



Election Period Policy

2020 General Election

Governance
August 2020



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Election Period Policy

Responsible officer

Governance

Authorising officer

Director Office of the CEO

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DRAFT

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1. PURPOSE

- 1.1. Councillors, Committee Members and Council staff must observe specific legislative and governance requirements during the period leading up to an election.
- 1.2. This policy determines that:
 - The election period is managed in a manner that is ethical, fair and equitable and is publicly perceived as such;
 - The incumbent Council will continue to discharge its statutory duties but does not inappropriately make decisions that will be binding on an incoming Council and limit its freedom to make its own decisions;
 - No actions and decisions which could be perceived as intended to affect the results of an election are made;
 - The day to day business of the Council continues efficiently and in a normal manner;
 - Council resources are not diverted for, or influenced by, electoral purposes or used to improperly advantage existing Council Members as candidates in the election; and
 - Council staff act impartially in relation to all candidates.

2. OUTCOMES

- 2.1 Council complies with its legislative requirements under the Local Government Act, and Councillors, community and staff are aware of what can and cannot be done during the election period.
- 2.2 Councillors and Council staff act in an accountable, transparent and lawful way during the election period.
- 2.3 Council achieves Direction 6 of the Council Plan (Our Commitment to You), by providing a transparent and good governance approach to decision making during the election period.

3. THE ELECTION PERIOD

- 3.1 The election period (often referred to as caretaker period) is the period that starts from the last day that nominations to be a candidate for that election can be received and ends at 6pm on Election Day. The 2020 Election Period is from 12 noon on Tuesday 22 September 2020 to 6pm Saturday 24 October 2020.
- 3.2 The term of office of a Councillor expires at 6 a.m. on the day of the general election.

4. DECISION MAKING

4.1 Under section 69 of the Local Government Act 2020 (the Act), Council, a delegated committee or a person acting under delegation is prohibited from making 'any decision during the election period 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.

4.2 The Act prohibits any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

Any decision made in contravention of these limitations is deemed to be invalid under the Act.

4.3 To ensure that Council complies with its obligations, the following decisions will not be made by Council, a Delegated Committee or an officer acting under delegated authority during the election period:

- Acquisition of land
- Adoption or amendment of the Port Phillip Planning Scheme
- Adoption or amendment of policies, protocols, strategies, master plans or frameworks
- Adoption or amendment of the Council Plan
- Adoption of a revised budget
- Adoption or amendment of a Local Law
- Adoption of the monthly CEO report
- Allocation of grants or awards to individuals or organisations
- Appointing representatives to Council committees
- Disposal of land or assets
- Endorsing submissions to government or public bodies
- Employment matters pertaining to the CEO
- Entering into a contract or entrepreneurial agreement exceeding the prescribed amount
- Entering into agreements (excluding an Enterprise Agreement), deeds or leases
- Naming or re-naming of roads, reserves or features
- Reviewing of programs or service provision
- Any other decision that the CEO considers should be made outside of the election period.

4.4 Decisions made prior to the election period by Council or by an officer under delegation can be implemented during the election period.

4.5 Ordinary Council meeting procedures

4.5.1 The agenda for any Council meeting to be held during the election period must be signed off by the CEO to ensure that no reports are presented to Council

that may give rise to a decision that contravenes the Act. The standard agenda for Council meetings will be modified so that the following agenda items will be not be considered by Council during the election period:

- Petitions and joint letters
- Public question time
- Councillor question time
- Notices of Motion
- Reports by Councillor delegates

4.5.2 Items proposed as urgent business must be signed off by the CEO to confirm the business does not give rise to a decision that contravenes this Policy.

4.6 Delegated Committees of Council

4.6.1 The **Planning Committee** is authorised to consider planning matters only in accordance with relevant policies and guidelines adopted by Council. The committee must not consider an adoption or amendment of the Port Phillip Planning Scheme during the election period. The agenda for the Planning Committee must be signed off by the CEO or delegate.

