

RESORT VILLAGE OF KIVIMAA-MOONLIGHT BAY

BYLAW NO. 3/23

A BYLAW TO AMEND BYLAW 5/16 THE CODE OF ETHICS BYLAW

The Council of the Resort Village of Kivimaa-Moonlight Bay in the Province of Saskatchewan, enacts the following replacement of Sections 3 (b-e) of the Code of Ethics Bylaw:

**The key steps in the process of responding to a complaint about an alleged contravention of a code of ethics include:**

1. Administration—Receiving and acknowledging the complaint
2. Notifying the affected council member
3. Notifying the council
4. Trying to resolve the complaint informally
5. Investigating the complaint
  - (i) Clarifying the issues
  - (ii) Fact finding
  - (iii) Determining the relevant law and policy
  - (iv) Applying the law and policy and making preliminary findings
6. Giving the council member and others an opportunity to comment on preliminary findings
7. Deciding how to deal with the complaint
8. Giving reasons

**1. Receiving and Acknowledging the Complaint** Once submitted, all complaints should be received by whomever is initially responsible for responding to them: the clerk, the administrator, an integrity commissioner, or a code of ethics officer or investigator. This should be done within the first few days after the complaint is submitted.

Whomever receives the complaint must initially assess whether it meets the definition of a complaint under the code of ethics. For example, the complainant might have raised more than one issue—one of which is an alleged contravention of a code of ethics, along with other issues that are not. It might be important to reach out to the complainant to clarify the information provided in the complaint.

In any event, the official should acknowledge receiving the complaint and explain to the complainant who will be dealing with it. If the complaint is not a proper complaint under the code of ethics, the official can direct the complainant to other avenues of redress or review that may be available to them.

**2. Notifying the Affected Council Member** The council member who is the subject of the complaint is entitled to be notified that a complaint has been made against them. Ideally, this should be done before the rest of the council or anyone else is notified. Depending on the nature of the complaint, the council member may be able to take steps to resolve the complaint informally.

**3. Notifying the Council** Though the council has the ultimate authority to decide how to address a proven contravention of its code of ethics by one of its own members, depending on the nature of the allegation,

it might not be necessary or fair to formally notify the council about a complaint being received until later in the complaint-handling process—for example, if the complaint was leveled by another council member, or if the complaint is salacious, or ends up being found to be false. This helps maintain the affected council member's confidentiality until the allegations are investigated and confirmed to be true or false.

**4. Trying to Resolve the Complaint Informally** Depending on the specifics of the complaint, it might still be reasonable to try to resolve it early and informally, even if the complainant did not start off using the informal process. The main point of early resolution is to resolve a complaint at the earliest opportunity at the most appropriate level. As mentioned earlier, this often means the complainant and the council member meeting face-to-face. For example, if the allegation is that the council member was disrespectful to the complainant, the complaint might be resolved by the council member offering a sincere apology, since it was the complainant's personal interest at stake. On the other hand, if it is alleged that the council member participated in a decision of council to further his or her private financial interest, then informal resolution might not be reasonable since the public's interest is at stake.

**5. Investigating the Complaint** A complaint should be investigated if informal resolution failed to resolve the complaint, or the complainant refuses to take part in the informal resolution process or if the issues are complex and require detailed investigation or the complaint relates to serious, high-risk or high-profile issues.

**Step 1—Clarifying the Issues** It is useful to clarify the issues raised by a complaint before collecting and reviewing any additional information. If an investigator is not clear about the issues, he or she might not gather all the relevant information or might waste time gathering irrelevant information. If the questions are wrong, the answers will be wrong. If the investigator is clear about the issues, they can help focus witnesses on providing relevant (and not irrelevant) information and submissions.

**Step 2—Fact Finding** Getting the facts right is the most important step in an investigation. If the facts are wrong or irrelevant, the decision is very likely to be wrong or irrelevant. When the council is reviewing the investigator's findings, it needs to be able to decide what is relevant and analyze the relevant information to decide the facts and events upon which its decision will be based. The investigator's assessment of what evidence is valid and relevant is crucial for the council to be able to do this. Here are some of the key steps in the fact-finding process:

**Gathering Information:** This includes information provided by people in interviews or hearings, documents (emails, letters, notes, photographs, videos, etc.) and, sometimes, physical evidence.

**Identifying information relevant to the issues:** Is the information logically connected to an issue arising from the complaint? Does it help to prove or disprove the issue? Information is relevant if it directly relates to the issues.

