

# Policy

## Code of Conduct



## Code of Conduct

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Directorate:	City Strategy
Department:	Governance and Civic Services
Related documents:	Acts/Regulations Local Government Act 1995

Public Sector Management Act 1994 Public  
Interest Disclosure Act 2003

#### Plans/Strategies

Corporate Business Plan 2016 – 2021

#### Policies

D17/11605 – HR Policy – Conduct and  
Compliance – Conflict of Interest

D14/23446[v2] – HR Policy – Secondary  
Employment

D11/7785[v5] – HR Policy – Workplace Behaviour  
– Harassment, Discrimination and Bullying

D09/30432[v5] – HR Policy – Grievance  
Management

D11/17628[v8] – HR Policy – Learning and  
Development

#### Work Instructions

D17/6757[v2] – Procedure for declaring a conflict  
of interest under the Code of Conduct

#### Other documents

D09/45347[v3] – Public Interest Disclosure –  
Guidelines

D17/60885 – Reporting of Criminal or Behavioural  
Issues in the Workplace – Employee Guidelines

D16/66684[v2] – Form – GCS – Declaration of  
conflict of interest under the Code of Conduct.

D14/49538[v2] – Form – GCS – Complaint of  
Minor Breach – Code of Conduct

D14/49537[v2] – Details of Complaint Form –  
Code of Conduct

Independent Commission Against Corruption –  
“Lobbying Local Government Councillors” August  
2006.

Department of Local Government (NSW) “The  
model Code of Conduct for Local Government in  
NSW” March 2013.

	<p>Department of Local Government and Regional Development “Council Members Relationship with Developers” Operational Guidelines No 12 – April 2006.</p> <p>Public Sector Commission Conduct Guide WALGA Model Code of Conduct</p>
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*Note: Changes to References may be made without the need to take the Policy to Council for review.*

## **Policy:**

# **CODE OF CONDUCT**

## **1. INTRODUCTION**

### **1.1 Preamble**

The Council of the City of Kwinana is the elected body responsible for the leadership of the City in the best interest of its residents. Council is committed to providing open, responsive and accountable government. It must do that in accordance with the applicable legislation.

The Local Government Act 1995 confers considerable power on Council. As a result of this, elected members, committee members and employees must actively seek to achieve and retain public trust if they are to deserve the responsibilities entrusted to them.

### **1.2 Requirement for a Code of Conduct and its application**

- (i) The Local Government Act 1995 requires every Council to adopt a Code of Conduct to be observed by elected members, committee members and employees.
- (ii) Elected members, committee members and employees of the City must comply with the applicable provisions of the City’s Code of Conduct.
- (ii) The Code of Conduct applies to all elected members committee members and employees of the City of Kwinana.
- (iv) It is a requirement of this Code that elected members observe the Local Government (Rules of Conduct) Regulations 2007 and the general principles referred to in Regulation 3(1).

Footnote:

Regulation 3(1) of the Local Government (Rules of Conduct) Regulations 2007 provides as follows:

- (a) act with reasonable care and diligence; and
- (b) act with honesty and integrity; and
- (c) act lawfully; and
- (d) avoid damage to the reputation of the local government; and
- (e) be open and accountable to the public; and
- (f) base decisions on relevant and factually correct information; and
- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting substances.
- (v) This Code comes into operation when it is adopted by Council.

### 1.3 Definitions

In this Code, unless the text requires otherwise;

**Act** means the Local Government Act 1995;

**Chief Executive Officer** means the Chief Executive Officer of the City; **Committee** means a committee established by Council under the Act; **committee member** has the meaning as defined in section 5.9(1) of the Local

**Government Act 1995** and includes 'other person', i.e., is not an Elected member or an employee

**Council** means the Council of the City;

**elected member** means a person who holds the office of Mayor or Councillor on the Council;

**employee** means a person employed by the City; **local law** means any local law adopted by Council; **City** means City of Kwinana;

**Regulations** means any regulations made under the Local Government Act 1995;

**Rules of Conduct Regulations** means the Local Government (Rules of Conduct) Regulations 2007.

### 1.4 Purpose of the Code of Conduct

- (i) The Code of Conduct provides elected members, committee members and employees of the City of Kwinana with clear guidelines for the standard of professional conduct and behaviour expected of them in carrying out their

functions and responsibilities. The Code addresses in a concise manner the broader issue of ethical responsibility and encourages greater transparency and accountability. It encourages a commitment to ethical and professional behaviour and outlines principles on which individual and collective local government responsibilities may be based.

The Code of Conduct is complementary to the principles adopted in the Local Government Act 1995, Regulations and local laws which incorporate four fundamental aims:

- (1) better decision making by local governments;
  - (2) greater community participation in the decisions and affairs of local governments;
  - (3) greater accountability of local government to their communities; and
  - (4) more efficient and effective local government.
- (ii) The Code of Conduct has been developed to assist elected members, committee members and employees to;
- understand the standard of conduct that is expected of them;
  - enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of due care and diligence; and
  - act in ways that enhance public confidence in the integrity of local government.

## **1.5 Key principles**

This Code of Conduct is based on the following key principles:

### **1.5.1 Integrity**

Elected members, committee members and employees must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

### **1.5.2 Leadership**

Elected members, committee members and employees have a duty to promote and support the key principles of leading by example and to maintain and strengthen the public's trust and confidence in the integrity of

the City. (This means promoting public duty to others in the City and community, by their own ethical behaviour).

#### 1.5.3 Selflessness

Elected members, committee members and employees have a duty to make decisions solely in the public interest (this means making decisions because they benefit the public, not because they benefit the decision maker).

Elected members, committee members and employees must not act in order to gain financial or other benefits for themselves, their family, friends or business interests.

#### 1.5.4 Objectivity

Elected members, committee members and employees must make decisions solely on merit and in accordance with their statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts, approving applications of matters that affect a third party or recommending individuals for rewards or benefits.

(This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of the City resources; considering only relevant matters).

#### 1.5.5 Accountability

Elected members, committee members and employees are accountable to the public for their decisions and actions and must consider issues on their merits, taking into account the views of others (This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails).

#### 1.5.6 Openness

Elected members, committee members and employees have a duty to be as open as possible about their decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. (This means recording, giving and revealing reasons for

decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly).

#### 1.5.7 Honesty

Elected members, committee members and employees have a duty to act honestly. They must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest (This means obeying the law; adhering to Council Policies and City of Kwinana procedures; observing the Code of Conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred).

#### 1.5.8 Respect

Elected members, committee members and employees must treat others with respect at all times. (This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play within local government decision making).

This standard requires that they treat other people as individuals with rights to be honoured and defended, and also to assist these people to claim their rights if they are unable to do it for themselves. The City encourages honest relationships by being truthful and sincere when dealing with others.

#### 1.5.9 Justice

Elected members, committee members and employees must treat people fairly, without discrimination, and with rules that apply equally to all. (This means they must ensure that opportunities and social benefits are shared equally among individuals, including equitable outcomes for disadvantaged people. They must uphold the laws of the City of Kwinana and comply with relevant State and Federal legislation).

