



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 154-2019

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### Being a By-law to Adopt a Whistleblower Policy for The Corporation of the Town of Fort Erie

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**Whereas** the Town of Fort Erie has policies in place to ensure that it is accountable to the public for its actions and that its actions are transparent to the public, including the Accountability and Transparency Policy outlined in By-law No. 195-07; and

**Whereas** whistleblowing by employees in local governments can bring critical knowledge about misconduct and failed policy outcomes and priorities to the attention of politicians and/or the public; and

**Whereas** the Provincial government, as well as other municipalities and agencies in Ontario, have in place policies and/or legislation that provide legal protection from discriminatory or disciplinary action for employees who disclose wrongdoing of any kind in the context of their workplace in good faith and to a competent authority; and

**Whereas** voters in the Regional Municipality of Niagara, including the Town of Fort Erie, sent a strong message on October 22nd, 2018 for the need for accountability and transparency in the way local governance is conducted; and

**Whereas** it is always desirable to build upon and enhance existing policies that further strengthen public trust in the accountability and transparency of the way their local government functions; and

**Whereas** at the Regular Council Meeting held July 15, 2019 Council passed a Motion to direct staff to prepare a report with respect to a Whistleblower Policy for the Town of Fort Erie; and

**Whereas** Report No. CAO-30-2019 was considered and postponed at the October 15, 2019 Council-in-Committee Meeting due to amendments being requested to the proposed Whistleblower Policy; and

**Whereas** Report No. CAO-30-1-2019 was considered and postponed at the November 4, 2019 Council-in-Committee Meeting due to further amendments being requested to the proposed Whistleblower Policy; and

**Whereas** Report No. CAO-30-2-2019 was considered and received at the November 12, 2019 Council-in-Committee Meeting for information purposes; and

**Whereas** Report No. CAO-30-2019, as amended, was considered and approved at the November 12, 2019 Council-in-Committee Meeting to adopt the Whistleblower Policy for The Corporation of the Town of Fort Erie; and

**Whereas** it is deemed desirable to adopt the Whistleblower Policy for The Corporation of the Town of Fort Erie;

**Now therefore** the Municipal Council of The Corporation of The Town of Fort Erie enacts as follows:

1. **That** the Whistleblower Policy for The Corporation of the Town of Fort Erie attached as Schedule "A" to this by-law is approved and adopted.
2. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 9th day of December, 2019.**

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Mayor

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Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 154-2019 of the said Town. Given under my hand and the seal of the said Corporation, this      day of      , 20      .



## Whistleblower Policy

### 1. Purpose

The Corporation of the Town of Fort Erie (Town) is committed to integrity and ethical behavior in the workplace and will foster and maintain an environment where employees can work safely and productively, without fear of retaliation.

This policy has been adopted to provide a mechanism where employees who disclose serious wrongdoings regarding the Town's operations by its employees are protected from reprisal and where, under appropriate circumstances, investigations are undertaken in response to such disclosures.

This policy recognizes that it is in the public interest to maintain and enhance public confidence in the Town and its employees, by providing for:

- a. the disclosure of serious wrongdoings with respect to the Town's operations by its employees;
- b. the protection from reprisals against employees for disclosing serious wrongdoings when such disclosures are qualifying disclosures, including prescribing the conduct of employees with supervisory or management responsibilities and members of Council required to protect employees from reprisals for disclosing serious wrongdoings by other employees; and
- c. appropriate investigation and other actions in response to disclosures of serious wrongdoings when made in good faith.

The Chief Administrative Officer and the Manager, Employment Services are responsible for determining if disclosures of serious wrongdoings are qualifying disclosures and for ensuring that the appropriate investigation in response to disclosures of serious wrongdoing are undertaken in accordance with this policy.

All employees with supervisory or management responsibilities who know of reprisals against employees for making disclosures are responsible for ensuring that employees are protected from reprisals in accordance with this policy.



## Whistleblower Policy

### 2. Definitions

**Allegation** means a complaint submitted under the Whistleblower Policy alleging serious wrongdoings on the part of any employee or alleging that any person has been a victim of retaliation for making a disclosure.

**Chief Administrative Officer (CAO)** is the person having been appointed to assume that position as the top non-elected official of the Town.

**Council** means the Council of the Corporation of the Town of Fort Erie.

**Disciplinary Action** means any consequence imposed upon a person as a result of the determination under this policy that he or she has committed an act of serious wrongdoing, which may include, but is not limited to, the following:

- a. public or private apology;
- b. educational training on ethical conduct;
- c. removal of an employee from any place where the employee represents the Town, including any committee, board, or corporation;
- d. removal from any position of responsibility in the Town;
- e. suspension of duties;
- f. termination of employment with the Town;
- g. termination of a contract;
- h. legal action depending on the severity of the action; or
- i. such other discipline as may be considered appropriate in the circumstances.

