

Shire OF
Wiluna



CODE OF CONDUCT

**For Councillors, Committee Members and
Staff (Employees)**

MAY 2018

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PREAMBLE

The Shire of Wiluna Code of Conduct provides Council Members, Committee Members and staff with consistent guidelines for an acceptable standard of professional conduct. The Code addresses, in a concise manner, the broader issue of ethical responsibility and encourages greater transparency and accountability.

The Shire of Wiluna's Code is complementary to the principles adopted in the Local Government Act and regulations which incorporates four fundamental aims to result in: -

- (a) better decision-making by the Shire;
- (b) greater community participation in the decisions and affairs of the Shire;
- (c) greater accountability of the Shire to their communities; and
- (d) more efficient and effective Shire.

The Code provides a guide and a basis of expectations for Council Members, Committee Members and staff. It encourages a commitment to ethical and professional behaviour and outlines principles in which individual and collective Shire's responsibilities may be based.

*In **VERY** simple terms: this Code of Conduct informs every one of the expected/required behaviour and actions from Councillors, Committee members and all staff (including contractors and Volunteers). It also makes everyone aware of the consequences if Councillors, Committee members and staff do not act or behave like this Code of Conduct requires.*

STATUTORY ENVIRONMENT

The Shire of Wiluna's Code of Conduct observes statutory requirements of the Local Government Act 1995 (S 103 - Codes of Conduct) and Local Government (Administration) Regulations 1996 (Regs 34B and 34C).

RULES OF CONDUCT

Council Members acknowledge their activities, behaviour and statutory compliance obligations may be scrutinised in accordance with prescribed rules of conduct as described in the Local Government Act 1995 and Local Government (Rules of Conduct) Regulations 2007.

1. ROLES

1.1 Role of Council Member

The primary role of a Council Member is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the Shire will be the focus of the Council Member's public life.

The Role of Council Members as set out in S 2.10 of the Local Government Act 1995 follows:

"A Councillor —

- (a) Represents the interests of electors, ratepayers and residents of the district;*
- (b) provides leadership and guidance to the community in the district;*
- (c) facilitates communication between the community and the council;*
- (d) participates in the local government's decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a Councillor by this Act or any other written law."*

A Council Member is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives. In fulfilling the various roles, Council Members activities will focus on:

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- achieving sound financial management and accountability in relation to the Shire's finances;
- ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns; working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- having an awareness of the statutory obligations imposed on Council Members and on the organisation as a whole.

In carrying out its functions the Shire of Wiluna will use its best endeavours to meet the needs of current and future generations through integration of environmental protection, social advancement and economic prosperity.

1.2 Role of Staff (Employee)

The role of staff is determined by the functions of the Chief Executive Officer (CEO) as set out in S 5.41 of the Local Government Act 1995:

"The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws;*
- (b) ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) cause council decisions to be implemented;*
- (d) manage the day to day operations of the local government;*
- (e) liaise with the mayor or president on the local government's affairs and the performance of*

- the local government's functions;*
- (f) speak on behalf of the local government if the mayor or president agrees;*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to S 5.37(2) in relation to senior employees);*
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) 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."*

1.3 Role of Council

The Role of the Council is in accordance with S 2.7 of the Local Government Act 1995:

- "(1) The council —*
 - (a) directs and controls the local government's affairs; and is responsible for the performance of the local government's functions.*
- (2) Without limiting subsection (1), the council is to —*
 - (a) oversee the allocation of the local government's finances and resources; and*
 - (b) determine the local government's policies."*

1.4 Relationships between Council Members and Staff

An effective Councillor will work as part of the Council team with the Chief Executive Officer and other members of staff. That teamwork will only occur if Council Members and staff have a mutual respect and co-operate with each other To achieve the Council's corporate goals and implement the Council's strategies. To achieve that position, Council Members need to observe their statutory obligations which include, but are not limited to, the following:

- accept that their role is a leadership, not a management or administrative one;
- acknowledge that they have no capacity to individually direct members of staff to carry out particular functions;
- refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility;

Staff are employed by and responsible to the CEO of the Shire of Wiluna. While their direction, supervision and management is the sole responsibility of the CEO in accordance with Section 5.41(g) of the *Local Government Act 1995*, it is also recognised that the CEO has a responsibility to the Council of the Shire of Wiluna to ensure employees provide it with relevant and quality advice.

