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Preamble

This Code of Conduct has been adopted to satisfy the requirements of S5.103 of the Local Government Act. The contents of this code are based on statutory sources, which are collated to form this Code. Where it is appropriate, original statutory sources are referenced throughout the document.

Clauses of this code relevant to the Local Government (Rules of Conduct) Regulations 2007 are subject to statutory disciplinary processes and penalties.

Clauses of this code that have been adopted by Council, as an expected standard of behaviour for elected and committee members, have no statutory disciplinary processes and penalties applied to them and will be addressed by the Chief Executive Officer in consultation with the Mayor.

In the interests of clarity, each provision is followed by a summary of the statutory requirements. These summaries are clearly identified as such and do not form part of the Code, nor are they a substitute for the source statutory requirement. They are included as explanatory notes, and may be adjusted administratively as and when legislation or interpretation of legislation changes. It is important to note that those explanatory notes should not be used for legal interpretation of the original statutory sources.

The matters dealt with in this Code include those that are direct references to existing legislation including:

- Local Government Act 1995;
- Local Government (Rules of Conduct) Regulations 2007;
1. Principles of Behaviour

The General principles to guide the behaviour of council members are set out in Regulation 3 of the Local Government (Rules of Conduct) Regulations.

Elected and Committee Members are encouraged to:
- act with reasonable care and diligence; and
- act with honesty and integrity; and
- act lawfully; and
- avoid damage to the reputation of the local government; and
- be open and accountable to the public; and
- base decisions on relevant and factually correct information; and
- treat others with respect and fairness; and
- not be impaired by mind affecting substances.

Explanatory note, not to be considered as legal interpretation

1.1 Harassment and Discrimination

An elected or committee member must not harass, discriminate against, or support others who harass, and discriminate against any person, colleagues or members of the public.

All people have a right to work in an environment that is free from sexual harassment. Sexual harassment will not be tolerated in the City of Fremantle. Any elected or committee members found to be committing sexual harassment will be subject to disciplinary proceedings.
2. Roles

2.1 Role of Elected Member

This is dealt with in section 2.10 of the Local Government Act.

A councillor —
- represents the interests of electors, ratepayers and residents of the district; and
- provides leadership and guidance to the community in the district; and
- facilitates communication between the community and the council; and
- participates in the local government’s decision-making processes at council and committee meetings; and
- performs such other functions as are given to a councillor by this Act or any other written law.

Explanatory note, not to be considered as legal interpretation

2.2 Role of Council

This is dealt with in section 2.7 of the Local Government Act.

Council —
- governs the local government’s affairs; and
- is responsible for the performance of the local government’s functions.

Council is to —
- oversee the allocation of the local government’s finances and resources; and
- determine the local government’s policies.

Explanatory note, not to be considered as legal interpretation

2.3 Appointments to External Committees

Council will appoint representatives to government specific external committees every two years following the ordinary elections or upon request by an external organisation.

Elected members representing council on government specific external committees have a duty to exercise voting rights as a member of the committee and should have regard to council policies and strategies when exercising their right to vote.

Representatives are also required to provide council with regular information and feedback from the committee meetings in which the elected member considers would be of interest or concern to the council.
3. Conflict and Disclosure of Interest

3.1 Financial, Indirect Financial, Proximity Interests

This is dealt with in sections 5.60 and 5.61 of the Local Government Act.

The Local Government Act 1995 (the Act) places specific obligations on elected members of council, local government employees and other persons involved in making decisions or giving advice on Council matters to act honestly and responsibly in carrying out their functions. Those obligations include the lodgement of disclosure of interest returns, the lodgement of written declarations and the verbal disclosure of financial interests at council and council committee meetings.

An Elected or Committee Member has an interest in a matter if either —
- the elected or committee member; or
- a person with whom the elected or committee member is closely associated,

has —
- a direct or indirect financial interest in the matter; or
- a proximity interest in the matter.

Financial interest
An elected or committee member has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, in a particular way, result in a financial gain, loss, benefit or detriment for that elected or committee member.

Indirect financial interests
An indirect financial interest of an elected or committee member in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in relation to the matter.

Proximity interest
An elected or committee member has a proximity interest in a matter if the matter concerns —
- a proposed change to a planning scheme affecting land that adjoins the person’s land; or
- a proposed change to the zoning or use of land that adjoins the person’s land; or
- a proposed development, maintenance or management of the land or of services or facilities on the land that adjoins the person’s land.

