

Invercargill City Council

# Code of Conduct

2022

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# Code of Conduct

## November 2022

### 1. Introduction

Invercargill City Council ("Council") Elected Members have an important and privileged role representing the people of Invercargill. This Code of Conduct ("the Code") represents a commitment from all Elected Members to maintain high standards of behaviour, which is important for their credibility as city leaders and for the reputation of Invercargill.

As well as articulating agreed professional and ethical behaviours, encouraging teamwork and facilitating effective local democracy, the Code is of value to the Council as a resource and information guide for existing Elected Members and an aid to the public - enabling the public to evaluate behaviour.

The Purpose of this Code is to:

- Enhance the effectiveness of Council and the provision of good local government of the community and city
- Promote effective decision-making and community engagements
- Enhance the credibility and accountability of Council to its communities
- Develop a culture of mutual trust, respect and tolerance between the Elected Members of Council and between the Elected Members and management.

This purpose is given effect through the values, roles, responsibilities, and specific behaviours in the code.

### 2. Definitions

**Council** - Invercargill City Council

**The Code** - The Code of Conduct adopted on 1 November 2022 by Invercargill City Council.

**Elected Member** - The definition of 'Elected Members' include those individuals declared to be elected to the Invercargill City Council as a Councillor, or Mayor and also appointed members to Council and Committees within the scope of this Code. Appointed members to Council's Committees (for example, Mana Whenua Representatives, appointed members to the Risk and Assurance Committee and appointments to any other Council Committees or sub-committees) will be treated as Elected Members within the scope of this Code.

**LGA** - Local Government Act 2002

**LGOIMA** - Local Government Official Information and Meetings Act 1987

**Materiality** - The following may be taken into account when assessing materiality:

- The conduct was not stopped on request

- The conduct appeared to be intentional, malicious, motivated by ill-will
- The conduct caused serious harm, for example, reputation harm, or brought Council into disrepute
- There is an ongoing pattern of breaches
- Even though the conduct occurred on only one or two occasions, it represents a major departure from expected standards.

### 3. Scope

Council is required to adopt a Code of Conduct according to clause 15 of Schedule 7 of the Local Government Act 2002 ("LGA"). Once adopted, all Elected Members are required to comply with the Code.

The Code is designed to deal with the behaviour of Elected Members towards:

- Each other
- The Chief Executive and staff
- The media

The Code is also concerned with the disclosure of information that Elected Members receive in their capacity as Elected Members and information which impacts on the ability of Council to give effect to its statutory responsibilities.

This Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of Elected Members present at a Council meeting when an amendment to the Code is being considered. The Code should be read in conjunction with the Council's Standing Orders.

### 4. Application

The Code applies to Elected Members at all times in their official capacity as Elected Members, and as representatives of Invercargill City Council and the wider community. Elected Members, like all citizens, are entitled to freedom of expression and play an important role in putting issues out for public debate and discussion. As a community leader and elected representative, this comes with a concurrent responsibility to be respectful, and open-minded to alternative views. Elected Members must have this standard of conduct in mind in the public arena whether as a part of a public rally, public speech or via websites or social media platforms.

Where a connection of any kind can be made to the behaviour of an Elected Member in their official capacity, then this Code of Conduct will apply.

The LGA requires Elected Members to comply with the provisions of this Code. Members are also bound by the LGA, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961, the Financial Markets Conduct Act 2013, the Health and Safety at Work Act 2015, and the Protected Disclosures Act 2000.

Short explanations of the obligations that each of these Acts has with respect to the conduct of Elected Members are set out in Appendix 1 of this Code.

## 5. Authority

The Code of Conduct adopted on 8 November 2016 was revoked, and the Code of Conduct 2022 adopted by Council at its meeting on 1 November 2022.

## 6. Principles of Governance

The Code outlines the principles of good governance. These principles complement and work in conjunction with, the governance principles relating to local authorities (sections 14 and 39 of LGA). Elected Members must adhere to the following principles as leaders of the city.

### 6.1 Public Interest

Elected Members will serve the best interest of the people within the City and discharge their duties conscientiously, to the best of their ability.

### 6.2 Integrity and Honesty

Elected Members will be honest and act with integrity. This includes:

- Behaving in accordance with the trust that the public places in them;
- Being fair and consistent in dealings with others and following through on commitments;
- Not making statements or doing anything that will, or is likely to, mislead or deceive including any statements or information that is false or factually incorrect;
- Not placing themselves in situations where their honesty and integrity may be questioned;
- Being open to constructive feedback;
- Complying with relevant legislation and Council policies and procedures; and
- Making decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

### 6.3 Accountability

Elected Members will:

- Comply with all legislative requirements applying to their role, abide by the Code, and act in accordance with the trust placed in them by the public to be responsible for their decisions and actions, and be prepared to justify these;
- Act in an open and transparent manner; and
- Ensure Council resources are used prudently.

### 6.4 Respect for Others

Elected Members will treat people, including other Elected Members with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- Treating people, including other Elected Members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability;

- Recognising and encouraging ideas and contributions from others;
- Being courteous and approachable;
- Not engaging in aggressive, offensive, abusive, harassing, bullying, or discriminatory behaviour (including for example any repetitive or unreasonable behaviour towards a person or group that poses a risk to their wellbeing or a single episode of unreasonable or demanding behaviour including when there is a power imbalance);
- Not making personal attacks;
- Respecting the impartiality and integrity of staff;
- Not interrupting when others are expressing their point of view;
- Not making any unreasonable, unwelcome, or unsolicited comments to the public or other Elected Members; and
- Not insulting, intimidating, being malicious, degrading, or offensive to the public or other Elected Members.

