

The Corporation of the City of Kawartha Lakes

Council Report

Report Number CAO2019-003

Date: February 19, 2019
Time: 2:00 p.m.
Place: Council Chambers

Ward Community Identifier:

Title: Committees/Boards/Task Forces – Policy and Code of Conduct Amendments

Description: Proposed clarifications and amendments to Council Policies CP2018-017 and CP2018-018

Author and Title: Ron Taylor, Chief Administrative Officer

Recommendation(s):

That Report CAO2019-003, Committees/Boards/Task Forces – Policy and Code of Conduct Amendments, be received; and

That amendments to the Policies entitled CP2018-017 – Council Committee, Board and Task Force Policy and CP2018-018 – Code of Conduct and Ethics – Members of Committees, Boards & Task Forces, as outlined in Appendices A and B to Report CAO2019-003, be adopted.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____



Background:

During the last term of Council, all Council policies were reviewed and updated where appropriate. Council Policy CP2018-017 – Committee, Board and Task Force Policy was adopted (see Appendix A) and replaced previous Policy 028-CAO-002.

During this review, staff identified a need to develop a new Code of Conduct and Ethics specifically to guide Committee/Board/Task Force members. Previously, there was no Code of Conduct and Ethics for members, and guidance was provided from Codes of Conduct governing Council or employees. Council Policy CP2018-018 – Code of Conduct and Ethics – Members of Committees, Boards and Task Forces was subsequently approved (see Appendix B).

This new Code of Conduct and Ethics was modelled after the Code of Conduct applicable to Council members. As the Head of Council, the Mayor is responsible to coordinate and investigate member contraventions and misconduct, and Council is responsible to make decisions respecting members.

A member of the public has provided recommended changes and clarifications to both Council policies through the Mayor. A memorandum outlining these recommendations is provided in Appendix C to this report.

This report provides staff recommended amendments to Policy CP2018-017 and CP 2018-018 for clarity.

Rationale:

Based on a review of the written submission and consultation with the Mayor, staff is recommending clarifications to both Council Policies (CP2018-017 and CP2018-018).

Other Alternatives Considered:

Council could choose to maintain the current policies as written. There is merit in providing clarification, as recommended, so that Council's expectations of Committee/Board/Task Force members are clear. The proposed policy amendments also provide a clear and consistent process to investigate contraventions, while engaging affected parties in that process.

Council could choose to further amend these guiding policies. If so, additional direction is required to establish a process.

Financial/Operation Impacts:

N/A

Relationship of Recommendation(s) to the 2016-2019 Strategic Plan:

Maintaining policies for committees/boards/task forces and member conduct clearly sets out Council expectations for citizen members, while protecting volunteers that are supporting Council and the community. The proposed policy clarifications are an example of Council's commitment to collaboration and continuous improvement.

Review of Accessibility Implications of Any Development or Policy:

N/A

Servicing Implications:

N/A

Consultations:

Mayor

Attachments:

Appendix A – Proposed and Redlined Policy CP2018-017



App A - CP2018-017
Council Committee Bo

Appendix B – Proposed and Redlined Policy CP2018-018



App B - CP2018-018
Code of Conduct and

Appendix C – Memorandum to Mayor & Council from J. Abernethy



App C - Abernethy
Memo Re CP2018-017

Department Head E-Mail: rtaylor@kawarthlakes.ca

Department Head: Ron Taylor, CAO

Department File:



Council Policy

Appendix A

Council Policy No.:	CP2018-017
Council Policy Name:	Council Committee, Board and Task Force
Date Approved by Council:	December 11, 2018
Date revision approved by Council:	
Related SOP, Management Directive, Council Policy, Form	CP2018-018 – Code of Conduct and Ethics (Members of Committees/Boards/Task Forces)

Policy Statement and Rationale:

The City appoints citizens from the municipality to Council Committees, Boards and Task Forces to review and recommend actions to Council to advance various issues relating to the municipality. It is recognized that Committees, Boards and Task Forces are vital to informing and supporting City Council in accomplishing the City's strategic goals and priorities. It is further recognized that appointed volunteer members of these Committees, Boards and Task Forces bring valuable community knowledge, experience and information, and are committed community stakeholders and ambassadors. This policy establishes the process for appointments, defines the volunteer appointee's roles and responsibilities, and establishes how they conduct business for the betterment of the municipality.

Scope:

This policy applies to all Council Committees, Boards and Task Forces created and approved by Council and their working groups. Where a Council Committee or Board is legislated, the provisions of the governing legislation shall take precedence over this policy.

