

Greater Wellington Regional Council

# Code of Conduct for Councillors

Adopted by Council on 25 February 2021





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## 1. Introduction

Schedule 7 of the Local Government Act 2002 requires Greater Wellington Regional Council to adopt a code of conduct. This code of conduct (Code) sets out the standards of behaviour that are expected of Greater Wellington Regional Council Councillors. It applies to Councillors in their dealings with:

- each other
- the Chief Executive
- all Greater Wellington staff employed by the Chief Executive
- all contractors engaged by Greater Wellington
- the media
- the general public.

For the purposes of this Code, “Council” refers to the governing body of the Greater Wellington Regional Council, and “Greater Wellington” refers to the organisation that puts into effect Council decisions. The Council is responsible for developing policies that direct the activities of Greater Wellington.

The Code sits alongside Greater Wellington’s Standing Orders. The Standing Orders set out the procedures to be followed for the conduct of meetings of the Council and those of its committees.

The objective of this Code is to support and strengthen:

- the effectiveness of Greater Wellington as an autonomous local authority with statutory responsibilities
- good governance
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance among Councillors, and between Councillors, the Chief Executive and staff.

This Code seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities
- agreed general principles of conduct
- specific conduct applying to particular circumstances or matters.

Councillors are primarily accountable to the electors of the Wellington Region through the democratic process. However, Councillors 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.

This Code can only be amended (or substituted by a replacement code) by a vote of at least 75 per cent of members present at a Council meeting when an amendment to, or substitution of the Code is being considered.

Parts 1, 2 and 3 of this Code apply to the appointed members of Council committees. If concerns are expressed by a Councillor or by the Chief Executive

about a committee appointee's actions and/or behaviour then the Council Chair shall determine the appropriate action required, after consultation with the Deputy Chair and relevant Committee Chair. Any proposed action involving the termination of an appointed member's appointment shall be reported to the Council for decision.

**This Code is based on the following general principles of good governance:**

- **Regional focus** – Councillors must exercise their powers and duties in the best interests of the Wellington Region as a whole.
- **Representation** – Councillors have a responsibility to represent the aspirations of their community.
- **Public trust and confidence** – Councillor behaviours and actions should foster public trust and confidence in the roles of the Council and Councillors. Councillors should never improperly confer an advantage or disadvantage on any one person, organisation or class of persons.
- **Honesty and integrity** – Councillors should act with honesty and integrity. Councillors should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity** – Councillors should make decisions on merit, including making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability** – Councillors are accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness** – Councillors should be as open as possible about their actions and those of Greater Wellington, and should be prepared to justify their actions.
- **Personal judgement** – Councillors 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** – Councillors should promote equality by not discriminating against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect and encourage the impartiality and integrity of Greater Wellington staff.
- **Duty to uphold the law** – Councillors should uphold the law, and on all occasions act in accordance with the trust the public places in them.



- **Stewardship** – Councillors should ensure that Greater Wellington uses resources prudently and for lawful purposes, and that it maintains sufficient resources to meet its statutory obligations.
- **Leadership** – Councillors are leaders in their community and should at all times provide leadership by example.

These general principles of good governance should be read in conjunction with the principles relating to local authorities set out in section 14 and the governance principles in section 39 of the Local Government Act 2002.

## 2. Roles and responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the governance of Greater Wellington and those responsible for advice and the implementation of Council decisions. This part of the Code describes the roles and responsibilities of Councillors, the additional roles of the Chair, Deputy Chair, and other positions of additional responsibility and the role of the Chief Executive.

### 2.1 Councillors

Councillors, acting together as the Council, are responsible for:

- representing the interests of the people of the Wellington Region
- developing and adopting plans, policies and budgets
- monitoring the performance of Greater Wellington against its stated objectives and policies
- providing prudent stewardship of Greater Wellington resources
- employing the Chief Executive and monitoring their performance
- representing the interests of the residents and ratepayers of the entire Wellington Region
- ensuring the Council and Greater Wellington each fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

Unless otherwise provided in the Local Government Act 2002 or in Standing Orders, the Council can only act by majority decisions at meetings. Each Councillor, other than the Chair, has one vote. The Chair has a deliberative vote, and in the case of an equality of votes, a casting vote unless specified otherwise in Standing Orders.

No individual Councillor (including the Chair) has authority to act on behalf of the Council unless the Council has expressly delegated such authority.

