



City of  
**Moonee Valley**

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# **Special Meeting of Council**

Tuesday, 17 May 2016 at 7.00pm

**Agenda**

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# Special Meeting of Council

Tuesday, 17 May 2016 at 7.00pm  
to be held at the Moonee Valley Civic Centre

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**TO :**

**Members:** Cr Andrea Surace Mayor  
Cr Paul Giuliano  
Cr Jan Chantry  
Cr Shirley Cornish  
Cr Jim Cusack  
Cr Nicole Marshall  
Cr Cam Nation  
Cr Narelle Sharpe  
Cr John Sipek

**Officers:** Mr Bryan Lancaster Chief Executive Officer  
Mr Anthony Smith Director Corporate & Community Services  
Mr Henry Bezuidenhout Acting Director Planning & Development  
Mr Gil Richardson Acting Director City Services  
Ms Yvonne Hansen Manager Legislative Services & Support

## **Business:**

- 1. Opening**
- 2. Apologies**
- 3. Declarations of Conflict of Interest**
- 4. Reports**
  - 4.1 Councillor Code of Conduct Review .....3
- 5. Close of Meeting**

**BRYAN LANCASTER**  
Chief Executive Officer

## REPORTS

### 4.1 Councillor Code of Conduct Review

**File No:** FOL/16/130  
**Author:** Coordinator Legislative Services  
**Directorate:** Corporate & Community Services  
**Ward:** Municipal

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#### Purpose

The purpose of this report is to present a revised Councillor Code of Conduct for endorsement which has been developed to meet the requirements of the *Local Government Amendment (Improved Governance) Act 2015*.

#### Executive Summary

- There is a legislative requirement that Council must review its Councillor Code of Conduct by 2 June 2016.
- It is proposed to maintain previously adopted material, however it is recommended to incorporate requirements of the recent amendment and matters important to Local Government.

#### Recommendation

That Council:

1. Having undertaken a review of its Councillor Code of Conduct as required under the *Local Government Amendment (Improved Governance) Act 2015*, hereby endorse the adoption of its new Councillor Code of Conduct (provided as **Appendix A**).
2. Request the Chief Executive Officer to:
  - a) ensure that the new Councillor Code of Conduct is signed by and a copy provided to each Councillor;
  - b) make a copy available for inspection at Council's Civic Centre; and
  - c) make a copy available on Council's website.

#### Background

Council adopted its current Councillor Code of Conduct ("the Code") on 28 May 2013. The requirements relating to the Councillor Code of Conduct resulting from the *Local Government Amendment (Improved Governance) Act 2015*, gazetted on

23 February 2016, compel Council to review and make any necessary amendments and present for adoption at a Special Meeting of Council by 2 June 2016.

### Discussion

The Code, as it stands, does not replicate what is expressly prescribed by legislation and/or Council policy, but rather places emphasis on matters customary to Council.

Therefore, the proposed Councillor Code of Conduct (refer **Appendix A**) intentionally maintains previously adopted material, however includes provisions to reflect recent amendments to legislation and matters prevalent to Local Government.

The provisions which have been changed, are as follows:

- a) Role of Mayor – changed to the “Functions of Mayor” in accordance with the Amendment, also changed to include reference to Council’s Media and Issues Management Policy;
- b) Role of Spokesperson has been removed – now covered in the Functions of Mayor;
- c) Role of Portfolio Councillor – Title changed to the “Functions of Portfolio Councillor” for consistency and changed to include reference to Council’s Media and Issues Management Policy;
- d) Candidature of Councillors at State or Federal Elections – updated in line with the MAV recommendations;
- e) Relationships with Staff – a minor wording change (shall has been replaced with will) and the term delegated representatives has been included;
- f) Council Policies – new provision making breach of Council policy a breach of the Councillor Code of Conduct;
- g) Procedure for Internal Dispute Resolution – removed and replaced with a new Internal Resolutions Procedure as required by the Amendment;
- h) Sanctions for the Contravention of the Code of Conduct – new provision in accordance with the Amendment;
- i) Endorsement – removed and replaced with a new Declaration as required by the Amendment.

### Consultation

Councillors have been consulted during the development and preparation of the new Councillor Code of Conduct.

### Implications

#### 1. Legislative

The *Local Government Amendment (Improved Governance) Act 2015*, gazetted on 23 February 2016, compels Council to review and make any necessary amendments to its Councillor Code of Conduct by 2 June 2016.

As this is a statutory obligation, there are no Charter of Human Rights implications for Council.

**2. Council Plan / Policy**

In presenting this report to Council, Council is achieving its Strategic Objective to Build a culture of governance that instils a high level of community respect and confidence in Council decision-making in accordance with Council Plan 2013-2017 Theme 1: Excellence in governance Dynamic, effective and accountable.

