

| Solution Title: | | Code of Conduct |
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| Council Approved: | REVISED MAY 6, 2019 | S201-15 |

KEY FACTS:

The Municipal Act, 2001, requires that Council adopt a Code of Conduct.

HOW MIGHT WE:

How Might the Town of Pelham establish a general standard to ensure all Members of Council share a common basis for acceptable conduct on a foundation of integrity, transparency, justice, truth, honesty and courtesy?

SOLUTION STATEMENT:

1.0 Application

- 1.1 This Code of Conduct applies to Members of the Council of the Town of Pelham, including the Mayor and, unless specifically provided, with necessary modifications to all Town committees, agencies, boards and commissions, which are defined as local boards in the *Municipal Act, 2001*.
- 1.2 The purpose of this Code of Conduct is to establish a general standard to ensure that all Members share a common basis for acceptable conduct, and to which all Members are expected to adhere to and comply with. This Code of Conduct augments other laws which Members are governed by and requires Members to follow the Procedural By-law and other sources of applicable law, including but not limited to:
 - *Municipal Act, 2001*
 - *Municipal Conflict of Interest Act*
 - *Municipal Elections Act, 1996*
 - *Municipal Freedom of Information and Protection of Privacy Act*
 - *Human Rights Code*
 - *Occupational Health and Safety Act*
 - *Provincial Offences Act*
 - *Criminal Code*

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2.0 Statement of Principles

- 2.1 This Code of Conduct is intended to set a high standard of conduct for Members in order to provide good governance and a high level of public confidence in the administration of the Town by its Members as duly elected public representatives to ensure that they each operate from a foundation of integrity, transparency, justice, truth, honesty and courtesy.
- 2.2 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code of Conduct:
- Members shall serve and be seen to serve the public in a conscientious and diligent manner;
 - Members shall observe and act with the highest standard of ethical conduct and integrity;
 - Members shall avoid the improper use of the influence of their office and act without self-interest;
 - Members shall act and are expected to perform their functions with honesty, integrity, accountability and transparency;
 - Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence;
 - Members shall be cognizant that they are at all times representatives of the Town and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and maintain and promote the public trust in the Town; and
 - Members will uphold the laws of Canada, Ontario and the laws and policies adopted by Council.

3.0 Definitions

- 3.1 The following terms shall have the following meanings in this Code of Conduct:
- (a) “CAO” means the Chief Administrative Officer of the Town;
 - (b) “child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;
 - (c) “confidential information” means information or records that are in the possession, in the custody or under the control of the Town that the Town is either precluded from disclosing under the *Municipal Act, 2001* or other applicable legislation, its Procedural By-law or any of its other by-laws, policies, rules or procedures, or that it is required to

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refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* or other legislation;

- (d) “conflict of interest” means a situation in which a Member has competing interests or loyalties between the Member’s personal or private interests and his or her public interests as an elected representative such that it might influence his or her decision in a particular matter;
- (e) “Council” means the council for the Town;
- (f) “frivolous” includes something that is not worthy of serious consideration or that is of little or no importance, due to its lack of seriousness or sense;
- (g) “Member” means a Member of the Council for the Town;
- (h) “non-pecuniary interest” means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member’s decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity;
- (i) “parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;
- (j) “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;
- (k) “staff” means the CAO and all commissioners, officers, directors, managers, supervisors and all individual members of staff, whether full-time, part-time, contract, seasonal or volunteer, as well as agents and consultants acting in furtherance of the Town’s business and interest;
- (l) “Town” means The Corporation of the Town of Pelham;
- (m) “vexatious” includes something that is instituted without sufficient grounds and serving only to cause annoyance, frustration or worry.

