

Councillor Code of Conduct

Policy statement

As Councillors we hold a unique and important role at the City of Whittlesea.

We provide leadership that ensures good governance of the municipality and accept responsibility for developing policies and strategies that will benefit the municipal community.

When carrying out our role and responsibilities, we are guided by the Standards of Conduct outlined within this Councillor Code of Conduct. We will honour these commitments and uphold these Standards of Conduct to earn the trust of the community which we serve.

Purpose

This Councillor Code of Conduct sets out the Standards of Conduct with which Councillors must comply and aims to:

- a) foster good working relationships between Councillors, to enable Councillors to work with the highest level of integrity, and constructively together in the best interests of the municipal community;
- b) help maintain a high standard of behaviour of Councillors during Council meetings, Councillor Briefings and any other meetings in which Councillors participate in from time to time; and
- c) establish benchmarks for Councillor conduct designed to:
 - build public confidence in the integrity of local government; and
 - give effect to Council's 2040 Vision.

Legislative Framework

Section 139 of the *Local Government Act 2020 (Act)* requires a council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct has been adopted by Council to comply with the requirements of the Act.

A Councillor Code of Conduct:

- a) must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020 (Regulations)* expected to be observed by Councillors; and
- b) must include any provisions prescribed by the Regulations; and
- c) must include provisions addressing any matters prescribed by the Regulations; and
- d) may include any other matters which a council considers appropriate, other than any other Standards of Conduct.

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations.

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Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in the Act and in this Councillor Code of Conduct.

Overarching Governance Principles

The development of this Councillor Code of Conduct reflects consideration of the Act's Overarching Governance Principles, and the following:

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| Lawful | <input checked="" type="checkbox"/> | Community engagement | <input checked="" type="checkbox"/> | Financially viable | <input checked="" type="checkbox"/> |
| Collaboration with government bodies | <input checked="" type="checkbox"/> | Transparent | <input checked="" type="checkbox"/> | | |

Pledge

We, the Councillors of the Whittlesea City Council, pledge to work together in the best interests of our community and to discharge our responsibilities to the best of our ability and judgement.

As part of this commitment, we will adhere to the principles, values and behaviours outlined in this Councillor Code of Conduct and work together constructively to achieve Whittlesea's vision in a manner that is consistent with our core values.

We are committed to meeting the Standards of Conduct prescribed by the Regulations.

Working together and with the Community

The City of Whittlesea strives to be an organisation of exceptional character. As community and civic leaders, Councillors will lead by example and promote the highest standards in the way that Council business is conducted.

We will achieve the greatest outcomes for the community by championing Council's adopted values and behaviours in pursuit of Council's future vision. We commit to the following principles and values:

Excellence

We will:

- earn and sustain public trust by making decisions and providing advice on merit and without bias, favouritism or self-interest
- achieve best use of resources and provide high quality services to the community
- identify and promote best practice
- use our powers responsibly and avoid conflicts of interest
- report improper conduct
- come prepared and participate at Council briefings and meetings
- work in a transparent manner and accept responsibility for our decisions and actions
- submit ourselves to appropriate scrutiny.

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Respect

We will:

- respect one another, members of Council staff and members of the community
- treat others fairly and objectively
- promote and ensure freedom from discrimination, harassment and vilification, including direct and indirect discrimination
- respect the traditional ownership of the land on which we meet.

Open Communication

We will:

- be honest, open and transparent in our dealings
- act with humility and apply the highest standards of ethical behaviour
- accept responsibility for mistakes and see them as opportunities for continuous improvement and growth
- ensure all communications (including communications via social media) are respectful and will not negatively impact on Council
- work effectively with and build constructive relationships with Council's Executive Leadership Team and key stakeholders
- Use social media responsibly and in accordance with the Councillor Communications Policy to minimise the exposure of Council and Councillors to legal and reputational risk.

Valuing Diversity

We will:

- take time to listen and understand different points of view
- understand and respect the diversity of our community
- make decisions and provide advice consistent with human rights
- recognise that some of the best solutions are community led, and ensure our processes are open, transparent and welcoming to community input
- recognise the strengths of our diverse community and ensure people from all walks of life, ability and backgrounds feel comfortable to engage and contribute. This means a one size does not fit all, and that sometimes targeted responses are required to achieve fairer outcomes; particularly for individuals and groups experiencing disadvantage and discrimination due to their heritage, disability, age, background or identity.
- encourage active community participation in civic life
- welcome the opinions of the community and respect their right to be heard.

Wellbeing

We will:

- respect and care about our community, each other, ourselves, and refrain from any conduct which may cause a reasonable person unwarranted offence or embarrassment
- work towards harmonious working relationships with others
- support one another and staff if they are treated unfairly or without respect
- promote gender equity, fairness, and inclusivity.

