

## Appendix 2 – Election Period Policy

### Policy statement

This Policy has been developed in order to ensure that general elections and by-elections for the Council are conducted in a manner that is ethical, fair and equitable, and are publicly perceived as such.

It specifies procedures intended to ensure the Council makes appropriate decisions, takes appropriate actions or uses resources appropriately during the Election Period before a general election, a by election and at other times as specified in this policy.

Further, this policy:

- (a) facilitates the continuation of the ordinary business of local government in the Council throughout the Election Period in a responsible and transparent manner;
- (b) ensures the authority of an incoming council is not restricted by decisions to which it may find itself unreasonably bound and unable to change. This could include significant contractual matters;
- (c) establishing procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the Council, Federal or State elections;
- (d) places limits on public consultation and the scheduling of Council events during the Election Period;
- (e) requires that materials produced by the Council and Whittlesea Council must not contain matter that will affect voting at the election;
- (f) sets out the requirements for a Councillor who is a candidate in an election, including a Council, Federal or State election.

### Background

This policy has been prepared in accordance with the *Local Government Act 2020* which requires Council to include an election period policy in its Governance Rules to be applied by Council during the election period, a by election and at other times as specified in this policy.

### Scope

This Policy relates to the Council, Councillors, Council Committees, the CEO and Council officers, their behaviour and decision making during the 'caretaker' period.

This policy replaces and overrides any previous policy that refers to the Election Period.

### Relevant Documents

All City of Whittlesea policies comply with:

Victorian Charter of Human Rights and Responsibilities

*Local Government Act 2020*

*Freedom of Information Act 1982*

Public Transparency Policy

## **Procedural Guidelines**

### **1. Application of Policy**

Council will function in accordance with this Policy during the election period commencing at **noon, 21 days prior to the fourth Saturday in October, or earlier if declared by the Minister for Local Government.**

#### **1.1 Role of Chief Executive Officer**

In addition to the CEO statutory responsibilities, the CEO has the following responsibilities in supporting the implementation and application of the Policy:

- (a) All Councillors and Council Officers are informed of and supported in the application of this policy at least 30 days prior to the commencement of the Election Period;
- (b) Make a public statement or media release that corrects inaccurate information or statements about Council made by candidates without naming the candidate, where they deem it appropriate; and
- (c) Matters of Council business requiring decisions prohibited during the Election Period by this Policy or the Act are, where possible, scheduled for Council to enable resolution prior to the commencement of the Election Period or deferred where appropriate for determination by the incoming Council.

### **2. Decisions by Council**

- 2.1.1 In accordance with section 69 of the Act Council is prohibited from making any decisions during the Election Period for a general election that:
  - (a) relates to the appointment or remuneration of the CEO, but not to the appointment or remuneration of an Acting CEO;
  - (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;
  - (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.
- 2.1.2 Council is prohibited from making any Council decisions 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.
- 2.1.3 During the Election Period, the Council, a Committee of Council, the CEO, of Council officer acting under delegation will not:

- (a) approve, amend or repeal any policy, plan or strategy, including those contained in or related to the Whittlesea Council Planning Scheme, which has been adopted by the Council; or
- (b) use their position to influence Council officers, or access Council resources of information in support of any election campaign or candidacy.

2.1.4 A Council decision made in contravention of subsection (a) or (b) above is invalid under the Act.

2.1.5 Council can continue to make town planning decisions under the *Planning and Environment Act 1987* during the election period and they will still be processed in accordance with usual practices and statutory timelines.

### **2.2.1 Prohibition on Council**

Council or a Council Officer under delegation is unable to make Major Policy Decisions and any major policy decision made during the election period is deemed to be invalid under the Act and may be compensable.

### **2.1.3 Extraordinary Circumstances**

If Council considers that there are extraordinary circumstances which require the making of a major policy decision during the Election Period that in doing so would breach the Act, the Council may apply in writing request an exemption from the Minister for Local Government.