Definitions:

"City", "City of Kawartha Lakes" or "Kawartha Lakes" means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

"City Clerk" means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

"Committee" means any Council Committee/Board/Task Force which is advisory in nature and/or mandate specific and is:

1. Established by Council through resolution or by-law; or



Council Policy

2. Created by another level of government (with jurisdiction), providing the right to Council to appoint one or more persons to it, who are not members of Council.

“Council” or “City Council” means the municipal council for the City;

“Director” means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council.

“Interview Team” means a team composed of three (3) members to review applications and make the recommendation to Council on the Committee/Board/Task Force appointments. The team shall include a minimum of one Member of Council and may include members of staff and/or the Committee/Board/Task Force Chair.

“Person” means a human individual. For the purposes of this policy, the term does not include “artificial” persons recognized by law (for example, Corporations).

Policy:

1.0 Volunteer Appointments

1.1 In addition to any other qualification requirements established by legislation, resolution or by City policy, any persons appointed to a Committee/Board/Task Force must be:

- i) an elector of the City;
- ii) at least eighteen years of age; and
- iii) a Canadian citizen.

except where:

- The Interview Team recommends the appointment of one or more person(s) to a Committee/Board/Task Force and declares the exception in the recommendation to Council.
- The Committee/Board/Task Force composition, as per the Committee/Board/Task Force Terms of Reference, includes members from specified organizations where the names of those members are to be provided by the organization along with any designated alternates.
- Permitted as per the Council approved Terms of Reference for the Committee/Board/Task Force.

1.2 Notwithstanding Section 1.1, the following persons are ineligible for appointment to the City's Committee/Board/Task Forces as a Public Appointee:

- i) current members of the Council (with the exceptions of statutory requirements and ex officio positions);
- ii) current trustees of the Trillium Lakelands District School Board or the Peterborough, Victoria, Northumberland, Clarington Catholic District School Board who have direct association/affiliation with the service/facility in question;
- iii) current City employees who have direct association/affiliation with the service/facility in question;
- iv) any person who may have an actual or perceived (in the opinion of the Interview Team) conflict of interest with the purposes of the Committee/Board/Task Force in question due to his or her employment or otherwise; or
- v) any person who is in litigation or potential litigation with the municipality.

1.03 Council may assign staff persons to Committee/Board/Task Forces in liaison or record-keeping roles. No City employees may participate in voting that may occur on Committee/Board/Task Forces unless they have been appointed as a Committee/Board/Task Force member.

1.04 Given the time commitment required by members of Committee/Board/Task Forces, no person shall serve as a member of more than three (3) Committee/Board/Task Forces during the same time period, without approval of Council.

2.0 Terms of Reference

2.1 The Terms of Reference of any Committee/Board/Task Force shall be developed using the templates as attached to this policy as Appendix A – Committee/Board Terms of Reference Template and Appendix B – Task Force Terms of Reference Template.

2.2 The City Clerk has authority to modify the Terms of Reference templates, attached to this policy as Appendix A – Committee/Board Terms of Reference Template and Appendix B – Task Force Terms of Reference Template, as may be required.

2.3 Any responsibilities not clearly identified within a Committee/Board/Task Force Terms of Reference shall be the responsibility of the City of Kawartha Lakes.

Council may, at its discretion, change the Terms of Reference for a Committee/Board/Task Force at any time. Any changes proposed to these Terms of Reference by the Committee/Board/Task Force shall be recommended to Council via the liaison department identified within the Terms of Reference through a report to Council.

- 2.4 At the discretion of Council, any Committee/Board/Task Force may be dissolved by resolution of Council. No prior notice is required.

3.0 Code of Conduct for Committee/Board/Task Force Appointees

- 3.1 All volunteer appointees to Committee/Board/Task Forces shall adhere to the City Code of Conduct for Committee/Board/Task Force and Members as approved by Council.