#### 1.5.10 Beneficence

Elected members, committee members and employees must do for others what they would like done for themselves – that they do good, and not harm,



to others. They must be aware that the strong have a duty of care to the weak, dependant and vulnerable and to uphold the rights of those who are unable to do so. They shall contribute to the well-being of individuals and society by exercising due diligence and duty of care to others.

## **1.6 Role of Council, Mayor, Elected members and the Chief Executive Officer**

The role of Council, Mayor, elected members and Chief Executive Officer is prescribed by the Local Government Act 1995.

As an elected leader of the community, the Mayor shall demonstrate the highest level of civic conscience, impartiality and personal conduct.

An elected member's primary role is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the local government. This will be the focus of the elected member's public life.

An elected member is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives.

In fulfilling their various roles, elected member's activities will focus on;

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- achieving sound financial management and accountability in relation to the City's finances;
- ensuring that appropriate mechanisms are in place to enable the prompt management of residents' concerns;
- working with other governments and organisations to achieve benefits for the community at both a local and regional level; and
- being aware of the statutory obligations imposed on elected members and on local governments.

## **2. GENERAL CONDUCT OBLIGATIONS**

### **2.1 General conduct**

- (i) Elected members, committee members and employees must avoid behaviour and conduct that:
- contravenes the Local Government Act 1995, associated regulations and the City's relevant administrative requirements;
  - is improper or unethical;
  - is an abuse of power or otherwise amounts to misconduct;
  - causes, compromises or involves creating or escalating any avoidable risks within property owned by the City, (including vehicles) that compromise the health, well being or safety of any members of the City or public. Potential risks or hazards to employees or public are to be reported according to existing procedures.
  - causes, compromises or involves intimidation, harassment, or verbal, physical or psychological abuse.
  - causes, compromises or involves discrimination, disadvantage or adverse treatment in relation to employment; or
  - causes, compromises or involves prejudice in the provision of a service to the community.
  - causes property belonging to another, (including City owned property) to be removed or taken without consent.
- (ii) Elected members, committee members and employees will respect the title of elected office, referring to the Mayor and elected members and committee members by their formal title whilst in the public arena, and thereafter as circumstances dictate.
- (iii) as part of their representative role elected members and employees are often asked to represent the City on external organisations. It is important that elected members and employees apply the following:
- Clearly understand the basis of their appointment;
  - Provide regular reports on the activities of the organisation; and
  - Always represent the decision/views of the City, whether the person agrees with the decision/view or not.

- (iv) Elected members, committee members and employees will promote courtesy, trust and respect in an environment that is free from bullying.
- (v) Elected members, committee members and employees must avoid conduct that commits, or indicates their vote/decision on a matter prior to the matter being presented to Council for a decision. Elected members, committee members and employees should remain non-committal and report any communications that have occurred outside of any formal Council meetings from a person or organisation that has a matter that will be considered by Council.

## **2.2 Honesty and integrity**

Elected members, committee members and employees will:

- (i) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- (ii) bring to the notice of the Chief Executive Officer any suspected dishonesty on the part of any elected members, committee members or employee.

Any presumed dishonesty on the part of the Chief Executive Officer is to be brought to the attention of the Mayor, and any suspected dishonesty on the part of the Mayor is to be brought to the attention of the Chief Executive Officer;

- (iii) be frank and honest in their official dealing with each other; and
- (iv) treat all members of the community honestly and fairly.

## **2.3 Fairness and equity**

Elected members, committee members and employees

- (i) have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a non-discriminatory manner.
- (ii) must take all relevant facts known to them, or that they should be reasonably aware of, into consideration and have regard to the particular merits of each case. They must not take irrelevant matters or circumstances into consideration when making decisions.

- (iii) Elected members, committee members and employees will ensure that the Council has its own proposals, for entrepreneurial activities, impartially and properly assessed, consistent with the scope and standard of the normal assessment applied to outside parties requiring Council approval (including subdivisions, development, buildings and tenders).

## **2.4 Improper and undue influence**

Elected members, committee members and employees must not take advantage of:

- (i) their position to improperly influence other City officials in the performance of their public or professional duties to secure a private benefit for themselves or for somebody else; and
- (ii) or seek to take advantage of, their status or position with, or functions performed for the City, in order to obtain unauthorised or unfair benefit for themselves or for any other person or body.

## **2.5 Personal behaviour**

Elected members, committee members and employees shall:

- (i) perform their duties impartially and in the best interest of the City uninfluenced by fear or favour;
- (ii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the City and the community;
- (iii) subject to section 8, when dealing with any person or organisation who has, or may have, dealings with the City, or any ratepayers or residents, explain whether they are representing the City, or whether they are acting on an individual basis. If acting as an individual, elected members, committee members and employees cannot speak on behalf of the City or offer Council's support for a position;
- (iv) not make any allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment;

- (v) ensure that any comments they make when acting in an official capacity are pertinent to the business of the local government and are not made maliciously or without regard as to whether they represent the truth;
- (vi) always act in accordance with their obligation of fidelity to the City;
- (vii) refrain from carrying out their official duties or responsibilities whilst affected by alcohol, illicit drugs or mind affecting substances;
- (viii) act at all times when representing the City (which includes while wearing City branded clothing) in a manner that will not adversely reflect on Council or bring the City of Kwinana into disrepute;
- (ix) whilst conducting City business, adhere at all times to a standard of dress and personal hygiene which is neat, responsible and consistent with community expectations and normal business practices; and
- (x) not denigrate or cast aspersions on a elected members', committee members' or employee's commitment, contribution or competence.

## **2.6 Performance of duties**

### Employees

- (i) While on duty, employees will give their whole time and attention to the local government's business and ensure that their work is carried out efficiently, economically and effectively in accordance with their position description responsibilities and duties, Council Policies and corporate objectives, and that their standard of work reflects favourably both on them and on the City;
- (ii) Employees shall demonstrate loyalty and commit to the unconditional acceptance and support of all Council decisions and lawful instructions from the Chief Executive Officer;
- (iii) Employees shall at all times ensure that their standard of work and conduct reflects favourably both on them and the City, and is in accordance with the City's Customer Service Charter and Customer Service Standards;
- (iv) Employees will comply with the Local Government (Functions and General) Regulations 1996 in respect to tenders for goods and services in any instance where they are involved in any manner with tendering for a City contract;
- (v) Employees shall comply with neat and responsible dress standards whilst at work and shall acknowledge that management reserves the right to raise the issue of dress with individual employees;

- (vi) Employees are encouraged to develop networks with the local government industry, to encourage and assist their peers and promote goodwill between local governments;
- (vii) Employees are expected to question, review and revise work practices and procedures to account for the organisation's statutory compliance. Regardless of 'instruction', statutory requirements are the principal power.; and
- (viii) Employees are encouraged to self-report legislative non-compliance when identified to improve the level of compliance and assist in minimising reoccurrences.

