



Maribyrnong
CITY COUNCIL

Councillor Code of Conduct 2021

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Introduction

The *Local Government Act 2020* (Vic) ('the Act') requires Council to adopt a Code of Conduct. The *Local Government (Governance and Integrity) Regulations 2020* (Vic) prescribe standards of conduct which all elected Councillors across Victoria must abide by. These standards must be included in a Council's Code of Conduct.

Purpose

The purpose of local government is to provide a system under which Council perform the functions and exercise the powers conferred by or under the Act and any other related Act and associated Regulations for the peace, order and good government of their municipal districts.

The purpose of this Councillor Code of Conduct is to satisfy the requirements of the Act, including the standards of conduct expected to be observed by all Maribyrnong City Council Councillors in the course of performing their duties and functions as Councillors, and to establish provisions prohibiting any form of discrimination, harassment and vilification.

Scope

This Code applies to all Councillors of the Maribyrnong City Council.

This Code:

- Provides the standards of conduct expected of Councillors and outlines the procedures for failure to abide by these standards.
- Outlines the distinct responsibilities of Council and Councillors and the roles that Councillors and the Mayor are required to undertake;
- Endeavours to foster good working relations between Councillors to enable them to work constructively together in the best interests of the municipality as a whole;
- Mandates Councillor Conduct designed to build public confidence in the integrity of local government;
- Reflects the prescribed standards of conduct under the *Local Government (Governance and Integrity) Regulations (Vic) 2020*.

Definitions

Term	Definition
Act	the Local Government Act 2020 (Vic)
Chief Executive Officer (CEO)	the Chief Executive Officer of the Maribyrnong City Council
Conduct Standards	the standards of Councillor conduct prescribed under Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020
Councillor	all references to 'Councillor' include the Mayor, Deputy Lord and elected members of the Maribyrnong City Council
Councillor Conduct Officer	the person appointed by the Chief Executive Officer
Councillor Conduct Panel	a panel established under the Local Government Act 2020 to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor
Governance Rules	the Maribyrnong City Council Governance Rules 2020 in accordance with section 60 of the Act
Key Strategic Document	any key document required by the Local Government Act (Vic) 2020 and includes Council's Governance Rules, Council Plan, Asset Plan, Infrastructure Plan, Community Engagement Policy and Public Transparency Policy
Misconduct	any breach by a Councillor of the prescribed conduct standards included in this Councillor Code of Conduct
Municipal Community	the City of Maribyrnong and includes all Wards within the municipal boundary; any reference to the municipal community refers to the entire City, not only a specific Ward
Principal Councillor Conduct Registrar	the person appointed by the Secretary to the Department of Environment, Land, Water and Planning under section 148
the Regulations	the Local Government (Governance and Integrity) Regulations 2020 that complement the Act.
Staff	an employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the City of Melbourne.

Part 1 – Roles and Responsibilities

This section of the Code outlines the Maribyrnong City Council organisational requirements, Councillor specific requirements and the specific responsibilities and functions of the Mayor (or the Acting Mayor if duly appointed in accordance with Council's Governance Rules and this Code).

1. Role of Maribyrnong City Council

In accordance with section 8 of the Act, the role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.

A Council provides good governance if it meets the overarching governance principles in accordance with section 9 of the Act, which are:

- (a) Council decisions are to be made and actions taken in accordance with the relevant law;
- (b) priority is to be given to achieving the best outcomes for the municipal community as a whole, including future generations;
- (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- (d) the municipal community is to be engaged in strategic planning and strategic decision making;
- (e) innovation and continuous improvement is to be pursued;
- (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
- (g) the ongoing financial viability of the Council is to be ensured;
- (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
- (i) the transparency of Council decisions, actions and information is to be ensured.

To ensure Council provides good governance in accordance with this provision, Council will ensure that Councillors and the municipal community have access to all relevant information to make the most informed decisions for the betterment of the municipal community in accordance with Council policy.

Council is committed to promoting an inclusive and collaborative working environment between Council, Councillors and the municipal community and Councillors must actively consider any and all suggestions provided to Council in documented and established communication channels when deliberating on a Council matter.