4.0 Advertising for Vacancies

- 4.1 The City Clerk will, if required, advertise during the last quarter of the calendar year for all vacancies to be filled through appointments of persons to Committee/Board/Task Forces of the City.
- 4.2 Advertisement(s) shall list the name(s) of the Committee/Board/Task Force(s) and any particular qualification requirements for membership.
- 4.3 Persons wishing to fill advertised vacancies on Committee/Board/Task Forces of the City must submit to the City Clerk, in writing, an application except as outlined in Section 4.4. The application shall be on a form supplied by the City Clerk's office. No consideration will be given to filling vacancies unless a written application is received. Supplemental resumes are encouraged, but are not required. Application forms and attached resumes are considered confidential and shall only be used for their intended purpose of selecting members to the specified Committee/Board/Task Force.
- 4.4 Any person who is a current appointee to any Committee/Board/Task Force and remains qualified to be a citizen appointee, can reapply by submitting a letter indicating their intention to reapply. Nothing prevents an incumbent from applying using the application form if they choose.
- 4.5 The City Clerk's Office shall receive and distribute all applications received in response to an advertisement for vacancies on Committee/Board/Task Forces. Copies of all applications shall be sent to the Director and Executive Assistant of the responsible department.
- 4.6 The Director or designate shall make the City Clerk aware of any vacancies on Committee/Board/Task Forces that arise throughout the calendar year. The City

Clerk may, if required, advertise at any time throughout the calendar year in order to fill such vacancies on Committee/Board/Task Forces.

- 4.7 Alternatively, the Director or designate may review the applications received when the position was most recently advertised and recommend a person to fill the vacancy to the Committee/Board/Task Force. If there are no applications in the file then the Director shall ask the Committee/Board/Task Force, through the chair, to nominate a single candidate for the position. Upon receipt of written acceptance of the nomination, the candidate shall be recommended to Council for appointment via a written confidential report.
- 4.8 Where for any reason it is impossible to fill a Committee/Board/Task Force vacancy, Council may approve an amendment to the terms of reference for the Committee/Board/Task Force to allow for a smaller membership number or to alter quorum rules, as required, or the Council may approve circumstances allowing the position to remain vacant for the balance of the term.
- 4.9 In all cases, persons appointed to fill a vacancy on a Committee/Board/Task Force shall assume the remainder of the Term of the member whose vacancy is being filled.

5.0 Interview, Selection and Appointment Process

- 5.1 The Director or designate, upon receipt of applications from the City Clerk's Office, shall arrange an interview team to consist of three (3) members. Whenever possible, any member(s) of Council appointed as the Council representative to the Committee/Board/Task Force shall form part of the interview team.
- 5.2 The Director or designate shall arrange a meeting of the Interview Team to review the applications and decide whether there is a sufficient number of qualified candidates, or if a further notice and advertisement is required, or to decide if interviews are required and how many candidates will be interviewed, or if a recommendation will be made to Council without interviews.
- 5.3 If interviews are required, the Director or designate shall arrange a meeting of the Interview Team to conduct the interviews with the applicants.
- 5.4 The Director or designate shall advise all selected applicants of the time and place of the interview.
- 5.5 The Interview Team will give fair and equal consideration to the qualifications, abilities and civic interest of all persons who have applied who meet the qualifications of the office when considering appointments to Committee/Board/Task Forces.

- 5.6 Interviews of the applicants to a Committee/Board/Task Force will be dealt with individually by the Interview Team. After interviews, the Director or designate will call the members of the Interview Team to a vote. The Director shall advise the Interview Team of those citizen candidates receiving the greatest number of recommending votes. The Interview Team will recommend the selected candidates to Council for appointment to the said Committee/Board/Task Force. The number of candidates recommended shall not exceed, but may be fewer than, the number of vacancies to be filled.
- 5.7 A confidential written report from the Director or designate will be presented in closed session at a Regular Council Meeting to bring forward the recommendations of the Interview Team, together with a list of all the names submitted for the vacancies and a brief explanation of each applicant interviewed. Council may choose to accept any of the Interview Team's recommendations, or it may choose to appoint an applicant not recommended by the Interview Team. Council shall not appoint a person who was not considered by the Interview Team. The final appointment resolution shall be made in open session of Council.
- 5.8 The City Clerk's Office shall retain all applications received for vacancies on Committee/Board/Task Forces in accordance with the City's Records Retention By-law.
- 6.0 Expulsion of a Member**
- 6.1 Any member of the Committee/Board/Task Force, who misses three consecutive formal business meetings, without being excused by the Committee/Board/Task Force, may be removed from the Committee/Board/Task Force.
- 6.2 The Committee/Board/Task Force may recommend to Council the expulsion of a member or Council may remove a member for reasons including, but not limited to, the member being in contravention of the Municipal Act, the Municipal Freedom of Information and Protections of Privacy Act, the Provincial Offences Act, the Municipal Conflict of Interest Act; the Code of Conduct and Ethics for Members of Committees, Boards and Task Forces; disrupting the work of the Committee/Board/Task Force or other legal issues. Recommendations from a Committee/Board/Task Force regarding expulsion of a member shall be directed to the Mayor.
- 6.3 Any Member, staff, Council member, Council, or a member of the public has the right to identify any alleged non-compliance to the Code of Conduct and Ethics – Members of Committees, Boards & Task Forces. The individual shall bring the matter forward to the Mayor.



