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Library Board Report

To: Newmarket Public Library Board

From: Todd Kyle, C.E.O.

Date: April 17, 2019

RE: **Revisions to Code of Conduct, Oath of Office, and investigation procedures**

Background:

Recent changes to the *Municipal Act* require councils and local boards to establish a Code of Conduct for their members as well as a method of investigating alleged breaches of the Code. Upon investigation, it was determined that Library Boards are not considered “local boards” for the purposes of the Act. However, the library’s existing Code and investigation methods, as well as its Oath of Office, were reviewed in conjunction with the Town Clerk and a revised draft of the library’s Governance Policy was developed in order to address some areas which required clarification.

The primary clarification required surrounded the Library Board’s investigation of alleged breaches of members’ Code of Conduct. The current investigation method, as detailed in the Governance Policy, requires a member to resign their position if the Board requests it; when signing the Oath of Office, members indicate that they will “immediately resign my position as Director of the Library in the event that I, or my colleagues on the Board, have concluded that I have breached my Oath of Office”. However, legal advice has indicated that only Council is given the authority under the Public Libraries Act to appoint members to the Board, so therefore only Council can remove a member. In addition, the Policy is silent on the matter of referral to the Town’s Integrity Commissioner process for investigating Code breaches, as this process did not exist when the Policy was drafted.

To remediate this shortcoming, drafted changes to the Policy would eliminate the Board’s power to demand a resignation and instead allow them to request a resignation and to then refer the matter to Council if the request is rejected by the member. Council would then be able to use their own Integrity Commissioner process to investigate if they so wish. In addition, the Code of Conduct was re-drafted to include wording from the Toronto Public Library’s code.

Conclusion:

A revised draft of the Governance Policy has been prepared to address the issues discussed here and changes are summarized in Appendix A, with the entire affected section in Appendix B. The remainder of the Policy has been reviewed for currency, and short of a small number of minor numbering and grammatical errors, does not need further revision. The current Oath of Office has yet to be administered to new Board members pending these revisions.

The following motion is recommended:

THAT the Library Board receive the report on revisions to Code of Conduct, Oath of Office, and investigation procedures;

AND THAT the Library Board approve the recommended revisions to Section 2 of the Governance Policy;

AND THAT the Library Board authorize the CEO to make minor corrections to the remainder of the Governance Policy, with a final copy to be presented to the Board;

AND THAT the Library Board authorize that the revised Oath of Office be administered to all members once approved.

Appendix A: Summary of recommended changes to the Governance Policy

Section	Current wording	Proposed wording
2.1 Oath of Office and Confidentiality	Confidentiality means Directors may not relate such matters to anyone including immediate family of Directors.	Confidentiality means Directors may not relate such matters to anyone including immediate family of Directors, unless required by law or authorized by the Board to do so.
(same)	Immediately resign my position as Director of the Library in the event that I, or my colleagues on the Board, have concluded that I have breached my 'Oath of Office'.	(remove)
2.2 Code of Conduct	Directors are expected to comply with the prescribed Code of Conduct that encourages the development of a spirit of collective decision-making, shared objectives and shared ownership of and respect for Board decisions.	Directors are expected to comply with the following Code of Conduct that encourages the development of a spirit of collective decision-making, shared objectives and shared ownership of and respect for Board decisions.
(same; replacing the entire Code)	<p>Directors and CEO of the organization will at all times conduct themselves in a manner that:</p> <ul style="list-style-type: none"> a) Advocates for and supports the goals and mission of the Library; b) Supports the objectives of the Library; c) Serves the overall best interests of the Library rather than any particular constituency d) Brings credibility and good will to the Library; e) Respects principles of impartiality and due process; f) Demonstrates respect for individuals in all manifestations of their cultural and linguistic diversity and life circumstances; g) Respects and gives fair consideration to diverse and opposing viewpoints; 	<ul style="list-style-type: none"> a) Serving the Community: Members will serve and be seen to serve Library users and their community in a conscientious and diligent manner. b) Respect: Members will treat Library users, volunteers, staff and fellow Board Members with respect. In the performance of their duties, Members will not abuse, bully or intimidate others and Members will fulfill their responsibilities in ensuring that the Library is free from discrimination and harassment. c) Board Meetings: Members will honour the Board Governance Policy and this Code of Conduct at Board Meetings. Members understand that these meetings are public and that their behaviour affects the image of the Newmarket Public Library. Members will be courteous and refrain from using offensive