**Disclosure** means an oral or written allegation to an appropriate Town official by an employee alleging a serious wrongdoing by another employee.

**Employee** means an employee of the Town and does not include the Mayor and Members of Council.

**Good Faith** means an act which is done for a proper and honest purpose and is not done trivially, frivolously or for a vexatious purpose.

**Lawful Authority** means the authorized agent of the law, established authority, proper authority, rightful authority and sanctioned authority.



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**Manager, Employment Services** means the senior person in the Town’s Human Resources Department who has that job title.

**Misconduct** means intentionally wrongful, improper or unlawful conduct.

**Reprisal** means any of the following measures taken against an employee because the employee has made a qualifying disclosure:

- a. the dismissal, suspension, demotion, discipline, harassment or abuse of an employee;
- b. the denial of a benefit of employment to an employee;
- c. any other disadvantaging of an employee;
- d. the intimidation, coercion or attempt to intimidate or coerce an employee.

**Serious Wrongdoing means:**

- a. a contravention of the Criminal Code, federal or provincial statute or regulation, or Town by-law;
- b. an act or omission that results or is likely to result in the misappropriation or misuse of Town funds or assets;
- c. a contravention of the Town’s Code of Conduct for employees that results or is likely to result in unjust profit, payment or compensation to the employee;
- d. an act of misconduct;
- e. an act or omission that creates or is likely to create a substantial and specific danger or harm to the life, health or safety of any person;
- f. an act or omission that creates or is likely to create a substantial and specific danger or harm to the environment; or



## Whistleblower Policy

- g. a reprisal against a whistleblower.

### **Supervisor/Manager means:**

- a. a supervisor or manager to whom an employee normally reports; or
- b. in the case of a disclosure of serious wrongdoing involving the supervisor or manager to whom an employee normally reports, the next above supervisor or manager in the employee's chain of command.
- c. in the case of a disclosure of serious wrongdoing involving the CAO, Council would be deemed in the chain of command.

**Town** means The Corporation of the Town of Fort Erie.

**Qualifying Disclosure** is a disclosure of information which is in the reasonable belief of the worker to be made in the public interest and tends to show that one or more of the six specified types of serious wrongdoing.

**Whistleblower** means a person who makes an Allegation.

### **3. Policy Statement**

The Town's corporate values include honesty, trust and integrity. Public confidence in the Corporation can be put at risk when the conduct of an employee involves serious wrongdoing.

Because of the nature of our work and the constituency served, Town employees are expected to conduct themselves with integrity and honesty. Some employees are also bound by professional standards and codes.

### **4. Application**

This policy applies to all employees of the Town. In addition to this policy the



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Town also has policies on the following that can be used for reference:

- PC-005 Employee Guide to Ethical Conduct
- PC-009 Civil and Respectful Workplace

### 5. Policy

5.1. The CAO and Manager, Employment Services shall determine whether or not a disclosure of serious wrongdoing made by an employee satisfies subsections (a) to (e) inclusive and when determined that the subsections have been satisfied, the disclosure of serious wrongdoing is deemed a “qualifying disclosure” for the purposes of this policy.

- a. the employee making the disclosure of serious wrongdoing self identifies their position with the Town including their work title;
- b. the employee making the disclosure of serious wrongdoing will provide oral or written documentation outlining the details which will include the name of the person, the incident, place, date, time and witnesses;
- c. the employee making the disclosure of serious wrongdoing has reasonable grounds to believe there has been or is about to occur serious wrongdoing by one or more employees;
- d. the employee making the disclosure of serious wrongdoing does so in good faith;
- e. the employee’s disclosure of serious wrongdoing is made to one of the following:
  - Manager, Employment Services
  - CAO
- f. A complaint form has been developed to capture the above information and is attached to this policy.

The CAO or Manager, Employment Services will send a written notice of receipt



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of a disclosure of a serious wrongdoing to the employee who has made such disclosure indicating it has been deemed a qualifying disclosure.

5.2 After a qualifying disclosure is determined the CAO shall decide the appropriate investigation process. Depending on the circumstances, either an internal or external investigation will be conducted.

### 6. Responsibilities

#### 6.1 Council shall:

- a. Review allegations of serious wrongdoing made against the CAO and any applicable investigation reports; and
- b. Take disciplinary action against the CAO if the CAO is found to have committed acts of serious wrongdoing.
- c. For clarification, the same provisions identified in this policy would be followed in investigating an allegation against the CAO and the duty. The process will be administered by the Manager, Employment Services.