The standard agenda for any Planning Committee held during the election period will be modified to remove the following items:

- Public question time
- Councillor question time

Items proposed as Urgent business must be signed off by the CEO to confirm the business does not give rise to a decision that contravenes this Policy.

4.6.2 The **Council Neighbourhood Programs Committee** distributes grants to individuals and community groups. The allocation of grants is a prohibited decision under this policy and consequently the Committee will not meet during the election period.

4.6.3 The **South Melbourne Market Committee** implements the strategic plan and capital works approved by Council. The Committee comprises three independent members, two Councillor committee representatives and one non-voting senior officer of Council. Meetings of the committee will not be held during the election period.

4.6.4 The **Inner Melbourne Action Plan Implementation Committee (IMAP)** meets quarterly and comprises the Councils of Port Phillip, Melbourne, Stonnington, Yarra and Maribyrnong. It is empowered to develop and implement a three-year rolling program. It is expected that meetings of the committee will not be scheduled during the election period.

4.6.5 The **Audit and Risk Committee** advises Council on the effectiveness of the organisation's systems, processes and culture for managing risk and complying with its legal and financial obligations. The Committee meets quarterly and comprises three independent members and two Councillor committee representatives. Meetings of the committee will not be held during the election period. The CEO may consult with independent members if the need arises during the election period.

4.6.6 **Councillor briefings**

Weekly Councillor Briefings are a forum for information sharing and providing direction on services, strategy and policy, and decisions likely to come before a Council. Councillor Briefings will not be held during the election period.

4.6.7 **Councillor appointments to external committees**

Where a Councillor has been appointed to an external committee or board it is expected that they will attend meetings of the committee or board during the election period. However, the Councillor may attend only in their role as a Councillor. A Councillor must not attend an external committee or board meeting, where they are a Councillor representative, in their capacity as a candidate. A Councillor must be mindful of their obligations under this election period policy, and not conduct any electoral campaigning activities at the meeting.

5. COUNCIL RESOURCES

- 5.1 Council resources, including offices, support staff, hospitality services, equipment and stationery must be used exclusively for normal Council business during the election period and must not be used in connection with an election.
- 5.2 Councillors can only make operational requests through the CRM system covering issues such as but not limited to roads, footpaths, trees, waste management and general amenity. Such requests will be administered as community requests.
- 5.3 Data-bases and mailing lists held by the organisation remain the property of the Council and are subject to the requirements of the Privacy and Data Protection Act 2014 and are not available to members of the public, candidates or to Councillors.
- 5.4 The organisation will continue to provide support to Councillors with respect to their normal day to day council business. Out-of-pocket expenses paid by Councillors during the election period for necessary costs incurred in the performance of their duties, which do not relate to any election campaign, will be reimbursed as normal.
- 5.5 Performance of duties during the election period includes only attendance at Ordinary Council Meetings and Planning Committee Meetings, attending Council-managed events referred to in clause 7.1, and undertaking the public consultation activities of clause 6.2 of this Policy.
- 5.6 For purposes other than usual community use, Council facilities may only be booked during the election period by persons, groups or organisations who are neutral with regard to the participating political parties or candidate campaigns. If a Council facility is hired for the purposes of discussing issues before voters (e.g. a community candidate forum), then every candidate of the municipality, or of that Ward, must be invited to equally participate in the event. The obligation to ensure fair and equitable participation for all candidates remains with the Hirer. Any feedback, enquiries or complaints on the running of the event will be directed to the Hirer.
- 5.7 The following is expressly prohibited:
 - 5.7.1 Photocopying for election campaigning purposes by Councillors or staff on office machines, or the preparation or production of any materials associated with a Councillor's election campaign by Council staff.
 - 5.7.2 Council logos, letterheads, or other Council branding used for, or linked in any way to, a candidate's election campaign.

- 5.7.3 Use of Council issued mobile phones and email addresses for election campaigning purposes.
- 5.7.4 The use of Council's webpages (including use of weblinks, livestreaming of Council Meetings, and social media links) for any activity to do with election campaigning.
- 5.7.5 Distribution or display of election material in or on Council facilities, webpages, libraries or community noticeboards.