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Standards of Conduct

The Standards of Conduct to be observed by Councillors are set out in Schedule 1 to the Regulations. Failure by a Councillor to comply with the Standards of Conduct constitutes 'misconduct' for the purposes of the Act, as defined in s 3(1) of the Act. If allegations of misconduct cannot be resolved between Councillors informally, they may be referred to the internal arbitration process, which may result in the imposition of sanctions.

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

- a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010;
- b) supports Council in fulfilling its obligation to achieve and promote gender equality;
- c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2 Performing the role of Councillor

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

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

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3 Compliance with Good Governance

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

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

4 Councillor must not discredit or mislead Council or public

A Councillor must, in performing the role of a Councillor:

- a) ensure that their behaviour does not bring discredit upon Council; and
- b) not deliberately mislead Council or the public about any matter related to the performance of their public duties.

5 Standards do not limit robust political debate

Councillors acknowledge that nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.

Other Categories of Misconduct

Councillors acknowledge that the Act creates two other categories of misconduct, being 'serious misconduct' and 'gross misconduct'. In the case of allegations of conduct constituting:

- a) 'serious misconduct', application can be made by a Councillor, a group of Councillors, a Council resolution or the Chief Municipal Inspector to convene a Councillor Conduct Panel to hear the allegation; and
- b) 'gross misconduct', application can be made by the Chief Municipal Inspector to the Victorian Civil and Administrative Tribunal.

It is noted that allegations of serious misconduct arising from an alleged conflict of interest breaches can only be pursued by the Chief Municipal Inspector and are not capable of being pursued by Councillors under this Councillor Code of Conduct or the Act.

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In addition, although allegations of conduct constituting ‘serious misconduct’ and ‘gross misconduct’ might not be capable of being addressed as contraventions of this Councillor Code of Conduct, we commit not to engage in:

- a) bullying; or
- b) sexual harassment,

(each of which constitutes ‘serious misconduct’ for the purposes of the Act).

1 Bullying

‘Bullying’ by a Councillor is defined by s 3(1) of the Act as:

‘...the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff.’

A Councillor who bullies another Councillor or a member of Council staff engages in ‘serious misconduct’ under the Act and may be the subject of an application to convene a Councillor Conduct Panel.

We agree that bullying is unacceptable under any circumstances, including via various social media channels, and each of us commits to avoiding conduct which might constitute bullying, and to calling out our fellow Councillors if they exhibit conduct which might constitute bullying, whether directed at another Councillor or at a member of Council staff.

2 Sexual harassment

The Act provides that ‘sexual harassment’ has the meaning given to it by s 92 of the *Equal Opportunity Act 2010*, which defines it as follows:

- 1) For the purpose of this Act, a person sexually harasses another person if they —
 - a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
 - b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
- 2) In subsection (1) conduct of a sexual nature includes—
 - a) subjecting a person to any act of physical intimacy;

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- b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence; or
- c) making any gesture, action or comment of a sexual nature in a person's presence.

A Councillor who engages in sexual harassment towards another Councillor or a member of Council staff engages in 'serious misconduct' and may be the subject of an application to convene a Councillor Conduct Panel.

We agree that sexual harassment is unacceptable under any circumstances, including via social media channels, and each of us commits to avoiding conduct which might constitute sexual harassment, and to calling out our fellow Councillors if they exhibit conduct which might constitute sexual harassment, whether directed at another Councillor or at a member of Council staff.

It is acknowledged that Councillors may also be subjected to sexual harassment from outside Council, for example from members of the public.

3 Addressing bullying and sexual harassment

A Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor, a member of Council staff or a member of the public may:

- a) access Council's Employee Assistance Program for confidential support, with contact details available from the Councillor Conduct Officer;
- b) where that conduct is perpetrated by a fellow Councillor, make an allegation of 'serious misconduct' by way of an application to convene a Councillor Conduct Panel in accordance with the Act, with details of that process available from the Councillor Conduct Officer; and/or
- c) make a complaint to an appropriate external body, such as the Local Government Inspectorate, the Victorian Equal Opportunity and Human Rights Commission or Victoria Police.

Councillors acknowledge that a Councillor who feels that they have been subjected to bullying or sexual harassment by another Councillor may not be comfortable pursuing any of the informal or internal dispute resolution procedures set out in this Councillor Code of Conduct. Those informal and internal dispute resolution procedures are not compulsory and there is no expectation that they will be followed in those circumstances.

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Improper Conduct

In addition to observing the Standards of Conduct, we acknowledge that the Act prohibits us from engaging in certain conduct and that engaging in such conduct constitutes a criminal offence. This conduct relates to:

- a) misuse of position (s 123);
- b) directing a member of Council staff (s 124);
- c) disclosing confidential information (s 125);
- d) failing to disclose a conflict of interest (serious misconduct and an offence against s 130); and
- e) other requirements imposed by the Act (including electoral conduct).