2. Role of Councillors

In accordance with section 28 of the Act, the role of a Council is to:

- (a) participate in the decision-making of Council;
- (b) represent the interests of the municipal community in that decision-making; and
- (c) contribute to the strategic direction of 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:

- (a) consider the diversity of interests and needs of the municipal community;
- (b) support the role of Council;
- (c) acknowledge and support the role of the Mayor;
- (d) act lawfully and in accordance with the oath or affirmation of office;
- (e) act in accordance with the Standards of Conduct;
- (f) comply with Council procedures required for good governance.

The role of a Councillor expressly excludes the performance of any responsibilities or functions of the Chief Executive Officer.

3. Specific Functions of the Mayor

As the principal spokesperson and figurehead of Council, the Mayor plays a key role in facilitating good relationships with Councillors, between elected members, Council's CEO and the municipal community.

The primary role and responsibilities are defined under the Act and include (section 18 of the Act):

- (a) chair Council meetings;
- (b) be the principal spokesperson for the Council;
- (c) lead engagement with the municipal community on the development of the Council Plan;
- (d) report to the municipal community, at least once each year, on the implementation of the Council Plan;
- (e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct;
- (f) assist Councillors to understand their role;
- (g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer;
- (h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- (i) perform civic and ceremonial duties on behalf of the Council.

Council's Deputy Mayor assumes the functions of the Mayor if the Deputy Mayor is Acting Mayor in accordance with Council's Governance Rules.

4. Functions of the Chief Executive Officer

Section 94A of the Local Government Act 1989 sets out the functions of the Chief Executive Officer, which include:

- Establishing and maintaining an appropriate organisational structure;
- Ensuring that the decisions of the Council are implemented without undue delay;
- 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 Mayor in the performance of the Mayor's role as 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 and the Workplace Injury Rehabilitation and Compensation Act 2013; and
- Performing any other function or duty of the CEO specified in the Act or any other Act.

From 1 July 2021, section 94A of the Local Government Act 1989 will be replaced by section 46 of the Act. The Chief Executive Officer's functions will then include:

- supporting the Mayor and the Councillors in the performance of their roles;
- ensuring the effective and efficient management of the day to day operations of the Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's duties;
- setting the agenda for Council meetings after consulting the Mayor;
- when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- establishing and maintaining an organisational structure for Council;
- being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between Council staff and Councillors

The Chief Executive Officer will determine the extent to which Councillors will be informed of decisions made in pursuit of these functions. Councillors acknowledge that any information provided by the Chief Executive Officer is provided as a courtesy and in pursuit of maintaining good working relationships.

Councillors accept that they must not seek to direct the Chief Executive Officer with respect to the fulfilment of these functions.

It is neither the role nor the responsibility of the Chief Executive Officer to mediate disagreements arising between Councillors, or to draft, or otherwise assist in the drafting of, an application under this Code or the Act.

Part 2 – Councillor Standards of Conduct

5. Standards of Conduct

This Code is governed by the standards the *Local Government (Governance and Integrity) Regulations 2020 (Vic)* ('the Regulations') and is to be read in conjunction with relevant Council policy.

Section 139 of the Local Government Act 2020 requires a Councillor code of conduct to include the standards of conduct prescribed by the regulations expected to be observed by a Councillor.

5.1. Treatment of others

Maribyrnong City Council Councillors must, in performing their role, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor:

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

5.2. Performing the role of Councillor

A Councillor must, in performing their role, do everything reasonably necessary to ensure that they perform their roles effectively and responsibly, including:

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

5.3. Compliance with good governance measures

Under the Act, a Councillor must comply with the governance measures as developed by the Council. To do so, a Councillor must diligently and properly comply with the following:

- (a) any policy, practice or protocol developed and implemented by the CEO in accordance with section 46 of the Act for managing interactions between members of Council staff and Elected Members;

- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

5.4. Councillor must not discredit or mislead Council or public

In performing their role, a Councillor must ensure that their behaviour does not bring discredit upon the Council and must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

5.5. Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

6. Specific Councillor Conduct Obligations

6.1. Decision making

A Councillor must be committed to making all decisions impartially and in the best interests of the community. Council's Governance Rules outlines the processes a Councillor must follow when making decisions and the obligations to make decisions in a fair and just manner.

