

DUNEDIN CITY COUNCIL STANDING ORDERS: APPENDIX J

CODE OF CONDUCT

(Requirements)

(Reference to the Mayor in this appendix means the Mayor, irrespective of whether the matter relates to a Community Board and/or a Community Board member.)

J1 Introduction

The Code of Conduct sets out the values, understandings and expectations agreed amongst members of the Dunedin City Council about the manner in which they conduct themselves while acting in their capacities as elected members. It includes understandings on behaviour towards one another, towards staff and towards the public.

As well as being used to promote ethical behaviours, encourage teamwork and facilitate effective local democracy, the code will be of value to the Council as:

- An orientation tool for new councillors;
- A guide to prospective candidates;
- A resource support for existing councillors;
- An aid to the public—enabling the public to evaluate behaviour.

The Code is divided into the following sections:

- J1 Introduction
- J2 Roles and Responsibilities
- J3 Relationships and Behaviours
- J4 Compliance and Review
- J5 Legislation Bearing on the Role and Conduct of Elected Members

Schedule 7 of the Local Government Act 2002 (the Act) requires each local authority to adopt a code of conduct. Once adopted, all elected members are required to comply with the code.

This code of conduct provides guidance on the standards of behaviour that are expected from the Mayor and elected members of the Dunedin City Council. The code applies to elected members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of the Council
- the media
- the general public.

This code does not apply to members of the Chalmers, Mosgiel Taieri, Otago Peninsula, Saddle Hill, Strath Taieri and Waikouaiti Coast Community Boards unless adopted by those boards. The boards may prepare their own code and are encouraged either to adopt this code or to use this code as the basis for their own code.

The objective of the code is to enhance:

- the effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good local government of the City of Dunedin
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance between the elected members as a group and between the elected members and management.

This code of conduct seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities (recorded in J2)
- agreed general principles of conduct (recorded in J3) specific codes of conduct applying to

particular circumstances or matters (also recorded in J3).

Elected members are primarily accountable to the electors of the city through the democratic process, however members must note that the Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

The code of conduct that follows is based on the following general principles of good governance:

Public interest	Members serve only the interests of the city as a whole and should never improperly confer an advantage or disadvantage on any one person.
Honesty and integrity	Members should not place themselves in situations or behave in such a manner where their honesty and integrity may be questioned.
Objectivity	Members' decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire city.
Accountability	Members be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.
Openness	Members should be as open as possible about their actions and those of the Council, and be prepared to justify their actions.
Personal judgment	Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.
Respect for others	Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of the Council staff.
Duty to uphold the law	Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.
Stewardship	Members must ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.
Leadership	Members should promote and support these proposals by example, and should always endeavour to act in the best interests of the community.

J2 Roles and responsibilities

This part of the code describes the roles and responsibilities of elected members, the additional roles of the Mayor and Deputy Mayor, and the role of the Chief Executive.

J2.1 Elected Members

Elected members, acting as the Council, are responsible for:

- Monitoring the performance of the Council against its stated objectives and policies
- Prudent stewardship of Council resources
- Employment of the Chief Executive
- Representing the interests of the residents and ratepayers of the Dunedin City Council.
- The development and adoption of Council policy

Unless otherwise provided in the Local Government Act 2002 or in standing orders, the Council can only act by majority decisions at meetings. Each member has one vote. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

J2.2 Mayor

The Mayor as one of the elected members shares the same responsibilities as other members of the Council. The Mayor also has the following roles as a:

- Presiding member at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (as determined in standing orders);
- Advocate on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- Ceremonial head of the Council;
- Providing leadership and feedback to other elected members on teamwork and chairmanship of committees; and
- The Mayor must follow the same rules as other elected members about making public statements and committing the Council to a particular course of action, unless acting in accordance with the rules for media contact on behalf of the Council under a delegation of authority from the Council.

J2.3 Deputy Mayor (and Acting Deputy Mayor in the absence of the Deputy Mayor and the Mayor)

The Deputy Mayor must be elected by the members of the Council, at the first meeting of the Council. The Deputy Mayor exercises the same roles as other elected members. The Deputy Mayor will perform all the duties and functions of the Mayor with the consent of the Mayor, during the temporary absence of the Mayor or without that consent:

- At any time while the Mayor is prevented by illness or other cause from performing the functions and duties or exercising the powers of the Mayor;
- Or while there is a vacancy in the office of the Mayor.

The Deputy Mayor may be removed from office by resolution of the Council. If the position of Deputy Mayor becomes vacant for any reason the Council will elect a new Deputy Mayor at its next ordinary meeting.

