



HAMILTON CITY COUNCIL

CODE OF

CONDUCT

FOR ELECTED MEMBERS

12 MAY 2022

1 & 2

SCOPE & APPLICATION

Hamilton City Councillors and Mayor (“Elected Members”) have an important and privileged role representing the people of Hamilton. This Code of Conduct (“the Code”) represents a commitment from all Elected Members to maintain high standards of behaviour as public figures, which is important for their credibility as city leaders and for the reputation of Hamilton.

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.

1. SCOPE

The Council is required to adopt a code of conduct (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 (‘CE’) and staff;
- the media; and
- the public.

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

2. APPLICATION

The Code applies to Elected Members at all times in their official capacity as Elected Members, and as representatives of Hamilton 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. The CE will ensure that an explanation of these Acts is provided at the first meeting after each triennial election and that copies of the above Acts are freely available to Elected Members.

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

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PRINCIPLES OF GOVERNANCE

The Code outlines the principles of good governance relating to behaviour. Elected Members must adhere to the following principles as public figures and leaders of the city:

3. 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.

3.1 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.

3.2 RESPECT

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights.

This includes:

- treating people, including other 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 or 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.

3.3 GOODFAITH

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

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

3.4 PROPER USE OF POSITION

Elected Members must not abuse their position, they 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 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 reelection.

3.5 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 the Council.

These principles complement, and work in conjunction with, the governance principles relating to local authorities (sections 14 and 39 LGA).

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ROLES AND RESPONSIBILITIES

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

4. ELECTED MEMBERS

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

- the development and approval of Council plans, policies and budgets;
- monitoring the performance of the Council against its stated objectives and policies;
- prudent stewardship of Council resources; and
- employment of the CE.

Elected Members are also responsible for representing the interests of the residents and ratepayers of the city.

Unless otherwise provided in the LGA or in the Council's Standing Orders, the Council can only act by majority decisions at meetings. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless provided for by statute or the 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 Hamilton;
- present themselves in a way that respects the level of formality of a meeting, event or occasion.

4.1 MAYOR

The Mayor is elected by the city as a whole. Section 41A of the LGA states that role of a Mayor is to provide leadership to other members of the Council and to the people of Hamilton.

The Mayor also has the following roles:

- lead the development of the Council's plans (including long-term plan and annual plan), policies and budgets for consideration by members of the territorial authority;
- appoint the Deputy Mayor; and
- establish committees of the Council and appoint the chairperson of each committee established – noting that nothing limits or prevents the Council from discharging or reconstituting committees or chairpersons of those committees established by the Mayor by way of Council resolution at a later date;
- presiding at Council meetings – the Mayor is responsible for ensuring the orderly conduct of business during Council meetings (as determined by Standing Orders);
- 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 and chairing of committees; and
- keeping the Council informed of matters brought to their attention.

4.2 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 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).

The Deputy Mayor may be removed from office by resolution of the Council.

4.3 COMMITTEE CHAIRPERSONS

A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by the 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 the Council. The Council may also appoint deputy chairpersons of committees, who shall fulfil the functions of the chair when the chairperson is absent.

4.4 CHIEF EXECUTIVE

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

As the principal administrative officer of the local authority, it is the CE, not the Elected Members, who is responsible for:

- implementing the decisions of the Council;
- providing advice to the Council and its committees;
- ensuring that all responsibilities, duties and powers delegated to them, or to any person employed by the local authority, or imposed or conferred by an Act, regulation or bylaw, are properly performed or exercised;
- managing the Council's activities effectively and efficiently;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council;
- providing leadership for the staff of the Council; and
- employing staff on behalf of the Council (including negotiation of the terms of employment for the staff of the local authority).

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

5

RELATIONSHIPS AND BEHAVIOURS

This section of the Code sets out the Council’s agreed standards of behaviour between members; members and staff; and members and the public. Any failure by members to meet the standards set out in this section represents a breach of this Code. For clarity, sections 5.1 to 5.3 include (but are not limited to) any written communication between Elected Members, or from an Elected Member, including through social media platforms.

5. RELATIONSHIP WITH OTHER MEMBERS

Successful teamwork is a critical element in the success of any organisation. No team will be effective unless mutual respect exists between members. 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;
- 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.

5.1 RELATIONSHIP WITH THE CHIEF EXECUTIVE AND STAFF

Elected Members should be aware that failure to observe the standards in section 5.1 of the Code may compromise the Council’s obligations to act as a good employer and may expose the Council to civil litigation and/or audit sanctions.

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

- recognise the CE is the employer (on behalf of the Council) of Council staff and only the CE (or their delegate) may hire, dismiss, instruct, or discipline an employee;
- make themselves aware of the obligations that the Council and the CE 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 CE 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 concerns about employees only with the CE, and concerns about the CE only with the Mayor or the CEO Review Committee;
- not seek to improperly influence staff in the normal undertaking of their duties.