Council Policy

6.4 The Mayor will determine the contravention(s) alleged, and investigate in keeping with Council Policy CP2018-018 (Code of Conduct and Ethics – Members of Committees/Boards & Task Forces). Council has the sole discretion to terminate any City Committee/Board/Task Force member.

7.0 Attachments:

Appendix A – Committee/Board Terms of Reference Template

Appendix B – Task Force Terms of Reference Template

Revision History:

Proposed Date of Review:

Revision	Date	Description of changes	Requested By
0.0	[Date]	Initial Release	



Council Policy

Appendix B

Council Policy No.:	CP2018-018
Council Policy Name:	Code of Conduct and Ethics – Members of Committees, Boards & Task Forces
Date Approved by Council:	December 11, 2018
Date revision approved by Council:	
Related SOP, Management Directive, Council Policy, Forms	CP2018-017 – Committee/Board/Task Force Policy

Policy Statement and Rationale:

This Code of Conduct and Ethics is established to provide a shared and common foundation and expectations for acceptable behavior, conduct and actions of appointees to City of Kawartha Lakes' Committees, Boards and Task Forces. It is recognized that Committees, Boards and Task Forces are vital to informing and supporting City Council in accomplishing the City's strategic goals and priorities. It is further recognized that appointed volunteer members of these Committees, Boards and Task Forces bring valuable community knowledge, experience and information, and are committed community stakeholders and ambassadors. In addition to being well-informed to undertake delegated decision-making functions and/or provide advice and recommendations effectively, appointed members are expected to carry out their duties in a fair, honest, conscientious, diligent, impartial, transparent and professional manner.

Members of Committees, Boards and Task Forces must operate within the scope of work and requirements outlined in the associated Council-approved Terms of Reference.

This Code of Conduct and Ethics provides positive direction to Committee, Board and Task Force members in support of the following principles:

- That impartial decision-making considers the best interests of the entire Municipality;
- That communications are open, honest, consistent, respectful, consultative and inclusive;
- That private interests are kept separate from public responsibilities;
- That respect and support for others, including Council members, [Committee members](#), members of City staff and members of the public, is maintained.



Council Policy

Scope:

This policy relates to Council-appointed members of Committees, Boards and Task Forces in the City of Kawartha Lakes.

Definitions:

“City”, “City of Kawartha Lakes” or “Kawartha Lakes” means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

“City Clerk” means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

“Committee” means any Council Committee/Board/Task Force which is advisory in nature and/or mandate specific and is:

1. Established by Council through resolution or by-law; or
2. Created by another level of government (with jurisdiction), providing the right to Council to appoint one or more persons to it, who are not members of Council.

“Council” or “City Council” means the municipal council for the City;

“Member” means a person appointed to a Committee/Board/Task Force by resolution of Council.

“Person” means a human individual. For the purposes of this policy, the term does not include “artificial” persons recognized by law (for example, Corporations).

Policy:

General

All Members shall serve on Committees, Boards and Task Forces in a transparent and accountable manner. Members shall perform responsibilities assigned to the Committee/Board/Task Force as prescribed within the associated Terms of Reference.

It is the responsibility of all appointed members to comply with:

- the City Code of Conduct and Ethics – Committee, Board & Task Force Members
- the City Procedural By-law
- Other applicable City by-laws and policies



Council Policy

- Municipal Act
- Municipal Freedom of Information and Protection of Privacy Act
- Municipal Conflict of Interest Act

No individual member or the Committee/Board/Task Force as a whole has the authority to make direct representations of the City to Federal or Provincial Governments.

Members shall abide by the rules outlined within the Municipal Conflict of Interest Act. Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

At a meeting at which a member discloses an interest, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the Recording Secretary of the Committee/Board/Task Force who shall in turn provide it to the City Clerk for inclusion in the City's Registry of Statement of Disclosure as required by the Municipal Act.

The Committee/Board will abide by any terms and conditions which may be set out by the City's Council, CAO, City Clerk, City Solicitor, Auditor and/or Insurer for any activities relating to Committee/Board business in keeping with the Committee's Terms of Reference and established Policies.

