

**CORP 01**

**Revised Model Code of Meeting Practice**

<b>Strategic Direction</b>	Leading through Collaboration Strive for best practice in all Council processes
<b>File Ref</b>	064737.2022
<b>Report By</b>	Ellen Whittingstall - Internal Ombudsman George Georgakis - Manager Council and Executive Services Jennifer Chenhall - General Counsel, Manager Governance, Legal and Procurement
<b>Approved By</b>	Paul Perrett - Director Corporate Services

**EXECUTIVE SUMMARY**

The Model Code of Meeting Practice (Model Code) was introduced in 2019 and provides a standard set of provisions on how councils in NSW should run their council and committee meetings.

From March 2021, the Office of Local Government (OLG) revised the Model Code of Meeting Practice (Model Code) following extensive consultation. On 12 November 2021, the Local Government (General) Amendment (Model Code of Meeting Practice) Regulation 2021 was prescribed under the Local Government (General) Regulation 2021 for the purposes of the *Local Government Act, 1993*, section 360(1).

Councils are required to adopt a Code of Meeting Practice that incorporates the mandatory provisions of the Model Meeting Code prescribed by the Regulation. A council's adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code and any other supplementary provisions adopted by the council.

Before adopting a new code of meeting practice, under section 361 of the *Local Government Act, 1993*, councils are required to exhibit a draft of the code of meeting practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft code.

## **RECOMMENDATION**

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That Council:

1. Place the Draft Code of Meeting Practice on public exhibition for (28 days) and receive comments up to (42 days) in accordance with Section 361 of the *Local Government Act, 1993*; and
2. Receive a further report at the May 2022 Council meeting following the public consultation period, or if no submissions are received, delegate to the Acting CEO to adopt the Code of Meeting Practice as exhibited.

## **REPORT**

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Councils are required to make the following administrative arrangements in preparation for commencement of their new Code of Meeting Practice:

- Exhibit the Draft Code of Meeting Practice for at least 28 days and provide members of the community at least 42 days to comment on the Draft Code of Meeting Practice;
- Adopt a new Code of Meeting Practice within 12 months of the local government elections (by December 2022); and
- Determine if Council will allow councillors to attend meetings by audio-visual link after 30 June 2022. If yes, the Draft Code of Meeting Practice needs to be adopted by 30 June 2022.

Note: The requirement for councillors not to be personally present at meetings in order to participate in them has been extended to 30 June 2022 under Section 237 of the *Local Government (General) Regulation 2021*. If Councils fail to adopt a new Code by 30 June 2022, then they will have no provision to allow for remote attendance by councillors at their meetings.

### **Model Code of Meeting Practice**

The Model Code contains mandatory and non-mandatory provisions. The mandatory provisions must be included in a Council's Code of Meeting Practice whilst councils can decide to either opt-in or opt-out of using the non-mandatory provisions. Councils also have the ability to include supplementary provisions within their individual Code of Meeting Practice. However, these supplementary provisions must not be inconsistent with the mandatory provisions contained in the Model Code.

### *Key Features and Changes to the Model Code of Meeting Practice*

Circular 21-35 has been received from the Office of Local Government (OLG) detailing the revised development of the Model Code. The key features of the new Model Code are:

- New provisions that allow councils to permit individual councillors to attend meetings by audio-visual link and to hold meetings by audio-visual link in the event of natural disasters or public health emergencies. The provisions governing attendance at meetings by audio-visual link are non-mandatory. Councils can choose not to adopt them or to adapt them to meet their own needs.
- Amendments to the provisions governing the webcasting of meetings and disorder at meetings to reflect amendments to the *Local Government (General) Regulation 2021*.
- An amendment implementing Recommendation 6 in the Independent Commission Against Corruption (ICAC) report, in relation to its investigation of the former Canterbury City Council (Operation Dasha). ICAC recommended that the Model Code be amended to require that council business papers include a Statement of Ethical Obligations as a reminder to councillors of their oath or affirmation of office, and their requirement to adequately manage conflicts of interest.

### **Layout of the Draft Code of Meeting Practice**

The Model Meeting Code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors, may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.

The provisions of the Model Meeting Code that are:

- Mandatory provisions are shown in **black font**;
- Non-Mandatory provisions are shown in **red font**;
- Previously adopted details which are unique to Liverpool City Council are shown in **green font**; and
- Supplementary Liverpool City Council provisions are shown in **blue font**.

The non-mandatory provisions (**red font**) cover areas of meeting practice that are common to most councils, but where there may be a need for some variation in practice between councils based on local circumstances. The non-mandatory provisions also operate to set a benchmark based on what the OLG sees as best practice for the relevant area of practice.