**Resolving conflicts or inconsistencies:** Reliable information stands up to scrutiny. It often (not always) comes from credible sources. Part of dealing with inconsistent information includes deciding how much weight to give certain information and why. Reliable information should be given more weight. For example, if several people give the same information, that information is usually entitled to more weight unless there is a reason to think they are working together. If several people have credibility issues, then giving more weight to the information of one credible individual might be the best decision. As a rule,

determine the facts that everyone agrees on first. Then deal with anything directly linked to the facts that everyone agrees on. Finally, deal with contradictory facts, assessing credibility and assigning weight to the information.

Step 3—Determining the Relevant Law and Policy: The rules that are relevant to an alleged contravention of a code of ethics are found in municipal legislation, bylaws (the code of ethics itself and maybe others), the common law, and possibly local policies and practices. In many cases, the only relevant law is the code of ethics bylaw and relevant provisions of the municipal statute (e.g. the conflict of interest rules). Keep this in mind: What is the purpose of the code and what are the provisions of the statute? Keep this in mind: What are they trying to accomplish? Sometimes, rules and principles set out in the common law are relevant. Cases that have similar facts and similar issues are going to be more relevant. Decisions from higher courts are more important than lower courts. Local policies or common practices might also be relevant to a code of ethics complaint. In many cases, it would be wise to get advice from a lawyer about what rules are relevant and how to interpret them.

Step 4—Applying the Law and Policy: The final step is to apply the relevant rules to the findings of fact. If steps 1, 2 and 3 are done well, this step is often straightforward. The conclusion the investigator needs to reach should be clear. If it isn't, the investigator may have missed something in the first three steps.

**6. Giving the Affected Council Member and Others an Opportunity to Comment on Findings** For a decision-making process to be fair, it is critical that the affected council member and possibly others who will be substantially affected by the council's decision be given a reasonable opportunity to review the investigator's preliminary findings and conclusions and to provide contrary or alternative relevant information for consideration. Practically, it helps to ensure that the investigator has all the relevant information available. It is also fundamental to a procedurally fair process.

Once the investigator has considered the comments and submissions made by the affected council member and others, the findings and conclusions should be presented to the council in a written report. The report should summarize the complaint as it was received, the issues that were investigated, and the findings of fact, the relevant laws and rules, the analysis of how the laws and rules apply to the facts, the investigator's conclusion, and any recommendations to the council about how to resolve the complaint.

**7. Deciding how to Deal with the Complaint** Once the council receives the investigator's report, and each council member who is going to participate in making a decision about the complaint has had a reasonable opportunity to review it, the council should convene an *in camera* session at a special or regular council meeting to discuss the report. The investigator should attend the session to answer questions. Once the council has discussed the report, it should go back into public session and pass a resolution about the complaint.

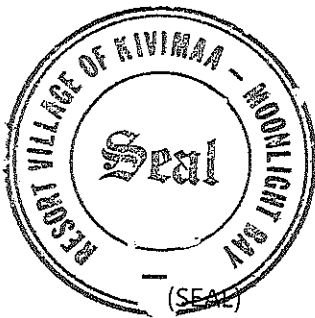
The resolution should answer the question: Did the council member contravene the code of ethics or not? If the council decides that there was a contravention of the code of ethics, it should also decide how it intends to resolve the complaint. Depending on the circumstances, the council might need to seek further advice before deciding how to resolve a founded complaint. Will it sanction the council member in accordance with its code of ethics? Will it ask the council member to resign (i.e. if the member is found to have been in a conflict of interest)? Will the council apply to the court for an order enforcing the council

member's disqualification? In addition, the council may make other decisions intended to remedy the complaint. For example, if the complaint is about a council member voting on a decision in which he or she had a conflict of interest, the council should consider repealing the decision and voting on it again. Or if the complaint was about a council member treating a person inappropriately, the council might want to issue a formal apology.


**8. Giving Reasons** In any event, whether the council decides the complaint was founded or not, it should ensure that both the affected council member and the complainant are given reasons for its decision. Depending on the circumstances, this might be accomplished by sharing the investigation report and a copy of the resolutions bases on it. Sometimes, however, it will not be appropriate, for reasons of confidentiality, to share the entire investigation report. Instead, it might be appropriate for the investigator or staff member to meet with a person to explain the results and the council's reasons for its decision. However, giving no reasons is never appropriate or reasonable.

The reasons should address all issues raised in the complaint. All points raised by the complainant and the affected council member should be fully addressed. If the investigation identified a contravention of the code of ethics, the response to the complainant should explain what actions the municipality proposes to take to resolve it. What will be done and when?

The response to the complainant should explain their right to complain to the Ombudsman if they are still dissatisfied with the outcome of their complaint and include contact information for the Ombudsman.



  
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Mayor

  
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Administrator

Read a third time and adopted this  
21 day of August, 2023

  
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Administrator