

Elections Caretaker Policy

City Policy

Responsible Directorate: Governance and Strategy

Objective: To establish protocols for the purposes of preventing actual and perceived advantage or disadvantage to a candidate in the City of Joondalup local government elections.

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1. Application:

This policy applies to Elected Members, local government election candidates and employees and specifically applies during a Caretaker Period to:

- (a) decisions made by Council
- (b) decisions made under delegated authority
- (c) promotional materials published by the City
- (d) discretionary community consultation
- (e) attendance and participation at events and functions held by the City or other organisations
- (f) use of the City's resources
- (g) access to information held by the City.

While local government election candidates, that are not sitting Elected Members, cannot be compelled to comply with this policy, such candidates will be made aware of it and encouraged to cooperate with its implementation.

2. Definitions:

'Caretaker Period' means the period of time prior to an Election Day, specifically being the period from the close of nominations (37 days prior to the Election Day in accordance with s.4.49(a) of the *Local Government Act 1995*) until 6.00pm on Election Day.

'Election Day' means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election. For the purposes of this policy, 'Election Day' generally excludes an Extraordinary Election Day unless otherwise specified in this policy.

'Electoral Material' means any advertisement, handbill, pamphlet, notice, letter, email, social media post or article that is intended or calculated to affect an Election Day result, but does not include:

- (a) an advertisement in a newspaper announcing the holding of a meeting (section 4.87(3) of the *Local Government Act 1995*)
- (b) any materials exempted under regulation 78 of the *Local Government (Elections) Regulations 1997*
- or
- (c) any materials produced by the City relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the Returning Officer for the purposes of conducting an election.

‘Events and Functions’ means gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the City and / or its stakeholders and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including gatherings coordinated or facilitated by the City or an external entity.

‘Extraordinary Circumstances’ means a circumstance that requires Council to make or announce a Major Policy Decision during the Caretaker Period because, in the Chief Executive Officer’s opinion, delaying the decision or announcement to occur after the Caretaker Period has reasonable potential to:

- (a) incur or increase legal, financial and/or reputational risk
or
- (b) cause detriment to the strategic objectives of the City.

‘Major Policy Decision’ means any decision:

- (a) relating to the employment, remuneration or termination of the Chief Executive Officer or any other designated senior employee, other than a decision to appoint an Acting Chief Executive Officer, or suspend the current Chief Executive Officer (in accordance with the terms of their Contract of Employment), pending the Election Day result
- (b) relating to the City entering into a sponsorship arrangement with a total City contribution that would constitute Significant Expenditure, unless Council has resolved “in principle” support for the sponsorship prior to the Caretaker Period taking effect and sufficient funds are allocated in the Annual Budget
- (c) relating to the City entering into a commercial enterprise as defined by section 3.59 of the *Local Government Act 1995*
- (d) that would commit the City to Significant Expenditure or actions that, in the Chief Executive Officer’s opinion, are significant to the City’s operations, strategic objectives and / or will have significant impact on the community
- (e) to prepare a report, initiated by an Elected Member or Council on a matter that, in the Chief Executive Officer’s opinion, may be perceived as or is actually an election campaign issue
- (f) initiated through a Notice of Motion by an Elected Member, where the effect of that motion will change the status quo or, in the Chief Executive Officer’s opinion, may be relevant to the circumstances described in sub-clauses (a) to (e) above
- (g) that adopts a new policy, service or service level or significantly amends an existing policy, service or service level, unless the decision is necessary to comply with legislation
- (h) that initiates or adopts a new *Local Planning Scheme*, amendment to a *Local Planning Scheme* or Planning Policy, unless in the Chief Executive Officer’s opinion, is required for the orderly and proper land use planning within the district,

but does not include any decision necessary in response to an emergency, either declared by the State or Federal Government or by the City in accordance with section 6.8(1)(c) of the *Local Government Act 1995*.

‘Public Consultation’ means a process which involves an invitation to individuals, groups, organisations or the wider community to provide comment on a matter, proposed action or proposed policy which may be perceived as or is actually an electoral / campaign issue, but does not include statutory consultation / submission periods prescribed in a written law.

‘Significant Expenditure’ means expenditure that exceeds \$250,000 (excluding GST) and that has not been budgeted for in the City’s Annual Budget.