4.0 General Obligations

4.1 In all respects, Members shall:

- (a) make every effort to act with good faith and care;
- (b) conduct themselves with integrity, courtesy and respectability at all meetings of the Council or any committee and in accordance with the Town’s Procedural By-law or other applicable procedural rules and policies;
- (c) seek to advance the public interest with honesty;

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- (d) seek to serve their constituents in a conscientious and diligent manner;
- (e) respect the individual rights, values, beliefs and personality traits of any other person;
- (f) refrain from making statements the Member knows or ought reasonably to know to be false or with the intent to mislead Council or the public;
- (g) accurately communicate the decisions of Council and respect Council's decision-making process even if they disagree with Council's ultimate determinations and rulings; and
- (h) refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member.

5.0 The Role of Staff

- 5.1 Council as a whole approves the budget, policies and governance of the Town through its by-laws and resolutions. Individual Members do not direct or oversee the functions of the staff of the Town.
- 5.2 The Town's staff serve Council and work for the Town as a body corporate under the direction of the CAO. Inquiries of staff from Members should be directed to the CAO or to the appropriate senior staff as directed by the CAO. Members shall not publicly criticize staff. Should a Member have any issue with respect to staff such issue shall be referred to the CAO who will direct the matter to the particular staff member's appropriate superior.
- 5.3 Members shall respect the role of staff in the administration of the business affairs of the Town. Members shall respect that staff:
 - (a) provide advice and make policy recommendations in accordance with their professional ethics, expertise and obligations and that Members must not falsely or maliciously injure the reputation of staff members whether professional or ethical or otherwise;
 - (b) work within the administration of the business affairs of the Town and Members must not make requests, statements or take actions which may be construed as an attempt to influence the independent administration of the work of staff and, therefore, Members shall not attempt to intimidate, threaten, or influence any staff member from carrying out that person's duties, including any duty to disclose improper activity; and
 - (c) carry out their duties based on political neutrality and without undue influence from any individual Member and, therefore, Members must



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not invite or pressure any member of staff to engage in partisan political activities or be subjected to discrimination or reprisal for refusing to engage in such activities.

6.0 Town Property

- 6.1 Council is the custodian of the assets of the Town. The community places its trust in Council and those it appoints to make decisions for the public good in relation to these assets.
- 6.2 By virtue of their office or appointment, Members must not use or permit the use of the Town's land, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the Town. No Member shall seek financial gain for themselves, family or friends from the use or sale of Town owned intellectual property, computer programs, technological innovations, or other patent, trademarks or copyright held by the Town.

7.0 Gifts and Benefits

- 7.1 Gifts to Members risk the appearance of improper influence. Gifts may improperly induce influence or create an incentive for Members to make decisions on the basis of relationships rather than in the best interests of the Town. A Member shall not accept a fee, advance, gift, gift certificate, cash, hospitality or any form of personal benefit connected directly or indirectly with the performance of his or her duties except as provided in Section 10.3. A gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member. Any doubt concerning the propriety of the gift should be resolved by the Member not accepting or keeping it.
- 7.2 For greater clarity, despite Section 7.1, Members are entitled to accept any compensation, remuneration or benefits authorized by law and shall not accept any gift or benefit in their public capacity other than in the following circumstances:
- (a) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
 - (b) a political contribution otherwise reported by law, in the case of Members running for office;
 - (c) services provided without compensation by persons volunteering their time;

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- (d) nominal tokens, mementos or souvenirs received as an incident of protocol or social obligation that normally accompanies the responsibilities of elected office or at a function honouring the Member;
- (e) food, lodging, transportation and entertainment provided by provincial, regional and local governments or any agencies or subdivisions of them or by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity;
- (f) entrance fees or food and beverages consumed at banquets, receptions or similar events, if:
 - (i) attendance serves a legitimate municipal business purpose related to the normal business of the Town,
 - (ii) the person extending the invitation or a representative of the organization is in attendance, and
 - (iii) the value is reasonable and the invitations are infrequent;
- (g) gifts of nominal value (for example, a baseball cap, t-shirt, flash drive, book, etc.); and
- (h) any gift or benefit, if the Integrity Commissioner is of the opinion, before the gift or personal benefit has been accepted, that it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.