	<p>h) Demonstrates due diligence and dedication in preparation for and attendance at meetings, special events and in all other activities on behalf of the Library;</p> <p>i) Demonstrates good faith, prudent judgement, honesty, transparency and openness in their activities on behalf of the Library;</p> <p>j) Ensures that the financial affairs of the Library are conducted in a responsible and transparent manner with due regard for their fiduciary responsibilities and public trusteeship</p> <p>k) Avoids real or perceived conflicts of interest;</p> <p>l) Conforms with the By-law and policies approved by the Board, in particular this Code of Conduct, the Oath of Office and Confidentiality and Conflict of Interest policies;</p> <p>m) Publicly demonstrates acceptance, respect and support for decisions legitimately taken in transaction of the Library's business.</p>	<p>language, and will show respect for diverse and opposing viewpoints.</p> <p>d) Public Servants: Members will respect the role of Library staff as public servants who provide professional and politically neutral advice to the Board.</p> <p>e) Privacy and Confidential Information: Members will respect the privacy of others and will not disclose or release by any means to any Member of the public, any confidential information acquired by virtue of their role at the Library. Members will maintain this obligation even after Members leave the Board. Members will only disclose confidential information if required by law, or authorized to do so by the Board.</p> <p>f) Support of the Board's actions: While Members may have dissenting views on decisions taken by the Board and are permitted to discuss those views publicly, they shall nonetheless demonstrate acceptance, respect and support for all decisions legitimately taken in transaction of the Library's business.</p> <p>g) Conflict of Interest: Members will abide by the Conflict of Interest Policy as outlined in the Board Governance Policy section 2.3.</p> <p>h) Improper Use of Influence: Members will not use their positions at the Library to improperly influence others for private gain or to gain preferential treatment for their family, friends or organizations with which Members are associated.</p>
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2.3.3 Disposition of Complaints and Disputes involving Directors	a) A committee of the Board shall review any complaints that a Director has violated any provision of the Library's By-laws, Governance Policies, Code of Conduct, Oath of Office and Confidentiality Agreement. The committee shall be comprised one Town councillor and two citizen representatives.	a) A committee of the Board shall review any complaints from staff, the public, or Directors that a Director has violated any provision of the Library's By-laws, Governance Policies, Code of Conduct, and Oath of Office and Confidentiality. The committee shall be comprised of one Director who is also a councilor and two Directors who are citizen representatives.
(same)	h) The ruling of the Board shall be final. Should the Director refuse to	h) The Board shall make a ruling as to whether a violation has occurred and

	<p>abide by the ruling, the Board may table the matter pending determination of disciplinary action. Such action may include formal or informal censure by the Chair or the Board, suspension or a request for the Director's resignation.</p>	<p>on the Committee's recommended resolution. Recommendations may include disciplinary action such as formal or informal censure by the Board or a request for the Director to resign or to take a leave of absence. Should the Director reject such a request, the Board may refer the matter to Town of Newmarket Council as the body with the sole authority to appoint Directors.</p> <p>i) Notwithstanding this process, a Director who is also a Town councilor may separately be subject to investigation and/or discipline by Town of Newmarket Council for the same matter.</p>
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Appendix B: Recommended new text of Section 2 of the Governance Policy

2. BOARD DIRECTORS

Each Director is expected to become an active participant in a body that functions effectively as a whole. In addition to assisting in the exercise of the major duties of the Board outlined above, Directors are responsible to exercise due diligence in the performance of their duties.

Responsibilities include:

- a) To be informed of the legislation under which the Library exists and Library's by-laws mission, values, code of conduct, and policies
- b) To keep informed about the activities of the Library and its community,
- c) To attend Board meetings regularly, serve on committees of the Board and actively contribute to the work of the Board;
- d) To exercise the same degree of care, diligence and skill that a reasonably prudent person would show in comparable circumstances;
- e) To explicitly voice at the time a decision is being taken, any opposition to a decision being considered by the Board;
- f) To ask the Directors to review a decision if he, or she, has reasonable grounds to believe that the Board has acted without full information or in a manner inconsistent with its fiduciary obligations;
- g) To support Board decisions made in good faith in a legally constituted meeting, by Directors;
- h) Know and respect the distinction in the roles of Board and staff consistent with the principles underlying these governance policies;
- i) Exercise vigilance for and declare personal conflict of interest in accordance with the Library's By-laws and policies and the *Municipal Conflict of Interest Act*.