#### Elected members

- (i) Will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits;
- (ii) Be as informed as much as possible about the functions of Council and be familiar with all agenda reports and associated documents, prior to the meeting at which the items will be considered;
- (iii) Attend all meetings of Council, committees, forums, working and advisory groups, to which they are appointed, unless they have previously been granted leave of absence by resolution of Council, or for reasons of illness or offers an apology for being unavailable for other reasons. In the event of a delegate being unable to attend any committee or Council responsibility, they shall inform the deputy delegate in time to attend; and
- (iv) Acknowledge there is an expectation that elected members will remain until the completion of Council meetings, committees, forums, working and advisory group meetings unless there is an overriding valid reason for leaving.

#### Committee members

- (i) Will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits;
- (ii) Be as informed as much as possible about the functions of the committee of which they are part, and be familiar with all agenda reports and associated documents, prior to the meeting at which the items will be considered;

- (iii) Attend all meetings of the committee, to which they are appointed, unless for reasons of illness or offers an apology for being unavailable for other reasons. In the event of a committee member being unable to attend any committee meeting, they shall endeavour to inform the City prior to the scheduled meeting time; and
- (iv) Acknowledge there is an expectation that committee members will remain until the completion of the committee meeting unless there is an overriding valid reason for leaving.

#### 2.6.1 Compliance with lawful orders

Elected members, committee members and employees will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the Chief Executive Officer. In the case of elected members the matter can be taken up with the Chief Executive Officer and/or the Mayor if the circumstances require it.

However this must not be seen to prevent elected members, committee members or employees in a private capacity from lobbying to change the policies of the local government.

#### 2.6.2 Administration and management

- (i) Elected members and employees will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.
- (ii) Elected members and employees shall at all times be mindful of their responsibility to maintain full and accurate records in the performance of their duties.
- (iii) In particular, employees shall ensure that file notes are drafted and placed on record immediately, or as soon as practicable, following discussions on issues of substance. Such issues shall include matters impacting on Council or the City and matters affecting public interest.

## **2.7 Harassment, discrimination and bullying**

- (i) Elected members, committee members and employees must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, disability, homosexuality or transgender.
- (ii) The City will ensure compliance with the principles and provisions of the Equal Opportunity Act 1984 (WA). This commitment extends to ensuring that recruitment and selection, promotion and advancement will be solely on the basis of equity and fairness and that appointment will be based on merit.
- (iii) All people have a right to work in an environment that is free from sexual harassment. Sexual harassment will not be tolerated in the City of Kwinana. Any elected members or employee found to be committing sexual harassment will be subject to discipline and/or termination proceedings.
- (iv) Bullying is repeated unreasonable or inappropriate behaviour that is directed towards an elected member, employees, or group of employees, that creates a risk to health and safety. Bullying is any behaviour that is repeated, systematic and directed towards an elected member or employee or group of elected member or employees. Workplace bullying is behaviours that can intimidate, threaten, offend, degrade, victimise, undermine or humiliate an elected member or employee and often creates a risk to health and/or safety. Bullying differs from harassment and discrimination in that the focus is not necessarily on gender, race or disability. The focus is often on competence, or rather the alleged lack of competence of the elected member or employee. Refer to the City of Kwinana HR Policies for more information on harassment, discrimination and bullying.

## **2.8 Decisions of Council**

- (i) Elected members have a duty to ensure that decisions are properly made and that parties involved in the process are dealt with fairly. Elected members must avoid impropriety and must also avoid any occasion for reasonable suspicion and any appearance or improper conduct.
- (ii) In determining applications, it is essential that elected members are highly conscious of the potential for even the slightest impropriety to lead to reasonable suspicion of misconduct. This means elected members must



ensure that no action, statement or communication between themselves and applicants or objectors conveys any suggestion of willingness to provide concessions or preferential treatment.

## **2.9 Lobbying**

### **2.9.1 Introduction**

“Lobbying” is used to cover those types of communication between local government elected members and the community such as representations to elected members by special interest groups, by individuals with a direct interest in a council decision and by advocates acting on behalf of others.

Lobbying is common in local government. The most common form occurs when a group or individual makes direct contact with elected members in an attempt to influence a Council decision.

Appropriate lobbying of elected members is considered normal. In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives.

### **2.9.2 Inappropriate lobbying**

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making. Lobbying is a two-way process between elected members and lobbyists.

Elected members should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour.

It is not possible to define every type of activity that could constitute inappropriate or unlawful lobbying. Generally, however, inappropriate or unlawful conduct on the part of someone lobbying an elected member usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of the matter. Examples include:

- (i) accepting undisclosed payments or benefits while making a decision that affects the gift giver’s interests;

- (ii) accepting a political donation in return for the favourable exercise of discretion during decision making;
- (iii) granting access to a particular individual or group while unreasonably denying similar access requested by another party;
- (iv) fettering discretion by giving undertakings to an interested party prior to considering all the information relevant to a decision;
- (v) acting in a manner that exceeds the role of an elected member as defined in section 2.8, 2.9 or 2.10 of the Local Government Act 1995;
- (vi) disclosing confidential information while being lobbied; and
- (vii) being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.

### 2.9.3 Transparency

Elected members should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a Council decision. Suspicions of inappropriate lobbying can occur when lobbying is not open to public scrutiny. Regardless of whether such suspicions are justified, they still have the potential to undermine public confidence in Council decision-making and adversely affect an elected member's reputation.

Transparency is the means of governing accountability and perceptions of fairness in lobbying processes. There are a number of ways elected members can help ensure transparency whilst being lobbied. These include:

- documenting meetings with proponents;
- generally conducting meetings in official locations, such as City premises;
- having other people present during meetings;
- inviting applicants who have approached them for a meeting to discuss significant developments, to write to the City seeking a meeting with all elected members and employees;
- providing copies of information presented during lobbying meetings to City employees for consideration and assessment (if required),

distribution to other elected members and filing as part of the City records;

- asking people who have requested a meeting to put their arguments in writing; and
- making a declaration at a Council meeting about lobbying activities they have been engaged in that are not part of Council's formal processes.

#### 2.9.4 Tendering

The lobbying of elected members, the Chief Executive Officer or other employees by tenderers about the outcome of a tender process is not permissible.

(Reference; clause 2.9 Independent Commission Against Corruption – Lobbying Local Government Councillors” – August 2006.)

### **3. CONFLICT OF INTERESTS**

#### **3.1 Conflict of interest**

- (i) Elected members, committee members and employees will ensure that there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their professional duties.
- (ii) Employees will notify the City's Human Resources Department of any secondary employment and will not engage in private work with or for any person or body with an interest in a proposed or current business dealing with the local government, without first making disclosure to the Chief Executive Officer, or in the case of the Chief Executive Officer, to the Mayor. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance or duties must be scrupulously avoided.
- (iii) Employees will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity.

An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti-discriminatory legislation.

