

Town of O’Leary, PEI
A Bylaw to Provide for a Code of Conduct for Members of Council
Bylaw # 2019-02

BE IT ENACTED by the Council of the Town of O’Leary as follows:

PART I – INTERPRETATION AND APPLICATION

1. Title

1.1. This bylaw shall be known and cited as the “Code of Conduct Bylaw.”

2. Purpose

2.1. The purpose of this bylaw is to set minimum expectations for the behaviour of members of Council in carrying out their functions and making decisions that benefit the Town of O’Leary.

3. Authority

3.1. Section 107 of the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1., provides that a Council must establish a Code of Conduct bylaw to govern the conduct of members of Council.

4. Application

4.1. This bylaw applies to the Mayor and all members of Council. It operates together with, and as a supplement to, the applicable common law and the following statutes, any regulations or other delegated legislation made pursuant to them:

- (a) the *Municipal Government Act*
- (b) the *Criminal Code of Canada*

4.2. This Code of Conduct is to operate in addition to other bylaws, policies and administrative directives as may be determined by Council.

5. Definitions

5.1. In this bylaw, any word and term that is defined in the *Municipal Government Act* has the same meaning as in that Act.

5.2. In this bylaw,

- (a) “Act” means the *Municipal Government Act*.
- (b) “Chief Administrative Officer” or “CAO” means the administrative head of a municipality as appointed by Council under clause 86(2)(c) of the *Municipal Government Act*.
- (c) “Confidential Information” means information that could reasonably harm the interests of individuals or organizations, including the municipality if disclosed to persons who are not authorized to access the information. This type of

information includes, but is not limited to, privileged information, personal information, third party information, technical, financial or scientific information and any other information collected, obtained or derived for or from municipal records that must or may be kept confidential.

- (d) "Council" means the Mayor and other members of the Council of a municipality.
- (e) "Councillor" means a member of Council other than the Mayor.
- (f) "Family Member" means in relation to a person, a spouse, parent, child, brother, sister, aunt, uncle, grandchild, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of the person;
- (g) "Person Closely Connected" means "person closely connected", in relation to a member, means a family member, an agent, a business partner or an employer of the member;
- (h) "Staff" includes the Chief Administrative Officer (CAO) and all staff of the municipality, whether full-time, part-time, contract, seasonal or volunteers.

6. Interpretation

- 6.1. This bylaw is to be given a broad, liberal interpretation in accordance with applicable legislation and the definitions set out in it.

7. Periodic Review

- 7.1. The Code of Conduct will be brought forward for review at the end of each term of Council or when relevant legislation is amended, and at other times when appropriate to ensure that it remains current and continues to be a useful guide to Members of Council.

PART II – PRINCIPLES

8. Guiding Principles

- 8.1. Members of Council are keepers of the public trust and must uphold the highest standards of ethical behaviour.
- 8.2. Members of Council are expected to act lawfully. They are expected 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 as a result of the member holding municipal office.
- 8.3. Members of Council have a duty to make decisions based on the best interests of the municipality as a whole.
- 8.4. Members of Council are responsible for the decisions that they make. This responsibility includes acts of commission and acts of omission. In turn, decision-making processes must be transparent and subject to public scrutiny.
- 8.5. Members of Council must act responsibly within the law and within the authority of the Act. All members of Council must observe the Code of Conduct. This means

disclosing actual or potential conflict of interest relating to their public duties and taking steps to resolve the conflict for the protection of the public interest.

- 8.6. Members of Council must demonstrate and promote the 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 municipal government.
- 8.7. Members of Council must conduct public business efficiently and with decorum. 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 municipal government decision making.
- 8.8. Members of Council have a duty to be as open as possible about their decisions and actions. This means communicating appropriate information openly to the public about decision-making processes and issues being considered, encouraging appropriate public participation, communicating clearly and providing appropriate means for recourse and feedback.

PART III – CONDUCT OF COUNCIL

9. General Conduct

- 9.1. Members of Council must adhere to the following principles and provisions:
 - (a) members of Council must serve, and be seen to serve, their constituents in a conscientious and diligent manner;
 - (b) members of Council must be committed to performing their functions with integrity and to avoiding conflicts of interest and the improper use of the influence of their office;
 - (c) members of Council must not extend, in the discharge of their official duties, preferential treatment to persons closely connected to the member or organizations and groups in which the member or persons closely connected to the member have a direct or indirect pecuniary interest;
 - (d) members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;
 - (e) members of Council must seek to serve the public interest by upholding both the letter of the law and the spirit of applicable federal, provincial and municipal laws;
 - (f) members of Council are obliged to question any request to act or make a decision that they think may be unethical or unlawful;
 - (g) members of Council must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, Council officials, staff and advisory body members must avoid conduct that is an abuse of power or otherwise amounts to

discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others; and

- (h) members of Council will respect the role of staff in the administration of the business affairs of the municipality.