#### 6.2 The Chief Administrative Officer shall:

- d. Ensure that a Whistleblower whose allegations of serious wrongdoing are made in good faith is protected from retaliation regardless of the outcome of the ensuing process.

Ensure the following process:

- a. Allegations received are reviewed;
- b. Allegations received are screened for legitimacy and potential investigation;
- c. Appropriate discipline is imposed when an allegation is substantiated; and





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- d. Adequate resources are made available to support all investigations.

Advise Council of any allegations that, if sustained, may involve significant imminent risk to the Town or may involve past, present or imminent criminal activity that would affect the Town.

### **6.3 Managers and Supervisors shall:**

- a. Inform their employees of the policy;
- b. Ensure that their employees understand the requirement to use government information responsibly and in good faith;
- c. Act promptly when information concerning serious wrongdoing is brought to their attention; and
- d. Protect from reprisal the employees who disclose serious wrongdoings in good faith.

### **6.4 Employees shall:**

- a. Use government information responsibly and in good faith.
- b. Follow the internal processes established in making allegations of serious wrongdoing in the workplace;
- c. Respect the reputation of individuals by not making trivial or malicious allegations or by making disclosures in bad faith, and
- d. Report the incident(s) or retaliation to the appropriate authority if they believe they have witnessed an act(s) of serious wrongdoing in their work environment.

## **7. Allegations**

- 7.1. Any individual who makes an allegation of serious wrongdoing must provide sufficient evidence to substantiate the allegation on the Serious Wrongdoing Complaint Form.
- 7.2. Anonymous allegations will only be considered when one or more of the



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following criteria are met:

- a. There is significant imminent risk to the Town;
  - b. There is evidence of past, present or imminent criminal activity involving the Town;
  - c. The allegation impacts the health, safety or well-being of elected officials, employees or the general public; or
  - d. The allegation is of such a serious nature and related to the operation of the Town such that, it cannot, in good faith, be overlooked.
- 7.3. Allegations must be made within 6 months of the date of the serious wrongdoing or within 6 months of the date on which the whistleblower learned of facts tending to support an allegation, except in the case of an allegation of criminal activity relating to the Town to which no time limit applies.
- 7.4. An allegation which discloses information suggesting criminal activity, an imminent risk of substantial danger to the life, health or safety of any person, or a risk to the environment must be immediately disclosed to the appropriate lawful authority.
- 7.5. Any person sending a complaint directly to an elected official shall be informed of this policy and that the procedure in this policy must be followed.

### 8. Investigations

- 8.1. All investigations will be conducted as expeditiously as possible in a fair and through manner with the results provided to the CAO. The CAO will determine whether or not the complaint is substantiated.
- 8.2. The investigation process and determination shall be carried out in a fair manner in accordance with principles of natural justice. The process shall include the provision of due process to the person who is



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subject to the investigation in order that they understand what they are being accused of and is offered a fair opportunity to respond before determination.

- 8.3. All Elected Officials and employees who are aware, or become aware of an investigation shall keep confidential and not disclose any knowledge they have or obtained concerning the details or results of an investigation.
- 8.4. An employee who breaches confidentiality with respect to an investigation may be subject to disciplinary action, regardless of the impact of the disclosure on the investigation.

### 9. Confidentiality

All records of workplace serious wrongdoing including reports and subsequent investigations are considered confidential and will not be disclosed to anyone except to the extent required by law.