6. CONSULTATION AND ENGAGEMENT

- 6.1 **Community consultation** involves inviting stakeholders (individuals, groups, organisations or the public generally) to provide feedback on a project, issue or policy through a range of feedback mechanisms (tools and techniques). Some topics for community consultation may have the potential to be an election issue therefore no community consultation will take place during the election period.
- 6.2 **Public consultation** associated with activities and decisions that are the subject of statutory processes can be expected to continue through the election period to ensure Council does not breach its statutory obligations, for example:
 - Consultations involving Council staff, Councillors and interested persons regarding applications under the Planning and Environment Act 1987; and
 - Consultation required in accordance with the Local Government Act 2020Discussions at these meetings are not to involve election issues or significant community consultation on major developments, strategy or policy issues.
- 6.3 Where community engagement has occurred prior to the election period but the report has not yet proceeded to a Council or Delegated Committee meeting, results of the consultation will also not be provided to a meeting until the election period has concluded, unless required to meet Council's statutory obligations
- 6.4 Council currently has eleven **Community Reference Committees (Advisory Committees)**, these committees may discuss potential election issues so consequently these committees will not meet during the election period. Meetings of forums and groups which have been established by Council, and not captured as Advisory Committees, should also not be held during the election period.

7. EVENTS AND FUNCTIONS

- 7.1 During the election period, Councillors may continue to attend functions and events. Council run events will be scheduled to ensure only those essential to the operations of Council, that must be held at a specific time which coincides with the election (i.e. the Seniors Festival) are run during the Election Period.
- 7.2 Where events and functions are held, candidates who are not currently Councillors will be invited to attend if appropriate to the type of event or function.
- 7.3 No election material or active campaigning is to be conducted at Council sponsored events or displayed in/on any Council building.
- 7.4 Guest lists to any Council organised event or function during the election period must be approved by the CEO.

- 7.5 For those functions referred to in clause 7.1, the CEO (or his delegate) will fulfil any speaking requirements. The Mayor and Councillors must not give speeches or addresses at Council organised or sponsored events and functions during the election period.
- 7.6 Where a Councillor has received an invitation to an external event and has determined to accept that invitation, the Councillor must make a clear separation between attendance in their role as a Councillor, or attendance in their role as a candidate. A Councillor may not attend an event in their capacity as both Councillor and candidate. If a Councillor gives a speech or public comment at an external event or function, he or she must make it clear that they are speaking as a candidate.

8. PUBLISHING AND COMMUNICATIONS

8.1 Electoral Offences

8.1.1 Printing and publication of electoral material

A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, electoral material unless the name and address of the person who authorised the electoral material is clearly displayed on its face.

Penalty:

In the case of a natural person, 10 penalty units;
In the case of a body corporate, 50 penalty units.

8.1.2 Misleading or deceptive matter

A person must not print, publish or distribute; or cause, permit or authorise to be printed, published or distributed any matter or thing that the person knows, or should reasonably be expected to know, is likely to mislead or deceive a voter in relation to the casting of the vote of the voter.

Penalty:

In the case of a natural person, 60 penalty units or imprisonment for 6 months;
In the case of a body corporate, 300 penalty units.

8.1.3 Author to be identified

A person must not during the election period print, publish or distribute; or cause, permit or authorise to be printed, published or distributed a newspaper, circular or pamphlet containing an article, report, letter or other matter containing electoral matter unless the author's name and address are set out at the end of the article, report, letter or other matter, or if only part of the article, report, letter or other matter appears in any issue of a newspaper, circular or pamphlet at the end of that part.

Penalty:

In the case of a natural person, 10 penalty units;
In the case of a body corporate, 50 penalty units.

- 8.2 The CEO should review all publications produced and distributed by the Council during the election period to confirm that the publication complies with the Act in circumstances where the publication contains electoral matter, i.e. any matter that is *“intended or likely to affect voting in an election”*.