Gifts and Benefits

To ensure and foster a culture of impartiality and objectivity Members shall not, directly or indirectly through family members or otherwise, solicit any gift or accept/receive any gift or personal benefits or rewards which may be tied or inferred to be tied directly or indirectly to their position or the performance of their duties.



Council Policy

No Member shall seek or obtain by reason of his or her appointment any personal privilege or advantage with respect to city services not otherwise available to the general public and not consequent to his or her official duties except as authorized by law or policy of the City.

Confidentiality and Use of Municipal Information

It is every Member's responsibility to ensure information disseminated to other Members, staff and/or the public is accurate. No Member shall willfully mislead other Members, employees or the public about any issue of municipal concern.

No Committee/Board/Task Force information or actions is permitted to be confidential, save and except where permitted in the Committee/Board/Task Force's Council approved Terms of Reference. All business must be conducted in an open and transparent manner.

All requests for City information should be referred to the recording secretary to process through the liaison Department and the City Clerks Office, to be addressed as either an informal request for access to municipal records or as a formal request under the Municipal Freedom of Information and Protection of Privacy Act.

No Member shall

- Use information acquired through their duties for a personal advantage during or after their appointment.
- Speak disrespectfully or negatively about the Corporation, a member of Council, another member or Council's decisions.. Any concerns regarding the conduct of another person including a contravention of the Code of Conduct by another member shall be handled through the appropriate process as defined in this policy.
- Speak or act on behalf of the Corporation or City Council without authorization to do so.

Conduct at Meetings

During meetings, Members shall conduct themselves with decorum and in accordance with the City's Procedural By-Law, as amended from time to time. Respect and courtesy will be provided to delegations, fellow members, Council members, staff and members of the general public. Members shall not distract from the business of the Committee, Board or Task Force during presentations and when other members have the floor. Each member has a responsibility to ensure that such decorum occurs, both through their own conduct and by bringing to the attention of the Chair any offensive conduct that is observed.



Council Policy

Relationships with Staff and Other Members

Members will show respect for other Members and staff and recognize their roles and responsibilities as defined by legislation and the associated Terms of Reference.

Members shall:

- Acknowledge that only Council as a whole shall direct staff members, through the CAO, to carry out specific tasks or functions.
- Provide advice and recommendations that are objective, politically neutral, applicable to the scope of work of the Committee, Board or Task Force, and in the best interest of the community and City.
- Refrain from using their position to improperly influence members of staff or Council members in their duties or functions or to gain an advantage for themselves, or others.
- Refrain from publicly criticizing individual members of staff or Council members and appointed Members in a way that maliciously or falsely injures the professional credibility or ethical reputation of the individual.
- Be respectful that staff work for the City as a body corporate and are charged with providing advice that is objective and based upon their professional expertise, politically neutral, and consider a corporate perspective, without undue influence from any individual member or group of members.
- Be respectful and supportive of the City's commitment to fostering an environment that is free from discrimination, harassment, interference, intimidation or coercion through personal adherence to the City's Respect in the Workplace Policy and the Ontario Human Rights Code.

Use of Municipal Property

Members may be required to borrow City property, equipment, supplies or services only for activities connected with Committee/Board/Task Force activities. The use of municipal property shall be coordinated through the liaison department. Any equipment or supplies borrowed in the exercise of the Members duties is City property and will be returned to the City promptly.

No member shall obtain financial gain from the use of city-developed intellectual property, computer programs, technological innovations or other patentable items, while an appointed member or thereafter. All such property remains the exclusive property of the City of Kawartha Lakes.

All Committee/Board/Task Force meetings must be held within an accessible city-owned facility.



Council Policy

Work of a Political Nature

Members shall be aware of and adhere to the City's policy regarding "Use of Corporate Resources for Municipal Election Purposes."

No member shall use City facilities, services, or property in support of a municipal election or re-election campaign, expression of support for or against a political candidate, or any other outside political activity.

Fraud, Breach of Trust and Other Criminal Activities

Members shall not engage in behaviour that is fraudulent or that constitutes a breach of trust with the City of Kawartha Lakes. A fraudulent activity includes, but is not limited to:

- Using deceit to gain a personal advantage or benefit for oneself and/or others.
- Illegally obtaining money, including the solicitation and/or acceptance of bribes.
- Intentionally providing false or incomplete or withholding information from Council and/or city officials.
- Intentionally circumventing City policies or procedures to gain a personal advantage for oneself and/or others.
- Planning or participating in a theft of City property, or the use of said property to aid or conduct a theft of any kind.
- Inappropriate personal use of or intentional damage to City property.
- Undertaking any other illegal activity.

