

Code of Conduct – Elected Members



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1 Interpretation

1.1 Terms used in this Code

Act means the *Local Government Act 1995* (WA).

Breach means breach of this Code of Conduct.

CCM Act means the *Corruption, Crime and Misconduct Act 2003* (WA).

CEO means the Chief Executive Officer of the City of Kalamunda.

City means the City of Kalamunda.

Code means the City of Kalamunda Code of Conduct for Elected Members and Committee Members, adopted by Council on 24 September 2019.

Committee Member means a member of a committee of Council in accordance with section 5.11 of the *Local Government Act 1995* (WA).

Confidential Document includes, but is not limited to, a document:

- (a) prepared by, or for, a person who was under an express or implied obligation, legal or otherwise, not to disclose its contents;
- (b) marked, or expressly described by the CEO or a person duly authorised by the CEO, to be confidential;
- (c) that attracts legal professional privilege;
- (d) that is provided at a closed meeting; or
- (e) that is designated confidential by resolution of Council or a committee of the Council; or

Conflict of Interest means a situation where a person has a personal interest in a matter the subject of a decision or duty of a person.

Corruption and Crime Commission means the Commission established under section 8 of the *Corruption, Crime and Misconduct Act 2003* (WA).

Council means the Council of the City of Kalamunda.

Elected Member means a person who holds the office of an Elected Member at the City.

Employee means a person employed by the City under section 5.36 of the Act.

Gift has the meaning given to that term in section 5.82(4) of the Act, with the exceptions included in Regulation 12 of the Rules.

Interest has the meaning prescribed in Regulation 11(1) of the Rules and as also prescribed in section 5.60 of the Act.

Misconduct has the meaning prescribed in section 3 of the *Corruption Crime and Misconduct Act 2003* (WA).

Notifiable Gift has the meaning prescribed in section 5.62(2) of the Act and Regulation 12(1) of the Rules.

Prohibited Gift has the meaning prescribed in Regulation 12(1) of the Rules.

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

Serious Misconduct has the meaning prescribed in section 3 of the *Corruption Crime and Misconduct Act 2003* (WA).

2 Introduction

2.1 Purpose

The Council of the City of Kalamunda is the elected body responsible for governing the City of Kalamunda's affairs and the performance of the City's functions including oversight of the allocation of the City's finances and resources and determining Council policies. Acting in the best interests of its residents, the Council is committed to providing open, responsible and accountable government.

The Act confers considerable power on Council. The City of Kalamunda community expects its Elected Members and Committee Members will actively seek to achieve and retain public trust through demonstrated adherence to the above responsibilities.

This Code provides guidance to Elected Members and Committee Members about the legal and ethical aspects of public duty. It also addresses the expected standards of professional conduct and behaviour expected when carrying out the functions and responsibilities included in the Code.

The Code is intended to complement the Act, its regulations and other local laws, and champions four fundamental aims:

- a) better decision making by Elected Members and Council committees;
- b) greater community participation in the decisions and affairs of the City;
- c) greater accountability of Council to its community; and
- d) a more efficient and effective Council.

2.2 Requirement for a Code of Conduct

Section 5.103 of the Act requires every Western Australian local government to prepare or adopt a code of conduct to be observed by Elected Members and Committee Members.

The Rules set out the conduct requirements for an elected member.

This Code must be read in conjunction with the requirements of the Act and Rules.

2.3 Complying with the Code

Elected members and Committee Members must comply with this Code and, in doing so, are expected to:

- a) understand the standard of conduct that is expected of them;

- b) fulfil their statutory duty to act honestly and exercise the level of due care and diligence required of a person in such a position; and
- c) act in ways that enhance public confidence.

3 ROLES OF ELECTED MEMBERS AND THE CEO

3.1 *Role of Elected Members*

- a) The role of an Elected Member is prescribed in section 2.10 of the Act and this includes:
 - (i) representing the interests of electors, ratepayers and residents of the district;
 - (ii) providing leadership and guidance to the community in the district;
 - (iii) facilitating communication between the community and the council;
 - (iv) participating in the local government's decision-making processes at council and committee meetings; and
 - (v) performing such other functions as are given to an Elected Member by the Act or any other written law.
- b) An Elected Member, broadly speaking, is:
 - (i) part of the collective team known as the Council, in which the community has placed its trust to make decisions on its behalf.
 - (ii) a strategic decision maker in local government, collectively with the Council, rather than a manager or administrator;

2.2 *Role of the Chief Executive Officer*

- a) The Council employs one employee, the Chief Executive Officer.
- b) The role of the Chief Executive Officer is prescribed by the Act in section 5.41, which provides that the Chief Executive Officer's functions are to –
 - (i) advise the council in relation to the functions of the local government;
 - (ii) ensure that advice and information is available to the council so that informed decisions can be made;
 - (iii) cause council decisions to be implemented;
 - (iv) manage the day to day operations of the local government;
 - (v) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
 - (vi) speak on behalf of the local government if the mayor or president agrees;
 - (vii) be responsible for the employment, management supervision, direction and dismissal of other employees;
 - (viii) be responsible for the employment, management supervision, direction and dismissal of other employees;
 - (ix) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.
- c) Broadly speaking, the Chief Executive Officer ensures that the City's administration delivers the strategy adopted by Council and in doing so operates efficiently, delivers services and complies with legislation.
- d) In employing the Chief Executive Officer, section 5.36 of the Act requires Council to:
 - (i) ensure that the Chief Executive Officer is suitably qualified for the position; and

- (ii) ensure it is satisfied with the provisions of the CEO's employment contract.

3.3 Contact with Employees

- a) The City of Kalamunda encourages communication between Councillors and members of the City's Executive Team and Customer and PR team.
- b) Communication is preferred with these teams rather than general staff, to ensure that Councillors are dealing with staff that are able to make high level decisions at all times and have the power to delegate through team members to action Councillor requests promptly.
- c) Elected members should note that employees may not always be available at short notice.
- d) Urgent enquiries should be referred to the CEO's office or the relevant Director.

4 BEHAVIOUR & STANDARDS EXPECTED OF ELECTED MEMBERS

4.1 Dress standards

- a) Elected members and Committee Members are expected to dress in manner befitting their role as community leaders.
- b) Clothing should be neat casual or business casual, not torn, frayed or dirty and should not contain offensive words or images.

4.2 General Principles of Behaviour

Regulation 3(1) of the Rules, provides general principles to guide Elected Member behaviour, including to:

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

There should be sufficient opportunity for others to express their opinions, without fear or favour.

That should be reciprocated by good listening and professional debate on Council issues.

4.3 Inappropriate Behaviour

Inappropriate behaviour will not be tolerated.

Examples include:

- a) bullying and intimidation;
- b) interrupting others when speaking;
- c) offensive language and excessive swearing;

- d) suggestive comments and jokes;
- e) offensive or disrespectful comments in writing, including social media and email;
- f) actions designed to annoy;
- g) making jokes at another's expense;
- h) encouraging or supporting others, including members of the community, to criticise the CEO, employees or other Elected Members;
- i) publicly criticising or blaming the CEO, employees or other Elected Members;
- j) initiating or spreading rumours or gossip calculated to offend or upset; and
- k) undertaking duties while under the influence of drugs or alcohol.

3.3 Bullying

- a) Bullying¹ occurs when a person or group:
 - (i) repeatedly and intentionally uses words or actions against another person or group; and
 - (ii) the words or actions cause distress or offence; and
 - (iii) it creates a risk to health and safety.
- b) Bullying can include verbal or physical abuse, such as shouting or offensive language. It can also include subtle psychological abuse, such as exclusion or omission.
- c) Bullying can occur directly and overtly, or by influencing others to facilitate bullying.
- d) Bullying is expressly prohibited by the *Fair Work Act 2009 (Cth)*. It may also be unlawful under federal or state anti-discrimination laws if the bullying is linked to, or based on, a protected characteristic, such as the person's age, sex, race or disability².
- e) The *Occupational Safety and Health Act 1984 (WA)* requires council to take reasonable steps to prevent bullying and harassment.

3.4 Alcohol and Drugs

- a) Elected members and Committee Members should not be impaired to perform their roles, due to mind altering substances (see 4.2 General Principles of Behaviour).
- b) As community leaders, alcohol consumption should be kept to a minimum at events attended on behalf of the City. Elected members and Committee Members should also monitor the health and safety of attendees at City-hosted events where alcohol is served, including safe travel after the event.
- c) Alcohol and drugs should not be consumed prior to or during any Council or Committee meeting, whereby decision-making or general behaviour may be impaired.

5 WORKING WITHIN THE COMMUNITY

4.1 Engaging with the Community

- a) The City strives to meet the environmental, economic and social needs of the people who live within the community.
- b) Elected Members and Committee Members will be responsive to the broad range of community needs and will treat people with courtesy and sensitivity.

¹ Australian Human Rights Commission, "What is bullying?", www.humanrights.gov.au

² For more information: Equal Opportunity Act 1984 (WA); Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth)

- c) Council, in making decisions, will always give regard to involving the community in the decision-making process.
- d) The City embraces social, economic and cultural differences within the community and seeks to unite everyone by the City's vision and values described in section 1.4.

4.2 *Ethical Decision-making*

- a) Ethics are the values and principles that guide behaviour and decision making.
- b) During the course of public duty, situations may arise that cause ethical dilemmas where the answer is not always black or white. When facing a challenging decision or dilemma, review this Code and consult the Elected Members Handbook for guidance.
- c) You may also seek guidance from another Elected Member, the Mayor or CEO. On more critical or sensitive issues, you may seek guidance from the Department of Local Government, Sport and Cultural Industries.

4.2 *Apolitical and Impartial Decision-making*

- a) The general function of a local government is to provide for the good government of persons in its district.³
- b) Elected Members, in making decisions on behalf of the City, must remain impartial and have no regard for their own political affiliations.
- c) Whilst the decisions of Council may take political factors and influences into account, they should be based primarily on:
 - (i) relevant facts;
 - (ii) the merit of each matter;
 - (iii) transparency, accountability and procedural fairness; and
 - (iv) what is in the best interest of the entire community, as opposed to one Ward or sub-group.

4.3 *Confidentiality*

- a) Elected Members and Committee Members who access or are provided with confidential information or Confidential Documents during their term on Council must not release the information to any other person in part or as a whole, unless duly authorised by resolution of the Council, on receipt of written authority from the Chief Executive Officer, or if required by law.
- b) Confidential Documents and/ or confidential or privileged information must not be divulged or used inappropriately to gain a direct or indirect advantage, financial or otherwise (refer also to 'Conflicts of Interest').
- c) Serious breaches of confidentiality may result in action against Elected Members and Committee Members under the provisions of the Act or Rules.
- d) Confidentiality requirements exist after the Elected Member or Committee Member's appointment term.

4.4 *Contact with Lobbyists*

- a) A lobbyist is a person or organisation who seeks to influence decisions on behalf of a special interest. Lobbying is common in local government when individuals or groups make direct contact with Elected Members in an attempt to influence a Council Decision.

³ Section 3.1(1), *Local Government Act 1995* (WA).

- b) Lobbying⁴ is appropriate if it is done with transparency, integrity and honesty, this includes, but is by no means limited to:
- (i) documenting meetings;
 - (ii) conducting meetings on Council premises or locations that would not be perceived to cause bias or secrecy (for example the private home of a developer);
 - (iii) including others in the meeting;
 - (iv) inviting lobbyists to communicate with Council in writing;
 - (v) providing a copy of information provided by lobbyists to Council for formal record;
 - (vi) providing copies of information to other Elected Members and to the CEO and City's records department;
 - (vii) declaring lobbying activities to Council; and
 - (viii) declaring any conflict of interest that you may have with lobbying entities.
- c) Lobbying is inappropriate when it does, or could be perceived to, undermine the public's confidence in the Council's decision-making process. Examples include:
- (i) accepting undisclosed payments or benefits while making a decision that affects the 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 denying similar access to another party;
 - (iv) giving undertakings to an interested party before considering all of the information relevant to the decision;
 - (v) acting in a manner that exceeds the role of an Elected Member;⁵
 - (vi) disclosing or providing access to confidential information, or Confidential Documents while being lobbied; and
 - (vii) being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.

4.5 *Property Applications and Property Developers*

- a) Whilst all decisions of Council must be made in an open and transparent manner to avoid accusations or perceptions of improper conduct, preferential treatment or bias, Elected Members should be alive to the fact that property development decisions inevitably attract often extreme scrutiny and therefore must be dealt with utmost diligence. If Elected Members have any doubt as to any aspect of their decision-making requirements in property development matters, the City strongly encourages Elected Members to seek advice from the CEO, or the City's General Counsel.
- b) Elected Members have a quasi-judicial⁶ responsibility in the area of planning applications. Therefore, Elected Members must ensure they adhere strictly to legislative requirements and City policies and procedures in these matters.

⁴ For more information: Western Australian Contact with Lobbyists Code; NSW Independent Commission against Corruption guide "Lobbying Local Government Councillors"; Public Sector Commission's Lobbyist Register; Public Sector Commission's "Contact with Lobbyist Code".

⁵ Refer sections 2.7 - 2.10 of the *Local Government Act 1995* (WA).

⁶ Refer to the City's General Counsel or the City's Governance and Policy framework for more information on this responsibility.

- c) Elected Members are encouraged to use the lobbying protocols described above (4.4 Contact with Lobbyists) when dealing with property developers⁷.
- d) There are strict requirements for declarations of interest in relation to property. These should be read and understood by all Elected Members.

4.6 *Community Complaints and Procedural Fairness*

- a) Community members will occasionally contact an Elected Member to raise a complaint or dispute about a decision made by Council or its administration.
- b) It is important for Elected Members to take a careful and considered approach to responding to community complaints.
- c) In particular, Elected Members should avoid:
 - (i) making commitments on behalf of the City about the outcome of a complaint; and/or
 - (ii) making comments about the merits of a complaint that has not been fully examined; and/or
 - (iii) making comments about City employees connected to the complaint.
- d) Procedural fairness requires the City to follow a fair, even handed and proper procedure when responding to a complaint or dispute.
- e) The CEO and Mayor will determine the best course of action.
- f) In responding to more serious community complaints, the City will follow the rules of procedural fairness which require⁸:
 - a. an inquiry to be held into the matters in dispute;
 - b. a hearing to take place that is appropriate to the circumstances;
 - c. all affected parties be given the opportunity to be heard; and
 - d. the person hearing the matter to act without bias and give reasons to support a decision.
- g) Employee matters arising from a community complaint will be confidentially dealt with by the CEO.

6 CONFLICT OF INTEREST

A conflict of interest arises where a personal interest conflicts with the public's interest. Elected Members and Committee Members must ensure that there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their role with the City.

5.1 *Declaring a Conflict of Interest (Impartiality)*

- a) As Elected Members and Committee Members live in the community they represent it is almost inevitable that they will have a conflict of interest at some point.
- b) Conflicts of interests are best managed proactively to avoid any damage to the community's confidence in the ability of Elected Members and Committee Members to make fair and impartial decisions.
- c) It is the responsibility of the Elected Member or Committee Member to make a disclosure. This is normally done in writing to the CEO before any Council or Committee meeting, or at the meeting immediately before the matter is discussed.

⁷ Refer to Department of Local Government and Communities Operational Guideline No 12 – Elected Members' Relationship with Developers.

⁸ Source: WA Ombudsman's Office - <http://www.ombudsman.wa.gov.au/>

- d) If an Elected Member or Committee Member becomes aware of a conflict of interest during a meeting, they should declare it before discussion commences on the matter, or otherwise immediately as they become aware of the conflict, even if discussion on the particular item has begun.
- e) If in doubt, Elected Members and Committee Members are encouraged to seek advice from the CEO on any perceived conflict of interest.

5.2 Financial Interest Disclosure

- a) Part 5, Division 6 of the *Local Government Act 1995* has strict requirements about managing and declaring financial interests.
- b) Proactive declaration and disclosure of financial interests is paramount.
- c) Perceived breaches could result in allegations of Misconduct, Serious Misconduct, Corruption or fraud and be reported to the Corruption and Crime Commission (see also "Misconduct, Corruption or Fraud" and "Breaches of this Code").
- d) Declaration or disclosure of financial interests should be made at the earliest possibility and before the matter is discussed or a decision is made⁹.
- e) Section 5.60 of the Act states that a '*relevant person*', which includes an Elected Member or Committee member, has an interest in a matter if either —
 - (i) the relevant person; or
 - (ii) a person with whom the relevant person is closely associated;¹⁰
 - has —
 - (iii) a direct or indirect financial interest in the matter; or
 - (iv) a proximity interest in the matter.
- f) Section 5.60A of the Act states that '*A person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.*'
- g) If in doubt, Elected Members and Committee Members are encouraged to seek early advice from the CEO on any perceived financial conflict of interest.

6.3 Gifts

- a) Receiving a Gift, benefit or undertaking from a person or organization, by virtue of Elected Member or Committee Member's role with the City, may create a conflict of interest.
- b) An Elected Member and Committee Member must not accept a Prohibited Gift from any person who is undertaking, seeking to undertake or it is reasonable to believe is intending to undertake an activity involving a local government discretion.
- c) Should an Elected Member or Committee Member accept a Gift, a declaration on the City's Gift Declaration Form¹¹ must be provided to the CEO within 10 days of acceptance. The Gift Declaration Form must include the name of the Gift giver, the

⁹ Refer to section 5.65(b) of the *Local Government Act 1995* (WA).

¹⁰ Refer to section 5.62 of the *Local Government Act 1995* (WA) for the full definition of 'closely associated person'.

¹¹ Available on the City's website, or by request to the City's General Counsel.

date, a description of the Gift together with its estimated value and the nature of the relationship to the member.

- d) The CEO maintains a register of all Gift Declarations.
- e) Subject to estimated value, Notifiable Gifts do not include:
 - (i) trinkets, such as pens, key rings, rulers and coasters;
 - (ii) minor items of apparel, such as a tie, hat or t-shirt;
 - (iii) minor promotional items, such as a mug or badge;
 - (iv) provision of food or beverages received in the normal course of representing Council;
 - (v) items received at an event, training or conference, such as course materials, satchel or entertainment.

6.4 Disclosing Board and Committee Appointments

- a) Elected Members and Committee Members must disclose membership of external boards or committees to the City.
- b) The CEO will use this information to advise the member of potential conflicts of interest that may arise.

6.5 Misconduct, Corruption and Fraud

- a) It is the responsibility of every Elected Member and Committee Member not to engage in misconduct, corruption or fraud and, additionally, to actively prevent or detect these activities in others and to immediately report them if detected.

What is Misconduct?

- b) Importantly, Misconduct of a kind dealt with under the *Corruption, Crime and Misconduct Act 2003 (WA)* by an Elected Member is, according to section 3 of the, *Corruption, Crime and Misconduct Act 2003 (WA)*, not able to be categorised as 'minor', but instead, will be categorised as *serious* by default.
- c) Serious Misconduct occurs if a public officer¹²:
 - (i) corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment¹³;
 - (ii) 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;
 - (iii) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment;
 - (iv) engages in conduct that —

(A) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority

¹² See section 1 of the *Criminal Code Compilation Act 1913 (WA)*.

¹³ See section 4 of the *Corruption Crime and Misconduct Act 2003 (WA)*.

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

- (B) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
- (C) 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;
- (D) 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.

d) Examples of Serious Misconduct by Elected Members might include:

- (i) corruptly failing to declare conflicts of interest;
- (ii) corruptly taking advantage of his or her office as an Elected Member to obtain a benefit for him or herself or for another person, or to cause a detriment to any person;
- (iii) unauthorized access to or disclosure of confidential information, or Confidential Documents;
- (iv) biased or preferential employment practices;
- (v) Dishonest, or preferential management of contracts or tender processes; and
- (vi) misappropriation of public funds or property.

What is Corruption?

- e) Corrupt conduct is conduct that tends to show a deliberate intent or an improper purpose and motivation and may involve conduct such as the deliberate failure to perform the functions of office properly; the exercise of a power or duty for an improper purpose; or dishonesty.¹⁴
- f) Corruption by any public officer is also a crime as prescribed by section 83 of the Criminal Code WA.

What is Fraud?

- g) Fraud is also a crime as prescribed by section 409 of the Criminal Code WA, which provides that –

Any person who, with intent to defraud, by deceit or any fraudulent means —

- (i) obtains property from any person; or
- (ii) induces any person to deliver property to another person; or
- (iii) gains a benefit, pecuniary or otherwise, for any person; or
- (iv) causes a detriment, pecuniary or otherwise, to any person; or
- (v) induces any person to do any act that the person is lawfully entitled to abstain from doing; or

¹⁴ Per Public Sector Commission.

(vi) induces any person to abstain from doing any act that the person is lawfully entitled to do,

is guilty of a crime

h) Alleged misconduct, corruption and/ or fraud must be reported immediately to the CEO.

6.6 *Protection for Informants*

a) The CCM Act has the ability to support, protect and indemnify informants who voluntarily report allegations of misconduct, corruption or fraud.

b) These witnesses are often called '*whistleblowers*'.

c) Protection for these individuals ensures that reporting of an alleged breach of the CCM Act does not result in disadvantage or persecution.

d) The CEO also has an obligation to ensure informants who report illegal or unacceptable behavior are not in any way disadvantaged.

7 COMMUNICATION AND PUBLIC RELATIONS

6.1 *Speaking on Behalf of the City*

a) The Act in section 2.8 provides that only the Mayor, or the CEO, if the Mayor agrees, can speak on behalf of the City.

b) The Mayor or CEO may only express the view or position of Council where Council has formally determined a view or position.

c) Where the Council has not formally determined a view or position, the Mayor or CEO may express a personal view, providing they clearly preface such remarks as being their own personal view and not those of Council.

d) To ensure consistency and accuracy, interaction with media outlets and on behalf of the City and Council, including on all forms of social media, will be facilitated through the City's public relations team.

e) Elected Members, Committee Members and employees who are contacted by the media must redirect the enquiry to this team.

f) Elected Members and Committee Members must notify the City's public relations team of all media contact by Elected Members and Committee Members, regardless of whether or not information has been requested or exchanged.

6.2 *Elected Members responding to Community Opinion*

a) The Act, in section 2.10 prescribes the role of Councillors (Elected Members), which includes, amongst other things, to facilitate communication between the community and the Council.

b) As representatives of the broader community, Elected Members and Committee Members need to be responsive to community views. This involves communicating the attitudes and decisions of Council.

- c) In doing so, Elected Members and Committee Members should consider these principles:¹⁵
- (i) as a member of Council there is a respect for differing views, but acknowledgment that decisions are based on a decision of the majority of Council;
 - (ii) explaining technical detail relating to a decision, such as approvals, permits and so on, ought to be communicated in an official capacity by the appropriately qualified employee of the City;
 - (iii) care should be taken to provide accurate information relating to policies, procedures and decisions of Council, or otherwise, ask for the relevant City employee to provide this information;
 - (iv) information of a confidential nature must not be communicated until it is no longer treated as confidential, even upon the expiry of the Elected Member or Committee Member's term with the Council or Committee;
 - (v) Queries and questions that are more complex in nature should be referred to the appropriately qualified employee of the City to respond to;
 - (vi) Elected members should encourage members of the community to engage in Council decisions through participation processes including community consultation processes, surveys, workshop attendance and attending public briefings and Council meetings.

6.3 *Expressing Personal Views*

- a) Elected Members and Committee Members may make their own personal position known about any matter, provided that the personal statement:
 - (i) cannot be misconstrued to be a statement on behalf of Council;
 - (ii) does not advocate for a position that is contrary to the decided majority view of the Council; and
 - (iii) is clearly prefaced as a personal view and not that of Council.
- b) In cases of debate and disagreement, the Elected Member or Committee Member must:
 - (i) respect the right of others to hold differing views within the community and Council;
 - (ii) respect the decision-making process of the majority of Council;
 - (iii) avoid comments that could cause damage to the reputation of the local government; and
 - (iv) not expressly or impliedly publicly criticise the City's CEO or the City's employees.
- c) During public consultation periods, Elected Members and Committee Members must refrain from making a decision until all relevant information has been collated and presented for consideration.
- d) In this case it is important to:

¹⁵ Refer also to section 4.6 - Community Complaints and Procedural Fairness in this Code of Conduct.

- (i) Refrain from making public comments that might be construed as prejudging a matter, whilst it is being advertised for public comment and/or is yet to be considered and determined by Council; and
- (ii) Clearly preface any remarks as being their own personal view (as per 6.3(i)); and
 - a. Encourage members of the public to make a submission to the City; and
 - b. Ensure community members understand you remain open to the submissions of the community in making a final decision with Council.
- e) 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.