- (iv) Employees who exercise a recruitment, regulatory, inspectorial or other discretionary function must make disclosure before dealing with closely associated persons, close relatives or close friends and, whenever possible, or in doubt, should disqualify themselves from dealing with those persons. This disclosure must be made in writing to their Director and/or Chief Executive Officer. In the case of the Chief Executive Officer, disclosure to the Mayor is required.
- (v) Elected members, committee members and employees need to consider any close personal or private interests that may conflict, or be perceived to conflict with their public duty.
- (vi) It is almost inevitable elected members, committee members and employees will have a conflict of interest at some point. These conflicts of interest must be recognised and dealt with accordingly to avoid any conflict or perceived conflict of interest, particularly when decision making is required.

### **3.2 Financial interest**

Elected members, committee members and employees will adopt the principles of financial interest as contained within the Local Government Act 1995. (Sections 5.59 to 5.90. Subdivision 2, Division 6.)

### **3.3 Disclosure of interest**

Elected members, committee members and employees will adopt the principles of disclosure of interest (impartiality) as contained within the Local Government (Administration) Regulations 1996 - Regulation 34C.

- (i) In addition to disclosure of financial interests, elected members, committee members and employees, including persons under a contract for services-
  - Attending a Council or committee Meeting; or
  - Giving advice to an elected member, Council or Committee meeting;are required to disclose any interest they have in a matter to be discussed at the meeting that could give rise to a reasonable belief that the impartiality of the person having the interest would be affected.
- (ii) Where an interest must be disclosed under (i) above, the disclosure is to be made at the meeting immediately before the matter is discussed or in a written

note given to the Chief Executive Officer before the meeting, and is to be recorded in the minutes of the meeting.

- (iii) The disclosure of an interest in (i) above does not affect the ability of the elected member or employee to discuss or vote on the matter.

This is not limited to, but may include, situations where Council decisions affect the person's close relatives (not already defined as a "closely associated" financial interest), a close friend or a sporting or community association of which the person is a committee member or office bearer.

Interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

In accordance with regulation 34C(2) of the Local Government (Administration) Regulations 1996 and regulation 11 of the Local Government (Rules of Conduct) Regulations 2007 it is a requirement that a person who is an employee or Elected Member and who has an interest in any matter to be discussed at a council or committee meeting attended by the person disclose the nature of the interest —

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

A direct or indirect financial interest or proximity interest must be maintained in a separate register in accordance with section 5.60 of the Local Government Act 1995.

In accordance with regulation 34C(5) of the Local Government (Administration) Regulations 1996 and regulation 11(4) of the Local Government (Rules of Conduct) Regulations 2007, a person is excused from a requirement made under the relevant sub regulations to disclose the nature of an interest if —

- (a) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
- (b) the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the nature of the interest as soon as possible after the discussion began.

## 4. GIFTS

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant legislation.

### 4.1 Definitions

Explanation of 'Notifiable Gifts' and 'Prohibited Gifts'

"notifiable gift", in relation to a person who is an elected member or employee, means —

- (a) a gift worth between \$50 and \$300; or
- (b) a gift that is one of 2 or more gifts given to the elected member or employee by the same person within a period of 6 months that are in total worth between \$50 and \$300;

from a person who is undertaking or seeking to undertake or who it is reasonable to believe is intending to undertake an activity involving a local government discretion.

"gift" has the meaning given to that term in section 5.82(4) except that it does not include —

- (a) a gift from a relative as defined in section 5.74(1); or
- (b) a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or
- (c) a gift from a statutory authority, government instrumentality or non profit association for professional training; or
- (d) a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia WA Division Incorporated (ABN 91 208 607 072).

"relative" means, in relation to a relevant person, means any of the following —

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the relevant person or of the relevant person's spouse or de facto partner;
- (b) the relevant person's spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a), whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and

whether the relationship is a natural relationship or a relationship established by a written law.

“activity involving a local government discretion” means an activity —

- (a) that cannot be undertaken without an authorisation from the local government; or
- (b) by way of a commercial dealing with the local government.

“prohibited gift” in relation to a person who is an elected member or employee, means —

- (a) a gift worth \$300 or more; or
- (b) a gift that is one of two or more gifts given to the elected member or employee by the same person within a period of six months that are in total worth \$300 or more;

from a person who is undertaking or seeking to undertake or who it is reasonable to believe is intending to undertake an activity involving a local government discretion. If an elected member or employee are offered a prohibited gift, it must not be accepted.

Explanation and examples of a ‘Gift’ and ‘Contribution to Travel’

Section 5.82 of the Act defines a gift as:

“Gift” means a disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money’s worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.

“contribution to travel” includes a financial contribution or a non-monetary contribution including the provision of flights or accommodation incidental to a journey. Food or drink provided to a relevant person in the course of travel are to be disclosed (where required) as a gift rather than a contribution to travel.

A gift or contribution to travel may be made by a natural person or a corporate person, such as a public body, company, association or body of persons, corporate or unincorporated

Section 5.82(3) of the Act states for the purposes of this section, the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as being an amount equal to the value of the property or the financial benefit at the time the gift was given.

Gifts may take many forms and be received in various ways that may not be readily recognized as falling into the category of a gift, particularly if it is received in a private capacity. Examples of gifts provided by the Department of Local Government and Communities include the following:

1. Hospitality – You regularly frequent a business as part of your duties and the business provides you with a free meal and the value of the meals over one year exceeds \$200
2. Loan of goods – An elected member is moving house on the weekend and posted on Facebook if someone could loan her a trailer, saving the elected member some \$300.
3. Partial contributions - A cash discount when buying an item when the person who you purchased it off recognized you as an elected member or an employee of the City. E.g., buying a new refrigerator and the salesperson recognises or knows you.
4. Birthday gifts – A designated elected member or employee received the following gifts for his birthday:
  - a. a new watch from his wife;
  - b. a new Blue-ray player from his nephew; and
  - c. a \$250 voucher from a group of friends for him and his wife to attend a wine tasting and lunch.

Neither the new watch from his wife or the Blue-ray player from his nephew need be disclosed as those persons are within the definition of a relative in section 5.74 of the Act. However, the \$250 voucher from friends, even though it is both for himself and his wife, must be disclosed, not just his 'share' of the gift.

5. Free tickets - A local government, who provides sponsorship to a football club, receives four free tickets to the end of season awards ceremony. Tickets are worth \$125 each as the awards ceremony includes entertainment and a 3 course meal. The council resolves to send the Mayor and one elected member, and their partners, to attend the awards evening.

As part of the evening, the Mayor participates in the award ceremony, and presents a number of trophies to players on the team.



As the elected member received two tickets (one for himself and one for his partner) the value of the gift to the elected member is the sum of both tickets. This means the Elected Member must disclose both his, and his partner's ticket (worth \$250), to the CEO within 10 days of receipt in the Register of Gifts and Contributions to Travel by elected members and designated employees.

Although it is acknowledged that the Mayor is performing a ceremonial duty by participating in the award ceremony, she too must also disclose both her, and her partner's ticket. Regardless of her performing an official duty at the ceremony, there is still a conferral of financial benefit without full consideration in return. However, should the local government pay the cost of her tickets to attend, no disclosure is required.

