



# WAITAKERE CITY

# CODE OF CONDUCT

Adopted by Council 20 June 2007  
Minute Number [1110/2007](#)

Reviewed December 2007 (no changes made)

## 1 INTRODUCTION

This Code of Conduct (“Code”) is established in accordance with the provisions of the Local Government Act 2002. This Code provides:

- a. Guidance to us, the Mayor and Councillors of Waitakere City Council (“Council”), as to the manner in which we are expected to conduct ourselves in our capacity as Members in our dealings with:
  - each other;
  - the Chief Executive Officer and staff employed by the Chief Executive Officer on behalf of Council; and
  - the public.
- b. Guidance as to our conduct relating to disclosure of information.
- c. A general explanation of:
  - the Local Government Official Information and Meetings Act 1987; and
  - any other enactment or rule of law applicable to us acting in our capacity as Members.
- d. Further guidance as to our conduct on other matters which we consider to be of importance and relevance to the good governance of Waitakere City being:
  - conflicts of interest;
  - register of interests;
  - contact with the media;
  - specific conduct; and
  - bankruptcy.

## 2 PRINCIPLES OF GOOD GOVERNANCE

By adoption of this Code we endorse the following general principles of good governance:

- **Public interest** - We must serve the interests of Waitakere City (“City”) as a whole, our primary duty is to the interests of the entire City, not just the ward that elected us;
- **Honesty and integrity** - We must not place ourselves in situations where our honesty and integrity may be questioned;
- **Objectivity** - We must make decisions on merit, including decisions making appointments, awarding contracts, or recommending individuals for rewards or benefits;
- **Accountability** - We must be accountable to the public for our actions and the manner in which we carry out our responsibilities;
- **Openness** - We must be open about our actions and those of the Council, and be prepared to justify our actions;
- **Personal judgment** - We can and will take account of the views of others, but must reach our own conclusions on the issues before us;
- **Respect for others** - We must promote equality by treating people with respect, regardless of ethnicity, nationality, age, religion, gender, sexual orientation, or disability;

- **Duty to uphold the law** - We must uphold the law, and on all occasions act in accordance with the trust the public places in us;
- **Stewardship** - We must ensure that the Council uses its resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations to both present and future generations; and
- **Leadership** - We are leaders in our community and must at all times provide leadership by example.

### 3 OUTCOMES

In endorsing the above principles it is our intention that we will:

- enhance local government in the City;
- enhance mutual trust, respect and tolerance among ourselves as a group and between us and those people with whom we may deal in the course of our duties as Members; and
- enhance the credibility of the Council within its community of Waitakere.

### 4 SCOPE, RESPONSIBILITIES AND EXPECTATIONS

This Code applies to all of us, namely: the Mayor and Councillors of Waitakere City Council. We acknowledge that this Code establishes the following responsibilities and expectations:

With respect to ourselves as Members:

- we will, individually and collectively, comply with the Code;
- we will model behaviours and practices consistent with the Code;
- we will maintain the highest level of professionalism and ethical behaviour;
- we will exercise good judgment and think about whether our conduct or actions are appropriate to the situation; and
- we will attempt to resolve alleged breaches of the Code directly amongst ourselves and in particular with the people directly concerned and/or affected.

With respect to the public:

- the expectation that we will comply with the Code.

With respect to the Chief Executive Officer and staff:

- the expectation that we will comply with the Code.

## 5 RELATIONSHIPS AND BEHAVIOURS

### Relationships with each other

We will conduct our dealings with each other in ways that:

- encourage mutual respect;
- maintain the dignity of each of us;
- enable the co-existence of individual and collective responsibility;
- allow for robust discussion and debate focusing on issues rather than personalities;
- encourage thoughtful analysis;
- maintain public confidence in the office to which we have been elected; and
- are open and honest.