## **6.5 Good Faith**

Elected Members will faithfully and impartially perform their duties and exercise their powers and authorities in the best interest of the community of Invercargill City.

A breach of this Code could indicate a lack of good faith and could be relevant to an assessment of personal liability (see the explanation of sections 43 to 47 of the LGA set out in Appendix 1 of the Code).

## **6.6 Proper Use of Position**

Elected Members must not:

- Solicit, demand or request any gift or benefit because of their position;
- Claim expenses which are not legitimate;
- Fail to declare gifts given to them because of their position (see the explanation of declaring gifts set out under Section 5.6 of this Code);
- Influence, or attempt to influence, any Council employee, or another member, in order to benefit their own, or family's, personal or business interests;
- Use information and/or Council resources for any purpose which is not directly related to Council business, including use of Council resources to promote personal or business interests; or
- Use, directly or indirectly, any Council resources and/or branding for the purpose of seeking re-election.

## **6.7 Equitable Contribution**

Elected Members will take all reasonable steps to ensure they fulfil their duties and responsibilities, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training sessions.

## **6.8 Leadership**

Elected Members agree to be bound by this Code and demonstrate adherence to these principles through their leadership of the city. They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of Council.

## 7. Role and Responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of Council and those responsible for advice and the implementation of Council's decisions.

This section of the Code describes the roles and responsibilities of Elected Members, the Mayor, Deputy Mayor, Committee Chairpersons, and Chief Executive.

### 7.1 Elected Members

Elected Members, acting as Council, are responsible for governance, including:

- Representing the interest of the people of the residents and ratepayers of the city;
- The development and approval of Council plans, policies and budgets;
- Monitoring the performance of Council against stated goals and objectives set out in its Long Term Plan;
- Providing prudent stewardship of Council resources;
- Employment of the Chief Executive and monitoring the performance of the Chief Executive; and
- Ensuring Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

Unless otherwise provided in the LGA or in Council's Standing Orders, Council can only act by majority decisions at meetings. Any individual Elected Member (including the Mayor) has no authority to act on behalf of Council unless provided for by statute or Council has expressly delegated such authority.

Elected Members must be committed to achieving the highest standards of conduct and behaviour at all times and will carry out their role to the best of their skill and judgment. To achieve this, Elected Members should:

- Take responsibility for ensuring that they understand their roles and responsibilities and the Code;
- Attend all meetings (including for external organisations to which they are appointed), task force groups (as appropriate) and any appropriate training opportunities provided by Council;
- Come to meetings prepared, including having read relevant material;
- Seek personal and skill development opportunities to effectively fulfil their statutory declaration of office and contribute to the good governance of Invercargill;
- Present themselves in a way that respects the level of formality of a meeting, event or occasion.

### 7.2 Mayor

The Mayor is elected by the city as a whole and as one of the Elected Members shares the same responsibilities as other members of Council. According to section 41A of the LGA, the role of a Mayor is to provide leadership to other members of Council and to the people of Invercargill.

The Mayor also has the following roles:

- Presiding at Council meetings – the Mayor is responsible for ensuring the orderly conduct of business during Council meetings (as determined by Standing Orders);
- Establish committees of Council and appoint the chairperson of each committee established – noting that nothing limits or prevents Council from discharging or reconstituting committees or chairpersons of those committees established by the Mayor by way of Council resolution at a later date;
- Appoint the Deputy Mayor;
- Lead the development of Council's plans (including long-term plan and annual plan), policies and budgets for consideration by members of Council;
- Advocating on behalf of the community – this role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- Ceremonial head of the Council;
- Providing leadership and feedback to other Elected Members on teamwork;
- Keeping the Council informed of matters brought to their attention.

### **7.3 Deputy Mayor**

If the Mayor has not appointed the Deputy Mayor as noted above, then the Deputy Mayor must be elected by the members of Council, at the first meeting of the Council. The Deputy Mayor may be removed from office by resolution of the Council.

The Deputy Mayor exercises the same roles as other Elected Members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all the responsibilities and duties, and may exercise the powers of the Mayor (as summarised above in clause 7.2).

### **7.4 Committee Chairpersons**

A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by Council and the orderly conduct of business during committee meetings (as determined by Standing Orders).

Committee chairpersons may be called on to act as official spokespersons on issues within the terms of reference for their committees.

Chairpersons may be removed from office by resolution of Council. Council may also appoint deputy chairpersons of committees, who shall fulfil the functions of the chair when the chairperson is absent.

### **7.5 Chief Executive**

Section 42 of the LGA provides that the Chief Executive is the only person directly employed by Council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the Chief Executive.

As the principal administrative officer of Council, it is the Chief Executive, not the Elected Members, who is responsible for:

- Implementing the decisions of Council;
- Providing advice to Council and its committees;



- Ensuring that all responsibilities, duties and powers delegated to them, or to any person employed by Council, or imposed or conferred by an Act, regulation or bylaw, are properly performed or exercised;
- Managing Council's activities effectively and efficiently;
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of Council;
- Providing leadership for the staff of Council; and
- Employing staff on behalf of Council (including negotiation of the terms of employment for the staff of Council).