A Councillor must actively participate in the decision making process and appropriately inform themselves of the matter at hand. A Councillor must consider the short, medium and long term impacts of their decisions and must consider the application of key Council documents on any Council decision. A Councillor must actively consider feedback as raised by the community in relation to any key strategic document, particularly any feedback received from any person potentially aggrieved by a Council decision. Once a decision has been made, Councillors must respect the making of that decision.

6.2. Use of Council Information

A Councillors is entitled to access a range of information from Council to assist in their formal responsibilities and in accordance with Council's policies and processes. This information must only be used for the purpose in which it has been granted.

Information which is 'confidential information' within the meaning of section 3 and section 125 of the Act, and Chapter 6 of the Governance Rules may not be disclosed by a Councillor except in certain specified circumstances. Councillors must comply with any legislative provisions and Council policies concerning access to, use of, or disclosure of Council information, whether confidential or otherwise.

To note further, information discussed at a closed meeting is confidential. Unless the information is already publicly available, a Councillor must not talk about anything discussed at the meeting with people who were not present

A Councillor must remain impartial and must not use council information to gain advantage for themselves or any other person

6.3. Communications and social media

Any form of internet or social media communication may enter the public domain and a Councillor is expected to exercise caution when posting on any social media platform, even on private accounts. Councillors need to ensure that the use of social media minimises exposure of Council and Councillors to legal and reputational risk. The Code of Conduct applies to online activity in the same way it does to other written or verbal communications.

6.4. Conflict of interest

Sections 126 to 131 of the Act, and Chapter 5 of the Governance Rules require each Councillor to identify, manage and disclose any conflicts of interest they may have. A Councillor must follow the processes established under Council's Governance Rules for the declaration of any conflicts of interest as they arise when a Councillor is performing any official function. The failure to adequately declare any conflict of interest is considered as a misuse of position and the significant penalties under the Act can apply. The onus is on each Councillor to declare any interest, no matter how insignificant or remote that interest may appear to that Councillor, in the event that interest arises.

6.5. Gifts and hospitality

A Councillor should be aware that their actions are subject to scrutiny, particularly when that Councillor is in receipt of a gift given outside of their elected responsibilities.

Council's Councillor Gift and Hospitality Policy governs the processes and practices that Councillors are bound by when accepting, or receiving, gifts. This policy relates to tangible gifts, monetary gifts, gifts of hospitality and offers for a Councillor to attend certain events within the municipality. A Councillor must abide by this policy.

6.6. Fraud and corruption

Council is responsive and responsible towards its constituents especially in regards to any potential fraud and corruption. This Council takes its' obligation towards minimising any fraudulent activity on behalf of its' Councillors extremely seriously and Councillors are reminded to immediately report to the Chief Executive Officer and/or appropriate integrity body, in line with the Council's Public Interest Disclosures Procedures, any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour that comes to their knowledge. A Councillor must abide by the procedures.

6.7. Councillor and officer engagement

To ensure compliance with Council's existing good governance measures, and in accordance with section 124 of the Act, a Councillors is not to seek to improperly direct or influence members of Council staff in the exercise of their duties. A Councillor is to follow all procedures and protocols in Council's Councillor and Staff Interaction Protocol which governs interactions with Council staff.

6.8. Use of Council resources

A Councillor are given a range of resources to assist them in fulfilling their elected responsibilities. Council's Council Support, Expenses and Reimbursement Policy outlines the processes and the limitations on the utility of Council's resources and the expenses that a Councillor is entitled to be reimbursed. Councillor obligations in relation to Council resources include:

- a) maintaining appropriate security over Council property, facilities and resources provided to assist them in performing their role; and adhering to any guidelines or policies that have been established for the use of Councillor resources and facilities
- b) not using public funds or resources in a manner that is improper or unauthorised;
- c) not using Council resources, including staff, equipment and/or intellectual property for electoral or other purposes;
- d) ensuring that all expense claims are accurate, are supported by the relevant documentation and strictly relate to Council business.

