



Councillor Fitness to Carry Out Duty Policy 2020

Adopted by Melbourne City Council on 15 December 2020

1. PURPOSE

The City of Melbourne is committed to enabling Councillors to fulfil their duties to the best of their abilities to ensure that the functions of the Council are achieved in accordance with legislative requirements and good governance.

Where a Councillor has known disabilities, the City of Melbourne will make all reasonable and necessary adjustments to support them in undertaking their role. This is not considered to be related to issues of fitness to carry out duty.

Councillors have also committed to take reasonable care to protect their own health and safety as well as the health and safety of others in the workplace.

The purpose of this policy is to:

- make Councillors aware of when and how to access support when they cannot fulfil their duties to the best of their abilities
- outline factors and circumstances which may impact a Councillor's fitness to perform all duties while in the role of Councillor
- set out the obligations of Councillors to make confidential disclosures regarding impacts on their abilities to undertake all duties
- set out the obligations of the Chief Executive Officer (CEO) on dealing with fitness for duty issues impacting a Councillor and/or other persons in the workplace.

2. SCOPE

This policy applies to all City of Melbourne Councillors, including the Lord Mayor and Deputy Lord Mayor. This policy applies to all issues which may impact on a Councillor's fitness to perform duties while undertaking the role of Councillor, including without limitation physical and psychological conditions and substance abuse.

This policy is incorporated in the Councillor Code of Conduct. Nothing in this policy changes or detracts from the operation of other provisions in the Councillor Code of Conduct.

Where a Councillor is not fit to perform their duties, they may advise the CEO as set out in this policy and supporting arrangements will be made to either support the Councillor to continue in the role or enable them to return to their role as quickly as possible.

In cases where a Councillor chooses not to disclose their unfitness and to continue to undertake their duties, this may constitute a health and safety risk for both the Councillor and others. In those situations it may then be incumbent on the CEO to take steps in accordance with their legal obligations to manage the situation.

The CEO from time to time, in consultation with Councillors, can make minor changes to this policy to reflect contemporary best practice.

3. FITNESS FOR DUTY AND DISCLOSURE OBLIGATIONS

3.1 Identifying a fitness for duty concern

A person is fit for duty when they are in a mental and physical state of health which allows them to competently perform the inherent or genuine and reasonable requirements of their role and in a manner which does not compromise or threaten the safety or health of themselves or others.

Common indicators of an issue concerning or impacting fitness may include:

- impaired physical function, including mobility
- unexplained or excessive absences or unreasonable habitual lateness
- problems with memory, speech or co-ordination
- disproportionate or excessive aggressive outbursts towards another person or in response to any discussion
- unusual drowsiness or fatigue
- concerning physical changes.

Councillors acknowledge that a physical or psychological impairment may impact on their fitness to carry out duty.

3.2 Consumption of alcohol and drugs

Councillors acknowledge that consumption of alcohol and other drugs (even if legal and prescribed), may impact on the satisfactory performance of their duties. Further, such activity may negatively impact on the working environment and affect other persons, including other Councillors, Council staff and the community.

Substance abuse which impacts on the ability of a Councillor to satisfactorily undertake duties as part of their role or which poses risks to others may result in the Councillor being considered to be unfit to carry out duty.

3.3 Other factors and circumstances impacting fitness

Councillors acknowledge that there are a range of other things that may impact on fitness for duty, including fatigue, general physical health, or specific health situations. This could mean a Councillor's physical or mental health is temporarily affected, or affected over a longer period of time, such that their ability to function in the role may be compromised.

3.4 Definitions

Alcohol	means ethyl alcohol or ethanol
Drug	means any substance that may result in psychological or behavioural changes that have the potential to reduce a person's fitness to perform duties and impact on performance and safety.
Duty	means the performance of the role and functions of a Councillor or Council as prescribed under the <i>Local Government Act 2020</i>
Substance	includes alcohol, intoxicating products, prescription and non-prescription medication, legal/illegal/illicit drugs whether naturally occurring or synthetic

4. MANAGING FITNESS FOR DUTY

4.1 Confidentiality and privacy

Subject to law, the personal and medical issues impacting a Councillor's fitness to carry out duty, and any disclosure or referral made to the CEO under section 4.2 or 4.3 of this policy, will be kept confidential.

The Privacy and Data Protection Act, the *Health Records Act 2001* and the *Local Government Act 2020* will apply to all documentation and information provided by a Councillor or developed in the course of any disclosure into a matter concerning the fitness to carry out duties of a Councillor. Such documentation or information may be provided to external advisors and agencies on a need to know basis or in accordance with law, and may be subject to obligations of confidentiality.

All Councillors should be mindful of any associated reputational damage to the individual Councillor where there are concerns around fitness to carry out duty. In line with the principle of respect outlined in the Councillor Code of Conduct, no public communications on such matters are permitted.

4.2 Disclosure by Councillor

Where a Councillor considers they may not be fit to undertake their duties, or their fitness has been restricted, or on professional medical advice their fitness has the potential to become restricted, they should notify the CEO.

In consultation with the Councillor, the CEO will put in place necessary and appropriate arrangements and safeguards to allow the Councillor to continue performing their duties.

Depending on the nature of the issue, and the risks to health and safety, arrangements need to be determined on a case by case basis.