While Council is ultimately accountable, its function is not to make detailed decisions on operational matters. Council, committee structures, and Elected Members day-to-day dealings with the Chief Executive should recognise the statutory responsibilities of the Chief Executive for the effective management of Council staff and for implementing the decisions of Council.

## 8. Relationships and Behaviours

Clause 8 of the Code sets out Council's agreed standards of behaviour between Elected Members; Elected Members and staff; and Elected Members and the public. Any failure by Elected Members to meet the standards set out in this section represents a breach of this Code. For clarity, clauses 8.1 to 8.3 include (but are not limited to) any written communication between Elected Members, or from an Elected Member, including through social media platforms.

### 8.1 Relationships between Elected Members

Successful teamwork is a critical element in the success of any organisation. No team will be effective unless mutual respect exists between members. Therefore, Elected Members must conduct their dealings with each other in ways that:

- Maintain public confidence in the office to which they have been elected;
- Are open and honest;
- Are courteous;
- Focus on issues rather than personalities;
- Avoid abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- Avoid conduct which is aggressive, offensive, or abusive or which may constitute unlawful or inappropriate behaviour.

### 8.2 Relationship with the Chief Executive and Staff

Elected Members should be aware that failure to observe the standards in clause 8.2 of the Code may compromise Council's obligations to act as a good employer and may expose Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's annual audit.

Effective performance of Council requires a high level of cooperation and mutual respect between Elected Members and the Chief Executive and staff. Therefore, Elected Members will:

- Recognise the Chief Executive is the employer (on behalf of the Council) of Council staff and only the Chief Executive (or their delegate) may hire, dismiss, instruct, or discipline an employee;
- Make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements at all times;
- Treat all Council staff with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees);
- Observe any guidelines that the Chief Executive puts in place regarding contact with employees;
- Not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
- Avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee;
- Raise any concerns about employees, officers or contracted officials only with the Chief Executive;
- Raise any concerns about the Chief Executive only with the Mayor or the CEO Review Committee;
- Not seek to improperly influence staff in the normal undertaking of their duties.

Any failure by Elected Members to act in the manner described in clause 8.2 occurs as a breach of this Code.

### **8.3 Relationship with the Public**

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. To maintain a productive relationship with the public, Elected Members will:

- Interact with members of the public in a fair, respectful, equitable and honest manner;
- Be available to listen and respond openly and honestly to community concerns;
- Consider all points of view or interests when participating in debate and making decisions;
- Treat members of the public in a courteous manner;
- Act in a way that upholds the reputation of Council and values community involvement in local democracy; and
- Ensure their behaviour, in the mind of the public, does not undermine the reputation of Council or other Elected Members.

## **9. Media Protocols**

Clause 9 of the Code sets out Council's media protocols. The media plays an important role in local democracy. To fulfil this role, the media needs access to accurate and timely information about the affairs of Council.

From time to time, individual Elected Members will be approached to comment on a particular issue either on behalf of the Council, or as an Elected Member in their own right.

When responding to the media Elected Members should follow the media protocols as follows.

## **9.1 General Principles**

- 9.1.1 Any failure by Elected Member to meet the standards set out in media protocols represents a breach of this Code.
- 9.1.2 Elected Members should follow the policy and process agreed with Council's Communications Team on official statements made on behalf of Council.
- 9.1.3 Operational questions should be referred to the Chief Executive.

## **9.2 Contact with the media on behalf of Council**

- 9.2.1 The Mayor or relevant Committee Chairperson is the first point of contact for an official view on an issue unless stated otherwise by delegation.
- 9.2.2 When the Mayor or relevant Committee Chairperson is absent matters will be referred to the Deputy Mayor, Deputy Chairperson, or portfolio holder unless stated otherwise by delegation.
- 9.2.3 The Mayor can refer matters to the relevant Committee Chairperson or Bluff Community Board Chairperson or Chief Executive for their comments.
- 9.2.4 No other Elected Members may comment on behalf of Council unless they have first obtained approval from the Mayor or relevant Committee Chairperson or portfolio holder.
- 9.2.5 When Elected Members are responding to media inquiries on behalf of Council, assistance from Council's Communications Team is available to ensure that media responses are accurate.

## **9.3 Contact with the media on an elected members own behalf**

- 9.3.1 Elected Members are free to express a personal view in the media, at any time, providing the following rules are observed:
  - i. Media Comments must not state or imply that they represent the view of Council;
  - ii. Where an Elected Member is making a statement that is contrary to a Council decision or Council policy, the Elected Member must not state or imply that their statements represent a majority view;
  - iii. Media comments must observe the other requirements of the Code, e.g. not disclose confidential information; compromise the impartiality or integrity of staff; or avoids aggressive, offensive or abusive comments which reflect adversely on Elected Members or Council;
  - iv. Media comments must not be misleading and should be accurate within the bounds of reasonableness.

## **9.4 Elected members conduct on social media**

- 9.4.1 When an Elected Member is using social media in their capacity as an Elected Member they must comply with clause 9.2 of the media protocols in this Code.

- 9.4.2 When an Elected Member is using social media in their personal capacity they must comply with clause 9.3 of the media protocols in this Code.
- 9.4.3 Council staff cannot support, maintain, or create content for Elected Members' personal social media profiles.
- 9.4.4 Council staff cannot assist Elected Members with social media content related to election campaigning.
- 9.4.5 Council official social media profiles are managed by Council's Communications Team. When required, Communications Team will work with Elected Members for media statements or responses on behalf of Council.