6. Private capacity – Presenting at a conference - A manager of finance has been invited to present at a conference on the subject of Good Governance and Financial Sustainability. In return for presenting, the manager receives free registration tickets for the conference worth \$500.

Under the Act, a gift is defined as any disposition of property, or the conferral of any other financial benefit, without consideration in money or money's worth passing from the recipient to the donor.

In this instance, it may be possible for the manager to argue that 'consideration in money's worth' is passing from the recipient (the manager) to the donor (conference organiser) in the form of his services in presenting to the conference. To work out the value of his services, it could be argued that the cost to the conference provider to procure another person to present is an indication of the current market value of presenting at the conference. For example, if all conference presenters are given free registration tickets to the conference, the cost to replace the manager with another presenter is \$500 in registration fees. Therefore, the value of the manager's presentation to the conference (\$500) is the same value as the benefit received (\$500 in registration fees), and full consideration has been passed from the recipient to the donor. In these circumstances, no disclosure is required.

However, if, in addition to the free registration fees, the manager received benefits or property that no other presenter was entitled to, or was above the market rate for presenting at the conference, then this would be considered a gift. If the value of the property or financial benefit was in excess of \$200, then this would need to be disclosed in the new on-line register.

## Disclosures

1. There are two required disclosures that relate to gifts and one required disclosure that relates to contribution to travel as summarised below:

- a. Disclosure of Notifiable Gifts is required where an elected member or employee receives a gift worth between \$50 - \$300 (or more than one gift from the same person worth between \$50 - \$300 within a period of six months) from a person undertaking or seeking to undertake an activity involving local government discretion or where it is reasonable to believe is intending to undertake an activity involving a local government discretion. The disclosure will be made available upon request in the Register of Notifiable Gifts.
- b. Disclosure of Gifts is required for any elected member or designated employee who receives a gift greater than \$200 in value (or more than one gift from the same person during a year, which together are greater than \$200 in value) and the donor was not a relative. This disclosure will be made available on-line in the Register of Gifts and Contribution to Travel by Elected Members and Designated Employees.
- c. Disclosure of Contributions to Travel is required for any elected member or designated employee who receives a contribution to travel, which is greater than \$200 in value (or more than one contribution from the same person during a year, which together are greater than \$200 in value) and the donor was not a relative, the contribution is not from Commonwealth, State or local government funds, made in the ordinary course of occupation of the person which is not related to his or her duty as an elected member or employee. This disclosure will be made available on-line in the Register of Gifts and Contribution to Travel by Elected Members and Designated Employees.

There may be circumstances where you are required to disclose a gift in both the Notifiable Gift Register and the Gifts and Contribution to Travel by Elected Members and Designated Employees.

2. Not all employees are required to disclose gifts or contributions to travel for the purposes of sections 5.82 and 5.83 of the Act. Only relevant persons as defined by section 5.74 of the Act are required to do so. A relevant person is either an Elected Member or a designated employee. A designated employee is defined in section 5.74 of the Act and means:

- (a) a CEO; and

- (b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4 of the Act; and
  - (c) an employee who is a member of a committee comprising council members and employees; and
  - (d) an employee nominated by the local government to be a designated employee.
3. When a relevant person receives a 'gift', as defined in section 5.82 of the Act, or has received a contribution toward travel as defined in section 5.83 of the Act, the relevant person is required to disclose the details in writing to the Chief Executive Officer, within 10 days of receipt.
  4. This disclosure is to be made in accordance with the City's reporting processes. The disclosure is to include a description of the gift, the name and address of the person who made the gift, the date on which the gift was received, the estimated value of the gift at the time it was made and the nature of the relationship between the relevant person and the person who made the gift.
  5. It is an offence to fail to comply with the requirements of sections 5.82 and 5.83 in relation to the disclosure of gifts and contributions to travel, to which a penalty of a fine of \$10,000 or imprisonment for 2 years applies.

#### Receiving a gift that was received by another employee or elected member

- (a) The person receiving the gift must declare the gift if it is a gift that needs to be disclosed.
- (b) If the person who received the gift in (a) forwards this gift to another designated employee or in the case where the elected member forwards onto another elected member, then the gift needs to be declared by that person receiving the gift with the donor being the designated employee or elected member in (a) not the original donor. Note: City employees cannot provide gifts to elected members.
- (c) The elected member who received the gift forwards this gift to another elected member then the gift needs to be declared by the person receiving the gift and the donor would be listed as the elected member. Note: Elected members can

forward gifts to other elected members but cannot forward any gifts to City employees.

## **4.2 Disclosure of election campaign donations**

In the interests of uncompromised decision making, the City of Kwinana requires all electoral candidates to comply with the Local Government Act 1995 and its associated regulations in disclosing electoral donations. A candidate is to disclose information about any electoral related gift with a value of \$200 or more that may be received within the six month period prior to the relevant election day.

- (i) A “gift” includes a gift of money, a gift which is non-monetary but of value, a gift in kind or an inadequate financial consideration or the receipt of a discount (where the difference or the discount is more than \$200 worth), financial or other contribution to travel, the provision of a service for no consideration or for inadequate consideration, and a firm promise or agreement to give a gift at some future time.

A gift does not include a gift by will; a gift by a relative; a gift that the candidate would have received notwithstanding his or her candidature; or the provision of volunteer labour.

- (ii) The disclosure of a gift is to be made to the Chief Executive Officer in the manner prescribed by Regulation and in doing so identify specified information.
- (iii) Details about each gift are to be disclosed on the prescribed form and submitted within three days of receiving the gift. Information to be supplied includes the name of the candidate, the name and address of the donor, the date the gift was promised or received, the value of the gift and a description of the gift.
- (iv) The disclosure period commences six months prior to the relevant election and finishes three days after the election day for unsuccessful candidates and on the start day for financial interest returns for successful candidates.
- (v) The Chief Executive Officer is to establish and maintain an Electoral Gift Register. Disclosure forms are to be placed in the Electoral Gift Register upon receipt by the Chief Executive Officer in a manner that clearly identifies and distinguishes the candidates. The Electoral Gift Register is to be kept available for public inspection.
- (vi) In accordance with the Local Government (Elections) Regulations 1999, a maximum penalty of \$5,000 may be imposed on a candidate who fails to comply with the disclosure requirements.

If an Elected Member is a candidate for a State or Federal election, any donations received as part of the election campaign should be disclosed and must follow the requirements outlined in the Code of Conduct.

### **4.3 Regulatory requirements**

In accordance with regulation 34B(2) of the Local Government (Administration) Regulations 1996 a person who is an employee refrain from accepting a prohibited gift from a person who —

- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- (b) it is reasonable to believe is intending to undertake an activity involving local government discretion.

In accordance with regulation 34B(3) of the Local Government (Administration) Regulations 1996 a person who is an employee and who accepts a notifiable gift from a person who —

- (a) is undertaking or seeking to undertake an activity involving a local government discretion; or
- (b) it is reasonable to believe is intending to undertake an activity involving a local government discretion, notify the CEO, in accordance with regulation 34B(4) of the Local Government (Administration) Regulations 1996 and within 10 days of accepting the gift, of the acceptance.

