

CAPITAL REGIONAL DISTRICT

BYLAW NO. 4605

A BYLAW TO REGULATE THE CONDUCT OF BOARD MEMBERS

WHEREAS

- A. Board Members are charged with serving their community and must therefore uphold the highest standards of ethical behaviour in order to maintain the public’s trust and confidence in local government;
- B. It is to the benefit of the community for Board Members to conduct themselves and their business in accordance with the guiding principles of integrity, accountability, leadership, respect, transparency and collaboration; and
- C. A Code of Conduct bylaw establishes shared standards and expectations with respect to the conduct expected of Board Members.

NOW THEREFORE, the Board of the Capital Regional District in open meeting assembled hereby enacts as follows:

PART ONE – ETHICAL CONDUCT

Division 1 – Interpretation and Application

Citation

- 1. This Bylaw may be cited as “Capital Regional District Board Code of Conduct Bylaw No. 1, 2024”.

Definitions

- 2. In this Bylaw:

“**Board**” means the Board of the Capital Regional District;

“**Board Member**” means all Directors and Alternate Directors of the Regional District, Municipal Elected Officials appointed to a Regional District committee or commission, and members of the Local Community Commission on Salt Spring Island;

“**CAO**” means the Chief Administrative Officer for the Regional District;

“**Chair**” means the Chair of the Capital Regional District Board;

“**Corporate Officer**” means the Corporate Officer appointed by the Board pursuant to section 236 of the *Local Government Act*;

“Executive Leadership Team” means the CAO, Chief Financial Officer, the Corporate Officer, or a General Manager for the Regional District;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);

“Investigator” means the investigator appointed in section 24;

“Municipal Elected Official” means a Mayor or Councillor duly elected in a municipality of the Regional District appointed to serve on a CRD committee or commission;

“Regional District” means the Capital Regional District;

“Solicitor” means the Regional District’s external solicitor;

“Staff” means an officer or employee of the Regional District, but does not include contractors;

“Vice-Chair” means the Vice-Chair of the Capital Regional District Board.

Interpretation

3. (1) This Bylaw is to be interpreted broadly and in a manner that is consistent with the *Local Government Act* and the *Community Charter*.
- (2) The intention of the Board in enacting this Code is not to stifle Board Members or to limit their ability to fully perform the governmental and advocacy functions that their position entails, with all the vigour, flair and freedom that is typical of a well-functioning democratic institution, but instead to guide Board Members to undertake those functions in a manner that accords with sound ethical principles.
- (3) The foundational principles in section 4 are to inform the interpretation of the substantive provisions of this Bylaw and shall not form stand-alone basis for complaints.
- (4) Nothing in this Bylaw is intended to preclude Board Members, prior to the filing of a complaint, from speaking to each other in order to resolve matters which may otherwise be captured by this Bylaw.

Foundational Principles

4. (1) Responsible conduct is based on the following foundational principles:
 - (a) Integrity: Board Members are keepers of the public trust, and they must uphold the highest standards of ethical behaviour including by acting lawfully, being free from undue influence, and making decisions that benefit the community;

- (b) Accountability: Board Members are trusted to act competently, diligently and responsibly and be accountable to the public for their actions and decisions;
- (c) Leadership: Board Members must demonstrate and promote the key principles of the Code of Conduct through their decisions, actions and behaviour, including by demonstrating behaviour that builds and inspires the public's trust and confidence in the Regional District;
- (d) Respect: Board Members must conduct themselves in a respectful manner and be courteous and civil with each other and others;
- (e) Transparency: Board Members must conduct their duties in an open and transparent manner, except where this conflicts with their duties to protect confidential information; and
- (f) Collaboration: Board Members shall seek to collaborate whenever possible and appropriate, as the social fabric of communities and the wellbeing of residents depends on solid and sustainable community partnerships.

Application

- 5. (1) This Bylaw applies to all Board Members, inclusive of their actions in their capacity as members of the Board, committees, and other Regional District discretionary appointments.
- (2) Unless otherwise provided, this Bylaw does not apply to a Board Member's conduct in their personal life, except to the extent that such conduct brings the reputation of the Regional District into disrepute or reasonably undermines public confidence in local governance.
- (3) For clarity, the provisions of this Bylaw apply to a Board Member's use of personal and professional social media accounts.
- (4) In the event of a conflict between this Bylaw and another Regional District Bylaw or policy governing Board Member conduct, this Bylaw prevails.