## 10. Information

Any failure by Elected Member to act in the manner described in this clause 10 represents a breach of this Code.

### 10.1 Confidential Information

Access to information is important for Elected Members to effectively and properly discharge their duties. Therefore, Elected Members are entitled to receive a broad range of publicly accessible information as well as information that is classified as confidential. This includes information received at public excluded meetings and workshops as well as information that is identified as confidential.

Elected Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to them.

Elected Members must be aware that failure to observe these provisions relating to confidential information will impede the performance of Council by inhibiting information flows and undermining public confidence in Council.

It may also expose Council to prosecution under the Privacy Act 2020 and/or civil litigation.

### 10.2 Information Received on capacity as elected member

Elected Members will disclose to other Elected Members and, where appropriate the Chief Executive, any information received in their capacity as an Elected Member that concerns Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

### 10.3 Official information held by elected members personally

Elected Members are accountable to the public. All official information held by them personally, whether on equipment provided by Council or their own personal equipment is subject to the LGOIMA.

Official information, if sought as part of a request, must be made available immediately to the Chief Executive or nominee of the Chief Executive. Therefore, it can be assessed in terms of the requirements of the LGOIMA.

## 11. Conflict of Interest

Clause 11 sets out the expectations and requirements of Elected Members regarding conflicts of interest.

Elected members should maintain a clear separation between their personal interests and their duties as Elected Members in order to ensure that they are free from bias (whether real or perceived). Ultimately, it is up to each Elected Member's own judgement as to whether they have an interest that needs to be disclosed or declared, and what action they take (if any) as a consequence.

Elected Members must familiarise themselves with the provisions of the Local Authorities (Member Interests) Act 1968 (LAMIA). Failure to observe the requirements of LAMIA could potentially invalidate a decision made, or action taken, by Council. Failure to observe these requirements could also leave the Elected Member open to prosecution (Appendix 1). In the event of conviction, Elected Members can be removed from office.

The requirements cover two classes of conflict of interest.

1. Pecuniary Interest (Financial interest)
2. Non-pecuniary Interest (Non-financial interest)

### 11.1 Pecuniary interest (financial interest)

Pecuniary interest is one where a decision or act of the governing body could reasonably give rise to an expectation of financial gain or loss to an Elected Member. Therefore, Elected Members should not participate in any Council decision or vote on any matter in which they have a pecuniary interest, other than an interest in common with the public. This also applies where an Elected Member's spouse/partner contracted with Council or has a pecuniary interest. Members should make a declaration of interest as soon as practicable after becoming aware of any such interests.

Elected Members can contact the Office of the Auditor General for guidance as to whether they have a pecuniary interest, and if so, can seek an exemption to allow that members to participate or vote on a particular issue in which they may have a pecuniary interest. This action must be done before the discussion or vote by the Elected Member who wishes to seek exemption.

### 11.2 Non-pecuniary interest (non-financial interest)

Non-pecuniary interest does not have a personal financial component. It may arise, for example, from a personal relationship or involvement or role or duty with an individual or an organisation, or from conduct that indicates prejudice or predetermination.

### 11.3 Test for conflict of interest

If an Elected Member has a pecuniary or non-pecuniary interest in a decision before Council, the Elected Member must apply the test for a conflict of interest at clause 11.3.1 of the Code to determine whether they may participate in decision-making on the matter.

11.3.1 Once a pecuniary or non-pecuniary interest is defined, the test for whether that interest may constitute a conflict of interest is:

*Would a fair-minded observer reasonably think that a member of the decision-making body might not bring an impartial mind to the decision, in the sense that they might unfairly regard with favour (or disfavour) a particular position due to their financial or non-financial interest?*

11.3.2 This test is not just limited to actual bias, but also the appearance or possibility of bias. This is because even the appearance of bias may undermine public trust and confidence in council decision-making.

11.3.3 Where an Elected Member has a direct financial interest, a fair-minded observer will be quick to assume that they might not bring an impartial mind to the decision.

11.3.4 An Elected Member has a conflict and cannot take part on decision making where they submit on a matter.

If an Elected Member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the Elected Member should seek guidance from the Chief Executive immediately.

## 12. Register of Interests

Elected Members shall, at least annually, make a declaration of interest. These declarations are recorded in a public Register of Interests maintained by Council.

Details of the Register of Interests can be found on Council website: <https://icc.govt.nz/your-council/interest-register/>

The declaration must include information on the nature and extent of any interest, including:

- (a) Any employment, trade or profession carried on by the Elected Member or their spouse/partner for profit or gain;
- (b) Any company, trust, partnership etc. for which the Elected Member or their spouse/partner is a director, business partner or trustee;
- (c) The address of any land in which the Elected Member has a beneficial interest within the jurisdiction of Council;
- (d) The address of any land owned by Council in which the member or their spouse/partner is
  - A tenant; or
  - The land is tenanted by a firm in which the Elected Member or their spouse/partner is a business partner; a company of which the Elected Member or their spouse/partner is a director; or a trust of which the Elected Member or their spouse/partner is a trustee; and

- (e) Any other matter which the public might reasonably regard as likely to influence the Elected Member's actions during the course of their duties as an Elected Member. If the Elected Member is in any doubt on this, the Elected Member should seek guidance from the Chief Executive.

