

Election Period Policy

1. Introduction

The Act requires Council to include an Election Period Policy (Policy) in its Governance Rules.

2. Context

Under Section 69 of the Act, an election period policy must prohibit any Council decision during the election period for a general election that:

- (a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
- (b) commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
- (c) the Council considers could be reasonably deferred until the next Council is in place; or
- (d) the Council considers should not be made during an election period.

An Election Period Policy must also prohibit any Council decision during the election period for a general election or by-election that would enable the use of Council resources in a way that is intended to influence, or is likely to influence voting at the election.

Section 123 of the Act (Misuse of Position) prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in their role, to gain an advantage, or disadvantage another.

3. Monitoring, Evaluation and Review

The requirements of this policy will be monitored throughout each election period to ensure compliance.

4. Associated documents

Local Government Act 2020

Councillor Code of Conduct

Environmental Protection Act 1970 (EPA Act)

5. Policy Objectives

To support and ensure the conduct of good governance for Council and the organisation during election periods through the transparency and accountability of Councillors, Council officers, and candidates during an election period.

The policy complies with the Act, which requires Councils to have an election period policy that sets out requirements relating to conduct, decision making, transparency and equity, and use of Council resources during an election period.

6. Policy Details

6.1 Election Period

During the 'Election Period' for a Municipal General Election the Council will be deemed to be in 'Caretaker Mode'. The election 'caretaker' period extends for 32 days - from the time nominations close on Nomination Day, until 6pm on election day.

During an election period, Councillors:

- a) Will continue to fulfil their duties (unless they are granted a leave of absence);
- b) Will continue to engage, and communicate with, the community in their Councillor role;
- c) Must comply with the Act and Councillor Code of Conduct, and
- d) Must not use their position to influence Council officers, or access Council resources or information, in support of any election campaign or candidacy.

Section 69 of the Act prohibits any Council decision during the election period for a general election that:

- a) Relates to the appointment or remuneration of the Chief Executive Officer, but not to the appointment or remuneration of an acting Chief Executive Officer;
- b) Commits the Council to expenditure exceeding 1% of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
- c) The Council considers could be reasonably deferred until the next Council is in place; or
- d) The Council considers should not be made during an election period.

If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular decision, the Chief Executive Officer may make an application to the Minister for a compliance exemption in accordance with section 177 of the Act.

During an election period, it shall be the ultimate responsibility of the Chief Executive Officer, having consulted with the Mayor, to determine if a matter is to be presented to Council for decision.

6.2 Guidance on Decisions

Council will avoid making decisions that would affect voting at an election or decisions that may unreasonably bind an incoming Council and could be deferred until after the election.

Examples of inappropriate decisions include:

- a) Allocating community grants or other direct funding to community organisations;
- b) Major planning scheme amendments;
- c) Changes to strategic objectives and strategies identified in the Council Plan;
- d) Adopting policy;
- e) Setting advocacy positions.

The only items to be considered at a Council or Delegated Committee Meeting held during the election period, will be the Annual Report, and administrative items to complete the Council's term of office, for example, routine governance items (including records of Meeting held under the auspices of Council reporting). Public Question Time and Community Statements will be suspended during the election period.

At a Council Meeting designated to consider Planning and Related Matters, only permit applications that may otherwise be subject of an application to VCAT on the grounds Council has failed to determine within the prescribed time will be considered.

6.3 Officers with Delegated Authority

During the election period, Council officers must defer making a decision under a delegation from Council or sub-delegation from the Chief Executive Officer, that could be reasonably deferred until the next Council is in place.

6.4 Caretaker Statement

During the election period, the Chief Executive Officer will ensure that a Caretaker Statement is included in every report submitted to the Council or to a Delegated Committee of Council for a decision.