All references to committees of Council in the Draft Code of Meeting Practice refer to a committee consisting only of councillors and does not refer to advisory committees or working parties.

#### **Suggested alterations to the Code of Meeting Practice:**

It is recommended that the notice period for the inclusion of a notice of motion on the agenda be changed from seven (7) business days before the meeting, to close of business nine (9) business days (not including the day of the meeting) before the meeting is to be held.

The CEO comment to each Notice of Motion will also include financial information regarding the notice of motion. The additional time will assist staff in providing a CEO comment. The Notice of Motion template which outlines the information to be included in the CEO comment is included in part 24 of the code on page 48.

#### *Giving notice of business to be considered at council meetings*

- 3.9 *A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion (NoM). To be included on the agenda of the meeting, the NoM must be in writing and must be submitted by close of business nine (9) business days (not including the day of the meeting) before the meeting is to be held. Where a NoM is received after the nine (9) day cut-off date, the NoM will be put forward to the next ordinary meeting.*

It is recommended that the same timeframe apply for Questions with Notice, with responses to be provided at the same Council meeting. The relevant clauses are copied below:

*Questions with Notice*

- 3.14 *A Councillor may, by way of notice submitted under clause 3.9, ask a question for response by the CEO about the performance or operations of the Council. The Question with Notice (QWN) must be in writing and must be submitted by close of business nine (9) business days (not including the day of the meeting) before the meeting is to be held. Where a QWN is received after the nine (9) day cut-off date, the QWN will be put forward to the next ordinary meeting.*
- 3.16 *The CEO or their nominee may respond to a QWN submitted under clause 3.14 by way or a report included in the business paper for the relevant meeting of the Council or orally at the meeting. Where a QWN cannot be addressed at the forthcoming meeting, the QWN will be addressed at the next ordinary meeting.*

**The suggested changes relating to the non-mandatory provisions are listed below:**

**i. Clauses 3.11 and 3.12**

These non-mandatory clauses relate to the requirement for the CEO to submit a report to Council in certain circumstances to address issues pertaining to Notices of Motion. In addition to the CEO comment to each Notice of Motion, there will also be a financial implication section completed by staff.

- 3.11 *If the CEO considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the CEO may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the council.*
- 3.12 *A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the CEO must either:*
- (a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or*
  - (b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.*

**ii. Clauses 3.33 – 3.38**

These non-mandatory clauses relate to Pre-Meeting Briefing Sessions to be held prior to each Ordinary Meeting. Council already holds a Councillors Briefing Session in the week preceding Ordinary Meetings and has adopted a Councillor Briefing Procedure. As such, it is recommended that our existing practice be continued and the clauses relating to pre-meeting briefing sessions be included in the Meeting Code for completeness.

- 3.33 *Prior to each ordinary meeting of the council, the CEO may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.*
- 3.34 *Pre-meeting briefing sessions are to be held in the absence of the public.*
- 3.35 *Pre-meeting briefing sessions may be held by audio-visual link.*
- 3.36 *The CEO or a member of staff nominated by the CEO is to preside at pre-meeting briefing sessions.*
- 3.37 *Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal council or committee meeting at which the item of business is to be considered.*
- 3.38 *Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the councillor who made the declaration.*

**iii. Clauses 5.13 – 5.14**

These non-mandatory clauses allow for the cancellation of a meeting under certain circumstances.

It is recommended that these non-mandatory clauses be included in the Meeting Code.

- 5.13 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety or welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster or a public health emergency, the mayor may, in consultation with the CEO and, as far as is

practicable, with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council's website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

- 5.14 Where a meeting is cancelled under clause 5.13, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called under clause 3.3.

**iv. Clauses 5.15 – 5.29**

These non-mandatory clauses relate to meetings held by audio-visual link and attendance by councillors at meetings by audio-visual link. It is recommended that these non-mandatory clauses be included in the Meeting Code.