Explanatory note, not to be considered as legal interpretation
3.2 Impartiality Interests

This is dealt with in Regulation 11 of the Local Government (Rules of Conduct) Regulations and Regulation 34C of the Local Government (Administration) Regulations 1996

Local government elected members are required to disclose an interest that may adversely affect their impartiality in any matter discussed at a council or committee meeting.

**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.

If the matter in which an elected or committee member has an interest affecting impartiality is to be discussed at a council or committee meeting, the elected or committee member is to disclose the interest either in a written notice given to the CEO before the meeting or verbally at the meeting immediately before the matter is discussed.

The existence of an interest affecting impartiality is dependent on –

- the elected or committee member having an association with a person or organisation that has a matter being discussed at a council or committee meeting;
- the type of matter being discussed at a council or committee meeting.

Explanatory note, not to be considered as legal interpretation

3.3 City of Fremantle additional requirements for declaration of interests

Elected and committee members who have a financial or impartiality interest in an item being prepared for, appearing on or which may appear on, a meeting agenda for the City, must:

- avoid any debate and or comment in relation to that item in any form
- excuse themselves from any discussion involving that item at informal gatherings of elected and committee members.

It is at the discretion of the elected or committee member as to their involvement in any preliminary discussions on an item being prepared for, appearing on or which may appear on, a meeting agenda for the City, for which they have an Interest affecting their impartiality.
4. Personal Benefit

4.1 Use of Confidential Information

This is dealt with in Regulation 6 of the Local Government (Rules of Conduct) Regulations.

An elected or committee member must not disclose information that the Member derived from a confidential document or information that the Member acquired at a closed meeting other than information that was derived from a non-confidential document.

An elected or committee member may only disclose information from a closed meeting:

- As specified by Council and subject to any conditions specified by the Council,
- Information that is already in the public domain, or
- to an officer of the Department of Local Government, Sport and Cultural Industries, or
- to the Minister for Local Government, or
- to a legal practitioner for the purpose of obtaining legal advice, or
- If the disclosure is permitted by law.

Explanatory note, not to be considered as legal interpretation

4.2 Securing personal advantage or disadvantaging others

This is dealt with in Regulation 7 of the Local Government (Rules of Conduct) Regulations.

An elected or committee member must not make improper use of their office as an elected or committee member to gain, directly or indirectly an advantage for themselves or any other person or to cause detriment to the City of Fremantle or any other person.

Explanatory note, not to be considered as legal interpretation
5. Gifts and Contributions to Travel

This is dealt with in Sections 5.62, 5.82 and 5.83 of the Local Government Act 1995
Regulation 12 of the Local Government (Rules of Conduct) Regulations

Elected members and senior employees are required by legislation to declare the receipt of certain gifts, donations and contributions to travel.

When accepting gifts of any kind, elected members should consider their potential impact on their ability to take part in any decision making processes.

It is important to remember, with regards to the acceptance of gifts and travel contributions, once a gift has been accepted that requires a disclosure in either the Electoral Gift Register or the Gift Register under section 5.82 or 5.83 of the Local Government act 1995, the contributors become ‘closely associated’ with you under section 5.62 of the Act. That means that any financial or proximity interests they have in a matter before council is a financial or proximity interest for you too.

Donors of gifts disclosed in the Gift Register under the Rules of Conduct will not be considered ‘closely associated’, unless the value of their gifts in a particular financial year exceeds the $200.

There are four categories of gift disclosures:

1. Regulation 12 of the Local Government (Rules of Conduct) Regulations 2007 sets out the parameters for acceptance, non-acceptance and disclosure of gifts by elected members from a donor undertaking or seeking to undertake an activity involving local government discretion or where it is reasonable to believe that the person is intending to do so.

In accordance with regulation 12:
A Notifiable Gift is a gift of between $50 and $300 or 2 or more gifts within a six month period that in total are worth between $50 and $300, from a person who is undertaking, or is likely to undertake an activity involving a local government discretion.

A Prohibited Gift is a gift of $300 or more, or 2 or more gifts within a six month period that in total are worth more than $300 from a person who is undertaking, or is likely to undertake an activity involving a local government discretion.

