

Title	Election Period Policy
Description	This policy constitutes the election period policy required by section 93B(1) of the Local Government Act 1989 and is to be read in addition to the requirements of that Act.
Category	Governance
Type	Policy
Approval authority	Council
Responsible officer	Senior Governance Advisor
Approval date	14 October 2019
Review cycle	Every four years
Review date	31 August 2023
Document Reference (Trim)	D16/71528
Human Rights compatibility	This policy has been assessed and is compatible with the Victorian Charter of Human Rights of Responsibilities

PART A - PRELIMINARY

1. Policy objectives

- 1.1. to ensure the highest standard of good governance is achieved by the incumbent Councillors and all Council staff; and
- 1.2. to ensure that Council elections are conducted in an environment that is open and fair to all candidates by outlining the use of Council resources, Council publications, functions and events, requests for information, liaisons with the media and Councillor expenditure in the lead up to an election; and
- 1.3. to supplement the requirements of the *Local Government Act 1989* (“the Act”) with additional measures to ensure that best practice is achieved in transparency and independence.

2. Definitions

- 2.1. In this Policy, these terms have the same meaning as defined in the Act:
 - 2.1.1. election day;
 - 2.1.2. election period;
 - 2.1.3. electoral advertisement, handbill, pamphlet or notice;
 - 2.1.4. electoral matter;
 - 2.1.5. inappropriate decision
 - 2.1.6. major policy decision; and
 - 2.1.7. publish.

- 2.2. For the avoidance of doubt, the election period in respect of the 2020 Council Election commences at midnight at the beginning of the day on Wednesday 23 September and concludes at 6.00pm on Saturday 24 October 2020.

3. Councillor Code of Conduct

- 3.1. This policy should be read in conjunction with the Yarra City Council Councillor Code of Conduct, particularly the following section:

14. Caretaker Period

1. Council is committed to upholding the highest standards of governance during election periods. I therefore agree:
 - (a) to refrain from using Council resources (including facilities and staff) to promote any candidate or position;
 - (b) to ensure that my electoral material is not present at any Council location or Council sponsored event;
 - (c) refrain from seeking access to Council's databases and mailing lists for electoral purposes;
 - (d) to ensure that my electoral material does not feature Council's logo or imply Council's endorsement in any way whatsoever;
 - (e) to avoid unfairly binding the incoming Council by making significant decisions or major policy decisions unnecessarily;
 - (f) that ward meetings will not be conducted during the caretaker period;
 - (g) that civic functions will only be organised if they are part of the normal services of the Council; and
 - (h) that no information other than my photograph and contact details will appear in Council publications (including Council's public website) during the caretaker period.
2. Where it is impractical for me to cease using a Council funded service (e.g. mobile telephone, fax machine, laptop computer, internet connection), I agree to reimburse the Council for election related expenditure.

4. Legislation

- 4.1. This policy should be read in conjunction with the Local Government Act 1989 (“the Act”), particularly the following sections:

<p>S. 55D inserted by No. 109/2003 s. 24, substituted by No. 58/2010 s. 5.</p>	<p>55D Prohibition on Council</p>
	<p>(1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.</p>
	<p>(2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process. Penalty: 60 penalty units.</p>
	<p>(3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.</p>
	<p>(4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section. Penalty: 60 penalty units.</p>

76D Misuse of position

S. 76D
inserted by
No. 67/2008
s. 16.

- (1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

S. 76D(1)
amended by
No. 64/2009
s. 21.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of section 77(2); or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.