2.1 Oath of Office and Confidentiality

Respect for confidentiality is the cornerstone of trust and confidence as well as a legislated obligation. Directors must at all times respect the confidentiality of any patron names and/or circumstances that might identify patrons. Similarly, all matters dealt with by the Board during closed session meetings and matters related to personnel and/or collective bargaining must be held in strictest confidence. Confidentiality means Directors may not relate such matters to anyone including immediate family of Directors, unless required by law or authorized by the Board to do so. The duty of confidentiality continues indefinitely after a Director has left the Board.

Directors shall agree to an Oath of Office and Confidentiality upon joining the Board.

I, insert name, a Director of the Newmarket Public Library, declare that, in carrying out my duties as a Director, I will:

1. Exercise the powers of my office and fulfill my responsibilities in good faith and in the best interest of the Library;
2. Exercise these responsibilities, at all times, with due diligence, care and skill in a reasonable and prudent manner.
3. Respect and support the Library's By-laws, policies, Code of Conduct, and decisions of the Board.
4. Keep confidential all information that I learn about patrons, personnel, collective bargaining and any other matters specifically determined by board motion to be matters of confidence including matters dealt with during closed session meetings of the Board.
5. Conduct myself in a spirit of collegiality and respect for the collective decisions of the board and subordinate my personal interests to the best interests of the Library.
6. Immediately declare any personal conflict of interest that may come to my attention.
7. Comply with the Municipal Conflict of Interest Act, the Municipal Freedom of Information and Protection of Information and Protection of Privacy Act.

2.2 Code of Conduct

Directors are expected to comply with the following Code of Conduct that encourages the development of a spirit of collective decision-making, shared objectives and shared ownership of and respect for Board decisions.

- k) Serving the Community:** Members will serve and be seen to serve Library users and their community in a conscientious and diligent manner.
- l) Respect:** Members will treat Library users, volunteers, staff and fellow Board Members with respect. In the performance of their duties, Members will not abuse, bully or intimidate others and Members will fulfill their responsibilities in ensuring that the Library is free from discrimination and harassment.
- m) Board Meetings:** Members will honour the Board Governance By-law and this Code of Conduct at Board Meetings. Members understand that these meetings are public and that their behaviour affects the image of the Newmarket Public Library. Members will be courteous and refrain from using offensive language, and will show respect for diverse and opposing viewpoints.
- n) Public Servants:** Members will respect the role of Library staff as public servants who provide professional and politically neutral advice to the Board.
- o) Privacy and Confidential Information:** Members will respect the privacy of others and will not disclose or release by any means to any Member of the public, any confidential information acquired by virtue of their role at the Library. Members will maintain this

obligation even after Members leave the Board. Members will only disclose confidential information if required by law, or authorized to do so by the Board.

- p) **Support of the Board's actions:** While Members may have dissenting views on decisions taken by the Board and are permitted to discuss those views publicly, they shall nonetheless demonstrate acceptance, respect and support for all decisions legitimately taken in transaction of the Library's business.
- q) **Conflict of Interest:** Members will abide by the Conflict of Interest Policy as outlined in the Board Governance Document section 2.3.
- r) **Improper Use of Influence:** Members will not use their positions at the Library to improperly influence others for private gain or to gain preferential treatment for their family, friends or organizations with which Members are associated.
- s) **Political Neutrality:** Members will not use Library facilities, equipment, supplies, services (including staff services) or any other resources for election campaign or campaign-related activities. Members will not use a position of authority at the Library to compel staff or volunteers to engage in partisan political activities.
- t) **Gifts:** Members will remain free from any improper influence, or the appearance of improper influence, in the performance of their duties. When outside individuals or organizations give Members gifts in connection to their position at the Library, they will only accept gifts that:
 - i. are infrequent and the value is reasonable;
 - ii. arise out of activities or events related to the Member's official duties;
 - iii. are within the normal standards of courtesy, hospitality or protocol; and
 - iv. do not compromise or appear to compromise the integrity of the Member or the Library.