Where an Elected Member's circumstances change they must ensure the Register of Interest is updated as soon as practicable.

## 13. Ethical Behaviour

Elected Members will seek to promote the highest standards of ethical conduct. Accordingly, Elected Members will:

- (a) Claim only for legitimate expenses as determined by the Remuneration authority and lawful policy of Council developed in accordance with that determination;
- (b) Not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or family's personal or business interest;
- (c) Only use Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- (d) Not solicit, demand, or request any gift, rewards or benefit by virtue of their position and notify the chief executive if any such gifts are accepted. Where a gift to the value of \$50 or more is accepted by an Elected Member, that Elected Member must immediately disclose this to the Chief Executive for inclusion in the publicly available Register of Interests.

Any failure by Elected Members to comply with the provisions set out in this clause 13 represents a breach of the Code.

### 13.1 Undischarged Bankruptcy

In accordance with clause 15(5) of Schedule 7 of LGA, any Elected Member who is an "undischarged bankrupt" will notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The Elected Member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the Elected Member's adjudication and the likely outcome of the bankruptcy. This must be recorded in the Register of Interests.

## 14. Creating a Supportive and Inclusive Environment

In accordance with the purpose of the Code, members agreed to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect, and tolerance. These include:

- (a) Attending post-election induction programmes organised by Council for the purpose of facilitating agreement on Council's vision, goals and objectives and the manner and operating style by which Elected Members will work.
- (b) Taking part in any assessment of Council's overall performance and operating style during the triennium.

- (c) Taking all responsible steps to acquire the required skills and knowledge to effectively fulfil their Declaration of Office (the Oath) and contribute to the good governance of the city.

## 15. Breaches of the Code

Elected Members must comply with the provisions of this Code (clause 15(4), Schedule 7, LGA). The exact nature of the action taken to resolve any allegations relating to misconduct of an Elected Member will depend on the nature of the alleged breach and whether there are statutory provisions dealing with the issue in question.

Any Elected Member or the Chief Executive (including on behalf of a member of staff of Council) may make a complaint to that effect.

The complaint must relate to the conduct of an Elected Member when acting in their capacity as an Elected Member.

Conduct matters that arise in Council/Committee meetings should be dealt with under the Standing Order of Council. Where a conduct matter arises at Council/Committee meeting but if it is not addressed at that meeting it may rise a complaint under the Code.

All complaints will be considered in a manner that is consistent with the principles in clause 15.1.

### 15.1 Principles

The following principles will guide any processes for investigating and determining whether a breach under this Code has occurred:

- That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- That the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This is conditional on the nature of an alleged breach, and requires that affected parties:
  - have a right to know that an investigation process is underway;
  - are given due notice and are provided with an opportunity to be heard;
  - have a right to seek appropriate advice and be represented;
  - have their privacy respected.



## **15.2 Process for the investigation and determination of complaints**

The process for dealing with complaints under this Code is as follows:

- 15.2.1 The complaints must be made in writing and lodged with the Chief Executive. The complaint should reference the part of the Code, which is alleged to be breached with the evidence of the alleged breach.
- 15.2.2 The Independent Chair of the Risk and Assurance Committee will receive a complaint if it is lodged by the Chief Executive (including on behalf of a member of staff of Council).
- 15.2.3 On receipt of a complaint, the Chief Executive or the Independent Chair of the Risk and Assurance Committee will refer that complaint to the Legal Team for a preliminary assessment.
- 15.2.4 Before the complaint is referred to the Legal Team for the preliminary assessment, the Chief Executive or the Independent Chair of Risk and Assurance Committee will inform:
- The complainant that the complaint will be referred to Council's lawyers for preliminary assessment
  - The respondent that a complaint has been made against them and it will be referred to Council's lawyers for preliminary assessment

### **Preliminary Assessment**

- 15.2.5 The Legal Team will conduct the preliminary assessment and a recommendation will inform the Chief Executive or the Independent Chair of the Risk and Assurance Committee. The internal Legal Team will not conduct preliminary assessments for complaints from the Chief executive and such complaints will be referred to external Council's lawyers.
- 15.2.6 In the preliminary assessment, the Legal Team will determine whether:
- (a) The complaint is frivolous or without substance and should be dismissed;
  - (b) The complaint is outside the scope of the Code and should be redirected to another agency or process;
  - (c) The subject of the complaint has previously been assessed and actions have been completed in accordance with the Code to address the complaint;
  - (d) The complaint is a non-material breach of the Code;
  - (e) The complaint is a material breach of the Code and should be the subject of a full investigation to be completed by an independent investigator.
- 15.2.7 There is no right of appeal of any decision made by the Legal Team. A dissatisfied complainant may seek a review of the Legal Team's decision by complaint to the Ombudsman or judicial review proceedings in the High Court. A review will usually be confined to procedural issues rather than a substantive review of the decision.

### **Independent Investigator**

- 15.2.8 Independent investigators will be appointed on an as needed basis by the Chief Executive or the Independent Chair of Risk and Assurance depending on the skills needed to investigate the complaint.