We acknowledge that, while allegations that such conduct has been engaged in will ordinarily go beyond the Standards of Conduct and are not, therefore, to be addressed as a contravention of this Councillor Code of Conduct, we must comply with these obligations at all times. In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel made by the Chief Municipal Inspector, or of a complaint to the Local Government Inspectorate, the Independent Broad-based Anti-corruption Commission or Victoria Police, depending on the nature of the allegation.

Councillor and Developer Interaction

Councillors are not to meet with developers unless a Council Officer is present.

If a developer has an application under assessment with Council, then no meeting with the developer is to occur.

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Dispute Resolution

1 Dispute Resolution Procedure

This dispute resolution procedure provides a framework to be followed by Councillors where a conflict or dispute among their own number arises, including where it is alleged that a Councillor has breached their obligations under this Councillor Code of Conduct. This dispute resolution procedure is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion, debate and voting in Council Meetings.

2 Disputes between Councillors

Councillors must be mindful that having and expressing differing and sometimes opposing viewpoints is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate and decision-making. All Councillors have the right to influence the decisions made by Council through this debate.

While Councillors must always endeavour to foster and encourage positive and productive interactions and have respectful conversations, conflicts or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making processes.

A conflict or dispute may arise between one Councillor and another Councillor or one Councillor and a group of Councillors or between two or more different groups of Councillors. This dispute resolution procedure will apply regardless of the dynamic and numbers involved.

3 Steps in dispute resolution procedure

Council's dispute resolution procedure is comprised of four steps. They are:

Step 1: Self-resolution

Step 2: Internal mediation

Step 3: External mediation

Step 4: Internal arbitration procedure.

Before commencing any formal dispute resolution process Councillors must be mindful that they have an individual and collective responsibility to use their best endeavours to resolve disputes in an efficient, courteous and respectful manner to prevent them from escalating unnecessarily and creating additional expense for the organisation.

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Parties to a dispute should work through each of these steps in sequence in an effort to resolve their differences. Step 3 is always highly recommended to be completed before Step 4 is instigated.

Whenever a difference, dispute or allegation under this Councillor Code of Conduct involves the Mayor, the Deputy Mayor will fulfil the role of the Mayor in respect of that difference, dispute or allegation. If both the Mayor and the Deputy Mayor are involved, Step 2 will not operate.

With respect to Step 4, Councillors should note that:

- it will only apply where a dispute alleges that a Councillor has breached the Standards of Conduct and therefore engaged in misconduct; and
- any application must be made no later than 3 months after the alleged misconduct occurred.

Step 1: Self Resolution

Councillors should take personal responsibility and endeavour to resolve disputes in an informal but courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

- A Councillor claiming that a dispute has arisen must notify the other party or parties in writing of the details of the dispute (Dispute Notice).
- A dispute will only arise upon service of a Dispute Notice.
- The parties must meet within 10 days of the service of the Dispute Notice and negotiate in good faith to resolve the dispute.

Either party may ask the Mayor, or if the dispute involves the Mayor, may ask the Deputy Mayor, to informally facilitate any discussions between the parties to the dispute.

In the event of a party not engaging in self-resolution process within 10 days of service of a Dispute Notice, a party not complying with the agreed outcome of that discussion, or of the discussion not achieving a satisfactory outcome, either party has the option to progress to Step 2 of the dispute resolution procedure.

Step 2: Internal Mediation

If Step 1 is unsuccessful, a formal request for internal mediation should be made to the Mayor. The Mayor will facilitate formal discussions between the parties in dispute. The Mayor will ensure the CEO is advised of the situation.

A request for internal mediation must be made in writing describing:

- a) the nature of the dispute;

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- b) the names of those involved;
- c) provisions of this Councillor Code of Conduct (if relevant) that are alleged to have been breached;
- d) any evidence to support the allegation.

If the request is being made by a group of Councillors, it must specify the Councillor to act as its representative. The Councillor making the request must provide a copy of the request to the other party (or parties) and to the CEO at the same time it is made.

The request must be made within 20 days of the dispute arising and the Mayor must use their best endeavours to ensure that the internal mediation occurs as soon as practicable after the request was received.

The Mayor may, at their discretion, request any necessary administrative assistance from the CEO or staff nominated by the CEO to assist in undertaking the informal mediation, noting that the CEO plays no role in resolving Councillor disputes.

The Mayor will convene an informal mediation at the earliest available opportunity.