- Staff shall therefore be aware of their duty to, via the CEO, provide relevant and quality advice to the Council and Committees.
- Staff shall also act courteously and with due respect during their dealings with the Council, any Committee, any Council Member or Committee member.
- It is expected that Staff will deal with each other, Council Members and Committee Members in an honest and respectful manner.

Councillors, Committee Members and Staff shall act in a professional, courteous, honest and respectful manner towards each other.

Cultural Values

Elected Members, Committee Member and Staff are expected to work within the values and display the following behaviours.

Respect: Treat others with consideration and courtesy. Encourage and acknowledge effort and initiative. Believe in the ability of others. Recognise and encourage diversity.

Openness: Share information and ideas. Listen and provide feedback. Only talk positively about others. Take responsibility for own actions.

Leadership: Involve staff in decision-making. Communicate plans and objectives. Encourage learning and personal development. Lead by example.

Excellence: Strive to learn. Actively seek and evaluate new ways of doing things. Encourage awareness of our Stakeholders. Actively support a team environment.

2. CONFLICT AND DISCLOSURE OF INTEREST

2.1 Conflict of Interest

- (a) Council Members, Committee Members and staff will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.
- (b) Staff will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Shire of Wiluna, without first making disclosure to the Chief Executive Officer. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided. Council Members, Committee Members and staff will lodge written notice with the Chief Executive Officer describing an intention to undertake a dealing in land within the Shire area or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).
- (c) Council Members, Committee Members and staff who exercise recruitment or other discretionary functions will make disclosure before dealing with relatives or close friends and will disqualify themselves from dealing with those persons.
- (d) Staff will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity. An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti-discriminatory legislation.
- (e) The Chief Executive Officer and/or designated Senior Employees are not allowed to submit a Tender/Quote for any Shire of Wiluna works and/or services on behalf of themselves or their associated companies or businesses.
- (f) The Shire's Chief Executive Officer including a contractor Chief Executive Officer can only hold one employed/contractor/consultant position within the Shire, that being the position of Chief Executive Officer.
- (g) staff including contractors, who are involved in the preparation of tenders will be excluded from submitting to those Tender/s. This exclusion also applies to any associated business and companies of the staff member/contractor.

2.2 Financial Interest

Council Members, Committee Members and staff will adopt the principles of disclosure of financial interest as contained within the Local Government Act.

2.3 Disclosure of Interest

Definition:

In this clause, and in accordance with Regulation 34C of the Local Government (Administration) Regulations 1996 -

“interest” means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

- (a) A person who is an employee and who has an interest in any matter to be discussed at a council or committee meeting attended by the person is required to disclose the nature of the interest -
 - (i) in a written notice given to the CEO before the meeting; or
 - (ii) at the meeting, immediately before the matter is discussed.
- (b) A person who is an employee and who has given, or will give, advice in respect of any matter to be discussed at a council or committee meeting not attended by the person is required to disclose the nature of any interest the person has in the matter -
 - (i) in a written notice given to the CEO before the meeting; or
 - (ii) at the time the advice is given.
- (c) A requirement described under items (a) and (b) exclude an interest referred to in S 5.60 of the Local Government Act 1995.
- (d) A person is excused from a requirement made under items (a) or (b) to disclose the nature of an interest if -
 - (i) the person's failure to disclose occurs because the person did not know he or she had an interest in the matter; or
 - (ii) the person's failure to disclose occurs because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person discloses the nature of the interest as soon as possible after becoming aware of the discussion of a matter of that kind.
- (e) If a person who is an employee makes a disclosure in a written notice given to the CEO before a meeting to comply with requirements of items (a) or (b), then -
 - (i) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
 - (ii) immediately before a matter to which the disclosure relates is discussed at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present.
- (f) If -
 - (i) to comply with a requirement made under item (a), the nature of a person's interest in a matter is disclosed at a meeting; or
 - (ii) a disclosure is made as described in item (d) (ii) at a meeting; or
 - (iii) to comply with a requirement made under item (e) (ii), a notice disclosing the nature of a person's interest in a matter is brought to the attention of the persons present at a meeting, the nature of the interest is to be recorded in the minutes of the meeting.

