

DRAFT

Protocol in Relation to Members' Business Dealings with the Council

1. Purpose of the Protocol

- 1.1 The purpose of this protocol is to advise Members and officers of the City Council of appropriate practices and procedures to adopt in relation to business dealings between Members and the City Council itself.
- 1.2 Public confidence in local government is dependent upon Members and officers observing the highest standards of conduct. It is not enough to avoid actual impropriety but also to avoid any occasion for suspicion or the appearance of improper conduct as this may result in allegations (which whether justified or not) may result in unfavourable publicity which damages the reputation of the Council.
- 1.3 The protocol identifies those provisions in the Members' Code of Conduct which are most relevant to such business dealings. It is based on the premise that the Code does not prohibit such dealings but that it provides safeguards which must be observed. Subject to complying with those safeguards a Member is entitled to undertake a business dealing with the Council. The Protocol does not repeat all the provisions of the Code as this is already fully set out elsewhere within the Constitution. However, Members are reminded that they have undertaken to observe the Code of Conduct and this includes the General Principles of Conduct for Members of local authorities which are set out in the preamble to the Council's Code of Conduct. In particular they must comply with the requirements to make declarations of interest whenever appropriate.
- 1.4 It is intended that this protocol should complement and supplement but not repeat at length the other protocols which the Council has already approved namely:
 - the protocol on Member/employee relations
 - the protocol for Member/employees in relation to development control matters
 - the protocol for Members in relation to licensing matters
 - the protocol for Members on the use of Council resources and equipment
 - the protocol on the use of Civic Cars
 - the Anti Fraud and Corruption Policy and
 - the Whistleblowing policy

to which Members should also refer for guidance in relation to the matters which they cover.

- 1.5 This protocol is not part of the adopted Code of Conduct for Members.

2. **Application of the Protocol**

- 2.1 The scope of this protocol is in respect of “business dealings” between Members and the Council and it applies to the ordinary common-sense notion of what is meant by a business dealing. It therefore covers situations where the Member or his employer is tendering for a Council contract, seeks to obtain a grant from the Council, applies for certain regulatory permissions (see below) or is involved in a property transaction either directly with the Council or indirectly where this bears upon the Council’s financial position or its rights as a property owner.
- 2.2 It is not intended to encompass those activities of a Member which would apply equally to the majority of the other inhabitants of the City or Council tax payers in their relationship with the Council. Thus, it does not apply to everyday activities which are conducted on the Council’s standard terms and conditions, such as the use of library or the hire or use of leisure facilities where the admission price or the charge is the same as that paid by a member of the public in comparable circumstances. Such activities do not fall within the ordinary common sense notion of a business dealing and applying the protocol would be inappropriate, unreasonable and disproportionate in those circumstances.
- 2.3 Similarly in respect of planning applications for their home a Member need only comply with the protocol on development control matters. If a Member submitted a planning application or an application for a licence of any description in respect of business premises or a commercial development then the provisions of this protocol would also apply.
- 2.4 Completion of an agreement for an allotment would not be treated as a business dealing since the completion of the agreement is incidental to the leisure pursuit. However, negotiations for a business tenancy from the Council or for a commercial purposes would be classified as a business dealing, since that the purpose of the agreement is to further a business interest.
- 2.5 Whilst it is not possible to provide an exhaustive list of circumstances where this protocol would apply, it is hoped that the above illustrations will assist. If a Member is uncertain about the application of the protocol they should seek guidance from the City Solicitor as the Council’s Monitoring Officer.

3. Interests of the Whole Community

- 3.1 The decision in respect of all business dealings should be determined having regard to the interests of the whole community of the City and be consistent with the Council's fiduciary duties to its Council tax payers, and not by reference to the interests of the Member concerned.

4. Contact between the Member and Officers

- 4.1 Any Member proposing to enter a business dealing with the Council shall notify the Chief Executive in writing at the earliest opportunity they have of doing so.