The Caretaker Statement will specify one or more of the following:

- a) The recommended decision is not, a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.
- b) The recommended decision is outside the guidance of the Election Period Policy, but the following negative consequences of a failure to make a decision on this matter outweigh the consequences of binding an incoming Council. [Insert description of negative consequences of failure to make decision].
- c) The recommended decision is a decision prohibited in the Act during an election period, but compliance exemption was sought from the Minister in accordance with section 177 of the Act and was granted by on [insert date].

During the election period, the Council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

Councillors will refrain from moving Motions or raising matters at a Meeting that could potentially influence voting at the election.

There will be no Notices of Motion accepted during the Caretaker Period.

6.5 Council resources must not be used

Council resources must not be used by any Councillor or candidate in any way that supports an election campaign or in a way that is intended or likely to influence voting in any election.

6.6 Candidacy

A Councillor must not use Council resources for candidacy, or any purpose that may be perceived as being used for candidacy (individual or political party). This also applies to a Councillor standing in local, state, or federal government elections, and for any other elected positions, for example, positions on boards. Such use would constitute misuse of position by the Councillor.

6.6.1 State and Federal Government Elections

Councillors will ensure there is a demonstrable distinction between their obligations to Council and their personal interests as a candidate, or member of a political party, in an election period prior to a state or federal election. In accordance with the Councillor code of conduct, a Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as a candidate in a state or federal election, is a 'Prospective Candidate' and will provide written advice to the Chief Executive Officer, as soon as practicable, who will then advise all Councillors.

Councillors will not use Council resources or participate in electioneering at Council events, Meetings or functions, in support of any candidate in a state or federal election.

Where clauses of this policy apply to a Councillor or candidate, it is intended that they be applied in the case of a state, federal or Council election.

6.7 Council Publications

6.7.1 Electoral Matter

Council will not print, publish or distribute (or cause to be printed, published or distributed) any Electoral Material (anything containing Electoral Matter) during an election period.

The following definitions are noted:

Section 3(1) '**publish**' means publish by any means including by publication on the Internet;

Section 3(4) '**Electoral Matter**' means matter, which is intended or likely to affect voting in an election but does not include any Electoral Material produced by or on behalf of the Returning Officer for the purposes of conducting an election.

Section 3(5) without limiting the generality of the definition of 'Electoral Matter', matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on -

- (a) the election; or
- (b) a candidate in the election, or
- (c) an issue submitted to, or otherwise before, the voters in connection with the election.

Council will not issue, publish or distribute any publication during an election period, other than media and social media responses/statements on a service or issue, or those that are required under an Act or regulation, or the Annual Report media release.

'Publications' include hard copy and electronic advertisements, promotional media releases, fliers, posters, newsletters/updates, booklets, surveys, invitations and group mailouts/emails.

Any publications to be issued during the election period are to be forwarded to the relevant Director for approval, and then sent to the Governance unit for vetting for Electoral Matter. Once vetted, the publication will then be submitted to the Chief Executive Officer for approval.

Council publications available in Council facilities will be reviewed before the election period to identify and temporarily remove anything that might reasonably influence the election.

The Chief Executive Officer, or Delegate, will be the primary spokesperson for Council communications during an election period.

Media and social media responses and statements will only be issued during an election period in the name of the Chief Executive Officer. These will be subject to approval by the Chief Executive Officer.

Council officers will not make any public statement that could be construed as influencing the election.

6.7.2 Annual Report

It is a requirement of the Act that Council's Annual Report is presented by the Mayor at an open Meeting of Council held, in the year of a general election, on a day not later than the day before election day. Every endeavour will be made for the report to be prepared and presented prior to the commencement of the election period.

6.8 Council Resources

The Council will also ensure other Council resources are not used inappropriately in ways that may influence voting in an election. This includes financial, human and material resources. Any staff member who considers that a particular use of Council resources may influence voting in the election must advise their Director or the Chief Executive Officer and obtain approval before authorising, using or allocating the resource.