4.3 Disclosure about perceived impacts on another Councillor's ability to perform duty

As part of Councillors' commitment to protect their own and each other's health and safety, a Councillor may disclose information to the CEO about concerns regarding perceived impacts on another Councillor's ability to perform their duties. Proactive disclosure supports the CEO to discharge their duty of care around the health and safety of all individuals in the workplace.

Following receipt of a disclosure, the CEO will decide whether the issue needs to be followed up with the Councillor concerned and managed in accordance with this policy.

4.4 Assistance, external advice and referral

In assisting the Councillor whose fitness for duty may be impaired, the CEO may consider any of the following options in consultation with the Councillor:

- provision of ergonomic and rehabilitation resources
- additional support provided by administrative staff as required
- a medical assessment (subject to Councillor consent) and/or return-to-full duties plan
- access to counselling.

In consultation with the Councillor concerned and without disclosing their circumstances, the CEO may discuss with the Lord Mayor (or Deputy Lord Mayor) an adjustment of the Councillor's upcoming duties, or distribution of their duties to other Councillors.

If the Councillor's circumstances give rise to an occupational health and safety risk, then the following section applies.

5. COMPLIANCE WITH ALL LEGISLATIVE AND CODE OF CONDUCT OBLIGATIONS

5.1 Occupational Health and Safety obligations

City of Melbourne is committed to providing and maintaining a work environment that is safe and without risks to health. The CEO is required to put in place and maintain policies and procedures to ensure a safe environment for Councillors and Council staff to carry out their duties, and for third parties both on Council premises and coming into contact with Council's operations and activities.

Where a situation arises where a Councillor is unfit to perform the duties associated with their role, the CEO is required to take all necessary steps in accordance with occupational health and safety legislation and Council's occupational health and safety policies.

In the event that the CEO becomes aware of a situation where, in their opinion, a Councillor's lack of fitness to perform duties poses serious risks to health and safety, Councillors agree that the CEO will take appropriate action to deal with such matters.

Such appropriate steps to reduce any health and safety risk may include, for example:

- restricting the use of Council resources by a Councillor (without curtailing the rights and entitlements granted to Councillors under *the Local Government Act 2020* and *City of Melbourne Act 2001*)
- recommending the Councillor take a temporary leave of absence
- referring the Councillor to appropriate authorities where the circumstances involve broader contravention of the Councillor Code of Conduct.

6. POSSIBLE SCENARIOS

The following scenarios are provided as examples only in order to illustrate how this policy may operate in practice. Failure to follow the steps outlined in these scenarios **does not** necessarily constitute a breach of this policy.

<p>I injured my leg</p>	<p><i>Will this impact your ability to carry out duties?</i></p> <p>You must consider whether an injury sustained at work or outside of work has the potential to impact on your performance.</p> <p>If so, you must report it to the CEO.</p>	<p><i>Report it immediately</i></p> <p>The CEO will assist you to rearrange your workload, reprioritise your duties or request you to seek specialist advice about your fitness.</p>	<p><i>If you take leave</i></p> <p>In some circumstances, where a fitness issue requires you to take temporary leave of absence, the organisation will make appropriate arrangements on your return to work in accordance with its OHS Policy.</p>
<p>I am taking prescription medication which makes me feel faint</p>	<p><i>Will this impact your ability to carry out duties?</i></p> <p>Feeling faint has negative impacts on your capacity as well as your safety at work.</p> <p>If there are potential impacts from the medication on your ability to undertake duties, you should inform the CEO.</p>	<p><i>Disclose it to the CEO</i></p> <p>The CEO will discuss potential options with you to enable you to undertake your duties while minimising risks to your safety. This may include reducing or rearranging your workload, taking temporary leave, and ensuring there is adequate staff support for you.</p>	<p><i>If there is a health and safety risk</i></p> <p>If there is an immediate health and safety risk, the CEO is obliged to take appropriate intervention.</p> <p>Prolonged symptoms of feeling faint may prompt the CEO to require you take leave and/or urge to consult your medical practitioner to review your medication.</p>
<p>I have noticed another Councillor often shows up smelling of alcohol</p>	<p><i>Is their fitness a concern?</i></p> <p>Are there outward serious or persistent signs that the person is having difficulty performing their usual duties?</p>	<p><i>Is there a health and safety risk?</i></p> <p>If this poses a potential risk to the health and safety of the Councillor and/or others, it must be reported to the CEO immediately.</p>	<p><i>Disclose it to the CEO</i></p> <p>Depending on the circumstances, and whether they have serious concerns about health and safety, the CEO may follow up with the Councillor and/or intervene.</p>
<p>I have noticed another Councillor isn't their usual self</p>	<p><i>Is their fitness a concern?</i></p> <p>Are there outward serious or persistent signs that the person is having difficulty performing their usual duties?</p>	<p><i>Disclose it to the CEO</i></p> <p>The CEO will decide whether the matter needs further follow up and whether the issue should be discussed with the Councillor concerned.</p>	<p><i>If there is a health and safety risk</i></p> <p>The CEO will take appropriate steps to address risks to anyone's health and safety. This may include requiring the Councillor to refrain from specific activities.</p>

7. RELATED POLICIES AND RESOURCES

City of Melbourne Councillor Code of Conduct

City of Melbourne Occupational Health and Safety Policy

Local Government Act 2020

Local Government (Governance and Integrity) Regulations 2020

Occupational Health and Safety Act 2004

Workplace Injury Rehabilitation and Compensation Act 2013

Equal Opportunity Act 2010

Disability Discrimination Act 1992

Privacy and Data Protection Act 2014

Health Records Act 2001