7.3 A Member who has received and accepted and gift or benefit pursuant to Section 7.2 shall file a disclosure of the gift or benefit indicating the person, body or entity from which it was received together with the estimated value of the gift or benefit. The list shall be provided to the Town's Clerk on a quarterly basis commencing on March 31 of every year and shall be a matter of public record and posted to the Town's website.

7.4 No Member shall seek or obtain by reason of his or her office any personal privilege or advantage with respect to municipal services not otherwise available to the general public and not connected directly or indirectly to the performance of the Member's duties.

8.0 Confidential Information

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- 8.1 Members receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the Town that falls under the privacy provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and other applicable privacy laws and information received during closed meetings of Council. Examples of types of information that a Member must keep confidential, unless expressly authorized by Council or as required by law, include, but are not limited to:
- (a) matters related to ongoing litigation or negotiation, or that is the subject of solicitor-client privilege between the Town and its Legal Counsel;
 - (b) information provided in confidence, for example the identity of a complainant where a complaint is made in confidence;
 - (c) price schedules in contract tender or Request for Proposal submissions if so specified;
 - (d) personnel matters about an identifiable individual;
 - (e) “personal information” as defined in the *Municipal Freedom of Information and Protection of Privacy Act*; and
 - (f) any census or assessment data that is deemed confidential.
- 8.2 A Member shall not disclose the content of any confidential information, or the substance of deliberations, of a closed meeting. A Member has a duty to hold any information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. All confidential documents received at a closed meeting are to be turned into the Clerk at the end of the closed meeting. A Member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.
- 8.3 A Member shall not disclose, use or release confidential information in contravention of applicable privacy laws. Members are only entitled to information in the possession of the Town that is relevant to matters before the Council, or a committee. Otherwise, Members enjoy the same access rights to information as any other member of the community or resident of the Town and must follow the same processes as any private citizen to obtain such information.
- 8.4 Members shall not misuse confidential information in any way or manner such that it may cause detriment to the Town, Council or any other person, or for financial or other gain for themselves or others.

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- 8.5 Members shall respect the right to confidentiality and privacy of all clients, volunteers and staff, and should be aware of their responsibilities under applicable legislation, Town policies, procedures and rules, ethical standards and, where appropriate, professional standards.
- 8.6 A Member shall not disclose any confidential information received by virtue of his or her office, even if the Member ceases to be a Member.

9.0 Discrimination and Harassment

- 9.1 Members shall treat all members of the public, one another and staff with respect and without abuse, bullying or intimidation and ensure that the work environment for employees who work for the Town is free from discrimination and harassment.
- 9.2 Members shall not use indecent, abusive or insulting words, phrases or expressions toward any member of the public, another Member or staff. Members shall not make comments or conduct themselves in any manner that is discriminatory to any individual based on the individual's race, colour, ancestry, citizenship, ethnic origin, place of origin, creed or religion, gender, sexual orientation, marital status, family status, disability, age or record of offences for which a pardon has not been granted.
- 9.3 Members shall comply with the Town's "Respectful Workplace Policy" and "Council/Staff Relations Policy".

10.0 Improper Use of Influence

- 10.1 Members shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.
- 10.2 Members shall not use the status of their position to influence the decision of another person to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.
- 10.3 Members who are asked to support charitable activities within the community may do so by accepting honorary roles, lending their names to organizations or events and encouraging public support of events. In doing so, Members

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shall ensure that they do not have a conflict between their private interest and their duties to the public. Members shall not directly solicit funds nor receive funds for charitable purposes in their role as a Member. Members shall remain at arms-length from financial aspects of external events which they support in their public capacity and shall not participate in decisions concerning the disbursement of funds or determining the beneficiaries of the funds.

11.0 Conflicts of Interest

- 11.1 Members shall avoid conflicts of interest, both pecuniary and non-pecuniary. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Town and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner (if enabled by legislation to do so) and/or legal advice when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary.

12.0 Council Policies and Procedures

- 12.1 Members shall observe and adhere to the policies, procedures and rules established by Council.