6.9. Planning process

A Councillor must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly.

In exercising land use planning, development assessment and other regulatory functions, a Councillor must ensure that no action, statement or communication between themselves and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

When proposing to meet with a known or proposed planning permit applicant (or property owner, or their representative), either for the purpose of discussing the application or where the application is likely to become a topic of discussion, a Councillor is to hold the meeting with a planning officer present.

6.10. Political activity

Should a Councillor become a candidate at a State or Federal election, the Councillor must take a leave of absence from their duties as a Councillor from the day they become a registered candidate for a State or Federal election.

In the event the Councillor is successful in their candidacy, they must resign from their position as a Councillor and return all Council provided resources to the Council Chief Executive Officer.

Councillors are reminded that Council's Election Period Policy applies during the local government election period.

6.11. Human rights and equal opportunity

Councillors are to acknowledge the human rights that are protected under the Victorian Charter of Human Rights and Responsibilities Act 2006 and undertake to

exercise their duties in a manner that is compatible with the rights set out in the Charter.

Discrimination is defined under the Equal Opportunity Act 2010 (Vic) ('Equal Opportunity Act') as 'direct or indirect discrimination on the basis of an attribute' that a particular person may have or may had at a particular point.

The Equal Opportunity Act provides that a Councillor of a municipal Council must not discriminate against a fellow Councillor of that Council, or any other member of a Council committee.

This undertaking extends to all relationships as a Councillor, including with other Councillors, the Chief Executive Officer and Council employees, as well as any member of the public, and any decisions a Councillor participates in.

Council is also committed to meeting its obligations under the Gender Equality Act 2020 and ensuring gender equity is enshrined in all Council's practices.

6.12. Discrimination, Harassment and Vilification

Council is committed to maintaining a working environment that is free from discrimination, harassment and vilification where all people are treated with dignity and respect. A Councillor is to uphold Council's obligations to support a safe workplace, and will not engage in repeated unreasonable behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff.

6.13. Cultural awareness

A Councillor, where appropriate, is to take into consideration the cultural sensitivities of the traditional owners of the land of the municipality including paying their respects to the elders, both past, present and emerging, of the traditional lands in which meetings held.

A Councillor should, where possible, when discussing and deliberation on matters that may affect the interest of the traditional owners of the land in which that matter relates, consult with and consider how any discussion or deliberation would impact on the traditional owners' rights.

Councillors are reminded that they represent the municipality as a whole and not only their Ward and must consider how any decision they make would impact the municipality as a whole.

All opportunities must be provided to any person, from any cultural, ethnic or religious group impacted by a potential Council decision, to address Council on the matters that directly affect them.

6.14. Fostering good working relationships with each other, the community and the organisation

A Councillor must exhibit a professional and collaborative working relationship with their fellow Councillors, the Executive Management Team, Council staff and the residents of the municipality. A Councillor must remember and pay due regard to their election as a Councillor of the Maribyrnong City Council by the municipal residents and must respect this process and the responsibility it brings.

When making a decision, a Councillor must consider the impact on the municipal community as a whole and the persons potentially impacted by a Council decision.

The Act clearly establishes that the elected arm (elected representatives) and the operational arm (Council staff) of a Council must remain separate and Council has a clearly defined position in its Councillor and Staff Interaction Protocol that elected members are not to direct or unduly influence a member of Council's staff.

6.15. Commitment to best practice

Councillors are to acknowledge that in fulfilling the statutory requirements of their role, a shared understanding of their obligation and the practical ways that they perform their duties is necessary for good governance. To achieve this shared understanding, a Councillor must commit to take all reasonable steps to become familiar with Councillor policies and protocols and participate in any reviews of these documents.

6.16. Relationship with the community

As Councillors are elected by the residents they represent, a Councillors is expected to maintain the highest level of professionalism at all times. This behaviour must reflect Council's values of Respect, Courage and Integrity and behaviour must reflect the community's expectation of proper conduct expected of their elected representatives.

