

# Complaint Investigation Council Policy

## Responsible directorate: Office of the CEO

**Objective:** To establish the additional complaint investigation procedures to support the City's Code of Conduct for Council Members, Committee Members and Candidates.

### 1. Application:

This policy applies to council members, committee members and candidates where a complaint has been received by the City under the City's Code of Conduct of Council Members, Committee Members and Candidates.

This policy does not apply to the investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct which must be referred to the appropriate authority.

### 2. Definitions:

**"candidate"** means a candidate for election as a council member.

**"City"** means the City of Joondalup, being a local government established as a body corporate under section 2.5 of the Act.

**"CEO"** means the Chief Executive Officer of the City.

**"Code"** means the City's Code of Conduct for Council Members, Committee Members and Candidates.

**"committee member"** includes any council member, the CEO, employee or unelected member of the community in any of those cases, who has been appointed by Council to be a member of a committee.

**"complaint"** means a complaint made under clause 11(1) of the Code.

**"Council"** means the Council of the City.

**"Council member"** means the City's elected Mayor or an elected Councillor.

“**employee**” means a person:

- (a) employed by the City under section 5.36(1) of the Act; or
- (b) engaged by the City under a contract for services.

### **3. Statement:**

In accordance with section 5.104 of the *Local Government Act 1995* every Western Australian local government is to adopt a code of conduct to be observed by council members, committee members and candidates. A local government’s code of conduct is to reflect the model code of conduct prescribed by section 5.103(1) of the *Local Government Act 1995* which includes:

- general principles to guide behaviour
- requirements relating to behaviour
- provisions specified to be rules of conduct.

The City’s Code has been adopted for this purpose and ensures the roles and responsibilities of council members, committee members and candidates are understood and respected. This enables professional relationships to be established and maintained in the interests of providing good governance, overall integrity and good government for the community.

The Code sets out principles and standards of behaviour council members, committee members and candidates must observe and is intended to promote accountable and ethical decision-making and conduct.

The purpose of this policy is to detail the high-level complaint investigation considerations in support of the mechanisms for dealing with complaints detailed in the Code. It is intended to:

- contribute to fairness, integrity and good governance
- provide guidance on the key matters to be considered in the preparation, and in the course of an investigation in relation to breaches of the Code.

### **4. Authorised persons to receive complaints and withdrawals:**

4.1. In accordance with clause 11(3) of the Code:

- (a) the CEO is authorised to receive complaints and withdrawal of complaints under the Code; or
- (b) where the complainant is the CEO, the Director Governance and Strategy is authorised to receive complaints and withdrawal of complaints under the Code.

### **5. Assessment of complaint:**

5.1. In dealing with a complaint under the Code, one or all of following factors will be taken into account in assessing a complaint:

- (a) Whether an alternative and satisfactory means of redress is available.

- (b) Whether the complaint is trivial, frivolous or vexatious.
- (c) Whether the complaint is made within one month after the occurrence of the alleged breach.
- (d) How serious the complaint is and the significance it has for the complainant and the City.
- (e) Whether it indicates the existence of a systemic or widespread problem throughout the Council.
- (f) Whether it is one of a series of complaints about the same Council member, indicating a pattern of conduct or a continuous problem.

## **6. Nature of investigation:**

- 6.1. An investigation into a complaint, may be conducted by an employee or other external person, depending upon:
  - (a) the nature of the complaint
  - (b) the resources needed to conduct an investigation
  - (c) whether any additional authorisations from Council are required; or
  - (d) the nature of the possible outcome.
- 6.2. Subject to the matters detailed in clause 6.1, additional resources are authorised by Council, to investigate a complaint including the referral of the complaint to a third party.
- 6.3. All investigations must be conducted without bias and in an impartial and objective manner without any actual or perceived conflict of interest.

## **7. Powers of investigation:**

- 7.1. The employees detailed in clause 4.1 are authorised to commence an investigation and given the necessary powers and authority to oversee an investigation process under the Code and in line with this policy and other supporting complaint investigation protocols.
- 7.2. Any employee or other person appointed to perform an investigation into a complaint under the Code has the necessary powers to:
  - (a) inquire with all parties relevant to a complaint to provide any evidence or statements relevant to the matter the subject of the complaint
  - (b) obtain any information from other parties in relation to policies, procedures and practices including access to relevant records or witness statements.

## **8. Evidence:**

- 8.1. For the purposes of an investigation into a complaint, evidence can take the form of:
  - (a) oral or written evidence (recollections)

- (b) documentary evidence (records)
- (c) expert evidence (technical advice)
- (d) site inspections.

8.2. The person or persons appointed under clause 4.1 are to maintain a central investigation file detailing any documentary evidence or records obtained, and that file is to be maintained in the City's record-keeping system with restricted access to ensure confidentiality.

8.3. If legal proceedings might arise at some future stage, evidence should be gathered in accordance with the rules of evidence.

## **9. Appropriate standard of proof:**

9.1. In any investigation into a complaint, all allegations must be proved "on the balance of probabilities" that is it must be more probable than not that the allegations the subject of the complaint are made out.

## **10. Procedural fairness:**

10.1. All investigations of a complaint are to observe due process and procedural fairness.

10.2. Procedural fairness for an investigation shall include:

- (a) ability for a person or persons the subject of a complaint an opportunity to respond
- (b) all parties given a reasonable opportunity to put their case, whether in writing, in person, or otherwise
- (c) the careful consideration of all evidence obtained during the course of the investigation
- (d) reasonable inquiries or an investigation being made before the making of a decision
- (e) taking into account all relevant factors and not irrelevant factors
- (f) ensuring any conflicts of interest are managed appropriately
- (g) acting fairly and without bias
- (h) conducting the investigation without undue delay.

## **11. Investigation report:**

11.1. At the conclusion of the investigation a confidential report is to be prepared detailing:

- (a) the substance of the complaint
- (b) the nature and extent of the investigation into the complaint
- (c) the evidence obtained during the investigation into the complaint

- (d) the recommended finding in relation to the complaint
- (e) any recommended plan prepared to address the behaviour of the person to whom the complaint relates.

## 12. Management of actions:

12.1. All findings made in contravention of the Code, and any associated actions, will be monitored and managed by persons detailed in clause 4.1 of this policy and clause 11(3) of the Code.

## 13. Reporting:

13.1. The City will maintain a register of complaints lodged with those persons authorised under clause 4.1 and dealt with under the Code. The register will be available on the City's website for public inspection.

13.2. Details of complaints received during a financial year, and how they were dealt with under the Code, are to be reported annually in the City's Annual Report and provided to Council members from time to time.

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**Creation date:** May 2021 (CJ071-05/21)

**Formerly:**

**Amendments:**

**Last reviewed:** May 2021 (CJ071-05/21)

**Related documentation:**

- Local Government Act 1995
- Local Government (Model Code of Conduct) Regulations 2021
- City of Joondalup Code of Conduct for Council Members, Committee Members and Candidates

**File reference:** 109560