

Management report to Council

Agenda item 3.1

Councillor Code of Conduct 2016

Council

Presenter: Keith Williamson, Manager Governance and Legal

28 June 2016

Purpose and background

1. The purpose of this report is to seek Council endorsement of a revised Councillor Code of Conduct (Code). Attachment 2 contains a copy of the revised Code. A marked up version, to highlight changes to the existing code, was provided to Councillors via a briefing paper.
2. The *Local Government Amendment (Improved Governance) Act 2015* reformed, restructured and strengthened the legislative framework in the *Local Government Act 1989* (Act) for the management of councillor conduct issues. Councils are required to review and make necessary amendments to their codes by 4 July 2016.
3. The amendments to the Act encourage councils to take responsibility for resolving conduct issues internally so far as possible by strengthening councillor codes of conduct. The amended Act requires councils to have an internal resolution procedure within its Code that makes it clear to all councillors how allegations of breaches of the Code are to be handled. The amended Act provides that councils may impose sanctions where a finding of breach of the Code has been made following an internal resolution procedure.
4. Given the requirement to review the Code, in addition to the inclusion of a comprehensive Dispute Resolution Process (which follows the Municipal Association of Victoria's draft code of conduct) the following changes have also been included in the draft Code:
 - 4.1. the roles of Lord Mayor, Councillors and the functions of the Chief Executive Officer (CEO) as defined in the Act
 - 4.2. an explanation of 'conflicting personal interest' as stated in the Act
 - 4.3. a statement on 'interacting with children and young people' in accordance with Victorian Child Safe Standards
 - 4.4. compliance with Council's media protocols
 - 4.5. notification of Notices of Motion.

Key issues

5. The amended Act requires that within one month of amendments to the Code being approved every Councillor must make a written declaration, witnessed by the CEO, stating that they will abide by the Code.
6. A copy of the Code must be given to each Councillor, made available for inspection by the public at the Council office and published on the Council's website.

Recommendation from management

7. That Council:
 - 7.1. adopts the Councillor Code of Conduct (Code) as contained in Attachment 2 to the report from management
 - 7.2. authorises the Manager Governance and Legal to make any further minor editorial changes to the Code prior to publication and following written declarations being made by Councillors.

Attachments:

1. Supporting Attachment (page 2 of 20)
2. Councillor Code of Conduct 2016 (page 3 of 20)

Supporting Attachment

Legal

1. The report accurately identifies the relevant legislative requirements.

Finance

2. There are no financial implications arising from the recommendation contained in this report.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. Victoria has introduced compulsory minimum standards that will apply to organisations that provide services for children to help protect children from all forms of abuse. The child safe standards form part of the Victorian Government's response to the Betrayal of Trust Inquiry.
5. Local governments are required to work towards compliance from 1 January 2016. The suggested inclusion of a commitment to being a child safe organisation together with agreed behaviours in the draft Code is similar to what will be incorporated into a revised Employee Code of Conduct.

Environmental sustainability

6. There is no significant sustainability impact arising from the recommendation in this report.

COUNCILLOR
CODE OF CONDUCT
2016

COUNCILLOR CODE OF CONDUCT

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1. Purpose and Commitment

As custodians of a capital city government, the Lord Mayor, Deputy Lord Mayor and Councillors hold a unique and important leadership role within Victoria. The role is recognised in two important pieces of legislation, the *Local Government Act 1989* (the Act) and the *City of Melbourne Act 2001*, which describe how the Council is to be accountable in the performance of its functions, the exercise of powers and the use of resources. The Acts specify the role, function and objectives of Council, Councillors and the Chief Executive Officer.

The Lord Mayor, Deputy Lord Mayor and Councillors commit to carrying out their role to the highest standards of conduct and behaviour. As part of this commitment, all Councillors will adhere to the conduct principles, values and processes outlined in the Councillor Code of Conduct. This will attract the highest level of confidence from Council's stakeholders, assist Councillors to carry out their role and provide a means for dealing with a range of situations which may occur.

The Act sets out standards of conduct for Councillors and provides specific arrangements to deal with alleged misconduct. These are outlined in this Councillor Code of Conduct.

2. Roles of Lord Mayor and Councillors and functions of Chief Executive Officer

The role of Councillors is to set the vision for the city which requires a focus on strategy and policy development. The role of the Chief Executive Officer and management team is to implement the decisions and ultimately the vision of Council. The Act defines the role of Lord Mayor, role of Councillors and functions of the Chief Executive Officer as follows:

2.1 Role of Lord Mayor

Section 73AA of the Act describes the functions of the Lord Mayor as including:

- providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C
- acting as the principal spokesperson for the Council
- supporting good working relations between Councillors
- carrying out the civic and ceremonial duties of the office of Lord Mayor.