Division 2 – Conduct Regulations

Comply with all Laws

- 6. (1) Board Members shall comply with all applicable federal, provincial and municipal laws in the performance of their public duties, including but not limited to:
 - (a) the *Local Government Act*;
 - (b) the *Community Charter*;

- (c) *FIPPA*;
- (d) the *Financial Disclosure Act*; and
- (e) all bylaws and policies of the Regional District.

General Conduct

- 7. (1) Board Members shall not:
 - (a) engage with others, including Staff, members of the public and other Board Members, in a manner that is abusive, bullying, intimidating or derogatory; or
 - (b) use their office to attempt to gain personal or financial benefits for themselves or their family members, friends or business interests.

Respect for Process

- 8. Board Members shall perform their duties in accordance with the policies, procedures and rules of order established by the Board from time to time.

Interactions with Staff

- 9. (1) Board Members shall not:
 - (a) interfere with, hinder, or obstruct Staff in the exercise or performance of their roles, responsibilities, powers, duties, or functions in accordance with section 153 of the *Community Charter*, nor impair the ability of Staff to implement the Board's policy decisions;
 - (b) request or require that Staff undertake personal or private work for or on behalf of a Board Member; or
 - (c) request or require that Staff engage in political activities, or subject them to reprisal of any kind for refusing to engage in such activities.
- (2) If a Board Member is unsure where to direct a question or inquiry regarding a departmental issue or other work-related item, or regarding a personal item that requires interactions with the regulatory functions of the Regional District, they shall direct the question or inquiry to the CAO or to someone on the Executive Leadership Team.

Interactions with the Public and Media

- 10. (1) Board Members shall not publicly:
 - (a) misrepresent a decision of the Board, even if they disagree with that decision;
or

- (b) make disparaging comments about other Board Members.
- (2) When presenting their individual opinions and positions on matters that are within the Board's jurisdiction, Board Members shall take all reasonable measures to ensure that, unless they are the designated spokesperson on a matter, they clearly state that their opinions and positions represent their own personal views and not those of the Board or the Regional District.
- (3) For opinions and positions presented on a social media account, subsection (2) may be satisfied through a statement on the Board Member's profile.

Conduct of Meetings

- 11. (1) Board Members shall conduct themselves with decorum at meetings, including by:
 - (a) complying with all conduct provisions set out in Bylaw No. 3828, "Capital Regional District Board Procedures Bylaw, 2012";
 - (b) adequately preparing for meetings;
 - (c) using respectful language;
 - (d) not using offensive gestures or signs;
 - (e) listening courteously and attentively to all discussions before the body, and focusing on the business at hand;
 - (f) not making comments not germane to the business of the body;
 - (g) not interrupting other speakers, except to raise a point of order; and
 - (h) not otherwise interfering with the orderly conduct of a meeting.

Handling of Confidential Information

- 12. (1) Board Members shall keep information and records prohibited from release under section 117 of the *Community Charter* in strict confidence.
- (2) Without limiting the generality of subsection (1), Board Members shall not disclose:
 - (a) information or records concerning the property, personnel, legal affairs, or other information of the Regional District distributed for the purposes of, or considered in, a closed Board meeting;
 - (b) resolutions or Staff report contents from a closed meeting of the Board unless and until a Board decision has been made for the information to become public; or

- (c) details on the Board's closed meeting deliberations or how individual Board Members voted on a question in a closed meeting.
- (3) Board Members shall not use confidential information to advance, directly or indirectly, their own personal, financial or other private interests.