As individuals, Councillors are each responsible for:

- making themselves familiar with this Code and the Standing Orders

- making themselves as knowledgeable as possible about the activities and processes of Greater Wellington, and the physical and social environment in which it operates
- ensuring that on a regular and timely basis the community and other stakeholders are fully and honestly informed of all material matters relating to Greater Wellington's business
- preparing for and attending meetings, whether of Council itself or of Council's committees
- making themselves available to attend external meetings and forums on behalf of the Council.

Any Councillor who will be unavailable to attend more than two consecutive ordinary meetings of the Council for personal reasons, shall discuss their leave with the Chair. The Chair shall decide if it is appropriate for the Council to consider if that member should take "leave without pay". If so, the matter will be reported to the Council for a decision.

Under the Local Government Act 2002, an elected member who is absent without leave of the local authority from four consecutive Council meetings (other than extraordinary meetings), is deemed to have vacated office.

## **2.2 Chair**

The Chair is elected by members of Council at the first meeting following the triennial election. As one of the Councillors, the Chair shares the same responsibilities as other members of Council.

The Chair has the following additional roles:

- presiding Councillor at Council meetings. The Chair is responsible for ensuring the orderly conduct of business during Council meetings (as determined in Standing Orders) and may exercise a casting vote, if required
- providing leadership on behalf of the community when appropriate. This role may involve promoting the community and representing its interests. Such leadership will be most effective where it is carried out with the knowledge and support of the Council
- ceremonial head of Council
- providing leadership and feedback to other Councillors on teamwork and chairing of committees
- Justice of the Peace (while the Chair holds office).

The Chair is obliged to follow the same rules as other Councillors with respect to making public statements and committing the Council to a particular course of action. The Chair may be removed from office by resolution of Council.

If the Chair is unavailable to attend more than two consecutive ordinary meetings of the Council for personal reasons, the Chief Executive will report that leave to the Council who shall decide if the Chair should take "leave without pay".

### **2.3 Deputy Chair**

The Deputy Chair is elected by the Councillors at the first meeting following the triennial election. The Deputy Chair exercises the same roles as other members, and if the Chair position becomes vacant, the Chair is incapacitated, or the Chair is temporarily absent (and consents) the Deputy Chair must perform all of the responsibilities and duties, and may exercise the powers, of the Chair (as summarised above). The Deputy Chair may be removed from office by resolution of Council.

### **2.4 Committee chairs**

The Council may create one or more committees of Council. A committee chair presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by Council, and as set out in the committee's terms of reference and recorded in Greater Wellington's Delegations Manual. Except where specified otherwise in their committee's terms of reference, a committee chair has a casting vote in the case of an equality of deliberative votes. Committee chairs may be called on to act as official spokespersons on particular issues. They may be removed from office by resolution of Council.

### **2.5 Committee deputy chairs**

A committee deputy chair exercises the same role as other committee members, and if the committee chair is absent or incapacitated, or the committee chair position is vacant, the deputy committee chair must perform all of the responsibilities and duties, and may exercise the powers of the committee chair (as summarised above).

### **2.6 Portfolio leaders**

The Council may appoint portfolio leaders to undertake responsibilities in specific areas of responsibility.

### **2.7 Chief Executive**

The Chief Executive is the only employee of the Council and the employer of all Greater Wellington staff.

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 Local Government Act 2002, the responsibilities of the Chief Executive are:

- implementing the decisions of Council, and the decisions made by committees under the delegated authority of Council
- providing advice to Council and committees
- 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 Greater Wellington effectively and efficiently
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of Greater Wellington
- employing staff and negotiating the terms of staff employment.

### **3. Relationships and behaviours**

This part of the Code sets out the Council's agreed standards of behaviour. Some of the matters described in this part of the Code reflect other legislation such as the Local Authorities (Members' Interests) Act 1968.

#### **3.1 Relationships between Councillors**

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members. With this in mind, Councillors will conduct their dealings with each other in ways that:

- maintain public trust and confidence in the office to which they have been elected
- are open, honest, and courteous
- focus on issues rather than personalities
- avoid abuse of meeting procedures; and
- avoid aggressive, offensive or abusive conduct.

Any failure by Councillors to act in the manner described above represents a breach of this Code. Note that nothing in this section is intended to limit robust debate within the Council as long as it is conducted in a respectful and insightful manner.