5.2 RELATIONSHIP WITH THE PUBLIC

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will, when interacting with the public (whether electronically or verbally):

- 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 the local authority and values community involvement in local democracy; and
- ensure their behaviour, in the mind of the public, does not undermine the reputation of the Council or other Elected Members.

5.3 CONTACT WITH THE MEDIA

The media plays an important part in local democracy. To fulfil this role, the media needs access to accurate and timely information about the affairs of the Council. From time to time, individual 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.

Elected Members will follow the policy and process agreed with the Communications Unit on official statements made on behalf of Council.

Elected Members are free to express a personal view in the media, at any time, provided the following rules are observed:

- i. media comments must not state or imply that they represent the views of the Council;
- ii. where an Elected Member is making a statement that is contrary to a Council decision or Council policy, the 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 reflects adversely on the member or the Council; and
- iv. media comments must not be misleading and should be accurate within the bounds of reasonableness.

5.4 INFORMATION AVAILABLE TO ELECTED MEMBERS

Any failure by members to act in the manner described in this section 5.5 will be treated seriously and will immediately be referred to the Code of Conduct Complaints Process in this Code.

Confidentiality

To enable Elected Members to properly discharge their duties, members are entitled to, and receive, a broad range of information which is publicly accessible. In the course of their duties, Elected Members will also receive information that may be classified as confidential. This includes information received at meetings which are closed to the public or information that is identified as confidential.

Elected Members may also be provided with, or have the ability to access, confidential information held by Council.

Confidential information includes information that staff have determined that there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 ('LGOIMA'). This will often be information that is either commercially sensitive or is personal to a particular individual. The Council's Privacy Officer is responsible for the release of information under LGOIMA.

Elected Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Elected Member. Elected Members should 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 the Council. They may also expose the Council to prosecution under the Privacy Act 2020 and/or civil litigation.

A breach of confidentiality could also indicate a lack of good faith which may be relevant to the assessment of personal liability (see explanation of sections 43 to 47 of the LGA set out in Schedule 1 of the Code). Information received in capacity as an Elected Member will be disclosed to other members and, where appropriate the CE, any information received in their capacity as an Elected Member that concerns the 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 is the member's duty to disclose the information and will decline the offer if that duty is likely to be compromised.

Elected Members are accountable to the public.

- All official information held by them personally, whether on Council equipment 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 CE (or nominee) so that it can be assessed in terms of the requirements of the LGOIMA.

5.5 GIFTS AND HOSPITALITY

A person in a position of trust, such as an Elected Member, should not make a profit through their office. The Crimes Act 1961 and the Secret Commissions Act 1910 deals with corruption and the obtaining of gifts as an inducement or reward for acts in relation to the Council's affairs (refer to Schedule 1). Gifts can include discounts, commissions, bonus or deductions.

Acceptance of gifts, services or hospitality may be considered as a bribe or perceived as undue influence. Elected Members must notify the Governance and Assurance Manager or Governance Lead (or delegate) if any gifts are accepted for inclusion in the Gifts Register maintained by the Council. Where a gift to the value of \$150 or more is offered to a member, it will also be included in the Register of Members Interests maintained by the Council.

As guidance:

- The cumulative value of recurring gifts received each financial year from the same donor must be disclosed. For example, if someone provides a member with concert tickets at different times through the year, the total value of those tickets over the relevant financial year is to be disclosed.
- A member is not required to disclose tickets to events for which that member is required to attend as the Council's representative (as recorded in the Council's Governance Structure).
- Working lunches and social occasions should be undertaken with a recognition of the public perception regarding undue influence on Elected Members.

5.6 CONFLICTS OF INTEREST

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

Schedule 2 of this Code sets out the Code's conflict of interest requirements. Elected Members must fully acquaint themselves, and adhere strictly to, these requirements.

Ultimately, it is up to each 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.

The requirements cover two classes of conflict of interest:

- A financial conflict of 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.

A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in. There are particularly strict provisions (and penalties) relating to dealing with a financial conflict of interest.

- A non-financial conflict of interest does not have a personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

Elected Members are required to complete declarations of interest following their inauguration, and to update their declarations as and when required.

5.7 BANKRUPTCY

Elected Members who are declared an undischarged bankrupt shall notify the CE when elected or as soon as practicable after being so declared. The member will provide the CE with a brief explanatory statement of the circumstances surrounding the bankruptcy, including its likely outcome. This must be recorded in the Register of Interests.

5.8 DISQUALIFICATION FROM OFFICE

The LGA and Standing Orders provide for disqualification of Elected Members from office for example, if they:

- are convicted of a criminal offence punishable by two or more years imprisonment;
- cease to be an elector or become disqualified for registration as an elector under the Electoral Act 1993;
- breach the LAMIA; or
- are absent without leave from the Council for four consecutive ordinary meetings of the Council.

5.9 USE OF SOCIAL MEDIA

Social media and online platforms include any internet-based tool used for publishing, sharing and discussing information and includes websites, blogs, wikis and social networking sites such as Facebook, Twitter or LinkedIn.