3. PERSONAL BENEFIT

3.1 Use of Confidential Information

Council Members, Committee Members and staff will not use confidential information to gain improper advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially and in good faith, or to improperly cause harm or detriment to any person or organisation.

3.2 Intellectual Property

The title to Intellectual Property in all duties relating to contracts of employment will be assigned to the Shire upon its creation unless otherwise agreed by separate contract.

3.3 Improper or Undue Influence

Council Members and staff will not take advantage of their position to improperly influence other Council Members or staff in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

3.4 Gifts

Definitions:

In this clause, and in accordance with Regulation 34B of the Local Government (Administration) Regulations 1996 -

- *“activity involving local government discretion” means an activity - that cannot be undertaken without an authorisation from the local government; or by way of a commercial dealing with the local government;*
- *“gift” has the meaning given to that term in S 5.82(4) except that it does not include - a gift from a relative as defined in S 5.74(1); or a gift that must be disclosed under Regulation 30B of the Local Government (Elections) Regulations 1997; or a gift from a statutory authority, government instrumentality or nonprofit association for professional training;*
- *“notifiable gift”, in relation to a person who is an employee, means -*
 - *a gift worth between \$50 and \$300; or*
 - *a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth between \$50 and \$300; “prohibited gift”, in relation to a person who is an employee, means -*
 - *a gift worth \$300 or more; or*
 - *a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth \$300 or more*

- (a) A person who is an employee is to refrain from accepting a prohibited gift from a person who -
 - (i) is undertaking or seeking to undertake an activity involving a Shire discretion; or
 - (ii) it is reasonable to believe is intending to undertake an activity involving a Shire discretion.
- (b) A person who is an employee and who accepts a notifiable gift from a person who -
 - (i) is undertaking or seeking to undertake an activity involving a Shire discretion; or
 - (ii) it is reasonable to believe is intending to undertake an activity involving a Shire discretion, notify the CEO, in accordance with item (c) and within 10 days of accepting the gift, of the acceptance.
- (c) The notification of the acceptance of a notifiable gift must be in writing and include -
 - (i) the name of the person who gave the gift; and
 - (ii) the date on which the gift was accepted; and

- (iii) a description, and the estimated value, of the gift; and
 - (iv) the nature of the relationship between the person who is an employee and the person who gave the gift; and
 - (v) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition) -a description; and
 - (1) the estimated value; and
 - (2) the date of acceptance,
 of each other gift accepted within the 6-month period.
- (d) The CEO is to maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under item (c).
- (e) This clause does not apply to gifts received from a relative (as defined in S 5.74(1) of the Local Government Act) or an electoral gift (to which other disclosure provisions apply).
- (f) This clause does not prevent the acceptance of a gift on behalf of the Shire in the course of performing professional or ceremonial duties in circumstances where the gift is presented in whole to the CEO, entered into the Register of Notifiable Gifts and used or retained exclusively for the benefit of the Shire.

3.5 Disclosure of Gifts and Contributions to Travel and Remote Attendance at Council Meetings

As of 4 March 2016, the Act requires **relevant persons** who accept a gift worth more than \$200 to disclose this gift, in writing, to the chief executive officer (CEO) within 10 days of receipt. This replaces the previous process of disclosing these in the annual return. All contributions to travel over \$200 must also be disclosed as do multiple gifts or contributions from the same donor where the total value is over \$200.

The threshold for disclosures remains the same as do the other disclosures required under the Act for the annual return.