Elected members who accept a gift of between $50 and $300, (a notifiable gift) are required to notify the CEO of acceptance within 10 days of accepting the gift, through completion of the Gift Declaration Form, which is then recorded in the gifts register. Information to be disclosed includes:
- The name of the person who gave and received the gift;
- The date of receipt of the gift;
- A description and the estimated value of the gift;
- The nature of the relationship between the elected member and the person who gave the gift.
- Details of any other gifts received from the same person/company within the preceding 6 month period.

Failure to disclose the acceptance of a notifiable gift or acceptance of a prohibited gift constitutes a minor breach of the Local Government Act 1995 for contravening a provision of the Local Government (Rules of Conduct) 2007 as prescribed by section 5.105(1)(a) of the Local Government Act 1995. Any breach of these rules will be dealt with under the process set out in sections 5.105 to 5.125 of the Local Government Act 1995.

Explanatory note, not to be considered as legal interpretation
2. Section 5.82 of the Local Government Act 1995 requires elected members to disclose each gift received over the prescribed amount of $200, including accumulative gifts received from the same donor totalling more than $200 over one year. The disclosure is to be made in writing to the CEO within 10 days of receipt of the gift. Information to be disclosed includes:
   - The name and address of the person who gave and received the gift;
   - The date of receipt of the gift;
   - A description and the estimated value of the gift;
   - The nature of the relationship between the elected member and the person who gave the gift.

3. Section 5.83 of the Local Government Act 1995 requires elected members to disclose contributions to travel in writing to the CEO within 10 days of receipt of the acceptance. Information to be disclosed includes:
   - a description of the contribution;
   - the name and address of the person who made the contribution;
   - the date on which the contribution was received;
   - the estimated value of the contribution at the time it was made;
   - the nature of the relationship between the relevant person and the person who made the contribution;
   - a description of the travel; and
   - the date of travel.

Councillors should be aware that under section 5.62 of the Local Government Act 1995, a donor of a gift under section 5.83 becomes a closely associated person and therefore a councillor would be required to disclose any financial or proximity interests when a matter is before Council.

4. Under the Local Government Act 1995 and Local Government (Elections) Regulations 1997 Candidates are required to disclose gifts received or promised during the election period. A person who gives you a notifiable gift in relation to the election at which you were last elected, or a gift since you were last elected, is deemed to be a “closely associated” person within the meaning of the Act if you were required by the Local Government (Elections) Regulations 1997 to provide information on that gift. Accordingly, for the term of your office you must disclose an interest in any matter that the person has before a meeting of which you are in attendance as a member.

Explanatory note, not to be considered as legal interpretation
6. Conduct of Council and Committee Members

6.1 Communication and Public Relations

Section 2.8 of the *Local Government Act 1995* prescribes the Mayor as spokesperson for the City of Fremantle and, as such, any official statement regarding the position of Council must be communicated through them, or the Chief Executive Officer with the Mayors authorisation.

Communication by elected and committee members (including verbal, written or personal), involving the City of Fremantle's activities should reflect the status and objectives of the City of Fremantle. Communications should be accurate, polite and professional.

Electronic communication by elected and committee members involving City of Fremantle's activities should copy in all elected members to ensure the appropriate dissemination of information.

6.2 Corporate Obligations

As representatives of the community, elected and committee members must not only be responsive to community views, but to also adequately communicate the attitudes and decisions of the Council.

In doing so, elected and committee members should acknowledge that:

a. as an elected or committee member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;

b. information relating to decisions of the Council on approvals, permits and so on ought be communicated in an official capacity by a designated employee of the City;

c. information concerning adopted policies, procedures and decisions of the Council is conveyed accurately; and

d. information of a confidential nature shall not be communicated until it is no longer treated as confidential.
6.3 Dealing with applicants of statutory approvals

An elected or committee member must:

a. not make any statements or express any views to an applicant or interested person which purports to be on behalf of the council or the City;
b. be alert to the motives and interests of an applicant or interested person;
c. be aware of which person, organisation or company that the applicant or interested person is representing;
d. not give any undertaking to an applicant or interested person in regard to the Proposal;
e. not do or say anything which could be viewed as giving an applicant or interested person preferential treatment;
f. ensure that an applicant or interested person is treated fairly and consistently;
g. be alert to attempts by an applicant or interested person to encourage elected or committee members to consider matters which are extraneous or irrelevant to the merits of the decision under consideration; and
h. provide any information received to all elected or committee members accordingly.