### 10. Discipline

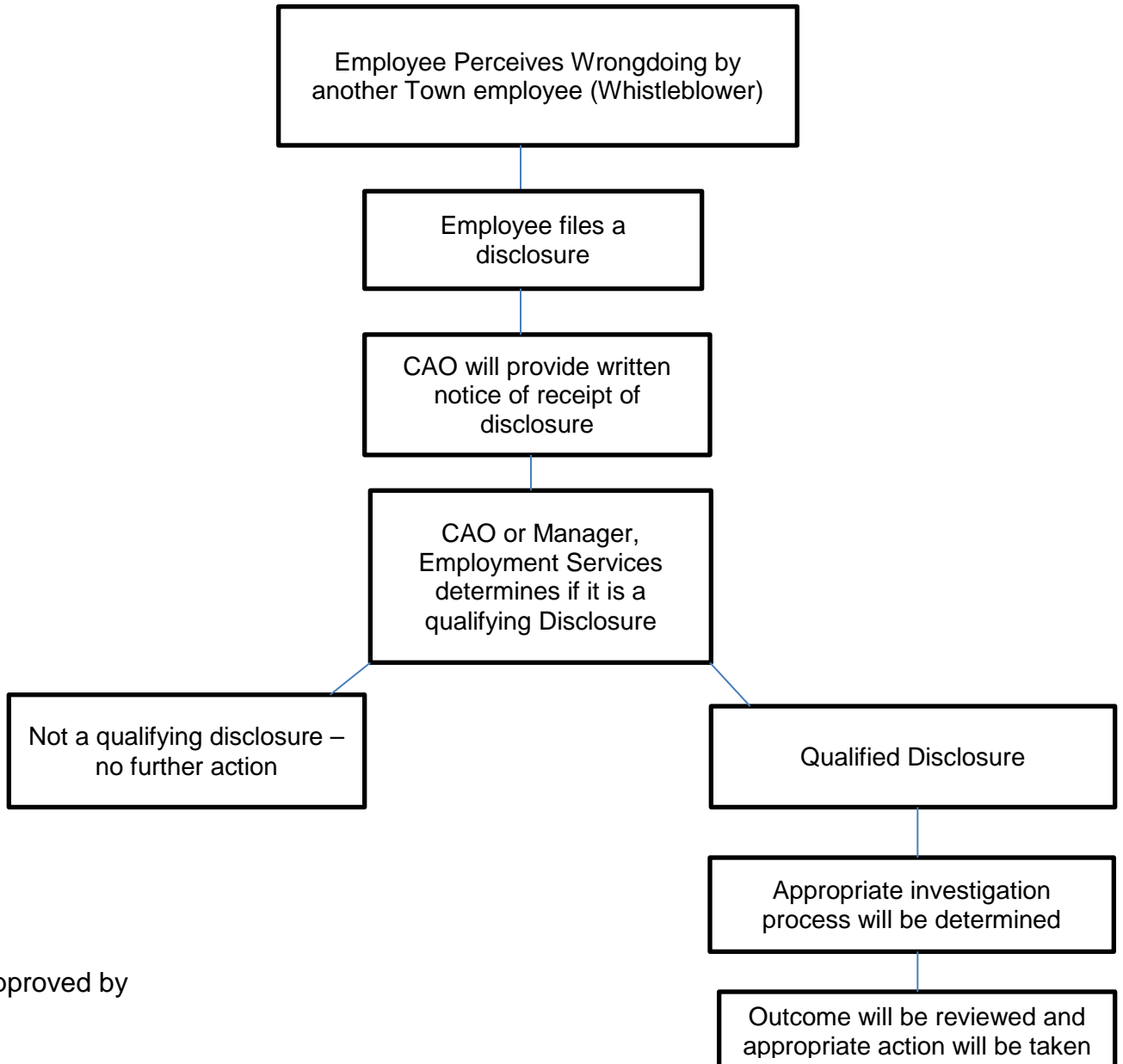
Upon concluding that an instance of workplace serious wrongdoing has occurred, the employee found to have committed a serious wrongdoing will be subject to disciplinary action. Disciplinary actions will be determined on the basis of the facts of each case and the extent of harm to the Town's interests and business goals.

This whistleblower policy will not be used to bring fraudulent or malicious complaints against employees. Any complaint made in bad faith, if demonstrated as being such through evidence, will result in disciplinary action being taken against the individual lodging the fraudulent or malicious complaint.



## Whistleblower Policy

### Complaint Process:



Approved by

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Tom Kuchyt, CET  
Chief Administrative Officer



## Whistleblower Policy

### Serious Wrongdoing Complaint Form Protection for the Whistleblower

Serious Wrongdoing means:

- a. A contravention of Criminal Code, federal or provincial statute or regulations, or Town by-law;
- b. An act or omission that results or is likely to result in the misappropriation or misuse of Town funds or assets;
- c. A contravention of the Town's Code of Conduct for employees that results or is likely to result in profit, payment or compensation to the employee(s);
- d. An act of misconduct;
- e. An act or omission that creates or is likely to create a substantial and specific danger or harm to the life, health or safety of any person;
- f. An act or omission that creates or is likely to create a substantial and specific danger or harm to the environment; or
- g. A reprisal against a Whistleblower.

Please Print Neatly

<b>Complainant Name (Your Name):</b>	<b>Respondent Name (Allegation made against):</b>
<b>Complainant Title (Your Title):</b>	<b>Respondent Title:</b>
<b>Date and Time of Alleged Workplace Incident:</b>	<b>Location of alleged workplace Incident:</b>
<b>Nature of Complaint: (set out full details).</b>	
<b>Did you speak to the Respondent, Manager or Witness about the action? If so who, when and where.</b>	<b>Provide names of all witnesses to the incident.</b>
<b>Have you witnessed prior incidents of wrongdoing? If so, provide details.</b>	<b>Provide names of other persons who can verify any of these other incidents.</b>
<b>Complainant Signature</b>	<b>Date:</b> _____

Complete a detailed statement on the reverse side of the complainant form if more room is necessary.

Complainant Signature \_\_\_\_\_ Date: \_\_\_\_\_