A relevant person is defined under section 5.74 of the Act as a person who is a council member or a designated employee which includes:

- (g) mayors
- (h) presidents
- (i) council members
- (j) the CEO
- (k) employees with delegated powers and duties under Part 5, Division 4 of the Act
- (l) employees who are members of committees comprising elected members and employees, and
- (m) other employees nominated by the local government to be designated employees

Section 5.78(1) is amended to remove the need to disclose gifts and contributions to travel under sections 5.82 and 5.83 in the annual return.

Sections 5.82 and 5.83 are amended - From 4 March 2016, these sections require relevant persons to declare gifts and contributions to travel, in writing, to the CEO within 10 days of receipt, rather than on an annual basis. This includes multiple gifts made within a year by the same person, the aggregate value of which reach the prescribed amount of \$200.

The disclosure for a gift must include:

- (n) a description of the gift
- (o) the name and address of the person who made the gift
- (p) the date on which the gift was received
- (q) the estimated value of the gift at the time it was made, and
- (r) the nature of the relationship between the relevant person and the person who made the gift.

For contributions to travel, the disclosure must include:

- (s) a description of the contribution
- (t) the name and address of the person who made the contribution
- (u) the date on which the contribution was received
- (v) the estimated value of the contribution at the time it was made
- (w) the nature of the relationship between the relevant person and the person who made the contribution
- (x) a description of the travel, and
- (y) the date of travel

3.5.1 Register of gifts and contributions to travel

A new section 5.89A requires the CEO to keep a register of gifts and contributions to travel in the form prescribed (see Form 4 attached).

The CEO is required to make the register available for public inspection and to publish it on the local government's official website.

If the person ceases to be a relevant person, the CEO is to remove from the register all records relating to that person. These records, however, must be retained for at least five years and made available for public inspection.

3.5.2 Offences

New section 5.89B makes it an offence if a person does not comply with sections 5.82 and 5.83 in relation to the disclosure of gifts and contributions to travel.

Section 5.89 is amended making it an offence for the person to give false or misleading information or to provide information which is likely to deceive in relation to the disclosure of gifts and contributions to travel.

The penalty for each offence is a fine of \$10,000 or imprisonment for two years.

Section 9.25(1) is amended to provide that there is no time limit for bringing a prosecution against a person who has not disclosed gifts or contributions to travel.

3.5.3 Transitional provisions for council members

Regulations 14 and 15 require council members to disclose gifts and contributions to travel received between 1 July 2015 and 3 March 2016 within 28 days from 4 March 2016 (that is, by 31 March). This disclosure is necessary as these will no longer form part of the annual return. The disclosure needs to be in writing and to the CEO.

Regulations 14(7) and 15(7) require the CEO to maintain the register of gifts and contributions to travel received by council members during the transitional period.

3.5.4 Transitional provisions for designated employees

Regulations 34F and 34G require designated employees to disclose gifts and contributions to travel received between 1 July 2015 and 3 March 2016 within 28 days from 4 March 2016. This disclosure is necessary as these will no longer form part of the annual return. The disclosure needs to be in writing and to the CEO.

Regulation 34F(7) and 34G(7) require the CEO to maintain the register of gifts and contributions to travel received by designated employees during the transitional period.

3.5.5 Forms

Form 3 - Parts 4 and 5 have been deleted from Form 3 (annual return) as there is no longer a requirement to disclose gifts and contributions to travel in the annual return.

Form 4 - New Form 4 is the register the CEO is to keep which is established under section 5.89A of the Act. A copy of this form is attached.

3.5.6 Remote attendance at council meetings

Regulation 14A amended to enable a person with a disability to attend a meeting with fewer restrictions. 'Disability' has the same meaning as in section 3 of the *Disability Services Act 1993*.

- 1) The words 'other than a person with a disability' are inserted in regulation 14A(2) which effectively means that this class of persons will no longer be required to be physically present for at least half of the council meetings.
- 2) The existing definition of 'suitable place' is amended, allowing council to approve a place to be suitable in relation to a person with a disability without the restriction that it must be within a townsite and more than 150 kilometres from the place of the meeting.

