

1.1 CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES

Responsible Directorate	Corporate Services	
Responsible Service Area	Governance	
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1. PURPOSE

The Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct) sets out the standards of ethical and professional behaviour expected of Shire of Mundaring council members, committee members and election candidates.

The Code of Conduct is to be considered in conjunction with the Shire's Strategic Community Plan 2020-2030 which guides Council in its decisions and their engagement with the Community.

Community Vision

The place for sustainable living

What we value most as a community

Protection of the natural environment	Peaceful lifestyle	Safe and inclusive community
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2. POLICY

2.1. Code of Conduct

Division 1 — Preliminary provisions

1. Citation

This is the Shire of Mundaring Code of Conduct for Council Members, Committee Members and Candidates.

2. Terms used

(1) In this code —

Act means the *Local Government Act 1995*;

candidate means a candidate for election as a council member;

complaint means a complaint made under clause 11(1);

publish includes to publish on a social media platform.

(2) Other terms used in this code that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

Division 2 — General principles

3. Overview of Division

This Division sets out general principles to guide the behaviour of council members, committee members and candidates.

4. Personal integrity

- (1) A council member, committee member or candidate should —
 - (a) act with reasonable care and diligence; and
 - (b) act with honesty and integrity; and
 - (c) act lawfully; and
 - (d) identify and appropriately manage any conflict of interest; and
 - (e) avoid damage to the reputation of the Shire of Mundaring.
- (2) A council member or committee member should —
 - (a) act in accordance with the trust placed in council members and committee members; and
 - (b) participate in decision making in an honest, fair, impartial and timely manner; and
 - (c) actively seek out and engage in training and development opportunities to improve the performance of their role; and
 - (d) attend and participate in briefings, workshops and training sessions provided or arranged by Shire of Mundaring in relation to the performance of their role.

5. Relationship with others

- (1) A council member, committee member or candidate should —
 - (a) treat others with respect, courtesy and fairness; and
 - (b) respect and value diversity in the community.
- (2) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.

6. Accountability

- (1) A council member or committee member should —
 - (a) base decisions on relevant and factually correct information; and
 - (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and
 - (c) read all agenda papers given to them in relation to council or committee meetings; and
 - (d) be open and accountable to, and represent, the community in the district.

Division 3 — Behaviour

7. Overview of Division

- (1) This Division sets out —
 - (a) requirements relating to the behaviour of council members, committee members and candidates; and
 - (b) the mechanism for dealing with alleged breaches of those requirements.

8. Personal integrity

- (1) A council member, committee member or candidate —
 - (a) must ensure that their use of social media and other forms of communication complies with this code; and
 - (b) must only publish material that is factually correct.
- (2) A council member or committee member —
 - (a) must not be impaired by alcohol or drugs in the performance of their official duties; and
 - (b) must comply with all policies, procedures and resolutions of Shire of Mundaring.

9. Relationship with others

- (1) A council member, committee member or candidate —
 - (a) must not bully or harass another person in any way; and
 - (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of Shire of Mundaring; and
 - (c) must not use offensive or derogatory language when referring to another person; and
 - (d) must not disparage the character of another council member, committee member or candidate or a Shire of Mundaring employee in connection with the performance of their official duties; and
 - (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a Shire of Mundaring employee in connection with the performance of their official duties.

10. Council or committee meetings

- (1) When attending a council or committee meeting, a council member, committee member or candidate —
 - (a) must not act in an abusive or threatening manner towards another person; and
 - (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and

- (c) must not repeatedly disrupt the meeting; and
- (d) must comply with any requirements of the *Shire of Mundaring Meeting Procedures Local Law 2015*; and
- (e) must comply with any direction given by the person presiding at the meeting; and
- (f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.

11. Complaint about alleged breach

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made —
 - (a) in writing in the form approved by Shire of Mundaring; and
 - (b) to a person authorised under subclause (3); and
 - (c) within 1 month after the occurrence of the alleged breach.
- (3) Shire of Mundaring must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints. Council has resolved on 9 February 2021 (C12.02.21) that the Chief Executive Officer is the authorised complaints officer.

12. Dealing with complaint

- (1) After considering a complaint, Shire of Mundaring must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.
- (2) Before making a finding in relation to the complaint, Shire of Mundaring must give the person to whom the complaint relates a reasonable opportunity to be heard.
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- (4) If Shire of Mundaring makes a finding that the alleged breach has occurred, Shire of Mundaring may —
 - (a) take no further action; or
 - (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), Shire of Mundaring must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
 - (a) engage in mediation;
 - (b) undertake counselling;
 - (c) undertake training;

- (d) take other action Shire of Mundaring considers appropriate.
- (7) If Shire of Mundaring makes a finding in relation to the complaint, Shire of Mundaring must give the complainant, and the person to whom the complaint relates, written notice of —
 - (a) its finding and the reasons for its finding; and
 - (b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

13. Dismissal of complaint

- (1) Shire of Mundaring must dismiss a complaint if it is satisfied that —
 - (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
 - (b) either —
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the Shire of Mundaring that deals with meeting procedures.
- (2) If Shire of Mundaring dismisses a complaint, Shire of Mundaring must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

14. Withdrawal of complaint

- (1) A complainant may withdraw their complaint at any time before Shire of Mundaring makes a finding in relation to the complaint.
- (2) The withdrawal of a complaint must be —
 - (a) in writing; and
 - (b) given to a person authorised under clause 13(3).

15. Other provisions about complaints

- (1) A complaint about an alleged breach by a candidate cannot be dealt with by Shire of Mundaring unless the candidate has been elected as a council member.
- (2) The procedure for dealing with complaints may be determined by Shire of Mundaring to the extent that it is not provided for in this Division.