Conflict of Interest

- 13. (1) Board Members shall not participate in discussion of a matter, or vote on a question in respect of that matter, if they have a conflict of interest.
- (2) In respect of each matter before the Board, Board Members shall:
 - (a) assess whether they have a conflict of interest; and
 - (b) determine whether it is necessary to seek independent legal advice at their own cost, except where the CAO approves the cost, with respect to any situation that may result in a conflict of interest.
- (3) If a Board Member believes that they have a conflict of interest in respect of a matter in a Board or committee meeting, the Board Member shall:
 - (a) prior to the matter's consideration, notify the Chair of the meeting that they have a conflict of interest, stating in general terms why they consider that to be the case;
 - (b) leave any meeting if the matter is discussed and not return until the discussion has ended or voting has been concluded;
 - (c) refrain from discussing the matter with any other Board Member publicly or privately; and
 - (d) refrain from attempting in any way to influence the voting on any question in respect of the matter.

Gifts

- 14. (1) Board Members shall not accept a gift or personal benefit, except in accordance with section 105 of the *Community Charter*.
- (2) Board Members shall disclose a gift or personal benefit, received in accordance with section 105 of the *Community Charter*, as per section 106 of the *Community Charter*.

Use of Public Resources

- 15. (1) Board Members shall not use resources provided to them by the Regional District, including but not limited to:

- (a) Staff time;
 - (b) equipment;
 - (c) technology;
 - (d) supplies;
 - (e) facilities; or
 - (f) other property,
- for personal gain or election-related purposes.
- (2) Board Members shall not undertake municipal election campaign related activities at the Regional District office or on other premises owned by the Regional District during regular working hours unless such activities are organized by the Regional District.

PART TWO – INVESTIGATION, COMPLIANCE AND ENFORCEMENT

Division 1 – Implementation and Preliminary Steps

Implementation

16. (1) As an expression of the standards of conduct for Board Members expected by the Regional District, this Code is intended to be self-enforcing.
- (2) This Code is most effective when Board Members are thoroughly familiar with it and embrace its provisions. For this reason, this Bylaw shall be provided as information to candidates for the Board.
- (3) On adoption of this Code, and thereafter at the start of each Board term following the General Local Election, Board Members will sign a statement of commitment acknowledging they have read and understood the Code.

Preliminary Steps

17. If a Board Member believes that they have observed another Board Member engaging in conduct that would breach this Bylaw, they must attempt to resolve the complaint directly with the other Board Member, if possible, prior to submitting a complaint under section 18.

Division 2 – Complaint Intake

Complaint Procedure

18. (1) Subject to section 17, a Board Member may submit a complaint to the Chair and CAO.
- (2) A complaint must be in writing, must be submitted within 60 days of the alleged breach, and must include, with sufficient detail:
 - (a) the name of the complainant;
 - (b) the name of the respondent Board Member(s);
 - (c) the conduct that the complainant alleges was in breach of the Code;
 - (d) the date of the alleged conduct;
 - (e) the parts of the Code the alleged conduct breached;
 - (f) the basis for the complainant's knowledge of the conduct; and
 - (g) whether there was any attempt to resolve the complaint informally under section 17.
- (3) A complaint may be accepted notwithstanding that it does not comply with every requirement in subsection (2), if the Chair and CAO determines that there has been substantial compliance or if the circumstances otherwise warrant acceptance.
- (4) A complaint submitted outside the time limits set out in subsection (2) must be rejected.
- (5) In an election year, a complaint submitted within 90 days of the general voting day must be accepted and held in abeyance until after the new Board has taken office, at which time the complaint shall only proceed if it relates to a Board Member who was re-elected in that election year or in the case of a Board Member that is a municipal director is reappointed to the Board.
- (6) For certainty, if the Board Member who is the subject of a complaint held in abeyance pursuant to subsection (5) is not re-elected or re-appointed to the Board, the complaint must be rejected.

Preliminary Assessment

19. (1) On receipt of a complaint, the Chair and CAO shall conduct a preliminary assessment of the complaint or forward the complaint to the Solicitor to conduct a preliminary assessment.