### Relationships with Staff

The effective performance of Council requires a high level of cooperation and mutual respect between us and staff. To ensure that the required level of cooperation and trust is maintained we will:

- recognise that the Chief Executive Officer is the employer (on behalf of Council) of all staff. Only the Chief Executive Officer may hire or dismiss, or instruct or censure, an employee;
- make ourselves aware of the obligations that the Council and the Chief Executive Officer have as employers and observe those requirements at all times;
- treat all staff with courtesy and respect;
- observe any guidelines which the Chief Executive Officer has put in place regarding contact with employees;
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
- raise concerns about staff only with the Chief Executive Officer; and
- raise concerns about the Chief Executive Officer only with the Mayor or the Performance Review Committee.

### Relationships with the Public

We will act in a manner that encourages and values community involvement in local democracy in the City. The views of members of the public will be accorded respect. We will listen to and deliberate on concerns carefully and patiently and in accordance with the requirements of the Local Government Act 2002.

## 6 RESPONSIBILITIES RELATING TO INFORMATION AND DISCLOSURE

### Disclosure on request

We understand that, in general, the principles relating to disclosure of official information, promote the concept of public availability of Council information unless there are compelling reasons why it should not be released. Any request to any one of us for disclosure of Council information will only be responded to in accordance with Council's policies and procedures and the provisions of the Local Government Official Information and Meetings Act 1987 (see below).

### Confidentiality

In the course of our duties we will receive information that is confidential. This will generally be information that is either commercially sensitive or is personal or sensitive to a particular individual or organisation. Where that information is required for the purposes of Council business we accept the information on the understanding that it will be made available, in confidence, to other Councillors and staff, as required, for official purposes. Where practical we will inform any person offering us confidential information that it may in some circumstances be subject to an obligation of disclosure without their consent.

### Security of information

Each of us will take all reasonable care to ensure that Council information in our possession is only accessible to authorised people for authorised purposes. We will ensure that all information (electronic or hard copy) in our possession or control is kept safe and accessed, used, stored and disposed of appropriately.

### Receipt and Use of information

All information (including confidential information) offered to us in our capacity as Members will be received by us as Council information and dealt with in accordance with this Code. We will not use any Council information for any purpose other than the purpose for which the information was supplied.

### Privacy

Subject to any disclosure required or permitted by law we will always observe an individual's right to privacy when dealing with personal information.

## 7 EXPLANATION OF LGOIMA AND OTHER LAWS APPLICABLE TO MEMBERS

We are aware that there is a range of statute based and general law obligations that relate to our roles as elected members of a local authority. We acknowledge that we each have a responsibility to understand and abide by these obligations:

- a. Local Government Official Information and Meetings Act 1987("LGOIMA"):  
In general, the principles of LGOIMA state that information should be made available on request unless there are compelling reasons why it should not be released. An explanation of the LGOIMA is contained in **Appendix A**.
- b. Other applicable laws:  
An explanation of and / or extracts from the following laws is contained in **Appendix A**:
  - The Local Government Act 2002;

- The Local Authorities (Members' Interests) Act 1968;
- The Secret Commissions Act 1910;
- The Crimes Act 1961; and
- The Securities Act 1978.

## 8 FURTHER GUIDANCE

### Conflicts of Interest

A conflict of interest arises when a person carries out a particular function with two or more interests in conflict. In our capacity as members, a conflict of interest exists when one of us has a private interest in a decision where we also have a public role. In such a case our public role and private interest are in conflict. The result can be a poor decision because our private concerns, that have nothing to do with our public duty, have influenced the decision. The purpose of this aspect of the Code is to emphasise the importance we place on high quality public decision making which enhances public confidence. We acknowledge the need to be vigilant in this respect.

The three classes of conflict of interest as we define in them in this Code are:

- a. A pecuniary interest in the matter before the Council, which gives rise to a presumption that there is a conflict with our duties as a member. The pecuniary interest may be direct or indirect and involve either financial gain or financial loss. These matters are regulated, in part, by the Local Authorities (Members' Interests) Act 1968. The provisions of that Act are summarised in **Appendix A**.
- b. A non-pecuniary interest, which may give rise to a perception of conflict between interest and duty. These may be interests or relationships arising out of kinship, marriage, domestic relationships, wider family relationships, employment or membership of community organisations.
- c. Demonstrated bias, that is the circumstances where one of us by words or action has indicated a commitment to a particular view in respect of an issue such that it is unlikely that we may approach the consideration of a decision on that issue with an open mind.

