

Council Policy CP015 Code of Conduct for Elected Members and Committee Members			
Officer	Manager Governance & Risk	Owner	Director Corporate & Commercial Services
Review frequency	Biennially	Next review	2015
Council resolution number and date			
Mayor		Chief Executive Officer	

OBJECTIVE

The primary objective of this Code of Conduct is to set out the standards of behaviour expected of the Elected Members and Committee Members.

SCOPE

This Code of Conduct applies to Elected Members and Committee members of the City of Greater Geraldton.

DEFINITIONS

Member means an Elected Member of the Council or a Committee Member who is not an Elected Member of the Council.

POLICY

1. Rule of Conduct

This Code must be read with the Rules of Conduct which are made under the *Local Government (Rules of Conduct) Regulations 2007* and apply to all Elected Members in WA. The Rules of Conduct have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the City's Complaints Officer (the CEO). If so, it will be dealt with under Part 5, Division 9 of the *Local Government Act 1995*.

References to the Rules of Conduct are contained in boxed sections in this Code.

2. Values

These values establish the parameters within which Elected Members and Committee members are expected to work in order to build the desired culture within our organization and to which all will be held accountable. The City's values are:

- Service
- Trust
- Accountability
- Respect
- Solidarity



SERVICE
TRUST
ACCOUNTABILITY
RESPECT
SOLIDARITY

3. Rules of Conduct Principles

For the purposes of this Code, the guiding principles set out in the Rules of Conduct apply to Elected Members and Committee members of the City.

Regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007* sets out principles to guide the behaviour of Elected Members. These include that a person in his or her capacity as an Elected Member (including when acting as a Committee Member) should:

- (a) act with reasonable care and diligence;
- (b) act with honesty and integrity;
- (c) act lawfully;
- (d) avoid damage to the reputation of the local government;
- (e) be open and accountable to the public;
- (f) base decisions on relevant and factually correct information;
- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting substances.

4. Conflict of Interests

Members must ensure there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions.

In applying this principle:

- a) Members must lodge written notice with the CEO describing an intention to undertake a dealing in land within the district or which may otherwise be in conflict with the City's functions (other than purchasing or leasing their principal place of residence);
- b) Members who exercise recruitment or other discretionary function must make written disclosure to the CEO before dealing with relatives or close friends, and will disqualify themselves from dealing with those persons during the recruitment or other matter requiring a discretionary function.

5. Financial Interests

Members must comply with the laws governing financial interests, including the disclosure of financial interests, set out in the Local Government Act 1995.

Sections 5.59-5.90 of the *Local Government Act 1995* establish the requirements for disclosure by Elected Members, a Committee Members or employees of financial interests (including proximity interests).

The onus is on members to identify possible financial interests (including proximity interests and non-financial interests), to determine whether an interest exists, and whether any statutory exemption applies.

6. Impartiality Interests

6.1. Meaning of impartiality interest

For the purposes of this Code, an impartiality 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.”

(See regulation 34(C)(1) of the *Local Government (Administration) Regulations 1996* and regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007*)

An ‘impartiality interest’ does not include a ‘financial interest’ that is subject to the requirements of the *Local Government Act 1995*.

6.2. Requirement to Disclose

A member who has an impartiality interest in any matter to be discussed at a Council or Committee meeting attended by that person must disclose the nature of the impartiality interest:

- a) in a written notice given to the CEO before the meeting; or
- b) at the meeting immediately before the matter is discussed.

A member is excused from the requirement to disclose an impartiality interest if the failure to disclose occurs because the person:

- a) did not know he or she had an impartiality interest in the matter; or
- b) did not know the matter in which he or she had an impartiality interest would be discussed at the meeting and the person discloses the nature of the impartiality interest as soon as possible after becoming aware of the discussion of that matter.

The disclosure of an impartiality interest does not affect the ability of the member to discuss or vote on the matter.

6.3. Notice of Recording

Where an impartiality interest is disclosed in a written notice given to the CEO before a meeting, then:

- a) before the meeting the CEO is to ensure that the notice is given to the person who is to preside at the meeting; and
- b) at the meeting, the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matter to which the disclosure relates is discussed.

Where an impartiality interest is disclosed or brought to the attention of the persons present at a meeting, the nature of the impartiality interest must be recorded in the minutes of the meeting.

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* contain detailed provisions relating to the disclosure by Elected Members of impartiality interests.

7. Disclosure of Information in Returns

Elected Members must provide primary and annual returns in accordance with the requirements of Division 6 of Part 5 of the *Local Government Act 1995*.

