

Date: Tuesday, April 30, 2024

To: Elizabeth Tracy, Chief Administrative Officer

From: Gwendolyn Kennedy, Manager, Corporate & Legislative Services

Subject: Code of Conduct Bylaw for First, Second, and Third Readings

PURPOSE

The purpose of this report is to present to Council Code of Conduct Bylaw No. 958, 2024, for first, second, and third readings.

BACKGROUND

At Committee of the Whole Meeting No. 250, held October 31, 2023, Council reviewed a draft code of conduct bylaw and asked for more information regarding monetary penalties applied to a breach of the bylaw. At Committee of the Whole Meeting No. 255, held Tuesday, February 13, 2024, the Committee considered a staff report providing the requested information. Subsequently, at Regular Council Meeting No. 1594, held Tuesday, February 27, 2024, Council passed the following resolution:

Resolution No. 1594-3

THAT staff be directed to include a provision in the code of conduct bylaw establishing that funds collected through monetary penalties imposed for a breach of the code of conduct be used to offset the costs of investigations conducted under the code of conduct bylaw.

Since then, staff have revised the draft bylaw, adding the requirement that funds collected through the imposition of monetary penalties be used to offset the cost of an investigation. Staff have also prepared an amendment to Council Remuneration Bylaw No. 704, 2012. Together, these bylaws will bring into effect the new code of conduct complete with a reduction in council remuneration as a penalty for breach of the bylaw.

This report presents Code of Conduct Bylaw No. 958, 2024 (**Appendix A**), to Council for first, second, and third readings. The amendment to Council Remuneration Bylaw No. 704, 2012, is presented in a separate report.

DISCUSSION & COMMENTS

Financial Implications

The bylaw presented today includes the content presented in the draft bylaw reviewed by the Committee at Committee of the Whole Meeting No. 250, with the addition of section 30 (2) that reads as follows:

- (2) Remuneration foregone by a council member pursuant to subsection (1) shall be used to offset the cost of investigations conducted under this bylaw.

Staff caution that although any revenue that can be used to offset the cost of investigations conducted under this bylaw will be welcome, the cost of investigations will likely exceed funds generated by this provision. Also, there is an administrative cost to managing this provision that must be acknowledged.

The intent of the bylaw is to formalize expectations of behaviour such that council members may avoid breaching the bylaw; to a certain extent, the bylaw is expected to be self-enforcing. As such, few cases are anticipated to proceed to a formal investigation. To ensure procedural fairness, the bylaw establishes that a formal complaint be investigated by a third-party investigator. The annual cost of investigating complaints will be determined by the number and complexity of complaints received. Providing a realistic estimate of the annual costs associated with the bylaw is not possible, but costs could be significant.

In addition to the cost of investigations conducted under this bylaw, there is the potential for substantial legal costs should the results of an investigation and the penalties imposed by Council be contested. Legal costs could run as high as hundreds of thousands of dollars in a hotly contested case, imposing a significant burden on taxpayers.

Recent news headlines have shown the cost associated with 17 complaints under the code of conduct in Kamloops has reached \$93,033.97, with four complaints accounting for \$66,411.46. (CFJC Today, February 11, 2024, [Taxpayer cost to investigate Kamloops council Code of Conduct complaints nearing \\$100k | CFJC Today Kamloops](#)).

Unlike the Kamloops bylaw, the bylaw presented for Council's consideration does not allow investigation of complaints submitted by members of the public. As such, the number of complaints received is not expected to approach the numbers seen in Kamloops. However, even a single complaint, if contested, may result in legal costs to the Village exceeding \$100,000. Although it is neither possible nor advisable to budget for such a scenario, Council should be aware of the potential costs associated with investigations and legal action arising from investigations.

Other Updates

Minor changes to the bylaw include updates to the formatting of headings and the numbering of sections, subsections, paragraphs, and subparagraphs for consistency with Village bylaws and with provincial legislative drafting guidelines. Unnecessary definitions were eliminated to improve clarity.

COMMUNICATIONS

Consideration of a code of conduct bylaw does not entail a communications element.

LEGAL CONSIDERATIONS

The requirement for a local government to review its code of conduct is set out in section 113 of the *Community Charter*.

BUDGET & STAFFING

Preparation of the code of conduct bylaw falls within the regular duties of Corporate & Legislative Services and has no impact on the budget or staff hours.

Financial implications of the bylaw are explored in the Discussion section of this report.

INTERDEPARTMENTAL IMPACT

The report has been reviewed and approved by Thomas Sikora, Manager of Finance.

COMMUNITY CLIMATE ACTION PLAN

Consideration of a code of conduct bylaw has no impact on the [Community Climate Action Plan](#) strategies.

STRATEGIC PRIORITIES

Formalizing the code of conduct in a bylaw supports the strategic priorities to *cultivate trust* and to *operate with excellence*.

IMPACT ON THE REGION

This initiative has no impact on other jurisdictions.

ALTERNATIVE OPTIONS

Option 1: THAT Council gives first, second, and third readings to Village of Pemberton Code of Conduct Bylaw No. 958, 2024

Option 2: THAT Council refers Village of Pemberton Code of Conduct Bylaw No. 958, 2024 back to staff for changes.

RECOMMENDATIONS

THAT Council gives first, second, and third readings to Village of Pemberton Code of Conduct Bylaw No. 958, 2024.

ATTACHMENTS:

Appendix A: Code of Conduct Bylaw No. 958, 2024

Prepared by:	Gwendolyn Kennedy, Manager, Corporate & Legislative Services
CAO approval:	Elizabeth Tracy, Chief Administrative officer