10. Confidential Information

- 10.1. Members of Council must respect rules regarding confidentiality, disclosure and access to all personal information in the control of the Town of O'Leary pursuant to the [Protection of Personal Information] Bylaw.
- 10.2. No Member of Council will disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except where required by policy or law or authorized by the Council to do so.
- 10.3. No Member of Council will use confidential information for personal or private gain or for the gain any other person or entity.
- 10.4. Members of Council should not access or attempt to gain access to confidential information in the custody of the municipality unless it is necessary for the performance of their duties and is not prohibited by legislation, regulations and Council policy.
- 10.5. Council shall keep confidential information that falls into the following or similar categories:
 - (a) commercial information which, if disclosed, would likely be prejudicial to the municipality or parties involved;
 - (b) information received in confidence which, if disclosed, would likely be prejudicial to the municipality or parties involved;
 - (c) personal information, other than a person's address, that is protected under the *Municipal Government Act*; and
 - (d) human resource matters.

11. Public Disclosure Statements

Note: The Council Member Disclosure Statement is form approved by the Minister. It is available online at <https://www.princeedwardisland.ca/en/publication/council-member-disclosure-statement>. Municipal Affairs recommends including a link to the form on the municipal website or providing the link to councillors. Please note, it is best practice to provide the **link** to the Government of PEI website instead of uploading the form to the municipal website - forms are subject to change and the most up-to-date version will be available on the government website.

- 11.1. Each member of Council is required to file a Council Member Disclosure Statement with the CAO within thirty (30) days of being elected.
- 11.2. The Disclosure Statement will identify:

- (a) the name and nature of employment;
 - (b) financial interests;
 - (c) other involvement that may be seen to affect fairness in making a municipal decision.
- 11.3. Public Disclosure Statement will not include specific details about a member of Council's personal financial matters such as salary, the value of holdings or other specific personal financial information.
- 11.4. Each Council member is required to declare any subsequent changes to employment, financial interests or other involvements. The CAO shall make amendments to the Council member's Disclosure Statement, including a notation stating the date on which the statement is amended.

12. Gifts and Benefits

- 12.1. No member of Council shall accept a fee, advance, cash, gift, gift certificate or personal benefit that is connected directly or indirectly with the performance of their duties of office, except for the following:
- (a) compensation authorized under the Council and Remuneration and Compensation Bylaw;
 - (b) gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
 - (c) a suitable memento of a function honouring the member of Council;
 - (d) food, lodging, transportation and entertainment provided by another government or by a conference, seminar or event organizer where the member of Council is either speaking or attending in an official capacity at an official event;
 - (e) food and beverages consumed at banquets, receptions or similar events;
 - (f) communication to the offices of a member of Council, including subscriptions to newspapers, and periodicals; and
 - (g) sponsorships and donations for community events organized or run by a member of Council or by a third party on behalf of a member of Council.
- 12.2 No member of Council shall accept the use of property or facilities, such as a vehicle, office or vacation property, at less than fair market value.
- 12.3 No member of Council shall sell property, goods and services to the municipality at higher than fair market value.
- 12.3 A fee or advance paid, or a gift or benefit provided, with the Member's knowledge, to a person closely connected to a member is deemed to be a gift to the Member of Council.

13. Use of Municipal Property, Equipment and Services

- 13.1. No member of Council shall use, or request the use of, any municipal property, including surplus material or equipment for personal convenience or profit, unless the property is:
 - (a) available for such use by the public generally and the member of Council is receiving no special preference in its use; or,
 - (b) made available to the member of Council in the course of carrying out council activities and duties.
- 13.2. No Member of Council shall use, or request the use of, for personal purpose any municipal staff services, property, equipment, services, supplies or other municipally-owned materials, other than for purposes connected with the discharge of municipal duties.
- 13.3. No Member of Council shall obtain, or attempt to obtain, personal financial gain from the use or sale of municipally-developed intellectual property.
- 13.4. No Member of Council shall use information, or attempt to use information, gained in the execution of their duties that is not available to the general public for any purposes other than carrying out their official duties.
- 13.5. No Member of Council shall obtain, or attempt to obtain, personal financial gain from the use or sale of personal property to the municipality, except in compliance with the Act and the Conflict of Interest Bylaw.