Conflicts of Interest

A conflict of interest is understood to occur if a Member's personal affairs, business, or relationships overlap with their duties and functions as appointed members of Committees, Boards or Task Forces. In order to avoid any conflict of interest, pecuniary interest or personal gain for members, their family or associates, members are not permitted to carry out any assigned duties for which a conflict of interest is present.

Members shall avoid and remove themselves from these situations of conflict.

Additionally, Members should be aware that some conflicts may be perceived in nature and will need to be considered on an individual basis.



Council Policy

Business/Organization Relations

It is recognized that Members may have work or business activities or associations outside of their duties. Members shall ensure these responsibilities remain distinct and separate from Committee/Board/Task Force business.

Members must demonstrate transparency with regards to business relations and/or organizations conducting business with the City. No member shall act as a paid agent before the Corporation or Council.

Members shall recognize the need for their decision-making to be impartial and transparent by refraining from having any direct or indirect pecuniary association with any business or organization that has interactions with them in the conduct of their duties and responsibilities. Members must disclose to the Chair and members of the public such information at the first opportunity.

Should a Committee/Board/Task Force composition, as per Council approved Terms of Reference, include Members from specified stakeholder organizations, it is acknowledged that such members have been appointed to represent the interests and perspectives of those organizations to further the mission and activities of the Committee/Board/Task Force.

City Expenditures and Purchases

Members are not involved in procurement activities for the City. Any City budget advice or recommendations will be considered by Council and/or the appropriate Department liaison.

Disclosure

Any Member, staff, Council member, Council, or a member of the public has the right to identify any alleged non-compliance. The individual shall bring the matter forward to the Mayor.

Compliance/Contravention

Upon receipt of an alleged Member contravention in writing, the Mayor shall will investigate the allegation and determine the form an investigation will take, and it may be in consultation with the CAO, Committee, Board or Task Force Chair, complainant and/or the liaison Department. The Mayor may will disclose and discuss the alleged contravention with the Member as part of the and outline the form of investigation, and will give the Member an opportunity(s) to respond accordingly.



Council Policy

At the completion of the investigation, the Mayor will provide recommendations to Council to verify any contraventions, provide all supporting written materials informing the investigation, and recommend appropriate actions (including immediate termination of appointment, if warranted). Council has the sole discretion to terminate any City Committee/Board/Task Force member.

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The Mayor will report any transgressions of an illegal nature to the appropriate police authority.

Implementation & Review

This Code of Conduct and Ethics shall be reviewed by each Council a minimum of once during each Council term.

This Code of Conduct and Ethics shall be reviewed by appointed Committee/Board/Task Force Members at the orientation session held the first meeting of each year following term expiry and appointment of new members, at either the mid-term or full term of Council.

Revision History:

Proposed Date of Review:

Revision	Date	Description of changes	Requested By
0.0	[Date]	Initial Release	

Appendix C

**Memorandum
(Draft)**

To: Mayor Andy Letham, City Councillors
From: Joan Abernethy
Date:
**Re: Council Policies CP2018-017 and CP2018-018 and
in comparison to Policy No. 028 CAO 002**

1. CP 2018-017 and CP2018-018, passed by council on 11 December 2018, replace Council Policy 028 CAO 002. I have attached those three policies to this memo.
2. The sections of the above policies this communication will address are:
 - a) Sections 7 of 028 CAO 002,
 - b) Section 6 of CP2018-017, and
 - c) the unnumbered section on page 7 of CP 2018-018 entitled “Compliance/Contravention”.
- A. CP2018-018**
3. CP2018-018 is a Council Policy entitled “Code of Conduct and Ethics - Members of Committees, Boards & Task Forces”.
4. In its first paragraph, CP2018-018 states it is binding on Committee, Board and Task Force Members: “This Code of Conduct and Ethics is established to provide a shared and common foundation and expectations for acceptable behavior, conduct and actions of appointees to City of Kawartha Lakes’ Committees, Boards and Task Forces.”
5. CP2018-018 details principles and policy directives that Committee, Board and Task Force Members must adhere to.
6. On page 7 of CP2018-018, under “Compliance/Contravention”, the policy gives the mayor sole power to hear and investigate complaints against Committee, Board and Task Force members: “The mayor shall determine the form an investigation will take” and “The mayor may consult with the CAO, Committee, Board or Task Force Chair and/or the liaison Department.”
7. CP2018-018 neither requires nor allows consultation with council, nor does it require or allow council to be informed of complaints the Mayor has received of alleged Committee/Board/Task Force Member policy contraventions or of initiated investigations, until after the Mayor has investigated the complaint of alleged contravention and determined a preferred recommendation.
8. Also under “Compliance/Contravention” on page 7, CP2018-018 further states: “The mayor may disclose the alleged contravention with the accused Member and outline the form of

investigation.” Whether the accused Member is notified of his/her/their alleged contravention and of whether s/he/they is/are under investigation is arbitrary and is entirely up to the Mayor.

