erode board effectiveness and its ability to advance its key strategic priorities such as the CVRD Board’s Strategic Drivers and Regional Growth Strategy. For this reason, it is suggested that the inclusion of a complaints, investigation and enforcement process for the code of conduct is generally supportive of the Board Strategic Drivers in a broad sense but without specific relation to each individual driver.

CVRD Regional Growth Strategy Goals:					
Housing		Ecosystems, Natural Areas and Parks		Local economic development	Transportation
Infrastructure		Food Systems		Public Health & Safety	Climate Change

The matters considered by this report do not have relevance to the goals of the CVRD Regional Growth Strategy but are broadly supported through effective governance as noted in the above section.

Intergovernmental Factors

This report has not been formally reviewed or considered by the CVRD’s member municipalities. Each local government within the province is charged with following the new legislation concerning codes and conduct and general collaboration and guidance is anticipated as the new regulations and ethics programs are developed and implemented.

Citizen/Public Relations

Public engagement has not been conducted on the Code of Conduct Policy. The existing policy has been primarily informed by the guide developed by the Working Group on Responsible Conduct, a joint initiative of the B.C. Ministry of Municipal Affairs, the Local Government Management Association of British Columbia, and the Union of British Columbia Municipalities. The Working

Group explored approaches from other Canadian provinces and engaged extensively with the local government Elected Officials, senior management staff and legal experts.

Attachments: Appendix A – P78 Board Code of Conduct redlined version

Policy Title: Board Code of Conduct	Policy Number: P78
Policy Category: Administration	
Approval Date: August 25, 2020	Policy Owner: Corporate Services
Approved by: CVRD Board	File Reference: 0340-50

PREAMBLE

1. As local elected representatives the Board recognizes that responsible conduct is essential to providing good governance for the Comox Valley Regional District.
2. Board members are required to conduct themselves to the highest ethical standards by being an active participant in ensuring that the foundational principles, and the standards of conduct set out below, are followed in all dealings with every person, including those with other members, staff, and the public.

PRINCIPLES

3. The Board recognizes that responsible conduct is based on the foundational principles of integrity, accountability, leadership, responsibility, respect, openness and collaboration.
 - Integrity – Board members must carry out their responsibilities to the highest standard of integrity and are expected to:
 - make decisions that benefit the community;
 - act lawfully and within the authorities of the Comox Valley Regional District;
 - be free from undue influence and not act, or appear to act, in order to gain financial or other benefits for themselves, family, friends or business interests.
 - Accountability – Board members are obligated to answer for a responsibility that has been entrusted to them. They are responsible for the decisions they make.
 - Leadership – Board members must demonstrate and promote the key principles of the Code of Conduct through their decisions, actions and behaviour. Their behaviour must build and inspire the public's trust and confidence in the Regional District.
 - Responsibility – Board members must act responsibly, within the law and within the authorities of the *Local Government Act*. They must follow the letter and spirit of policies and procedures, and exercise all conferred power strictly for the purpose for which the powers have been conferred.
 - Respect – Board members must conduct public business efficiently, with decorum and with proper attention to the Comox Valley Regional District's diversity. They must treat each other and others with respect at all times. This means not using derogatory

language towards others, respecting the rights of other people, treating people with courtesy and recognizing the different roles others play in local government decision making;

- Openness – Board members have a duty to be as open as possible about their decisions and actions while respecting the need to keep confidential matters confidential; and
- Collaboration – The social fabric of communities and the health and wellbeing of citizens depend on solid and sustainable community partnerships. Board members shall seek to collaborate whenever possible and appropriate and shall utilize this principle to guide their work and conduct.

PURPOSE

4. The purpose of this ~~policy~~ Policy is to:
 - i. establish standards for the ethical conduct of elected officials relating to their roles and obligations as representatives of the Comox Valley Regional District; and
 - ii. provide clarity to the public as to the behaviour they can expect from CVRD elected officials.

SCOPE

5. All elected and appointed CVRD Directors, Alternate Directors and the Chief Administrative Officer.

DEFINITIONS

Board members: all Directors and Alternate Directors of the Comox Valley Regional District

CAO: Means the Chief Administrative Officer for the Comox Valley Regional District.

Commissioner: Means the person appointed as the Ethics Commissioner by the Board to fulfill the duties and responsibilities assigned to that position as set out in this Policy or an ad hoc Commissioner appointed by the CAO to administer this Policy in respect of an individual complaint.