76E Improper direction and improper influence

- (1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

S. 93A
inserted by
No. 109/2003
s. 66.

93A Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a *major policy decision* means any decision—
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

S. 93A(6)(c)
substituted by
No. 67/2008
s. 42(1).

S. 93A(6)(d)
amended by
No. 67/2008
s. 42(2).

93B Council to adopt an election period policy

S. 93B
inserted by
No. 53/2015
s. 65.

- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1)—
 - (a) by 31 March 2016; and
 - (b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.
- (3) An election period policy must include the following—
 - (a) procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
 - (b) limits on public consultation and the scheduling of Council events;
 - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must—
 - (a) be given to each Councillor as soon as practicable after it is adopted; and
 - (b) be available for inspection by the public at the Council office and any district offices; and
 - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section—

inappropriate decisions made by a Council during an election period includes any of the following—

 - (a) decisions that would affect voting in an election;
 - (b) decisions that could reasonably be made after the election.

PART B - APPLICATION

5. Candidates for election

- 5.1. Councillors are expected to comply with this policy, regardless of whether or not they have nominated as candidates for election.
- 5.2. Members of Council committees and advisory groups (other than Councillors) who are candidates for election are expected to comply with this policy and in addition:
 - 5.2.1. submit apologies for any committee meetings or other committee activities held during the election period;
 - 5.2.2. return any council equipment, documents or information which is not available to the public for the duration of the election period; and
 - 5.2.3. immediately resign from the committee upon election.
- 5.3. Council staff who are candidates for election are expected comply with this policy and in addition:
 - 5.3.1. take leave from their duties for the duration of the election period in accordance with section 29(3) of the Act (if not enough paid leave is accrued, unpaid leave will be available for this purpose);
 - 5.3.2. return any Council equipment (including, but not limited to, motor vehicles, telephones, computers, swipe cards and keys), documents or information which is not available to the public for the duration of the election period; and
 - 5.3.3. immediately resign upon election.
- 5.4. Other candidates for election are expected to voluntarily comply with the obligations of this policy where they apply.

6. Other persons

- 6.1. All Councillors, members of Council committees and advisory groups and Council staff are bound by this policy insofar as it relates to the provision of support for candidates for election.

7. Related Policies

- 7.1. This policy should be read in conjunction with all Council policies, including:
 - 7.1.1. Access to Confidential Information and Inspection by Councillors Policy
 - 7.1.2. Confidential Information (Access) Policy
 - 7.1.3. Councillor Code of Conduct
 - 7.1.4. Councillor Support and Reimbursement of Expenses Policy
 - 7.1.5. Elections, Public Access to Voter's Roll Policy

8. Application of the Staff Code of Conduct

- 8.1. For the avoidance of doubt, the establishment of this policy does not abrogate from the obligation of Council Staff to adhere to the Staff Code of Conduct with respect to electoral activities. The Code of Conduct states that “*a conflict of interest occurs where your personal, financial or other interest conflicts with the performance of your Council duties*”. The provision of support to a candidate at the Yarra City Council election would constitute a conflict of interest under this policy and is therefore prohibited.
- 8.2. Such support includes, but is not limited to:
 - 8.2.1. providing advice to candidate
 - 8.2.2. distributing or preparing campaign material
 - 8.2.3. fundraising
 - 8.2.4. making a cash or in kind campaign donation
 - 8.2.5. permitting or placing electoral signage on their property
- 8.3. The Staff Code of Conduct does not limit the ability of a member of Council staff to support the candidature of a person in a different municipal election or in state or federal elections.
- 8.4. A staff member may not support or participate in any campaign activity for any candidate standing for election at the Yarra City Council election.