#### **3.2 Relationships with Greater Wellington staff**

The effective performance of the Council also requires a high level of co-operation and mutual respect between Councillors and Greater Wellington staff. To ensure that level of co-operation and trust is maintained, Councillors will:

- recognise that the Chief Executive is the employer of all Greater Wellington staff, and only the Chief Executive, or their authorised delegate(s), may hire, dismiss, instruct or censure a staff member
- inform themselves of the obligations that the Chief Executive and the Council have as employers and observe those requirements at all times
- treat all staff with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards Greater Wellington employees)
- observe any guidelines that the Chief Executive puts in place regarding contact with staff
- avoid anything which compromises, or could be seen as compromising, the impartiality of staff

- avoid publicly criticising any staff member in any way, but especially in ways that reflect on the competence and integrity of the staff member
- raise concerns about staff only with the Chief Executive, and concerns about the Chief Executive only with the Chair or Deputy Chair
- recognise that individual staff members will have particular expertise or experience, and that it is appropriate to refer to them for advice.

Councillors should be aware that failure to observe this section may represent a breach of this Code. Further, it may compromise the Council's and Chief Executive's obligations to act as a good employer and may expose Greater Wellington to civil litigation and audit sanctions.

### **3.3 Relationships with the community**

Effective Council decision-making depends on productive relationships between Councillors and the community at large. Councillors should ensure that individuals are accorded respect in their dealings with the Council, have their concerns listened to, and deliberated on in accordance with the requirements of the Local Government Act 2002. Councillors should act in a manner that encourages and values community involvement in local democracy.

From time to time, individuals or organisations will approach Councillors for advice or comment on issues that are topical or are relevant and of particular interest to individuals or groups within the community. Councillors should seek appropriate advice from the Chief Executive or staff before commenting on operational matters or issues that call for particular technical or legal expertise.

### **3.4 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 and relevant information about the affairs of Council.

From time to time, individual Councillors will be approached to comment on a particular issue either on behalf of Council, or as a member in their own right, or as a community leader. 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 apply for media contact on behalf of the Council:

- the Chair or the chair of the relevant committee is the first point of contact for the Council's official view on any issue. Where the Chair or committee chair is absent, any matters will be referred to the relevant deputy chair or portfolio leader
- the Chair may refer any matter to the relevant committee chair or to the Chief Executive for their comment
- Councillors are free to express a personal view in the media, at any time, provided the following rules are observed:

- media comments must not state or imply that they represent the views of the Council. In expressing a personal view, Councillors should make it clear that they are not speaking on behalf of the Council
- where a Councillor is making a statement that is contrary to a Council decision or Council policy, the Councillor should make this explicit and must not state or imply that their statements represent a majority view
- media comments must observe the other requirements of the Code, e.g. not disclosing personal or confidential information, or compromising the impartiality or integrity of Councillors or Greater Wellington staff, or of Council decision-making processes.

Particular care should be taken when commenting on matters currently under negotiation (so as not to compromise Greater Wellington’s negotiating position) or on any matter that may come before the Council for a decision.

Greater Wellington’s communications approach is based on an objective of “no surprises”. Councillors dealing with the media on an issue that may be controversial or sensitive should notify the Chair, Chief Executive or appropriate manager, and other councillors (when appropriate) as soon as possible after media contact is made. This ensures that an issue can be monitored and appropriate support provided to Councillors acting in a spokesperson role. Similarly, the Chief Executive shall ensure that Councillors are informed of media communications issued by Greater Wellington.

### **3.5 Confidential or personal information**

In the course of their duties Councillors will occasionally receive information that is confidential or which identifies an individual. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Councillors must not use or disclose confidential or personal information for any purpose other than the purpose for which the information was supplied to the Council. Councillors should be aware that failure to observe these provisions may impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose Greater Wellington to investigation under the Ombudsmen Act 1975, the Privacy Act 2020 and/or civil litigation.

### **3.6 Conflicts of interest**

Councillors 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). The following is a summary of the rules surrounding financial and non-financial conflicts of interest.

