



City of Nedlands

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# *Code of Conduct*

As at 23 August 2016

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## 1. Introduction

- 1.1 The Code of Conduct is established for the purpose of ensuring that the roles and responsibilities of Elected Members and Employees are understood and respected so that a professional working relationship is established and maintained in the interests of providing excellent customer service and good government for the City. The Code of Conduct sets out the principles and standards of behaviour, which are expected of both Employees and Elected Members.
- 1.2 The Code of Conduct is intended to assist Elected Members and Employees as to the right course of action to take in a particular situation.

The Code of Conduct has been prepared in accordance with the *Local Government Act 1995* and is based on the same principals as outlined in the *Local Government (Rules of Conduct) Regulations 2007*, namely:

- a. act with reasonable care and diligence; and
  - b. act with honesty and integrity; and
  - c. act lawfully; and
  - d. avoid damage to the reputation of the local government; and
  - e. be open and accountable to the public; and
  - f. base decisions on relevant and factually correct information; and
  - g. treat others with respect and fairness; and
  - h. not be impaired by mind affecting substances.
- 1.3 The Code of Conduct does not override or affect the validity of the *Local Government Act 1995* or Regulations.

The Code of Conduct should also be read in conjunction with Council's Policy and Governance Manuals.

## 2. Role and Function of Council

- 2.1 The Council is comprised of a popularly elected Mayor, and 12 Elected Members representing the following Wards:

Coastal Districts Ward	3 Elected Members
Dalkeith Ward	3 Elected Members
Hollywood Ward	3 Elected Members
Melvista Ward	3 Elected Members

- 2.2 The Council is the elected body responsible for the good government of the district and strategic leadership of the local government. Council shall carry out its duties and responsibilities in the best interests of the community of the district and ensure that services and facilities are provided equitably and in an efficient and effective manner. Elected Members must at all times comply with the requirements of the Act.
- 2.3 The Council is responsible for formulating the vision and strategic directions of the City, policy making, setting Council's priorities and objectives, overseeing the allocation of the City's finances and resources and carrying out the Chief Executive Officer's performance review.
- 2.4 The community is entitled to expect that:
- the business of the Council is open and accountable, is conducted with efficiency and integrity and is committed to customer service;
  - Elected Members will act in accordance with the spirit and letter of the law including all relevant legislation; and
  - Council's duty to the community will always be given absolute priority over the private interests or opinions of Elected Members.
- 2.5 In accordance with *Section 2.10 of the Local Government Act 1995*, an Elected Member has five primary roles:
- a. representing the interests of electors, ratepayers and residents of the district;
  - b. providing leadership and guidance to the community in the district;
  - c. facilitating communication between the community and the council;
  - d. participating in the local government's decision making processes at council and committee meetings; and
  - e. performing such other functions as are given to a councillor by the Act or any other written law.

Further to the above:

- While Elected Members are elected by the electors of a particular Ward, their principal responsibility is to govern the entire City in the best interests of all electors, ratepayers and residents. Elected Members are therefore expected to have a reasonable knowledge of all aspects of Council activities and take into account the expectations of all electors;
- Council is a policy making body, establishing strategic goals and setting objectives to achieve these goals;

- Council conducts its meetings in accordance with its Local Laws Relating to Standing Orders. It is expected that a high standard of decorum and dress be maintained at Council meetings.
- 2.6 The powers and functions of Council can only be exercised by way of decisions made at properly convened meetings of the Council. Elected Members as individuals, unless formally delegated authority to do so, have no decision-making authority and cannot:
- commit Council to any course of action;
  - commit Council to any expenditure;
  - instruct any staff member; and
  - instruct any member of the public.
- 2.7 Elected Members may have access to any information held by the City that is relevant to the performance of their functions. Any request by an Elected Member for information shall be directed to the Chief Executive Officer, who shall determine whether the Elected Member is entitled to the information requested.
- 2.8 Elected Members taking part in Council meetings are granted the protection of privilege, however this privilege is not an absolute one. The law will only grant Elected Members protection provided statements made in good faith, are fairly warranted and honestly made. Protection is not available for defamatory statements which are known to be untrue, are reckless, or are designed to injure the person who is defamed.
- 2.9 Elected Members and candidates wishing to be elected to Council are required to adhere to this Code of Conduct during Election periods.
- 2.10 Elected Members are to treat employees courteously and with respect.