Use of social media is an effective and efficient way to share information, engage with the public and inform the communities that Elected Members serve. However, platforms can be misused, false information shared, and abusive interactions can negatively impact the wellbeing of those targeted and undermine staff or Elected Member's ability to serve the community.

This guidance for use of social media is designed to protect members of the public, Elected Members, and staff. Elected Members are supported to utilise social media in their elected member's official capacity provided any posts or comments are consistent with the Code (including Schedule 4), are open and transparent (including the entitlement to taking a view on critical issues for a decision to be made by Council) but do not:

- contain any language or the behaviours required of them in clause 3.3 above;
- bring the Council into disrepute e.g., making derogatory remarks about any individual or any organisation;
- contain confidential information (see Confidential Information at 5.5), impugn the integrity or impartiality of other Elected Members;
- contain information that is factually false or misleads the public; or
- misrepresent the views of the Council, any Council Policy, or the views of other Elected Members unless the post or comment clearly states that it does not represent the views of the majority of Elected Members.

For further guidance with using social media and other online platforms, see Schedule 4 for examples of terms of engagement, good practice online behaviour, actions to take for serious emotional distress and separating private and official capacity accounts.

6

BREACHES OF THE CODE

Members must comply with the provisions of this Code (clause 14(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.

6. 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.

6.1 COMPLAINTS PROCESS

At all times, other than breaches of legislation, any of the following informal processes may be followed:

- Internal (staff or Elected Member) complaints: Elected Members (including the Mayor) are encouraged, when appropriate, to resolve the matter between themselves or with staff to attempt to resolve the issue and seek assistance from the CE when needed; or
- External (public) complaints: the Mayor, Deputy Mayor and CE at their discretion may apply a suitable informal resolution process to attempt to resolve the matter regardless of whether a complaint has been made formally or not and/or the issue is material.

Any complaints that are not resolved informally using the above options, must be addressed in accordance with the process set out in Schedule 3 including the appointment of an investigator, as required but also noting that in the Schedule 3 process, allows for further referral to an informal process, if appropriate.

Panel of Independent Investigators

On behalf of the Council, the CE will, as soon as practicable after the start of a triennium and adoption of the Code, prepare, in consultation with the Mayor and Deputy Mayor, a panel of independent investigators. The panel of independent investigators will be responsible for undertaking an assessment of complaints and making recommendations to the Council in accordance with the process set out in Schedule 3. The Panel of Independent Investigators is not a committee of the Council.

The CE may, at their discretion, prepare a list specifically for the Council or prepare a list jointly with selected neighbouring councils or contract with an agency capable of providing appropriate investigators.

Example Scenarios

For further guidance with when conduct may or may not be a breach of this Code, see Schedule 5 with example scenarios and explanations.

Materiality

An alleged breach under this Code is material if, in the reasonable opinion of an independent investigator, it would, if proven, bring an Elected Member or the Council into disrepute (for example in the mind of the public, any behaviour that negatively risks or undermines the reputation of the Council or another Elected Member) or, if not addressed, reflect adversely on another Elected Member of the Council. An alleged breach of section 5.5 of the Code (Information available to Elected Members) will automatically be considered material and referred to an independent investigator for assessment.

6.2 PENALTIES AND ACTIONS

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

Material breaches

In the case of material breaches of this Code the Council may require one or more of the following:

- a letter of censure to the member;
- a request (made either privately or publicly) for an apology;
- a vote of no confidence in the member;
- removal of certain Council-funded privileges or Council appointments;
- restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- limitation on any dealings with Council staff so that they are confined to the CE only;
- suspension or removal from Committees (including joint committees), task forces or other Council bodies; and/or
- an invitation for the member to consider resigning from the Council.

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

- attend a relevant training course; and/or
- work with a mentor for a period; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in LGOIMA, for not doing so.

Breaches of Legislation

If there are statutory provisions dealing with the issue in question, the issue will not be dealt with as a breach of the Code but may be addressed in accordance with the relevant statutory provisions.

These include:

- issues relating to members' interests may render members liable for prosecution by the Auditor General under the Local Authorities (Member's Interests) Act 1968 and, if convicted, the Member can be removed from office;
- issues which result in the Council suffering financial loss or damage may be reported on by the Auditor General under the LGA, which may result in the member having to make good the loss or damage;
- issues relating to the commission of a criminal offence may leave the Elected Member liable for criminal prosecution.

Council may refer an issue to the relevant body, any member of the public may make a complaint to that body, or the Auditor-General or the Police may take action of their own initiative

Breaches of the Code during meetings

It is expected that compliance with the provisions of this Code during a meeting shall be dealt with by the Chairperson of that meeting, within Standing Orders, at the time the breach arises.

Elected Members should raise alleged breaches of the Code with the Chairperson at the time. If an Elected Member believes that an alleged breach of the Code has not been dealt with adequately by the Chairperson at a meeting, that Elected Member may initiate the procedures set out in Section 6.2 and Schedule 3 in the Code.