- 8.2.1 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 the election, a candidate in the election, or an issue submitted to, or otherwise before, the voters in connection with the election.
- 8.2.2 This is to be broadly interpreted to refer to documents that are produced for communicating with the community and will include, amongst other things:
- Council newsletters and other circulars (hardcopy and/or electronic)
 - Advertisements and notices
 - Media releases and responses to media enquiries
 - Leaflets, brochures, pamphlets, handbills, flyers, magazines, books and stickers
 - Mail outs to multiple addresses
 - New website material and Social media content
 - Material to publicise a function or event •
 - Notices or posters placed on Council controlled property, including walls, noticeboards, and electronic noticeboards and screens
- 8.2.3 Documents that were published prior to the commencement of the election period, or that are required to be published in accordance with any Act or regulation, are exempted from the requirements of this Policy.

8.3 Process for review of publications

- 8.3.1 Officers will vet all publications before they are recommended to be confirmed by the CEO as suitable for printing, publishing or distributing during the election period.
- 8.3.2 The below wording will be used to ensure compliance with the Act when publishing material:
- Authorised by the Chief Executive Officer of the City of Port Phillip, 99A Carlisle Street St Kilda*
- 8.3.3 Once confirmed by this process, documents may then be published.
- 8.3.4 A record of all publications confirmed by the CEO and published by Council will kept via Council's records management system.

8.4 Information about the Election

Council may provide information, education and publicity designed only to promote public participation in the electoral processes.

8.5 DiverCity newsletter

DiverCity newsletter will not be published or distributed during the election period.

8.6 Annual Report

The Act requires the annual report to be submitted to the Minister by 30 September. The Act also requires Council to consider the annual report at a Council meeting prior to Election Day. The annual report will be made publicly available during the election period and the information within the report will be restricted to what is required by the legislation. The annual report does not require review by the CEO however any publication of an extract or summary of the Annual Report will require review.

8.7 Council and Delegated Committee Meetings

Public notice of Council meetings and Delegated Committee meetings, and agenda papers and minutes of Council and Delegated Committee meetings do not require review by the CEO unless they are printed or published for a wider distribution than normal.

8.8 City of Port Phillip websites

During the election period Councillor profile pages will be limited to names, contact details, date elected and membership of committees. There will be no photographs, biographies or policy statements.

New content can only be added to the website, or content updated, if the content complies with the Act and where necessary has been confirmed by the CEO.

Website content will be reviewed prior to the election period commencing and any prohibited information will be redacted or removed by the beginning of the election period.

8.9 Media

The CEO must sign-off on all media releases and media responses.

Media releases and media responses must not refer to Councillors or any candidate and must not comment on an issue likely to be an election issue.

Media enquiries will be channelled through the CEO who will determine who the appropriate spokesperson will be. The CEO will be the spokesperson of the Council where the issue relates to electoral matters including issues before the voters.

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 an election campaign.

8.10 Social Media

Any publication of comments or new content on social media sites (that are managed by Council) must be confirmed by the CEO during the election period. Where it is necessary to identify a spokesperson for comment on Council's social media channels, the CEO will determine the spokesperson and certify commentary.

At the commencement of the election period, Council will advise social media subscribers that comments containing electoral matter will be deleted.

Staff responsible for administering individual social media sites will monitor their respective sites during the election period and use moderation features where available to ensure no electoral matter is posted.

Information published prior to Election Period on Council's social media and website is not subject to CEO review.

9. COUNCIL INFORMATION

9.1 Councillors will continue to receive information necessary to fulfill their existing roles as a Councillor during the election period.

9.2 Councillor access to historical briefing and workshop papers will be suspended for the duration of the election period. Council Meeting papers may continue to be accessed by anyone via the Council website.

