

CODE OF CONDUCT FOR COUNCILLORS

This Code of Conduct was adopted by resolution of the Monash City Council on 4 April 2006 and in accordance with section 76C of the Local Government Act 1989.

Code of Conduct

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Councillor Behaviours

1. The Council affirms the following principles of behaviour.
 - A. Each Councillor is aware of their responsibility to comply with the rules of conduct specified in Section 76B of the Act that require that Councillors must:
 - a) Act honestly;
 - b) Exercise reasonable care and diligence;
 - c) Not make improper use of their position
 - to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person, or
 - to cause, or attempt to cause, damage to the Council;
 - d) Not make improper use of information acquired because of their position
 - to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person, or
 - to cause, or attempt to cause, damage to the Council

Conflict of Interest Procedures

2. For the purpose of this Code, “Interests”, “Conflicts of Interest” and “Pecuniary Interests” have the meanings specified in the Act.
3. Councillors will comply with all the provisions of the Act in regard to Interests and Conflicts of Interest:
 - a. If the Councillor considers that they have, or might reasonably be perceived to have, an interest in a matter before the Council or a special committee of Council, they will clearly state the nature of their interest at the meeting and immediately before the matter is considered. This will be done on every occasion that the matter is considered by the Council or special committee.
 - b. If a Councillor has an Interest in a matter to be considered by the Council or special committee that is a pecuniary interest, they will also declare that they have a Conflict of Interest.
 - c. If a Councillor has an Interest in a matter to be considered by the Council or special committee that is not pecuniary, and the Councillor considers that their personal interest may be in conflict with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a Conflict of Interest.
 - d. If a Councillor has a Conflict of Interest in a matter they will comply with the requirements of the Act and ensure they do not move or second the motion and that they leave the room in which the meeting is being held during any vote on the matter and not vote on the matter.
 - e. If a Councillor has a Conflict of Interest in a matter, they will declare the interest and the nature of that interest either at the beginning of the meeting, or immediately prior to the matter being discussed. If a Councillor has a Conflict of Interest in a matter and does not intend to be present at a meeting where the matter is discussed, they will declare the interest and the nature of the interest to the Chief Executive Officer prior to the commencement of the meeting, in writing (i.e. by letter, fax or email). The opportunity for a Councillor to disclose interests or declare conflicts of

- interest at a meeting is provided at the beginning of each meeting, as a listed agenda item.
- f. The Councillor or member of the special committee may choose to remain in the room in which the meeting is being held during any consideration or discussion of the contract, proposed contract or other matter.
 - g. The Councillor or member of the special committee may take part in the consideration or discussion but cannot move or second a motion on any question relating to the contract, proposed contract or other matter.

Dispute Resolution Procedures

4. Councillors commit to working effectively together at all times and to developing good working relationships. In the event of any dispute occurring where Councillors are unable to resolve interpersonal conflicts that unduly affect the operation of the Council adversely, the parties to the dispute agree to work together with openness and transparency to resolve the dispute, and will agree to the appointment of a mediator where appropriate.

Statement of Caretaker Procedures

5. The purpose of these procedures is to ensure that the ordinary business of local government in the City of Monash continues throughout an election period in a responsible and transparent manner, and in accordance with statutory requirements and established “caretaker” conventions. These procedures commit Council during the caretaker period to:
 - a. Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
 - b. Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election.

Major Policy Decisions

6. Section 93A of the Act prohibits the making of “Major Policy Decisions” (Major Policy Decisions has the same meaning as the Local Government Act 1989) during the election period, which is from Entitlement day until 6:00 pm on the Election Day.
7. Major Policy decisions are defined by the Act to be decisions;
 - a. relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - b. to terminate the appointment of a Chief Executive Officer under section 94;
 - c. to enter into a contract the total value of which exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year;
 - d. to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year.
8. If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution,

request an exemption from the Minister for Local Government, in accordance with section 93A(2).

S 55D - Electoral Matter

9. The Council commits to the principle that it will ensure that council resources are not used inappropriately during a council election.
10. Council will ensure that it complies with section 55D of the Act which requires that a Council does not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.
11. Council will review all publications prior to the commencement of the caretaker period, and during the caretaker period, prior to publication, to ensure that any such publications comply with the requirements of section 55D.

12. The following definitions from the Act are noted:

Section 3(1) **"electoral advertisement, handbill, pamphlet or notice"** means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"publish" means publish by any means including by publication on the Internet;

Section 3(1A) **"electoral matter"** means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

Section 3 (1B) Without limiting the generality of the definition of "electoral matter", matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—

- (a) the election; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.

Appendix 1 – Section 76B

76B. Rules of conduct

(1) In performing the role of a Councillor or a member of a special committee, a person—

- (a) must act honestly;
- (b) must exercise reasonable care and diligence.

(2) A person who fails to comply with sub-section (1) is guilty of an offence against this Act.

(3) A person who is, or has been, a Councillor or member of a special committee—

- (a) must not make improper use of their position—
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
 - (ii) to cause, or attempt to cause, detriment to the Council;
- (b) must not make improper use of information acquired because of their position—
 - (i) to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person;
 - (ii) to cause, or attempt to cause, detriment to the Council.

(4) A person who fails to comply with sub-section (3) is guilty of an offence.

Penalty: 100 penalty units.

Appendix 2 – Section 76C

76C. Code of Conduct

(1) A Council must develop and approve a Code of Conduct for the Council within the period of 6 months after the commencement of section 57 of the **Local Government (Democratic Reform) Act 2003**.

(2) A Council must review the Code of Conduct within the period of 6 months after a general election.

(3) A Code of Conduct—

(a) must include the provisions of section 76B;

(b) must set out processes for the purpose of resolving an internal dispute between Councillors;

(c) must specify procedures applying in relation to disclosure of interests and conflict of interests;

(d) must include provisions in respect of any matter prescribed for the purpose of this section;

(e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

(4) Without limiting sub-section (3), a Code of Conduct must contain a statement of the caretaker procedures which are to apply during an election period including procedures—

(a) consistent with section 93A to ensure that inappropriate decisions are not made during the election period;

(b) consistent with section 55D to ensure the Council does not inappropriately publish or distribute electoral matter during an election;

(c) to ensure that resources of the Council are not inappropriately applied during an election period.

(5) A Code of Conduct must not be inconsistent with any Act or regulation.

(6) A copy of the current Code of Conduct must be—

(a) given to each Councillor;

(b) available for inspection by the public at the Council office and any district offices.

Appendix 3 – Conflict of Interest Provisions

Section 77A. Disclosure of interests

- (1) Subject to sub-section (3), a Councillor or a member of a special committee has an interest in a matter in which the Council is concerned and is, or is likely to be, considered or discussed at a meeting of the Council or a special committee, if subsection (2) applies.
- (2) This sub-section applies if, were the matter to be decided in a particular manner, the Councillor or member, or a person with whom the Councillor or member is closely associated—
 - (a) would receive or have a reasonable expectation of receiving, a direct or indirect pecuniary or non-pecuniary benefit; or
 - (b) would suffer or have a reasonable expectation of suffering, a direct or indirect pecuniary or non-pecuniary detriment; or
 - (c) could be reasonably perceived as—
 - (i) receiving a direct or indirect pecuniary or non-pecuniary benefit; or
 - (ii) suffering a direct or indirect pecuniary or non-pecuniary detriment.
- (3) A Councillor or a member of a special committee is not to be taken to have an interest in a matter for the purposes of this section if the interest arises solely by being a voter, resident or ratepayer and is held in common with other voters, residents or ratepayers.
- (4) If sub-section (2) applies, the Councillor or the member of the special committee must disclose the interest to the Council or the special committee before the matter is considered or discussed at the meeting.
- (5) A disclosure under sub-section (4) must— (a) include the nature of the relevant interest; and (b) be recorded in the minutes of the meeting.

Section 77B. Conflict of interest

For the purposes of section 79, a Councillor or a member of a special committee has a conflict of interest in respect of a contract, proposed contract or other matter if the Councillor or member—

- (a) has a direct or indirect pecuniary interest in the matter; or
- (b) is of the opinion that the nature of his or her interest in the contract, proposed contract or other matter is such that it may conflict with the proper performance of his or her public duties in respect of the contract, proposed contract or other matter.

Section 78. Pecuniary interests

- (1) Section 79 does not apply to a direct or indirect pecuniary interest in a contract, proposed contract or other matter which a Councillor or a member of a special committee has—
 - (a) only as a voter or ratepayer and in common with other voters or ratepayers; or
 - (b) only because the contract, proposed contract or other matter involves expenditure from money belonging to or held by the Council and the Councillor or member of a special committee is as a ratepayer a contributor to the money; or
 - (c) in relation to the declaration of rates and charges or the fixing of a fee by the Council; or