2.2 Role of Councillors

Section 65 of the Act provides that the role of a Councillor is:

- to participate in the decision-making of the Council
- to represent the local community in that decision-making
- to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of a Councillor, a Councillor must:

- consider the diversity of interests and needs of the local community

- observe principles of good governance and act with integrity
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts
- participate in the responsible allocation of the resources of Council through the annual budget
- facilitate effective communication between the Council and the community.

The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Act.

2.3 Functions of the Chief Executive Officer

The Chief Executive Officer is responsible for:

- establishing and maintaining an appropriate organisational structure for the Council
- ensuring that the decisions of the Council are implemented without undue delay
- the day to day management of the Council's operations in accordance with the Council Plan
- developing, adopting and disseminating a code of conduct for Council staff
- providing timely advice to the Council
- ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act
- supporting the Lord Mayor in the performance of the Lord Mayor's role as Lord Mayor
- carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013
- performing any other function or duty of the Chief Executive Officer specified in the Act or any other Act.

The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under the Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out her or his functions.

The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

Councillors undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

3. Councillor Conduct Principles

Councillors will observe and demonstrate the standards of conduct that the community has a right to expect of them. These standards are the 'Councillor Conduct Principles' which are described in the Act and include the following 'Primary Principle' and seven 'General Principles'.

3.1 Primary Principle

Section 76B of the Act sets out the 'Primary Principle' of Councillor Conduct being that, in performing the role of a Councillor, a Councillor must:

- act with **integrity**
- **impartially** exercise his or her responsibilities in the interests of the local community
- not **improperly** seek to confer an advantage or disadvantage on any person.

3.2 General Principles

Section 76BA of the Act goes on to require that, in performing the role of a Councillor, a Councillor must also:

- **avoid conflicts** between his or her public duties as a Councillor and his or her personal interests and obligations
- **act honestly** and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person
- **treat all persons with respect** and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons
- **exercise reasonable care** and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office
- endeavour to ensure that **public resources are used prudently** and solely in the public interest
- **act lawfully** and in accordance with the trust placed in him or her as an elected representative
- support and **promote these principles by leadership** and example and act in a way that secures and preserves public confidence in the office of Councillor.

4. Councillor Conduct

Councillors acknowledge that the Act specifies some type of conduct that is expressly prohibited. They relate to specific actions and are unlike the 'Principles', which describe how Councillors should conduct themselves in more general terms. These matters can be particularly relevant to considerations of misconduct or serious misconduct by a Councillor Conduct Panel or gross misconduct by the Victorian Civil and Administrative Tribunal. Councillors also acknowledge that, in many cases, a breach of a specific provision in the Act may be subject to prosecution in a Court.

4.1 Misuse of position

Section 76D of the Act prohibits the misuse of position. It involves two criteria, both of which must be met for an offence to have occurred. It can apply to a Councillor even after he or she ceases to hold office.

Firstly, a Councillor may not misuse his or her position, including, but not limited to:

- making improper use of information acquired as a result of the position he or she held or holds
- disclosing information that is confidential within the meaning of section 77 of the Act

- directing or improperly influencing a member of Council staff, or trying to do so, in contravention of section 76E of the Act
- exercising or performing, or trying to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform
- using public funds or resources in a manner that is improper or unauthorised.

Secondly, the misuse of position will arise when a Councillor:

- gains or attempts to gain, directly or indirectly, an advantage for themselves or for any other person
- causes, or attempts to cause, detriment to the Council or another person.

A breach of any of the provisions relating to improper direction, confidentiality, or conflict of interest may constitute a misuse of position under section 76D if the second criterion applies.

4.2 Improper direction

Section 76E of the Act states that a Councillor must not improperly direct or influence a member of council staff in the exercise of any power or in the performance of any duty or function by that staff member. Nor must they attempt to do so.

In addition, a Councillor must specifically not direct or seek to direct a staff member:

- in the exercise of a delegated power, or performance of a duty or function
- in the exercise of a power, or performance of a duty or function as an authorised officer under any Act
- in the exercise of any power or performance of a duty or function that the staff member exercises in an office or position held under another Act
- in relation to advice provided to the Council or a special committee.