8. Personal Benefit

8.1. Disclosure of Confidential Information

Members must not disclose to another person, unless it is required for the performance of their duties at the City, written or oral information that is provided to them, or obtained by them, in confidence or, in the case of a document, is marked by the CEO to be confidential.

Regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007* also prohibit an Elected Member from disclosing confidential information, or information acquired at a closed meeting

8.2. Improper use of information

Members must not make improper use of any information acquired in the performance by the person of any of his or her functions under the *Local Government Act 1995* or any other written law.

Due discretion must be exercised by all those who have access to confidential or sensitive information. This applies not only to the proper disclosure of that information, but also to the appropriate measures to be taken to ensure that the security of the information is not compromised.

Section 5.93 of the *Local Government Act 1995* prohibits an Elected Member, Committee Member or employee from making 'improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law:

- a) to gain directly or indirectly an advantage for the person or any other persons; or
- b) to cause detriment to the local government or any other person'.

The penalty, on conviction, is a fine of \$10,000 or imprisonment for 2 years.

8.3. Improper use of position

A member must not make improper use of his or her office or position:

- a) to gain directly or indirectly an advantage for him or her, or for any other person;
or
- b) to cause detriment to the City or any other person.

Regulation 7 of the Local Government (Rules of Conduct) Regulations 2007 also deal with the improper use by an Elected Member of his or her position.

8.4. Improper or undue influence

Members must not take advantage of their positions to improperly influence any other person:

- a) to gain directly or indirectly an advantage for him or her, or any other person; or
- b) to cause detriment to the City or any other person.

Regulation 10(1) and (2) of the Local Government (Rules of Conduct) Regulations 2007 prohibit an Elected Member from:
(a) directing or attempting to direct a local government employee; or
(b) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee.

9. Gifts

9.1. General

In general, members must not seek or accept (either directly or indirectly) any immediate or future gift (including any financial benefit, reward, donation or hospitality) for themselves, or for any other person or body, as a result of their role with the City.

Despite the general presumption against seeking or accepting gifts or acts of hospitality, members may accept some types of gifts which are excluded from this Code's coverage.

For the purposes of this Code, a **'gift'** has the extended meaning set out in section 5.82(4) of the Local Government Act 1995 and includes:

“any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.”

However, a **'gift'** does not include:

- a) a gift from a relative as defined in section 5.74(1) of the Local Government Act 1995;
- 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.

Examples of gifts are:

- a) a tangible item, such as a bottle of wine or a book;

- b) a contribution towards the provision of accommodation;
- c) an act of hospitality, such as payment for a meal or an invitation to a function or event; or
- d) discounts on a provider's products.

Nothing in this Code prevents a gift from being received:

- a) on behalf of the City, where it is retained by the City; or
- b) by a member under and in accordance with the terms of a sponsorship or other commercial arrangement with the City.

For example, a ticket to attend a VIP event that is given to a member will not be a 'gift' (and, therefore, will not be subject to the gift provisions of this Code) if it is given because of a contractual obligation to give it under a sponsorship agreement with the City. However, a ticket that is given voluntarily, over and above any contractual obligation will be a gift (if it otherwise satisfies the definition of 'gift' referred to earlier) and, if so, will be subject to the gift provisions of this Code.

9.2. Prohibited gifts

A member must not accept a **prohibited gift** from a person who:

- a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- b) it is reasonable to believe is intending to undertake an activity involving a local government discretion.

For these purposes:

- a) a 'prohibited gift' means:
 - i. a gift worth \$300 or more; or
 - ii. a gift that is one of 2 or more gifts given to the member by the same person within a period of 6 months that are in total worth \$300 or more; and
- b) 'activity involving a local government discretion' is an activity:
 - i. that cannot be undertaken without an authorisation from the City; or
 - ii. by way of a commercial dealing with the City.

Any gift valued at \$300 or more should be declined politely. If it is considered inappropriate to reject a gift worth \$300 or more (such as in the case of a gift from a foreign dignitary), the gift should be received on behalf of the City and provided to the CEO at the first possible opportunity. At the CEO's discretion, these gifts will be placed in an appropriate position within the City and/or registered in the City's memorabilia collection.

The value of a gift can be estimated if you believe its value is low. However, if it is believed its value approaches \$300, the precise value of the gift should be checked before accepting to ensure compliance with this Code.

It is also important to ensure that the full value of the gift is taken into account. This includes all hidden costs in association with acts of hospitality. (For example, if invited to a box at a sporting event, the cost is not just the cost of an entry ticket but a proportion of the cost of the box and the hospitality provided.) It would also include the cost of the attendance of a partner at an event, should the partner be invited to accompany the City's representative.

Regulation 12 of the Local Government (Rules of Conduct) Regulations 2007 prohibit an Elected Member from accepting a prohibited gift.