- (d) in relation to the terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public; or
 - (e) only as a person to whom goods or services are supplied in the like manner and subject to the same terms and conditions as apply to members of the public; or
 - (f) only by reason of receiving an allowance or travelling allowances as permitted by this Act; or
 - (g) only by reason of the Councillor or member of a special committee or his or her spouse or domestic partner being insured by the Council; or
 - (h) only as a member of a local community body, club, union or other organisation which is a non-profit organisation if no personal gain to the Councillor or member of a special committee or his or her spouse or domestic partner is involved; or
 - (i) only in planning and development matters which have a general application throughout the municipal district or a ward; or
 - (j) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other right or privilege under this or any other Act, if the extent of the interest of the Councillor or member of a special committee or his or her spouse or domestic partner is the same as other members of the public; or
 - (k) only as an employee in the service of the Crown or of a body established by or under any Act for a public purpose; or
 - (l) only by reason of being a candidate for election as Mayor; or
 - (m) only as a member of a body (whether or not incorporated) who is appointed or nominated by the Council and whether or not any remuneration or allowances are received.
- (2) For the purposes of section 79, a person is to be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if—
- (a) the Councillor or member of a special committee or a nominee of the Councillor or member of a special committee is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the matter under consideration; or
 - (b) the Councillor or member of a special committee is a partner, agent, consultant or employee of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the matter under consideration; or
 - (c) the Councillor or member of a special committee is a director, manager, employee or agent of a company which has a direct or indirect pecuniary interest in the matter under consideration; or
 - (d) the spouse or domestic partner of the Councillor or member of a special committee has an interest of a kind referred to in paragraph (a), (b) or (c); or
 - (e) the spouse or domestic partner of the Councillor or member of a special committee has a direct or indirect pecuniary interest in the contract, proposed contract or other matter.
- (3) If a Councillor or a member of a special committee has an indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter referred to in section 79(1) only because he or she, or his or her spouse or domestic partner, has a beneficial interest in shares of a company or other body and the total nominal value of those shares does not exceed \$2000 or 1% of the total nominal value of the issued

share capital of the company or body (whichever is the less), section 79(1) does not preclude him or her from taking part in the consideration or discussion of, or voting on any question with respect to the contract, proposed contract or other matter.

- (4) In this section, "domestic partner" of a person means an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (a) for fee or reward; or
 - (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation).
- (5) For the purposes of the definition of "domestic partner" in sub-section (4)—
 - (a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the Property Law Act 1958 as may be relevant in a particular case;
 - (b) a person is not a domestic partner of another person only because they are co-tenants.

Section 79. Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in any contract or proposed contract with the Council, or in any other matter in which the Council is concerned which is to be, or is likely to be, considered or discussed at a meeting of the Council or a special committee, the Councillor or member of the special committee must—
 - (a) if he or she intends to be present at the meeting, disclose the nature of the conflict of interest immediately before the consideration or discussion; or
 - (b) if he or she does not intend to be present at the meeting, disclose the nature of the conflict of interest to the Chief Executive Officer or the Chairperson of the special committee at any time before the meeting is held.
- (2) The Councillor or member of the special committee may choose to remain in the room in which the meeting is being held during any consideration or discussion of the contract, proposed contract or other matter.
- (3) The Councillor or member of the special committee may take part in the consideration or discussion but cannot move or second a motion on any question relating to the contract, proposed contract or other matter.
- (4) While any vote is taken on a question relating to the contract, proposed contract or other matter, the Councillor or member of the special committee must—
 - (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (5) After the result on the vote on the question relating to the contract, proposed contract or other matter has been declared, the Mayor or the Chairperson of the special committee must cause the Councillor or member of the special committee to be notified that he or she may return to the room.

(6) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson of the special committee must record the declaration and the nature of the conflict of interest in the minutes of the meeting at which the consideration or discussion took place.

(7) Unless sub-section (8) or section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence.

Penalty: 100 penalty units.

(8) It is a defence to a prosecution if the Councillor or member of the special committee proves that he or she did not know—

(a) that he or she had a conflict of interest in respect of the contract, proposed contract or other matter; or

(b) that a contract, proposed contract or other matter in respect of which he or she had a conflict of interest was considered or discussed at the meeting.

(9) This section does not prevent any person from taking part in the consideration or discussion of, or voting on—

(a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from money held by the Council; or

(b) the election of a Councillor to be the Mayor; or

(c) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 80.

Appendix 3 – Section 93A – Conduct of Council

93A. Conduct of Council during election period

(1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.

(2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.

(3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.

(4) A major policy decision made in contravention of this section is invalid.

(5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

(6) In this section, a "**major policy decision**" means any decision—

(a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;

(b) to terminate the appointment of a Chief Executive Officer under section 94;

(c) to enter into a contract the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year;

(d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year.

Appendix 4 – Section 55D

55D. - Prohibition on Council

A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Section 3(1) **"electoral advertisement, handbill, pamphlet or notice"** means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"publish" means publish by any means including by publication on the Internet;

Section 3(1A) **"electoral matter"** means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.

Section 3 (1B) Without limiting the generality of the definition of "electoral matter", matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—

- (a) the election; or
- (b) a candidate in the election; or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.