If a Councillor 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 they should:

- seek advice from the Chief Executive *immediately*. The Chief Executive is available to facilitate the provision of confidential and independent legal advice to Councillors, if requested
- refer to the Auditor-General's publication [Local Authorities \(Members' Interests\) Act 1968: A guide for members of local authorities on managing financial conflicts of interest \(June 2020\)](#).<sup>1</sup>

### 3.6.1 Financial conflicts of interest

In local government, financial conflicts of interest are governed primarily by the Local Authorities (Members Interests) Act 1968 (LAMIA). The LAMIA provides that:

- a Councillor is disqualified from office, or from election to office, if they are concerned or interested in contracts (collectively and individually) under which payments made by or on behalf of the local authority exceed \$25,000 (including GST) in any financial year. On an application by the local authority the Auditor-General can grant approval to a Councillor to exceed the contracting limit
- a Councillor is prohibited from participating in any Council or committee discussion or voting on any matter in which they, or their spouse or partner, have a direct or indirect pecuniary interest, other than an interest in common with the general public. On an application by the Councillor the Auditor-General can grant an exemption or a declaration enabling the Councillor to participate in the matter.

If a Councillor has a financial conflict of interest in a matter before the Council the Councillor must:

- declare to the meeting the existence of a pecuniary interest when the matter comes up at the meeting
- refrain from discussing and voting on the matter (it is good practice, and recommended, that the Councillor leave the meeting for the discussion and voting on the matter).

The declaration shall be recorded in the meeting minutes.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could expose the relevant Council or committee decision to judicial review and could also leave the Councillor open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction the Councillor is ousted from office.

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<sup>1</sup> <https://oag.parliament.nz/2020/lamia>

### 3.6.2 Non-financial conflicts of interest

While the Local Authority (Members' Interests) Act 1968 deals with pecuniary interests, there are other rules about conflicts of interest, more generally, which apply to non-pecuniary conflicts of interest.

Of key significance is the matter of bias – this is not limited to actual bias, but also relates to the appearance or possibility of bias. Situations of non-pecuniary bias commonly involve pre-determination of a matter or a close relationship or involvement with an individual or an organisation affected by the matter.

Guidance on the laws on conflict of interest is also contained in Auditor-General's publication [Managing conflicts of interest: A guide for the public sector \(June 2020\)](#).<sup>2</sup>

If a councillor has a non-financial conflict of interest in a matter before the Council they should:

- declare that they have a conflict of interest when the matter comes up at the meeting
- refrain from discussing or voting on the matter (it is good practice, and recommended, that the Councillor leave the meeting for the discussion and voting on the matter).

The declaration shall be recorded in the meeting minutes.

### 3.6.3 Councillors' register of interests

To increase transparency on Councillors' interests the Council has resolved that Councillors shall make a bi-annual declaration of both their pecuniary and non-pecuniary interests. These declarations are published on Greater Wellington's website.

## 3.7 Conduct in meetings

Councillors must adhere to any Standing Orders adopted by Council under the Local Government Act 2002. These Standing Orders are subject to the same legal requirements as a Code of conduct with regard to their adoption and amendment.

Of particular importance for the roles and conduct of Councillors is the fact that the chair or presiding member has the responsibility to maintain order at meetings, but all members should accept a personal responsibility to maintain acceptable standards of address and debate. Councillors should:

- not create a disturbance or a distraction while another member is speaking
- be respectful when they refer to each other or other people
- not use offensive language about the Council, other Councillors, any Greater Wellington staff member or any member of the public

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<sup>2</sup> <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>



- only use personal devices for the purpose of the meeting, and in a manner that is not disruptive to others.

Councillors will conduct themselves in meetings in a manner that is appropriate and takes cognisance of the interests of other Councillors and members of the public who are in attendance at the meeting.

### **3.8 Ethics**

The Council seeks to promote the highest standards of ethical conduct amongst its Councillors. Accordingly, Councillors will:

- claim only for legitimate expenses as laid down by any determination of the [Remuneration Authority](#)<sup>3</sup> then in force, and any lawful policy of Council developed in accordance with that determination
- not influence, or attempt to influence, any Greater Wellington staff member to take actions that may benefit the Councillor, or the Councillor's family or business interests
- not use Greater Wellington resources for personal business (including campaigning).

### **3.9 Gifts**

To accept or give gifts, certain entertainment or any material benefits could be seen by the community as a means of seeking to influence the decision of the recipient (whether or not the recipient is a member or an organisation with which the Council has a relationship).