9. Only after the Mayor hears and investigates a complaint, possibly in secret, does the policy require council be informed. On page 7 under “Compliance/Contravention”, CP2018-018 states: “At the completion of the investigation, the Mayor will provide recommendations to Council to verify any contraventions, and appropriate actions (including immediate termination of appointment).”

10. For Council to responsibly “verify any contraventions” the accused Member may have made of City policy would require

- a) adequate and timely notice and details of the complaint, *before any investigation is undertaken and final recommendations made by the Mayor,*
- b) a majority Council vote on a motion to challenge the Mayor’s investigation and recommendation, including immediate termination, and
- c) majority Council support to expend the resources required to complete an independent investigation.

11. CP2018-018 gives the power to hear, determine how to investigate and to investigate complaints against Committee/Board/Task Force members exclusively to the Mayor, allows the Mayor to hear and investigate complaints entirely in secret, and severely limits the power of constituent-elected Councillors to responsibly “verify” allegations made in complaints against Committee/Board/Task Force Members.

12. The Compliance/Contravention section of CP2018-018 contradicts the stated goal of the policy itself and of related policies to conduct business in an open and transparent manner. It encourages duplicity and disrespect between staff, members of the public, Council members and Committee/Board/Task Force members. There are very few more duplicitous or disrespectful acts than complaining to an authority to form a limited and secret conspiracy to effect the sudden termination of a Committee/Board/Task Force Member’s appointment that provides that Member no recourse to understand, to answer or to repair. The Romance-period poet, William Blake wrote a famous children’s fable about exactly such duplicity entitled “A Poison Tree”. The moral of that simple fable is that those who want to establish friendly relations openly discuss their differences whereas those whose interests are relationship enmity plot in secret to fell their opponents. CP2018-018 encourages the cultivation of poison trees, not the respect, openness and transparency the City of Kawartha Lakes claims as its relationship standard.

028 CAO 002

13. Policy 028 CAO 002 protected the natural justice principle known as “Audi Alteram Partem” - “listen to the other side” or “let the other side be heard as well”. It is fundamental to a free, fair and democratic society that no accused person be condemned without first being heard.

14. Section 7 of Policy 028 CAO 002 required the following:

- a) that a recommendation to Council to terminate a Member for reasons based on an accusation of alleged policy contraventions other than uncontested vacation of his/her/their seat not be considered unless the accused Member has been provided notice of the recommendation,
- b) that waiving of the required notice is prohibited,
- c) that the notice state both the recommendation to Council and the reasons advanced in support of the recommendation,
- d) that the notice of the recommendation and supporting documentation be sent by the Clerk directly to the accused Member by registered mail, at least seven (7) days prior to the meeting at which the complaint is to be presented,
- e) that the accused Member be apprised of his/her/their entitlement to forward a written response to the Clerk within seven (7) days of receipt of the notice and supporting documents,
- f) that, after the period for the accused Member to reply has expired, the Clerk provide Council with details of the notice to terminate, supporting documentation, and any written response received and place it on the closed session agenda of the next scheduled regular Council meeting or on the agenda of any Special Meeting called to consider the notice, and
- g) that the accused Member be given the opportunity to make a presentation to Council prior to a vote being taken on the recommendation.

CP2018-017

15. CP2018-017, at section 6, omits any right of an accused Member to receive notification of a recommendation to terminate his/her/their appointment, to receive and review details of the complaint(s) and alleged policy contraventions, to answer the allegations, to present evidence in support of a defense to council and to produce witnesses in support of a defense to council.
16. CP2018-017 grants to any member of a Committee, Board, or Task Force, any staff, any Council member, Council itself, and any member of the public the right to identify any alleged non-compliance with the Code of Conduct and Ethics - Members of Committees, Boards & Task Forces, Policy CP2018-018.
17. CP2018-017 requires the complainant make his/her/their complaint directly to the Mayor and, as detailed above, CP2018-018 gives the Mayor the power to hear and investigate the complaint entirely in secret before recommending to Council how to respond.
18. The only reference to the complaints process is at Section 6.3 of CP2018-017 where it refers to Policy CP2018-018. It is up to anyone who wants to understand the complaints process to find it on page 7 of CP2018-018 under "Compliance/Contravention".
19. I submit that the natural justice principle that no one should be condemned unheard (*Audi Alteram Partem*) or "listen to the other side"/"let the other side be heard as well" is fundamental

to a free, fair and democratic society. No person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