In applying these principles, the Council understands that the following will be the normal practice during the election period:

- a) Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the Caretaker Period, and will not be used for the personal advantage of any Councillor or candidate in connection with any election. This does not apply to the provision of space for the Returning Officer.
- b) No new publications or pamphlets, including Inside Merri-bek will be published by Council during the election period.
- c) Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operations of the Council, for example for a Citizenship Ceremony, and such speeches will not be circulated or available for publication.
- d) No Council logos, letterheads, business cards, photos or other Merri-bek City Council branding will be used for, or linked in any way, to a candidate's election campaign.

- e) It is recommended that Council staff who are either following Councillors/candidates Facebook pages or who are 'friends' with them unfriend and/or unfollow the Councillor/candidate during this period.
- f) There will be no ward or Councillor Meetings held.
- g) The Executive Assistant to the Mayor and Councillors or any other Council staff member will not be asked to undertake any tasks connected directly or indirectly with electioneering.
- h) Reimbursements of Councillors' out-of-pocket expenses during the Election Period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.
- i) Where Councillors have Council funded equipment, including laptops, tablets, printers and mobile phones, these are not to be used for election purposes or in a manner that could be perceived as supporting or being connected with a candidate's election campaign.

6.8.1 Council Facilities and Meeting Rooms

Council Facilities/Halls for Hire Council facilities will be able to be hired by Federal and State political members and officers, and local candidates (including Councillors) at the normal corporate hire rate determined for the facility, in the lead up to an election, but not during an election period for any local state or federal election.

To avoid a perception that Council facilities are being used to promote any candidacy, no promotional material related to the event/hired use, apart from directional signage, is able to be displayed in the common public areas of the facility being hired. This will be advised at time of booking.

Candidates wishing to conduct electioneering activities in public space, for example, a stall at a shopping strip or park, must act in accordance with Council's local laws and procedures.

No other promotional material, including signage, posters, flyers or banners, for any political candidacy is permitted on Council land or in its facilities at any time.

It is an offense under Council's local laws to display this material on Council land, and penalties apply.

6.8.2 Use of the Title 'Councillor'

Councillors may use the title Councillor in their election material, as they continue to hold office during the caretaker period.

While a Councillor can refer to themselves as Councillor in all communication issued by the Councillor (verbal or written), it must be made clear that it is the communication of a candidate and not a position of Council.

6.8.3 Photographs and Images

Photographs and images paid for by Council or taken by Council officers are not to be used in Electoral Material for any candidate. This includes images of Councillors, Council events, and Council owned or maintained infrastructure.

Photographs taken by Councillors, their family or friends, or professional photos they have directly commissioned and paid for, may be used in Electoral Material.

6.8.4 Election Signage on Council Land

In order to ensure Council resources including buildings and land will not be used to support any electioneering activity, Council prohibits any type of candidate election signage being erected or displayed on Council land, including:

- a) Council owned/managed parks, reserves, buildings (exteriors) and nature strips
- b) Road dividing strips (median strips, traffic islands, roundabouts)
- c) Trees, shrubs or plants
- d) Street signs, traffic control signs, parking signs

If election signage is displayed on Council Land:

- a) Council may request the immediate removal of the signage by the owner or candidate or may remove the signage without notification to the owner or candidate.
- b) An infringement notice and fine may be issued to the candidate, in accordance with the General Local Law.
- c) Any costs incurred by Council to remove signage, and/or any costs caused by the signage, for example, damage to trees, may be charged to the candidate.
- d) If election signage is displayed on Crown, Federal or State land in the City of Merri-bek, Council contact the relevant land manager to request the sign be removed.
- e) Victoria Police will be contacted in the event of any one attempting to obstruct Council officers removing signage.
- f) Council will report all instances of the display on Council land of candidate election signage for a local government election, to the Victorian Electoral Commission.

In accordance with the EPA Act, advertising material/documents may not be affixed to any fixed structure for example, light poles, traffic lights etc without the consent of the owner, occupier or manager of the structure.