Under the Council's [Sensitive Expenditure \(Elected Members\) Policy](#)<sup>4</sup> (adopted by Council on 30 April 2020) the following principles apply to the receiving of gifts:

- gifts may be accepted by Greater Wellington as an organisation, except when acceptance could be perceived as a means of influencing a Council decision-making process
- all gifts are the property of Greater Wellington, as an organisation, and the Chief Executive must be advised of the gift, except where individual Councillors are given infrequent, inexpensive gifts such as pens, badges, or calendars
- gifts with an estimated value of over \$150 (GST incl.) must be recorded in the Council's Gifts and Invitations Register held by the Chief Executive and forwarded to the Chief Executive, who will determine how they should be used or distributed
- where it is necessary, in the circumstances, to decline a gift, the following steps should be taken in order to preserve the relevant working relationships of Greater Wellington and the person or organisation involved:

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<sup>3</sup> <https://www.remauthority.govt.nz/clients-remuneration/local-government-elected-members/>

<sup>4</sup> [http://www.gw.govt.nz/assets/council-reports/Report\\_PDFs/13.1028a1.pdf](http://www.gw.govt.nz/assets/council-reports/Report_PDFs/13.1028a1.pdf)

- (a) thank the person or organisation for the gesture of the gift and acknowledge Greater Wellington's appreciation
- (b) explain that due to the Council's policy, the gift cannot be accepted
- (c) advise that you are not the only person who has had to respectfully decline a gift as a result of this policy. Other Councillors have been in the same situation.

In no circumstances should a Councillor accept cash, or solicit a gift by virtue of their position.

### **3.10 Opportunities to build relationships**

Councillors will, on many occasions, be invited to attend events of a social nature in order that they are able to "network" and build appropriate business relationships.

Councillors make their own decisions on whether to accept invitations. In making their decision, Councillors must be aware of the line between appropriate relationship building and compromise and should consult the Chief Executive in cases of doubt as to whether to accept an invitation to an event.

The decision to accept an invitation requires consideration of whether attendance would:

- benefit a business relationship of Greater Wellington
- maintain impartiality and integrity (i.e. not be perceived as a means of influencing a Greater Wellington or Council decision-making process).

Councillors should keep a record of invitations received and their acceptance or otherwise.

### **3.11 Disqualification of members from office**

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

Under the Local Government Act 2002, local authorities, when adopting a code, must consider whether to require Councillors to declare whether they are an undischarged bankrupt. This Council believes that bankruptcy raises questions about the soundness of a person's financial management skills and their judgement in general. The Council therefore requires Councillors who are declared bankrupt to notify the Chief Executive as soon as practicable after being declared bankrupt. The Chief Executive will then discuss with the Chair the potential actions that may be appropriate in respect of the member's bankruptcy.

### **3.12 Creating a supportive and inclusive environment**

In accordance with the purpose of the Code, Councillors agree that they will take reasonable steps to participate in any scheduled activities that promote a culture of mutual trust, respect and tolerance. These may include:

- attending post-election induction programmes organised by Greater Wellington for the purpose of facilitating agreement on the Council's vision, goals, and objectives and the manner and operating style by which Councillors will work
- taking part in any assessment of the Council's overall performance and operating style during the triennium
- taking reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office and contribute to the good governance of the region.

## **4. Compliance and Review**

This part deals with ensuring that Councillors adhere to the Code and mechanisms for the review of the Code.

### **4.1 Compliance**

Councillors must comply with this Code and are bound by the:

- Local Government Act 2002
- Local Authorities (Members' Interests) Act 1968
- Local Government Official Information and Meetings Act 1987
- Secret Commissions Act 1910
- Crimes Act 1961
- Financial Markets Conduct Act 2013.

The Chief Executive will ensure that an explanation of these Acts is made at the first Council meeting after each triennial election. Copies of these Acts are freely available at <https://www.legislation.govt.nz/>. Short explanations of the obligations that each of these Acts has with respect to conduct of Councillors is attached in the Appendix to this Code.

### **4.2 Breaches of this Code**

Councillors must comply with the provisions of this Code (Clause 15(4), Schedule 7 to the Local Government Act 2002). Any Councillor, or the Chief Executive, who believes that the Code has been breached by the behaviour of a Councillor, may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

#### **4.2.1 Principles**

The following principles will guide any processes for investigating and determining whether or not a breach under this Code has occurred:

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about
- that the roles of complainant, investigator, advisor, and decision-maker be kept separate as appropriate to the nature and complexity of the alleged breach
- that the concepts of natural justice and fairness will apply in the determination of complaints made under this Code; this requires, conditional on the nature of an alleged breach, that affected parties:
  - (a) have a right to know that an investigation process is underway and the subject-matter of the investigation;
  - (b) are given due notice and are provided with an opportunity to be heard;
  - (c) have a right to seek appropriate advice and be represented; and
  - (d) have their privacy respected.