- (2) If the Chair, CAO, or Solicitor determines that any of the following circumstances apply, they must notify the complainant and respondent Board Member in writing that the complaint will be closed, stating the reasons for the closure:
 - (a) the complaint is not with respect to a breach of this Bylaw;
 - (b) the complaint is frivolous, vexatious, or not made in good faith;
 - (c) the complaint would be more appropriately addressed through another process;
 - (d) the complaint is not in compliance with section 18(2) and the respondent Board Member will be prejudiced by the complainant's failure to comply;
 - (e) the complaint concerns the same subject matter as a previous complaint that has already been accepted under this section, and it is not necessary to expand that original complaint or add the new complainant;
 - (f) the complainant wishes to withdraw the complaint, and it would be appropriate to allow the complaint to be withdrawn;
 - (g) the complaint was submitted by a Board Member, and the Board Member ought to have first attempted to resolve the complaint informally under section 17; or
 - (h) there are no possible grounds on which to conclude that a violation of this Bylaw has occurred.
- (3) In completing the preliminary assessment, the Solicitor may request further information from the complainant before determining whether there are sufficient grounds to believe that a breach of this Bylaw may have occurred.
- (4) If the Solicitor receives multiple complaints concerning the same matter, the Solicitor 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.

Criminal Conduct

20. (1) If, at any stage in the complaint procedure, the CAO, Corporate Officer, Solicitor or Investigator determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code*, or learns that there is an ongoing police investigation into the conduct that gave rise to the complaint, then they must immediately refer the matter to the appropriate authorities and suspend any investigation into the complaint until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to the Board, the complainant, and the respondent Board Member.

- (2) For certainty, a complaint must be suspended while the Board Member is on a mandatory leave of absence under section 109.3(1) of the *Community Charter*, and may be re-commenced only once the mandatory leave of absence ends pursuant to section 109.3(1)(b) of the *Community Charter*.

Disqualification Proceedings

21. (1) If, at any stage in the complaint procedure, the CAO, Corporate Officer, Solicitor or Investigator determines that:
 - (a) the subject-matter of the complaint is being addressed in a disqualification proceeding commenced under section 111 of the *Community Charter*; or
 - (b) the complainant could commence a disqualification proceeding under section 111 of the *Community Charter* in relation to the matter that is the subject of the complaint;

the complaint must immediately be suspended until the proceeding under subsection (a) has concluded or the time-period within which the complainant could commence a proceeding under subsection (b) has expired.

- (2) If a complaint has been suspended under subsection (1), it may be re-commenced upon the conclusion of a disqualification proceeding, or the time-period within which a disqualification proceeding could be filed has expired, if:
 - (a) the Board Member who is subject to the complaint has not been disqualified from office by the British Columbia Supreme Court; and
 - (b) it would be in the public interest to do so.

Division 3 – Resolution Procedures & Investigations

Informal or Formal Resolution

22. (1) After a complaint is accepted under section 19(1),
 - (a) the Corporate Officer or CAO must refer the complaint to the Solicitor, if not already referred under section 19(1), for a determination under subsection (b); and
 - (b) the Solicitor must then determine whether the complaint requires a formal investigation or whether the complaint may be resolved informally.
- (2) When determining whether the complaint may be resolved informally, the Solicitor:

- (a) may consider culturally appropriate or transformative or restorative justice approaches, and may engage a third-party mediator or facilitator to assist for this purpose; and
 - (b) shall give strong preference to the informal resolution process where possible.
- (3) The complainant or respondent Board Member may decline to participate in an informal resolution at any time.

Informal Resolution

23. (1) Where the Solicitor has determined that the complaint may be resolved informally, the Solicitor may, at their discretion, either attempt to resolve the complaint directly, or refer the complaint to the Chair, unless the complaint is against the Chair, in which case the complaint will be referred to the Vice-Chair of the Board.
- (2) Where the Solicitor has referred the complaint in subsection (1), the Chair or Vice-Chair, as the case may be, may agree to assist in resolving the complaint directly.
- (3) Where the Chair, Vice-Chair or a third-party mediator or facilitator is engaged to assist in the informal resolution of a complaint, they shall assess the suitability for settlement or resolution on an ongoing basis and may decline to assist at any point.
- (4) If the complaint is resolved informally by someone other than the Solicitor, the person assisting in resolving the complaint must notify the Solicitor in writing of the terms of the resolution, upon receipt of which, the Solicitor must close the complaint.
- (5) If the person assisting in the informal resolution of a complaint declines to assist, the complainant or respondent Board Member declines to participate, or 30 days has passed since the determination in section 22(1)(b) was made by the Solicitor to resolve the complaint informally, then the complaint shall be referred in accordance with section 24.

