

Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour
Responsible Directorate: Finance and Corporate Services **Version:** Adopted

1. PURPOSE

- 1.1. The purpose of this Policy is to outline the City's approach to the management of complaints relating to breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

2. SCOPE

- 2.1. This Policy is applicable to complaints about breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.
- 2.2. A breach of Part 4 of the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:
- complaints made with the intent of addressing personal grievances or disagreements;
 - complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
 - minor breaches under section 5.105(1) of the Act;
 - serious breaches under section 5.114 of the Act; and
 - allegations of corruption.

3. DEFINITIONS

Term	Meaning
Committee	The Behaviour Complaints Committee established under section 5.8 of the <i>Local Government Act 1995</i> and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
City's Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Investigator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to investigate complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled "Management of Complaints of Alleged Breaches of Behaviour".

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Theme 4 - Leadership of the City's Strategic Community Plan 2021-2031 and specifically the Strategic Priority 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
 - a. making a complaint;
 - b. dealing with a complaint;
 - c. dismissal of a complaint; and
 - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint; specifically the mechanism for investigating, determining, making recommendations and implementing action plans when dealing with alleged breaches of the behavioural requirements set out in the Code.

Investigating a complaint

- 5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour, and if required under paragraph 5.9, a Mediator.
- 5.5. A complaint cannot be submitted anonymously.
- 5.6. The City's Complaints Officer, within 14 days of receiving a complaint:
 - a. will contact the complainant acknowledging that the complaint has been received;
 - b. as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;
 - c. will outline the process that will be followed and possible outcomes and the application of confidentiality;
 - d. will provide the council or committee member to whom the complaint relates with a copy of this Policy, the Code, and a copy of the complaint, including the name of the complainant; and
 - e. will send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 5.7. Complaints are to be dealt with and considered in the order in which they are received by the City's Complaints Officer. If more than one complaint is received that relates to the same alleged behaviour, the City's Complaints Officer may determine to progress those complaints concurrently.
- 5.8. In investigating the complaint, the Investigator may request the City's Complaints Officer to search for any relevant records in the City's record management system.
- 5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.
- 5.10. If mediation is accepted by both parties, the investigative timelines outlined in this Policy are suspended until such time as the mediation is finalised or discontinued in accordance with paragraph 5.11.
- 5.11. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.

- 5.12. Before making an assessment in relation to a complaint, the Investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint, and to provide their own comments and evidence for consideration. The person to whom the complaint relates must do this within 21 days of formally being notified of the complaint.
- 5.13. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.
- 5.14. The Investigator's assessment must be made within 21 days from receiving a copy of the response to the allegations by the person to whom the complaint relates.
- 5.15. Within 21 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's Complaints Officer.
- 5.16. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required.
- 5.17. In making a recommendation of further action, the Investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.
- 5.18. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the Investigator's report to the City's Complaints Officer and included in the report to Council.
- 5.19. The Investigator may recommend to the Committee or Council to dismiss a complaint in accordance with clause 14.1 of the Code.
- 5.20. If the Investigator assesses that the behaviour is an offence under the City's *Standing Orders Local Law 2018*, the complaint should be referred back to the City's Complaints Officer.
- 5.21. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's Complaints Officer, but subject to any consultation with the person to whom the complaint relates.

Committee or Council finding

- 5.22. A meeting of the Committee must be convened within 21 days after receipt of the Investigators assessment, at which the City's Complaints Officer must provide a confidential report.
- 5.23. In accordance with clause 5.26, if the matter is referred to the Council, the City's Complaints Officer must provide a confidential report at the next practicable Council meeting.
- 5.24. The confidential report is to include:
 - a. a copy of the complaint;
 - b. the report of the Investigator together with the evidence received and any submissions or other communications from parties;
 - c. a recommendation on the question whether or not a breach of behaviour has occurred;
 - d. a recommendation as to whether any, and if so what, further action is required; and
 - e. an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.

- 5.25. Based on the Investigator's report, the evidence and any further comments or submissions by the parties, the Committee or Council may do one of the following:
- a. dismiss the complaint in accordance with clause 14.1 of the Code;
 - b. find the alleged breach has occurred and decide no further action is required;
 - c. find the alleged breach has occurred, decide that further action is required; and
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.
 - d. find that the alleged breach has not occurred.
- 5.26. The CEO has the discretion to refer matter, in extraordinary circumstances, to Council to make a finding in relation to an alleged breach of behaviour.

Action plans

- 5.27. An action plan should outline:
- a. the behaviour/s of concern;
 - b. the actions to be taken to address the behaviour/s;
 - c. who is responsible for the actions; and
 - d. an agreed timeframe for the actions to be completed.
- 5.28. In deciding whether to implement an action plan, the Committee or Council should consider:
- a. the nature and seriousness of the breach(es);
 - b. any submission made by the person to whom the complaint relates;
 - c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
 - d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
 - e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Confidentiality of complaints

- 5.29. The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the Committee has reached an outcome in respect of the complaint.

Compliance with plan requirement

- 5.30. The City's Complaints Officer is to monitor the actions and timeframes set out in an action plan.
- 5.31. Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.
- 5.32. The City's Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	10 November 2021	Resolution #	C2111/087
Previous Adoption	DATE	9 June 2021	Resolution #	C2106/113