While the decision to disqualify ourselves is ultimately a matter for each of us alone, we encourage each other to seek guidance and assistance from our colleagues or the Chief Executive Officer. As a further resource we note the guidance contained in the following documents (and any subsequent updates or revisions) published by the Office of the Auditor-General:

- a. Good Practice Guide: Managing conflicts of interest - Guidance for Public Entities (June 2007).
- b. Good Practice Guide: Guidance for members of local authorities about the law on conflicts of interest (June 2007).

We will take a precautionary approach to the way in which we manage all conflicts of interest.

### Register of Interests

To assist in the fulfilment of our obligations in relation to conflicts of interest and to enhance public confidence in the quality of our decision making we will make a written statement, within three months of the date of the local body triennial elections or within three months of the date of adoption of this code, and annually thereafter on or before 31 January in each year, of the nature of our interests which may give rise to conflicts of interest. Such statement will be submitted by each of us in confidence to be held by the Chief Executive Officer but shall be available for review, as of right, by:

- anyone of us; and
- the Council's Chief Executive Officer, Director Corporate and Business Services, Chief Financial Officer and Corporate Solicitor or such other senior Council officer as delegated in confidence by the Chief Executive Officer for the purpose of administering this Code.

Each of us is at liberty to submit such statement as a publicly available document or waive the confidential status of our own statement of interests (in whole or in part) at any time. We acknowledge that although submitted in confidence the information contained in such statements is held by Council subject to any disclosure required or permitted by law.

The matters to be covered by our statement are details of:

- interests in land, whether as owner or tenant, identified by street address or, if there is no street address, by legal description;
- investments in companies partnerships or joint ventures. We are not however required to disclose:
  - details of shareholdings in publicly listed companies if those shares are held by us through a managed fund in respect of which we have no control over share trading decisions and/or the details of those shareholdings are not reasonably ascertainable by us; or
  - Details of pecuniary interests where such interests are in common with the public (see **Appendix A**, Local Authorities (Members' Interests) Act 1968).
- banks or any other person firm or organisation with whom the member has invested money or other assets;
- occupation, employment status and name of employer and, if self-employed, the name of our business;
- membership of community organisations, for example clubs, environmental protection organisations, churches or charitable bodies;
- appointments (except appointments made by the Council) such as appointments to a Health Board, University Council or government agency;
- all of the above in respect of our domestic partners;
- gifts or favours received by us in the previous 12 months (including travel and related expenses) valued at \$NZ 150 or more from any person (other than gifts or favours from a domestic partner or a relative or where travel related expenditure is reimbursed in the normal course of our business or employment activities); and

- when making this statement we will treat any interest in land or investment held by a trust of which we are a trustee or beneficiary or a company of which we are a director or shareholder in the same manner as if that interest was held by us.

The relevant details are to be provided at such level sufficient to properly identify the extent and nature of the interests held. A worked example of a Statement of Interests is attached as **Appendix B**.

### Contact with the Media

The media plays an important role in the effective operation of local government. In order to fulfil this role the media needs access to accurate, timely information about the affairs of Council. We agree to the following protocols for media contact on behalf of Council:

- no member may speak to the media on behalf of Council unless first approved to do so by resolution of the Council, or of a Committee of the Council, or by the Mayor as set out below;
- the Mayor is the first point of contact for the Council view on any issue. If the Mayor is absent, or unable to act, a matter may be referred to the Deputy Mayor or to the relevant committee chairperson (in that order) for a response; and
- the Mayor may refer any matter to the relevant committee chairperson, a member or to the Chief Executive Officer for comment.

We each remain free to express a personal view in the media at any time but any comments made must observe all requirements of this Code and must state that:

- the comments represent a personal view only; and
- (if the comment is contrary to a Council decision or Council policy) that the comment is a minority view.