## **2.2 Council Meetings**

Scheduled Council meetings will continue to take place during the Election Period. However, the following adjustments will be made to the Agenda:

- (a) Public Question Time will be suspended
- (b) Notice of Motions will not be allowed
- (c) Councillors will limit their discussion during debate to the topic under consideration and will avoid raising Electoral Matter
- (d) Reports for the consideration of Council will be referred to the CEO for approval before inclusion on the meeting agenda

Councillors are prohibited from promoting their election campaign or individual policy positions during any Council meeting.

Council officers are prohibited from approaching Councillors leading up to an election in attempt to gain an advantage or benefit in exchange for a formal decision to be made by Council.

## **3. Application of Resources**

3.1.1 The use of Council resources, including, but not limited to, vehicles, staff, services, property, equipment, stationery, IP, websites, social media and hospitality for any Council, Federal or State election campaign purposes is prohibited.

3.1.2 Where the use of Council resources appears to relate to the election campaign of a Councillor standing in or for re-election, the matter must be referred to the CEO or their delegate.

- 3.1.3 In accordance with section 304 of the Act, a Councillor or Council officer must not use Council resources in a way that is intended to or is likely to affect the result of an election under this Act.
- 3.1.4 A Councillor or Council officer must not use Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the Election Period on behalf of, or purporting to be on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulations.
- 3.1.5 A Councillor or Council officer must not at any time intentionally or recklessly disclose, information they know, or should reasonably know is confidential.
- 3.1.6 A Councillor or Council officer must not place any election materials on or in any Council owned or operated facilities or land.

#### **4. Candidacy**

A Councillor or Council officer must not use Council resources for candidacy, or any purpose that may be perceived as being used either as an individual or political party. This applies to a Councillor or Council officer standing in a Council, Federal or State election, and for any other elected position, for example, positions on boards. Such use would constitute misuse of position.

#### **5. Federal and State Government Elections**

- 5.1.1 Councillor 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 or during a Federal or State election.
- 5.1.2 Once a Councillor or Council officer becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as a candidate in a Federal or State election, they must provide written advice to the CEO, as soon as practicable. The CEO will then advise all Councillors.

#### **6. Public Consultation and Council Events**

- 6.1.1 Public consultation activities may be necessary during the election period to ensure that the community is continuing to be consulted in decision making processes. Where it is within Council's control to do so, Council will seek to avoid actions which will require Councillor or Council officer public consultation during the election period. Councillors and Council officers will not attend or be involved in public consultation.
- 6.1.2 Any public consultation will avoid express or implicit links to the election.

#### **7 Council Events**

Council will ensure that any significant Council events are scheduled to occur outside the election period. Where a Council event must be held during the election period, Councillor involvement will be minimised.

#### **8. Council Publications**

## **8.1 Prohibition on Publishing Material during the Election Period**

- 8.1.1 The Chief Executive Officer will only certify electoral advertisements and information about the election process.
- 8.1.2 A Councillor or Council officer will not print, publish or distribute, or be involved in the printing, publishing or distribution of an electoral advertisement, handbill, pamphlet or notice during the election period if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer.

## **8.2 Certification of Publications**

- 8.2.1 Local election process publications which require certification include:
- (a) Brochures, pamphlets, handbills, flyers, magazines and books;
  - (b) Reports (other than Agenda papers and Minutes);
  - (c) Advertisements and notices, except newspaper notices of Meetings;
  - (d) New website material;
  - (e) Social media publications or social media posts;
  - (f) Emails with multiple addresses, used for broad communication with the community;
  - (g) Mass mail outs or identical letters sent to a large number of people by or on behalf of the Council;
  - (h) Media releases;
  - (i) Material to publicise a function or event; and
  - (j) Any publication or distribution of Councillor's speeches.
- 8.2.2 Application should be made to the Chief Executive Officer who will seek certification of the publication of election advertisements.
- 8.2.3 Copies of all certified documents and applications will be retained for three (3) years by the City of Whittlesea.

## **8.3 Prohibited Material**

'Electoral matter' is 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;
- (b) A candidate in the election; or
- (c) An issue submitted to, or otherwise before, the voters in connection with the election.

It's therefore likely that "electoral matter" will include material which:

- (d) Publicises the strengths or weaknesses of a candidate;
- (e) Advocates the policies of the Council or of a candidate;
- (f) Responds to claims made by a candidate; or
- (g) Publicises the achievements of the elected Council or particular Councillors.

#### **8.4 Council Publications Including Councillor Information**

Council publications printed, published or distributed during the local election period will not include any reference to individual Councillors, unless Council is legally obliged to include any such reference.

#### **8.5 Website**

- 8.5.1 Councillor contact information will remain available on the website during the local election period, but Councillors' profiles will be removed.
- 8.5.2 Any news published on Council's website during the local election period must be certified by the Chief Executive Officer.

#### **8.6 Annual Report**

- 8.6.1 Council is required to produce and put on public display a copy of its Annual Report. The Annual Report may be published by the CEO, or delegate during the election period. The Annual Report will not contain any electioneering or material that could promote individual Councillors.
- 8.6.2 The Annual Report does not require certification by the CEO; however, any publication of an extract or summary of the Annual Report will require certification.

#### **8.7 Council and Committee Agendas and Minutes**

Agenda papers and Minutes of Council and Committee Meetings require certification by the CEO, or delegate, prior to being printed or published for wider distribution.

#### **8.8 Social Media**

- 8.8.1 Any publication on social media sites including Facebook, X (formally Twitter), blogs and wiki pages during the local election period must be certified by the CEO, or delegate.
- 8.8.2 Staff responsible for administering Council's social media sites will monitor them during the local election period and use moderation features where available to ensure no electoral matter is posted.
- 8.8.3 Councillors who stand as a candidate in any Local, State or Federal election must comply with the Councillor Social Media Policy.

## **9. Council Resources**

### **9.1 Application of Resources**

- 9.1.1 Council resources, including email addresses, photos, offices, vehicles, staff, hospitality, services, property (including intellectual property), equipment and stationery must be used exclusively for normal Council business during the election period and must not be used in connection with any election campaign or issue.
- 9.1.2 Any Councillor misusing their position to gain or attempt to gain, directly or indirectly, an advantage for themselves or any other person or to cause or attempt to cause detriment to Council or another person may breach section 123 of the Act. Circumstances involving the misuse of a position include using public funds or resources in a manner that is improper or unauthorised may be prosecuted.
- 9.1.3 Any Council officer misusing their position to gain or attempt to gain, directly or indirectly, an advantage for themselves or any other person or to cause or attempt to cause detriment to Council or another person may breach the Employee Code of Conduct. Circumstances involving the misuse of a position that is improper or unauthorised may result in disciplinary action.

### **9.2 Role of Executive Assistant to Mayor and Councillors**

The Executive Assistant to Mayor and Councillors cannot be asked to undertake any tasks connected directly or indirectly with a Councillor's election campaign.

### **9.3 Use of Council Equipment by Councillors**

Councillors (including those standing for re-election) must give back all Council owned equipment (such as laptops, printers, security passes etc.) prior to 6pm on the day of the local election. The timing is to be agreed prior to the election period. Councillors standing for re-election must not use Council equipment such as printers as a resource to assist with election campaigns.

### **9.4 Councillors Entitlement to Reimbursement**

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 support or relate to a candidate's election campaign.

### **9.5 Council Branding**

Council logos, letterheads, or other corporate branding or intellectual property must not be used for, or linked in any way to, a candidate's election campaign.

### **9.6 Reporting**

Where the use of Council resources appears to relate to the election campaign of a Councillor standing for election or re-election, the matter must be referred to the CEO or Delegate.

## **10. Media Services**

### **10.1 Restriction on Services**

- 10.1.1 During the election period, the Council's Public Affairs and Customer Service Departments' services must not be used in any way that might promote a Councillor as an election candidate.



10.1.2 Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and is subject to CEO, or delegate approval and certification.

## **10.2 Media Releases/Spokespersons**

10.2.1 Media releases will minimise references to specific Councillors and will not promote a Councillor as an election candidate. The CEO or Delegate will be referenced instead.

10.2.2 All Media releases and statements must be certified by the CEO or delegate.

## **10.3 Councillors**

Councillors will not use their position as elected representatives or their access to Council Officers and other Council resources to gain media attention in support of an election campaign.

Councillors are strongly encouraged to take formal leave of absence well before the commencement of campaigning in parliamentary elections in order to both avoid the risk of breaching conflict of interest and misuse of position provisions in the Act.

## **10.4 Council Employees**

In accordance with the Employee Code of Conduct, during the election period, no Council employee may make any public statement that relates to an election issue unless prior approval has been obtained from the CEO or Delegate.

Council employees will not use their position or their access to other Council employees and other Council resources to gain media attention in support of an election campaign.

## **11. Assistance to Candidates**

### **11.1 Role of Returning Officer**

All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the VEC / AEC Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the CEO or Delegate.

### **11.2 Candidate Information**

11.2.1 The VEC will provide candidates with a Councillor Candidate Information Kit to assist them in running and nominating for Council.

11.2.2 Candidates will complete a Nomination Form, which will be available from the VEC Returning Officer, accompanied by the prescribed nomination fee.

11.2.3 Candidates will complete and submit an Election Campaign Donation Return in the prescribed form within 40 days after election day to the Chief Executive Officer. The return must contain details of any campaign donation or gift valued at more than the gift disclosure threshold (currently \$500 as at June 2022) which was received between the date 30 days after the previous election and the date 30 days after the current election.

### **11.3 Access to Information & Candidate Information**

11.3.1 A Councillor may continue to access Council information only as it is necessary for them to perform their role as a Councillor.



- 11.3.2 All election candidates have equal rights to Council information relevant to their election campaign from the Council administration in accordance with the Council's Public Transparency Policy and the *Freedom of Information Act 1982*.
- 11.3.3 Neither Councillors nor Candidates will receive information or advice from Council officers that may improperly advantage Candidates in the election.
- 11.3.4 Council will provide Candidates with a copy of a Councillor Candidate Information Kit (if any) produced by the Victorian Electoral Commission to assist them in running and nominating for Council.

#### **11.4 Information Request Register**

The Governance team will maintain and publish an Information Request Register during the Election Period.

#### **12 Staff member as a candidate**

- 12.1.1 Section 34 of the Act prohibits a person who is a staff member of Whittlesea City Council serving as a Whittlesea City Council Councillor.
- 12.1.2 Under s 256(8) of the Act a member of Staff is not prevented from nominating as a candidate at an election if for the duration of the Election Period for that election if:
- (a) the person has taken leave from that office or position; and
  - (b) the person does not perform any of the duties of that office or position.
- 12.1.3 A Staff member cannot take the oath or affirmation of office as a Whittlesea City Council Councillor unless they resign from that office or position before taking the oath or affirmation of office.
- 12.1.4 In the event that a Council officer nominates as a candidate for a Council, Federal or State election, the officer will immediately notify their Director or Executive Manager in writing with a copy to the Executive Manager Office of Council & CEO. On receiving such notice the relevant manager will enter into an agreed work plan with the staff member to ensure:
- There is no conflict of interest between the staff member's duties as a Council employee or access to information and their role as an election candidate;
  - The staff member does not have access to information that would place them at an advantage over other candidates in the election; or
  - No Council resources are used in support of the staff member's candidacy.
- 12.1.5 The agreed work plan must be approved by the relevant Director and forwarded to the CEO and Executive Manager Office of Council & CEO.