Referral to Third-Party Investigator

24. (1) If the Solicitor determines that the complaint requires a formal investigation under section 22(1)(b), or in the event that informal resolution is unsuccessful, they shall refer the complaint to a neutral and independent third-party Investigator to conduct an investigation and notify the complainant and respondent Board Member of the referral.
- (2) The Investigator shall, at all times during an investigation, have the power to:
- (a) dismiss a complaint on a preliminary basis as set out in section 19; and
 - (b) attempt to resolve the complaint informally if the Investigator considers it appropriate in the circumstances.

- (3) The Investigator, once retained, may only be dismissed for cause.

Formal Resolution

25. (1) Once retained, the Investigator shall deliver the complaint to the respondent Board Member, along with a request that the respondent Board Member provide a written response to the complaint, together with any submissions that the respondent chooses to make, within 10 days, subject to the Investigator's discretion to reasonably extend the timeline.
- (2) The Investigator may, at their discretion, deliver the respondent Board Member's written response and submissions to the complainant and request a reply in writing within 10 days, subject to the Investigator's discretion to reasonably extend the timeline.
- (3) The Investigator may:
 - (a) speak to anyone relevant to the complaint;
 - (b) request disclosure of documents relevant to the complaint, including closed meeting minutes; and
 - (c) access any record in the custody or control of the Regional District, within the meaning of *FIPPA*, with the exception of records subject to solicitor-client privilege.
- (4) The Investigator has discretion to conduct the investigation as they see fit but must ensure that the investigation complies with the rules of procedural fairness and natural justice required in the circumstances of the complaint.

Confidentiality

26. (1) The CAO, Corporate Officer, Solicitor and Investigator must make all reasonable efforts to process and investigate complaints in a confidential manner.
- (2) The Investigator and every person acting under the Investigator's instructions must preserve confidentiality with respect to all matters that come into the Investigator's knowledge in the course of any investigation or complaint, except as otherwise required by law.
- (3) Board Members must make all reasonable efforts to keep complaints and all matters pertaining to complaints under this Bylaw, at any stage, confidential, except as otherwise provided in this Bylaw.

Obstruction

27. (1) A Board Member must not obstruct any person in relation to the administration of this Bylaw or the investigation of a complaint.

- (2) Without limitation, the following shall constitute obstruction:
 - (a) uttering of threats or undertaking any reprisal against any person involved in the complaint;
 - (b) destruction of relevant records or documents; and
 - (c) refusal to cooperate with the Investigator.

Frivolous and Vexatious Complaints

28. Any Board Member who is found to have obstructed any person contrary to section 27, or who makes a complaint that is subsequently found to have been made in a deliberately frivolous, vexatious or malicious manner, or otherwise made in bad faith, will be subject to appropriate disciplinary action, which may include, but is not limited to the sanctions and remedies as described in section 31.

Division 4 – Adjudication and Reporting

Final Determination by Investigator

29. (1) The Investigator must conclude the investigation and make a determination regarding the alleged breach within 90 days of referral under section 23(1), unless the Investigator determines that doing so is not practicable, in which case the Investigator must notify the complainant and respondent Board Member of the delay and provide a revised decision date, which may be extended by periods of up to 30 days at a time on provision of written notice to the complainant and respondent Board Member.
- (2) If, after reviewing all the material information, the Investigator determines that a Board Member did not violate this Bylaw, then the Investigator shall:
 - (a) prepare a written investigation report providing reasons for their determination, which shall include a determination of whether the complaint was submitted frivolously, vexatiously or in bad faith;
 - (b) deliver a summary of the investigation report to the complainant; and
 - (c) deliver a copy of the investigation report to the respondent Board Member and the Board.
- (3) If, after reviewing all the material information, the Investigator determines that a Board Member did violate this Bylaw, then the Investigator shall:
 - (a) prepare a written investigation report providing reasons for their determination, which must include:

- (i) a summary of the factual findings of the Investigator;
 - (ii) an application of this Bylaw, and any other applicable law, to the facts;
 - (iii) a recommendation of the appropriate sanction, subject to subsection (iv);
and
 - (iv) if applicable, a determination of whether the respondent Board Member took all reasonable steps to avoid the breach or whether the breach was trivial, inadvertent or due to an error in judgment made in good faith, in which case the Investigator may recommend that no sanction be imposed;
- (b) notify the complainant that the investigation is complete and inform them that the investigation report, or a summary thereof, will be subsequently released by the Board in accordance with section 30(4);
 - (c) deliver a copy of the investigation report to the respondent Board Member;
and
 - (d) 48 hours after the delivery of the investigation report to the respondent Board Member, deliver a copy of the investigation report to the Board.
- (4) The Investigator may choose to distribute the investigation report to the Board under this section through the Corporate Officer.