7

REVIEWS OR CHANGES TO THE CODE

The Council may by resolution of 75 per cent majority or more, change the Code at any time.

The 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 the full Council for its consideration and vote. At that time, a clean slate will apply to the application of this Code for the new triennium.

The Code should be read in conjunction with the Council's Standing Orders.

SUMMARY OF LEGISLATION

This Schedule is a summary of the legislative requirements that have some bearing on the duties and conduct of Elected Members. Copies of the legislation can be found on www.legislation.govt.nz or requested from the Governance team.

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 Maaori 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 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;
- 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 Maaori and their culture and traditions with their ancestral land, water, sites, waahi 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 Maaori to contribute to the decision-making process;
- consider ways in which the Council may foster the development of Maaori capacity to contribute to the decision-making process;
- provide relevant information to Maaori;
- 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.

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 the Council) an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote¹. The CE must also seek approval from the OAG for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements 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. Further guidance is detailed under Schedule 2 of the Code.

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 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 section 3 of this Code.

¹ The Auditor-General can provide retrospective approval for contracts that would otherwise disqualify a member under the Act, in limited circumstances.

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 the local authority. 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 & 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 the Council is meeting its health and safety responsibilities under HSWA. The CE 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 the 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.

The Council has a Protected Disclosure Management Policy, which applies to employees. For Elected Members, the default position requires a disclosure to be made to the CE or Deputy CE. If the employee considers the CE or Deputy CE may be involved in serious wrongdoing, the matter can also be escalated to an "appropriate authority".

Appropriate authorities are defined in the Act and include the Commissioner of Police, the Controller and Auditor-General and the Parliamentary Ombudsman.

CONFLICTS OF INTEREST

GENERAL

Elected Members are expected to approach decision making with an open mind - 'faithfully and impartially' and in 'the best interests of Hamilton City'. Elected Members must therefore be careful that they maintain a clear separation between their personal interests and their duties as a member of Council (as governing body, and as a member of a Council committee or other Council body). They must exercise care to avoid situations where they have, or appear to have, a conflict of interest.

Elected Members must carry out their duties free from bias (whether actual or perceived). Bias is the common factor in all conflict-of-interest situations. The rule about bias applies to both financial and non-financial conflicts of interest and is summed up in the saying 'no one may be judge in their own cause'.

In the local government context, financial conflicts of interest are governed primarily by the Local Authorities' (Members' Interests) Act 1968 ('LAMIA') and non-financial conflicts of interest are governed by the common law rule about bias.

Broadly speaking, a conflict of interest exists when an elected member could use, or uses, their position to further their own interests or those of their partner, or spouse. The various types of conflict of interest include:

- Direct financial interest - where a decision or act of the Council could reasonably give rise to an expectation of financial gain or loss to an elected member.
- Indirect financial interest - where cash doesn't change hands directly but, for example, may influence the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in;
- Non-financial interest - where an elected member's responsibilities as a member of Council could be affected by some other separate interest or duty that they may have in relation to a matter as a result of, for example, a personal relationship, or involvement with an external organisation, or from conduct that indicates prejudice or predetermination.

Conflicts of interest can be:

- Actual: where the conflict of interest already exists;
- Potential: where the conflict is about to happen, or reasonably could happen; or
- Perceived: where other people might reasonably think an Elected Member is not being objective or their position as an Elected Member has been compromised.

FINANCIAL CONFLICTS OF INTEREST

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned." (OAG, 2001)

Members should consider the following factors in considering whether they have a financial interest.

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor or another person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek independent legal advice. Where uncertainty exists, members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

The two specific rules in the LAMIA relate to:

Contracts

An Elected Member is disqualified from office, or from election to office, if that member is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of Council exceed \$25,000 in any financial year (unless there is an exemption granted by the Office of the Controller and Auditor-General ('OAG')).

The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which a member is interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by the member.

It is an offence under LAMIA for a person to act as a member of the Council (or Council committee) while disqualified.

Participation In Decision-Making

Elected Members must not participate in any Council discussion or vote on any matter in which they have a financial interest (either directly or indirectly), other than an interest in common with the public.

Both rules apply in the case of an interest or concern through an Elected Member's spouse or partner, or through a company or trust.

HOW IS BIAS DETERMINED?

Bias is determined by asking the following question:

"Is there, to a reasonable, fair-minded and informed observer, a real danger of bias on the part of a member of the decision-making body, in the sense that they might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?"

It is natural to expect that Elected Members will bring their own experience and knowledge to the decision-making process; that members may already have views - even strong or publicly stated views - about the matter; and that political considerations may play a part in the decision.

The question is not limited to actual bias but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members should focus on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether they might be perceived as biased, members must also consider the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the member would give effect to that promise, however they must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

DECLARATIONS OF INTEREST

To help identify possible conflicts of interest the Council operates a Register of Members' Interests.