J2.4 Committee Chairpersons

The Council may create one or more committees of Council. The Chairperson also has the following roles:

- Presiding member at Committee meetings. The Chairperson is responsible for ensuring the orderly conduct of business during meetings as set out in the Council's Delegations Manual, Standing Orders and this Code of Conduct.
- Providing leadership and feedback to other elected members on teamwork and chairmanship of subcommittees and working parties.
- Committee chairpersons may be called on to act as an official spokesperson on a particular issue. They may be removed from office by resolution of the Council.

J2.5 *Chief Executive*

The Chief Executive is appointed by the Council in accordance with section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. In terms of section 42 of the Act, the responsibilities of the Chief Executive are:

- Implementing the decisions of the Council
- Providing advice to the Council and community boards
- Ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- Managing the activities of the local authority effectively and efficiently
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- Providing leadership for the staff of the local authority
- Employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

Under section 42 of the Local Government Act 2002 the Chief Executive employs all other staff on behalf of the local authority.

An effective working relationship between elected members and officers is critical to the success of the Council.

The Chief Executive delegates tasks and authority to other Council officers. An elected member will often work closely with Council officers on specific committees or projects. The officers will provide services as agreed with the Chief Executive. These services may include information, advice and secretarial services.

Officers that provide advice to the Council must ensure that their advice is unbiased and professional, and where possible offer alternative ways of achieving the Council's objectives. Officers should understand that elected members often need to take into account other factors before reaching a decision.

A distinction needs to be drawn between the effectiveness of any policy and the management or implementation of that policy.

Elected members may comment publicly on the effectiveness of any policy, while concerns about the management or implementation of that policy should be discussed in the first instance with the Chief Executive. (For example, where an individual private development is approved by Council officers, in accordance with provisions of the District Plan, it is reasonable for an elected member to express reservations about the District Plan rules and whether those rules should be reviewed. It is not acceptable for the elected member to criticise the staff member for approving the individual application).

If elected members have concerns about the performance of any officer or contractor, these concerns should be directed to the Chief Executive. It is not appropriate for elected members to approach staff and contractors directly regarding their performance, nor is it appropriate for elected members to comment publicly on the individual management or staff of the Dunedin City Council.

Likewise, Council officers are expected to show respect for the office of the elected members and ensure that their comments enhance the reputation of the Council as a whole.

Refer also to the document "A Working Relationship for Elected Members and Council Officers".

J3 Relationships and Behaviours

This part of the code sets out the Council's agreed standards of behaviour. Further guidance is also set out in the document "A Working Relationship for Elected Members and Council Officers". Copies are available from the Governance Team. Elected members also need to be aware of the legislative requirements regulating their behaviour. Refer to the attachment to this appendix: JA1.

J3.1 Relationships with Other Members

Critical to the success of any democratically elected organisation is that mutual respect exists between members. With this in mind elected members shall conduct their dealings with each other in ways that:

- (a) Maintain public confidence in the office to which they have been elected
- (b) Are open and honest
- (c) Focus on issues rather than personalities
- (d) Avoid aggressive, offensive or abusive conduct.

J3.2 Relationships with Staff

The effective performance of the Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members shall:

- (a) Recognise that the Chief Executive is the employer (on behalf of the Council) of all Council employees, and as such only the Chief Executive may hire, dismiss or instruct or censure an employee
- (b) Make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times
- (c) Treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees)
- (d) Observe any guidelines that the Chief Executive puts in place regarding contact with employees, which are agreed with elected members
- (e) Not do anything which compromises, or could be seen as compromising, the impartiality of an employee
- (f) Avoid publicly criticising any employee in a manner that reflects on the competence and integrity of the employee
- (g) Raise issues involving employees only with the Chief Executive, or with the Chief Executive and Mayor at the same time
- (h) Raise issues involving the Chief Executive with him or her directly, or if appropriate with the Mayor or the Performance Appraisal Committee, or at any formal or informal meeting of elected members of Council where it is appropriate to address such issues.
- (i) Raise issues involving Dunedin City Holdings Limited or other Council Controlled Organisations with the Chief Executive of the Dunedin City Council

Elected members should be aware that failure to observe this portion of the code of conduct may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions.

J3.3 Relationships with the Community

Effective Council decision-making depends on productive relationships between elected members and the community at large.

Members should ensure that individual citizens are accorded respect in their dealings with the Council, have their concerns listened to, and deliberated on in accordance with the requirements of the Act.

Members should act in a manner that encourages and values community involvement in local democracy.

J3.4 *Contact with the Media*

The media plays an important part in local democracy. In order to fulfil this role the media needs access to accurate, timely information about the affairs of the Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. This part of the code deals with the rights and duties of Councillors when speaking to the media on behalf of the Council, or in their own right.