During the informal mediation each party must:

- be given the opportunity to present their view of the alleged dispute;
- be given a right of reply to any new matters raised at the mediation; and
- use their best endeavours to resolve the dispute and agree upon a set of outcomes.

The Mayor will document any outcomes from the informal mediation and will provide copies to all parties and to the CEO for Council's records.

In the event of a party not engaging in informal mediation process within 10 days of being advised of a request, a party not complying with the agreed outcome of an informal mediation, or of the informal mediation not achieving a satisfactory outcome, either party has the option to progress to Step 3 of the dispute resolution procedure.

Step 3: External Mediation

Prior to any dispute proceeding to Step 4 of this dispute resolution procedure, the parties to it should refer it to external mediation.

To instigate external mediation, the Councillor referring the matter must provide Council's Conduct Officer (**CCO**) with written notice of the reason for the dispute, the names of those involved, the provisions of this Councillor Code of Conduct that may have been breached and any evidence to support the allegation.

If the request is being made by a group of Councillors, it must specify the Councillor to act as its representative. The Councillor referring the matter must provide a copy of the written

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notice to the other party (or parties) and to the CEO at the same time the matter is referred to the CCO.

The application must be made by the later of:

- 30 days after the dispute arising; and
- 5 days after the completion of Step 2.

Where external mediation is sought, the CCO will ascertain whether or not the other party to the dispute will attend. Councillors acknowledge that declining to attend external mediation may constitute a breach of this Councillor Code of Conduct.

If the other party agrees to participate in external mediation, the CCO will advise the applicant, the Mayor, or if the matter involves the Mayor, the Deputy Mayor and the CEO accordingly.

The CEO or their delegate will engage the services of an external and independent mediator to conduct the mediation at the earliest available opportunity, and in any event no more than 45 days after the matter is referred for mediation.

The mediator will coordinate the time and date with the parties and document any agreement or outcomes reached at the mediation and copies will be provided to both parties.

In the event of one party not engaging in a formal mediation process, a party not complying with the agreed outcome of an external mediation, or of the external mediation not achieving a satisfactory outcome, either party has the option to progress to Step 4 of the dispute resolution procedure.

Step 4: Internal Arbitration Process

If a conflict or dispute arises from an alleged contravention of the Standards of Conduct, and it has not been resolved through any of the previous Steps of the dispute resolution process for whatever reason, an application may be made for internal arbitration of the dispute.

The application may be made by:

- the Council following a resolution of the Council; or
- a Councillor or a group of Councillors.

The application must be completed by the Councillor alleging the breach in the form required by the Principal Councillor Conduct Registrar (**PCCR**). The application will be provided by the Councillor to the CCO, who will deliver it to the PCCR.

The application must be made within 3 months of the alleged breach of the Standards of Conduct.

The PCCR, after examining an application for internal arbitration, will appoint an arbiter to hear the matter, as long as the PCCR is satisfied that:

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- a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- b) there is enough evidence to support an allegation of a breach of the Standards of Conduct as specified in the application.

The PCCR will reject an application if they are not satisfied of both of these matters.

Where an application to the PCCR has been accepted, the appointed arbiter will ensure that parties involved in the internal arbitration process are given an opportunity to be heard fairly.

The arbiter will ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly.

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

An arbiter finding and reasons for findings will be tabled at the next scheduled Council meeting with no debate or discussion.

If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with this Councillor Code of Conduct, the arbiter may make a finding of misconduct against the Councillor and apply any sanction available under the Act for such a finding, which may include:

- directing the Councillor to make an apology in a form or manner specified by the arbiter;
- suspending the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month; or
- directing that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter.

A failure by a Councillor to comply with step 4, and a failure of a Councillor to comply with any sanction imposed by an arbiter following a finding of misconduct, constitute serious misconduct.

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Disputes between Councillors and staff

The CEO has sole responsibility for the management of Council staff. In the event of a dispute between a Councillor and a member of Council staff, it must be brought to the immediate attention of the CEO. The CEO will decide whether to investigate the dispute and/or take any other action in relation to the matter in their absolute discretion.

Disputes between members of the public and Councillors

Where a complaint is received from the public in respect of a Councillor/s, the matter will be referred to the Mayor for consideration. Where the Mayor considers that a breach of the Standards of Conduct has occurred, the Mayor will decide whether to progress the matter in accordance with this dispute resolution procedure.

Where the complaint involves the Mayor, the Deputy Mayor will fulfil the role of the Mayor. The Mayor may seek advice and guidance from the CEO or a member of staff nominated by the CEO in consideration of the complaint received.

The Mayor will inform the member of the public of the outcome of their consideration of the complaint.

If the Mayor decides not to take further action in relation to a complaint received from a member of the public, it will not prevent another Councillor from pursuing the matter under this Councillor Code of Conduct or the Act.

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