MUNICIPALITY OF CLANWILLIAM-ERICKSON
BYLAW NO.68-20

BEING A BY-LAW OF THE MUNICIPALITY OF CLANWILLIAM-ERICKSON TO ESTABLISH AND REGULATE A CODE OF CONDUCT FOR MEMBERS OF COUNCIL

WHEREAS under ***The Municipal Act*** a council must establish, by by-law, a code of conduct that applies to the members of council;

AND WHEREAS under ***The Municipal Act*** a council must establish the process for dealing with contraventions to the code, including the procedures for receiving reports of contraventions;

AND WHEREAS under ***The Municipal Act*** a council must set out the sanctions that may be imposed on a member or the remedial measures that a member may be required to take if they are found to have contravened the code;

AND WHEREAS under ***The Municipal Act*** a council must comply with the requirements of provincial regulations concerning codes of conduct;

AND WHEREAS the public is entitled to expect the highest standards of conduct from the members that it elects to council for the Municipality of Clanwilliam-Erickson;

AND WHEREAS the Municipality of Clanwilliam-Erickson, recognizes that public confidence and public trust are essential to good governance, and to promote public confidence and trust, the Municipality of Clanwilliam-Erickson] is committed to fostering and maintaining the highest standards of professionalism and ethical conduct among its council members;

AND WHEREAS the Municipality of Clanwilliam-Erickson deems this by-law to be advisable, in the public interest and aligned with municipal purposes of promoting good government.

THEREFORE BE IT RESOLVED that the council of the Municipality of Clanwilliam-Erickson, in open meeting assembled, enacts as follows:

SHORT TITLE

1. This By-law may be cited as the “Code of Conduct for Members of Council By-law”.

DEFINITIONS

2. In this by-law,

a. **“Act”** or **“Municipal Act”** means *The Municipal Act* of Manitoba, C.C.S.M. c. M225, and associated regulations, as amended;
b. **“administration”** means the administrative and operational arm of the municipality, comprised of the various departments and business units and including all employees;
c. **“CAO”** means Chief Administrative Officer of the municipality, or their delegate;
d. **“complainant”** means the person who commences a complaint or on who’s behalf a complaint was commenced;
e. **“council”** means the elected council of the Municipality
f. **“employees”** means any person employed by the municipality, and includes the Chief Administrative Officer, designated officers, full-time, part-time, contract, or casual employees, including volunteers;
g. **“inappropriate behaviour**” means disrespectful behaviour, sexual harassment, harassment, bullying and/or violence;
h. **“investigator”** means a committee of council or a third party appointed by council to investigate a complaint and recommend sanction(s);
i. **“member(s)”** means the councillor(s), including the head of council;

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j. **"municipality"** means the [name of municipality]; and
k. **"respondent"** means the person against whom a complaint is commenced.

PRINCIPLES

3.1 The council has a duty to consider the well-being and best interests of the municipality as a whole. All members must conduct themselves in such a way as to promote public trust and public confidence in the council and the municipality.

3.2 It is each member's individual responsibility to uphold both the letter and the spirit of this code of conduct By-law.

PURPOSE

4. The purpose of this code of conduct By-law is to establish:
a. the standards and values that council members must uphold in carrying out their duties under *The Municipal Act* or any other relevant legislation;
b. the application and enforcement of those standards and values;
c. the sanctions available to address code of conduct violations; and
d. procedures for updating the code of conduct.

RULES FOR INTERPRETATION

5. This code of conduct By-law is intended to supplement any other legal duties imposed on members of council by an enactment of the Parliament of Canada and the Legislature of Manitoba, by-laws, including but not limited to:
a. The Municipal Act;
b. The Municipal Council Conflict of Interest Act; C.C.S.M. c. M255
c. The Human Rights Code; C.C.S.M. c. H175
d. The Freedom of Information and Protection of Privacy Act; C.C.S.M. c. F175;
e. The Workplace Safety and Health Act; C.C.S.M. c. W210 and
f. The Criminal Code of Canada, R.S.C., 1985, c. C-46.