This is an important rule that follows from the nature of local government. A broad range of powers are given to Councils under many Acts. These powers are given to the Council as a whole and an individual Councillor only exercises powers when he or she votes in a Council or special committee meeting. An individual Councillor does not have the legal authority to instruct a member of council staff or to direct the council administration.

4.3 Breach of confidentiality

Section 77 of the Act provides that a Councillor must not release information that he or she knows, or should reasonably know, is confidential. The section also sets out the ways in which information is made confidential. This includes where:

- the Chief Executive Officer has designated the information confidential
- the information is provided to a meeting that is closed to the public
- the Council has designated the information confidential.

In addition to requirements covered under the Act, section 6 of the Code also addresses information which the Chief Executive Officer, a member of the Executive Leadership Team or Council's Chief Legal Counsel has formally requested to be kept confidential or that has been marked as confidential.

4.4 Conflict of interest

Sections 77A to 80A of the Act require Councillors to disclose conflicts of interest:

- in Council meetings
- in meetings of special committees
- in audit committee and section 223 committee meetings
- in meetings that are classified as Assemblies of Councillors.

Councillors acknowledge that the Act defines the:

- circumstances that give rise to a conflict of interest
- actions that should be taken to resolve a conflict of interest.

In general terms, a Councillor has a direct conflict of interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way, including where they are likely to directly gain or lose financially.

A conflict of interest also exists where a Councillor has one or more of the following six types of indirect interest:

- an indirect interest because of a close association with a family member, relative or housemate who has a direct interest
- an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- a conflict of duty arising from having particular responsibilities to a person or organisation with a direct interest
- having received an applicable gift (including hospitality) or gifts with a total value of more than \$500 within the five years preceding from a person or organisation with a direct interest
- being a party to the matter by having become a party to civil proceedings in relation to the matter
- where there is a reasonable likelihood that their residential amenity will be altered if the matter is decided in a particular way.

When declaring a conflict of interest at a meeting of Committee or Council, a Councillor must make a declaration at the commencement of discussion, identify the type and nature of the conflict and complete the required declaration form.

In addition to the provisions contained in the Act relating to Assemblies of Councillors, Councillors shall, when attending a meeting at which a Council staff member is present, disclose any conflicts of interest which, had the meeting been an Assembly of Councillors, they would have been required to disclose.

Councillors shall also disclose any conflict of interest relating to any matters discussed at Councillor-Only Sessions.

4.5 Conflicting personal interest

If a Councillor doesn't have a conflict of interest but considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter and give reasons in support of their application.

Council or the special committee may consent to any application made and must not unreasonably withhold consent. If consent is given to the Councillor's application the Councillor is to follow the same process as if it were a conflict of interest specified under the Act.

4.6 Eligibility to be a Councillor

The Act describes the criteria which provides for eligibility to hold the office of Councillor. It also describes the circumstances in which a Councillor may become ineligible or disqualified from holding office.

Councillors will advise the Chief Executive Officer of any change of entitlement to be a Councillor. If there has been a change in the particulars or a cessation of entitlement to enrolment on the municipal voters roll, the Councillor will notify the Chief Executive Officer in writing within one month of that change or cessation of entitlement.

4.7 Reporting inappropriate behaviour

Councillors commit to upholding and promoting the highest standards in their day-to-day interactions. If in the conduct of duties a Councillor receives an inappropriate offer of a benefit of any kind, the Councillor shall refer the matter to the Chief Executive Officer and Manager Governance and Legal. At that stage, a decision will be made regarding referral to an appropriate authority for investigation.

4.8 Council's planning process

When proposing to meet with a known planning permit applicant, either for the purpose of discussing the application or where the application is likely to become a topic of discussion, Councillors should, unless not practicable, hold the meeting with a Council planning officer present.

4.9 Interacting with children and young people

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation including Failure to Disclose, Failure to Protect and Grooming offenses. Any allegation or incident of abuse will be treated very seriously and consistently with child protection legislation, regulations and guidelines and in accordance with Council policy and procedures.

Councillors must maintain the highest standards of professional conduct in their attitude, behaviour and interactions with children and young people. As leaders, Councillors are expected to uphold the rights and best interests of the child and take these matters into account in all decision making. It is particularly important that all organisations supported by Council, such as through a grant/sponsorship process or tender outcome, demonstrate

compliance to the Victorian Child Safety Standards if they are required to under legislation and in any case have appropriate policies and procedures to protect children from harm.