Elected Members must make full and complete declarations of interests following the Inaugural Meeting of Council (after local government elections or by-election, as appropriate), and then every six months, using the Register of Members' Interests Declaration Form. These declarations of interests are a key individual responsibility of all Elected Members. They must notify the Council of the nature and extent of any interest as further detailed in the declaration form.

Declarations will be recorded in a Register of Members' Interests maintained by Council's Governance Manager. The Register (or a fair and accurate summary of its contents) will be available for public inspection. A summary will be published on the Council's website.

The Register does not remove the requirement to disclose conflicts of interest as they arise. Members must therefore advise the Council's Governance Manager, as soon as practicable during the year, if any new interests arise; complete a declaration of interests form every six months and update the Register whenever a member's interest has changed. Members must also declare their interests at meetings where matters in which they have a conflict of interest arise. The Elected Member must:

- declare the existence of a conflict to the meeting (the member does not have to disclose the nature of the interest concerned, though they are required if the interest is a financial one);
- abstain from discussion and voting (take no part in the consideration of the matter). Depending on the issue, the member may consider it best to leave the meeting room itself.

GENERAL AWARENESS AND SUPPORT

There is no simple binding rule that covers all conflict-of-interest situations - each situation must be evaluated on its individual merits. If an Elected Member is in any doubt as to whether they should declare an interest and stand aside from decision-making (including a decision to take no action), then they should seek guidance from the Mayor immediately; seek advice from the OAG (as to whether there is a financial interest) or from their own lawyer.

In some situations of pecuniary interest, a member may be able to obtain an exemption from the OAG to allow him/her to participate or vote on a particular issue. Any exemptions must be obtained before the discussion or vote takes place².

² The Auditor General can retrospectively approve contracts that would otherwise disqualify a member under the Act, in limited cases.

In a case of doubt, a member should refrain from discussing or voting on the matter in question and preferably physically withdraw from the meeting. The minutes of the meeting will record the member's declaration of interest and absence from voting.

Relevant guidelines include:

- 'Guidance for Members of Local Authorities about the Local Authorities' (Members' Interests) Act 1968' - Office of the Auditor General 2010.
- 'Managing Conflicting Interests in Local Government: The Local Authorities (Members' Interests) Act 1968 and Associated Issues' - Department of Internal Affairs August 2011.

CONSEQUENCES OF BIAS AND/OR BREACH OF THE LAMIA

An Elected Member will be automatically disqualified from office if they are concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of Council exceed \$25,000 in any financial year.

If an Elected Member has a financial interest in a matter and participates in discussion and voting on it, they will have committed an offence under the LAMIA. In the event of a conviction, an Elected Member can be removed from office.

An Elected Member's bias (whether actual or perceived) has the potential to invalidate the particular decision made, or the action taken, by Council (if successfully challenged by way of judicial review).

If an Elected Member's conduct has contributed to Council incurring a loss; that conduct could also result in personal financial liability under section 46 of the LGA (refer to Schedule 1).

PROCESS FOR THE INVESTIGATION AND DETERMINATION OF COMPLAINTS

SUMMARY

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

Stage 1: The complainant is required to complete a complaint form, which is acknowledged by the Legal Team.

Stage 2: Preliminary assessment of the complaint is completed by the Legal Team and a recommendation made to the Mayor, Deputy Mayor and the CE's Office, which may be referred to an informal process.

Stage 3: Upon receiving the recommendation, the Mayor, Deputy Mayor and CE's Office will consider the recommendation and make a decision on referral of the complaint to an informal process or to an investigator.

Stage 4: Where the Mayor, Deputy Mayor and CE's Office refers the complaint to an independent investigator assessment, the CE will use discretion to select a suitable investigator from the Panel of Investigators.

Stage 5: The Council will consider the investigator's report and reach a decision for a resolution for the complaint.

A flowchart illustrating the complaints process is attached to this Schedule. Staff are guided by internal information and templates with appropriate timeframes of which all uphold a fair process and natural justice with clear communication to the parties involved.

STEP 1: ACKNOWLEDGMENT OF COMPLAINT

1. Upon receipt of a complaint, the following will occur:
 - a. An acknowledgement of a submitted complaint form will be emailed to the complainant. The Legal Team will review the completed form and if needed, request clarification for any missing information or evidence.
 - b. The onus is on the complainant to ensure they have referred to the relevant section of the Code of Conduct that they are claiming to have been breached. The complaint will remain confidential while an investigation is being completed.
 - c. The Legal Team will inform the respondent that a complaint has been made against them and refer them to the process for dealing with the complaint under this Code.