In accordance with regulation 34B(4) of the Local Government (Administration) Regulations 1996 notification of the acceptance of a notifiable gift be in writing and include —

- (a) the name of the person who gave the gift; and
- (b) the date on which the gift was accepted; and
- (c) a description, and the estimated value, of the gift; and
- (d) the nature of the relationship between the person who is an employee and the person who gave the gift; and
- (e) if the gift is a notifiable gift under paragraph (b) of the definition of notifiable gift in regulation 34B(1) of the Local Government (Administration) Regulations 1996 (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
  - (i) a description; and

- (ii) the estimated value; and
- (iii) the date of acceptance,

of each other gift accepted within the 6 month period.

In accordance with regulation 34B(5) of the Local Government (Administration) Regulations 1996 the CEO maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirements outlined in the Local Government (Administration) Regulations 1996

Interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

In accordance with regulation 34C(2) of the Local Government (Administration) Regulations 1996 it is a requirement that a person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person disclose the nature of the interest —

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

In accordance with regulation 34C(3) of the Local Government (Administration) Regulations 1996 it is a requirement that a person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person disclose the nature of any interest the person has in the matter —

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the time the advice is given.

A direct or indirect financial interest or proximity interest must be maintained in a separate register in accordance with section 5.60 of the Local Government Act 1995.

In accordance with regulation 34C(5) of the Local Government (Administration) Regulations 1996 a person is excused from a requirement made under subregulation (2) or (3) to disclose the nature of an interest if —

- (a) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
- (b) the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and

the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.

To comply with a requirement made under regulation 34C(2) or (3) of the Local Government (Administration) Regulations 1996, a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting then —

- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.

If —

- (a) to comply with a requirement made under regulation 34C(2) of the Local Government (Administration) Regulations 1996, the nature of a person's interest in a matter is disclosed at a meeting; or
- (b) a disclosure is made as described in regulation 34C(5)(b) of the Local Government (Administration) Regulations 1996 at a meeting; or
- (c) to comply with a requirement made under regulation 34C(6)(b) of the Local Government (Administration) Regulations 1996, a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.

## **5. WORKING RELATIONSHIPS**

### **5.1 Working relationships between elected members and employees**

- (i) Elected members will work as part of the Council team with the Chief Executive Officer and employees. That teamwork will only occur if elected members and employees have a mutual respect and co-operate with each other to achieve Council's corporate goals and implement the Council's strategies. To achieve that position elected members need to:
  - (a) accept that their role is a leadership, not a management or an administrative one;
  - (b) acknowledge that they have no capacity to individually direct employees to carry out particular functions;

- (c) refrain from publicly criticising employees (including whether in a Council meeting or via the media) in a way that casts aspersions on their professional reputation, character, ability, integrity, competence or credibility; and
  - (d) ensure that no restrictions or undue influence is placed on the ability of employees to give professional advice to Council.
- (ii) At the same time, Employees will recognise that elected members views and opinions often reflect valid community viewpoints that should be considered in conjunction with professional opinion. Employees will therefore make every effort to assist elected members in the performance of their role, and to achieve the satisfactory resolution of issues that they may raise in the performance of their official role.
- (iii) Elected members have the right to raise various issues and requests with the Chief Executive Officer, in accordance with the Council's Policy/protocols which include:
  - (a) The Mayor and elected members are to refer their requests to the Chief Executive Officer, or if appropriate, the relevant Director.
  - (b) Requests/complaints are to be forwarded (in writing) direct to the Council Administration Officer for entering into the Register of elected member's Requests.
  - (c) Elected member requests will be actioned within ten working days and a written response will be provided to the elected member advising of the action taken.
  - (d) Where an elected member Request requires a diversion of considerable employee resources (eg more than one days research) or where the matter has not been included in the City's current budget, the Chief Executive Officer or relevant Director will discuss the request with the elected member.
- (iv) The Chief Executive Officer is responsible to Council for the performance and direction of all employees and delegates/contractors and the use of resources, in the day-to-day management of the City.
- (v) Elected members and employees should endeavour to resolve serious conflict through initial discussion facilitated by either the Mayor or the Chief Executive Officer. In any case involving the Mayor and Chief Executive Officer, by the Deputy Mayor or other appropriate person, jointly agreed by both.



- (vi) Employees have an obligation to:
- Give their attention to the business of the City while on duty;
  - Ensure that their work is carried out efficiently, economically and effectively;
  - Carry out lawful directions given by any person having authority to give such directions; and
  - Give effect to the lawful policies, decisions and practices of Council, whether or not the employee agrees with or approves of them.

## 5.2 Inappropriate interactions

- (i) The following interactions are inappropriate and therefore elected members shall not approach employees:
- (a) other than the Chief Executive Officer or Directors for information on sensitive or controversial matters; or
  - (b) other than where authorised by the Chief Executive Officer, outside the employee's place of work, or outside hours of work to discuss council business;
- (ii) Elected members must:
- (a) refrain from directing City employees other than by way of a Council or committee resolution;
  - (b) refrain from, in any public or private forum, directing or influencing, or attempting to direct or influence, any other employee of the City or a delegate of Council in the exercise of the functions of the employee or delegate;
  - (c) refrain from contacting an employee unless in accordance with procedures governing the interaction of elected members and employees that have been authorised by the Chief Executive Officer;
  - (d) not contact or issue instructions to any of the City's contractors or tenderers, including the City's legal advisors;
  - (e) not be overbearing or threatening to employees;
  - (f) not direct or pressure (or attempt to) employees in the performance of their work, or recommendations they should make;

- (g) not approach employee organisations; for example unions and associations; in relation to employee matters that relate to individual Employees rather than broader industrial policy issues;
  - (h) not attend on-site inspection meetings with lawyers and/or consultants engaged by the City associated with current or proposed legal proceedings (other than those where approval has been granted to participate).
- (iii) Employees shall not:
- (a) approach elected members directly on individual employee matters that are subject to provisions for which the City has internal Human Resources policies or procedures;
  - (b) refuse to give information which is available to other elected members to a particular elected member because of the Employee or elected member's political views;
  - (c) provide ad hoc advice to elected members (i.e. other than where it is procedural or of a minor nature) without recording or documenting the interaction as they would if the advice was provided to a member of the community;
  - (d) meet with developers alone and outside standard office hours to discuss development applications or proposals, unless properly authorised to do so.

### **5.3 Dealings with elected members and employees**

- (i) All commercial/business dealings (including the awarding of contracts) with the City by elected members and employees (and their closely associated persons) shall at all times be open, transparent and accountable.
- (ii) All elected members and employees (and their closely associated persons) wishing to carry out any business activities with the City shall only do so in strict accordance with the Council Policy and procedures.

### **5.4 Land dealings and personal development applications**

- (i) Elected members and employees will lodge written notice with the Chief Executive Officer, or in the case of the Chief Executive Officer, to the Mayor, describing an intention to undertake a dealing in land within the City or which may

otherwise be in conflict with Council's functions (other than purchasing their principal place of residence, or a site for such a purpose).