Councillors will:

- Take all reasonable steps to protect children from harm.
- Set clear boundaries about appropriate behaviour with children and young people.
- Report any allegations of child abuse or child safety concerns to the relevant authorities including Police and Child Protection.
- Promote the cultural safety, participation and empowerment of Aboriginal children, culturally and linguistically diverse children and children with a disability.
- Encourage and empower children and young people to participate in decision making processes.
- Treat children and young people with respect and value their ideas and opinions.
- Ensure children and young people are aware of their rights, including their rights to respect, fairness and safety.
- Uphold the rights and best interest of the child and take these matters into account in all decision making.

Councillors will not:

- Exhibit behaviours with children which may be construed as unnecessarily physical.
- Show or share sexually suggestive material to a child in any form such as e-mail, text, movie, sound, or picture file.
- Hold, kiss, cuddle or touch a child in an age/culturally inappropriate manner or, in a manner considered inappropriate by reason of the nature of the occasion/program/activity/event, except for appropriate touch (for example to comfort distress).
- Cultivate online and social media 'friendships' with children and young people without parental/guardian permission.
- Take unauthorised photos, movies or recordings of a child.
- Publish unauthorised photos, movies or recordings of a child or young person, including online, without parental/guardian consent.
- Use inappropriate language in the presence of children/young people.
- Express personal views on culture, ethnicity or sexuality in the presence of children.
- Discriminate against any child because of culture, race, ethnicity or disability.
- Ignore or disregard any suspected or disclosed child abuse.

5. Values and Behaviours

As community and civic leaders and the custodians of the Council's decision-making structure, Councillors will lead by example and promote the highest standards in the way Council business is conducted.

In carrying out their role, Councillors will embrace and demonstrate the City of Melbourne corporate values which foster a spirit of working together for Melbourne. In challenging and inspiring each other to realise their vision for the City, Councillors will demonstrate the following:

5.1 Integrity

Councillors will conduct activities professionally and ethically and shall take responsibility for actions in an honest and transparent way. Councillors shall:

- deal with others fairly and consistently
- follow through on commitments
- represent their views truthfully
- be open to constructive feedback
- consider the whole picture, seek evidence before forming views and be prepared to discuss how views were formed
- abide by the relevant legislation, and City of Melbourne policies and procedures
- support fellow Councillors if they are treated unfairly or without respect.

5.2 Courage

Councillors will exercise fortitude in decision-making and accept responsibility for the consequences of their own actions and choices. In doing so, Councillors will:

- raise issues directly, constructively and in an appropriate forum
- be willing to explore new ideas and ways of doing things
- present and debate ideas and innovations to the best of their ability and willingly accepts outcomes
- always be willing to have a go
- speak for themselves rather than relying on others.

5.3 Accountability

Councillors will take personal responsibility for decisions and actions to achieve agreed outcomes. In doing so, Councillors will:

- ensure best use of resources
- take responsibility for personal decisions and actions
- act and work in an open and transparent manner and report results
- recognise the achievements of others
- be responsive in a timely manner.

5.4 Respect

Councillors will value the contribution and individuality of others and contribute to healthy working relationships. In doing so, Councillors will:

- recognise and encourage ideas and contributions of others
- show respect when speaking to and about others
- respect and relate well to people of diverse backgrounds

- be courteous and approachable
- positively contribute to, and participate in, Councillor group activities
- listen and consider other's ideas, which may be different to their own
- always endeavour to be punctual
- comply with the Council's media protocols
- notify all other Councillors of any proposed Notices of Motion they are considering lodging before lodging them or making public comment about the content.

5.5 Excellence

Councillors will aim to achieve the highest standard and continuously improve performance to achieve outstanding outcomes for Melbourne. In doing so, Councillors will:

- be strongly focused on results
- seek personal and skill development opportunities
- understand what is required to deliver excellence and seek support when needed
- take responsibility for safety and be prepared to point out safety issues
- consider and work to mitigate any environmental impacts arising from their actions
- continually strive for improvement.

6. Working with the Chief Executive Officer and Management

The Chief Executive Officer is responsible for administrative and operational matters of Council including the appointment of Council officers and structuring an organisation that allows the implementation of decisions made by Council. The Council appoints and reviews the performance of the Chief Executive Officer.

Information is made available on a daily basis that will assist the representation and decision-making roles of Councillors. To obtain information that is up-to-date and offered in the right context, liaison should occur with the Chief Executive Officer, Director or Manager. Speaking directly to Council officers below Manager level without the authorisation of the officer's Manager or Director may result in Councillors receiving advice that has not been formally endorsed by the management. Exceptions are made with support staff and other designated staff such as media advisers or planning officers who, for operational reasons, will have regular contact with Councillors.