STEP 2: PRELIMINARY ASSESSMENT OF COMPLAINT

2. The CE, with the Mayor and Deputy Mayor (either of whom may be removed from the process if the complaint involves the Mayor or Deputy Mayor) will decide 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. is suitable based on the circumstances, to refer to an informal process for implementation by the CE's Office. The interpretation of the complaint against the Code of Conduct at that time will be based on the Legal Team's assessment.
 - e. the complaint is material and should be the subject of a full investigation to be completed by an independent investigator.
3. At each stage of the complaints process, the Legal Team and the CE's Office will be responsible for informing the parties involved of the progress, timeframes and decisions, and will utilise internal templates and guidance to ensure a fair process and natural justice is upheld.
4. If it is determined that the complaint involves a potential legislative breach and is outside the scope of the Code, the Legal Team will advise the CE's Office and will forward the complaint to the relevant agency and inform both the complainant and respondent of the action. The Legal Team may also make additional recommendations based on the circumstances.
5. The Mayor, Deputy Mayor and the CE have full discretion to refer any complaint to an informal process for resolution, notwithstanding that it is material or not.
6. The timeframes for assessment, resolution and/or investigation will be clarified by the Legal Team based on the circumstances of the complaint. If additional time is required to complete the assessment following the initial assessment, the CE Office or the Legal Team must notify the complainant and respondent of the further time required.

STEP 3: INFORMAL RESOLUTION

7. Where the complaint is referred to an informal process, the parties will endeavour to resolve the complaint as soon as reasonably practicable, in the circumstances.

The outcome of any process that it is not fully investigated may be that the parties reach an informal agreement to resolve the complaint, in which case no further action is required. A written record of the informal agreement must be kept by the CE's office and the outcome of the informal agreement sent to the Legal Team, Mayor's Office and the Governance Team. If agreement is not possible between the parties under an informal process, the CE, Mayor and Deputy Mayor may refer the complaint to an independent investigator for full investigation.

STEP 4: INDEPENDENT INVESTIGATOR ASSESSMENT

8. The CE's Office will refer the complaint to an independent investigator selected from the approved Panel of Independent Investigators.

9. On receipt of a complaint the investigator will, if appropriate, assess 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 more suitably resolved informally;
- e. the complaint is non-material; or
- f. the complaint is material, and a full investigation is required.

10. The investigator must carry out their assessment in accordance with the principles in section 6.1 and within the terms of engagement provided by the CE. The assessment must be completed and sent to the CE as soon as reasonably practicable, from the date the complaint is referred to the investigator (unless otherwise agreed with the CE).

11. In making the assessment, the investigator may make whatever initial inquiry is necessary to determine the materiality of an alleged breach and to recommend the appropriate course of action. The investigator has full discretion to recommend any complaint is dismissed which, in their view, fails to meet the test of materiality.

12. On receiving the investigator's assessment, the CE will:

- a. where an investigator determines that a complaint is frivolous or without substance or previously been assessed and actioned under the Code, inform the complainant and the respondent directly and inform

other Elected Members (if there are no grounds for confidentiality) of the investigator's decision; or

- b. in cases where the investigator finds that the complaint involves a potential legislative breach and is outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

STEP 4A: ACTIONS WHERE A BREACH IS FOUND TO BE NON-MATERIAL

13. The investigator will inform the CE if they find the breach is non-material as part of their assessment, and, if they choose, recommend a course of action appropriate to the breach, such as the respondent:

- a. receiving direction from Council (excluding the respondent and any interested Elected Members) regarding behaviour or conduct expected from Elected Members;
- b. attending appropriate training or counselling to better understand the behaviour or conduct that is expected from Elected Members in circumstances that led to the complaint.

14. The CE's Office should implement the recommendations made by the investigators report which may include referring the resolution to a suitable informal process.

STEP 4B: ACTIONS WHERE A BREACH IS FOUND TO BE MATERIAL

15. The investigator will inform the CE if they find that the breach is material as part of their assessment. The CE will then inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach.

16. In preparing that report the investigator:
- a. must consult with the complainant, respondent and any affected parties; and
 - b. must refer to any relevant documents or information provided by the CE; and
 - c. may undertake a hearing with relevant parties.

On receipt of the investigator's report, the CE will prepare a report for the Council, which will meet as soon as reasonably possible. The CE's report will include the full report prepared by the investigator, including any recommendations.

The CE will share the investigator's report with the complainant and respondent under strict confidentiality inviting them to reply in writing as to whether they agree to the findings and whether they wish to make a written submission for consideration by the Council. The complainant and respondent must not disclose or discuss the investigator's report with any person other than appropriate internal staff, such as the Legal Team and the Governance and Assurance Manager prior to the Council meeting being held to determine the complaint.

STAGE 5: THE COUNCIL'S CONSIDERATION OF AN INVESTIGATOR'S REPORT

17. The CE's report (with the investigator's full report or assessment, and any submissions from the complainant or respondent, attached) will be considered by the full Council, excluding any interested members (including the complainant (if relevant) and respondent).

18. The Council will consider the CE's report in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under section 48 of the LGOIMA, in which case it will be a Public Excluded meeting.