(ii) Elected members who have lodged a development application with the City shall only discuss the matter with employees at formal meetings, made in relation to the development application.

## **6. DEALINGS WITH CITY RESOURCES**

### **6.1 Use of local government resources**

Elected members, committee members and employees will:

- (i) be honest in their use of the local government's resources and shall not misuse them or permit the misuse (or the appearance of misuse) by any other person or body;
- (ii) use the local government resources entrusted to them effectively, economically and lawfully in the course of their duties;
- (iii) not use the local government's facilities, materials, funds, equipment or resources (including the services of employees) for private purposes (other than in the case of employees, when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer);
- (iv) use City resources ethically, effectively, efficiently and carefully in the course of their public or professional duties, and must not use them for private purposes unless this use is lawfully authorised and proper payment is made where appropriate;
- (v) be scrupulous in the use of City property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body;
- (vi) avoid any action or situation which could create the impression that City property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain;
- (vii) not convert any property of the City to their own use unless properly authorised; and

- (viii) not use the City's computer or telecommunications resources to excess or to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

## **6.2 Travelling and sustenance expenses**

Elected members and employees will only claim or accept travelling and sustenance expenses arising out of travel related matters which have a direct bearing on the services, policies or business of the local government in accordance with local government policy and the provision of the Local Government Act 1995.

Elected members and employees shall be diligent in ensuring that the expenses relate to their functions as an elected member or employee and are appropriately acquitted in accordance with Elected Members Allowances, Expenses and Gifts Council Policy and for employees the Learning and Development HR Policy.

## **6.3 Use of City property for election purposes**

The interest of an elected member in their re-election is considered to be a personal interest and as such under no circumstances is any reimbursement to be made in connection with costs incurred.

Equipment, consumables, facilities, entitlements, travel expenses, services or anything (including City logo and letterhead) associated with the City in any way is only to be used in performing the Civic functions of an elected member and are not to be used in any way in association with campaigning for re-election as an elected member.

# **7. ACCESS TO INFORMATION**

## **7.1 Access to information**

- (i) In accordance with the Local Government Act 1995, elected members are to be given access to all information for them to properly perform their functions and comply with their responsibilities as elected members.
- (ii) Elected members will ensure that information provided will be used properly and to assist in the process of making reasonable and informed decisions on matters before the Council.
- (iii) The City must provide access to the documents available under section 5.92 of the Local Government Act 1995 to all members of the public, and to elected

members. The City must also provide elected members with information sufficient to enable them to carry out their civic functions.

- (iv) Elected members and committee members who have a personal (as distinct from a civic) interest in a document of the City have the same rights of access as any member of the public.
- (v) Employees have an obligation to provide full and timely information to elected members about matters that they are dealing with, in accordance with City procedures.
- (vi) Elected members and committee members have an obligation to properly examine all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter.

## **7.2 Use and security of information**

Elected members, committee members and employees:

- (i) will not use confidential information to gain improper advantage for themselves or for any other person or body, or in ways which are inconsistent with their obligation to act impartially, or to improperly cause harm or detriment to any person or organisation;
- (ii) must only access information needed for official business;
- (iii) must protect confidential information;
- (iv) must not use confidential information for personal purposes or for any non-official purpose;
- (v) must only release confidential information if they have authority to do so; and
- (vi) must only use confidential information for the purpose it is intended to be used.

## **7.3 Request for information – personal interest**

An elected member or employee

- (i) making an enquiry on a matter being considered by the City's administration or Council in which that elected member or employee has a personal/financial interest shall seek the information only from the Chief Executive Officer and that when required by the Chief Executive, the request shall be in writing; and

- (ii) must not use confidential information gained through their official position for the purpose of securing a private benefit for themselves or for any other person.

#### **7.4 Refusal of access to documents**

The Chief Executive Officer must act in deciding whether a document sought by elected members should be made available under section 5.92 of the Local Government Act 1995 or because it is relevant to the performance of the elected member or committee member's civic duty. The Chief Executive Officer must state the reasons for the decision if access is refused.

### **8. COMMUNICATION AND PUBLIC RELATIONS**

#### **8.1 Communication**

- (i) Employees shall promptly respond to written, electronic and verbal enquiries in accordance with the City's Customer Service Charter and Customer Service Standards.
- (ii) Unless on approved leave of absence or unavailable for other reasons, elected members shall respond to all written, electronic and verbal enquiries as soon as practicable.

An adequate response includes a request to the Council Administration Officer who will delegate to the relevant City's employee for comment, response and action directly to the enquirer.

- (iii) All aspects of communication by elected members and employees (including verbal, written or personal), involving the City's activities should reflect the status and objectives of Council. Communications should be accurate, polite and professional.

#### **8.2 Mayor to speak on behalf of Council**

In accordance with the Local Government Act 1995, the spokespersons for Council is the Mayor and with the Mayor's authorisation, the Chief Executive Officer, either of whom may make a statement on behalf of Council and the City.

The Mayor or Chief Executive Officer will only express the view or position of Council, where Council has formally determined a view or position. Where Council has not determined the matter or has no clear view/position, the Mayor or Chief Executive Officer may express a

personal view, providing they clearly preface such remarks as being their own personal view and not those of Council.

### **8.3 Corporate obligations**

As representatives of the community, elected members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of Council. In doing so elected members should acknowledge that:

- (a) as a member of Council there is respect for the decision making processes of Council, which are based on a decision of the majority of Council;
- (b) information relating to decisions of Council on approvals, permits and so on ought to be communicated in an official capacity by a designated employee of the City;
- (c) information concerning adopted policies, procedures and decisions of Council is conveyed accurately; and
- (d) information of a confidential nature shall not be communicated until it is no longer treated as confidential.

### **8.4 Expression of personal views**

Elected members and employees are free to make their own personal position known about any matter, which is pertinent to the business of the City, including Council decisions, provided that it cannot be construed to be a statement on behalf of Council.

- (a) Elected members and employees will refrain from making personal statements to the media without clearly prefacing such remarks that they are personal views and not those of Council;
- (b) Elected members and employees will not adversely reflect on a Council decision; and
- (c) This shall not prejudice an individual member's right to express a personal opinion on issues of public interest.

### **8.5 Comment during public consultation period**

- (i) Elected members, committee members and employees:

- (a) will refrain from making public comment expressing a personal opinion or prejudge a matter whilst the matter is being advertised for public comment and/or is yet to be considered and determined by Council;
  - (b) will clearly preface any of their remarks as being their own personal views and not those of Council or possibly be construed to be on behalf of Council; and
  - (c) will encourage members of the public to make a submission to the City.
- (ii) The Mayor and/or Chief Executive Officer may take appropriate action (including issuing a statement to the media) to correct any misinformation or erroneous information which is in the public arena.