APPLICATION

6.1 This code of conduct By-law applies to all members of the council, and their interactions in and outside of the council chambers, including those with:
a. other council members;
b. municipal employees; and
c. members of the public.

6.2 This code of conduct By-law applies to behaviour that:
a. reflects negatively on the municipality;
b. affects the council member's ability to perform their duties effectively;
c. affects the ability of other council members or employees of the municipality to perform their duties effectively; and/or
d. restricts the council or administration's ability to meet operational requirements.

6.3 This code of conduct By-law applies within the council chambers, but also to all behaviours and actions connected to the municipality, including but not limited to:
a. conferences, travel and public events;
b. online and social media interactions, including but not limited to emails, text messages, Facebook, Twitter and LinkedIn profiles and posts, or
c. any activities including those occurring outside of the municipality.

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RULES GOVERNING MEMBER CONDUCT

7.1 Council has a responsibility to create and maintain an environment that is respectful and free of all forms of harassment, including sexual harassment and bullying.

Integrity

7.2 Council members will demonstrate strong ethical principles, working together to further the best interests of the municipality in a consistent, truthful and honourable way.

Leadership and Collaboration

7.3 Council members are expected to:

a. demonstrate an ability to lead, listen to, and positively influence others;
b. demonstrate respect and value the distinct roles and responsibilities others play in creating an accountable and transparent municipal government;
c. commit to fostering positive working relationships with other council members, employees, and the public; and
d. recognize that debate is an essential part of the democratic process, participate in constructive conversation, and encourage other members and staff to provide their perspectives on relevant issues.

Accountability

7.4 Council members must:

a. demonstrate accountability, individually and as part of council as a whole, by accepting responsibility for actions and decisions, including acts of commission and acts of omission; and
b. ensure the appropriate use of municipal resources.

Responsibility

7.5 Council members must:

a. demonstrate responsibility by acting in accordance with the enactments of the Parliament of Canada and the Legislature of Manitoba, including *The Municipal Act*; and
b. demonstrate responsibility by acting in accordance with the by-laws, resolutions, policies and procedures of the municipality.

Respect

7.6 Council members must:

a. demonstrate respect towards other council members, municipal employees and the public;
b. seek to include rather than exclude;
c. treat every person with courtesy, dignity, and fairness;
d. foster an environment of trust by showing consideration for every person’s values, beliefs and contributions, and supporting and encouraging others to participate in council activities;
e. demonstrate awareness of their own conduct, and consider how their words or actions may be perceived as offensive or demeaning;
f. demonstrate respect for the decision-making processes of the municipality, accepting that a decision of council is a decision of council as a whole and making every effort to accurately communicate that decision;
g. demonstrate respect for the professional capacities of municipal employees, including employees’ responsibility to provide unbiased and objective advice without undue influence from any individual member or faction of council;
h. not attempt to require an employee to undertake personal or private tasks on behalf of a member or council; and
i. not use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any employee with the intent of interfering with that person's duties, including the duty to disclose improper activity.

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Harassment

7.7 Council members must not harass or bully other members of council, municipal employees or members of the public.

a. Harassment may be written, verbal, physical, online or electronic, a gesture or display, or any combination of these. Harassment may happen only once, but often happens repeatedly.
b. Harassment includes objectionable conduct and bullying.
c. Objectionable conduct includes behaviours that create a risk to the health of a council member, municipal employee and/or the public.
d. Objectionable conduct may be based on any of the following: race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, marital status, family status, source of income, political belief, political association, political activity, disability, physical size or weight, age, nationality, ancestry or place of origin
e. Bullying behaviours include severe conduct that adversely affects a person's psychological or physical well-being.
f. Conduct is considered severe if it is:

i. repeated humiliation or intimidation that adversely affects a person's psychological or physical well-being; or
ii. a single instance so serious that it has a lasting, harmful effect on a person.