13.0 Election Activity

- 13.1 Members of Council are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and any Town policies. The use of the Town's resources, both property and staff time, for any election-related activity is strictly prohibited. Election-related activity applies to the Member's campaign and any other election campaigns for municipal, provincial or federal office.

14.0 Respect for the Code of Conduct

- 14.1 Members shall respect the process for complaints made under the Code of Conduct or through any process for complaints adopted by the Town. Members shall not act in reprisal or threaten reprisal against a person who makes a complaint or provides information to the Integrity Commissioner during an investigation. Members shall interact courteously and respectfully with the Integrity Commissioner and with any person acting under the direction of the Integrity Commissioner.

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14.2 Members shall cooperate with requests for information during any investigations or inquiries under the Code. Members shall not destroy documents or erase electronic communications or refuse to respond to the Integrity Commissioner where a complaint has been lodged under the Code or any process for complaints adopted by the Town.

15.0 Penalties for Non-Compliance with the Code of Conduct

15.1 Where Council receives a report from the Integrity Commissioner that there has been a violation of the Code of Conduct by a Member, Council may impose the following penalties on the Member:

- (a) a reprimand; or
- (b) a suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period up to 90 days.

15.2 Council may, on the basis of a recommendation from the Integrity Commissioner, also take any or all of the following actions in furtherance of a reprimand, and require that the Member:

- (a) provide a written or verbal apology;
- (b) return property or make reimbursement of its value or of money spent;
- (c) be removed from or not be appointed to the membership on a committee of Council;
- (d) be removed from or not be appointed as chair of a committee of Council.

16.0 Complaint Protocol

16.1 The procedure for filing complaints alleging that a Member of Council has contravened the Code shall be governed by the policies of Council as amended from time to time. The current Complaint Protocol is Appendix 1 to the Code of Conduct.



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Appendix 1

Complaint and Investigation Protocol

Code of Conduct

*Subject to amendment in accordance with the policies of Council from time to time.

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Council Code of Conduct
Complaint and Investigation Protocol

Under Section 223.4(1) of the Municipal Act, 2001, Council, a Member of Council or a member of the public may request the Integrity Commissioner to conduct an inquiry about whether a member of Council has contravened the Town Council Code of Conduct.

1. Request for Inquiry

- I. A request for an inquiry shall be in writing.
- II. All requests shall be signed by an identifiable individual (which includes the signing officer of an organization).
- III. A request shall set out all reasonable and probable grounds for the allegation that the member has contravened the Town Council Code of Conduct and shall include a supporting affidavit that sets out the evidence in support of the complaint in the form set out in this protocol.
- IV. Staff in the Town Clerk's office, who are Commissioners of Oaths, are authorized to swear the supporting affidavit.
- V. In a regular municipal election year between the fourth Friday in July ("nomination day") and voting day, a Code of Conduct complaint may not be filed and any uncompleted inquiries into outstanding complaints under the Code of Conduct shall be terminated, provided that either the Complainant or the Councillor whose conduct is affected by the complaint may, within six weeks after the voting date, request the Integrity Commissioner to recommence any investigation relative to the terminated complaint.

2. Initial Review by Integrity Commissioner

- I. The request shall be filed with the Town Clerk who shall forward the matter to the Integrity Commissioner for initial review to determine if the matter is, on its face, a complaint with respect to non-compliance with the Council Code of Conduct and not covered by other legislation or other Council policies.
- II. If the request does not include a supporting affidavit, the Integrity Commissioner shall defer the review until an affidavit is received.
- III. If the complaint, including any supporting affidavit, is not on its face, a complaint with respect to non-compliance with the Council Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner may inform the Town Clerk to advise the Complainant in writing as follows:

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- a. If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the matter should be referred to the appropriate authorities and the Town Clerk shall advise the Complainant that if the Complainant wishes to pursue any such allegation, the Complainant must pursue it with the appropriate police service;
 - b. If the complaint on its face relates to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the Complainant should be advised that the matter will be referred to the Town Clerk for review.
 - c. If the complaint on its face is with respect to non-compliance with a more specific Council policy, with a separate complaint procedure, the Complainant should be advised by the Town Clerk that the matter should be processed under that procedure; and
 - d. In other cases, the Complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.
- IV. The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.