3. Statement:

The purpose of this policy is to avoid Council making major decisions prior to a local government election which would bind an incoming Council; prevent the use of public resources in ways seen to be advantageous to, or promoting, Elected Members who are seeking re-election or new candidates; and to ensure the City and employees act impartially in relation to local government election candidates.

This policy is to be applied in conjunction with all other relevant legislation, local laws, delegations, policies, procedures and processes of the City and provides guidance to ensure the continuation of ordinary business for the City in a responsible and transparent manner that ensures local government elections are conducted in an ethical, fair and equitable manner and are publicly perceived as such.

4. Decision making:

The Chief Executive Officer will ensure that:

- (a) Elected Members and employees are advised in writing of the impending Caretaker Period and policy requirements at least 30-days prior to the commencement of a Caretaker Period
- (b) candidates are provided with a copy of this policy following their nomination for election, to ensure their awareness and the equitable access requirements that apply during a Caretaker Period.

4.1. Scheduling Major Policy Decisions

- (1) During a Caretaker Period, unless Extraordinary Circumstances apply, the Chief Executive Officer will reasonably ensure that:
 - (a) a Council Agenda, Committee Agenda or Briefing Session Agenda, does not include reports that constitute Major Policy Decisions
 - (b) Elected Member forums, workshops or Strategy Sessions, do not list for discussion matters that relate to Major Policy Decisions.
- (2) The Chief Executive Officer shall reasonably ensure that, unless Extraordinary Circumstances apply, Major Policy Decisions are either:
 - (a) considered by Council prior to the Caretaker Period
 - or
 - (b) scheduled for determination by the incoming Council.
- (3) The Chief Executive Officer shall reasonably ensure that, unless Extraordinary Circumstances apply, delegated authority from Council to the Chief Executive Officer or a Committee is not exercised where the exercise of that delegated authority relates to a Major Policy Decision or an election campaign issue.

4.2. Extraordinary Circumstances

- (1) Where, during a Caretaker Period, the Chief Executive Officer determines that Extraordinary Circumstances apply, the Chief Executive Officer may submit a report on a Major Policy Decision for Council's consideration.
- (2) Where, during a Caretaker Period, the Chief Executive Officer determines that Extraordinary Circumstances apply, the Chief Executive Officer may include matters relating to a Major Policy Decision for Elected Member discussion at Elected Member forums, workshops or Strategy Sessions.

4.3. Chief Executive Officer employment

This policy prohibits Major Policy Decisions relating to the employment, remuneration or termination of the Chief Executive Officer during a Caretaker Period.

Council is however required to fulfil its obligations as the Chief Executive Officer's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period Council may consider and determine:

- (a) Chief Executive Officer's leave applications
- (b) appoint an Acting Chief Executive Officer, where necessary
- (c) suspend the current Chief Executive Officer, where appropriate and in accordance with the terms of their contract.

5. Caretaker Period Protocols - Elected Members:

Part 5 of this policy, inclusive of its sub-clauses, applies to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

5.1. Access to information and advice

All Elected Members are to avoid using or accessing City information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy.

All Elected Member requests for information and advice from the City will be reviewed by the Chief Executive Officer and where the subject of the information or advice is considered as being related to an election campaign issue, the Chief Executive Officer will have absolute discretion to determine if the information or advice is / is not provided, including where information is provided to one candidate, if that information is also to be provided to all candidates (including candidates who are not current Elected Members).

5.2. Media and publicity

All Elected Member requests for media advice or assistance during a Caretaker Period, including Elected Members who have nominated for re-election, will be referred to the Chief Executive Officer for review.

The Chief Executive Officer will only authorise Elected Member access to media advice or assistance where, in the Chief Executive Officer's opinion, the subject matter is relevant to the City's objectives or operations and is not related to an election campaign purpose or issue or to the Elected Member's candidacy or the candidacy of another person.

5.3. Elected Member business cards and City printed materials

Elected Members must ensure that City issued business cards and printed materials are only used for purposes associated with their role as an Elected Member, in accordance with section 2.10 of the *Local Government Act 1995*.