## **8.6 Defamation**

Elected members should acknowledge that:

- (a) Comments by elected members at meetings of Council and/or committees, forums, working or advisory groups of the City are not covered from defamation action by absolute privilege.
- (b) Elected members should ensure that comments made are pertinent to the business of local government and they are not made maliciously or without due regard to whether they represent the truth.

## **9 IMPLEMENTATION, REVIEW AND COMPLIANCE**

### **9.1 Implementation and review**

- (a) The original Code of Conduct for the City of Kwinana was first adopted on 28 November 1990 and reviewed and is amended as required by the Local Government Act 1995.
- (b) Council currently review the Code of Conduct after each ordinary election (i.e. every two years) and any amendments to the Code of Conduct will be subsequently communicated to elected members, committee members, employees and the community.

### **9.2 Matters not dealt with by this Code**

- (i) Rules of Conduct Regulations



Elected members are required to observe the rules of conduct prescribed in the Local Government (Rules of Conduct) Regulations 2007 (and those rules do not form part of this Code), namely –

- General principles to guide the behaviour of council members;
- Contravention of certain local laws;
- Use of information;
- Securing personal advantage or disadvantaging others;
- Misuse of local government resources;
- Prohibition against involvement in administration;
- Relations with local government employees;
- Disclosure of interest; and
- Gifts.

(ii) The Act

Certain conduct and actions by elected members, committee members and employees may constitute offences under the Local Government Act 1995 and may not be dealt with by this Code of Conduct.

### **9.3 Adherence to the Code**

- (i) Elected members are required to make a declaration to comply with Council's Code of Conduct upon being sworn in.
- (ii) All employees, on induction, are required to make a declaration to comply with Council's Code of Conduct.
- (iii) Any elected member, committee members or employee having concerns with regard to an actual, perceived, potential, intended or unintended breach of either the specific provisions or the spirit of the Code of Conduct, or any provisions of the Local Government Act 1995, Regulations or local laws, should discuss those concerns with the Chief Executive Officer where such matters relate to elected members, committee members or employees, or the Mayor in the case of matters involving the Chief Executive Officer.

- (iv) In all matters, the subject of the complaint shall be treated in the strictest confidence until such time as an appropriate investigation has been undertaken.
- (v) Any actions taken as a result of a breach will be made in accordance with the provisions of any applicable legislative requirement and the City's responsibilities as an employer.
- (vi) Serious and/or repeated breaches of the Code of Conduct will be reported to the Council or appropriate authority or relevant person for consideration and appropriate action, where necessary.

#### **9.4 Dealing with complaints and allegations**

- (i) If a person has any complaint concerning the performance, ability, character or integrity of any elected members, committee members or employee, or of any act or omission of an elected member, committee member or employee, he or she shall make the complaint in the prescribed form and notify the Chief Executive Officer or the Mayor, if the complaint is in relation to the Chief Executive Officer.
- (ii) Any serious complaint or one which alleges misconduct or corruption must be verified by a Statutory Declaration, as prescribed by the Oaths, Affidavits and Statutory Declarations Act 2005.
- (iii) The complaint must be given in confidence and shall;
  - (a) identify the complainant and the person against whom the complaint is made;
  - (b) set out the details of the complaint, alleged breach of the Code of Conduct and/or legislation; and
  - (c) be in writing, or in the prescribed form and preferably verified by a Statutory Declaration, as prescribed by the Oaths, Affidavits and Statutory Declarations Act 2005.
- (iv) Any person who has lodged a complaint, or any elected members, committee members or employee, against whom a complaint has been made, must keep confidential the complaint, until the complaint has been determined or finalised.
- (v) Employees:

- (a) Any complaint about an employee (other than a complaint about the Chief Executive Officer) shall be reported to and dealt with administratively by the Chief Executive Officer.
- (b) Any complaint about the Chief Executive Officer shall be addressed to the Mayor, and will be dealt with by Council.
- (vi) Elected members and committee members:
  - (a) Any complaint about an elected member or committee member shall be reported to the Chief Executive Officer.

## **9.5 Procedure for dealing with complaints and allegations**

All complaints and allegations will;

- (i) be treated as confidential and will ensure that the principles of “natural justice” and “procedural fairness” are followed at all times;
- (ii) for employees, be dealt with in accordance with any City policies and/or procedures; and
- (iii) for elected members and committee members, be dealt with in accordance with the Act, and Regulations or where applicable any City policies and/or procedures.
- (iv) The Public Interest Disclosure Act 2003 (PID Act) applies to disclosures of public interest information. Public interest information means information that –
  - a) relates to the performance of a public function by a public authority, public officer or public sector contractor (either before or after the commencement of the PID Act); and
  - b) shows or tends to show that a public authority, a public officer, or a public sector contractor is, has been or proposes to be involved in;
    - improper conduct; or
    - an act or omission that constitutes an offence under a written (State) law; or
    - substantial unauthorised or irregular use of, or substantial mismanagement of, public resources or;
    - an act done or omission that involves a substantial and specific risk of -
      - injury to public health; or

- prejudice to public safety; or
- harm to the environment; or
- a matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971 by the Parliamentary Commissioner (Ombudsman Western Australia).

Information will be made available to the City's contractors and the community about the public interest disclosure process and relevant documents on the City's website.

### **9.6 Protection of persons reporting unacceptable or illegal behaviour**

The Chief Executive Officer is to ensure that elected members, committee members and employees who report unacceptable or illegal behaviour of elected members or employees (that is, whistleblowers) are not in any way disadvantaged or victimised because of their actions. The Chief Executive Officer's action is limited to matters for which he/she has responsibility and/or jurisdiction to act.

### **9.7 Corruption, Crime and Misconduct Act 2003**

Elected members, committee members and employees must be aware of the Corruption, Crime and Misconduct Act 2003 which requires the Principal Officer of an organisation (ie: the Chief Executive Officer) to report possible misconduct or corruption to the Commission.

#### **Victimisation**

A person must not —

- (a) threaten to prejudice the safety or career of any person; or
- (b) intimidate or harass, or threaten to intimidate or harass, any person; or
- (c) do an act that is, or is likely to be, to the detriment of any person,

because the person mentioned in paragraph (a), (b) or (c), or someone else, gave evidence to, or helped, the Commission, the Public Sector Commissioner or the Parliamentary Inspector in the performance of functions under this Act.

## Definitions

The Corruption and Crime Commission has produced the following information:

“Misconduct” essentially occurs if a public officer (which includes local government elected members, committee members and employees):

- corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment; or
- corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or
- whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment;

or

A public officer engages in conduct that:

- adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
- constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
- constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
- involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

AND constitutes or could constitute:

- a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

## What Does Corruptly Mean?

The term is not defined under the Act. Corruption usually involves calculated, often continuing, covert and wrongful exercise of public duty or function. The Criminal Code also provides guidance by defining the offence of corruption at section 83, in the following terms:

“Corruption

Any public officer who, without lawful authority or a reasonable excuse —

- (a) acts upon any knowledge or information obtained by reason of his office or employment; or
- (b) acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or
- (c) acts corruptly in the performance or discharge of the functions of his office or employment, so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime”