

Amendments to the Code of Conduct and Procedures

File No: X038263

Summary

On 14 August 2020, amendments were made to the *Local Government (General) Regulation 2005*, the Model Code of Conduct for Local Councils in NSW and the Procedures for the Administration of the Model Code. These changes came into effect immediately. Council is required to adopt a code of conduct and procedures incorporating the provisions of the prescribed Model Code of Conduct and Procedures as soon as possible.

Recommendation

It is resolved that Council:

- (A) adopt the City of Sydney Code of Conduct as amended (as shown in Attachment A to the subject report); and
- (B) adopt the City of Sydney Procedures for the Administration of the Code as amended (as shown in Attachment B to the subject report).

Attachments

Attachment A. City of Sydney Code of Conduct (as amended)

Attachment B. City of Sydney Procedures for the Administration of the Code of Conduct (as amended)

Background

1. On 14 August 2020, a new Model Code of Conduct was prescribed under the *Local Government (General) Regulation 2005*. A number of changes have been made to the Model Code of Conduct and procedures, with the most significant set out below.

Model Code of Conduct

2. Audit, Risk and Improvement Committees (equivalent to the City's Audit, Risk and Compliance Committee) have been added to the definition of a Council Committee, and its non-Councillor members added to the definition of Council Committee Member. This is consistent with the City's existing Code of Conduct.
3. The terminology used for the grounds of discrimination and harassment under clause 3.6 have been contemporised.
4. New exclusions to what constitutes a gift or benefit under clause 6.2, with the following now excluded:
 - (a) Items with a value of \$10 or less - this means these items may be accepted and do not need to be declared. It is open to Council to not adopt this exclusion should Council wish to have gifts under \$10 declared. However, this is not recommended as the administrative requirements for declaring these minor gifts for some areas of the City such as children's services, outweigh the risks.
 - (b) a benefit or facility provided by the City to an employee or councillor - this allows for the City to provide things such as event tickets to staff and Councillors (provided there is a relevant provision in the Councillor Expenses and Facility Policy).
 - (c) free or subsidised meals, beverages or refreshments provided to council officials in conjunction with the performance of their official duties (irrespective of cost, previously limited to token value) - this enables, for example, council officials to have a meal at a formal dinner they are required to attend without this being treated as a benefit.
5. The threshold for gifts or benefits of more than token value has been increased from the current \$50 to \$100 (clauses 6.9 to 6.11). This change to the Model Code has been made in response to feedback from some councils that the \$50 threshold was too low. Council may choose to adopt the new threshold, or to maintain the current threshold of \$50 if it considers this to be a more appropriate value, or alternatively Council could adopt an amount in between. To maintain consistency with the Model Code provisions it is recommended that Council adopt the \$100 threshold.

Procedures for the Administration of the Model Code

6. The Office of Local Government (“OLG”) has made a number of changes to the Procedures, including the following:
- (a) Changes to allow the Chief Executive Officer (CEO) to establish the panel of conduct reviewers, where a Council resolution was previously required.
 - (b) A conduct reviewer must now be satisfied that the alleged conduct, if proven, is sufficiently serious to warrant formal censure of a Councillor under s440 of the Local Government Act 1993 (the Act), or disciplinary action against the CEO under their employment contract, before they can commence an investigation.
 - (c) A conduct reviewer may now refer or resolve a matter by alternative means up until they have issued their final report (previously up until issue of their draft report).
 - (d) Amendments to clarify that where an investigator determines that the code of conduct has been breached, they may now only recommend:
 - (i) Disciplinary action under the employment contract for the CEO; or
 - (ii) For a Councillor, formal censure under section 440 of the Act.

In the case of a breach by a Councillor, that the Council resolves to formally censure the Councillor, and to refer the matter to the Office of Local Government for further action under the misconduct provisions. The conduct reviewer must first consult with the OLG before making this recommendation.

A conduct reviewer may also recommend that the council revise any of its policies, practices or procedures.

- (e) A new clause requiring an investigator's report to be referred to OLG for consideration when the Council is unable to form a quorum.
- (f) Amendments to provide the only form of disciplinary action that a Council may take in relation to a breach by a councillor is formal censure or formal censure and referral to the OLG. This is in response to the recent Supreme Court decision (*Cornish v Secretary, Department of Planning, Industry and Environment* [2019] NSWSC 1134) that found other forms of disciplinary action under the current procedures are invalid as they are outside the powers of the Act. Any censure resolution must include the matters specified in the Procedures.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

7. 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 report is aligned with the following strategic direction and objective:
 - (a) Direction 10 - Implementation through Effective Governance and Partnerships - be ensuring effective standards of conduct and governance for council officials and operations.

Organisational Impact

8. Changes to the Code of Conduct and Procedures as adopted by Council will be communicated to council officials and familiarised through our annual Code of Conduct training program, the next of which is scheduled to commence in the coming months.

Financial Implications

9. Code of conduct training is incorporated into the City's annual learning and development budget.

Public Consultation

10. As these are mandated model documents for the local government sector in NSW, public exhibition or consultation is not required.

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