6.4 Lobbying

a. Elected and committee members should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a council decision. Suspicions of inappropriate lobbying can occur when lobbying is not open to public scrutiny.
b. The lobbying of elected and committee members by tenderers is NOT permitted.

6.5 Discretionary decisions of council and Personal statutory applications

a. Elected and committee members must lodge applications in the City’s usual way, available to all community members
b. Elected and committee members who are seeking a discretionary decision of council or have lodged applications with the City must only discuss the matter with the Chief Executive Officer or relevant Director and, only if approved by the Chief Executive Officer or Director, with other employees.
6.6 Involvement in administration

This is dealt with in Regulation 9 of the Local Government (Rules of Conduct) Regulations 2007.

Explanatory note, not to be considered as legal interpretation

6.7 Access to Administration Area and Contact with City Employees

a. Elected members may only access the administration area in the Administration Building with the understanding of either the Chief Executive Officer or a Director.
b. Elected members are to include the Chief Executive Officer or a Director in all communication with the City relating to administration matters including decisions of council, enquiries, complaints and comments.

6.8 Relations with local government employees

This is dealt with in Regulation 10 of the Local Government (Rules of Conduct) Regulations 2007.

Explanatory note, not to be considered as legal interpretation

Elected and committee members must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task. This does not apply to anything that an elected or committee member does as part of the deliberations at a council or committee meeting.

Elected and committee members may not —
- direct or attempt to direct employees; or
- attempt to influence, the conduct of an employee by means of a threat or the promise of a reward,
- make a statement that an employee is incompetent or dishonest; or
- use offensive or objectionable expressions in reference to an employee.
6.9 Record Keeping Obligations

Councillors must comply with obligations under the State Records Act 2000 as follows –

a. Adhere to the relevant City of Fremantle Recordkeeping policies and create and maintain records relating to their role in the decision making processes of Council. Records such as correspondence or petitions from ratepayers or community members; relating to lobbying or other matters regardless of whether lobbying itself is of local government or community interest.

b. Create and keep records of communications or transactions, which convey information relating to local government business or functions involving them. These records must be forwarded to the City’s administration for capture in the City’s official recordkeeping system. Records may take a variety of forms including letters, email, facsimiles etc.

If an elected member believes that some of the records forwarded for capture in the City’s recordkeeping system are highly sensitive or confidential, the elected member must contact the Chief Executive Officer to arrange the necessary security to restrict access to those records.
7. Dealing with Council Property

This is dealt with in Regulation 8 of the Local Government (Rules of Conduct) Regulations

7.1 Use of the City's Resources

Elected and committee members must not:

- use the Local Government’s resources (including the services of City employees) for private purposes, unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer).

- indirectly or directly use the resources of the City (which includes employees) for the purposes of persuading electors to vote in a particular way at an election, referendum or other poll held under the Local Government Act 1995, the Electoral Act 1907 or the Commonwealth Electoral Act 1918.

Explanatory note, not to be considered as legal interpretation
8. Complaints

8.1 Complaints about behaviour considered to be outside of the standards set by Council

Any person who believes that the conduct of an elected or committee member falls outside of the standards as set out in this code of conduct, other than those matters set out in the Local Government (Rules of Conduct) Regulations 2007, may refer the matter in writing to the Chief Executive Officer for consideration.

As indicated in the preamble to this code:

Clauses of this code relevant to the Local Government (Rules of Conduct) Regulations 2007 are subject to statutory disciplinary processes and penalties.

Clauses of this code that have been adopted by Council, as an expected standard of behaviour for elected and committee members, have no statutory disciplinary processes and penalties applied to them and will be addressed by the Chief Executive Officer in consultation with the Mayor.

If the Chief Executive Officer has reason to believe that a complaint made constitutes a breach of the standards of conduct in the Local Government (Rules of Conduct) Regulations 2007 he or she may refer the matter to Local Government Standards Panel (Act s.5.107[3]).

8.2 Complaints of a suspected breach of the Local Government (Rules of Conduct) Regulations 2007

Any person who has reason to believe that the personal behaviour of an elected or committee member breaches the standards of conduct set out in the Local Government (Rules of Conduct) Regulations 2007 may refer the matter as follows:

a. A complaint is drafted using the Complaint of Minor Breach Form (appendix 1) with appropriate and relevant supporting evidence attached.

b. The complainant lodges the Complaint of Minor Breach Form and supporting evidence with the Chief Executive Officer. The Chief Executive Officer may also initiate complaints under the Act (s.5.109).

c. The Chief Executive Officer, within 14 days:
   i. contacts the complainant acknowledging that the complaint has been received;
   ii. provides the council member who is the subject of the complaint with a copy of the complaint; and
   iii. sends the complaint to the Local Government Standards Panel (Act s.5.107[3]).