14. Reimbursable Expenses

- 14.1. Members of Council may claim reimbursement by the municipality for the following expenses in accordance with the Town of O'Leary Remuneration Bylaw # 2018-07:
 - (a) expenses incurred by Members of Council for an official duty or function that are modest and represent the prudent use of public funds and do not involve the purchase of alcoholic beverages; and
 - (b) hospitality expenses incurred by Members of Council for meetings that include:
 - i. engaging representatives of other levels of government, international delegations or visitors, the broader public sector, business contacts and other third parties in discussions on official matters;
 - ii. providing persons from national, international and charitable organizations with an understanding and appreciation of the municipality or the workings of its municipal government;
 - iii. honouring persons from the municipality in recognition of exceptional public service and staff appreciation events;
 - iv. recognition events for various agencies, boards and commissions of the municipality; or
 - v. other community groups or associations.

15. Support for Charities

- 15.1. Members of Council may lend their support to and encourage community donations to registered charitable, not-for-profit and other community-based groups; however, all amounts raised through fundraising efforts shall go directly to the groups or volunteers or chapters acting as local organizers of the group.
- 15.2. No Member of Council shall directly or indirectly manage or control any monies received relating to fundraising for registered charitable, not-for-profit and other community-based groups.

16. Election Campaigns

- 16.1. No Member of Council shall use supplies, services, staff, municipal logo or other resources of the municipality for any election campaign or campaign-related activities.
- 16.2. A member of Council may only utilize a municipal facility or access equipment in the same manner as any other candidate for an election campaign purpose.
- 16.3. All members of Council shall be respectful of the role of the CAO and municipal electoral officer (MEO) in managing the municipal election process and shall not interfere with how the CAO and MEO carries out their duties.
- 16.4. No Member of Council shall use the services of persons for campaign-related activities during hours in which those persons receive any compensation from the municipality.

17. Planning or Procurement Proposals before Council

- 17.1. No members of Council shall solicit or accept support in any form from an individual, group or corporation, with any planning or procurement proposal before Council.

18. Improper Use of Influence

- 18.1. No Member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.
- 18.2. When a matter pertaining to the municipality is before any tribunal, members of Council shall not contact any tribunal members.
- 18.3. In matters relating to municipal administration, direction shall be given to the CAO by Council as a whole rather than by individual members of Council.

19. Business Relations

- 19.1. No Member of Council shall allow the prospect of their future employment by a person or entity to affect the performance of their duties to the municipality.
- 19.2. No Member of Council shall borrow money from any person who regularly does business with the municipality, unless such person is an institution or company whose shares are publically traded and who is regularly in the business of lending money.
- 19.3. No Member of Council shall act as a paid agent before Council or a committee of Council or any agency, board or committee of the municipality.

- 19.4. No Member of Council shall refer a third party to a person, partnership or corporation in exchange for payment or other personal benefit.

20. Conduct at Council Meetings

- 20.1. Members of Council shall conduct themselves with decorum at Council meetings in accordance with the provisions of the Procedural Bylaw.

21. Respectful Workplace

- 21.1. Members of Council shall encourage public respect for the municipality and its bylaws. All Members of Council have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment.

22. Interactions of Council with Staff and Service Providers

- 22.1. Council has the responsibility to govern in accordance with the Act and regulations.
- 22.2. Council officials must act in accordance with Council's Procedural Bylaw and the conduct guidelines outlined in this Code of Conduct Bylaw.
- 22.3. Members of Council shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.
- 22.4. Members of Council must not direct or influence, or attempt to direct or influence any municipal staff in the exercise of their duties or functions.
- 22.5. Pursuant to subsection 93.(6) of the MGA, members of Council are to direct any inquires to the CAO rather than access staff directly. No Council member or member of a Council committee shall publicly or privately instruct or direct an employee of the municipality except through the CAO. Members of Council are not to contact or issue instructions to any of the contractors, tenderers, consultants or other service providers to the municipality.
- 22.6. Members of Council must not make public statements attacking or reflecting negatively on the Town of O'Leary staff or invoke staff matters for political purposes.

23. Employment of Persons Closely Connected to Members of Council

- 23.1. No member of Council shall attempt to influence any municipal employee to hire or promote a person closely connected to the member.
- 23.2. No member of Council shall make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate any person closely connected to the member.
- 23.3. No member of Council shall attempt to use a family relationship for their personal benefit or gain.

