



WHITEHORSE CITY COUNCIL

Councillor Code of Conduct

22 February 2021



Table of Contents

Purpose of the Councillor Code of Conduct	3
Roles and Responsibilities	4
Role of Council.....	4
Role of Councillors.....	4
Role of the Mayor.....	4
Role of the Deputy Mayor.....	5
Standards of Conduct	5
1 Treatment of others.....	5
2 Performing the role of Councillor.....	6
3 Compliance with good governance measures.....	6
4 Councillor must not discredit or mislead Council or public.....	7
5 Standards do not limit robust political debate.....	8
Dispute Resolution	8
Self-Resolution.....	8
Mayoral Negotiation.....	8
External Mediation.....	9
Breaches of the Prescribed Standards of Conduct	10
Internal Arbitration process.....	10
Request for Councillor Conduct Panel.....	11
Flowchart of Dispute Resolution Options	12

Purpose of the Councillor Code of Conduct

The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

A person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath of affirmation of office. As part of that declaration, Councillors must declare that they will abide by this Councillor Code of Conduct.

Thus, elected members must comply with the provisions of this Councillor Code of Conduct.

Roles and Responsibilities

As a precursor to detailing the specifics of this Councillor Code of Conduct, it is important that there is a clear appreciation of the roles and inferred responsibilities for all parties, including Council, Councillors and those in the roles of Mayor and Deputy Mayor.

Having clarity regarding this key information will avoid confusion or uncertainty with assigned roles and therefore will drive good performance and conduct.

Role of Council

The key role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.

Role of Councillors

The role of every Councillor is –

- a) *to participate in the decision-making of the Council;*
- b) *to represent the interest of the municipal community in that decision-making; and*
- c) *to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.*

(Section 28 Local Government Act 2020)

Role of the Mayor

The role of the Mayor is –

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

(Section 18 Local Government Act 2020)

Role of the Deputy Mayor

The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if –

- a) *the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or*
- b) *the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or*
- c) *the office of Mayor is vacant.*

(Section 21 Local Government Act 2020)

Standards of Conduct

Section 139(3) of the *Local Government Act 2020* and Regulation 12 of the *Local Government (Governance and Integrity) Regulations 2020*, detail the prerequisites for Councillor Codes of Conduct, including the five prescribed standards of Conduct (as recorded below), together with any prevailing regulatory requirements and other matters which Council considers appropriate.

1 Treatment of others

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

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

1.1 A Councillor will conduct dealings with other Councillors in ways that maintain public confidence in the office of Councillor and such interactions being open, honest and issues focused.

1.2 A Councillor will ensure that people are treated fairly and with respect and are free from all forms of unlawful discrimination and inappropriate workplace behaviours, such as sexual harassment, victimisation, bullying, harassment and occupational violence.

Refer to:

- *Equal Opportunity Act 2010*, including for definitions for: Discrimination (s7); Sexual Harassment (s92(1)) and Victimisation (s104(1)).
- *Occupational Health and Safety Act 2004* (s21(1)).
- WorkSafe Victoria, for descriptions of inappropriate workplace behaviours refer to website at (www.worksafe.vic.gov.au).

1.3 A Councillor will refrain from publicly criticising Council Officers in a way that cast aspersions on their professional competency or credibility.

1.4 A Councillor will recognise that the Chief Executive Officer is the employer (on behalf of the Council) of all Council employees, and as such only the Chief Executive Officer or his/her delegate, may recruit, dismiss or instruct and/or censure an employee.

1.5 A Councillor will act to ensure that Whitehorse community members are accorded respect in their dealings with the Council, have their concerns listened to, and deliberated on in accordance with relevant legislative requirements.

2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor -

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

- 2.1 A Councillor will act with integrity, and impartially exercise their responsibilities in the interest of the Whitehorse community and not improperly seek to confer an advantage or disadvantage on any person.
- 2.2 A Councillor will avoid conflicts between their public duties as a Councillor and their personal interests.
- 2.3 A Councillor will attend and participate meaningfully in all Council meetings, committee meetings, briefings and training opportunities to assist them in fulfilling their roles.
- 2.4 A Councillor will not disclose information that they know or should reasonably know is confidential information.
- 2.5 A Councillor will make decisions in a considered, reasonable and fair manner, but treat all matters on individual merits.
- 2.6 A Councillor will promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct.
- 2.7 A Councillor will not be impaired by alcohol or drugs in the performance of Council duties.

3 Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following –

- a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors; and*
- b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act; and*
- c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act; and*
- d) any directions of the Minister issued under section 175 of the Act.*

- 3.1 A Councillor will comply with all Council policies, procedures and Council resolutions.
- 3.2 A Councillor will ensure that when considering a land-use planning or any other regulatory matter, they will not take any action, make any statement or convey any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.
- 3.3 A Councillor will not use Council resources or devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the Council's reputation.
- 3.4 A Councillor will deal with information received in their capacity as a Council member, in a responsible manner.
- 3.5 A Councillor who makes use of social media channels will ensure that personal comments made, clearly indicate that it is a personal view and not that of the Council.
- 3.6 A Councillor who becomes an endorsed candidate for a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election, should provide written advice to the CEO, as soon as practicable, who should then advise all Councillors.
- 3.7 A Councillor who nominates as a candidate for a state or federal election, will apply for leave of absence from Council, commencing on the day of nomination with the Victorian Electoral Commission/Australian Electoral Commission and concluding after the declaration of the poll.