Sexual Harassment

7.8 Council members must not engage in harassment based on sex, gender, gender identity or expression, or sexual orientation.

a. Sexual harassment can be sexual in nature, but can also include any form of harassment based on sex, gender or sexual orientation.
b. Sexual harassment can also refer to behaviour that creates or permits a sexualized or sexually charged, or a negative/poisoned atmosphere.
c. Sexual harassment may be written, verbal, physical, online or electronic, a gesture or display, or any combination of these.

FORMAL COMPLAINT RESOLUTION PROCESS

8.1 A council member may file a code of conduct complaint, in an approved form, with the CAO if:

a. A council member believes that another council member has contravened this code of conduct; and
b. An informal resolution of the complaint was initiated by the council member, but the complaint could not be resolved informally.

8.2 A completed code of conduct complaint form must be filed with the CAO not later than 30 days after the date the council member became aware of the conduct giving rise to the complaint unless that complaint involves allegations of sexual harassment.

8.3 Despite clause 8.1(b) an informal resolution of the complaint does not need to be initiated by the complainant prior to filing a code of conduct complaint form with the CAO, if the complaint involves allegations of sexual harassment.

8.4 A completed code of conduct complaint form that involves allegations of sexual harassment must be filed with the CAO not later than 90 days after the date the complainant became aware of the conduct giving rise to the complaint.

Complaint Initial Assessment

8.5 Within seven days of receiving a completed code of conduct complaint form, the CAO must:

a. Forward the completed code of conduct complaint form to a provincially approved third party reviewer for initial assessment; and
b. Notify the respondent and provide them with a copy of the code of conduct and the completed code of conduct complaint form.

8.6 The third party reviewer must conduct an initial assessment of the complaint and determine whether the complaint is accepted or whether to recommend the complaint be dismissed.

8.7 The third party reviewer may recommend the dismissal of complaints that are frivolous, vexatious, or outside of the scope of the code of conduct.

8.8 The third party reviewer must within seven days of his or her receipt of the complaint, notify the CAO, the complainant and the respondent in writing, with reasons, of his or her initial assessment decision.

8.9 If a third party reviewer's decision is to accept the complaint, it must proceed to the next phase of the formal complaint resolution process.

8.10 If a third party reviewer's decision is to recommend dismissing the complaint, the initial assessment decision and reasons must be put before council to review at the closed (in camera) portion of the next scheduled council meeting, where council must resolve in a public meeting to:

a. Accept the third party reviewer's recommendation to dismiss the complaint and close the file; or
b. Decline the third party reviewer's recommendation to dismiss the complaint and permit the complaint to proceed to the next phase of the formal complaint resolution process.

8.11 Costs of the initial assessment conducted by a third party reviewer are the responsibility of and must be paid by the municipality.

Mediation

8.12 Upon a complainant's complaint being accepted the CAO must inform the complainant and the respondent of the option to proceed to mediation to try to resolve the complaint.

8.13 Mediation is a voluntary process. If both the complainant and the respondent agree to proceed to mediation to resolve the complaint, the parties must jointly select a mediator. If the parties cannot agree on the choice of mediator or if the selected mediator is not available to commence the mediation within 30 days, the CAO must select a mediator from a provincially provided list of mediators based on provincially provided criteria.

8.14 Costs of the mediation process are the responsibly of and must be paid by the municipality.

8.15 If the mediator concludes at any time that a mediated resolution of the complaint is not possible, the mediator must return the file to the CAO for the complaint to proceed to investigation. The mediator will not provide any report or assessment on the issue.

8.16 If a complaint is settled on terms satisfactory to the complainant and the respondent, the complaint file is closed.

Investigation

8.17 If the complainant and the respondent to a complaint do not agree to mediation or a mediated resolution is not possible, the complaint must proceed to investigation.

8.18 Subject to section 8.19 a committee of council or a third party may conduct a code of conduct complaint investigation.

8.19 If either the complainant or the respondent indicates that they want a third party to conduct the investigation, a third party must conduct a code of conduct complaint investigation.