PART IV – COMPLAINTS

24. Breaches, Complaint Handling and Internal Resolution

- 24.1. Members of Council are to abide by the requirements of this Code of Conduct, and shall endeavour to resolve interpersonal disputes in good faith.
- 24.2. Before commencing the formal internal resolution procedure specified below, the member or members of Council who are a party or parties to an alleged contravention of this Code of Conduct will endeavour to resolve the matter informally in a courteous and respectful manner, recognizing that they have been elected to represent the best interests of the municipality.
- 24.3. Alleged breaches of this Code of Conduct by a member of Council shall be submitted in a written complaint addressed to the Mayor and/or the CAO within three (3) months of the last alleged breach.
- 24.4. In the event that the Mayor is the subject of, or is implicated in a complaint, the complaint shall be addressed to the Deputy Mayor.
- 24.5. If the alleged contravention cannot be informally resolved, the Mayor will facilitate discussion between the parties.
- 24.6. If the matter is not satisfactorily resolved after mayoral facilitation, the Mayor, with the assistance of the CAO will commence the formal internal resolution process by appointing an independent third party investigator who has the necessary professional skills, knowledge and experience to carry out the role and investigate the complaint in a fair and objective manner.
- 24.7. If the Mayor is involved in the alleged contravention of the Code of Conduct, the Deputy Mayor shall assume the role of the Mayor in the facilitation process and the appointment of any third party investigator. All deliberations regarding alleged contraventions of the Code should be conducted in confidence.
- 24.8. If a third party investigator is appointed, the parties:
 - (a) Shall provide reasonable assistance to the investigator if requested; and
 - (b) Must participate in good faith in the investigation.
- 24.9. The role of the investigator is to:
 - (a) Consider the alleged contravention of the Code of Conduct;
 - (b) Ensure that the parties involved are given an opportunity to be heard by the arbiter;
 - (c) Explore if the alleged contravention can be resolved between the parties without making any findings; and
 - (d) Failing resolution between the parties, the third party investigator will provide an investigation update within ninety (90) days of their appointment to the Mayor or Deputy Mayor, as applicable, and to the complainant and the respondent.

- 24.10. The third party investigator will provide a written, confidential report of the findings of the investigation, including findings as to whether there has been a breach of this Code of Conduct, to the Mayor or Deputy Mayor, as applicable, and to the complainant and the respondent. The CAO will receive and retain all reports prepared in relation to breaches of the Code of Conduct.
- 24.11. Based on the findings in the report of the third party investigator, the Council, Mayor or Deputy Mayor will determine the most appropriate action to resolve the matter.
- 24.12. Council may, in accordance with section 107(3) of the Act:
- (a) Dismiss the complaint;
 - (b) Require the member of Council to remove themselves from the meeting if conduct is deemed to be inappropriate;
 - (c) Reprimand the member of Council for a breach of this Code of Conduct Bylaw;
 - (d) Suspend the remuneration paid to the member in respect of their services as a member of Council for a period of up to 90 days;
 - (e) Request for an apology to Council, the complainant, or both;
 - (f) Impose a fine of not more than \$500; or
 - (g) Impose any other sanction that is deemed appropriate in the professional judgment of the third party investigator, where so enabled in the Act.
- 24.13. The principles of natural justice must be observed during the arbitration of an alleged contravention of this Code of Conduct. There is a right to a fair hearing before an independent investigator. The member of Council who is the subject of an alleged contravention must be given all relevant information in regard to the allegation and an opportunity to respond and be supported if the member so desires. Any member of Council who alleges a contravention of the Code of Conduct must not be disadvantaged because of such action.
- 24.14. The Code of Conduct does not override, prevail over, or amend legislation applicable to the roles, responsibilities, and duties of members of Council.
- 24.15. Members of Council are individually responsible for seeking relevant advice from the CAO as to the application of the Code of Conduct.

25. Repeal of Existing Bylaw

- 25.1. Not applicable.

26. Effective Date

- 26.1. This Code of Conduct Bylaw, Bylaw# 2019-02, shall be effective on the date of approval and adoption below.

First Reading:

This Code of Conduct Bylaw, Bylaw# 2019-02, was read a first time at the Council meeting held on the 8th day of May, 2019.

This Code of Conduct Bylaw, Bylaw# 2019-02, was approved by a majority of Council members present at the Council meeting held on the 8th day of May, 2019.

Second Reading:

This Code of Conduct Bylaw, Bylaw# 2019-02, was read a second time at the Council meeting held on the 12th day of June, 2019.

This Code of Conduct Bylaw, Bylaw# 2019-02, was approved by a majority of Council members present at the Council meeting held on the 12th day of June, 2019.

Approval and Adoption by Council:

This Code of Conduct Bylaw, Bylaw# 2019-02, was adopted by a majority of Council members present at the Council meeting held on the 12th day of June, 2019.

Signatures

____Eric Gavin_____
Mayor

____Beverley Shaw_____
Chief Administrative Officer

This Code of Conduct Bylaw # 2019-02 adopted by the Council of the Town of O’Leary on June 12th, 2019 is certified to be a true copy.

____Beverley Shaw_____
Chief Administrative Officer Signature

____October 16, 2019_____
Date