POLICY

General Conduct

6. All Board members must adhere to the key principles and provisions of the Code of Conduct.
7. Board members must act lawfully and within the authorities of the Local Government Act and Community Charter, and exercise a reasonable degree of care and diligence in carrying

out their functions.

8. Board members have an obligation to consider issues consistently and fairly.
9. Board members must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, Board members must avoid conduct that:
 - (1) Contravenes the law, including the BC Human Rights Code, the Local Government Act, the Community Charter, CVRD Bylaws, associated regulations, and CVRD Policies;
 - (2) Is an abuse of power or otherwise amounts to discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others;
 - (3) Prejudices the provision of a service or services to the community.
10. Board members are obliged to question any request to act or make a decision that they think may be unethical or unlawful.

~~11. The Chief Administrative Officer must carry out his/her duties in a manner that allows Board members and the public to remain informed about local government activity and practices.~~

Conflict of Interest

~~12.11.~~ Board members are expected to make decisions that benefit the community. They are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, family, friends, or business interests.

~~13.12.~~ Board members must appropriately resolve any conflict or incompatibility between their personal interests and the impartial performance of their duties in accordance with statutory requirements of the Community Charter.

Meetings

~~14.13.~~ Members will recognize the importance of the role of the chair of meetings, and treat that person with respect at all times.

~~15.14.~~ Board members shall prepare themselves for meetings, listen courteously and attentively to all discussions before the body, and focus on the issues and the facts.

~~16.15.~~ The diverse perspectives of each director, as they reflect the interests of their own communities, will be respected.

~~17.16.~~ When making decisions, Board members must consider all relevant facts, opinions and analyses of which they should be reasonably aware.

~~18~~17. Strong disagreements and conflicts will be seen as a natural part of board and committee work. Such disagreements will not be taken personally, nor made personal.

~~19~~18. Board members can expect courteous behaviour from each other. Directors shall not interrupt other speakers, make personal comments or comments not germane to the business of the body, or otherwise disturb a meeting. Meetings shall provide an environment for transparent and healthy debate on matters requiring deliberation by the Board.

~~20~~19. Board members, when speaking publicly and at board and committee meetings, will avoid inflammatory language. They are expected to speak in an objective manner.

Policy Role of the Board

~~21~~20. Members shall respect and adhere to the Board-~~Chief Administrative Officer~~CAO structure of government as practiced at the Comox Valley Regional District. In this structure, the Board determines the policies of the CVRD with the advice, information and analysis provided by the public, committees, and CVRD staff. Members, therefore, shall not interfere with the administrative functions of the CVRD or with the professional duties of staff; nor shall they impair the ability of staff to implement Board policy decisions.

Use of Public Resources

~~22~~21. Members shall not use public resources, which are not available to the public in general, such as staff time, equipment, supplies or facilities, for private gain or personal purposes.

Communication and Media Relations

~~23~~22. The Regional District Board Chair is the spokesperson for the Regional District on Board matters.

~~24~~23. Board members will accurately communicate the decisions of the Board, even if they disagree with the majority decision of the Board. Board members will refrain from making disparaging comments about other Directors, the Board's decision itself or individual staff and by doing so will affirm the respect for and integrity of the decision making process of the Regional District Board.

Gifts and Personal Benefits

~~24~~. Board members shall not accept any money, property, position or favour of any kind whether to be received at the present or in the future, from a person having, or seeking to have dealings with the CVRD, save for appropriate refreshments or meals, except where such a gift or favour is authorized by law, or where such gifts or favours are received as an

incident of the protocol, social obligation or common business hospitality that accompany the duties and responsibilities of the member.

Informal Complaint Procedure

25. If disputes arise under this Policy, Board members shall endeavour to resolve them promptly and in good faith.
26. Any Board member or member of staff who considers that they have been subjected to or has identified or witnessed behavior or an activity by a Board member that they believe, in good faith, is in contravention of this Policy may address the prohibited conduct by:
- (1) advising the Board member that the conduct violates this Policy and request that the contravention cease immediately; or
 - (2) requesting the CAO and Board Chair to assist in discussion of the alleged complaint with the Board member in an attempt to resolve the matter.
27. Where appropriate, the informal complaint process described in section 26 is encouraged as the first means of remedying conduct that may be violation this Policy, however, it is not a prerequisite to pursuing a formal complaint.