- 9.3 No information other than what would normally be made available to any member of the public on request will be provided to a Councillor or a candidate. Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns.
- 9.4 Council staff when carrying out their duties must not offer comment to members of the public about any Councillors or candidates, except to provide contact details for current Councillors.
- 9.5 Information Requests – process, record and access
- 9.5.1 All candidate requests for information relating to electoral matters and non-routine requests will be processed by the Governance department. A record of requests will be maintained by the Governance department. A copy of the request and the officer response will be made available to all candidates via an email database.
- 9.5.2 Enquiries from Councillors, candidates and the public about the election process will be referred to the Returning Officer for the election so that a consistent response is maintained. Where the matter is outside the responsibilities of the Returning Officer, it will be referred to the Governance Department.

10. ELECTORAL SIGNAGE AND ELECTIONEERING

Councillors, like other candidates, must comply with Council's Electoral Signage and Electioneering Guidelines. The guidelines include the City of Port Phillip Planning Scheme Requirements for what sort of signs can be displayed during an election, and rules for when candidates or their supporters are electioneering in public places. The guidelines are included at the end of this Policy.

11. BREACHES

- 11.1 Sections 123 and 124 of the Act prohibit Councillors from intentionally directing, or seeking to direct a member of Council staff; or misusing their position to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or to cause, or attempt to cause, detriment to the Council or another person.
- 11.2 Circumstances involving the misuse of a position by a Councillor or member of a delegated committee include—
- a) making improper use of information acquired as a result of the position the person held or holds; or
 - b) disclosing information that is confidential information; or
 - c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
 - d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
 - e) using public funds or resources in a manner that is improper or unauthorised; or

- f) participating in a decision on a matter in which the person has a conflict of interest.

11.3 A breach of section 123 attracts serious penalties, including possible imprisonment. Allegations of breaches of the Local Government Act are independently received and investigated by the Local Government Inspectorate.

11.4 Allegations of breaches of this Policy will be dealt with under the Internal Resolution Procedure of the Code of Conduct. The CEO will take the place of the Mayor in managing complaints received under the Election Period Policy.

11.5 Complaints must be directed to the CEO in writing, providing details of the alleged contravention, when it occurred and who it involved. The CEO will assess the information and follow the provisions of the Internal Resolution Procedure of the Code of Conduct including, where necessary, the appointment of an external arbiter.

12. RESPONSIBLE OFFICERS

The CEO and Executive Leadership Team are the responsible executive officers for this policy.

13. POLICY REVIEW

The Act requires Council to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each general election period.

ELECTORAL SIGNAGE

What sort of sign can I display during an election?

City of Port Phillip Planning Scheme Requirement

A permit is not required to display a sign with an advertisement area not exceeding 5 square metres publicising a local political event not held for commercial purposes.

The requirements are:

- *Only one sign can be displayed on the land*
- *The sign must not be animated*
- *The sign must not be internally illuminated*
- *The sign must not be displayed for more than 3 months and must be removed within 14 days of the event*

A sign publicising a local political event may include information about a candidate for an election.

(This section of the Planning Scheme is a mandatory State Government requirement).

The sign can be displayed on a person's own land or another person's land if permission of the landowner has been granted.

Signs not compliant with these requirements are subject to a Council Planning application.

Electoral advertising cannot be displayed on or in any Council building or Council notice board, or on any Council land, including median strips and footpaths.

Electoral material must follow the requirements of the relevant electoral legislation.

ELECTIONEERING

When candidates or their supporters are electioneering in public places they must be aware of the following:

- A candidate / supporter may handout electoral material in a public place, that is, streets and parks within the control of Council, but not within Council buildings or premises.
- Electoral material must follow the requirements of relevant electoral legislation.
- Council will not require a fee or a permit if a candidate / supporter is standing at a small table with a sign (note planning requirements) handing out electoral material.
- Persons distributing electoral material must be aware of public safety and community amenity, and must leave a minimum 1.2 metre wide pedestrian access on the footpath.
- Any tables and signs placed in front of Council, commercial or residential properties must be located with the agreement of the adjoining owner / occupier.
- No electoral material is to be posted on Council property including buildings, noticeboards, land, fences, street lighting posts, etc. Any such postings will be subjected to a Local Laws Enforcement investigation.

Any electoral material posted on private property without the authority of the owner may be referred to the Police for investigation.