### Specific conduct

We commit to conducting ourselves ethically at all times. Specifically we will:

- claim only for legitimate expenses laid down by any remuneration determination and any policy of 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 other interests associated with the member;
- not use Council resources for personal business (including campaigning);
- not solicit, demand, or request any gift, reward or benefit by virtue of their position; and
- notify the Chief Executive Officer if any gifts are accepted by a member, in his or her capacity as a member. If the gift exceeds \$150.00 in value, the Chief Executive Officer will immediately make an appropriate entry in the member's register of interests.

### **Bankruptcy**

We require that in the event of one of us being an undischarged bankrupt that person shall notify the Mayor and Chief Executive Officer in writing as soon as is practicable and such notification shall then be communicated to all members.

## **9 COMPLIANCE WITH THE CODE**

Our compliance with the Code will be monitored by ourselves collectively and individually.

### **Complaints as to breach of the code**

Each of us has:

- the right to raise a concern with a member colleague regarding the possible breach of this Code by that member;
- the right to initiate a complaint concerning an alleged breach of the Code by a Member colleague with the Board; and
- the right to respond to a complaint made against us.

The Chief Executive Officer has:

- the right to initiate a complaint on behalf of a member of the staff; and
- the right to initiate a complaint on his / her own behalf.

This Code does not confer on a member of the public any right to lodge a complaint under the procedures set out in this Code. However, we acknowledge and endorse the right of the public to raise matters of concern in other ways including:

- an approach to the Mayor;
- an approach to anyone of us as Councillors;
- an approach to the Chief Executive Officer;
- a complaint to the Ombudsmen's Office; and
- a complaint to the Office of the Auditor General or other appropriate authority.

### **Conduct Review Board**

For the purposes of investigating alleged breaches of the Code we have by this Code established a Conduct Review Board “(the Board)”. The Board will consist of three people being:

- the Mayor;
- the Deputy Mayor; and
- one person who is neither an elected member nor a staff member and who has dispute resolution skills appointed on the advice of the Chief Executive Officer.

Where the Mayor or Deputy Mayor is the subject of the complaint or the complainant in his / her own right then their position on the Board will be replaced by one of us as members (such member to be agreed by the persons involved in the complaint), or if agreement cannot be reached then by an additional independent person appointed by the Chief Executive Officer.

For the avoidance of doubt, the Board is not a committee or a sub-committee of the Council to which the requirements of LGOIMA apply. The Board shall enquire into and deliberate upon, all complaints and own motion investigations, in private. Subject to the requirements of this Code the Board:

- shall regulate its own procedure regarding any such investigation;
- shall discharge its obligations in a timely manner having regard to the principles of fairness and natural justice; and
- shall allow any of us involved in the complaint process to be accompanied by a support person or persons (including legal counsel) in the event that we might attend at a meeting of the Board in the course of the investigation (see Stage 2 below).

### **Alleged breaches**

Alleged breaches of the Code may be dealt with directly between the parties concerned or affected or referred to the Board for investigation. The Board may also investigate a potential breach of its own volition.

All alleged breaches of the Code which are referred to the Board must be:

- referred in writing;
- make a specific allegation of a breach of the code; and
- provide corroborating evidence.

Following referral of the alleged breach the stages involved in responding to the referral shall be as follows:

#### **Stage 1 - Preliminary communications and assessment**

Prior to commencement of any investigation by the Board under Stage 2 the Mayor and Deputy Mayor (or their replacement, as the case may be), shall advise the member who is the subject of the complaint that the Board has received a complaint and that a preliminary assessment of the complaint will be made. A preliminary assessment of the allegation/s shall be undertaken by the Mayor and Deputy Mayor to determine whether the complaint warrants further investigation or whether it should be dismissed without further inquiry. For the purposes of guidance only the nature and / or seriousness of the complaint shall be of relevance in exercising this discretion. In undertaking the preliminary assessment the Mayor and Deputy Mayor shall be entitled to consult with such persons as they consider appropriate and may encourage informal efforts to resolve the matter.

On completion of such preliminary assessment the complaint shall either be dismissed or referred to the Board for investigation under Stage 2. The outcome of the preliminary assessment will be communicated to the relevant members.

### Stage 2 - Investigation

Upon referral of a complaint after preliminary assessment the Board will investigate the alleged breach. As part of the investigation process, the Board will notify the member in writing of the complaint and afford the member a full opportunity to respond to the complaint. The Board may determine from time to time to what extent if any it requires either the complainant and / or the member the subject of the complaint to address the Board in person.

### Stage 3 - Decision

Upon the Board being satisfied that it has sufficient information to properly consider the issues at hand it will make a determination as to whether a breach of the Code has occurred or not and advise the relevant members in writing.

### **Consequences of a breach**

Where the Board finds that a breach of the code has occurred it shall prepare a report to the Council advising of such finding. The Council will consider any such report in open meeting of Council, except where the alleged breach relates to the misuse of confidential information, or where the report from the Board would otherwise be exempt from public disclosure under LGOIMA.

Upon the Board reporting a breach to the Council then Council shall consider such sanctions as are lawfully within its power.

The form of any sanction that the Council may apply will depend on the nature of the breach, and may include the following:

- no further action;
- a public or private apology;
- censure of the member, by letter and/or in open meeting;
- removal of the member from representation on Council committees or other bodies as representative of the Council;
- removal of any special status of the member, such as the position of Deputy Mayor or Chair of a committee; and
- if it appears that a breach of the code also constitutes a statutory offence then the Council may refer the circumstances of that breach to the relevant body for further action.

A resolution by the Council receiving the report of the Board that a breach of the code has occurred, and/or recording the penalty to be applied, will be final and binding on the member to whom that resolution relates and each of us. With the exception only of an allegation of a breach of the rules of natural justice, none of us shall seek to review or challenge the outcome.

## **10 CODE REVIEW**

This Code shall be reviewed by the Council no later than three months following each triennial election or at such other times as agreed by us.

## APPENDIX A

Legislation relevant to the conduct of members (Copies of these Acts can be found in the Council Library)

### **LOCAL GOVERNMENT ACT 2002 (EXTRACTS)**

#### **“10 PURPOSE OF LOCAL GOVERNMENT**

*The purpose of local government is -*

- (a) *to enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) *to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.*

#### **14 PRINCIPLES RELATING TO LOCAL AUTHORITIES**

- (1) *In performing its role, a local authority must act in accordance with the following principles:*
  - (a) *a local authority should -*
    - (i) *conduct its business in an open, transparent, and democratically accountable manner; and*
    - (ii) *give effect to its identified priorities and desired outcomes in an efficient and effective manner:*
  - (b) *a local authority should make itself aware of, and should have regard to, the views of all of its communities; and*
  - (c) *when making a decision, a local authority should take account of—*
    - (i) *the diversity of the community, and the community’s interests, within its district or region; and*
    - (ii) *the interests of future as well as current communities; and*
    - (iii) *the likely impact of any decision on each aspect of well-being referred to in section 10:*
  - (d) *a local authority should provide opportunities for Maori to contribute to its decision-making processes:*
  - (e) *a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and*
  - (f) *a local authority should undertake any commercial transactions in accordance with sound business practices; and*
  - (g) *a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and*
  - (h) *in taking a sustainable development approach, a local authority should take into account -*
    - (i) *the social, economic, and cultural well-being of people and communities; and*

- (ii) *the need to maintain and enhance the quality of the environment; and*
  - (iii) *the reasonably foreseeable needs of future generations.*
- (2) *If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).*

### **39 GOVERNANCE PRINCIPLES**

*A local authority must act in accordance with the following principles in relation to its governance:*

- (a) *a local authority should ensure that the role of democratic governance of the community, and the expected conduct of members, is clear and understood by members and the community; and*
- (b) *a local authority should ensure that the governance structures and processes are effective, open, and transparent; and*
- (c) *a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and*
- (d) *a local authority should be a good employer; and*
- (e) *a local authority should ensure that the relationship between members and management of the local authority is effective and understood.*