4 Councillor must not discredit or mislead Council or public

In performing the role of a Councillor, a Councillor must –

- a) ensure that their behaviour does not bring discredit upon the Council; and*
 - b) not deliberately mislead the Council or the public about any matter related to the performance of their public duties.*
- 4.1 A Councillor will be committed to making decisions without bias and in the best interest of the Whitehorse community and comply with relevant conflict of interest provisions of the *Local Government Act 2020*.
 - 4.2 A Councillor will when expressing an opinion dissenting with the majority decision of Council, respect the democratic process by acknowledging that the Council decision represents the majority view of the Council.
 - 4.3 A Councillor will commit to using Council resources effectively and economically, and not use such resources in a manner that is improper or unauthorised.
 - 4.4 A Councillor will not misuse their position to gain an advantage for themselves or for any other person or to cause detriment to the Council or another person.
 - 4.5 A Councillor will not improperly direct or influence, or seek to improperly direct or to improperly influence a Council officer in the exercise of any power or in the performance of any duty or function by the staff member.
 - 4.6 A Councillor will base decisions on relevant and factually correct information and make decisions on merit, in the community's interests and in accordance with statutory obligations and principles of good governance and procedural fairness.
 - 4.7 A Councillor will represent the municipal community at events and functions as far as practicable and will abide by the Council's Gift Policy.
 - 4.8 A Councillor will avoid situations that may give rise to the appearance that a person or body is attempting to secure favourable treatment from the Councillor.

- 4.9 A Councillor will act honestly and avoid statements (whether oral or in writing) or actions or lack thereof, that will or are likely to mislead or deceive a person.
- 4.10 A Councillor will not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.

5 Standards do not limit robust political debate

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

(Standards of Conduct 1-5 as per Regulation 12 Local Government (Governance and Integrity) Regulations 2020)

Dispute Resolution

Councillors have an individual and collective responsibility to try every avenue possible to resolve such disputes in-house and from allowing them to escalate further.

Such in-house options include self-resolution, Mayoral negotiation and external mediation. Where a resolution cannot be achieved and/or the nature of the circumstances are such that the matter needs to proceed externally, seeking an internal arbitration or a Councillor Conduct Panel are available to be used.

Whilst the dispute resolution steps are designed to reach resolution, each stage of the resolution process (with the exception of those prescribed in the *Local Government Act 2020* or the *Local Government (Governance and Integrity) Regulations 2020*) is not a mandatory step.

Self-Resolution

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

Mayoral Negotiation

If self-resolution between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties. A dispute referred for Mayoral negotiation may relate to:

1. an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
2. an alleged breach of the Councillor Code of Conduct.

The party requesting the Mayoral negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a “Mayoral negotiation” dispute resolution process. Where the request relates to an alleged breach of the Councillor Code of Conduct, the request must:

- a) specify the name of the Councillor alleged to have contravened the Code;
- b) specify the provision(s) of the Code that is alleged to have been contravened;
- c) include evidence in support of the allegation;
- d) name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
- e) be signed and dated by the requestor or the requestor’s representative.

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

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

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

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act, the observation of the Councillor Code of Conduct. The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the parties should progress to external mediation.

Importantly, in the event that the dispute involves the Mayor, the matter will be referred to the CEO to appoint a suitably qualified independent person to facilitate discussion between the parties in dispute and to liaise with the CCO.

¹In accordance with section 150 of the Local Government Act 2020 the Chief Executive Officer must appoint a person in writing to be a Councillor Conduct Officer and must notify the Principal Councillor Conduct Registrar of the appointment.

External Mediation

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

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “self-resolution”.

The applicant is to submit a written application to the CCO setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged breach of the Councillor Code of Conduct, the application must:

- a) specify the name of the Councillor alleged to have breached the Code;
- b) specify the provision(s) of the Code that is alleged to have been breached;
- c) include evidence in support of the allegation;
- d) name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
- e) be signed and dated by the applicant or the applicant’s representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the CCO or as soon as practical thereafter. The CCO is to ascertain (in writing) whether or not the other party is prepared to attend an “external mediation”. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the CCO. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Councillor Code of Conduct. If the other party agrees to participate in an external mediation, the CCO is to advise the applicant, the Mayor and CEO immediately. The CCO is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged breach of the Councillor Code of Conduct. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged breach of the Councillor Code of Conduct.

Breaches of the Prescribed Standards of Conduct

Internal Arbitration process

An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by the Council following a resolution of the Council; or a Councillor or a group of Councillors.