Division 4 — Rules of conduct

Notes for this Division:

- 1. Under section 5.105(1) of the Act a council member commits a minor breach if the council member contravenes a rule of conduct. This extends to the contravention of a rule of conduct that occurred when the council member was a candidate.
- 2. A minor breach is dealt with by a standards panel under section 5.110 of the Act.

16. Overview of Division

- (1) This Division sets out rules of conduct for council members and candidates.
- (2) A reference in this Division to a council member includes a council member when acting as a committee member.

17. Misuse of local government resources

- (1) In this clause —
electoral purpose means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918;
resources of a local government includes —
 - (a) local government property; and
 - (b) services provided, or paid for, by a local government.
- (2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by Shire of Mundaring or the CEO, to use the resources for that purpose.

18. Securing personal advantage or disadvantaging others

- (1) A council member must not make improper use of their office —
 - (a) to gain, directly or indirectly, an advantage for the council member or any other person; or
 - (b) to cause detriment to Shire of Mundaring or any other person.
- (2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.

19. Prohibition against involvement in administration

- (1) A council member must not undertake a task that contributes to the administration of Shire of Mundaring unless authorised by Shire of Mundaring or the CEO to undertake that task.
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

20. Relationship with Shire of Mundaring employees

- (1) In this clause —
Shire of Mundaring employee means a person —
 - (a) employed by a local government under section 5.36(1) of the Act; or
 - (b) engaged by a local government under a contract for services.
- (2) A council member or candidate must not —
 - (a) direct or attempt to direct a Shire of Mundaring employee to do or not to do anything in their capacity as a Shire of Mundaring employee; or

- (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a Shire of Mundaring employee in their capacity as a Shire of Mundaring employee; or
 - (c) act in an abusive or threatening manner towards a Shire of Mundaring employee.
- (3) Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
 - (4) If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means —
 - (a) make a statement that a Shire of Mundaring employee is incompetent or dishonest; or
 - (b) use an offensive or objectionable expression when referring to a Shire of Mundaring employee.
 - (5) Subclause (4)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.

21. Disclosure of information

- (1) In this clause —
 - closed meeting** means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;
 - confidential document** means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;
 - document** includes a part of a document;
 - non confidential document means** a document that is not a confidential document.
- (2) A council member must not disclose information that the council member —
 - (a) derived from a confidential document; or
 - (b) acquired at a closed meeting other than information derived from a non confidential document.
- (3) Subclause (2) does not prevent a council member from disclosing information —
 - (a) at a closed meeting; or
 - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
 - (c) that is already in the public domain; or
 - (d) to an officer of the Department; or
 - (e) to the Minister; or
 - (f) to a legal practitioner for the purpose of obtaining legal advice; or
 - (g) if the disclosure is required or permitted by law.

22. Disclosure of interests

- (1) In this clause —
interest —
 - (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
 - (b) includes an interest arising from kinship, friendship or membership of an association.
- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the council member must 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.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know —
 - (a) that they had an interest in the matter; or
 - (b) that the matter in which they had an interest would be discussed at the meeting and the council member disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting, then —
 - (a) before the meeting the CEO must cause the notice to be given to the person who is to preside at the meeting; and
 - (b) at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.
- (6) Subclause (7) applies in relation to an interest if —
 - (a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or
 - (b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.
- (7) The nature of the interest must be recorded in the minutes of the meeting.

23. Compliance with plan requirement

If a plan under clause 12(4)(b) in relation to a council member includes a requirement referred to in clause 12(6), the council member must comply with the requirement.

2.2. Enforcing the Code

2.2.1. Breaches of behaviour requirements

If there is reason to believe a council member, committee member or candidate has breached the behavioural requirements of this Code of Conduct, a complaint may be submitted to a person authorised to be the Shire's Complaints Officer. The complaint needs to be made within one month of the alleged breach occurring.

Complaints of this nature are to be dealt with in accordance with the *Local Government (Model Code of Conduct) Regulations 2021*, this Code of Conduct, and any relevant Shire of Mundaring documents adopted by Council.

If an alleged breach is found to have occurred, the subject of the complaint may have their behaviour addressed in accordance with clause 12(4)(b) of this Code of Conduct.

2.2.2. Breaches of rules of conduct

Failure to act in accordance with Shire of Mundaring *Meeting Procedures Local Law 2015* or the prescribed rules of conduct under the *Local Government (Model Code of Conduct) Regulations 2021* may constitute a minor breach under the *Local Government Act 1995*.

The complaint needs to be made by completing a Complaint of Minor Breach form with all supporting evidence.

Complaints of this nature may be forwarded to the Department of Local Government Chief Executive Officer for determination.

2.3. Commitment to the Code of Conduct

As an elected representative of the community charged with decision making for Shire of Mundaring, Councillors are committed to undertaking the duties and responsibilities of their office by working together with fellow council members in a respectful and constructive manner to achieve the community vision for the Shire.

This Code sets out each Councillors commitment to their fellow council members and the community to govern the Shire in a manner which accords with the expressed behaviours, standards and values.

This Code will be reviewed in accordance with relevant legislative obligations. Additionally, at least once every two years council members will review this Code to ensure that it meets and continues to meet community standards and expectations.

3. APPENDICES

Appendix 1 – Complaint of Minor Breach form

Appendix 2 – Gift Guidelines

4. RELATED LEGISLATION

Local Government Act 1995, Division 9 – Conduct

Local Government (Model Code of Conduct) Regulations 2021

5. RELATED DOCUMENTS

Local Government Operational Guidelines – [Disclosure of gifts and disclosure of interests relating to gifts](#)