The Act outlines that a duly appointed Council Mayor is Council's principal spokesperson during their term as Mayor. A Councillor must not speak to any media agency or external organisation on behalf of Council, unless they are in an Acting Mayoral position. This Acting Mayoral position must be duly appointed using the processes outlined in the Governance Rules and any act or decision made by a Councillor in breach of the processes in the Governance Rules will render that act or decision invalid and expose that Councillor to potentially disciplinary action in accordance with Council's documented disciplinary processes.

6.17. Misuse of position

Misuse of position is defined under section 123 of the Act as 'any act or thing done by a Councillor in an attempt to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the Council or another person'. Councillors acknowledge and agree to adhere to their responsibilities under section 123 of the Act.

Part 3 – Dispute Resolution

Councillors acknowledge that interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.

This dispute resolution procedure is intended to be used:

1. when Councillors have been unable to resolve an interpersonal difference or disputes and where the situation is unduly affecting the operation of the Council; or
2. to manage complaints or concerns regarding the behaviour of Councillors from the public or Council staff.

It is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion and voting in Council and Committee Meetings.

Where the dispute arises from a complaint generated by a member of the public or Council staff, access to the dispute resolution process under this Code is only possible where a Councillor or group of Councillors takes up the complaint about another Councillor on behalf of the complainant.

7. Informal dispute resolution process

In resolving interpersonal differences or disputes, Councillors will consider pursuing informal steps, including:

7.1. Self-Resolution

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Self-resolution involves a Councillor(s) raising concerns directly with the Councillor(s) with whom they have a dispute by approaching them directly, explaining the impact of the behaviour that they consider unacceptable and asking them to cease the behaviour.

7.2. Mayoral facilitation discussion

If the self-resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

An interpersonal difference or dispute referred for Mayoral negotiation may relate to:

- an interpersonal conflict or dispute 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 Mayoral negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing, indicating that it is for a “Mayoral facilitation discussion”.

Within 5 working days of receipt of the complaint, the Mayor will:

- provide written acknowledgment of receipt of the complaint to the Complainant;
- provide a copy of the complaint to the Councillor concerned; and
- attempt to facilitate a resolution and convene a meeting

The Mayor may call upon the Councillor Conduct Officer (CCO)¹ for advice and guidance at this point in the process.

The role of the 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, and the observation of the Councillor Standards of Conduct and the Councillor Code of Conduct.

The 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.

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 parties should progress to external mediation.

7.2.1. Interpersonal differences or disputes between Councillors and the Mayor

In the event that the interpersonal difference or dispute involves the Mayor, the Deputy Mayor or other Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussions between the parties in dispute and liaising with the CCO.

7.3. External Mediation

If reconciliation of the interpersonal difference or dispute is not possible after Mayoral facilitation discussion, it is the responsibility of the Mayor to seek assistance from an external mediator, preferably with the active support of the parties involved, who must be informed of such a decision in any circumstance.

The applicant is to submit a written application to the CCO setting out the name of the Councillor and the details of the interpersonal difference or 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;

¹ The appointed Councillor Conduct Officer is the Director Corporate Services.

- 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 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 CCO or as soon as practical thereafter.

The CCO 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 Councillor 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 CCO is to advise the applicant, the Mayor and Chief Executive Officer immediately.

The CCO 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 set in Part 4 of this Code where the matter relates to an alleged contravention of the Standards 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.

Part 4 – Breaches of Standards of Conduct

8. Internal Arbitration process

If the interpersonal difference or dispute cannot be resolved informally, the Councillor(s) will consider whether any of the conduct giving rise to it constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under part 4 of this Code.

8.1. Making an Application

An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by:

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

An application under section 143 of the Act must be made within 3 months of the alleged misconduct occurring.

An application under section 143 must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act.

The prescribed process for an application for internal arbitration must include:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach; and
- after receiving an application under section 143 of the Act, the Councillor Conduct Officer provides the application to the Councillor who is the subject of the application.