3.5.7 Closely associated persons

Regulation 20 is amended to correct a drafting error. The effect is that a person that receives legal or financial professional services from an elected member or supplies those services to an elected member is a closely associated person for the purposes of section 5.62 of the Act. The elected member must disclose this if a matter comes before council in which the person has a direct or indirect interest or a proximity interest. This regulation gives effect to a recommendation by the Panel Inquiry into the City of Cockburn.

4. CONDUCT OF COUNCIL MEMBERS, COMMITTEE MEMBERS AND STAFF

4.1 Personal Behaviour

(a) Council Members, Committee Members and staff will:

- (i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- (ii) perform their duties impartially and in the best interests of the Shire uninfluenced by fear or favour;
- (iii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Shire and the community;
- (iv) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and always act in accordance with their obligation of fidelity to the Shire.

(b) Council Members will represent and promote the interests of the Shire, while recognising their special duty to their own constituents.

4.2 Honesty and Integrity

Council Members, Committee Members and staff will:

- (a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- (b) bring to the notice of the Shire President any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee to the Chief Executive Officer.
- (c) be frank and honest in their official dealing with each other.

4.3 Personal Communications and Social Media

- (a) Personal communications and statements made privately in conversation, written, recorded, emailed or posted in personal social media, have the potential to be made public, whether it was intended to be made public or not.

Therefore, on the basis that personal or private communications may be shared or become public at some point in the future, Elected Members and Employees must ensure that their personal and private communications do not breach the requirements of this Code of Conduct and for Elected Members, the *Local Government (Rules of Conduct) Regulations 2007*.

- (b) Employees must not, unless specifically authorised to do so, disclose information, make comments or engage in communication activities about or on behalf of the Shire of Wiluna, its Elected Members, employees or contractors, which breach this Code of Conduct.

- (c) Elected Member comments which become public and breach the *Local Government (Rules of Conduct) Regulations 20017* may constitute a serious breach of the *Local Government Act 1995* and may be referred for investigation.
- (d) Employee comments which become public and breach the Code of Conduct, or any other operational policy or procedure, may constitute a disciplinary matter and may also be determined as misconduct and be reported under the *Public Sector Management Act 1992*.

4.4 Performance of Duties

- (a) While on duty, staff will give their whole time and attention to the Shire's business and ensure that their work is carried out efficiently, economically and effectively, and that their standard of work reflects favourably both on them and on the Shire.
- (b) Council Members and Committee Members will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Council Members and Committee Members will be as informed as possible about the functions of the Council, and treat all members of the community honestly and fairly.

4.5 Compliance with Lawful Orders

- (a) Council Members, Committee Members and staff will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety of any such order being taken up with the superior of the person who gave the order and, if resolution cannot be achieved, with the Chief Executive Officer.
- (b) Council Members, Committee Members and staff will give effect to the lawful policies of the Shire, whether or not they agree with or approve of them.

4.6 Administrative and Management Practices

Council Members, Committee Members and staff will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

4.7 Corporate Obligations

(a) Standard of Dress

Council Members, Committee Members and staff are expected to comply with neat and responsible dress standards at all times. Accordingly:

- (i) Council Members and Committee Members will dress in a manner appropriate to their position, in particular when attending meetings or representing the Shire in an official capacity.
- (ii) The Shire reserves the right to adopt policies relating to corporate dress standards.

(b) Communication and Public Relations

- (i) All aspects of communication by staff (including verbal, written or personal), involving Shire's activities should reflect the status and objectives of that Shire. Communications should be accurate, polite and professional.

- As a representative of the community, Council Members need to be not only

responsive to community views, but to adequately communicate the attitudes and decisions of the Council. In doing so Council Members should acknowledge that: as a member of the Council there is respect for the decision-making processes of the Council which are based on a decision of the majority of the Council;

- information of a confidential nature ought not be communicated until it is no longer treated as confidential;
- information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the Council;
- information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

(ii) Committee Members accept and acknowledge it is their responsibility to observe any direction the Shire may adopt in terms of advancing and promoting the objectives of the Committee to which they have been appointed.