### **40 LOCAL GOVERNANCE STATEMENTS**

- (1) *A local authority must prepare and make publicly available, following the triennial general election of members, a local governance statement that includes information on -*
  - (a) *the functions, responsibilities, and activities of the local authority; and*
  - (b) *any local legislation that confers powers on the local authority; and*
  - (c) *the electoral system and the opportunity to change it; and*
  - (d) *representation arrangements, including the option of establishing Maori wards or constituencies, and the opportunity to change them; and*
  - (e) *members' roles and conduct (with specific reference to the applicable statutory requirements and code of conduct); and*
  - (f) *governance structures and processes, membership, and delegations; and*
  - (g) *meeting processes (with specific reference to the applicable provisions of the Local Government Official Information and Meetings Act 1987 and standing orders); and*
  - (h) *consultation policies; and*
  - (i) *policies for liaising with, and memoranda or agreements with, Maori; and*
  - (j) *the management structure and the relationship between management and elected members; and*

- (k) *equal employment opportunities policy; and*
  - (l) *key approved planning and policy documents and the process for their development and review; and*
  - (m) *systems for public access to it and its elected members; and*
  - (n) *processes for requests for official information.*
- (2) *A local authority must comply with subsection (1) within 6 months after each triennial election of members of the local authority.*
- (3) *A local authority must update its governance statement as it considers appropriate.*

#### **43 CERTAIN MEMBERS INDEMNIFIED**

*A member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority) is indemnified by that local authority, whether or not that member was elected to that local authority or community board under the Local Electoral Act 2001 or appointed by the local authority, for---*

- (a) *costs and damages for any civil liability arising from any action brought by a third party if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and*
  - (b) *costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.*
- (2) *Subsection (1) does not apply to a member's liability for a loss under section 46.*
- (3) *To avoid doubt, a local authority may not indemnify a director of a council-controlled organisation for any liability arising from that director's acts or omissions in relation to that council-controlled organisation.*

#### **SUBPART 2 - COMMUNITY BOARDS**

##### **49 Establishment of community Boards**

- (1) *A community board must be established for each community constituted, in accordance with Schedule 6, by -*
- an Order in Council giving effect to a reorganisation scheme; or*
  - a resolution made by the territorial authority within whose district the community will be situated as a result of a proposal by electors to establish a community; or*
  - a resolution made by the territorial authority within whose district the community will be situated as a result of the territorial authority's review of representation arrangements.*

- (2) *The community board must be described as the “[name of community] Community Board”.*

*Compare: 1974 No 66 s 101ZG*

**50 Membership of community boards**

*The membership of a community board consists of -  
members elected under the Local Electoral Act 2001;  
and*

*members (if any) of, and appointed in accordance with the Local Electoral Act 2001  
by, the territorial authority in whose district the relevant community is situated.*

**51 Status of community boards**

*A community board -  
is an unincorporated body; and  
is not a local authority; and  
is not a committee of the relevant territorial authority.*

*Compare: 1974 No 66 s 101Z*

**52 Role of community boards**

*The role of a community board is to -  
represent, and act as an advocate for, the interests of its community; and  
consider and report on all matters referred to it by the territorial authority, or any  
matter of interest or concern to the community board; and  
maintain an overview of services provided by the territorial authority within the  
community; and  
prepare an annual submission to the territorial authority for expenditure within the  
community; and  
communicate with community organisations and special interest groups within the  
community; and  
undertake any other responsibilities that are delegated to it by the territorial authority.*

*Compare: 1974 No 66 s 101ZY*

**53 Powers of community boards**

*A community board has the powers that are -  
delegated to it by the relevant territorial authority in accordance with clause 32 of  
Schedule 7; or  
prescribed by the Order in Council constituting its community.*

*The powers of a community board prescribed by Order in Council expire at the close  
of 6 years after the order comes into force.*

*Despite subsection (1), a community board may not -  
acquire, hold, or dispose of property; or  
appoint, suspend, or remove staff.*