**3. Financial**

There are no financial implications associated with this report.

**4. Environmental**

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**Conclusion**

A Councillor Code of Conduct contributes to, and strengthens the foundations of the collaborative spirit between elected representatives. Importantly, consistent with their legal obligations, Councillors are expected to observe certain behaviours that support the effective decision making processes of the Council. It is considered that the Councillor Code of Conduct will support Councillors in achieving these objectives.

**Appendices**

Appendix A: Councillor Code of Conduct 2016

# Councillor Code of Conduct

Moonee Valley City Council

In performing the functions and exercising the powers conferred by or under the Local Government Act 1989 (the Act) or any other Act for the peace, order and good government of the municipal district of Moonee Valley City Council, Councillors will adhere to the following Councillor conduct principles in compliance with sections 76B and 76BA of the Act –

**1. Primary principle of Councillor conduct**

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- a) act with integrity; and
- b) impartially exercise his or her responsibilities in the interests of the Moonee Valley community; and
- c) not improperly seek to confer an advantage or disadvantage on any person.

**2. General Councillor conduct principles**

In addition to acting in accordance with the primary principle of Councillor conduct specified above, in performing the role of a Councillor, a Councillor must—

- a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons;
- d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- f) act lawfully and in accordance with the trust placed in him or her as an elected representative; and
- g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

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### **3. Other General Principles**

#### **3.1 Functions of Mayor**

The functions of the Mayor of a Council include:

- a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under the Act; and
- b) acting as the principal spokesperson for the Council (as required by Council's Media and Issues Management Policy; and
- c) supporting good working relations between Councillors; and
- d) carrying out the civic and ceremonial duties of the office of Mayor.

#### **3.2 Functions of Portfolio Councillor**

Councillors acknowledge and respect that the Portfolio Councillor's function involves:

- a) receiving and providing preliminary feedback in relation to issues impacting on the portfolio;
- b) increasing their level of knowledge, understanding and involvement in the area; and
- c) In accordance with Council's Media and Issues Management Policy, functioning as a Council spokesperson in matters that arise in relation to their portfolio.

#### **3.3 Designated Confidential Material**

Notwithstanding Section 77 (Confidential Information) of the Local Government Act 1989, Councillors acknowledge and respect that all material prepared under the direction of the Chief Executive Officer and issued to Councillors for consideration at relevant internal briefings involving Councillors, shall be deemed and remain as confidential material, unless resolved otherwise by Council or the Chief Executive Officer has informed all Councillors in writing or the material is no longer confidential by virtue of being in the public domain (other than as a consequence of a disclosure by a Councillor in contravention of the Act or this section).

#### **3.4 Candidature of Councillors at a State or Federal Election**

Councillors will acknowledge and adhere to the following guidelines, when running at a State or Federal Election:

- a) A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), must provide written advice to the CEO, as soon as practicable, who must then advise all councillors.

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- b) A Councillor who is a Prospective Candidate, must declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to Guideline 3.4(a).
- c) A Councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), must apply for leave of absence from the Council and this leave of absence must commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence must not attend meetings of the Council or otherwise act as a Councillor.
- d) All contact with Council officers shall be through the Chief Executive Officer or his/her nominee/s, the names of which must be advised to relevant Councillors.
- e) A Councillor who is a Prospective Candidate or a Nominated Candidate speaking on Council issues as a candidate in an election must clearly identify this fact. Where a Councillor misrepresents the Council position in election commentary, the Mayor or Chief Executive Officer may make a public comment clarifying the position of Council.
- f) A Councillor who is a Prospective Candidate or a Nominated Candidate must not use Council resources, including: time, Council funds, equipment including IT equipment, vehicle, phones, stationery, utilising officer time and facilities in relation to his/her candidacy.
- g) A Councillor who is a Prospective Candidate or a Nominated Candidate, must not use Council activities, including committee meetings and Council-related external activities in relation to his/her candidacy.

### 3.5 Voting

Where seeking to achieve its primary objective, a Council must have regard to ensure transparency and accountability in Council decision making. It is Councillor's preferred position to always vote, however it is also acknowledged that there may be exceptional circumstances where a Councillor may exercise their legal right to abstain from voting.

### 3.6 Relationships with Staff

Councillors recognise that it is the role of the Chief Executive Officer to direct staff on all Council matters. Where it is required, any request for information or action will be directed to the relevant Executive Team member (or their delegated representative) or through the Mayor and Councillors support staff.