*Meetings held by audio-visual link*

- 5.15 *A meeting of the council or a committee of the council may be held by audio-visual link where the mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of councillors and staff at risk. The mayor must make a determination under this clause in consultation with the CEO and, as far as is practicable, with each councillor.*
- 5.16 *Where the mayor determines under clause 5.15 that a meeting is to be held by audio-visual link, the CEO must:*
- (a) give written notice to all councillors that the meeting is to be held by audio-visual link, and*
  - (b) take all reasonable steps to ensure that all councillors can participate in the meeting by audio-visual link, and*
  - (c) cause a notice to be published on the council's website and in such other manner the CEO is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.*
- 5.17 *This code applies to a meeting held by audio-visual link under clause 5.15 in the same way it would if the meeting was held in person.*

*Attendance by councillors at meetings by audio-visual link and attendance by councillors at meeting by*

- 5.18 *Councillors may attend and participate in meetings of the council and committees of the council by audio-visual link with the approval of the council or the relevant committee.*
- 5.19 *A request by a councillor for approval to attend a meeting by audio-visual link must be made in writing to the CEO prior to the meeting in question and must provide reasons why the councillor will be prevented from attending the meeting in person.*
- 5.20 *Councillors may request approval to attend more than one meeting by audio-visual link. Where a councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.19.*
- 5.21 *The council must comply with the Health Privacy Principles prescribed under the Health Records and Information Privacy Act 2002 when collecting, holding, using, and disclosing health information in connection with a request by a councillor to attend a meeting by audio-visual link.*
- 5.22 *A councillor who has requested approval to attend a meeting of the council or a committee of the council by audio-visual link may participate in the meeting by audio-visual link until the council or committee determines whether to approve their request and is to be taken as present at the meeting. The councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.*
- 5.23 *A decision whether to approve a request by a councillor to attend a meeting of the council or a committee of the council by audio-visual link must be made by a resolution of the council or the committee concerned. The resolution must state:*
- (a) the meetings the resolution applies to, and*
  - (b) the reason why the councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.*
- 5.24 *If the council or committee refuses a councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.*
- 5.25 *A decision whether to approve a councillor's request to attend a meeting by audio-visual link is at the council's or the relevant committee's discretion. The council and committees of the council must act reasonably when considering*



*requests by councillors to attend meetings by audio-visual link. However, the council and committees of the council are under no obligation to approve a councillor's request to attend a meeting by audio-visual link where the technical capacity does not exist to allow the councillor to attend the meeting by these means.*

- 5.26 *The council and committees of the council may refuse a councillor's request to attend a meeting by audio-visual link where the council or committee is satisfied that the councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the council or a committee of the council by audio-visual link.*
- 5.27 *This code applies to a councillor attending a meeting by audio-visual link in the same way it would if the councillor was attending the meeting in person. Where a councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.*
- 5.28 *A councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.*
- 5.29 *A councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.*

**v. Clauses 7.1 – 7.4**

These non-mandatory clauses relate to the Modes of Address at the meeting for the Chairperson, Councillors and Council staff.

It is recommended that these non-mandatory clauses be included in the Meeting Code.

- 7 *Modes of Address*
- 7.1 *If the chairperson is the mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.*
- 7.2 *Where the chairperson is not the mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.*

- 7.3 *A councillor is to be addressed as 'Councillor [surname]'.*
- 7.4 *A council officer is to be addressed by their official designation or as Mr/Ms [surname].*

**vi. Clause 9.10**

Similar to Clauses 3.11 and 3.12, this non-mandatory clause relates to the requirement for the CEO to submit a report to Council in certain circumstances to address issues pertaining to Mayoral Minutes.

It is recommended that this be included in the meeting code.

9.10

*Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the council must defer consideration of the matter, pending a report from the CEO on the availability of funds for implementing the recommendation if adopted.*

**vii. Clause 10.9**

Motions requiring the expenditure of funds.

This non-mandatory clause relates to the requirement for a motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in Council's current adopted operation plan to identify the funding source.

10.9

*A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the CEO on the availability of funds for implementing the motion if adopted.*

**viii. Clause 13**

Dealing with items by exception

This non-mandatory clause deals with how Council can resolve to adopt multiple items of business on the agenda by way of a single resolution. Council has often

done this particularly when considering reports on Committee minutes and it is recommended that this be included in the meeting code.

- 13.1 *The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.*
- 13.2 *Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.*
- 13.3 *The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.*
- 13.4 *Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.2.*
- 13.5 *A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.*
- 13.6 *Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.*
- 13.7 *Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the council's code of conduct.*

**ix. Clause 14.20**

Obligations of councillors attending meetings by audio-visual link

This non-mandatory provision deals with the obligation of councillors participating in meetings by audio-visual link during closed session items. It is recommended that this be included in the meeting code.

- 14.20 Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

**x. Clauses 15.14 – 15.17**

Expulsion from meetings

Clauses 15.14 – 15.17 deal with expulsion from meetings. These are mandatory provisions in the meeting code, however council must use **either clause 15.14 or clause 15.15.**

Note, Council's current Code provides for clause 15.15 and it is recommended that this be retained, however this is a decision for Council.