### **Actions where a breach is found to be non-material**

- 15.2.9 A non-material breach is a breach of the Code which is not material (see clause 2 of the Code for the definition of materiality).
- 15.2.10 Where the Legal Team finds that the complaint relates to a non-material breach of the Code, but has decided that the complaint should not be dismissed, the Legal Team will inform the Chief Executive or the Independent Chair of the Risk and Assurance Committee and may recommend an appropriate non-binding course of action for the respondent, which may include:
- That the respondent seek guidance from the Mayor or the Chairperson of the relevant Committee or another suitable mentor;
  - That the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint;
  - That the respondent apologise to the complainant
  - That to resolve the complaint in any other appropriate manner.
- 15.2.11 The Legal team also can recommend that a non-material complaint to be investigated by an independent investigator, if the Legal Team considers that this is necessary to resolve the complaint.
- 15.2.12 The Chief Executive or the Independent Chair of the Risk and Assurance Committee will inform the complainant and the respondent of the Legal Team's decision and if there are any recommendations.

### **Actions where a breach is found to be material**

- 15.2.13 Where the Legal Team considers the complaint relates to a material breach of the Code and a full investigation by an independent investigator is required, it will inform the Chief Executive or the Independent Chair of the Risk and Assurance Committee.
- 15.2.14 Then the Chief Executive or the Independent Chair of the Risk and Assurance Committee will refer the complaint to an independent investigator selected from the approved list of independent investigators.
- 15.2.15 Thereafter the Chief Executive or the Independent Chair of the Risk and Assurance Committee will inform the complainant and the respondent that the complaint has been referred to an independent investigator and the name of the investigator and refer them to the process for dealing with complaints as set out in the Code.
- 15.2.16 When investigating the complaint, the independent investigator must:
- Consult with the complainant, respondent and any affected parties;
  - Undertake a hearing with relevant parties;
  - Refer to any relevant documents or information.
- 15.2.17 The independent investigator will undertake an investigation appropriate to the scale of the breach and prepare a report to the Chief Executive or the Independent Chair of the Risk and Assurance Committee which will set out the rationale for the findings of the investigation and may include the recommendations for resolving the breach and/or appropriate penalties.

## Process for considering the independent investigator's report

- 15.2.18 On receipt of the investigator's report, the Chief Executive or the independent Chair of the Risk and Assurance Committee will prepare a report for Council or the Code of Conduct Committee (if the matter is delegated to the Code of Conduct Committee). This report will meet to consider the findings and determine whether a penalty, or another form of action, will be imposed. This report will include the full report prepared by the investigator.
- 15.2.19 Council can delegate the matter of considering the report from the Chief Executive or the independent Chair of the Risk and Assurance Committee to the Code of Conduct Committee to avoid bias. The Code of Conduct Committee should establish by Council at the start of the triennium with a majority of members selected from the community either through an application process or by invitation.
- 15.2.20 The Code of Conduct Committee will make their recommendations to Council after consideration of the report from the Chief Executive or the independent Chair of the Risk and Assurance Committee. In accordance with this Code, Council will agree to implement the recommendations of the Code of Conduct Committee.
- 15.2.21 If Council or Code of Conduct Committee is considering and ruling the report from the Chief Executive or the independent Chair of the Risk and Assurance Committee, no members of Council with an interest in the complaint may take part in the hearing and decision-making process, unless invited by Council or Committee to speak their submissions.
- 15.2.22 On receipt of the report from the Chief Executive or the independent Chair of the Risk and Assurance Committee, Council or the Code of Conduct Committee will:
- If necessary, ask the investigator to provide a briefing on findings
  - Invite the complainant and the respondent to speak to any submissions that might have been made.
  - Decide whether a material breach of the Code has occurred and what, if any penalty or action should occur in response to the breach.
- 15.2.23 Council will inform the complainant and the respondent of their decision in writing.
- 15.2.24 When Council receives the recommendations from the Code of Conduct Committee, after adopting those recommendations, Council will inform the complainant and the respondent of their decision in writing.
- 15.2.25 Council or the Code of Conduct Committee will consider the report from the Chief Executive or the independent Chair of the Risk and Assurance Committee in an open meeting;, except where the alleged breach concern matters that justify the exclusion of the public in which case it will be a public excluded meeting.  
Example: such as the misuse of confidential information or matters that would otherwise be exempt from public disclosure under section 48 of the LGOIMA,
- 15.2.26 Right to appeal is not included in the Code as all Elected Members are able to make use of the process set out in Standing Orders for revoking Council decisions. In addition, Council decision can be subjected to a judicial review and the Code of Conduct Committee decision can be subject to the Ombudsmen's review.

- 15.2.27 The form of penalty that might be applied will depend on the nature of the breach and may include the actions set out in clause 16 of this Code.
- 15.2.28 Flowchart of the Process of the Determination and Investigation of Complaints in the Appendix 2.

## 16. Penalties and Actions

Where a complaint is determined to be a material breach of the Code and referred to Council for determination, the nature of any penalty or action will depend on and be commensurate to, the seriousness of the breach.

### 16.1 Material breaches

Where a material breach of the Code has been confirmed, Council or Code of Conduct Committee (for their recommendation to Council) might consider the following penalties and actions:

- a. A letter of censure to the members;
- b. A request (made either privately or publicly) for an apology;
- c. A vote of no confidence in the Elected Member
- d. Removal of certain council-funded privileges (such as attendance at conferences);
- e. Restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- f. Limitation on dealing with Council staff other than the Chief Executive;
- g. Suspension or removal from committees (including sub committees and joint committees) or any other Council bodies;
- h. An invitation to the Elected Member to consider resigning from Council.