2.3 Conflict of Interest Policy

Directors shall act at all times in the best interests of the Library rather than particular interests or constituencies. This means setting aside personal self-interest and performing their duties in transaction of the affairs of the Library in such a manner that promotes public confidence and trust in the integrity, objectivity and impartiality of the Board. Directors shall serve without remuneration. No Director shall directly or indirectly receive any profit from his or her position as such. The pecuniary interests of immediate family members of a Director are considered to also be the pecuniary interests of the Directors.

Directors may be paid reasonable expenses incurred by them in the performance of their duties. It is recognized that some Board Directors who are Councilors of the Town of Newmarket will have different roles at different times and any determination as to a conflict of interest will be governed by the *Municipal Conflict of Interest Act*.

2.3.1 Principles for Dealing with Conflict of Interest

- a) A Director must openly disclose a potential, real or perceived conflict of interest as soon as the issue arises and before the board or its committees deal with the matter at issue;
- b) If a Director is not certain he or she is in a conflict of interest position, the matter may be brought before the Chair, the Board or a committee of the Board for advice and guidance;
- c) If there is any question or doubt about the existence of a real or perceived conflict, the Board will seek legal advice as to how to proceed under the *Municipal Conflict of Interest Act*;
- d) It is the responsibility of other Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow Director to raise the issue for clarification, first with the Director and, if still unresolved, with the Board Chair, who will seek legal advice;
- e) The Director must abstain from participation in any discussion on the matter, shall not attempt to personally influence the outcome, shall refrain from voting on the matter and unless otherwise decided by the Board, may be required to leave the meeting room for the duration of any such discussion or vote;
- f) The disclosure and decision as to whether the matter needs to be referred for further investigation with respect to the *Municipal Conflict of Interest Act* shall be duly recorded in the minutes of the meeting.

2.3.2 Interest on the part of a Director

Interest includes, but is not limited to:

- a) Any circumstance that may result in a personal or financial benefit to a Director or their family or business associate. This includes, but is not limited to, accepting any payment for services rendered to the Library, including contracted work or honoraria; accessing financial or other resources for personal use, i.e. transportation, training costs, supplies, equipment, etc.
- b) Personal interests which conflict with the interests of the patrons, or that are otherwise adverse to the interests of the Library;
- c) Seeking, accepting or receiving any personal benefit from a supplier, vendor, or any individual or organization doing or seeking business with the Library;
- d) Any involvement in the hiring, supervision, grievance, evaluation, promotion, remuneration or firing of a family member or business associate, of the Director;
- e) Individuals who serve as Directors on the same board with members of their family or others with whom they have a direct business or personal relationship will be subject to an immediate perception of apparent conflict of interest.

2.3.3 Disposition of Complaints and Disputes involving Directors

- a) A committee of the Board shall review any complaints from staff, the public, or Directors that a Director has violated any provision of the Library's By-laws, Governance Policies, Code of Conduct, and Oath of Office and Confidentiality. The committee shall be comprised of one Director who is also a councilor and two Directors who are citizen representatives.
- b) This committee shall similarly review disputes between Directors that interfere with the ability of the Board to carry on its business;
- c) Complaints of a serious nature may be referred to an independent arbitrator;
- d) Allegations of illegal activity shall be immediately referred to the appropriate authorities for investigation. Any Director against whom such allegations are made shall take a leave of absence from the Board pending completion of the investigation;
- e) The review of complaints or disputes shall include an opportunity for the Directors concerned to present their positions;
- f) Every attempt should be made to resolve matters expeditiously and fairly;
- g) The recommendations regarding resolution of matters shall be brought to the Board for approval;
- h) The Board shall make a ruling as to whether a violation has occurred and on the Committee's recommended resolution. Recommendations may include disciplinary action such as formal or informal censure by the Board or a request for the Director to resign or to take a leave of absence. Should the Director reject such a request, the Board may refer the matter to Town of Newmarket Council as the body with the sole authority to appoint Directors.
- i) Notwithstanding this process, a Director who is also a Town councilor may separately be subject to investigation and/or discipline by Town of Newmarket Council for the same matter.