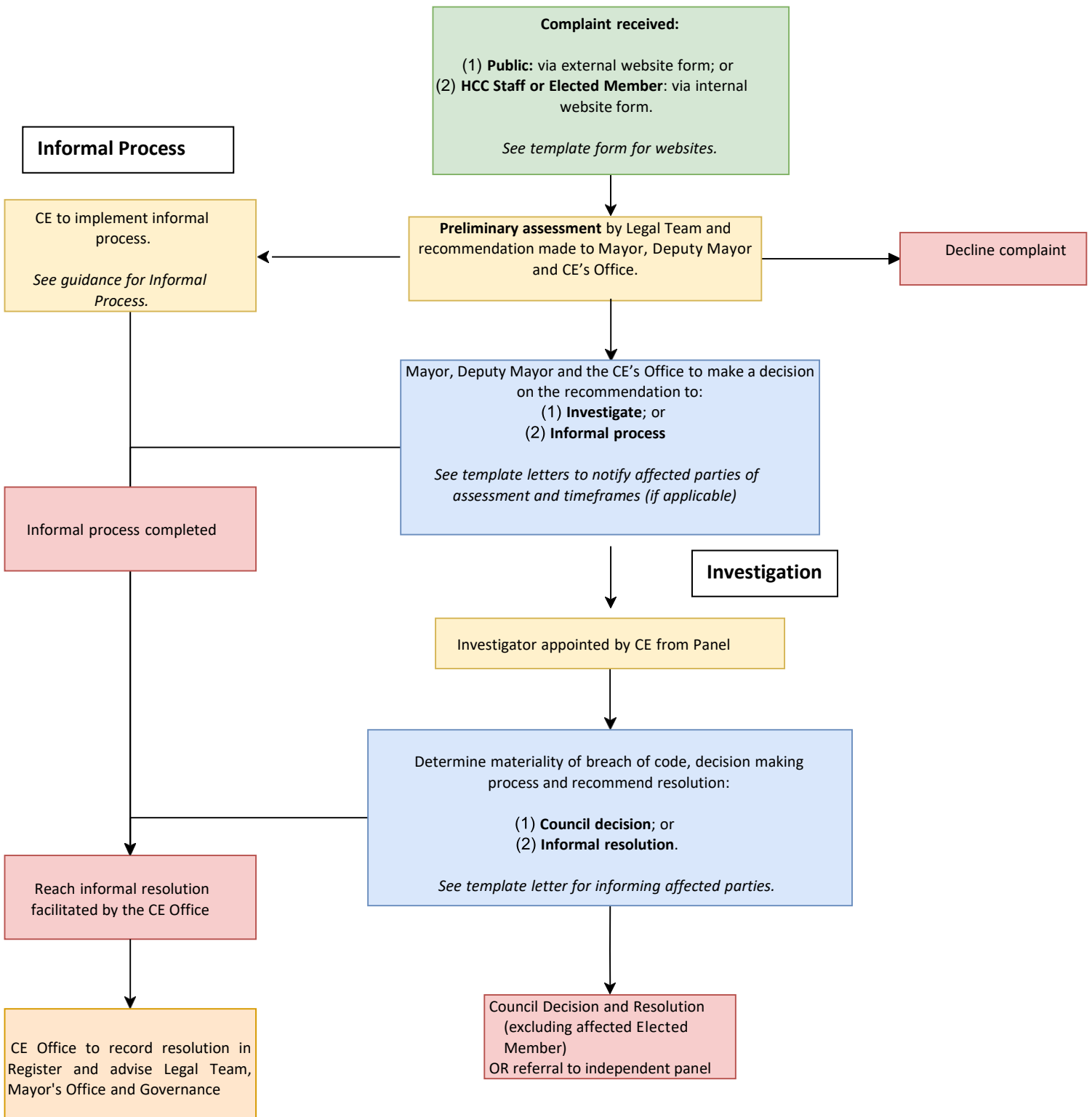
19. Before making any decision in respect of the investigator's report the Council will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings may not otherwise take part in these proceedings.

20. Council shall:

- a. consider the findings of the investigator's report; and either:
- b. determine whether to accept the findings of the investigator's report and whether a penalty, or some other form of action, will be imposed; or
- c. determine that in the interests of natural justice, a decision on whether to accept the findings of the investigator's report and whether a penalty, or some other form of action, will be imposed, should be made by a panel of no less than three independent, appropriately qualified members, to be selected by the CE, Mayor and Deputy Mayor.

21. The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 6.3 of this Code. Any censure or penalty must be proportional to the behaviour that is found to be in breach of the Code.

Flowchart



ONLINE COMMUNICATION

DEALING WITH ONLINE ABUSE

Elected Members are public facing and interacting with the public should be robust, but it should also be respectful. Elected Members are encouraged to participate in debate and entitled to take a view on critical issues that call for a decision of Council including doing so on social media platforms, websites or blogs whilst presenting and applying an open mind. Whilst this open minded debate is acceptable, personal attacks are not, as well as any of the misconduct in clause 5.10.

To apply best practice, Elected Members may decide to utilize the following template to display to users in on their social media accounts:

I openly welcome your comments to encourage discussion on this platform but ask that you are polite and respectful in your comments and views. I reserve the right to hide or remove posts or comments from this page which include any content that is disrespectful, rude or abusive language, any direct personal attacks or any disclosure of private information or details of any elected members or staff or other users, objectionable material and any unsolicited advertising marketing or spam. If your comments fail to comply with the above terms, you may be blocked from posting on this page and comments will be hidden.