*Compare: 1974 No 66 ss 101ZZ, 101ZZA*

**54 Application of other provisions to community boards**

*Part 2 of Schedule 7 applies to community boards.*

*Part 1 of Schedule 7 (excluding clauses 15 and 33 to 36) applies to community  
boards, with all necessary modifications, as if they were local authorities.*

SCHEDULE 7

1 Disqualification of members

- (1) A person's office as a member of a local authority is vacated if the person, while holding office as a member of the local authority,---
  - (a) Ceases to be an elector or becomes disqualified for registration as an elector under the Electoral Act 1993;  
or
  - (b) is convicted of an offence punishable by a term of imprisonment of 2 years or more.
- (2) If subclause (1)(b) applies -
  - (a) The disqualification does not take effect -
    - (i) Until the expiration of the time for appealing against the conviction or decision; or
    - (ii) If there is an appeal against the conviction or decision, until the appeal is determined; and
  - (b) The person is deemed to have been granted leave of absence until the expiration of that time, and is not capable of acting as a member during that time, and is not capable of acting as a member during that time.
- (3) A person may not do an act as a member while disqualified under subclause (1) or while on leave of absence under subclause (2).

15 CODE OF CONDUCT

A local authority must adopt a code of conduct for members of the local authority as soon as practicable after the commencement of this Act.

The code of conduct must set out -

understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including -

- (i) behaviour toward one another, staff, and the public; and
- (ii) disclosure of information, including (but not limited to) the provision of any document, to elected members that -
  - (A) is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and
  - (B) relates to the ability of the local authority to give effect to any provision of this Act; and
- (b) a general explanation of -
  - (i) the Local Government Official Information and Meetings Act 1987; and
  - (ii) any other enactment or rule of law applicable to members.
- (3) A local authority may amend or replace its code of conduct, but may not revoke it without replacement.
- (4) A member of a local authority must comply with the code of conduct of that local authority.

- (5) *A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.*
- (6) *After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.*  
*To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act. "*

### **LOCAL AUTHORITY (MEMBERS' INTERESTS) ACT 1968**

This Act regulates the circumstances where a member has a pecuniary interest in a matter before the Council.

#### **Contractual interests**

No person may be elected to a Council, or once elected remain a member, if the value of any contracts between the Council and that member exceed \$25,000 in any financial year. This prohibition applies to all forms of contract, including ongoing supply contracts and one-off contracts (including contracts for the sale of property by or to the Council). In the event of breach the member is automatically disqualified from office and may not seek a re-election at the by-election which follows. The member is however authorised to stand at the next triennial election. On a conviction for an offence the member may be fined up to \$200.

#### **Other pecuniary interests**

A member may not participate in the discussion or voting on a matter in which the member directly or indirectly has a pecuniary interest, except an interest in common with the public. If a member is convicted of a breach of this requirement then a fine of up to \$100 may be imposed and disqualification from office is automatic. A disqualified member may however stand for election at a by-election.

#### **Additional points**

- the interests covered by this Act extend to include interests held by the member's spouse, companies in which the member holds shares or is a director, other business structures or trusts in which the member has an interest. The word "spouse" is not defined in the statute, but the prudent course is to use this word in a modern i.e. domestic partner sense, a "spouse" ceases to be a spouse on separation; and
- the Audit Office has an ability to grant exemptions on application. A retrospective exemption may be granted in respect of contractual arrangements but not in respect of other pecuniary interests.

The requirements of this Act are complex. It is strongly recommended that members familiarise themselves with the provisions of the Act. The publication by Audit New Zealand "Financial Conflicts of Interest of Members of Governing Bodies" published in September 2001 is a very useful starting point.

---

## **LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 ("LGOIMA")**

### **Official Information**

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 s.7 of the Act.

The obligations of LGOIMA are binding on members and apply to the disclosure of information by a member in respect of any information held by that member (in his or her capacity as member) to a member of the public. It does not apply to the disclosure of information to the Council in accordance with the requirements of the Code of Conduct.

### **Meetings**

LGOIMA also regulates and sets out the procedural requirements for meetings of local authorities (including territorial authorities), the publication of agenda, procedures for discussion with the public excluded and access by the public to the minutes of meetings.