6.4 Defamation

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

6.5 Corporate Image and Style

- a) The City's corporate image must be reflected professionally and consistently in all published materials.
- b) The corporate style guide is available from public relations and contains information about the use of the City's logo in communications.
- c) To ensure consistency is maintained in all City communications, the City's formal style guide is used in all print and advertising, including in the preparation of reports, agendas and minutes or other corporate documents.

8 USE OF CITY RESOURCES

8.1 Financial Responsibilities

- a) Elected members and Committee Members must act with high levels of diligence, transparency and integrity in the management of public monies¹⁶.
- b) Reimbursement of professional development and travel costs must be in accordance with City policies and should be supported by relevant documentation and receipts.
- c) Purchasing of goods and services, including hospitality at meetings, are requested through the CEO, as a component of day to day operations. The CEO will ensure purchasing processes have the relevant approvals and comply with purchasing protocols.
- d) In all cases, spending public funds is done conservatively and efforts should be made to ensure the expenditure is warranted and defensible.

¹⁶ Also refer to the requirements of the *Local Government (Financial Management) Regulations 1996*.

8.2 Competitive Tendering and Contracting

- a) In accordance with the Act and subsidiary legislation, the City has a strict procurement policy and process to regulate awarding of competitive tenders under this legislation.
- b) Elected Members and Committee Members should ensure that they do not engage in any way with a tenderer while a tender process is under way.
- c) Lobbying of Elected Members, the CEO or other employees by a tenderer is not permissible during a tender process and may result in the process being ended due to this interference or the tenderer being disqualified.

8.3 Use of the City's Information Systems

- a) Elected Members and Committee Members must ensure that confidential information is stored securely. Section 440A(3)(b) of the Criminal Code WA states a person who unlawfully uses a restricted access computer system is guilty of a crime ... if by doing so the person gains or intends to gain a benefit, pecuniary or otherwise, for any person. (Penalty: 5 years imprisonment)
- b) The City's system is a restricted access computer system, therefore misuse of the City's system, or its data, in contravention of the Criminal Code may result in a criminal offence and be reported to the Corruption and Crime Commission.
- c) City email addresses are provided to Councillors for their role as Elected Member. Email correspondence remains the property of the City and is managed as a record under the *State Records Act 2000* (WA).
- d) Advice should be sought before disposing of emails.
- e) Electronic devices provided by the City and used for storing City documents or emails should be password protected and stored in a safe location at all times.
- f) Some reasonable personal use of tablet devices is expected and permissible.
- g) The device custodian should ensure it is protected from damage or theft.

8.4 Internet Access

- a) Internet access through City resources is restricted to acceptable business use, which includes:
 - (i) carrying out City business activities;
 - (ii) communicating with employees;
 - (iii) reviewing web sites for community information and news; and
 - (iv) researching regulatory and technical information.
- b) Inappropriate internet access, such as accessing illegal or offensive material, may result in restrictions being put in place. In extreme examples, inappropriate internet use may result in misconduct proceedings being initiated.
- c) Elected Members and Committee Members should note that the City monitors internet use including data download.

8.5 Legislative Requirements of Record Keeping

- a) The *State Records Act 2000* (WA) strengthens public sector accountability through effective recordkeeping of state records, which are defined as:
 - (i) any record of information (in any form) created, received or maintained by a government organisation in the course of conducting its business activities; and
 - (ii) records in any format on which information can be stored, including maps, plans, photographs, films, magnetic and optical media.
- b) Elected Members and Committee Members are required to provide the City with copies of documents that have been created or received and are relevant to their roles, and particularly information that relates to processes of consultation, deliberation and decision-making.
- c) Elected Members and Committee Members should ensure that documentation is factual, accurate and not misleading.
- d) Multiple pieces of legislation require a local government to maintain factual and accurate records through effective record keeping practices.
- e) Additionally, the community and other interested parties, may have the right to access the City's records under the *Freedom of Information Act 1992* (WA), or other legal discovery processes¹⁷.
- f) Elected Members and Committee Members should ensure that all documentation, commentary and personal notations (including emails) are written/recorded in an appropriate manner. It should be assumed that the City's records might be read by the individual or organisation to whom they refer.