Final Determination by the Board

- 30. (1) The Board must, within 30 days of the Investigator's delivery of the investigation report, decide on the appropriate measures, if any, that are warranted by a breach of this Bylaw.
- (2) Prior to making any decision regarding the findings and recommendations set out in the investigation report, the respondent Board Member must be provided with an opportunity, in person and in writing, to comment to the Board on the Investigator's determinations and recommendations.
- (3) An investigation report may be considered in a closed meeting, if the circumstances warrant and there is a valid reason to close the meeting under section 90 of the *Community Charter*.
- (4) Within 30 days of receiving the investigation report under section 29(2)(c) or section 29(3)(d), the Board must, subject to the Regional District's obligations under *FIPPA*, release to the public the investigation report, or a summary thereof, along with a summary of the Board's decision, if applicable.

Remedies

31. (1) The Board may impose the following remedies for a violation of this Bylaw:
 - (a) a letter of reprimand from the Board, addressed to the respondent Board Member;
 - (b) a request from the Board that the respondent Board Member issue a letter of apology;
 - (c) the publication of the letters contemplated in subsections (a) and (b), along with the respondent Board Member's response, if any;
 - (d) directions to the CAO regarding the method of providing documents that contain confidential information to the respondent Board Member;
 - (e) a recommendation that the respondent Board Member:
 - (i) attend specific training or counselling;
 - (ii) complete a specified number of volunteer hours; or
 - (iii) make a charitable donation of a specified or unspecified amount to a particular charity;
 - (f) limitations on access to certain Regional District facilities;
 - (g) prohibition from representing the Regional District at events and/or attending conferences or seminars;
 - (h) suspension or removal of the respondent Board Member from the position of chair or vice-chair on committees;
 - (i) suspension or removal of the respondent Board Member from committees;
 - (j) public censure of the respondent Board Member; or
 - (k) any other sanction recommended by the Investigator, so long as that sanction is within the authority of the Board.
- (2) The Board must consider the following factors when determining whether to impose a remedy on a Board Member:
 - (a) the degree and nature of the conduct;
 - (b) whether the contravention was a single or repeated act;
 - (c) whether the Board Member knowingly contravened this Bylaw;

- (d) whether the Board Member took steps to mitigate or remedy the contravention;
 - (e) the Board Member's history of other contraventions; and
 - (f) if applicable, the Investigator's finding that the respondent Board Member took all reasonable steps to avoid the breach, or that the breach was trivial or done inadvertently or because of an error in judgment.
- (3) When the Board imposes a remedy pursuant to subsection(1), it may include secondary remedies to take effect on a date set by the Board in the event that the Board Member fails to comply.

Division 5 – Post-Decision Matters

Reimbursement of Costs

32. (1) For clarity, the reimbursement rules set out in this section apply despite any other indemnification bylaw or policy.
- (2) A Board Member may make a request to the Board for reimbursement of the costs of legal advice and representation in responding to the formal complaint process outlined in this Bylaw.
- (3) If appropriate, after considering all of the 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 Board Member has not previously been found to have breached this Bylaw;
 - (b) the Board Member has not previously been reimbursed under this section;
 - (c) the amount claimed does not exceed \$10,000; and
 - (d) the Board Member did not engage in dishonest, grossly negligent, or malicious conduct.

READ A FIRST TIME THIS	13 th	day of	March,	2024
READ A SECOND TIME THIS	13 th	day of	March,	2024
READ A THIRD TIME THIS	13 th	day of	March,	2024
ADOPTED THIS	13 th	day of	March,	2024



CHAIR



CORPORATE OFFICER