The following rules shall apply for media contact *on behalf of the Council*:

- (a) The Mayor or relevant committee Chairperson is the first point of contact for the official view on any issue. Where the Mayor or Chairperson is absent, any matters will be referred to the Deputy Mayor, Acting Deputy Mayor, committee Chairperson or where the committee Chairperson is absent, the relevant deputy Chairperson
- (b) The Mayor may refer any matter to the relevant committee Chairperson or to the Chief Executive for their comment
- (c) No other member may comment *on behalf of the Council* without having first obtained the approval of the Mayor or the Council

Elected members are free to express a *personal view* in the media, at any time, provided the following rules are observed:

- (d) Media comments must not state or imply that they represent the views of Council
- (e) Where an elected member is making a statement that is contrary to a Council decision or Council policy, the member must make it clear that his or her statements represent a majority view
- (f) Media comments must observe the other requirements of the code of conduct, e.g. not disclose confidential information, or compromise the impartiality or integrity of staff.

J3.5 *Confidential Information*

In the course of their duties members will receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Staff and Chairpersons will ensure that confidential material distributed at formal and informal meetings is clearly identified as confidential¹.

Elected members must not use or disclose confidential information received from any source for any purpose other than the purpose for which the information was supplied to the elected member.

Elected members should be aware that failure to observe these provisions will impede the performance of the Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

For the purpose of this part of the code "disclose confidential information":

- (a) In relation to information disclosed from outside the Council to the member in his or her capacity as an elected member on a confidential basis, means "disclose confidential information to any other person". (These circumstances will arise only very rarely.)

¹ *Non-public minutes, reports and agendas are usually distributed on grey paper.*

- (b) In relation to information disclosed to the member in a public excluded meeting of the Council or a committee, means "disclose confidential information to any person who was not present at that publicly excluded meeting"
- (c) In relation to any other information disclosed to the member in his or her capacity as an elected member, means "disclose confidential information to any other person who is not a member or employee of the Council" (but with any disclosure to a member or employee being made on a "need to know" basis).

Refer also to Appendix I: Use of Information

J3.6 *Conflicts of Interest*

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

The Act provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Additionally, elected members are prohibited from participating in any local authority discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

If the member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive immediately.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by the Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

J3.7 *Ethics*

Dunedin City Council seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- Claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any lawful policy of the Council developed in accordance with that determination
- Not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests
- Not use Council resources for personal business (including campaigning)
- Not solicit, demand, or request any gift, reward or benefit by virtue of their position
- Notify the Chief Executive if any gifts are accepted
- Where a gift to the value of \$100 or more is offered to a member, immediately disclose

this to the Chief Executive.

J3.8 *Disqualification of Members from Office*

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years' imprisonment, or if they cease to be or lose their status as an elector or of certain breaches of the Local Authorities (Members' Interests) Act 1968.

J3.9 *Declaration of Bankruptcy*

Under the Local Government Act 2002, local authorities, when adopting a code of conduct, must consider whether or not they will require members to declare whether they are an undischarged bankrupt. This Council believes that bankruptcy does raise questions about the soundness of a person's financial management skills and their judgment in general. The Council therefore requires elected members who are declared bankrupt to notify the Chief Executive as soon as practicable after being declared bankrupt.

J3.10 *Dress Code*

Elected members should maintain an appropriate standard of dress at meetings of Committees and the Council. It is recognised that the standard of dress will be in accordance with the level of formality of the meeting they are attending.

J4 **Compliance and Review**

This part deals with ensuring that elected members adhere to the code of conduct and mechanisms for the review of the code of conduct.

J4.1 *Compliance*

Elected members must note that they are bound to comply with the provisions of this Code of Conduct (Local Government Act 2002, Schedule 7, section 15(4)).

Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The Chief Executive will ensure that an explanation of these Acts is made at the first meeting after each triennial election and that copies of these Acts are freely available to elected members. Short explanations of the obligations that each of these has with respect to conduct of elected members is attached in the Appendix JA1 to this code.

Compliance will be monitored by the Conduct Committee. This committee will be constituted at the first meeting after triennial elections as set out in the Committee Structure and Delegations Manual.

Where a conflict of interest arises because a member of the Conduct Committee has either brought an allegation or had an allegation made against them the Council must appoint an elected member to act as a replacement in the matter so that the membership of the Conduct Committee is maintained.

All alleged breaches of the code will be reported to the Mayor or if the Mayor is the subject of the alleged breach to the Deputy Mayor in the first instance. If the Mayor or Deputy Mayor is satisfied that there are reasonable grounds for believing that a provision of the Code has been breached the Mayor or Deputy Mayor may refer the matter to the Conduct Committee for investigation². Where a matter is referred to the Conduct Committee for investigation the Mayor/Deputy Mayor must advise the Council at the next ordinary meeting

² *The Mayor/Deputy Mayor may seek to mediate a solution in the first instance. Where a solution is agreed through mediation the Mayor/Deputy Mayor will not be required to refer the matter to the Conduct Committee. The Mayor/Deputy Mayor is also entitled to take into consideration the amount of time that has elapsed since the alleged breach before referring the matter to the Conduct Committee, and may decline to refer the matter if as a result of the time elapsed since the alleged breach, the Mayor/Deputy Mayor is of the view that it would be unfair to do so.*

of the Council. (See also Appendix I).

Members to be Informed of Allegations Against Them

- (a) Any member raising an alleged breach of the Code of Conduct which involves another member of the Council shall, as soon as reasonably practicable after raising the matter, fully inform that other member of the matter which has been raised.
- (b) The Mayor or Deputy Mayor shall not report to Council that a matter involving another member involves an alleged breach of Code of Conduct without first informing that member that this is intended.

Any allegation of a breach of a code of conduct must be in writing, make a specific allegation of a breach of the code of conduct, and provide corroborating evidence.

The Conduct Committee will investigate the alleged breach and prepare a report for the consideration of the Council. Before beginning any investigation, the committee will notify the elected member(s) in writing of the complaint and explaining when and how they will get the opportunity to put their version of events.

The Council will consider the report in open meeting of Council, except where the alleged breach relates to the misuse of confidential information or could impinge on the privacy of an elected member, a member of staff or of the general public.

J4.2 *Responses to breaches of the code*

The exact nature of the action the Council may take depends on the nature of the breach and whether there are statutory provisions dealing with the breach.

Where there are statutory provisions:

- Breaches relating to members' interests render members liable for prosecution by the Auditor-General under the Local Authorities (Members' Interests) Act 1968
- Breaches which result in the Council suffering financial loss or damage may be reported on by the Auditor-General under the Local Government Act 2002, which may result in the member having to make good the loss or damage
- Breaches relating to the commission of a criminal offence may leave the elected member liable for criminal prosecution.
- In these cases the Council may refer an issue to the relevant body, any member of the public may make a complaint, or the body itself may take action of its own initiative.

Where there are no statutory provisions, the Council may take the following action by means of a resolution with a three-fourths majority of those present to that effect:

- (a) Request an appropriate apology from the elected member
- (b) Censure
- (c) Suspension from specified Council committees and/or other representative type bodies for a defined period of time to be recommended by the Conduct Committee in its report on the investigation of the alleged breach. (Suspension is defined as loss of voting rights and payment (in the event that any meeting fees apply) for attendance at that committee).
- (d) Dismissal of the elected member from a position as Deputy Mayor or Chairperson or Deputy Chairperson of a committee.

J4.3 *Review*

Once adopted, a Code of Conduct continues in force until amended by the Council. The code can be amended at any time but cannot be revoked unless the Council replaces it with another code. Once adopted, amendments to the Code of Conduct require a resolution supported by 75 per cent or more of the members of the Council present.

The Council will formally review the Code as soon as practicable after the beginning of each

triennium. The results of that review will be presented to the Council for their consideration and decision.

ATTACHMENT JA1: Legislation Bearing on the Role and Conduct of Elected Members

This is a summary of the legislative requirements that impact on the duties and conduct of elected members. Copies of these statutes can be found in the Council's libraries or copies can be requested from the Governance Team. Refer also to the legislation summary distributed to elected members at the start of each triennium or contact staff for advice.

JA1.1 *Local Authorities (Members' Interests) Act 1968*

This Act³ regulates situations where a member's personal interests impinge, or could be seen as impinging on their duties as an elected member.

The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any Council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

JA1.2 *Local Government Official Information and Meetings Act 1987*

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- Create a disturbance or a distraction while another Councillor is speaking
- Be disrespectful when they refer to each other or other people
- Use offensive language about the Council, other Councillors, any employee of the Council or any member of the public.

JA1.3 *Secret Commissions Act 1910*

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to the Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, or fined up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

³ The Audit Office publication *Financial Conflicts of Interests of Members of Governing Bodies* (2001) provides further guidance on this Act.

JA1.4 *Crimes Act 1961*

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of the Council
- Use information gained in the course of their duties for their, or another person's, monetary gain or advantage.
- These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted of these offences will also be automatically ousted from office.

JA1.5 *Securities Act 1978*

The Securities Act 1978 essentially places elected members in the same position as company directors whenever the Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.