Formal Complaint Procedure

28. Any Board member or member of staff who considers that they have been subjected to or has identified or witnessed behavior or an activity by a Board member that they believe, in good faith, is in contravention of this Policy may file a formal complaint and seek resolution in accordance with the following procedure:
- (1) All complaints must be delivered in writing to the CAO, be dated and signed and contain the particulars of the complaint, including the date on which the conduct that is the subject of the complaint occurred and the part or parts of this Policy that the complainant alleges has or have been breached;
 - (2) The CAO must not accept multiple complaints concerning the same matter. In the event that the CAO receives multiple complaints concerning the same matter, the CAO must proceed with the first complaint accepted, but may expand the complaint and/or add complainants for the purpose of seeking resolution of the complaint and where required, the conduct of the preliminary assessment and formal investigation by the Commissioner.
 - (3) Upon receipt of a complaint the CAO shall inform the respondent, share a copy of the complaint and request a written response within 10 days to assist in the initial review of the complaint.
 - (4) The CAO and the Chair shall review the material information provided and meet with the complainant and the respondent to seek resolution of the complaint. Where

- appropriate, the CAO or the Chair may engage the Commissioner or appoint another third party to assist in resolving the complaint or at their discretion.
- (5) If the complaint cannot be resolved, the Commissioner shall conduct a preliminary assessment;
- (6) As part of the preliminary assessment of the matter the Commissioner may request further information from the complainant and respondent.
- (7) Based on the preliminary assessment the Commissioner must determine whether the complaint should be pursued further through a formal investigation. The following are some of the potential reasons why a complaint may not be pursued:
- (a) the allegations are not within jurisdiction of the Policy;
 - (b) the complaint is deemed to be frivolous or vexatious or not made in good faith;
 - (c) the complaint would be more appropriately addressed through another process;
 - (d) there is insufficient evidence or information for concluding that a violation of this Policy has occurred;
 - (e) an extensive delay or unreasonable delay (i.e. more than six months) has occurred;
- (8) If a complaint is not rejected or closed the Commissioner must proceed with a formal investigation.
- (9) The Commissioner must notify the complainant, the respondent and the Chair and CAO in writing of the findings of the preliminary assessment and set out the reasons therefore.
- (10) If a formal investigation is determined appropriate, the Commissioner shall take all such steps as may be considered appropriate, including:
- (a) speaking to anyone relevant to the complaint;
 - (b) seeking legal advice;
 - (c) requesting disclosure of documents relevant to the complaint; or
 - (d) accessing any record in the possession or control of the CVRD, except a record that is subject to privilege.
- (11) All proceedings of the investigation shall be confidential and comply with the rules of procedural fairness and natural justice required in the circumstances.
- (12) Within 30 days of making a decision to proceed with a formal investigation, the Commissioner shall provide the complainant, respondent and the Board a written report containing the results of the investigation and a determination of whether a contravention occurred. The report may also include considerations respecting the imposition of a sanction if contravention has been found;
- (13) A Board member who is the subject of an investigation shall be afforded an opportunity to respond to the allegations at the time of receipt by the Board of the Commissioner's report and is entitled to be represented by legal counsel;
- (14) The Commissioner's report provided to the Board may be considered in a closed meeting for the purpose of receiving legal advice, or other valid reason, however, when the Board deliberates and votes on the investigation report, it will do

so in a public meeting and the investigation report must be made available to the public.

(15) The Commissioner must ensure that the investigation report as drafted complies with the CVRD's obligations regarding disclosure of personal information set out in the Freedom of Information and Protection of Privacy Act, or ensure that appropriate redactions are applied prior to release to the public.

29. For clarity, if the CAO or the Commissioner, at any stage in the complaint procedure, determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code*, the CAO or Commissioner must immediately refer the matter to the appropriate authorities and suspend the complaint process until any resulting police investigation and charge have been finally disposed of.

30. In the event that Board Chair or CAO is a direct party to a complaint under this Policy, they shall remove themselves from any role other than that of complainant or responder. In cases involving the CAO, all references to CAO contained within this Policy shall be deemed to be the Deputy CAO. In the case of a complaint against the Chair, all references to Chair contained within this Policy shall be deemed to be the Vice-Chair.

31. Nothing in this Policy precludes the complainant from taking measures that the complainant is entitled to take under law, including but not limited to filing a human rights complaint, a grievance or other applicable process under a collective agreement, a complaint with WorkSafe BC, or other proceedings, as applicable.