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

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

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

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

The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if satisfied that the application is not frivolous, vexatious, misconceived or lacking in substance; and there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

An arbiter appointed to hear a matter subject to an application must conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and ensure that the hearing is not open to the public. An arbiter -

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

An Arbiter must refer certain applications -

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

Notes:

- Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.
- An application cannot be made for an internal resolution process during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election. If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume.

Request for Councillor Conduct Panel

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

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

Importantly, an application for a finding of serious misconduct must be made within 12 months of the alleged serious misconduct occurring.



Whitehorse City Council – Councillor Code of Conduct Flowchart of Dispute Resolution Options

(Whilst the dispute resolution steps are designed to reach resolution, each stage of the resolution process (with the exception of those prescribed in the Local Government Act 2020 or the Local Government (Governance and Integrity) Regulations 2020) is not a mandatory step).

Mayoral Negotiation

Step 1. Applicant must submit written request with various information.



Step 2. Within 5 days, Mayor will provide acknowledgement of receipt to applicant.



Step 3. Mayor will convene meeting to resolve dispute between parties.
(A further meeting may be convened, where required).

Note: *If dispute remains unresolved, the parties should progress to External Mediation.*

External Mediation

Where Mayoral Negotiation is unsuccessful or an application* is made with Mayor for an external mediation. (Written application* must include various information).

Step 1. The Mayor will lodge a written application with Councillor Conduct Officer (CCO) seeking an external mediator be appointed.



Step 2. The applicant to notify other party of request and provide a copy of application as soon as submitted to CCO or as soon as practicable.



Step 3. The CCO will write to other party to check whether willing to attend external mediation. (If other party declines to participate, must provide reasons in writing to CCO).



Step 4. If other party agrees to participate, the CCO to advise applicant, Mayor and CEO immediately.



Step 5. The CCO to engage an external mediator at earliest opportunity.
(Mediator to document agreement reached at meeting/s and provide copies to all parties).

Note: *If a party does not comply with agreement or dispute remains unresolved, the applicant has recourse to the Internal Arbitration Process (only where matter relates to an alleged breach of Councillor Code of Conduct).*

Whitehorse City Council – Councillor Code of Conduct

Flowchart of Dispute Resolution Options

Internal Arbitration Process

Step 1. Application to be made to Principal Councillor Conduct Registrar (PCCR) with various information provided.
(Must be made within 3 months of alleged misconduct occurring).



Step 2. PCCR will examine application and if satisfied, will appoint an Arbiter to hear the matter.



Step 3. Appointed Arbiter to convene hearing with all parties. (Not open to the public).
(The appointed arbiter may discontinue hearing for a number of reasons).



Step 4. Appointed Arbiter will –

A. Determine matter and provide statement of reasons to all parties
(confidential information).

OR

B. If matter deemed to involve serious misconduct, will refer the matter in writing to the PCCR. (PCCR will inform all parties, where a referral made by Arbiter).

Request for Councillor Conduct Panel

Step 1. Application with supporting information made to PCCR to establish a panel.
(An application for serious misconduct must be made within 12 months of alleged misconduct occurring).



Step 2. If satisfied, the PCCR will establish a panel to consider matter.

RELATED POLICIES AND LEGISLATION

Related legislation

- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Equal Opportunity Act 2010*
- *Privacy and Data Protection Act 2014*

Related Policies/Guides include:

- Conference Attendance and Travel by Councillors
- Council Expenses Policy
- Gift Benefits and Hospitality Policy
- Operational Policies for Councillors
- Public Transparency Policy
- Social Media Guide for Councillors
- Whitehorse Governance Rules 2020

The Whitehorse Councillor Code of Conduct is consistent with the *Charter of Human Rights and Responsibilities Act 2006*.

The Whitehorse Councillor Code of Conduct was unanimously adopted by Council at its meeting held on 22 February 2021.



ACKNOWLEDGEMENT OF COUNTRY

In the spirit of reconciliation, Whitehorse City Council acknowledges the Wurundjeri people as the traditional custodians of the land. We pay our respects to their Elders past and present.

CONTACTING COUNCIL

- Postal Address:** Whitehorse City Council
Locked Bag 2
Nunawading 3131
- Telephone:** 9262 6333
Fax: 9262 6490
NRS: 133 677 then quote 9262 6333
(Service for deaf or hearing impaired people)
- TIS:** 131 450
(Telephone Interpreter Service. Call and ask to be connected to Whitehorse City Council)
- Email:** customer.service@whitehorse.vic.gov.au
Website: www.whitehorse.vic.gov.au
- Service Centres:**
- Whitehorse Civic Centre**
379-397 Whitehorse Road, Nunawading 3131
 - Box Hill Town Hall Service Centre**
Box Hill Town Hall
1022 Whitehorse Road, Box Hill 3128
 - Forest Hill Service Centre**
Shop 275
Forest Hill Chase Shopping Centre
Canterbury Road, Forest Hill 3131