9.3. Notifiable gifts

A member may accept a '**notifiable gift**'. However, if he or she accepts a **notifiable gift** from a person who:

- a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- b) it is reasonable to believe is intended to undertake an activity involving a local government discretion.

He or she must notify the CEO within 10 days of accepting the gift.

For these purposes:

- a) a 'notifiable gift' means:
 - i. a gift worth between \$50 and \$300; or
 - ii. a gift that is one of two or more gifts given to an Elected Member or committee member by the same person within a period of six months that are in total worth between \$50 and \$300.
- b) 'activity' involving a local government discretion' has the same meaning as referred to in 4.5(2)(b) above.

The notification to the CEO of the acceptance of a 'notifiable gift' must be in writing and must include:

- a) the name of the person who gave the gift;
- b) the date on which the gift was accepted;
- c) a description, and the estimated value, of the gift; and
- d) the nature of the relationship between the person who is a member and the person who gave the gift.

Members should also remember to disclose gifts, in a primary or annual return, received and valued at over \$200.

Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* contain similar requirements relating to the acceptance and notification of a 'notifiable gift' by an Elected Member.

9.4. Register of Notifiable gifts

The CEO must maintain a register of notifiable gifts and record any details of notifications given to comply with the requirement under (3) above.

10. Disclosure of Election Campaign Contributions

All electoral candidates must comply with the Local Government Act 1995 and the Local Government (Elections) Regulations 1997 in disclosing electoral donations or 'gifts'. A candidate must disclose to the CEO information about any electoral or related gift with a value of \$200 or more that is promised or received within 6 months before the relevant election day.

Requirements relating to the disclosure of electoral gifts are set out in the Local Government (Elections) Regulations 1997, particularly Part 5A.

11. Conduct of Members

11.1. Objectives

As members, high standards of professional conduct ensure that a positive image of the City is conveyed when the City interacts with its stakeholders and the general public. The conduct displayed should encourage fair, equitable and lawful management and operation of the City.

11.2. Personal Behaviour

Members must:

- a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- b) perform their duties impartially and in the best interests of the City uninfluenced by fear or favour;
- c) act in good faith in the interests of the City and the community;
- d) make no allegations which are improper or derogatory and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any person unwarranted offence or embarrassment; and
- e) always act in accordance with their obligations to the City and in line with relevant policies and procedures.

Elected Members must represent and promote the interests of the City, while recognising their special duty to their own constituents.

Regulation 10(3) of the Local Government (Rules of Conduct) Regulations 2007 prohibit an Elected Member from:

- (a) making a statement that a local government employee is incompetent or dishonest; or
- (b) using offensive or objectionable expressions in reference to a local government employee

11.3. Honesty and Integrity

Members and employees must:

- a) observe the highest standards of honesty and integrity;
- b) bring to the notice of the Mayor any dishonesty or possible dishonesty on the part of the CEO;
- c) bring to the notice of the CEO any dishonesty or possible dishonesty on the part of any member; and
- d) be frank and honest in their official dealings with each other.

A notice under paragraph 5.3(b) must be given strict confidentiality and the City will give appropriate support to all parties during any investigation.

11.4. Performance of Duties

Members must at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits.

Members will be as informed as possible about the functions of the City and will treat all members of the community honestly and fairly.

11.5. Compliance with local laws and policies

Members must give effect to the adopted local laws and policies of the City, whether or not they agree with or approve of them.

11.6. Management Practices

Members must comply with the City's management practices and administrative procedures, whether or not they agree with or approve of them.

11.7. Communication and Public Relations

As a representative of the community, members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so members must acknowledge that:

- a) as a member of the Council or a Committee, there must be respect for the decision making processes which are based on a decision of the majority of the Council or Committee;
- b) information of a confidential nature must not be communicated until it is no longer treated by the City as confidential;
- c) information relating to decisions of the Council must be communicated in an official capacity only by:
 - i. the Mayor (or his/her representative); or
 - ii. with the agreement of the Mayor, by the CEO (or the CEO's representative); and
- d) information concerning adopted policies, procedures and decisions of the City must be conveyed accurately.

11.8. Relationships between members and employees

An effective member will work as part of the City's team with the CEO and other members and employees. That teamwork will occur only if members and employees have mutual respect for, and co-operate with, each other to achieve the City's corporate goals and implement the City's strategies. To achieve that position all parties need to understand each other's roles as specified in the Act and any relevant agreements.

To achieve this effectiveness in teamwork, all members will:

- a) accept that their role is one of leadership, and not a management or administrative role;
- b) acknowledge that they have no capacity to individually direct employees to carry out particular functions;
- c) refrain from publicly criticising employees in a way that casts aspersions on their professional competence or credibility; and
- d) ensure that no restriction or undue influence is placed on the ability of employees to give professional advice to the Council.

Regulations 9 and 10 of the Local Government (Rules of Conduct) Regulations 2007 prohibit an Elected Member from:

- (a) undertaking a task that contributes to the administration of the local government, unless authorised by the Council or by the CEO to undertake that task;
 - (b) directing or attempting to direct a local government employee;
 - (c) attempting to influence, by means of a threat or the promise of a reward, the conduct of a local government employee;
 - (d) making a statement that a local government employee is incompetent or dishonest;
- or
- (e) using offensive or objectionable expressions in reference to a local government employee.

11.9. Appointments to External Organisations

Elected Members representing the Council on external organisations are to ensure that they:

- a) clearly understand the basis of their appointment;
- b) provide regular reports on the activities of the organisation in accordance with the confidentiality requirements of that organisation; and
- c) represent the Council's interests on all matters relating to that organisation, whilst maintaining the confidentiality requirements of the City.

11.10. Defamation

Comments by members at meetings of the Council and/or Committees of the Council are covered only by qualified privilege against defamation.

A member can rely on the defence of qualified privilege only while exercising the proper discharge of his or her duties, and doing so in the public interest.

In order to maintain the qualified privilege, a member should ensure that comments made are pertinent to the business of local government, they are not made maliciously, or without due regard to whether they represent the truth.

12. Dealing with the City's property

12.1. Use of resources

Members must:

- a) be honest in their use of the City's resources and must not misuse them or permit their misuse by any other person or body;
- b) use City's resources entrusted to them effectively and efficiently in the course of their duties; and
- c) ensure the City's resources are to be utilised only for authorised activities (for example - no use of employees for personal tasks or no use of equipment for non-City business).

Regulation 8 of the Local Government (Rules of Conduct) Regulations 2007 prohibit an Elected Member from using the resources of a local government for electoral purposes, or for any other purpose, unless authorised under the Local Government Act 1995 or by the Council or the CEO.

12.2. Reimbursement of Expenses

Members may claim for reimbursement of expenses only in accordance with the relevant policy.

13. Breaches and Misconduct

13.1. Breaches

A person may report a breach, or suspected breach, of this Code:

- a) by a member – to the CEO.

Each report of a breach is to be dealt with quickly and fairly in accordance with the principles of procedural fairness.

As indicated earlier (at Clause 1.4), the Rules of Conduct have their own enforcement regime. A breach by an Elected Member of a Rule of Conduct may be reported to the City's Complaints Officer (the CEO). If so, it will be dealt with under Part 5, Division 9 of the Local Government Act 1995.

13.2. Misconduct

The CEO has a statutory obligation to report to the Corruption and Crime Commission:

- a) any allegation of misconduct; or
- b) any situation that otherwise comes to his or her attention involving misconduct, where the CEO considers on reasonable grounds that misconduct may have occurred.

Note: For these purposes, 'misconduct' and 'serious misconduct' are defined in section 4 of the Corruption and Crime Commission Act 2003.

13.3. Public Interest Disclosure Act 2003

The Public Interest Disclosure Act 2003 facilitates the reporting of public interest information and provides protection for those who report this information under the Act.

The City:

- a) does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the City, by its members;
- b) is committed to the aims and objectives of the Public Interest Disclosure Act 2003;
- c) strongly supports disclosures being made by members as to corrupt or other improper conduct;
- d) will take all reasonable steps to provide protection to members who make disclosures from any detrimental action in reprisal for the making of a public interest disclosure; and
- e) does not tolerate any of its members engaging in acts of victimisation or reprisal against those who make public interest disclosures.

Members are encouraged to contact the City's nominated Public Interest Disclosure Officer to seek guidance on their disclosure and to lodge completed Public Interest Disclosure forms.

A person who makes an appropriate disclosure of public interest information to the City's nominated Public Interest Disclosure Officer under section 5 of the Public Interest Disclosure Act 2003:

- a) incurs no civil or criminal liability for doing so; and
- b) is not, for doing so, liable:
 - i. to any disciplinary action under a written law;
 - ii. to be dismissed;
 - iii. to have his or her services dispensed with or otherwise terminated; or
 - iv. for any breach of duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person (section 13).

WORKPLACE INFORMATION/REFERENCES

Local Government Act 1995 (Disclosure of Financial Interests)
Local Government (Official Conduct) Amendment Act 2007
Local Government (Administration) Regulations 1996
Local Government (Rules of Conduct) Regulations 2007
Public Interest Disclosure Act 2003
Defamation Act 2005