PART C - POLICY

9. Council resources

- 9.1. In accordance with Section 55D of the Act, Council will ensure that probity is observed in the use of all Council resources during the election period, and Council staff are required to exercise appropriate discretion in that regard. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer or the Group Manager Chief Executive's Office.
- 9.2. In determining whether the use of Council resources during the election period is appropriate, candidates will have regard to whether these same resources are available to other candidates at the election. These restrictions apply regardless of whether such use comes at no cost to Council and include, but are not limited to:
 - 9.2.1. The use by a candidate of a Council provided computer for the preparation of campaign material is not permitted, apart from a publicly provided computer in a library or community facility.
 - 9.2.2. The use of a Council provided mobile telephone for making campaign related calls, messages, emails, photographs or social media is not permitted. While it is acknowledged that the receipt of communications cannot be controlled, candidates shall not encourage campaign related communication by this means.
 - 9.2.3. The use of a photograph in campaign materials that was taken by a member of Council staff or a photographer engaged by Council is not permitted.
 - 9.2.4. The use of Council administrative facilities such as offices, meeting rooms, support staff, hospitality services, equipment and stationery in connection with any election campaign is not permitted.
- 9.3. Reimbursements of candidates' 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.
- 9.4. Notwithstanding part 14(1) of the Councillors Code of Conduct, Council determines that it is no longer impractical to cease using a Council funded service (e.g. mobile telephone, fax machine, laptop computer, internet connection) for electoral purposes.
- 9.5. No Council livery, including logos, publications, letterheads, or other Yarra City Council branding will be used for, or linked in any way to, a candidate's election campaign.
- 9.6. Council telephone numbers and email addresses are not to be used in candidate election material.
- 9.7. Officers will not assist in preparing candidate election material.
- 9.8. Officers will not provide candidates with access to databases, contact lists, property counts, email addresses or any other information that would assist in mailing or other distribution of election material. Any such Council information already in the possession of candidates is subject to the provisions of the Privacy and Data Protection Act 2014 and cannot be used for electoral purposes.

10. Information

- 10.1. The Council recognises that all election candidates have certain rights to information from the Council administration. However, it is important that sitting Councillors 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 an election campaign.
- 10.2. Information and briefing material prepared by staff or the Victorian Electoral Commission during the election period will relate only to factual matters or to existing Council services. Such information will not relate to 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.
- 10.3. Public consultation of a limited kind normally associated with the routine administration of planning, building, traffic, parking or other matters will continue through the election period. However significant community or ward-wide consultation on major strategy or policy issues will not occur, or if already commenced, will be suspended during the election period.

11. Council publications

- 11.1. In accordance with Section 55D of the Act the Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless it has been certified, in writing, by the CEO.
- 11.2. All advertisements, handbills, pamphlets or notices for printing, publication or distribution during the election period will be certified by the CEO using Form 1 (attached) and the process for the certification will be as follows:
 - 11.2.1. publication authors are to check that no election material is included when preparing a publication and submit the completed publication to the Group Manager, Chief Executive's Office for review;
 - 11.2.2. the Group Manager, Chief Executive's Office is to confirm that no election material is included, and return the publication to the author (if election material is present) or submit it to the CEO for authorisation (if it complies with the requirements of the Act);
 - 11.2.3. the CEO is to authorise or reject the publication and return it to the Group Manager, Chief Executive's Office; and
 - 11.2.4. the Group Manager, Chief Executive's Office is to maintain a register of all documents authorised under this section.
- 11.3. Council will suspend the publication and distribution of Yarra News or any similar publication during the election period.
- 11.4. During the election period, Council will restrict Councillor details on the Council website to Councillor names, the ward they represent and their contact details.
- 11.5. For the avoidance of doubt, this policy does not prevent candidates from publishing their own campaign material from their own funds outside the Council, and not bearing any reference or inference that such material is from the Council, supported or endorsed by the Council and must not bear any Council identification such as logos or similar. Candidates must ensure that such publications comply with the requirements of the Act.

12. Publicity

- 12.1. It is recognised that Council publicity is intended to promote Council activities and services. Council publicity will not be used in any way that might influence the outcome of a Council election.
- 12.2. During the election period, no Council employee may make any public statement as a spokesperson for Council that could be construed as influencing the election. This does not include statements of clarification that are approved by the CEO.
- 12.3. During the election period, publicity campaigns, other than for the purpose of conducting the election, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council service or function, it must be approved by the CEO. In any event, Council publicity during the election period will be restricted to promoting normal Council activities.
- 12.4. Any requests for media advice or assistance from Councillors during the election period will be channelled through the CEO, or the CEO's designated delegate. In any event, no media advice or assistance will be provided in relation to election campaign matters, or in regard to publicity that involves specific Councillors.
- 12.5. 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.