### **3. Role of the Mayor**

- 3.1 The role of the Mayor encompasses leadership, representation and advocacy as well as ceremonial responsibilities. The Mayor speaks on behalf of the City and in doing so represents the decisions made collectively by the Council. The Mayor provides an interface between the Elected Members and the Chief Executive Officer.
- 3.2 *Section 2.8 of the Local Government Act 1995* explains that the role of the Mayor is to:
- a. preside at meetings in accordance with this Act;
  - b. provide leadership and guidance to the community in the district;

- c. carry out civic and ceremonial duties on behalf of the local government;
- d. speak on behalf of the local government;
- e. perform such other functions as are given to the Mayor by the Act or any other written law; and
- f. liaise with the CEO on the local government's affairs and the performance of its functions.

Further to the above:

- the Mayor is entitled to be an ex-officio member of all Council's Committees;
- the Mayor is to provide corporate leadership at elected level and to act as a link between Council and the Chief Executive Officer;
- the Mayor is required to encourage input from all Elected Members and to ensure that the proper rules of debate are adhered to. Ultimately, debate must be constructive, concise and relevant to the subject;
- the Mayor has a duty to attain a working knowledge of the *Local Government Act 1995*, Council's Local Laws Relating to Standing Orders and meeting procedures, and to uphold these in all respects.

3.3 The Chief Executive Officer and Executive Assistant are available to the Mayor for advice and support throughout the term.

## **4. Role of the Chief Executive Officer**

4.1 In accordance with *Section 5.41 of the Local Government Act 1995*, the CEO's functions are to —

- a. advise the council in relation to the functions of a local government under this Act and other written laws;
- b. ensure that advice and information is available to the council so that informed decisions can be made;
- c. cause council decisions to be implemented;
- d. manage the day to day operations of the local government;
- e. liaise with the Mayor on the local government's affairs and the performance of the local government's functions;
- f. speak on behalf of the local government if the Mayor agrees;

- g. be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);
  - h. ensure that records and documents of the local government are properly kept for the purposes of the Act and any other written law; and
  - i. perform any other function specified or delegated by the local government or imposed under the Act or any other written law as a function to be performed by the CEO.
- 4.2 The Chief Executive Officer is the Council's principal advisor and allocates resources to allow Council decisions to be implemented.
- 4.3 Further to *Section 5.41 of the Local Government Act 1995*, the Chief Executive Officer has authority to determine matters associated with the administrative structure of Council, and subject to budget constraints and the provisions of the Act, to:
- create new positions other than the appointment of senior employees;
  - determine the remuneration of new and existing positions;
  - determine the functions of new and existing positions;
  - terminate existing positions, including making existing staff redundant in accordance with policy if necessary;
  - allocate responsibilities between divisions;
  - generally make structural changes to the administration within the divisional structure in order to ensure that the Chief Executive Officer's responsibilities are performed; and
  - undertake the performance appraisals of senior staff.
- 4.4 The Chief Executive Officer has the power to exercise delegated functions and any other function conferred by any Act relevant to Local Government.
- 4.5 Council supports the Chief Executive Officer's mandate to regularly review the organisation to achieve objectives as set down by Council, with regular reports being presented to Council by the Chief Executive Officer.
- 4.6 The Chief Executive Officer has the responsibility of ensuring that Council undertakings are within the powers of the relevant enabling legislation.
- 4.8 The Chief Executive Officer is the representative of the City in dealing with external organisations and the public with respect to the day to day operations of the City, and may speak on behalf of the City if the Mayor agrees.

4.9 The Chief Executive Officer is the link between appointed staff and Elected Members.

## 5. Council Staff

5.1 The role of employees is to:

- advise on and implement policies and directives as and when directed by Council;
- provide impartial advice and professional expertise;
- undertake the administrative and operational functions of the City; and
- stimulate innovation and strive toward best practice in the delivery of service to the community.

5.2 Employees must at all times comply with the requirements of the *Local Government Act 1995* and associated regulations.

5.3 The Chief Executive Officer is directly responsible to Council for all staff. The Chief Executive Officer is responsible for the effective and efficient implementation of Council decisions and in turn all employees of the City are subject to the direction of the Chief Executive Officer. In the interest of good management, efficiency and discipline, this line of authority must be adhered to at all times.

5.4 Employees shall:

- accept and respect the rights and obligations vested in Elected Members under the representative system of local government;
- conduct themselves professionally in all dealings with Elected Members;
- ensure that all issues are addressed with the highest level of proficiency and loyalty to the organisation;
- ensure that they operate within the limitations of the delegations and authorities given to them;
- refrain from any public criticism of the Mayor or Elected Members;
- carry out decisions of Council in an effective and efficient manner; and
- deal with Elected Members and members of the public in a courteous and respectful manner.



5.5 Clause 13 of this Code of Conduct sets out the process for dealing with any complaints or breach of this Code by the Chief Executive Officer or any employee.

## **6. Organisational Arrangements and Decision Making**

6.1 At Council and Committee meetings, whether making statements or answering questions, employees shall not engage in the debate of issues with Elected Members, and shall not dispute statements made by Elected Members or other employees unless necessary to correct an inaccurate, false or misleading statement with factual information. Should an error on the part of an officer or Elected Member be identified at a meeting, it shall be promptly acknowledged and addressed.

6.2 Council conducts its meetings in accordance with the Standing Orders Local Law and enforcement is the responsibility of the Mayor or relevant Chairperson and the Chief Executive Officer.

6.3 If any conflict arises between an Elected Member and an employee at a meeting, every endeavour shall be made to resolve the conflict discreetly and promptly. If the matter cannot be resolved, the parties shall confer with the Chief Executive Officer and the Mayor.

6.4 Elected Members and employees shall accept that the Mayor or relevant Chairperson and the Chief Executive Officer retain the right to answer any question arising in the first instance, and an employee is responsible for assisting with a response when called upon to do so.

6.5 Elected Members and employees, respecting the demands on each others' time, will use their best endeavours to arrive at meetings on time and shall advise the Chief Executive Officer if circumstances cause an inability to attend, or late attendance at, a particular Council or Committee meeting.

6.6 Elected Members are required to vote openly on all issues requiring a Council decision in accordance with the requirements of the *Local Government Act 1995*.

6.7 Elected Members are committed to adhere to the following decision-making criteria, adopted through its Strategic Community Plan:

- a. How well does it fit our strategic direction?
- b. Who benefits?
- c. Can we afford it?
- d. Does it involve a tolerable risk?

6.8 The Executive Management Team is committed to maintaining a high quality of material in written reports. Recommendations submitted to Council are to reflect the corporate view of the Executive Management Team.

6.9 The Elected Members and Executive Management Team will respect the procedural decisions of the Chair at meetings.

- 6.10 The need for thorough preparation on issues for discussion at Council meetings is recognised. Prior discussion of issues between Elected Members and officers avoids questions of operational nature in Council meetings and unnecessary reports.
- 6.11 Further to 6.9, Elected Members shall endeavour to provide any substantial amendments to recommendations to Committee or Council to the Executive Assistant at least 2 days prior to the relevant meeting for dissemination to Elected Members with accompanying notes or reasons to support the amendment.
- 6.12 Elected Members may, through the Mayor, call for a special briefing should they feel an issue warrants one. If the Mayor decides that it is warranted, the Mayor shall request the Chief Executive Officer to arrange the briefing.
- 6.13 Elected Members and employees should ensure that the local government impartially and properly assesses its own proposals for entrepreneurial activities, consistent with the scope and standard of the normal assessment of similar private activities.
- 6.14 The Code of Conduct shall be self-regulated by the Council. Elected Members and employees shall be cognisant of their obligations under this Code and endeavour to carry out their duties and responsibilities to the highest ethical standards.

## **7. Use of Council Property**

- 7.1 Elected Members and employees shall:
- be scrupulously honest in their use of local government resources and shall not misuse them or permit their misuse (or appearance of misuse) by any person or body. Resources (for the purpose of this clause) includes but is not limited to funds, facilities, and equipment and services of, and information (including confidential information) held by, the City;
  - use the local government resources entrusted to them effectively and economically in the course of their duties; and
  - not use the local governments resources for private purposes unless properly authorised to do so.
- 7.2 Elected Members should not occupy any part of the building after normal office hours, unless expressly permitted by the Chief Executive Officer.
- 7.3 The use of all communication aids and support equipment provided to Elected Members shall be restricted to Council business.

## 8. Conduct of ELECTED MEMBERS and Employees

8.1 The conduct of all Elected Members is covered by the *Local Government (Rules of Conduct) Regulations 2007*. These regulations include rules which cover:

- Use of information;
- Securing personal advantage or disadvantaging others;
- Misuse of local government resources;
- Prohibition against involvement in administration;
- Relations with local government employees;
- Disclosure of interest; and
- Gifts.

8.2 In addition to the *Local Government (Rules of Conduct) Regulations 2007*, all Elected Members and employees are to:

- act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code of Conduct;
- perform their duties impartially and in the best interests of the City of Nedlands and the community, uninfluenced by fear or favour;
- act in good faith (ie honestly and for a proper purpose) in the interests of the City of Nedlands and the community; and
- ensure that any comments they make in their capacity as an Elected Member are pertinent to the business of the City of Nedlands and are not made maliciously or without regard to whether they represent the truth.

8.3 Elected Members shall represent and promote the interests of the community as a whole, while recognising their special duty to their ward constituents.

8.4 Elected Members and employees are bound by Council decisions and shall not engage in any communications or practices which are contrary to the effect of the Council decision.

8.4 Elected Members and employees will act at all times when in Council buildings and properties in a manner that will not bring the City into disrepute.

8.5 The Mayor is the only person who is able to officially represent the views of the Council and the City. Elected Members are free to make their own personal position known about any matter, which is pertinent to the business of Council

and of public interest, including Council decisions. However, this is provided that such expressions of view are clearly prefaced with a statement or reference that they are personal views and not those of Council. The views should be expressed in a manner that is respectful of other Elected Members and Council officers.

8.6 Elected Members and employees will:

- demonstrate the City of Nedlands organisational values;
- observe the highest standards of honesty, decorum and integrity, and avoid conduct which may depart from these standards;
- bring to the notice of the Mayor or Chief Executive Officer any:
  - a. dishonesty or possible dishonesty on the part of any other Elected Member or employee
  - b. any breach of the City's Code of Conduct; and
- be frank, but respectful of their respective roles and duties, in their official dealings with each other.

8.7 Elected Members and employees shall demonstrate mutual respect and understanding in relation to their respective roles, functions and responsibilities.

8.8 Elected Members should:

- acknowledge and accept their role as representatives for the whole community within the district of the City, including the need to provide vision and leadership and be responsible for the performance review of the Chief Executive Officer;
- acknowledge that the Chief Executive Officer is responsible for staffing and resources and all matters relating to the operational management of the City;
- acknowledge that Elected Members have no place or authority to individually direct employees to carry out particular functions and duties and therefore, all matters relating to Council employees must be referred directly to the Chief Executive Officer;
- refrain from using their position to improperly influence employees in their duties or functions or to gain an advantage for themselves or others; and
- understand that they must not undertake a task that contributes to the administration of the City unless authorised by the Council or the CEO.

- 8.9 Elected Members may exercise their rights as private residents of the City to approach Council staff in the same way that any other resident may, and will receive the same level of service.
- 8.10 Elected Members and employees shall recognise that the collegiate nature of decision making under the existing system of local government means that a member's decision making function may only be exercised in properly constituted forums and collectively by Council resolution. Decisions made by the Council shall at all times be accorded their legitimacy and authority by Elected Members and Employees alike and respected and upheld at all times unless revoked.
- 8.11 Employees are accountable to the Council through the Chief Executive Officer and therefore, it is imperative that all requests for any action be directed through the Chief Executive Officer.
- 8.12 Elected Members are not to distribute via electronic mail, facsimile or any other means any material which contravenes this Code of Conduct.
- 8.13 Elected Members are to uphold the disclaimer at the end of any Council correspondence at all times. For example, all email communications marked for the reader, may only be passed to another party with the express permission of the author.
- 8.14 Elected Members can obtain information required in the course of their duties from the Chief Executive Officer or the responsible Director through the Chief Executive Officer. Elected Members are entitled to inspect and obtain copies of any documents relevant to a matter under discussion in Council, in accordance with the relevant provisions of the *Local Government Act 1995*.
- 8.15 Elected Members acknowledge the importance of minimising disruption to staff. Unannounced visits to Council offices or work sites are not encouraged.
- 8.16 Elected Members and employees shall not harass, discriminate against, bully, intimidate, or support others who harass, discriminate against, bully or intimidate colleagues or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or background), religion, political affiliation, marital status, disability, sexual preference or transgender.

## **9. Public Relations and Communications**

- 9.1 The Mayor, or delegate, leads Council deputations and represents Council at major congresses, seminars etc. The Mayor and Chief Executive Officer shall have open communication in order that the Chief Executive Officer is aware of movements of the Mayor in regard to City business. The Executive Assistant to the Chief Executive Officer and Mayor should be kept informed of the daily whereabouts of the Mayor.

- 9.2 Elected Members and employees shall ensure that timely, effective up to date and accurate information relevant to the City's functions is communicated to all sections of the community and appropriate procedures are implemented to facilitate proper access to and dissemination of information regarding Council business activities to achieve proper accountability and responsibility.
- 9.3 Council is committed to the principle of building a sustainable and successful partnership with the community, of which community consultation is an integral component.
- 9.4 All aspects of communication (including verbal, written or personal), involving local government activities should reflect the status and objectives of the Council. Communications should be accurate, polite and professional.
- 9.5 While recognising the desirability of transparent decision-making and open dialogue with the community, Elected Members and employees cannot disclose to the public any information which is held on a confidential basis by the Council or the City.
- 9.6 In accordance with the *Local Government Act 1995*, the spokesperson for Council is the Mayor. The Mayor may authorise the Chief Executive Officer to speak on behalf of the City.

## **10. Conflict of Interest**

- 10.1 Elected Members and employees will ensure that there is no conflict or incompatibility between their personal interests (including the interests of closely associated persons as defined by the Act) and the impartial fulfillment of their public or, professional duties.
- 10.2 Elected Members and employees are encouraged, insofar as it is within their power, to not allow any business or business activities in which they have an interest (excluding any interest which is solely the ownership, an interest in the ownership, or an entitlement to ownership, of shares in a publicly listed company) to engage in any form of work directly with the City or to operate in any other way that may place them in a conflict of interest with their role and responsibilities to the City of Nedlands.
- 10.3 Elected Members and designated employees will comply with the requirements of the *Local Government Act 1995* and associated Regulations with regards to lodging financial returns.
- 10.4 Employees and Elected Members will comply with the tender provisions of the *Local Government (Functions and General) Regulations 1996* if tendering for a contract to be let by the City, but are discouraged from lodging tenders.
- 10.5 Elected Members and Employees must make themselves aware of the requirements of Part 5, Division 6 of the *Local Government Act 1995* in relation to the disclosure of financial interests and proximity interests and when

attending any Committee or Council meeting must disclose any such interest in accordance with the Act.

10.6 In the following clauses 10.7 to 10.12 “interest” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

10.7 An employee who has an interest in any matter to be discussed at a Council or Committee meeting attended by the Employee must disclose that interest:

- In a written notice given to the CEO before the meeting; or
- At the meeting immediately before the matter is discussed.

10.8 An employee who has given, or will give, advice in respect of any matter to be discussed at a Council or Committee meeting not attended by the employee must disclose the nature of any interest the employee has in the matter:

- In a written notice to the Chief Executive Officer before the meeting; or
- At the time the advice is given.

10.9 The requirements of clause 10.7 and clause 10.8 do not relate to any interest referred to in section 5.60 of the *Local Government Act 1995*.

10.10 An employee is excused from the requirements of clause 10.7 and clause 10.8 to disclose the nature of an interest if:

- The employee’s failure to disclose occurs because the employee did not know he or she had an interest in the matter;
- The employee’s failure to disclose occurred because the employee did not know the matter in which he or she had an interest would be discussed at the meeting and the employee discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.

10.11 If, to comply with a requirement under clause 10.7 or clause 10.8, an employee makes a disclosure in a written notice given to the Chief Executive Officer before a meeting then –

- Before the meeting the Chief Executive Officer is to cause the notice to be given to the person who is to preside at the meeting; and
- Immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.

10.12 If –



- To comply with a requirement under clause 10.7 the nature of a person's interest in a matter is disclosed at a meeting; or
- A disclosure is made as described in clause 10.10 point 2 at a meeting; or
- To comply with a requirement under clause 10.11 point 2 a notice disclosing the nature of the Employee's interest in a matter is brought to the attention of the persons present at the meeting,

the nature of the interest is to be recorded in the Minutes of the meeting.

## 11. Personal Benefit

- 11.1 Elected Members and employees shall not use confidential information to gain improper advantage for themselves or for any other person or body, or to cause detriment to the City or any person.
- 11.2 Information of a confidential nature will not be disclosed by an Elected Member or Employee to until it is no longer regarded as confidential, except in accordance with the *Local Government Act 1995*.
- 11.3 Elected Members and employees shall not improperly take advantage of their position to influence other Elected Members or employees in the performance of their duties or functions in order to gain (directly or indirectly) any advantage for themselves or for any other person or body, or to cause detriment to the City or any person.
- 11.4 No Elected Member shall use the City's resources, including photocopying, stationery or other physical resources for the purpose of persuading electors to vote in a particular way in an election, referendum or other poll held under any written law.

## 12. Gifts

- 12.1 In this Part –

***activity involving a local government discretion*** means an activity —

- that cannot be undertaken without an authorisation from the City; or
- by way of a commercial dealing with the City;

***gift*** has the meaning given to that term in section 5.82(4) of the Act except that it does not include —

- a gift from a relative as defined in section 5.74(1); or



- b. a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
- c. a gift from a statutory authority, government instrumentality or non-profit association for professional training;

**notifiable gift**, in relation to a person who is an employee, means —

- a. a gift worth between \$50 and \$300; or
- b. a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth between \$50 and \$300;

**prohibited gift**, in relation to a person who is an employee, means —

- a. a gift worth \$300 or more; or
- b. a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth \$300 or more.

12.2 An employee must refrain from accepting a prohibited gift from a person who —

- a. is undertaking or seeking to undertake an activity involving the City's discretion; or
- b. it is reasonable to believe is intending to undertake an activity involving the City's discretion.

12.3 An employee who accepts a notifiable gift from a person who —

- a. is undertaking or seeking to undertake an activity involving the City's discretion; or
- b. it is reasonable to believe is intending to undertake an activity involving the City's discretion,

must notify the Chief Executive Officer, in accordance with clause 12.4 and within 10 days of accepting the gift, of the acceptance.

12.4 The notification of the acceptance of a notifiable gift must be in writing and include —

- a. the name of the person who gave the gift; and
- b. the date on which the gift was accepted; and
- c. a description, and the estimated value, of the gift; and

- d. the nature of the relationship between the employee and the person who gave the gift; and
- e. if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” in clause 12.1 (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
  - i. a description; and
  - ii. the estimated value; and
  - iii. the date of acceptance,of each other gift accepted within the 6 month period.

12.5 The CEO must maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement under clause 12.3.

12.6 Elected Members are reminded of the requirements of the *Local Government Act* and Regulations in relation to donations to election campaigns. The CEO maintains an electoral gift register in accordance with regulation 30G of the *Local Government (Elections) Regulations 1997*.

### **13. Breaches and Enforcement of the Code of Conduct**

13.1 This Code of Conduct does not override the provisions of Division 9 of Part 5 of the *Local Government Act 1995* or the *Local Government (Rules of Conduct) Regulations 2007*. Those provisions deal with the conduct of Elected Members and the process for consideration of a minor or serious breach of the Act. The following provisions are only intended to provide procedures for dealing with alleged breaches of the Code by Elected Members and employees.

#### 13.2 Responsibility for Upholding the Code of Conduct

- All Elected Members and Employees have a shared responsibility for upholding the Code of Conduct.

#### 13.3 Reporting Alleged Breaches of the Code

- Elected Members will report an alleged breach by an Elected Member or employee to the Mayor who will in turn refer any alleged breach by an employee to the CEO.
- Employees will report an alleged breach by an Elected Member or employee to the CEO who will in turn refer any alleged breach by an Elected Member to the Mayor.

- Elected Members and employees will report an alleged breach by the CEO to the Mayor.
- Elected Members will report an alleged breach by the Mayor to the Deputy Mayor.