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### 3.7 Council Policies

Councillors agree to abide by all Council adopted Policies, Protocols, and/or Guidelines. Councillors acknowledge that a breach of any Council adopted Council Policy, Protocol or Guideline will be deemed to be a breach of this Code of Conduct.

## 4. Internal Resolutions Procedure

4.1 Before commencing any formal dispute resolution process, the Councillor/s who are parties to any disagreement or alleged breach of this Code of Conduct will, endeavour to resolve the matter in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the people of Moonee Valley.

4.2 In the event that the parties cannot resolve the matter, the first stage of the internal resolution process will be:

- a) If the complainant is another Councillor, the Mayor (or Deputy Mayor should the Mayor be a party to the matter) is to initiate a meeting with the Councillors concerned and facilitate discussions between the parties. This is to be undertaken with the Mayor remaining impartial and not taking a position on the matter of contention. This meeting must be undertaken within 7 days of the dispute or the alleged breach of conduct being reported.
- b) If the complainant is a Council officer, the Mayor (or Deputy Mayor should the Mayor be a party to the matter) is to initiate a meeting and facilitate discussions between the parties. This is to be undertaken with the Mayor remaining impartial and not taking a position on the matter of contention. The officer's relevant Director or the Chief Executive Officer will also be in attendance on behalf of the officer involved. This meeting must be undertaken within 7 days of the dispute or the alleged breach of conduct being reported.

If the parties concerned do not wish step 4.2(a) or 4.2(b) (which ever applies) to be undertaken, then the parties will move to step 4.3 of the process.

4.3 Where a dispute occurs and it is unable to be resolved; or an alleged breach of this Code of Conduct is reported, the Councillor/s concerned agree to work towards resolving the dispute by the appointment of an arbiter who is suitably independent and able to carry out the role of arbiter fairly. This Arbiter, as nominated by the Chief Executive Officer will be acceptable to both parties, or failing agreement, the Chief Executive Officer will seek assistance from the MAV or other peak bodies to select an appropriate arbiter.

4.4 When an arbiter is appointed, all Councillors agree to cooperate with the internal resolution process and use their best endeavours to assist the arbiter when requested.

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- 4.5 The role of the arbiter is to:
- a) Act fairly and without bias;
  - b) Ensure that the rules of natural justice are observed and applied in the hearing of the matter;
  - c) Ensure that all hearings are closed to the public;
  - d) Confirm with those alleging the breach of the Code of Conduct, the main points of their allegations;
  - e) In accordance with procedural fairness, provide the Councillor/s concerned with reasonable opportunity to be heard;
  - f) Hear all other parties to the matter and consider their submissions;
  - g) Make reasonable inquiries or investigations before making a finding. (A finding that will negatively affect a Councillor should not be based on suspicion, gossip or rumour. There must be factual information to support all findings);
  - h) Only take into account relevant factors;
  - i) Ensure that a full written record of the investigation has been prepared;
  - j) Make a clear finding as to whether or not there has been a contravention of the Councillor Code of Conduct;
  - k) Provide a written report of findings, including the reasons supporting those findings, to Council and the parties concerned.
- 4.6 Through application of these processes, if any contravention of this Code of Conduct remains unresolved or is deemed to be Misconduct, it will be referred by Council's Principal Conduct Officer to the Councillor Conduct Panel Registrar in accordance with the Local Government Act 1989.
- 4.7 If the dispute or breach of the Code of Conduct relates to an apparent offence under the Local Government Act 1989, for matters such as misuse of position, improper direction or influence, confidential information, conflict of interest, electoral conduct etc. it should be referred to the relevant Minister and not be the subject of an application to a Councillor Conduct Panel.
- 4.8 The dispute resolution procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and/or Committee meetings.

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Moonee Valley City Council

Councillor Code Of Conduct

### Sanctions for the Contravention of this Code of Conduct

If, after an internal resolution procedure has been conducted, it is found that a Councillor has contravened this Code of Conduct, Council may give one of the following written directions to the Councillor:

- a) Direct the Councillor to make an apology in a form or manner specified by Council.
- b) Direct the Councillor to not to attend up to, but not exceeding, the next 2 scheduled meetings of the Council.
- c) Direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by Council, the Councillor:
  - i) be removed from any position where he or she represents the Council; and
  - ii) to not chair or attend any advisory or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

### Declaration

I declare that I have read, understand and will abide by the provisions of this Councillor Code of Conduct:

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Cr Jan Chantry

Cr Shirley Cornish

Cr Jim Cusack

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Cr Paul Giuliano

Cr Nicole Marshall

Cr Cam Nation

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Cr Narelle Sharpe

Cr John Sipek

Cr Andrea Surace

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Witnessed by the Chief Executive Officer

Date

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