

Election Period Policy

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1. TITLE

Election Period Policy

2. OBJECTIVE

To ensure:

- (a) compliance with the provisions of the *Local Government Act 1989* dealing with the election period during the lead up to local government elections;
- (b) Council does not make inappropriate decisions or use resources inappropriately during the election period;
- (c) there are limits on public consultation and the scheduling of Council events; and
- (d) access to information held by Council is made equally available and accessible to candidates during the election.

This policy forms part of the Glen Eira City Council Code of Conduct for Councillors.

3. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
Election Period	the period before an election day that: (a) starts on the last day on which nominations for that election can be received; and (b) ends at 6 p.m. on election day.
Electoral Matter	Matter intended or likely to affect voting but not including any electoral material produced by or on behalf of the returning officer for the purposes of an election. Matter is to be taken to be intended or likely to affect voting 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, voters in connection with the election

4. INTRODUCTION

- 4.1** Governments at all levels have long-standing caretaker conventions. They aim to provide assurance that public resources will not be used for electoral purposes and that major decisions will not be made during the period leading up to an election day which pre-empt incoming governments.
- 4.2** The *Local Government Act 1989 (Vic)* (the Act) includes a number of provisions relevant to Election Periods and in 2015, the Act was amended by the insertion of section 93B which requires Council to adopt an election period policy. Relevant extracts of the Act are attached as Attachment 2 to this policy.
- 4.3** Section 93B states that an election period policy must include:
 - procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the Election Period before a general election;

- limits on public consultation and the scheduling of Council events; and
- procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

4.4 Other key sections of the Act imposing obligations or prohibitions during the Election Period include:

- Section 93A, which prohibits a council, special committee or delegate from making ‘major policy decisions’ during an Election Period. The section includes a mechanism for seeking a Ministerial exemption from the general prohibition against major policy decisions in extraordinary circumstances.
- Section 55D, which prohibits certain publications during the election period; and
- Section 76D, which imposes severe penalties on Councillors who misuse their positions for private benefit. The section identifies improper use of public resources as a misuse of position and this includes electioneering.

4.5 In accordance with the requirements of the Act and recommended practice, the following arrangements apply during the Election Period.

5. POLICY

5.1 Major Policy Decisions

5.1.1 The Council, special committees and delegates must not make any Major Policy Decisions during the Election Period. Major Policy Decisions are decisions:

- (a) that relate to the employment or remuneration of a Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer;
- (b) to terminate the appointment of a Chief Executive Officer under section 94 of the Act;
- (c) to enter into a contract the total value of which exceeds whichever is the greater of \$150,000 (for contracts for the purchase of goods and services) or \$200,000 (for contracts for the carrying out of works)¹ and one per cent of Council’s revenue from rates and charges in the preceding financial year²;
- (d) to exercise any power under section 193 of the Act if the sum assessed under section 193(5A) of the Act in respect of the proposal exceeds whichever is the greater of \$100,000 or one per cent of the Council’s revenue from rates and charges in the preceding financial year.

5.1.2 Agendas for Council meetings held during the Election Period must contain a certification by the Chief Executive Officer that no agenda item involves the making of a Major Policy Decision.

¹ These amounts were fixed pursuant to an Order in Council dated 5 August 2008.

² For the 2018-2019 financial year, 1% of Council’s revenue from rates and charges was \$1,095,459.

5.1.3 A Major Policy Decision made in contravention of section 93A is invalid. Any person who suffers any loss or damage as a result of acting in good faith based on a Major Policy Decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.

5.2 Inappropriate Decisions

During the Election Period Council must not make any decisions that:

- would affect voting in an election; or
- could reasonably be made after the election.

5.3 Council Resources and Misuse of Position

5.3.1 Council resources, including land lines and mobile telephones, computers and email accounts, offices, meeting rooms, secretarial support, equipment and stationery will be used exclusively for normal Council business and must not be used in connection with any candidate's election campaign.

5.3.2 Photographs or images taken by or on behalf of Council must not be used for the purposes of electioneering.

5.3.3 Glen Eira City Council's logo, branding and letterhead must not be used in connection with a candidate's election campaign.

5.3.4 Reimbursements of Councillors' out-of-pocket expenses must 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.

5.3.5 Council officers must not assist in preparing Electoral Matter or any related activity.

5.3.6 Councillors and members of a special committee must not misuse their position to gain an advantage or cause detriment to another person at any time in accordance with section 76D of the Act, including by:

- making improper use of information acquired as a result of their position;
- disclosing confidential information;
- directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E;
- exercising or performing, or purporting to exercise or perform, a power, duty or function that they are not authorised to exercise or perform (and for this reason Councillors must ensure that they do not make electoral promises that cannot be kept);
- using public funds or resources in a manner that is improper or unauthorised; and
- failing to disclose a conflict of interest as required by the Act.

5.4 Publications and Advertising

5.4.1 As set out in 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 the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

5.4.2 The Chief Executive Officer must not certify an advertisement, handbill, pamphlet or notice containing Electoral Matter during the Election Period unless it only contains information about the election process.

[Note that the Act imposes a penalty of 60 penalty units for breaching this obligation.]

5.4.3 The Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under the Act to a Council officer.

5.4.4 A Councillor or Council officer must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an advertisement, handbill, pamphlet or notice containing Electoral Matter during the election period on behalf of, or in the name of, the Council or a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer as required by the Act.

[Note that the Act imposes a penalty of 60 penalty units for breaching this obligation.]

5.4.5 Prohibited publications do not include the publication of any document published before the commencement of the Election Period or the publication of any document required to be published under any Act or regulation.

5.4.6 Council follows the recommended practice of refraining from all publication activity during the Election Period, however, where the printing, publishing or distribution of a document is essential for the conduct of Council's operations, and where that document is an "advertisement, handbill, pamphlet or notice" (thus caught by Section 55D), the Chief Executive Officer will certify the document following the procedure set out in Attachment 1 to this policy: Election Period Certification Procedure.

5.4.7 Any publications appearing via social media tools, including on Facebook, Twitter and You Tube, must meet the requirements of this policy and the Chief Executive Officer must certify relevant documents in the terms set out above.

5.4.8 It should be noted that there is no requirement for the section 55D certification to appear on the face of a publication. Nor is there a requirement for publications to be individually certified; categories of publications can be certified by the Chief Executive Officer in accordance with section 55D of the Act.

5.4.9 In accordance with recommended practice, Council must, as far as is practicable and taking into account part 5.4.5 above, restrict details about Councillors on Council's website. Material that could be viewed as Electoral Matter on social media pages operated by Council will not be permitted to be posted during the Election Period. Council officers will review comments to be posted on Council's social media pages during the Election Period prior to posting.

- 5.4.10 Councillors will be reminded of the legislative restrictions and this policy immediately prior to the Election Period.
- 5.4.11 Councillors who are standing for re-election must ensure that their own campaign material (to be prepared at their expense) does not bear any reference or inference that such material is from Council, or is supported or endorsed by Council and must not bear any Council identification such as logos, design schemes or colour schemes.
- 5.4.12 Council officers may not 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.
- 5.4.13 Council publicity during the Election Period will be restricted to promoting normal Council activities. Council-funded publicity will not feature Councillors except the Mayor when representing Council in an official capacity. Where a publicity campaign is deemed necessary for a Council service or function (e.g. vaccinations), it must be approved by the Chief Executive Officer.
- 5.4.14 Public Questions at Council Meetings, which would normally be recorded in the Minutes, should avoid Electoral Matter and a question may be ruled out of order on that ground.
- 5.4.15 Any requests for media advice or assistance from Councillors during the Election Period must be decided by the Chief Executive Officer or the Chief Executive Officer's 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.

5.5 Election Signs on Public Land

Election signs and notices, posters or advertisements containing Electoral Matter must not be erected, posted or displayed on land, buildings or structures owned or managed by Council except:

- by the Victorian Electoral Commission (VEC) in connection with the conduct of the election; or
- where an election is to be determined by attendance voting, at voting centres on election day or early voting centres during the times and dates nominated by the VEC for early voting.

5.6 Public Consultation

- 5.6.1 No public consultation will be undertaken during the Election Period unless prior approval is obtained from the Chief Executive Officer.
- 5.6.2 Public consultation in this part means a process involving an invitation and opportunity for the public to comment or provide an opinion on a matter, proposed action or proposed policy.
- 5.6.3 The Chief Executive Officer will consider the following factors when deciding whether to approve public consultation:
- whether the consultation could reasonably take place after the election;
 - whether conducting the consultation could affect voting in the election;
 - whether risks of influencing the election can be reduced or avoided;
 - whether special circumstances exist which make the consultation necessary during

- the election period; and
- the financial and other repercussions of postponing the consultation until after the election.

5.6.4 Where public consultation during an Election Period is approved, the results of that consultation will not be published or disclosed until after the Election Period except where approved by the Chief Executive Officer.

5.6.5 Public consultations in this part do not include consultations required by any Act or regulation which are conducted in the normal course of Council operations, such as public consultation on planning applications required under the *Planning and Environment Act 1987 (Vic)*.

5.7 Council Events

5.7.1 Council organised events and functions held during the Election Period will be reduced to only those essential to the operation of the Council or which are held to mark national celebrations and which can't reasonably be held at other times (eg. Seniors Festival).

5.7.2 Publications promoting any Council events or functions held during the Election Period must comply with part 5.4 of this policy.

5.7.3 Councillors are able to continue to attend meetings, events and functions in the course of performing their duties as a Councillor. Speeches at Council functions should not contain any express or implied reference to Electoral Matters.

5.7.4 Councillors are able to attend events or functions conducted by external bodies, but must be mindful of the obligations in the Act to avoid misuse of their position.

5.8 Information for Candidates

5.8.1. Access to information held by Council must be made equally available and accessible to candidates during the election, subject to applicable legislative requirements.

5.8.2. Councillors will continue to receive information necessary to perform their roles, however, neither Councillors nor candidate will receive information or advice from Council officers that may advantage them in the election.

5.8.3. Corporate Counsel will maintain an Information Request Register during the Election Period to record all requests for information connected to the election or to Electoral Matters by Councillors and candidates and the responses provided to those requests and staff must provide details of such requests and responses to Corporate Counsel to include in the Information Request Register.

5.8.4. The Information Request Register will be available to the public to view on request at the Council offices.

5.9 Distribution of this Policy

A copy of this policy must:

- be provided to each Councillor as soon as practicable after it is adopted;
- be available for inspection by the public at the Council office; and
- be published on Council's website.

6. HUMAN RIGHTS CHARTER COMPATIBILITY

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

7. ASSOCIATED DOCUMENTS

Glen Eira City Council Code of Conduct for Councillors
Election Period Certification Procedure (Attachment 1 to this policy)

8. REFERENCES/RESOURCES

Local Government Act 1989 (Vic) (Attachment 2 to this policy contains selected extracts)

Attachment 1 Election Period Certification Procedure

1 Background

- 1.1 This procedure is an attachment to the Election Period Policy (the Policy) and applies to all publications proposed during the Election Period (as defined in the Policy).
- 1.2 Section 55D of the *Local Government Act 1989 (Vic)* prohibits Council from printing, publishing or distributing or authorising to be printed, published or distributed, any publication during the Election Period unless the publication has been certified, in writing, by the Chief Executive Officer (CEO). The CEO must not certify any publication containing Electoral Matter (as defined in the Policy) during the Election Period unless it only contains information about the election process.
- 1.3 This procedure sets out the process for submitting a publication to the CEO for certification in order to meet the requirements of the Act.

2 Definitions

“Publication” means an advertisement, handbill, pamphlet or notice, but does not include any document published before the commencement of the Election Period or the any document required to be published under any Act or regulation.

3 Procedure

- 3.1 All publications proposed to be printed, published or distributed, or approved or authorised during the Election Period must be submitted to Corporate Counsel.
- 3.2 Corporate Counsel must review all proposed publications received under this procedure and if satisfied a publication contains no Electoral Matter, will submit it to the CEO for certification with advice attached containing words to the effect of:

“This publication has been reviewed by Corporate Counsel and assessed as containing no Electoral Matter. In accordance with section 55D of the *Local Government Act 1989 (Vic)* the publication is in order for you to certify that it is appropriate to be published or distributed.”

- 3.3 The CEO may approve such publications using words to the effect of:

“I certify that the attached material is appropriate for printing, publication or distribution in accordance with section 55D of the *Local Government Act 1989 (Vic)*.”

Attachment 2
Extract from Local Government Act 1989
– sections relevant to Election Period

SECTION 55D
Prohibition on Council

- (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.
- (1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include—
- (a) publication of any document published before the commencement of the election period; and
 - (b) publication of any document required to be published in accordance with, or under, any Act or regulation.
- (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.

- (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.
- (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.

SECTION 76D
Misuse of position

- (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.

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.
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

SECTION 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.

SECTION 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.

SECTION 93B

Council to adopt an election period policy

- (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.