Careful thought should be given to the tone and content of email communication. Assume all emails might be read by the individual or organisation to whom they refer.

- g) Disposal or destruction of records may be an offence in some situations. Elected Members and Committee Members should provide documents to the City's records management team for disposal.
- h) Members should seek advice from the CEO if they wish to dispose of a document, record or email containing unique information relevant to the City.

8.6 Access to Information

- a) Elected members are given access to information required for them to properly meet their statutory obligations.
- b) Information must be used for proper purposes and to inform decision-making. See also '4.3 Confidentiality' and '8.3 Use of the City's Information Systems'.

¹⁷ Legislation that imposes obligations on Local Government regarding record keeping include: *Corruption, Crime and Misconduct Act 2003*; *Criminal Code Act 1913*; *Electronic Transactions Act 2011*, *Evidence Act 1906*; *Financial Management Act 2006*; *Freedom of Information Act 1992*; *Limitation Act 1935* and *Limitation Act 2005*; *Local Government Act 1995*; *Public Sector Management Act 1994*

8.7 Building Access Cards

- a) Elected Members and Committee Members must keep their building access card safe at all times. The card should not identify the building or the City of Kalamunda.
- b) Cards are for personal use, specific to the Elected Member or Committee Member roles, and are not to be lent to others. Lost cards must be reported to the CEO immediately.

9 BREACHES OF THIS CODE

9.1 Reporting a Breach

- a) If any person suspects a breach of this Code, it should be brought to the attention of the CEO or Mayor who will provide guidance about the appropriate action to take.
- b) If it is considered appropriate to lodge a formal complaint, the complaint must be made on the approved form (See appendix) and lodged in accordance with the following process:
 - (i) Code of Conduct Complaint Form is completed;
 - (ii) Complaint lodged with CEO;
 - (iii) CEO reviews the complaint and takes appropriate action in consultation with the Mayor; and
 - (iv) CEO advises parties of next steps.

8.2 What are the Consequences of a Breach?

- a) Elected Members and Committee Members are required to observe this Code under the Act.
- b) Additionally, Elected Members are required to comply with the Rules.
- c) The Act¹⁸ and its regulations provide for minor and serious breaches by Elected Members.
- d) The ramifications for Elected Members and Members of Committees will vary depending on the breach and whether the alleged breach can be dealt with entirely as a breach of this Code or if it needs to be referred to the Local Government Standards Panel as a breach of the Rules.
- e) Punishments could range from public censure, a public apology, requirement to attend formal counselling or training, to suspension or disqualification.
- f) Allegations of misconduct, corruption or fraud must be reported to the CEO. If the CEO believes the allegations have merit, the CEO is required by law to report the matter to the Corruption and Crime Commission.

¹⁸ Refer to s5.103(1) and s5.105 of the Refer to the Corruption and Crime Commission, www.ccc.wa.gov.au *Local Government Act 1995*,

10 Code of Conduct Complaint Form

CODE OF CONDUCT COMPLAINT FORM

Note to person making the complaint: This form must be completed if you wish to complain about an alleged breach the Code of Conduct.

All information requested on the form must be provided before the complaint can be processed. After all information has been provided, sign and date the form and submit to the CEO. The CEO will then ensure sufficient and relevant information has been collected. The CEO will then independently determine the course of action to take.

Where the complaint involves an Elected Member, the Mayor will determine the complaint in consultation with the CEO.

Where the complaint involves the Mayor, the Deputy Mayor will determine the complaint in consultation with the CEO.

Any information provided on this form **MUST NOT** be sent or divulged in any way to the person who is the subject of the complaint.

All information requested below must be provided by the person making the complaint:

What is the name of the Elected Member, Committee member or committee member who you allege has breached the Code of Conduct?

What section of the Code of Conduct do you allege has been breached?

What date do you allege the breach occurred?

How do you allege the breach occurred?
(Additional sheets, if any, must be attached to complaint form.)

Were there any witnesses to the alleged breach?

Are the witnesses willing to provide information to assist in resolving the complaint?

If so, what are the name(s) and contact details of witnesses?

Name:-

Contact details:-

Name:-

Contact details:-

Have you attached all relevant and additional information which may assist in resolving the complaint?

Signed

Date

Full Name

Telephone Contact

Email: