

Title	Councillor Code of Conduct
Description	A Councillor Code of Conduct required by section 139(1) of the Local Government Act 2020.
Category	Council
Type	Policy
Approval authority	Council
Responsible officer	Group Manager, Chief Executive's Office
Approval date	16 February 2021
Review cycle	Within six months and then every four years thereafter (within four months of each general election)
Review date	16 August 2021
Document Reference (Trim)	D13/83056
Human Rights compatibility	This policy has been assessed and is compatible with the Victorian Charter of Human Rights and Responsibilities.

1. Preamble

As Councillors of the City of Yarra we commit to:

- 1) working together and being accountable to achieving the aspirations and best interests of our community;
- 2) effective good governance and to ensuring the diversity of community views and opinions are properly balanced in the decision making process;
- 3) working constructively with our community and to take a strategic forward thinking approach to their long term aspirations, having always, a high regard for our environment, our heritage and the liveability of our city, whilst fostering employment opportunity; and
- 4) discharging our responsibilities to the best of our skill and judgement.

2. Policy

2.1. Standards of Conduct

Standard 1 - Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and

- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

Standard 2 - Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor—

- (a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

Standard 3 - Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

Standard 4 - Councillor must not discredit or mislead Council or public

In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.

In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

Standard 5 - Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

2.2. Misuse of Position

I will not misuse my position:

- 1) to gain or attempt to gain, directly or indirectly, an advantage for myself or another person; or
- 2) to cause, or attempt to cause, detriment to the Council or another person. (this includes the manner in which I communicate with and/or about Councillors or others, whether verbally, by electronic or any other medium)

Misuse of position includes:

- 1) making improper use of information acquired as a result of the position he or she held or holds; or
- 2) disclosing information that is confidential information within the meaning of section 125; or
- 3) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 124; or
- 4) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- 5) using public funds or resources in a manner that is improper or unauthorised; or

2.3. Relationship With Staff

I will not seek to improperly direct or influence a member of Council staff in the exercise of any power or in the performance of any duty or function.

As a collective, Councillors appoint and instruct the Chief Executive Officer, who in turn is responsible for the day to day operations of the organisation. I acknowledge that as an individual Councillor, I cannot direct staff members to undertake specific duties.

I recognise that a resolution of Council is the appropriate mechanism to establish or amend Council policy. In the case of routine inquiries, however, I may contact the relevant member of the Executive Team (or the appropriate Executive Assistant) for clarification.

I agree that workplace bullying can and should be prevented. As a collective, Council will collaborate with staff and unions to institute and uphold policies to facilitate an environment free from physical and psychological violence.

2.4. Access to files

If I wish to inspect a Council file, I will lodge a request with the Group Manager Chief Executive's Office. I acknowledge that:

- 1) I will only be able to view the material in the presence of a Council officer;
- 2) I will not be permitted to take the file 'off-site'; and
- 3) I will not be permitted to copy any part of the file.

2.5. Conflict of Interest

When I have (or may be perceived to have) an interest that prevents me from acting impartially, I will as soon as possible inform the Chief Executive Officer and my fellow Councillors that I am declaring a conflict of interest and state the nature of the interest.

When I have a conflict, I will disclose the conflict of interest in the manner required by the Council's Governance Rules; and exclude myself from the decision making process in relation to that matter,

including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.

While I may seek advice, I recognise that the legal onus rests with me. If I cannot confidently say that I do not have a conflict, I will declare a possible conflict and comply with the relevant requirements as if I do have a conflict.

2.6. An Open Mind

Notwithstanding my broader policy positions, I will keep an 'open mind' when researching, hearing submissions on, considering and finally, making a decision regarding a specific matter.

In the event that I am not capable of being persuaded from a pre-determined viewpoint, I will declare a conflict of interest and excuse myself from consideration of the matter.

2.7. Gifts and Hospitality

I will not accept any gifts or hospitality (including loans or discounts) where there may be a real or perceived conflict of interest with my past, present or future duties as a Councillor.

In particular, I will not accept gifts from individuals or bodies:

- 1) participating in a competitive tendering processes conducted by Council;
- 2) engaged in seeking an approval from Council in respect to planning, building, local laws, health registration or any statutory or other process; and
- 3) with any party responding to Council in undertaking its statutory enforcement responsibilities in respect to planning, building, health registration or any statutory or other process.

Under no circumstances will I accept cash or other money as a gift.

Council recognises the cultural sensitivities around gift giving. In circumstances where:

- 1) there is no potential for a real or perceived conflict of interest; and
- 2) refusal of the gift is likely to cause offence;

I may, pending the approval of the Group Manager Chief Executive's Office, accept the gift on behalf of Council.

If I do accept a gift, I will declare it by submitting both a Gifts Declaration Form and the item itself to the Group Manager Chief Executive's Office.

The Group Manager Chief Executive's Office will, in accordance with any Council policy then applicable, determine the manner in which accepted gifts will be employed for the benefit of Council as a whole. If the gift is valued at over \$500, the Group Manager Chief Executive's Office will make the decision in consultation with the Chief Executive Officer.

2.8. Confidentiality and privacy

I will:

- 1) ensure that I do not intentionally or recklessly disclose information that I know, or should reasonably know, is confidential information;
- 2) exercise due diligence in my management of private and/or personal information provided to Council by third parties; and

- 3) refrain from using information gained by virtue of being a Councillor for any purpose other than to exercise my role as Councillor.

2.9. Council Resources

I will:

- 1) exercise prudence in the use of public resources and maintain separation between Council property and my own;
- 2) ensure that I do not use Council resources (including staff time) for personal purposes; and
- 3) ensure that claims for out of pocket expenses are accurate and relate strictly to Council business.

2.10. Caretaker Period

Council is committed to upholding the highest standards of governance during election periods. I therefore agree:

- 1) to refrain from using Council resources (including facilities and staff) to promote any candidate or position;
- 2) to ensure that my electoral material is not present at any Council location or Council sponsored event;
- 3) refrain from seeking access to Council's databases and mailing lists for electoral purposes;
- 4) to ensure that my electoral material does not feature Council's logo or imply Council's endorsement in any way whatsoever;
- 5) to avoid unfairly binding the incoming Council by making significant decisions or major policy decisions unnecessarily;
- 6) that ward meetings will not be conducted during the caretaker period;
- 7) that civic functions will only be organised if they are part of the normal services of the Council; and
- 8) that no information other than my photograph and contact details will appear in Council publications (including Council's public website) during the caretaker period.

3. Grievance Resolution Procedure

Note Regarding Protected Disclosures

Pursuant to the provisions of the Public Interest Disclosure Act 2012, disclosures relating to a Councillor (as defined in that Act) must be made to the Independent Broad-based Anti-corruption Commission (IBAC) or the Ombudsman. The practical application of this requirement is that a Council cannot investigate public interest disclosures (as defined in that Act) made about a Councillor..

In response to grievances raised, whether by another Councillor/s or by a Council officer or another person, against a Councillor or Councillors, Council will follow the process set out in this section.

The purpose of this section is to record the procedure for managing the resolution of grievances directed at and/or relating to a Councillor/s, whether by a Councillor/s, an Officer/s or any other person/s, in a constructive manner.

3.1. Step 1:

Where the Mayor is not a party to a grievance, he/she will raise the issue with the Councillor/s who are the subject of the grievance and endeavour to assist in resolving the dispute informally. Where the Mayor believes it would assist, he/she may request the Chief Executive Officer to engage the assistance of an independent mediator in resolving the grievance.

Where the Mayor is a party to a grievance, the Chief Executive Officer will invite the parties to resolve the dispute informally and will offer the assistance of an independent mediator if any of the parties so desire.

This step is premised on the principle that before commencing any formal dispute resolution process, Councillors who are parties to any grievance, together with any other aggrieved parties, will exhaustively endeavour to resolve the issue in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

This grievance resolution procedure is intended to be used when Councillors and any other aggrieved parties, have been unable to resolve a grievance and where the situation is unduly affecting the operation of the Council.

Note

This procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Committee meetings.

If the parties are able to achieve a resolution to the grievance/s, whether by means of an apology or any other agreed action, the matter will be deemed to have been addressed and completed.

If after exhaustive effort, the grievance is not able to be resolved, the matter will proceed to Step 2.

3.2. Step 2:

The Councillors will convene an informal confidential meeting of Councillors only, to discuss the grievance/s and exhaustively endeavour to resolve the issue/s, in a courteous and respectful manner.

This step is premised on the principle that before commencing any formal dispute resolution process, the Councillor/s who is/are parties, together with any other aggrieved party/ies, to any grievance will endeavour to resolve the issue/s in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

In this regard, a Councillor/s may obtain assistance (e.g. an independent mediator) in resolving the grievance/s issue/s. This grievance resolution procedure is intended to be used when a Councillor/s have been unable to resolve a grievance/s and where the situation is unduly affecting the operation of the Council.

If the parties are able to achieve a resolution to the grievance, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.

If after exhaustive effort, the grievance is not able to be resolved, the matter will proceed to Step 3.

3.3. Step 3:

The Group Manager, Chief Executive's Office will nominate three external arbiters to assist in the resolution of the grievances. Each of these nominees will be suitably independent and able to carry out the role of arbiter fairly.

The arbiter to be appointed will be the nominee agreed on by all parties to the grievances or, failing agreement, the nominee selected by the Chief Executive Officer.

The arbiter will have responsibility for the oversight of a confidential dispute resolution process which shall include:

- 1) Consideration of applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
- 2) Making findings in relation to any application alleging a contravention of the Councillor Code of Conduct and the submission of those findings in writing to the Council.

The findings of the arbiter will be presented to a formal Council Meeting (in confidential session), to discuss the grievance/s and exhaustively endeavour to formally resolve on the issue/s.

- 1) If Council determines that the grievance has been resolved, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.
- 2) If after exhaustive effort, the grievance/s is/are not able to be resolved, it will proceed to Step 4. Therefore, Council will further formally resolve to take one of the following options, depending on the nature of the grievance/s issue/s:
 - a) If the alleged matter, if proven, would constitute misconduct as defined in the Local Government Act 2020, the Council may, by resolution, make an application to the Principal Councillor Conduct Registrar for an internal arbitration process, noting that:
 - applications can also be made by a Councillor, or a group of Councillors;
 - applications must be made in the manner specified in any guidelines published under section 149(1)(c); and
 - applications must be made within three months of the alleged misconduct.
 - b) If the alleged matter, if proven, would constitute serious misconduct as defined in the Local Government Act 2020, the Council may, by resolution, make an application to the Principal Councillor Conduct Registrar for the establishment of a Councillor Conduct Panel, noting that:
 - applications can also be made by a Councillor, or a group of Councillors;
 - applications must be made in the manner specified in any guidelines published under section 149(1)(n); and
 - applications must be made within twelve months of the alleged serious misconduct.
 - c) to refer the matter to the Local Government Inspectorate; OR
 - d) to refer the matter to the Ombudsman; OR
 - e) to refer the matter to the Independent Broad-based Anti-corruption Commission (IBAC).

3.4. Step 4:

Matter is then taken up by one of the following:

- The Internal arbitration process (see section 141 of the Act)
- A Councillor Conduct Panel (see part 6, Division 7 of the Act); or
- The Victorian Inspectorate; or
- The Ombudsman; or
- Independent Broad-based Anti-Corruption Commission (IBAC).

Note

Upon referral to one of the above bodies, the process is effectively out of the control of the Council and Councillors and becomes subject to a more formal action by the respective body. It is clearly more desirable for a Council to exhaust all efforts to address and resolve any grievance/s at the level of Steps 1 to 3.

3.5. Formal procedure

Throughout the process, details of all the steps taken including the relevant facts, referrals and dates, must be recorded by the parties, in order that the Council can inform any Authority to which the dispute matter may be referred, comprehensive details of steps taken to that point and of the status of the dispute.

4. Related Documents

- Local Government Act 2020
- Public Interest Disclosure Act 2012
- Independent Broad-based Anti-corruption Commission Act 2011

Step 1:

- Complaint/grievance lodged
- Mayor discusses grievance with Councillor/s and aggrieved party/ies.
- Mayor exhausts all efforts to achieve agreed resolution
- If grievance not resolved, proceed to Step 2.

Step 2:

- Mayor convenes confidential informal meeting of Councillors
- Mayor discusses grievance with Councillor/s
- Mayor exhausts all efforts to achieve agreed resolution between Councillor/s and aggrieved party/ies
- If grievance not resolved, proceed to Step 3.

Step 3:

- Nomination of three independent arbiters
- Selection and appointment of independent arbiter
- Conduct of arbiter's investigation
- Consideration of arbiters findings at confidential Council Meeting
- Resolution by Council determining whether a contravention has occurred and whether the grievance has been resolved.
- If grievance not resolved, proceed to Step 4

Step 4:

- Matter taken out of Council control and investigated by referred body.