3. Integrity Commissioner Investigations

- I. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, shall terminate the investigation.
- II. Other than in exceptional circumstances, the Integrity Commissioner shall not report to Council on any complaint described in subsection (I) except as part of an annual or other periodic report.



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4. Investigation & Settlement

- I. If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under Section 2, the Commissioner shall investigate and may attempt to settle the complaint.
- II. Section 223.4(2) of the *Municipal Act* provides for the Integrity Commissioner to elect to investigate a complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- III. When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall follow the procedures specified in that Act and this Complaint Protocol, but if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.
- V. The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
 - a. Serve the complaint and supporting material filed by the Complainant upon the Member whose conduct is in question with a request that a written response to the allegation be filed within seven days or such shorter or longer period as the Integrity Commissioner may authorize in writing; and
 - b. Serve a copy of the response provided by the Member upon the Complainant with a request for a written reply within seven days or such shorter or longer period as the Integrity Commissioner may authorize in writing.
- VI. Section 33 of the *Public Inquiries Act* allows the Integrity Commissioner to speak to anyone relevant to the complaint, access and examine any of the information relevant to the complaint and to enter any Town work location relevant to the complaint for the purpose of investigation and settlement. The Integrity Commissioner is to be provided free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality.
- VII. The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to

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comment on the proposed finding and any recommended sanction.

- VIII. The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

5. Final Report

- I. The Integrity Commissioner shall report to the Complainant, the Member and Council, generally no later than 90 days after the making of the complaint.
- II. Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining his or her findings and/or recommended penalty and the terms of any settlement which have not been agreed by the parties to be held in confidence.
- III. Any recommended corrective action or penalty must be permitted by the *Municipal Act, 2001*, and shall be designed to ensure that the inappropriate behaviour or activity does not continue and is not repeated.

6. Member Not Blameworthy

- I. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner may so state in the report and may recommend that no penalty be imposed.

7. Copies

- I. The Integrity Commissioner shall give a copy of the report to the Complainant and the Member that was involved.

8. Report to Council

- I. The Town Clerk shall process the report for the next meeting of General Committee, followed by Council. The report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been reported out to the Members of Council.

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9. Council Review

- I. Council shall consider and respond to the report within 90 days after the day the report is laid before it.
- II. Section 223.4 (5) of the *Municipal Act, 2001*, allows the municipality to impose either of the following penalties on a Member of Council if the Commissioner reports to the municipality that, in his or her opinion, the Member has contravened the code of conduct:
 - a. A reprimand.
 - b. Suspension of the remuneration paid to the Member in respect of his or her service as a Member of Council, for a period of up to 90 days.

10. Confidentiality

- I. Section 223.5(1) of the *Municipal Act, 2001*, provides that the Integrity Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties.
- II. If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.
- III. If the Integrity Commissioner reports to the municipality his or her opinion about whether a Member of Council has contravened the applicable Council Code of Conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purpose of the report (including name of the Member whose conduct was investigated).

11. Amendments to Protocol

- I. This protocol is subject to amendment in accordance with the policies of Council from time to time.



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Code of Conduct — Formal Complaint Form
AFFIDAVIT

I, _____ (first and last name), of the
municipality of _____ in the Province of Ontario.

MAKE OATH AND SAY (or AFFIRM):

1. I have reasonable and probable grounds to believe that:

_____ (specify name of Member),
a member of the Council of the Town of Pelham has contravened section(s)
_____ of the Code of Conduct of the Town of Pelham. The particulars of which are
are attached hereto.

2. Facts constituting the alleged contravention (use separate page if required)

This affidavit is made for the purpose of requesting that this matter be reviewed and/or investigated by the Town of Pelham's appointed Integrity Commissioner and for no other improper purpose.

SWORN (or AFFIRMED) before me at the)
the Town of Pelham on)
_____ (date))
)

(Signature)



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