

Item 5.

Policy - Adoption - Code of Conduct

File No: S121910

Summary

The City of Sydney Council's Code of Conduct and Procedures for the Administration of the Code operate in accordance with the Local Government Act 1993 (the Act). All councils must adopt a code of conduct and procedures that, at a minimum, incorporate, and not be inconsistent with, the provisions of the Model Code of Conduct for Local Councils in New South Wales and Model Procedures issued by the Office of Local Government.

The Model Code outlines the minimum ethical and behavioural standards of conduct for council officials in carrying out their functions. The purpose of the Model Procedures is to support the enforcement of the standards set out in the Model Code.

On 14 December 2018, a new Model Code and Model Procedures for NSW Councils were prescribed further to a major review undertaken by the Office of Local Government. Please refer to the Office of Local Government's Circular at Attachment A to the subject report.

The new Model Code was developed to consolidate the prescription of all ethical standards for local government into a single statutory instrument. Previously, ethical standards were prescribed within the pecuniary interest provisions of the Act, the Local Government (General) Regulation 2005 (the Regulation), and the Model Code of Conduct.

The key changes to the new Model Code include: new standards relating to discrimination and harassment, bullying, and Work Health and Safety; new rules governing the acceptance of gifts, which includes a value of no more than \$50 for 'token' gifts; and the inclusion of pecuniary interest requirements from the Act.

The new Model Procedures have been amended to become more robust in supporting the enforcement of the ethical and behavioural standards defined in the Model Code.

Council's existing Code of Conduct and Procedures will remain in force until Council adopts a new code of conduct and procedures.

The City of Sydney Council's new Code of Conduct and new Procedures for the Administration of the Code are in the same form as the Model Code of Conduct for Local Councils in New South Wales and Model Code Procedures issued by the Office of Local Government.

The application of Council's new Code of Conduct and Procedures has been extended to include contractors, community members of wholly advisory committees and volunteers.

Recommendation

It is resolved that:

- (A) Council adopt the City of Sydney Code of Conduct, shown at Attachment B to the subject report;
- (B) Council adopt the City of Sydney Procedures for Administration of the Code of Conduct, shown at Attachment C to the subject report; and
- (C) authority be delegated to the Chief Executive Officer to make minor amendments to the Code of Conduct and the Procedures for the Administration of the Code of Conduct, as required from time to time, subject to all Councillors being informed of any such changes.

Attachments

- Attachment A.** Office of Local Government Circular 18 December 2018
- Attachment B.** City of Sydney Code of Conduct
- Attachment C.** City of Sydney Procedures for Administration of the Code of Conduct

Background

1. Section 440 of the Act requires councils to adopt a code of conduct that incorporates the provisions of the Model Code as issued by the Office of Local Government.
2. A Code of Conduct has been in place at Council since 2005, when the first Model Code came into effect. Council has reviewed and adopted subsequent Model Codes in 2005, 2009, 2013, 2016 and 2017.
3. Section 440AA of the Act requires NSW councils to adopt procedures for the administration of the code that incorporate the provisions of the Model Code Procedures.
4. Procedures for the Administration of the Code of Conduct have been in place at Council since 2013, when this requirement came into existence.
5. On 14 December 2018, a new Model Code and Model Procedures for NSW Councils were prescribed following a major review undertaken by the Office of Local Government.
6. Council must adopt a Code of Conduct and Procedures by 14 June 2019, based on the new Model Code and Procedures issued by the Office of Local Government.
7. Council's existing Code of Conduct and Procedures remain in force until 14 June 2019 unless Council adopts a new code of conduct and procedures earlier.
8. In accordance with the Administrative Arrangements (Administrative Changes – Public Service Agencies) Order 2019 made on 2 April 2019 and commencing on 1 July 2019, the Office of Local Government has been abolished and transferred to the Department of Planning and Industry.
9. Structural changes are taking place within the Office of Local Government and the Department of Planning and Industry, therefore, references in documents will be updated once these changes have been finalised. In the interim, in this report, the Model Code and the Procedures for the Administration of the Code of Conduct:
 - (a) a reference to the Office of Local Government is to be construed as a reference to the Department of Planning and Industry; and
 - (b) a reference to the Chief Executive of the Office of Local Government is to be construed as a reference to the Secretary of the Department of Planning and Industry.