If the Chief Executive Officer believes that a complaint discloses a serious breach (rather than a minor breach), they are required to refer it to the Department (Act s.5.115).
9. Additional Reporting Agencies

9.1 Reporting misconduct to the Corruption and Crime Commission

The Chief Executive Officer, being a ‘principal officer of a notifying authority’ (for the purposes of the Corruption and Crime Commission Act 2003) 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 their attention involving misconduct, where the Chief Executive Officer suspects on reasonable grounds concerns or may concern misconduct and is of relevance or concern to the Chief Executive Officer in their official capacity.

Notwithstanding, any elected or committee member or any other person may report directly to the Corruption and Crime Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct that:

   a. has or may have occurred;
   b. is or may be occurring;
   c. is or may be about to occur; or
   d. is likely to occur.

9.2 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 that Act.

Elected and committee 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;
   b. is not, for doing so, liable:
      i. to any disciplinary action under a written law;
      ii. to be dismissed;
      iii. to have their 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).
Definitions and abbreviations

Nil.

Review information and related documentation

Reviewing officer: Manager Governance
Policy amended:

Legislation: Statutory References
Corruption, Crime and Misconduct Act 2003
Equal Opportunity Act 1984
Freedom of Information Act 1992
Local Government Act 1995
Local Government (Administration) Regulations 1996
Local Government (Financial Management) Regulations 1996
Local Government (Rules of Conduct) Regulations 2007
Occupational Safety and Health Act 1984
Public Interest Disclosure Act 2003
Public Sector Management Act 1994
Public Service Act 1999 Cth
Sex Discrimination Act 1984 Cth
State Records Act 2000

Delegations: NA

Related documents: Elected Member Policies

Next review date: 23 May 2020
COMPLAINT OF MINOR BREACH FORM
(Breach of the Local Government (Rules of Conduct) Regulations 2007)
(Subsections 5.107(1) and (2) of the Local Government Act 1995 ("the LG Act"))

NOTE: A person who includes information in a complaint knowing it to be false or misleading in a material particular commits an offence (maximum penalty: $5,000). If this complaint is made during the campaign period for a local government election (that is, during the period from opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (maximum penalty: $5,000).

The law requires a copy of this complaint to be given to the Council member complained about.

<table>
<thead>
<tr>
<th>NAME OF PERSON WHO IS MAKING THE COMPLAINT:</th>
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<tbody>
<tr>
<td>Name: ____________________________________</td>
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<tr>
<td>Given Name(s)</td>
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<table>
<thead>
<tr>
<th>NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:</th>
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<table>
<thead>
<tr>
<th>NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:</th>
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<tr>
<th>WHAT IS YOUR COMPLAINT:</th>
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<tbody>
<tr>
<td>State the type of your complaint by ticking the box of the particular breach alleged to have occurred under the Local Government (Rules of Conduct) Regulations 2007.</td>
</tr>
</tbody>
</table>

☐ Regulation 4 – Breach of a local law relating to conduct at meetings
☐ Regulation 6 – Improper disclosure of information
☐ Regulation 7 – Securing personal advantage or disadvantaging others
☐ Regulation 8 – Misuse of local government resources
☐ Regulation 9 – Prohibition against involvement in administration
☐ Regulation 10 – Relations with local government employees
☐ Regulation 11 – Non-disclosure of interest adverse to impartiality
☐ Regulation 12 – Acceptance of gifts

(State full details of What Happened in that section on the next page)

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<thead>
<tr>
<th>DATE OF INCIDENT:</th>
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<tbody>
<tr>
<td>______________[day] / _____________[month] / ____________[year]</td>
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<tr>
<td>WHAT HAPPENED?</td>
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<tr>
<td>What are the details of the contravention that is alleged to have resulted in the breach?</td>
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<tr>
<td>[Attach further information if insufficient space]</td>
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<th>SIGNED:</th>
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<tbody>
<tr>
<td>Complainant’s Signature: .................................................................</td>
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<tr>
<td>Date of signing: _______ / _______ / 20_______</td>
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