## Definitions

Where terms used in this Policy are defined in the *Local Government Act 2020 (Act)*, their use in this Policy is consistent with the definitions in the Act.

<b>Words</b>	<b>Meaning/Definition</b>
<b>Act</b>	means the <i>Local Government Act 2020 (Vic)</i> .
<b>Candidate</b>	means a person who is nominated to stand for a Council, Federal or State election.
<b>Chief Executive Officer</b>	means the person appointed by Council to be its Chief Executive Officer, or any person acting in that position.
<b>Community Consultation</b>	means the process in which City of Whittlesea and Municipal Community connect with each other to exchange views, ideas and information to: <ul style="list-style-type: none"> <li>(a) inform decisions;</li> <li>(b) build capacity; and</li> <li>(c) strengthen relationships.</li> </ul>
<b>Councillor</b>	A person who holds the office of Member of Council or a person appointed as an Administrator for City of Whittlesea who performs the role of a Councillor for the purposes of section 28 of the Act.
<b>Councillor Candidate Information Kit</b>	means the Councillor Candidate Information Kit provided by the Victorian Electoral Commission.
<b>Council Meeting</b>	means a Council meeting that complies with the Act.
<b>Delegate</b>	means a Director or Executive Manager as appointed.
<b>Election Day</b>	means the day of an election as determined under the Act.
<b>Election period</b>	has the same meaning as 'election period' in section 3(1) of the Act and means the period that starts on the last day on which nominations for that election can be received and ends at 6pm on election day.
<b>Electoral advertisement, handbill, pamphlet or notice</b>	means any document that is produced for the purpose of communicating with the community and which contains electoral matter, such as: <ul style="list-style-type: none"> <li>(a) Newsletters and other circulars (including those sent by email);</li> <li>(b) Media releases;</li> <li>(c) Leaflets, pamphlets, handbills, flyers, magazines and brochures;</li> <li>(d) Any new email, web based publications or social media posts; and</li> <li>(e) Mailouts to multiple addresses.</li> </ul>
<b>Electoral Material</b>	means an advertisement, handbill, pamphlet or notices that contains Electoral Matter, but does not include an advertisement that is only announcing the holding of a meeting.
<b>Electoral Matter</b>	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 election manager for the purposes of conducting an election. Electoral 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: <ul style="list-style-type: none"> <li>(a) the election; or</li> <li>(b) a candidate in the election; or</li> <li>(c) an issue submitted to, or otherwise before, the voters in connection with the election</li> </ul>

<b>Inappropriate decisions</b>	Includes any of the following: (a) decisions that would affect voting in an election; or (b) decisions that could reasonably be made after the election.
<b>Information Request Register</b>	This Information Request Register will be a public document that records all requests relating to Electoral Matters and non-routine requests for information by Councillors and Candidates, and the responses given to those requests.
<b>Member of Council Staff</b>	means a natural person appointed by the Chief Executive Officer (other than an independent contractor under a contract for services or a volunteer) to enable: (a) the functions of the Council to be carried out; and (b) the Chief Executive Officer to carry out their functions. The Chief Executive Officer is also a member of Council Staff.
<b>Public consultation</b>	A process that involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy, and includes discussion of that matter with the public.
<b>Publish</b>	means publish by any means including by publication on the internet.
<b>Major Policy Decision</b>	Is defined by the Act to mean a decision (a) Relating to the employment or remuneration of a CEO, other than a decision to appoint an acting CEO; (b) To terminate the appointment of a CEO; To enter into a contract the total value of which exceeds 1% of Council's total revenue from rates and charges in the preceding financial year.
<b>Significant decision</b>	In the context of this policy, significant decisions include: (a) decisions that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions; and (b) decisions that may have an irrevocable and significant impact on the municipality or a significant section of the community.