An arbiter appointed to hear a matter subject to an application must:

- (a) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (b) ensure that the hearing is not open to the public.

An arbiter:

- (a) may hear each party to the matter in person or solely by written or electronic means of communication; and
- (b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit; and
- (c) may at any time discontinue the hearing if the arbiter considers that
 - (i) the application is vexatious, misconceived, frivolous or lacking in substance; or
 - (ii) the applicant has not responded, or has responded inadequately, to a request for further information.

8.2. Principal Councillor Conduct Registrar must examine application

- (1) The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that:
 - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and

- (b) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.
- (2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).
- (3) The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.
- (4) Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

8.3. Arbiter must refer certain applications

- (1) If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- (2) If the Principal Councillor Conduct Registrar receives a referral under subsection (1), the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

8.4. Sanctions that may be imposed by an arbiter on finding of misconduct

- (1) If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- (2) If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following—
 - (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
 - (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
 - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
 - (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
 - (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.
- (3) The arbiter must provide a written copy of the arbiter's decision and statement of reasons to:

- (a) the Council; and
 - (b) the applicant or applicants; and
 - (c) the respondent; and
 - (d) the Principal Councillor Conduct Registrar.
- (4) Subject to subsection (5), a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
 - (5) If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4).

8.5. No Applications during Election Period

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 were 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.

9. Request for Councillor Conduct Panel

The Principal Councillor Conduct Registrar² manages the establishment of Councillor Conduct Panels.

All applications (supported with evidence) to establish a panel to hear allegations of misconduct or serious misconduct must go to the registrar. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and council processes have been fully exhausted or are not appropriate.

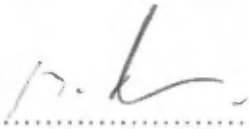
² The registrar is appointed by the Secretary to the Department.

Commitment to the Code

As Councillors of the Maribyrnong City Council, we commit to abiding by this Code, including that we will comply with:

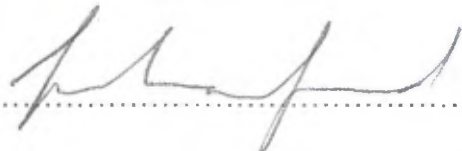
- The standard of conduct;
- The specific Councillor conduct obligations;
- Any policy or protocol introduced by the CEO to manage the interactions between Councillors and staff; and
- The dispute resolution procedures.

This Councillor Code of Conduct was adopted at the Council Meeting by Maribyrnong City Council on 23 February 2021. By signing below, Councillor declare that they have read the Councillor Code of Conduct and declared to abide by the Code at all times.


Cr Michael Clarke  Dated: 23 February 2021
Mayor

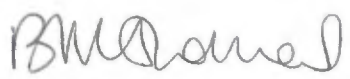
Cr Anthony Tran  Dated: ^{02 MARCH}~~23 February~~ 2021
Deputy Mayor

Cr Sarah Carter  Dated: 23 February 2021

Cr Simon Crawford  Dated: 23 February 2021

Cr Jorge Jorquera  Dated: 23 February 2021

Cr Cuc Lam  Dated: 23 February 2021

Cr Bernadette Thomas  Dated: 23 February 2021

Key Stakeholders

This Code applies to all Maribyrnong City Council Councillors.

Related Legislation

Charter of Human Rights and Responsibilities Act (Vic) 2006
Child Wellbeing and Safety Act (Vic) 2005
Equal Opportunity Act (Vic) 2010
Gender Equality Act 2020
Local Government Act (Vic) 1989
Local Government Act (Vic) 2020
Local Government (Governance and Integrity) Regulations (Vic) 2020
Occupational Health and Safety (Vic) Act
Public Interest Disclosures Act (Vic) 2012
Sex Discrimination Act (Cth) 1984

Related Documents

Governance Rules
Community Engagement Policy
Council Support, Expenses and Reimbursement Policy
Councillor and Staff Interaction Protocol

Review of Policy

This Code may be reviewed at any time during the Council term but need not be reviewed until after the general election to be held in October 2024.