13. Decisions

- 13.1. Council will comply with section 93A(1) of the Act with respect to making major policy decisions.
- 13.2. The Chief Executive Officer shall have the delegated authority to make an application to the Minister for Local Government under section 93A(2) if extraordinary circumstances require the making of a major policy decision during the election period.
- 13.3. Council will comply with section 93B(3)(a) with respect to making inappropriate decisions.
- 13.4. In determining whether a matter would constitute an inappropriate decision, Council shall have regard to:
 - 13.4.1. whether the matter could affect voting in the election in that 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; and
 - 13.4.2. whether the matter could reasonably be made after the election having regard to the negative impact of a delayed decision on the Council, the municipality or the local community.
- 13.5. Council notes that the restriction on the making of inappropriate decisions is not intended to delay the routine making of administrative and operational decisions by Council officers under delegation.

14. Conduct of Council Meetings

- 14.1. The following modifications will be made to the conduct of Council Meetings during the election period:

14.1.1. Public question time will be suspended.

14.1.2. Submissions made by members of the public in relation to matter listed on the agenda shall be submitted in writing and in advance. Those submissions shall be presented at the Council meeting by the Group Manager Chief Executive's Office provided the submitter is present and the submission is limited in scope to the matter before Council does not contain electoral matter.

14.1.3. Councillors will limit their discussion during debate to the topic under consideration and will avoid raising electoral matter where possible.

14.1.4. Councillors will not raise items of general business or questions without notice that contain or relate to electoral matter.

14.2. No officer report shall be presented to Council during the election period unless it contains an express statement by the CEO that a decision on that matter:

14.2.1. would not constitute a major policy decision; and

14.2.2. would not constitute an inappropriate decision.

15. Events and Functions

15.1. Council will suspend its program of Ward Meetings during the election period.

15.2. Councillors are able to continue to attend meetings, events and functions during the election period which are relevant to the Council and the community.

15.3. Council's annual program of events will continue during the election period however speeches will be limited to a short welcome, and should not contain any express or implied reference to the election. Any publicity will be mindful of the controls on electoral material outlined in these guidelines.

15.4. Councillors are able to attend events or functions conducted by external bodies during the election period, however when attending as a representative of Council, Councillors must be mindful that they do not use that opportunity to promote their election campaign.

16. Assistance to Candidates

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

16.2. All election related inquiries from candidates will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the CEO or Group Manager Chief Executive's Office.

17. Monitoring, Enforcement and Amendment

17.1. The implementation of this policy shall be overseen by the Group Manager Chief Executive's Office who shall establish a steering group comprising, at a minimum, a representative of the governance and communications teams.

17.2. Breaches of the policy shall be brought to the attention of the CEO without delay.

- 17.3. Breaches of the policy sufficient to constitute a breach of the Local Government Act 1989 shall be referred to the Local Government Investigations and Compliance Inspectorate.
- 17.4. The CEO has the discretion to introduce additional provisions to this policy where she believes they are necessary to support the achievement of its stated policy objectives.
- 17.5. Any changes made by the CEO will be reflected in an update to this policy and published on Council's website and a notification of this change will be sent to all Councillors and candidates.

18. Review

- 18.1. This Policy will be reviewed in August 2023 unless an earlier review is required due to a legislative change or the conduct of a general election.