- 4.2 The Chief Executive shall acknowledge such notification in writing within five working days of its receipt.

- 4.3 Depending on the nature of the matter, the Chief Executive shall take advice if necessary from any other relevant Chief Officer and send a substantive reply within no more than 15 working days of its receipt, setting out the way in which the Council will deal with the matter and providing information on procedures to be followed and how they will be conducted. In particular, consideration will be given to the following matters:

- whether it is appropriate for the Council to obtain any independent advice
- the desirability of any negotiations being conducted by a Member's professional adviser.

- 4.4 A note shall be kept by the officer of any meeting or telephone communication which occurs in relation to a business dealing between a Member and that officer and a copy shall be sent promptly to the Chief Executive.

- 4.5 Members may submit written representations in their private capacity or use a professional representative to act on their behalf.

- 4.6 The role of the officer is to give impartial professional advice to the Council as a whole.

5. Code of Conduct – General Behaviour

- 5.1 In any such business dealings the Member and officer must treat each other with respect.

- 5.2 Members should never put pressure on officers in respect of the processing or outcome of their business dealings and avoid behaviour which could be perceived as intimidatory.

- 5.3 Members must not compromise, or attempt to compromise the impartiality of officers of the authority.
- 5.4 Members must not use, or attempt to use, their position improperly to their advantage or to the disadvantage of anyone else. For example a Member should not seek to obtain greater information than that which would be made available to any other tenderer.

6. **Personal Interests**

- 6.1 Members should refer to the full text of the Code of Conduct in determining whether they have a personal interest.

In summary:

- 6.1.2 A Member must regard himself/herself as having a personal interest in any matter which falls within the meaning of paragraph 8 of the Code of Conduct for Members and Co-opted Members.
- 6.1.3 To comply with the Code of Conduct for Members or Co-opted Members a Member must declare a personal interest in an item on the agenda of a meeting which he/she attends.
- 6.1.4 A Member must disclose a personal interest at the commencement of the consideration of the matter or when the interest becomes apparent.

7. **Prejudicial Interest**

- 7.1 Members should refer to the full text of the Code of Conduct in determining whether they have a prejudicial interest.

In summary:

- 7.2 A Member with a personal interest in a matter which also amounts to a prejudicial interest must ordinarily withdrawn from the room where a meeting is being held when the matters is being considered unless he/she has obtained a dispensation from the Council's Standards Committee.
- 7.3 A prejudicial interest is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.
- 7.4 Members should not attend any meeting of the Authority at which their business dealing is considered save to the extent permitted by paragraph 12(2) of the Code of Conduct.

7.5 A Member with a prejudicial interest must not seek to improperly influence a decision in which they have a prejudicial interest. A Member can nevertheless make representations where a member of the public would have that right under paragraph 12(2) of the Code of Conduct and as provided in the protocols on development control and licensing matters.

8. **Gifts and Hospitality**

8.1 Members and officers involved in a business dealing should be guided by their respective Codes of Conduct in relation to the offer and acceptance of gifts and hospitality.

8.2 They should bear in mind that the offer or receipt of any gifts or hospitality in such circumstances would be perceived with extreme suspicion and damage public confidence.

9. **Contracts**

9.1 In respect of any quotation or tender for a contract with the Council or an application for a business grant from the Council a declaration shall be given by the Member that they are a Member of the Council or that it is made by a firm in which they are a partner, or a company of which they are a remunerated director.

10. **Reports to the Standards Committee**

10.1 The Chief Executive shall submit a report to the next meeting of the Standards Committee of any notification received under paragraph 4 above which follows its receipt. He shall also set out the nature of the substantive response sent to the Member concerned.

10.2 Any notifications received under paragraph 9 will be forwarded by the relevant officer to the Monitoring Officer and a report thereon will be submitted to the next meeting of the Standards Committee.

11. **Register of Interests**

11.1 Members are reminded of their obligation to ensure that they notify all their personal interests and notify the Monitoring Officer of any change within 28 days of its occurrence.