In matters where there are regulatory or legislative provisions, the Council may refer an issue to the relevant enforcement body, in situations including but not limited to the following:

- breaches relating to members' interests render Councillors liable for prosecution by the Auditor-General under the Local Authorities (Members' Interests) Act 1968
- breaches which result in Greater Wellington incurring a loss may be reported on by the Auditor-General under the Local Government Act 2002, with copies of the report sent to the Minister and every member of the Council. The Council must respond to the report, and both the report and the response must be tabled in a meeting that is open to the public. Such breaches may result in the Councillor (and/or each member of the Council) having to pay the Crown the amount of the loss
- breaches relating to the commission of a criminal offence may leave the Councillor liable for criminal prosecution.

### **4.3 Complaint process**

In the interest of facilitating early and constructive resolution of alleged breaches of the Code by a Councillor, issues should be raised and resolved at the lowest possible level. If such informal steps do not resolve the alleged breach (and there is not a process and penalty provided elsewhere) the matter shall be reported in a timely manner to the Chair. The allegation of the breach of the Code must be in writing, specific, and provide corroborating evidence. If the Chair considers there is a significant unresolved issue, the Chair shall determine the approach to the investigation of the complaint. The Chair may opt to investigate the complaint themselves or to convene a panel which may comprise Councillors and/or one or more independent expert persons.

Where a complaint is lodged against the Chair the Deputy Chair shall be responsible for the investigation of the complaint and will follow the process outlined in this section.

The Councillor (or the Chief Executive) who has lodged a complaint for consideration shall not be involved in the investigation, except as a witness.

The Chair will ensure that the alleged breach is investigated in a manner that is fair to all parties involved in the allegation, including notifying in writing the Councillor(s) who is/are the subject of the complaint of the allegation and explaining when and how they will get an opportunity to put forward their version of events. If, following the opportunity to respond to the allegation, it is considered that the allegation of a breach of the Code is material, the Chair or any panel convened by the Chair will prepare a report for consideration of the Council so that it can determine whether to take any appropriate lawful action.

In preparing the report for Council, the report's subject-matter and content will be assessed to determine whether the report should be considered in the Public or Public Excluded section of the Council meeting. This is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

#### **4.4 Penalties and Actions**

An alleged breach under this Code is material if, in the opinion of the Chair, it would, if proven, bring a Councillor, the Council, or Greater Wellington into disrepute or, if not addressed, reflect adversely on another Councillor, the Council, or Greater Wellington.

Where a complaint is determined to be material, the nature of the penalty or action will depend on the seriousness of the breach.

In the case of material breaches of this Code the Council may resolve one or more of the following actions:

- a letter of censure to the Councillor
- a request (made either privately or publicly) for an apology
- a vote of no confidence in the Councillor
- removal of certain Greater Wellington-funded opportunities (such as attendance at conferences)
- restricted entry to Greater Wellington offices, such as no access to staff areas (where restrictions may not previously have existed)
- limitation on any dealings with Greater Wellington staff, so that they are confined to the Chief Executive only
- suspension or removal from committees or other bodies
- removal from Council positions of additional responsibility
- an invitation for the Councillor to consider resigning from the Council

- any other action determined by Council as being proportional and appropriate to the nature of the breach of this Code.

The Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course
- work with a mentor for a period of time
- participate in voluntary mediation (if the complaint involves a conflict between two Councillors)
- tender an apology.

#### **4.5 Review**

Once adopted, this Code continues in force until amended by 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 require a resolution supported by 75 per cent or more of the members of the Council present. The Code will be reviewed at least once every six years. The results of that review will be presented to Council for its consideration and vote.

#### **4.6 Availability of code**

The Code will be available for inspection at the Council's office at 100 Cuba Street, Te Aro, Wellington, during ordinary business hours and on the Council's website [www.gw.govt.nz](http://www.gw.govt.nz).

## Appendix: Legislation bearing on the role and conduct of Councillors

This is a brief outline of the legislation requirements that have some bearing on the duties and conduct of councillors. Copies of these statutes can be found [online](#).<sup>5</sup>

### A. Local Authority (Members' Interests) Act 1968

The Local Authority (Members' Interests) Act 1968 (LAMIA) regulates situations where a member's pecuniary interests impinge, or could be seen as impinging on their duties as a councillor.