Summary of Changes

10. The main changes to the Model Code and Model Procedures are outlined in the Circular from the Office of Local Government (Attachment A).
11. Key changes to the Model Code include:
 - (a) new standards relating to discrimination, harassment and bullying;
 - (b) the inclusion of new Work Health and Safety requirements in relation to the *Work Health and Safety Act 2011*;
 - (c) new requirements relating to behaviour at council and committee meetings;

- (d) a new ongoing disclosure requirement for councillors and designated persons requiring disclosure of new interests in returns of interests within three months of becoming aware of them;
 - (e) two separate parts for pecuniary and non-pecuniary conflicts of interests, including more prescriptive information and rules regarding their definition, disclosure, and the management of them;
 - (f) the requirement for a councillor to make a special disclosure where a councillor has a pecuniary interest in a councillor's place of residence, or an interest in another person (including as spouse, partner, relative) in that person's principal place of residence;
 - (g) new rules governing the acceptance of gifts, including a \$50 limit in relation to one or more gifts offered over a 12-month period, noting that the aggregate benefit of one or more gifts from a person or organisation over a 12-month period cannot exceed a value of \$50;
 - (h) authority to consider refusing access to information requested by a councillor if the councillor has disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter, unless the information is otherwise publicly available; and
 - (i) new rules governing Council's record keeping to ensure that it is in line with the requirements of the *State Records Act 1998*.
12. Key changes to the Model Procedures have been made to:
- (a) give the Chief Executive Officer the flexibility to delegate their functions under the Procedure to another member of staff or a person external to Council;
 - (b) make it clear what are not code of conduct complaints; and
 - (c) provide recourse to persons who inappropriately disclose information about code of conduct complaints they have made.
13. Given the release of the new Model Code and new Model Procedures as a result of the revision by the Office of Local Government, it is proposed that Council adopts a new Code of Conduct and new Procedures to replace Council's existing Code of Conduct and Procedures.
14. The following minor amendments / additions have been made to the Model Code and Model Procedures issued by the Office of Local Government in preparation for Council to adopt the new Code of Conduct and new Procedures:
- (a) all references to the mayor have been replaced with the words 'Lord Mayor';
 - (b) all references to the general manager have been replaced with the words 'Chief Executive Officer';
 - (c) the application of Council's new Code of Conduct and Procedures has been extended to include contractors, community members of wholly advisory committees and volunteers;

- (d) clause 7.3 has been added to the proposed new Code of Conduct to ensure that both the Lord Mayor and Councillors are able to continue to direct their respective staff; and
- (e) in the interests of clarity and simplicity, the procedures for dealing with complaints have been summarised in a flowchart at the end of the Procedures for the Administration of the Code.

Key Implications

Strategic Alignment - Sustainable Sydney 2030 Vision

15. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This policy is aligned with Direction 10 - Implementation through Effective Governance and Partnerships in that:
 - (a) The City of Sydney's Code of Conduct is a foundation policy that sets out the minimum standards of conduct for Councillors, council staff, contractors, community members of wholly advisory committees and volunteers when carrying out their functions as council officials.
 - (b) Councils Procedures for the Administration of the Code of Conduct specify the process that must be followed for all alleged breaches of the Code of Conduct at Council.

Organisational Impact

16. The new Code of Conduct will be communicated to all council officials and training undertaken to ensure that it is understood.
17. The City of Sydney intends to communicate with all suppliers, grant recipients and stakeholders to remind them of the requirements of our Code of Conduct, and specifically not to send gifts.

Social / Cultural / Community

18. The Code of Conduct provides clear guidance to the local community on the minimum ethical and behavioural standards they can expect of City of Sydney council officials who serve them.
19. The Code of Conduct promotes transparency and accountability, promotes community confidence in the integrity of the decisions Council makes and the functions exercised on behalf of their community, and promotes community confidence in the institution of local government.

Relevant Legislation

20. Local Government Act 1993.
21. Local Government (General) Regulation 2005.
22. State Records Act 1998.
23. Work Health and Safety Act 2011.

Critical Dates / Time Frames

24. Council's existing Code of Conduct and Procedures will remain in force until 14 June 2019, or until Council adopts a new code of conduct and procedures, if earlier. If Council does not adopt the new Code of Conduct and Procedures by 14 June 2010, any provisions that are different from but not inconsistent with the mandatory provisions of the Model Code and Model Procedures, will automatically cease to have effect after that date.

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