Council or the Code of Conduct Committee may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- Attend a relevant training course; and/or
- Work with a mentor for a period of time; and/or
- Participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- Tender an apology.

Decisions to apply a non-statutory penalty for material breaches should be made in meetings, open to the public unless some aspect of the matter necessitates treating the matter in a public excluded meeting.

### 16.2 Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency.

For example:

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);

- Breaches which result in the council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under section 30 of the LGA which may result in the member having to make good the loss or damage); or
- Breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the Elected Member liable for criminal prosecution).

## 17. Review

Once adopted, a Code of Conduct continues in force until amended by Council. The Code can be amended at any time but cannot be revoked unless Council replaces it with another code. Amendments to the Code required a resolution supported by 75 per cent of the Elected Members of Council present at the Council meeting at which the amendment is considered.

Council will formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be presented to Council for their consideration and vote.

# APPENDIX 1 - LEGISLATIONS BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

This Schedule is a summary of the legislative requirements that have some bearing on the duties and conduct of Elected Members. The full statutes can be found on [www.legislation.govt.nz](http://www.legislation.govt.nz)

## LOCAL GOVERNMENT ACT 2002 ('LGA')

### Governance Principles

In performing its role, the Council must act in accordance with nine broad principles as set out in section 14(1) of the LGA as follows:

- Conduct its business in an open, transparent, and democratically accountable manner; and
- Give effect to its identified priorities and desired outcomes in an efficient and effective manner;
- Make itself aware of and have regard to the views of all its communities;
- When making a decision, take account of the diversity of the community and the various community's interests; the interests of future as well as current communities and the likely impact of any decision on these interests;
- Provide opportunities for Māori to contribute to its decision-making process;
- Collaborate and cooperate with other local authorities;
- Undertake commercial transactions in accordance with sound business practices and assess periodically the expected returns from investing in or undertaking a commercial activity;
- Ensure prudent stewardship and efficient and effective use of its resources in the interests of the district;
- Take a sustainable development approach that takes into account the social, economic and cultural interests of people and communities and the need to maintain and enhance the quality of the environment and the reasonably foreseeable needs of future generations.

If any of the principles are in conflict, the Council must resolve that conflict in an open, transparent and democratically accountable manner. These principles are helpful in determining the governance structure as they are indicative of the spirit and intent of the LGA and govern the way in which the Council undertakes decision-making. A Council that is seen to act in conflict with these principles can be subject to judicial review.

In deciding on a governance structure, section 39 of the LGA is also helpful to consider as it defines the following governance principles:

- A local authority should ensure that the role of democratic governance of the community, and the expected conduct of Elected Members, is clear and understood by Elected Members and the community;
- A local authority should ensure that the governance structures and processes are effective, open and transparent;
- A local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities;
- A local authority should be a good employer; and

- A local authority should ensure that the relationship between Elected Members and management of the local authority is effective and understood.

### **Decision-Making Responsibility**

Every decision made by a local authority, including a decision not to take any action, must be made in accordance with sections 77, 78, 80, 81 and 82 of the LGA. Specifically, the Council must during the decision-making process:

- Seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- Assess the options in terms of their advantages and disadvantages;
- Identify those options which involve a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna and other taonga;
- Give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter;
- Determine the matters significance in relation to Council's Significance and Engagement Policy;
- Identify whether the proposed decision would be significantly inconsistent with any existing policy or plan;
- Establish and maintain processes to provide opportunities for Māori to contribute to the decision-making process;
- Consider ways in which the Council may foster the development of Māori capacity to contribute to the decision-making process;
- Provide relevant information to Māori;
- Undertake consultation in accordance with the principles of consultation as set out in section 82.

### **Significance and Engagement**

A higher standard of compliance with the decision-making process is required when the Council is making a significant decision. The definition of "significance" is defined in the LGA and in the Council's Significance and Engagement Policy.

If the Council determines that the decision or matter is significant in terms of the Council's Policy, then the Council must apply greater diligence in regard to the decision-making requirements of the LGA.

This includes the degree to which different options are identified and assessed and the extent to which community views are considered, including whether consultation is required. The more significant a matter, the greater the level and detail, of analysis is required.

Section 78 alone does not require the Council to undertake a consultation process, provided the Council has sought to make itself aware of the views of those interested or affected. The Council may, for example, have gathered information through a process, formal or informal, which has provided the Council with the information it needs to take community views into account. The Significance and Engagement Policy provides guidance on when consultation will and will not be undertaken.

## **Personal Liability of Members**

Although having qualified privilege, Elected Members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under section 44 LGA, it is found that one of the following applies:

- Money belonging to, or administered by, a local authority has been unlawfully expended; or
- An asset has been unlawfully sold or otherwise disposed of by the local authority; or
- A liability has been unlawfully incurred by the local authority; or
- A local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- Without the member's knowledge;
- With the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- Contrary to the manner in which the member voted on the issue; and
- In circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situations, members will also be responsible for paying the costs of proceedings (section 47 LGA 2002).

## **Local Authorities (Members' Interests) Act 1968 ('LAMIA')**

LAMIA regulates situations where an Elected Member's personal interests impinge or could be seen as impinging on their duties as an Elected Member.