The LAMIA has both a 'contracting' rule and a 'participation' rule.

The LAMIA provides that a member is disqualified from office if that Councillor, or their spouse or partner, is concerned or interested in contracts, both individually and collectively, under which payments made by or on behalf of the local authority exceed \$25,000 (GST incl.) in any financial year.

On an application by the local authority the Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify a councillor under the LAMIA.

If the contracting rule is broken then no person shall be capable of being elected as, or appointed to be, or of being, a member of a local authority or of any committee of a local authority.

Additionally, Councillors are prohibited from participating in any Council or committee discussion or voting on any matter in which they, or their spouse or partner, have a pecuniary interest, other than an interest in common with the general public.

Councillors may seek an exemption to allow them to participate or vote on a particular issue in which they may have a pecuniary interest. This must be done before the discussion or vote. Failure to observe these requirements could also leave the Councillor open to prosecution under the LAMIA. In the event of a conviction Councillors are ousted from office.

#### *Determining whether a pecuniary interest exists*

In deciding whether a pecuniary interest exists, a Councillor should consider the following factors:

- what is the nature of the decision being made?
- do I, or any parties I am associated with, have a, direct or indirect, pecuniary interest in that decision – do I, or any parties I am associated with, have a reasonable expectation of gain or loss of money by making that decision?
- are there past events that could create a public perception that there is a pecuniary conflict of interest?

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<sup>5</sup> <https://www.legislation.govt.nz/>

- is my pecuniary interest, or the pecuniary interest of parties I am associated with, more than an interest in common with the public?
- do any of the exceptions in the LAMIA apply to me?

Councillors may seek assistance from the Chair or the Chief Executive to determine if they should discuss or vote on an issue, but ultimately it is their own judgement as to whether they have a pecuniary interest in the outcome. The Chief Executive can arrange legal advice, if appropriate. A cautionary approach is recommended for Councillors declaring their interests.

## **B. Local Government Official Information and Meetings Act 1987**

### *Official Information*

The Local Government Official Information and Meetings Act 1987 (LGOIMA) contains rules relating to the disclosure of information held by a local authority to a member of the public on request. The underlying principle of the Act is that information should be made available unless there is good reason to withhold disclosure. There are a number of grounds for withholding disclosure, principally contained in section 7 of the Act.

The obligations of the LGOIMA are binding on Councillors. Any information held by that Councillor (in his or her capacity as member) is deemed to be official information and is subject to the LGOIMA. It covers information held by Councillors in their official capacity regardless of the means by which that information is stored, for instance, on a home computer.

### *Meetings*

The LGOIMA also regulates the procedures and requirements of Council meetings, including the publication of agenda, procedures for discussion with the public excluded and access by the public to the minutes of meetings (specified further in the Standing Orders).

Of particular importance for the roles and conduct of Councillors is the fact that the meeting Chair has the responsibility to maintain order at meetings, but all Councillors should accept a personal responsibility to maintain acceptable standards of address and debate.

No Councillor should:

- create a disturbance or a distraction while another member is speaking
- be disrespectful when they refer to each other or other people
- use offensive language about the Council or Greater Wellington, other Councillors, the Chief Executive or any staff of Greater Wellington, or any member of the public.

## **C. Secret Commissions Act 1910**

Under this Act it is unlawful for a Councillor 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 Greater Wellington.



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.

#### **D. Crimes Act 1961**

Under this Act it is unlawful for a Councillor to:

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of 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.

#### **E. Financial Markets Conduct Act 2013**

Financial Markets Conduct Act 2013 essentially places Councillors in the same position as company directors whenever Greater Wellington offers stock to the public. Councillors 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.

#### **F. Local Government Act 2002**

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles. Provisions directly relevant to this Code include:

##### *Personal liability of councillors*

Although having qualified privilege, Councillors can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s.44 LGA 2002, it is found that one of the following applies:

- a) money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) a liability has been unlawfully incurred by the local authority; or
- d) a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Councillors will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- a) without the Councillor's knowledge;
- b) with the Councillor's knowledge but against the Councillor's protest made at or before the time when the loss occurred;

- c) contrary to the manner in which the Councillor voted on the issue; and
- d) in circumstances where, although being a party to the act or failure to act, the Councillor acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situations Councillors will also be responsible for paying the costs of proceedings (s.47 LGA 2002.)



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