4.8 Appointments to Committees

As part of their representative role Council Members are often asked to represent the Council on external organisations. It is important that Council Members:

- clearly understand the basis of their appointment; and
- provide regular reports on the activities of the organisation.

5. DEALING WITH COUNCIL PROPERTY

5.1 Use of Shire Resources

Council Members and Staff will:

- (a) be scrupulously honest in their use of the Shire's resources and shall not misuse them or permit their misuse (or the appearance of misuse) by any other person or body;
- (b) use the Shire resources entrusted to them effectively and economically in the course of their duties; and
- (c) not use the Shire's resources (including the services of Shire Staff) for private purposes (other than when supplied as part of a contract of employment or Shire Policy), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer) Travelling and Sustenance Expenses

Council Members, Committee Members and Staff will only claim or accept travelling and sustenance expenses arising out of travel-related matters which have a direct bearing on the services, policies or business of the Shire in accordance with Shire policy and the provisions of the Local Government Act 1995.

5.2 Access to Information

- (a) The CEO will ensure that Council Members are given access to information necessary for them to properly perform their functions and comply with their responsibilities.
- (b) Council Members will ensure that information provided will be used properly and to assist in the

process of making reasonable and informed decisions on matters before the Council.

6. Support/Advice on the Shire's Code of Conduct

6.1 Elected Members

Elected Members should contact the following persons if they require addition support and/or advice about how to interpret and follow the Shire' Code of Conduct:

- Shire President,
- Chief Executive Officer,
- WALGA, or
- Department of Local Government & Communities.

6.2 Committee Members

Committee Members should contact the following persons if they require addition support and/or advice about how to interpret and follow the Shire' Code of Conduct:

- Shire President, or
- Chief Executive Officer.

6.3 Staff

Staff should contact the following persons if they require addition support and/or advice about how to interpret and follow the Shire' Code of Conduct:

- Chief Executive Officer,
- Line Manager, or
- Trade Union Representative.

Appendix 1



Western Australia

Local Government Act 1995

Local Government (Rules of Conduct) Regulations 2007

As at 21 Jan 2017

Version 00-d0-00

Extract from www.slp.wa.gov.au, see that website for further information

Local Government (Rules of Conduct) Regulations 2007

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Defined terms

Local Government (Rules of Conduct) Regulations 2007

Part 1 — General

1. Citation

These regulations are the *Local Government (Rules of Conduct) Regulations 2007*¹.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Local Government (Official Conduct) Amendment Act 2007* section 11 comes into operation.

3. General principles to guide the behaviour of council members

- (1) General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should —
 - (a) act with reasonable care and diligence; and
 - (b) act with honesty and integrity; and
 - (c) act lawfully; and
 - (d) avoid damage to the reputation of the local government; and
 - (e) be open and accountable to the public; and
 - (f) base decisions on relevant and factually correct information; and

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- (g) treat others with respect and fairness; and
- (h) not be impaired by mind affecting substances.

- (2) The general principles referred to in subregulation (1) are for guidance of council members but it is not a rule of conduct that the principles be observed.

4. Contravention of certain local laws

- (1) In this regulation —
local law as to conduct means a local law relating to conduct of people at council or committee meetings.
- (2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.

Part 2 — Rules of conduct

Division 1 — Preliminary

[Heading inserted in Gazette 4 Mar 2016 p. 659.]

5. Rules of conduct

- (1) This Part contains the rules of conduct referred to in section 5.104(1) of the Act.
- (2) The rules of conduct apply to a council member whether or not acting as a committee member.

Division 2 — Rules of conduct: general

[Heading inserted in Gazette 4 Mar 2016 p. 660.]

6. Use of information

- (1) In this regulation —
 - 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 to clearly show that the information in the document is not to be disclosed;
 - non-confidential document* means a document that is not a confidential document.
- (2) A person who is a council member must not disclose —
 - (a) information that the council member derived from a confidential document; or
 - (b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subregulation (2) does not prevent a person who is 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.

7. Securing personal advantage or disadvantaging others

- (1) A person who is a council member must not make improper use of the person's office as a council member —
 - (a) to gain directly or indirectly an advantage for the person or any other person; or
 - (b) to cause detriment to the local government or any other person.
- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) for 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*; or
- (b) for any other purpose,

unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.

9. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

10. Relations with local government employees

- (1) A person who is a council member must not —
 - (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; or
 - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person's capacity as a local government employee.
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.
- (3) If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —
 - (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use offensive or objectionable expressions in reference to a local government employee.
- (4) Subregulation (3)(a) does not apply to conduct that is unlawful under *The Criminal Code* Chapter XXXV.

11. Disclosure of interest

(1) In this regulation —

interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

(2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the 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) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.

(4) Subregulation (2) does not apply if —

- (a) a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or
- (b) a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

(5) If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —

- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present

immediately before a matter to which the disclosure relates is discussed.

- (6) If —
- (a) under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or
 - (b) under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,

the nature of the interest is to be recorded in the minutes of the meeting.

12. Gifts

- (1) In this regulation —

activity involving a local government discretion means an activity —

- (a) that cannot be undertaken without an authorisation from the local government; or
- (b) by way of a commercial dealing with the local government;

gift has the meaning given to that term in section 5.82(4) of the Act except that it does not include —

- (a) a gift from a relative as defined in section 5.74(1) of the Act; or
- (b) a gift that must be disclosed under regulation 30B of the *Local Government (Elections) Regulations 1997*; or
- (c) a gift from a statutory authority, government instrumentality or non-profit association for professional training; or
- (d) a gift from WALGA, the Australian Local Government Association Limited (ABN 31 008 613 876) or the Local Government Managers Australia WA Division Incorporated (ABN 91 208 607 072);

notifiable gift, in relation to a person who is a council member, means —

- (a) a gift worth between \$50 and \$300; or
- (b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth between \$50 and \$300;

prohibited gift, in relation to a person who is a council member, means —

- (a) a gift worth \$300 or more; or
 - (b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth \$300 or more.
- (2) A person who is a council member must not accept a prohibited gift from a person —
- (a) who is undertaking or seeking to undertake; or
 - (b) who it is reasonable to believe is intending to undertake,
- an activity involving a local government discretion.
- (3) A person who is a council member and who accepts a notifiable gift from a person —
- (a) who is undertaking or seeking to undertake; or
 - (b) who it is reasonable to believe is intending to undertake,
- an activity involving a local government discretion must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with subregulation (4).
- (4) Notification of the acceptance of a notifiable gift is to be in writing and is to include —
- (a) the name of the person who gave the gift; and
 - (b) the date on which the gift was accepted; and
 - (c) a description, and the estimated value, of the gift; and
 - (d) the nature of the relationship between the person who is a council member and the person who gave the gift; and

- (e) if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
- (i) a description; and
 - (ii) the estimated value; and
 - (iii) the date of acceptance,
- of each other gift accepted within the 6 month period.
- (5) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.

[Regulation 12 amended in Gazette 20 Jan 2017 p. 649-50.]

Division 3 — Rules of conduct: transitional period

[Heading inserted in Gazette 4 Mar 2016 p. 660.]

13. Terms used

In this Division —

address has the meaning given in section 5.74(1) of the Act;

assent day means the day on which the *City of Perth Act 2016* receives the Royal Assent;

designated employee has the meaning given in section 5.74(1) of the Act;

gift has the meaning given in section 5.82(4) of the Act;

political party has the meaning given in section 5.83(4) of the Act;

relative has the meaning given in section 5.74(1) of the Act;

transitional period means the period beginning on 1 July 2015 and ending at the close of assent day;

travel has the meaning given in section 5.83(4) of the Act;

travel contribution, in relation to a person, means a financial or other contribution that has been made to any travel undertaken by the person.

[Regulation 13 inserted in Gazette 4 Mar 2016 p. 660-1.]