15.14 *All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person, including any councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act.*

15.15 *All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person other than a councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the council or the committee of the council.*

*Note: Councils may use either clause 15.14 or clause 15.15. **Note**, Council's current Code provides for clause 15.15 and it is recommended that this be retained, however this is a decision for Council.*

15.16 *Clause [15.14/15.15] [delete whichever is not applicable], does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2)(a) of the Act.*

15.17 *A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 15.12. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.*

**xi. Clauses 15.21 – 15.22**

How disorder by councillors attending meetings by audio-visual link may be dealt with.

These non-mandatory clauses deal with how disorder by councillors attending meetings by audio-visual link may be dealt with. It is recommended that the clauses by included in the meeting code.

- 15.21 *Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the councillor's audio link to the meeting for the purposes of enforcing compliance with this code.*
- 15.22 *If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the councillor's audio-visual link to the meeting.*

**xii. Clause 16.2**

Conflicts of interest (when attending a meeting by audio-visual link)

This non-mandatory clause deals with how councillors participating in meetings by audio-visual link are to deal with pecuniary or significant non-pecuniary conflicts of interest. It is recommended that this clause be included in the meeting code.

- 16.2 *Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the council's code of conduct. Where a councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting must be suspended or terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.*

**xiii. Clause 18**

Time limits on Council meetings

Clauses 18.1 – 18.4 deal with time limits for Council meetings.

Council's current meeting code provides that meetings are to conclude no later than 11.00pm without an extension.

There is a non-mandatory provision which allows Council to extend the time of the meeting by resolution if the business of the council is unfinished (at 11.00pm).

It is recommended that council's current practice of not allowing for an extension beyond 11.00pm remain in place, however this is a decision for Council. Note, the information highlighted below is not included in council's current code.

- 18.1 *Meetings of the council and committees of the council are to conclude no later than 11.00pm without an extension.*

*Note: Staff required to attend Council meetings will be instructed by their immediate supervisor to commence work on the day of the scheduled Council meeting at a time that will ensure that their ordinary hours of work shall not exceed 12 hours in any one day exclusive of unpaid meal breaks, The affected staff should not resume duty without receiving 10 consecutive hours off duty.*

18.2 *If the business of the meeting is unfinished at 11.00pm, the council or the committee may, by resolution, extend the time of the meeting.*

18.3 *If the business of the meeting is unfinished at 11.00pm and the council does not resolve to extend the meeting, the chairperson must either:*

- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the council, or*
- (b) adjourn the meeting to a time, date and place fixed by the chairperson.*

18.4 *Clause 18.3 does not limit the ability of the council or a committee of the council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date, and place that the meeting is to be adjourned to.*

**xiv. Clause 19.2(a) and 20.22**

Minutes of council meetings and committee meetings.

This non-mandatory clause deals with information to be contained in the minutes. It is recommended that this be included in the meeting code.

**19.2(a) and 20.22**

*The CEO must ensure that the following matters are recorded in the council's minutes:*

- (a) the names of councillors attending a council meeting and whether they attended the meeting in person or by audio-visual link*

**CONCLUSION**

The Code of Meeting Practice structure assists decision making by allowing effective decision processes and use of time, Councillors to fulfil their responsibilities under the *Local Government Act* and a structured community input and participation in decision.

The Code of Meeting Practice sets the benchmark that allows Council to make lawful and financially responsible decisions.

**FINANCIAL IMPLICATIONS**

There are no financial implications relating to this recommendation.

**CONSIDERATIONS**

<b>Economic</b>	There are no economic and financial considerations.
<b>Environment</b>	There are no environmental and sustainability considerations.
<b>Social</b>	There are no social and cultural considerations.
<b>Civic Leadership</b>	<p>Facilitate the development of community leaders.</p> <p>Encourage the community to engage in Council initiatives and actions.</p> <p>Provide information about Council's services, roles and decision making processes.</p> <p>Deliver services that are customer focused.</p> <p>Operate a well-developed governance system that demonstrates accountability, transparency, and ethical conduct.</p>
<b>Legislative</b>	Sections 360 and 361 of the Local Government Act 1993.
<b>Risk</b>	The risk is deemed to be low and is considered to be within Council's risk appetite.

**ATTACHMENTS**

1. Office of Local Government Circular on the Model Code of Meeting Practice (Under separate cover)
2. Draft Code of Meeting Practice (Under separate cover)
3. Office of Local Government Model Code of Meeting Practice (Under separate cover)