Election Period

32. Any formal complaint against a Board member received after August 1 in a general election year shall be held in abeyance until the new Board has been sworn in following the election. If the respondent is not re-elected in that election, the CAO must notify the complainant and respondent in writing that the complaint is closed on this basis.

Remedies

33. The Board shall decide on which appropriate measures, if any, are warranted by a contravention of this Policy. In determining the appropriate measure, the Board shall consider the following factors:

- (a) the degree and nature of the conduct;
- (b) whether the contravention was a single or repeated act;
- (c) whether the Board member was told that the conduct was unwelcome or offensive, and nonetheless continued the conduct;
- (d) the nature of the work relationship of the complainant and the respondent, and whether the Board member was in a position of authority over the complainant, such that the degree and nature of the conduct was thereby exacerbated by an abuse of power;

- (e) the impact of the contravention on the complainant;
- (f) the Board member's acknowledgment of wrongdoing; and
- (g) the Board member's history of other contraventions.

34. After considering the prescribed factors and upon the finding that the Board member has breached this Policy, the Board may impose sanctions including the following:

- (a) letter of reprimand addressed to the Member;
- (b) motion of censure;
- (c) a request that the Member issue a letter of apology;
- (d) publication of a letter of reprimand or request for apology and the elected official's response;
- (e) recommendation to attend training;
- (f) suspension or removal from some or all internal and external Board committees and bodies to which the Board has the right to appoint members;
- (g) restricting the Member from attending events as a representative of the Board;
- (h) imposing further limits on Board-related travel or expenses beyond those set out in CVRD bylaws or policies;
- (i) requiring the return of regional district property provided for convenience;
- (j) limiting access to certain regional district facilities;
- (k) restricting how documents are provided to the member;
- (l) referral to a prosecutor or police; and
- (m) any other sanction the Board deems reasonable and appropriate in the circumstances, provided that the sanction does not prevent a Board member from fulfilling the legislated duties of an elected official and the sanction is not contrary to provincial legislation.

Reprisals and Obstruction

35. No Board Member or staff will threaten or undertake any active reprisal against a complainant or against a person who provides information in the context of an investigation under this policy.

36. No Board Member or staff will tamper with or destroy documents or electronic records related to any matter under investigation under this Policy or refuse to respond to the Commissioner when questioned regarding an investigation.

37. Any individual covered by this Policy who is found to have engaged in any reprisal or retaliation in violation of this Policy will be subject to appropriate disciplinary action, which action may include, and is not limited to, the sanctions and remedies described above, or in the case of staff, disciplinary action up to and including the termination of employment for just cause, as applicable.

Reimbursement of Costs

38. For clarity, actions by Board Members as outlined in Bylaw No. 237 being “Comox Valley Regional District Elected Officials, Directors, Officers and Employees Indemnification Bylaw No. 237”, as replaced or amended from time to time, do not apply to this policy.

39. A Board Member may make a request to the Board for reimbursement for the costs of legal advice and representation in responding to the formal complaint process outlined in this Policy. If appropriate after considering all circumstances, the Board may resolve to reimburse legal fees reasonably incurred by a Board Member, provided that all of the following are met:

- (a) the Commissioner ultimately does not determine that the Board member acted with dishonesty, gross negligence, or malicious or willful misconduct;
- (b) it is the Board member’s first formal complaint process within a given four-year term of office; and
- (c) such legal costs do not exceed \$10,000.

Vexatious Allegations and Complaints

40. Any individual covered by this Policy who makes an allegation or complaint under this Policy that is subsequently found to have been made in a deliberately vexatious or malicious manner, or otherwise to have been made in bad faith, will be subject to appropriate disciplinary action, which action may include, but is not limited to:

- (a) in the case of Board Members, sanctions and remedies described in Section 34.
- (b) in the case of staff, the termination of employment for just cause, as applicable.

ROLES AND RESPONSIBILITIES

Implementation and Review

4.41. The Board Code of Conduct is intended to be self-enforcing. Members should view the Code as a set of guidelines that express collectively the standards of conduct expected of them. It, therefore, becomes most effective when Members are thoroughly familiar with the Code and embrace its provisions. For this reason, the Code of Conduct shall be reviewed on an annual basis at the inaugural meeting or at another duly convened meeting at the discretion of the Board Chair. The Code of Conduct shall also be reviewed in detail at orientation sessions for new and returning directors following each general local election.

REVISION HISTORY

Approval Date	Approved By	Description of Change
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