14. Disclosure of gifts

- (1) A person who is a council member must disclose each gift received by the person during the transitional period.
- (2) The disclosure is to be made in writing to the CEO.
- (3) The disclosure is to be made within 28 days after assent day.
- (4) The disclosure is to include the following —
 - (a) a description of the gift;
 - (b) the name and address of the person who made the gift;
 - (c) the date on which the gift was received;
 - (d) the estimated value of the gift at the time it was made;
 - (e) the nature of the relationship between the person who is a council member and the person who made the gift.
- (5) Nothing in this regulation requires a person to disclose a gift received by the person if —
 - (a) the amount of the gift did not exceed \$200 unless —
 - (i) the gift was one of 2 or more gifts made by one person at any time during the year; and
 - (ii) the sum of those 2 or more gifts exceeded \$200;or
 - (b) the donor was a relative of the person.
- (6) For the purposes of subregulation (5)(a), the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as being an amount equal to the value of the property or the financial benefit at the time the gift was made.

- (7) The CEO must maintain a register of gifts received during the transitional period in which details of disclosures made under this regulation are recorded.

[Regulation 14 inserted in Gazette 4 Mar 2016 p. 661-2.]

15. Disclosure of travel contributions

- (1) A person who is a council member must disclose each travel contribution received by the person during the transitional period.
- (2) The disclosure is to be made in writing to the CEO.
- (3) The disclosure is to be made within 28 days after assent day.
- (4) The disclosure is to include the following —
- (a) a description of the contribution;
 - (b) the name and address of the person who made the contribution;
 - (c) the date on which the contribution was received;
 - (d) the estimated value of the contribution at the time it was made;
 - (e) the nature of the relationship between the person who is a council member and the person who made the contribution;
 - (f) a description of the travel;
 - (g) the date of travel.
- (5) Nothing in this regulation requires a person to disclose a travel contribution if —
- (a) the contribution was made from Commonwealth, State or local government funds; or
 - (b) the contribution was made by a relative of the person; or
 - (c) the contribution was made in the ordinary course of an occupation of the person which is not related to the person's duties as a council member; or

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Part 2 Rules of conduct

Division 3 Rules of conduct: transitional period

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- (d) the amount of the contribution did not exceed \$200 unless —
 - (i) the contribution was one of 2 or more contributions made by one person at any time during the year; and
 - (ii) the sum of those 2 or more contributions exceeded \$200;or
 - (e) the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party.
- (6) For the purposes of subregulation (5)(d), the amount of a contribution (other than a financial contribution) is to be treated as being an amount equal to the value of the contribution at the time the contribution was made.
- (7) The CEO must maintain a register of travel contributions received during the transitional period in which details of disclosures made under this regulation are recorded.

[Regulation 15 inserted in Gazette 4 Mar 2016 p. 662-4.]

Notes

- ¹ This is a compilation of the *Local Government (Rules of Conduct) Regulations 2007* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Local Government (Rules of Conduct) Regulations 2007</i>	21 Aug 2007 p. 4203-16	r. 1 and 2: 21 Aug 2007 (see r. 2(a)) Regulations other than r. 1 and 2: 21 Oct 2007 (see r. 2(b) and <i>Gazette</i> 21 Aug 2007 p. 4173)
<i>Local Government (Rules of Conduct) Amendment Regulations 2016</i>	4 Mar 2016 p. 659-64	r. 1 and 2: 4 Mar 2016 (see r. 2(a)) Regulations other than r. 1 and 2: 5 Mar 2016 (see r. 2(b))
<i>Local Government Regulations Amendment (Gifts) Regulations 2017</i> Pt. 3	20 Jan 2017 p. 648-50	21 Jan 2017 (see r. 2(b))

Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
activity involving a local government discretion	12(1)
address	13
assent day	13
closed meeting	6(1)
confidential document.....	6(1)
designated employee.....	13
gift.....	12(1), 13
interest.....	11(1)
local law as to conduct.....	4(1)
non-confidential document	6(1)
notifiable gift	12(1)
political party	13
prohibited gift	12(1)
relative	13
transitional period	13
travel	13
travel contribution.....	13

ACKNOWLEDGEMENT

I _____ have read and understand the contents the of
this document being the Shire of Wiluna's Code of Conduct.

Signed: _____ Date: _____

Witness: _____ Date: _____