A report of an alleged breach is to include:

- the name of the person who is the subject of the alleged breach;
- the behaviours that have been witnessed that give reason to believe that there has been an alleged breach;
- any other information that may be of relevance to an investigation of the alleged breach; and
- the clause of the Code that has allegedly been breached.
- The Mayor is responsible for dealing with alleged breaches of the Code by an Elected Member or the Chief Executive Officer.
- The Chief Executive Officer is responsible for dealing with an alleged breach by an employee.
- The Deputy Mayor is responsible for dealing with an alleged breach by the Mayor.

#### 13.4 Dealing with Alleged Breaches – Employees

- The CEO will investigate an alleged breach by an employee.
- After investigating the alleged breach, the CEO will decide whether the breach has occurred.
- The CEO is responsible for deciding the consequences of a breach by an employee having regard to the employee's contract of employment and industrial law.
- The CEO shall advise the complainant of the outcome of any alleged breach.

#### 13.5 Dealing with Alleged Breaches – CEO

- Subject to this clause, the Mayor will discuss an alleged breach with the CEO and seek to resolve the matter directly with the CEO. The Mayor will decide whether a breach has occurred and will resolve the matter in the following manner:
- If the Mayor decides that a breach has not occurred then the Mayor will inform the complainant and the CEO of this decision.

- If the Mayor decides that a breach has occurred the CEO may acknowledge the breach and if so will issue an apology to the complainant or another party as the case may be if deemed appropriate by the Mayor.
- The Mayor may refer an alleged breach to an independent investigator if the Mayor is not able to determine if a breach has occurred, or if having arrived at a determination the Mayor was not able to satisfactorily resolve the matter in accordance with the preceding paragraph.
- The independent investigator shall be selected from a list supplied by WALGA or the Department of Local Government and agreed to by the CEO.
- After investigating the alleged breach, the independent investigator will decide whether the breach has occurred and record the decision in writing.
- If the independent investigator decides that a breach has occurred the independent investigator may either:
  - refer the matter to the Council with a recommendation for resolution; or
  - refer the matter to the Department of Local Government for further investigation.

If:

- the Mayor forms the view the alleged breach is sufficiently serious; or
- it has previously been determined that two or more breaches have occurred,

the Mayor may decide the alleged breach should not be dealt with in the manner described above, and instead may refer the reach to the Department of Land Government or to another appropriate person or authority.

### 13.6 Dealing With Alleged Breaches – Elected Members

- Where the Mayor receives a report of an alleged breach by an Elected Member then the Mayor will consult with the Deputy Mayor.
- Subject to this clause, the Mayor and Deputy Mayor (provided the alleged breach is not made against the Deputy Mayor) will discuss an alleged breach with the Elected Member and seek to resolve the matter directly with the Elected Member. The Mayor and Deputy Mayor will

decide whether a breach has occurred and will resolve the matter in the following manner:

- If the Mayor and Deputy Mayor decide that a breach has not occurred then the Mayor will inform the complainant and the Elected Member concerned of this decision.
- If the Mayor and Deputy Mayor decide that a breach has occurred the Elected Member may acknowledge the breach and if so will issue an apology to the complainant or other party if deemed appropriate by the Mayor, and will undertake not to breach the Code in the future.
- The Mayor may determine at any time during an investigation of an alleged breach that the matter would be more appropriately determined by referring it to the internal review panel.

If:

- the Mayor forms the view the alleged breach is sufficiently serious; or
- it has previously been determined that two or more breaches have occurred,

the Mayor may decide the alleged breach should not be dealt with in the manner described above, and instead may refer the breach to the Department of Land Government or to another appropriate person or authority.

### 13.7 Dealing with Alleged Breaches – Mayor

- The Deputy Mayor will discuss an alleged breach with the Mayor and seek to resolve the matter directly with the Mayor. The Deputy Mayor will decide whether a breach has occurred subject to this clause and will resolve the matter in the following manner:
- If the Deputy Mayor decides that a breach has not occurred then the Deputy Mayor will inform the complainant and the Mayor of this decision.
- If the Deputy Mayor decides that a breach has occurred the Mayor may acknowledge the breach and if so will issue an apology to the complainant or other party if deemed appropriate by the Deputy Mayor, and will undertake not to breach the Code in the future.
- The Deputy Mayor will refer an alleged breach to an independent investigator if the Deputy Mayor is not able to determine if a breach has occurred or if having arrived at a determination the Deputy Mayor was not able to satisfactorily resolve the matter in accordance with the preceding paragraph.