PART D – ATTACHMENTS

Summary of Caretaker Restrictions

		Prior to election period	During election period
5.2	Committee member standing as a candidate	Once nominated, must lodge apologies for meetings and return all Council equipment and information	Must lodge apologies for meetings and return all Council equipment and information
5.3	Council staff standing as a candidate	Once nominated, must take leave and return all Council equipment and information	Must take leave and return all Council equipment and information
8.1 & 8.2	Council staff supporting a candidate	Not permitted (under the Staff Code of Conduct)	Not permitted (under the Staff Code of Conduct)
9.2	Council resources used in conjunction with an election campaign	Not permitted	Not permitted
9.3	Reimbursement of out of pocket expenses to Councillors	Cannot include expenses that could be perceived as electoral expenses	Cannot include expenses that could be perceived as electoral expenses
9.5	Use of Council logo or branding in campaign material	Not permitted	Not permitted
9.6	Use of Council phone number or email address in campaign material	Not permitted	Not permitted
9.7	Officer assistance in preparing campaign material	Not permitted	Not permitted
9.8	Officer provision of databases and contact lists	Not permitted	Not permitted
10.3	Routine community consultation	Permitted	Permitted
10.3	Significant community consultation	Permitted	Not permitted
11.1 & 11.2	Printing, publishing or distributing a handbill, pamphlet or notice containing electoral matter	Permitted	Not permitted
11.1 & 11.2	Printing, publishing or distributing a handbill, pamphlet or notice <u>not</u> containing electoral matter	Permitted	Permitted following certification by the CEO
11.3	Publication of Yarra News	Permitted	Not permitted
11.4	Councillor details on Council's website	No restrictions	Restricted to name, ward and contact details
12.2	Employee of Council making a public statement as a spokesperson that could be construed as influencing the election	Not permitted, apart from clarifications made by the CEO	Not permitted, apart from clarifications made by the CEO
12.3	Publicity campaigns for Council services or functions	No restriction	Should be avoided where possible, and otherwise approved by the CEO

		Prior to election period	During election period
12.4	Councillor requests for media assistance	Cannot relate to election campaigns	Must be approved by the CEO or delegate but cannot relate to election campaigns or promote individual Councillors
13.1	Council making Major Policy Decisions	Permitted	Not permitted, except in accordance with the Act
13.3	Council making inappropriate decisions	Not applicable	Not permitted
13.5	Routine making of administrative and operational decisions by Council officers under delegation	No restriction	No restriction
14.1.1	Public question time at Council Meetings	No restrictions	Suspended
14.1.2	Public submissions to Council Meetings	No restrictions	To be made in advance and in writing
14.1.3	Discussion of matters at Council Meetings	No restrictions	Comments by Councillors not to include Electoral Matter where possible
14.1.4	Raising of general business or questions without notice at Council Meetings	Any matter within Council's powers	Comments by Councillors not to include Electoral Matter
14.2	Declaration by CEO in Council reports that matter is neither a major policy decision or an inappropriate decision	Not required	Required
15.1	Councillor attendance at meetings, events and functions	Permitted	Permitted
15.2	Speeches by candidates at Council events	Permitted	Limited to a short welcome, with no reference to the election.
15.3	Attendance by Councillors at external events as representatives of Council	Permitted, but Councillors not to use the opportunity to promote their election campaign.	Permitted, but Councillors not to use the opportunity to promote their election campaign.
16.2	Enquiries to Council from candidates	Shall be referred to the Returning Officer	Shall be referred to the Returning Officer
17.1	Introduction of additional provisions by the CEO	Permitted where necessary to achieve policy objectives.	Permitted where necessary to achieve policy objectives.



Request for certification of a publication during the Election Period

1 Author to complete

Document Description
(attach document)

Intended distribution
channel

I declare that this material contained in the attached document has been checked by me and to the best of my knowledge does not contain any electoral matter.

Name and Title

Signature

Date

2 Group Manager Chief Executive's Office (or delegate) to complete

I have reviewed the material contained in the attached document can advise that to the best of my knowledge it does not contain any electoral matter.

Name and Title

Signature

Date

3 Chief Executive Officer to complete

In accordance with section 55D(1) of the *Local Government Act* 1989, I certify that the attached advertisement, handbill, pamphlet or notice may be printed, published or distributed during the election period on behalf of the Yarra City Council.

Name and Title

Vijaya Vaidyanath, Chief Executive Officer

Signature

Date

4 Group Manager Chief Executive's Office (or delegate) to place on register