TAKING ACTION AGAINST HARMFUL DIGITAL COMMUNICATIONS

Abuse sent to and from the public on social media may be in different forms, so good judgment is required when determining what is an appropriate response or post.

Elected Members must be mindful that it is a criminal offence to cause serious emotional distress by posting a 'digital communication' intended to cause harm on social media (or any other digital source) in accordance with the Harmful Digital Communications Act 2015 (HDCA).

Where abuse is made against an Elected Member, they are encouraged to take a screenshot and record the URL of the webpage. Any complaints about breaches of under the HDCA should be made to NetSafe and when serious, also reported to Police as well as the Mayor/CEO.

If necessary, where abuse is serious, Elected Members should report the abusive comments to the social media platform, mute or block repeat offenders or refuse to engage with aggressive comments by not replying or hiding the comments.

Elected Members are guided to:

- Make it clear that inappropriate comments are unacceptable.
- Be factual and polite to avoid escalation and retaliatory comments.
- De-escalate situations negative situations by acknowledging a person's frustrations, assure them that they have been heard and commit to follow up where appropriate.

ONLINE BEHAVIOUR - LEADING BY EXAMPLE

Elected Members should model good online behaviour when using social media. As a rule of thumb, an Elected Member should only post what they would be prepared to say in person in a public gathering and if in doubt, do not post it. Once it is posted, it can be copied and shared, even if it has been deleted.

Focus should be on the issue, not the person, counter misinformation with facts and call out inappropriate behaviour. It is recommended that Elected Members consider logging off before responding and seek guidance if you are unsure.

EXAMPLES

EXAMPLE ONE

Councillor Smith was elected on a platform of stopping the sale of council housing. The Council has made a decision to sell the council housing. Cr Smith makes a media statement with comments against the decision after it is made. The same statements suggested that Council staff advising on the sale “must have own shares” in the company that proposed to buy the houses.

Cr Smith’s actions in releasing a media statement criticizing a decision after has been made could probably not in and of themselves constitute a breach of a Code of Conduct. Cr Smith has a right to express a viewpoint and, if he makes it clear he is expressing a personal view, then issuing a critical press statement is an action he is entitled to take. If his statement failed to make it clear that he was expressing a personal or minority view then it may be a non-material breach of the Code of Conduct, probably one where censure would be the appropriate response.

However, the media statement has made an allegation that staff advice was based on improper motives and/or corruption and that would be a breach of the Code of Conduct. It is most likely to be a material breach given the potential impact on the Council’s reputation and the reputation of staff.

Also, there is no qualified privilege attaching public statements about employees which are false and damaging. In other words, Elected Members may be sued for defamatory statements made about employees. This will also apply for any defamatory statements made about other Elected Members if that was the case.

EXAMPLE TWO

Councillor Jones is on the Council’s Works and Services Committee. The Committee is currently considering tenders for the construction of a new wastewater treatment plant and has received four tenders in commercial confidence. The Committee has recommended to Council that they award the contract to the lowest tenderer. Cr Jones is concerned that the lowest tender proposes to treat sewerage to a lesser standard than others. She leaks all four tenders to the local media. A subsequent investigation by the Council conclusively traces the leak back to her.

In leaking the tender information to the media, CR Jones will have breached the Code of Conduct. This breach has potentially serious consequences for the Council as a whole. It not only undermines elected members trust of each other, it also undermines the confidence of suppliers in the Council, which may lead to them not dealing with the Council in the future, or even complaints under the Privacy Act 2020.

In circumstances such as these, where an Elected Member fails to respect a commercial confidence censure and removal from the Committee is an obvious step. The Council may be liable for prosecution under the Privacy Act, and even to civil litigation.

If the Council suffers financial loss the Council may elect to ask the Auditor-General to prepare a report on the loss (or the Audit Office may do so on their own initiative), which may result in CR Jones having to make good the loss from her own pocket.

EXAMPLE THREE

The Council is conducting a performance review of the Chief Executive. It has established a CEO performance review that the Committee meets informally with the CEO to review which performance targets were met and which were not. The meeting notes that the CEO has been unable to meet two of his twenty performance targets that were set and resolves to formally report this to the full Council for consideration. At the conclusion of the meeting, Cr Black jumps online, logs into his social media page and comments that “John White won’t be getting a pay rise this year because he didn’t meet all his targets as the CEO”.

This action will constitute a breach of the Conduct of Conduct in that it:

- *Breached a confidence*
- *Presumed to speak on behalf of the Council*
- *Purported to commit Council to a course of action before the Council had made a decision (or even met to consider the matter); and*
- *Failed to treat a staff member with respect and courtesy.*

In addition, Cr Black’s actions will undermine the relationship between the CEO and the Council, which may also give rise to grounds for litigation against the Council in terms of employment and privacy.