## **SECRET COMMISSIONS ACT 1910**

It is unlawful for 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 Council.

If convicted of any offence under this Act a person can be imprisoned for up to 2 years, or fined up to \$1000, or both. (A conviction triggers the disqualification provisions in Clause 1 of Schedule 7 of the Act and result in automatic disqualification of the member from office.

## **CRIMES ACT 1961**

It is unlawful for 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 Council; and
- use information gained in the course of the member's duties for monetary gain or advantage by the member, or anyone else

These offences are punishable by a term of imprisonment of seven years or more. Members convicted of these offences will also be automatically disqualified from office.

## **SECURITIES ACT 1978**

The Securities Act places members in the same position as company directors whenever Council offers shares in a company to the public. 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. (These circumstances will arise only very rarely, if ever).

**APPENDIX B**  
**Register of Interests**

*(worked example)*

**Member's Name:** Joan Smith

**Member's Partner's Name:** Fred Blogg

**Effective Date:** 30/08/03

This statement is given in accordance with the Code of Conduct adopted by Waitakere City Council. The information contained in this statement is to the best of my knowledge complete and accurate as at the Effective Date. I confirm that I have included in this statement details of any interests held by me or my partner through trusts or companies.

**Signed:** .....

**Date:** .....

Interest	Member	Partner
<b>Interests in land:</b> (address or legal description)	12 Jones Street, New Lynn 15 Marine Parade, Pauanui	12 Jones Street, New Lynn 24 Queen Street, Auckland
<b>Investments in Partnerships, joint ventures or other business:</b>	The Pottery Shoppe	None
<b>Shares in Companies:</b> (Other than shares in a listed company held through a managed fund)	Tranz Rail Tower AMP	Fred Blogg Architects Limited 24 Queen Street Limited
<b>Term deposits, bank debentures and mortgages:</b>	National Bank Fisher & Paykel Finance Ltd	RS&B Builders Limited
<b>Occupation:</b>	Elected member	Architect
<b>Employers name:</b>	None	None
<b>Employment Status:</b>	N/A	Self-employed
<b>Bankers:</b>	National Bank ASB	National Bank BNZ

Interest	Member	Partner
<b>Appointments Held:</b>	Auckland Health Board New Lynn Pony Club Fred Blogg Architects Ltd	Institute of Architects Fred Blogg Architects Ltd Piha Golf Club
<b>Memberships:</b>	New Lynn Pony Club Forest and Bird RSPCA Labour Party	Piha Golf Club Greenpeace Auckland Club ACT Party
<b>Gifts:</b> (over NZ\$150 within the last 12 months excluding family gifts)	Kensington Swan (lunch at Cin Cin on 5 July 2003)	N/A
<b>Travel funded by a third party:</b>	Sydney 5-8 June 2003 (WCC)  Beijing 20-30 June 2003 (Chinese Government)  Bali 10-20 August 2003 (RS&B Builders Ltd)	N/A

**Member's Name:** \_\_\_\_\_

**Member's Partner's Name:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

This statement is given in accordance with the Code of Conduct adopted by Waitakere City Council. The information contained in this statement is to the best of my knowledge complete and accurate as at the Effective Date. I confirm that I have included in this statement details of any interests held by me or my partner through trusts or companies.

**Signed:** .....

**Date:** .....

Interest	Member	Partner
<b>Interests in land:</b> (address or legal description)		
<b>Investments in Partnerships, joint ventures or other business:</b>		
<b>Shares in Companies:</b> (Other than shares in a listed company held through a managed fund)		
<b>Term deposits, bank debentures and mortgages:</b>		

Interest	Member	Partner
<b>Occupation:</b>		
<b>Employers name:</b>		
<b>Employment Status:</b>		
<b>Bankers:</b>		
<b>Appointments Held:</b>		
<b>Memberships:</b>		
<b>Gifts:</b> (over NZ\$150 within the last 12 months excluding family gifts)		
<b>Travel funded by a third party:</b>		