The provision of information and advice to Councillors operates on the principle that information provided to one Councillor should generally be made available to all Councillors.

As referred to in section 4.2 of this Code, the Act provides that individual Councillors cannot direct or attempt to influence Council officers in the performance of their duties. Councillors as a group make decisions and this is done through a resolution adopted at a special Committee or Council meeting.

Councillors should refrain from publicly criticising Council officers in a way that casts aspersions on their professional competence or credibility. Councillors should advise the Chief Executive Officer in a timely fashion of any concerns that a Council officer has acted contrary to a formal Council policy or decision.

In addition to statutory provisions regarding confidential information (covered under section 4.3 of the Code), Councillors must not release to an external person or organisation any documents or

information that the Chief Executive Officer, member of the Executive Leadership Team or Council's Chief Legal Counsel has formally requested be kept confidential or that has been marked confidential.

7. Protocols Supporting Decision-making Structures and City Representation Role

Councillors acknowledge that in fulfilling the statutory requirements of their role, a shared understanding of individual and collective roles in the way Council business is conducted would best provide for highest standards of teamwork and good governance. To achieve this position, Council commits to the development, adoption and adherence to a set of operational protocols that help define how they will work together and with council officers to conduct Council business. These will, from time-to-time, require renewal to reflect changes to understandings and expectations in the way Council business is conducted.

8. Dispute Resolution Processes

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties may resort to any or all of the Council's three phase dispute resolution process.

The Council's three phase dispute resolution process involves:

- direct negotiation between the parties in dispute with the Lord Mayor in attendance to provide guidance
- external mediation by an independent mediator engaged by the Chief Executive Officer or Principal Conduct Officer
- an internal resolution procedure involving an independent arbiter.

Phase 1 – Direct negotiation

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Lord Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the direct negotiation meeting is to provide the Lord Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a 'direct negotiation' dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the request is made by a group of councillors
- be signed and dated by the requestor or the requestor's representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Lord Mayor or as soon as practicable thereafter.

The Lord Mayor is to ascertain whether or not the other party is prepared to attend a 'direct negotiation' meeting.

If the other party is not prepared to attend a meeting, the Lord Mayor is to advise the requestor forthwith. No further action is required of the Lord Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Lord Mayor is to convene a meeting of the parties. Unless one or both parties are unavailable, this should be within five working days of receiving the consent of the other party.

The Lord Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Lord Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the councillor conduct principles and the Councillor Code of Conduct.

The Lord Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Lord Mayor is a party to the dispute, the request is to be made to the Deputy Lord Mayor. The Deputy Lord Mayor will perform the functions ascribed to the Lord Mayor.

Phase 2 – External mediation

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for 'direct negotiation'.

An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The applicant is to submit a written application to the Principal Conduct Officer (Manager Governance and Legal) setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an 'external mediation'. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of councillors

- be signed and dated by the applicant or the applicant's representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an 'external mediation'. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Lord Mayor and Chief Executive Officer forthwith.

The Chief Executive Officer or the Principal Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Phase 3 - Internal resolution procedure - Arbiter

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application was made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;

- name the Councillor appointed to be their representative where the application is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The application must be submitted to the Council's Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Lord Mayor and CEO of the application without undue delay
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
- identify an arbiter to hear the application
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the arbiter
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing
- attend the hearing(s) and assist the arbiter in the administration of the process.

In identifying an arbiter to hear the application, the Principal Conduct Officer will select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing
- hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter

- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application
- ensure that the rules of natural justice are observed and applied in the hearing of the application
- ensure that the hearings are closed to the public.

Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by the respondent in their entirety.

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code
- will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted, as far as is practicable, to the next ordinary meeting of the Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council)
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
 - be removed from any position where the Councillor represents the Council; and
 - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

- (a) failure by a Councillor to comply with the Council's internal resolution procedure
- (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB
- (c) repeated contravention of any of the Councillor conduct principles.

Allegations of misconduct are heard on application by a Councillor Conduct Panel.

9. Council Adoption

This Code of Conduct was adopted at the special meeting of the Melbourne City Council held on 28 June 2016.

Robert Doyle
Lord Mayor

Susan Riley
Deputy Lord Mayor

Councillor Richard Foster

Councillor Rohan Leppert

Councillor Kevin Louey

Councillor Stephen Mayne

Councillor Cathy Oke

Councillor Ken Ong

Councillor Beverley Pinder-Mortimer

Councillor Jackie Watts

Councillor Arron Wood