- The independent investigator shall be selected from a list supplied by WALGA or the Department of Local Government and agreed to by the Mayor.
- After investigating the alleged breach, the independent investigator will decide whether the breach has occurred and record the decision in writing.
- If the independent investigator decides that a breach has occurred the independent investigator may either:
- refer the matter to the Council with a recommendation for resolution; or
- refer the matter to the Department of Local Government for further investigation.

If:

- the Deputy Mayor forms the view the alleged breach is sufficiently serious; or
- it has previously been determined that two or more breaches have occurred,

the Deputy Mayor may decide the alleged breach should not be dealt with in the manner described above, and instead may refer the breach to the Department of Land Government or to another appropriate person or authority.

### 13.8 Dealing with Alleged Breaches - Elected Members - Internal Review Panel

- The internal review panel will investigate an alleged breach by an Elected Member that is referred to the internal review panel by the Mayor.
- The internal review panel is to consist of:
- the Mayor or if necessary the Deputy Mayor;
- an Elected Member nominated by the Elected Member who is the subject of the alleged breach; and
- an Elected Member nominated by the person who is making the allegation of a breach.
- The Mayor will be the chair of the internal review panel. If the Mayor is the complainant alleging the breach then the Deputy Mayor will be the

chair of the internal review panel unless the Elected Member alleged to have breached the Code of Conduct is the Deputy Mayor. In this case another Elected Member will be appointed by the Mayor to be chair.

- The complainant and the person alleged to have breached the Code cannot be members of the internal review panel.
- The internal review panel is not a committee of Council.
- The quorum of the internal review panel is all three members of the internal review panel.
- After investigating the alleged breach, the internal review panel will decide whether the breach has occurred and the decision is to be recorded in writing.
- If the internal review panel decides that a breach has occurred then the internal review panel may:
  - warn the Elected Member in writing; or
  - refer the matter to the Department of Local Government for further investigation; or
  - refer the matter to the Council with a recommendation for resolution, or
  - take two or more of the courses described above.

### 13.9 Dealing with Alleged Breaches - Referral to Council

- Where an alleged breach by an Elected Member has been referred to the Council for resolution then the Council may:
  - issue a formal warning;
  - resolve that the Council issues a public censure to the Elected Member;
  - order that the person committing the breach publicly apologise,
  - require the person committing the breach to attend a nominated training course, or
  - refer the matter to the Department of Local Government for further investigation.
- The Council may take two or more of the courses described above.

- Should a person committing a breach refuse to comply with a direction of the Council under this clause then that person commits a further breach of the Code. In this instance the Council may consider further sanctions as it deems appropriate.

### 13.10 Investigating Breaches

- A finding that a breach has occurred is to be based on the standard of proof from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- The investigation of a breach will be guided by the principle that the more serious the allegation and the consequences of an adverse finding, the higher the standard of proof required.
- The investigation of a breach will be guided by the principles of natural justice and will be investigated in confidence.
- When investigating a breach, the investigator:
  - may interview the person who reported the alleged breach;
  - shall interview the person who is alleged to have committed the alleged breach and allow that person to respond;
  - may interview any other person who may be of relevant assistance; and
  - may require a written report or response to any allegations.
- When investigating an alleged breach, the investigator will maintain records of the investigation including:
  - the report on the alleged breach which will include the investigator's findings;
  - an explanation of the process followed in investigating the alleged breach;
  - records of any interviews conducted; and
  - any written allegations or reports or response to allegations.
- After investigating the alleged breach, the investigator will advise the relevant parties of the outcome of the investigation.
- The person conducting an investigation under the provisions of clause 13 of the Code of Conduct, including an internal review panel if applicable, shall be entitled to seek advice on the investigation from the



CEO (provided the CEO is not a party to the complaint) the Council's legal representatives or any other relevant person or body.

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Adopted by Council at its Meeting dated 22 April 2003.  
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