20. The repeal of 028 CAO 002 and its replacement by CP2018-017 and CP2018-18 gives the Mayor alone the power to hear and investigate complaints against Committee, Board or Task Force members, to determine the scope of any investigation deemed necessary, to do so entirely in secret, then to recommend to Council immediate termination based on the secret investigation.

21. The repeal of 028 CAO 002 and its replacement by CP2018-017 and CP2018-018 empowers council to condemn an accused Member based on hearing only the recommendations of the mayor that are based on the mayor's investigation of anyone's allegations - an estranged spouse, a political opponent, a business competitor - without the accused person being provided notice or details of the accusation, and without giving him/her/them an opportunity to speak to the allegations, to submit evidence to council and/or to produce witnesses to speak to council.

22. I think Policies CP2018-017 and CP2018-018, as written, are draconian and that they may set the City up for allegations of Charter violations and significant claims for civil damages.

23. Therefore, I recommend the following amendments to CP2018-017 and CP2018-018:

24. CP2018-017

6.1 Council may remove from a Committee/Board/Task Force any member who vacates his/her/their seat by missing three consecutive formal business meetings without being excused by the Committee/Board/Task Force, and who does not contest their vacation.

6.2 Council may remove from a Committee/Board/Task Force any member who it is determined by Council has violated the Code of Conduct and Ethics - Members of Committees, Boards & Task Forces, Policy CP2018-018.

6.3 Anyone (including members of the public, City staff, Committee/Board/Task Force members, Council members) may identify any alleged non-compliance with the Code of Conduct and Ethics - Members of Committees, Boards & Task Forces and may notify Council of their allegations, in writing, via a formal complaint to the City Clerk.

6.4 Within seven (7) days of receiving a formal written complaint about a Committee, Board, Task Force member, the City Clerk shall notify the accused member of the details of the complaint, shall provide the accused member with any supporting documentation, and shall provide the accused member details of the complaints process.

6.5 Waiving by anyone, including the Mayor and Council, of notice that the City Clerk has received a formal complaint and the provision of details, documentation and complaints process information to the accused member is strictly prohibited.

6.6 The complaints process shall consist of the following:

6.6.1 The complainant files a formal written complaint with the Clerk's office, along with any supporting documentation.

6.6.2 Within seven (7) days of receipt of a formal complaint, the Clerk shall provide the accused member, by secured mail, with notification that a formal complaint has been made, shall provide the accused member with details of the complaint and any supporting documentation, and shall provide the accused member with information about the complaints process.

6.6.3 Within seven (7) days of receipt of a formal complaint, the Clerk shall also apprise the accused member of his/her/their right to reply, in writing, to the allegations made in the formal complaint, including the provision of any supporting documentation and any list of witnesses or materials provided by witnesses or references, within seven (7) days of receipt of the Clerk's notice, including details and supporting documentation of a formal complaint.

6.6.4 Once the period for the accused member to reply has expired, the Clerk shall place the matter on the agenda of the next regularly scheduled Council Meeting agenda and shall provide all Members of Council with copies of the formal written complaint, the supporting documentation, and any materials provided by the accused member in response to the complaint.

6.6.5 Council shall review the materials and discuss them in closed session, as allowed under the *Municipal Act*, and may recommend an independent investigation of the complaint and the form such an investigation will take.

6.6.6 The Clerk shall issue an invitation to the complainant, to the accused member, and to any other person (including witnesses) the Clerk deems appropriate to appear before Council at a meeting, either closed or special, to present to Council their case and to respond to any questions Council has about the complaint, the accused member's reply, supporting documentation, and/or witness testimony.

6.6.7 In the event the complaint concerns allegations of threat or risk, the Clerk shall invite security resources to attend the meeting.

6.6.8 Council shall deliberate on the evidence, testimony and submissions in closed session, as allowed under the *Municipal Act*, and make a recommendation for remedial action.

6.6.9 At the next open meeting of Council, the recommendation shall be voted on by Council and shall be decided by a simple majority.

25. CP2018-018

Delete the section on page 7 entitled "Compliance/Contravention".