6.9 Community Engagement and Council Events

Community engagement is an integral part of Council's policy development process and operations, however, there are concerns that consultation undertaken close to a general election may become an issue in itself and influence voting.

Council events in the lead up to an election can also raise concerns over the potential use of sitting Councillors using them for electioneering purposes.

If consultation must be undertaken or an event held during this time, the Council must explain to the community the special circumstances making it necessary and how the risks influencing the election will be mitigated or prevented.

Therefore, during an election period no public consultation under section 223 of the Local Government Act 1989 will be conducted during this period.

- a) Only consultation for the purpose of planning permit applications and operational issues such as canvassing residents' views on small-scale traffic treatments, installation of single trees and the like will be allowed as they are operational in nature and are unlikely to impact the conduct of the election.
- b) Civic Events will cease during this time.
- c) No election material or active campaigning is to be conducted at Council sponsored festivals.

6.10 Equitable Access to Council Information

The Council recognises that all election candidates have a right to information from the Council administration. However, sitting Councillors will continue to receive information that is necessary to fulfil their elected roles. Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and transparency will be observed and practised in the provision of all information and advice during the Election Period.

Information and briefing material prepared by staff for Councillors during the Election Period will relate only to factual matters or to existing Council policies and services. All such requests are to be issued through the offices of the responsible Council Director who will maintain a register of requests made and advice provided. Such information will not relate to new policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.

A copy of the document/advice will then be passed to the Manager Governance and Strategy as issued during the Election Period. The document/advice will be emailed or provided in a hardcopy format to all sitting Councillors and candidates to access. Candidates will be advised of this process in writing.

An Information Request Register will be maintained by the Governance and Strategy Branch during the Election Period. This Register will be a public document that records all requests for information by Councillors and candidates, and the responses given to those requests. Only information that can be reasonably accessed will be released.

All requests for information are to be directed to the Manager Governance and Strategy.

6.11 Publicity

It is recognised that Council publicity is intended to promote normal services or operations of the Council. Council publicity will not be used in any way that might be construed as intended to influence the outcome of the Council election.

- a) During the Election Period, no Council employee may make any public statement that could be construed as influencing the election. This does not include statements of clarification that are approved by the Chief Executive Officer.
- b) During the Election Period, publicity campaigns, other than for the purpose of conducting the election, will be avoided. Where a publicity campaign is deemed necessary for a Council service or operation, it must be approved by the Chief Executive Officer. In any event, Council publicity during the Election Period will be restricted to promoting the normal services or operations of the Council.
- c) Any requests for media advice or assistance from Councillors during the Election Period will be channelled through the Chief Executive Officer or the Manager Community Engagement. In any event, no media advice and/or assistance or media releases will be provided in relation to election campaign matters, or in regard to publicity that involves specific Councillors.
- d) Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of matters that could be construed as relating to an election campaign.

Information published on Council's website with regard to sitting Councillors will be limited to statements of facts about their roles and responsibilities as a Councillor. For example, contact details, roles and responsibilities as assigned by Council resolution.

6.11.1 Council Websites and Social Media

The only new material published on Council's websites or social medial sites during an election period will be:

- a) The Agenda and Minutes for any Council or Delegated Committee Meetings;
- b) The Annual Report
- c) Key service disruption information

Service information already published on the website will be reviewed to ensure it does not include anything that might be seen as likely to influence the election.

6.12 Assistance to Candidates

A copy of this Policy must be given to each Councillor as soon as practicable after it is adopted, be available for inspection, on request, by the public at the Council office and be published on Council's website. The Chief Executive Officer will ensure that all Councillors, Managers and staff are informed of the requirements of this policy.

The Council affirms that all candidates for the Council election will be treated equally.

Any assistance and advice to be provided to Candidates as part of the conduct of the Council Election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to all candidates in advance.

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or the Director Business Transformation.