In relation to pecuniary interest, the LAMIA applies to both contracting and participating in the decision-making process. Elected Members may contact the Office of the Auditor General ('OAG') for guidance as to whether that member has a pecuniary interest, and if so, may seek (through an application from Council) an exemption to allow that Elected Member to participate or vote on a particular issue in which they may have a pecuniary interest. The Auditor General can provide retrospective approval for contracts that would otherwise disqualify a member under the Act, in limited circumstances. This must be done before the discussion or vote. The Chief Executive must also seek approval from the OAG for contractual payments to Elected Members, their spouses or their companies that exceed the \$25,000 annual limit.

Elected Members who do have a pecuniary interest should declare it to the meeting. The declaration and abstention from discussion or voting should be recorded in the meeting minutes (Further information and guidance are set out in Council's Standing Orders).

- Failure to observe the requirements set out by LAMIA could also leave the Elected Member open to prosecution under the LAMIA. In the event of a conviction Elected Members can be removed from office.



## **Local Government Official Information and Meetings Act 1987 ('LGOIMA')**

The purpose of LGOIMA is to provide for the availability to the public of official information held by local authorities, and to promote the open and public transaction of business in meetings of local authorities.

The general principle is that information held by local authorities is to be made available unless there is a good reason for withholding it. The principal grounds for withholding information are set out in sections 6 and 7 of LGOIMA.

LGOIMA sets out a number of statutory procedures and requirements for local authority meetings. Meetings are to be publicly notified, and open to the public unless there is good reason for withholding information and excluding the public.

The Chair has the responsibility to maintain order at meetings, but all Elected Members should accept personal responsibility to maintain acceptable standards of address and debate in line with the principles detailed in clause 6 of this Code.

No Elected Member should:

- Create a disturbance or distraction while another councillor is speaking;
- Be disrespectful when they refer to each other or other people; or
- Use offensive language about Council, other Elected Members, any employees of Council or any member of public.

## **Secret Commissions Act 1910 ('SCA')**

It is unlawful for an Elected Member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result. It is also unlawful for an Elected Member (or officer) to present false receipts to Council. If convicted of any offence under the SCA, a person can be imprisoned for up to 7 years. Elected Members convicted of an offence will be removed from office.

## **Crimes Act 1961**

It is a crime for any Elected Member to accept, or solicit for themselves (or anyone else), any gift or reward for acting or not acting in relation to the business of the local authority. It is also a crime for any Elected Member to use information acquired in their official capacity for monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected Members convicted of these offences will be removed from office.

## **Financial Markets Conduct Act 2013 ('FMCA')**

The FMCA regulates the offer, issue and re-sale of financial products, which includes shares, debt securities and derivatives. Council is unable to issue shares, but can issue debt securities and derivatives, and may from time to time sell financial products. If Council does issue financial products or, in certain cases, sells financial products that it holds, members will be potentially subject to personal liability for breaches of the offer and other provisions of the FMCA.

## **Health and Safety at Work Act 2015 ('HSWA')**

HSWA came into force on 4 April 2016. Its focus is the protection of workers and other people against harm to their health, safety and welfare by eliminating or minimising risks at workplaces. The HSWA places obligations on four duty holders - a person conducting a business or undertaking ('PCBU'); officers of a PCBU; workers; and other people at a workplace. Council as a PCBU holds the primary duty of care under HSWA i.e., to ensure so far as is reasonably practicable, the health and safety of its workers and of other workers whose activities Council influences or directs.

Each Elected Member is an 'officer' (being a person occupying a position in a body corporate that is comparable with that of a director of a company), responsible under HSWA for exercising due diligence to ensure that Council is meeting its health and safety responsibilities under HSWA. The Chief Executive and Senior Leadership Team are also officers under HSWA.

The due diligence duty of officers supports the primary duty of care owed by a PCBU – placing duties on individuals whose decisions significantly influence the activities of a PCBU, therefore influencing whether the PCBU meets its statutory duties.

Unlike the Chief Executive and Executive Leadership Team, Elected Members are not required to be directly involved in the day-to-day management of health and safety. They are, however, still required to take reasonable steps to understand Council's operations and health and safety risks, and to ensure that they are managed so that the organisation meets its legal obligations under the HSWA. This duty does not extend to ensuring that a council-controlled organisation ('CCO') complies with the HSWA, unless the Elected Member is also an 'officer' of that CCO.

Taking 'reasonable steps' requires each Elected Member to exercise the care, diligence and skill a reasonable officer would exercise in the same circumstances, taking into account matters including the nature of Council's business, and the Elected Member's position and nature of their responsibilities.

Most officers can be convicted of an offence for failing to meet their due diligence obligations, whether or not a PCBU is convicted of an offence. Elected members, however, when acting in the capacity of an Elected Member of Council are expressly exempted from prosecution.

## **Protected Disclosures Act 2000 ('PDA')**

Under the PDA, the definition of an employee of a public sector organisation (PSO) includes Elected Members of a local authority. Elected Members (as 'employees') who disclose information about a serious wrongdoing by the Council are protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the Elected Member.

Serious wrongdoing under the Act includes unlawful or irregular use of funds or resources; conduct that risks public health and safety; conduct that risks the maintenance of law; conduct that constitutes an offence; oppressive, improper discriminatory conduct; and gross negligence or gross mismanagement by a public official.

Protection under the PDA applies where the employee has information about a serious wrongdoing; a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and that employee desires protection under the Act.

## APPENDIX 2 – PROCESS OF THE DETERMINATION AND INVESTIGATION OF COMPLAINTS