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8.20 If a third party investigator is used, the complainant and respondent must jointly select a investigator. If the parties cannot agree on the choice of third party investigator or if the selected investigator is not available to commence the investigation within 30 days, the CAO must select a third party investigator from a provincially provided list of investigators based on provincially provided criteria.

8.21 Costs of an investigation are the responsibly of and must be paid by the municipality.

8.22 The investigator must provide the CAO, the complainant and the respondent with a report summarizing the findings of their investigation into contraventions of the code of conduct and in accordance with section 10, recommend sanction(s), where appropriate.

COUNCIL REVIEW AND VOTE

9.1 Council must review and consider an investigation report at the closed (in camera) portion of the next scheduled council meeting after receiving the investigation report.

9.2 When the review is finished, council must re-open the meeting to the public and hold a vote to determine if the member breached the code of conduct and the appropriate sanction(s), if any.

SANCTIONS

10.1 Council must consider the following factors when determining to impose a sanction on a member:

a. The nature of the code of conduct contravention;
b. The length or persistence of the code of conduct contravention;
c. If the member knowingly contravened the code of conduct;
d. If the member took steps to mitigate or remedy the code of conduct contravention;
e. If the member previously contravened the code of conduct.

10.2 Council may impose only the following potential sanctions:

a. Censuring the member;
b. Reprimanding the member;
c. Requiring the member to issue a letter of apology within 30 days after being directed to do so;
d. Requiring the member to attend training as directed by council;
e. Suspending or removing the member's presiding duties under subsection 83(2) of The Municipal Act, if applicable;
f. Suspending or removing the member as the deputy head of the council, if applicable;
g. Suspending or removing the member as chair of a committee, if applicable;
h. Suspending or removing the member from any or all council committees or bodies on which the member serves;
i. Suspending the member from carrying out a power, duty or function as a member for a period not exceeding 90 days;
j. Reducing or suspending the member's compensation for the duration of any suspension imposed under clause (i);
k. Imposing a fine of not more than $1,000, to be paid within 30 days after being imposed.

10.3 If sanctions are imposed, a sanctioned member must be provided with a copy of the resolution authorizing the sanction as soon as practicable after the council meeting at which the resolution was passed.

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10.4 A council member who does not comply with or complete a sanction in the time period required by the council, the council member may not carry out a power, duty or function as a member until they do so.

APPEALS

11.1 A council member may appeal a sanction solely on the basis that their conduct did not contravene the code of conduct.

11.2 To appeal a sanction, a council member must file a Notice of Appeal form, include a statement setting out the reasons for the appeal and an optional written submission (five pages maximum) with the Appeals Director.

11.3 Appeals must be filed using the standardized Notice of Appeal form within 30 days after the sanction is imposed. The filing of an appeal stays the sanction pending the resolution of the appeal.

11.4 In responding to an appeal, council is required to follow the steps prescribed in the Council Members' Codes of Conduct Regulation, in effect November 1, 2020.

11.5 The council member may provide to the Appeals Director a written response to the municipality's submission within 15 days after receiving it. The member's response must address only the matters raised by the municipality in its submission.

11.6 As soon as practicable after receiving all possible submissions from the parties, the Appeals Director will make a written decision and provide the parties with a copy of the decision.

11.7 When deciding an appeal, the Appeals Director may confirm the council's sanction or quash it.

11.8 A decision made by the Appeals Director is final and is not subject to appeal.

REVIEW AND REVISION OF THE CODE

12. Council must review this code of conduct By-Law annually to ensure it effectively meets its needs.

SEVERABILITY

13. If any provision of this by-law is held to be invalid by any court of competent jurisdiction, the remaining provisions of the by-law shall not be invalidated.

DONE AND PASSED as a by-law of the Municipality of Clanwilliam-Erickson at Erickson in the Province of Manitoba on this 14th day of October, 2020.

_____
Victor Baraniuk
Reeve

_____
Quinn Greavett
Chief Administrative Officer

Read a first time this 9th day of September, 2020.
Read a second time this 14th day of October, 2020.
Read a third time this 14th day of October, 2020.