Elected Members are prohibited from using City business cards or printed materials at any time, including times outside a Caretaker Period, for any election campaign purpose, either in support of their own candidacy or the candidacy of another person.

5.4. Elected Member participation in events and functions

During a Caretaker Period Elected Members may continue to fulfil their role through attendance at events and functions hosted by external bodies, or at announcements made by external bodies.

5.5. Council delegates to external organisations

At any time, including times outside of a Caretaker Period, Elected Members who are the Council's appointed delegate to an external organisation, must not use their attendance at an external organisation's meeting, event or function for any purpose associated with an election campaign purpose, including recruiting campaign assistance or to promote their own candidacy or the candidacy of another person.

5.6. Elected Member addresses / speeches

Excluding the Mayor and Deputy Mayor, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the *Local Government Act 1995*, Elected Members who have nominated for re-election, shall not be permitted to make speeches or addresses during a Caretaker Period at events or functions organised or sponsored by the City, unless expressly authorised by the Chief Executive Officer.

In any case, the Mayor, Deputy Mayor and Elected Members are prohibited from using an official speech or address during a Caretaker Period to promote an election campaign purpose.

5.7. Elected Member misuse of local government resources

An Elected Member who uses City resources for the purpose of persuading electors to vote in a particular way is in breach of a rule of conduct under Division 4 of the *Code of Conduct for Council Members, Committee Members and Candidates*.

This prohibition on misuse of local government resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

For clarity, local government resources includes, but is not limited to employee time or expertise; City provided equipment; stationery; hospitality; images; communications; services; and reimbursements and allowances provided by the City.

6. Caretaker Period Protocols – Candidates:

Part 6 of this policy, inclusive of its sub-clauses, apply to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

Candidates, including Elected Members who have nominated for re-election, shall be provided with equitable access to the City's public information.

The Chief Executive Officer shall ensure that assistance and advice provided to candidates as part of the conduct of the election is provided equally to all candidates.

Elected Members nominating for re-election, may access information and assistance regarding the City's operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as an Elected Member and limited to matters currently relevant to the City.

All election process enquiries from candidates, including Elected Members who have nominated for re-election, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the Chief Executive Officer.

6.1. Candidate Requests on behalf of electors, residents or ratepayers

Candidates, including Elected Members who have nominated for re-election, may advise the Chief Executive Officer where they have received elector, resident or ratepayer requests for advice, information or responses to matters relevant to the City.

Responses will not be provided to the candidate on the basis that the provision of responses to enquiries from electors, residents or ratepayers regarding the operations of the local government is an administrative function (refer clause 19 of the *Code of Conduct for Council Members, Committee Members and Candidates*).

Candidates requests made on behalf of an elector, resident or ratepayer, will be responded to by the City directly to the requesting elector, resident or ratepayer.

6.2. Candidate Campaign Electoral Material

Candidates, including Elected Members who have nominated for re-election, are prohibited from using the City's official crest, logo or marketing material, including photographs in any campaign Electoral Material.

6.3. Candidate attendance at Meetings

For the purposes of transparency and the benefit of the public gallery, Candidates are requested to identify themselves as an election candidate prior to asking a question or making a statement at a Briefing Session, Council meeting or Committee meeting.

7. City publicity, promotional and civic activities

Part 7 of this policy, inclusive of its sub-clauses, apply to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

- (a) promoting City services and activities, where such promotion does not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations
- (b) conducting the Election and promoting elector participation in the Election.

All other, publicity and promotional activities of City initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Major Policy Decisions, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.

The Chief Executive Officer may determine if Exceptional Circumstances apply and if a Major Policy Decision announcement is necessary during a Caretaker Period.

7.1. Civic events and functions

The City will avoid the scheduling of Civic Events and Functions during a Caretaker Period, so as to avoid any actual or perceived electoral advantage that may be provided to Elected Members who have nominated for re-election. The Chief Executive Officer may approve an event or function to occur during a Caretaker Period, where it forms part of the City's annual Schedule of events or functions.

Elected Member dinners as detailed in the *Elected Members' Entitlements Policy* will not be scheduled during a Caretaker Period.

7.2. City publications and communications

All City publications and communications distributed during a Caretaker Period must not include content that:

- (a) may actually, or be perceived to, persuade voting in an election
- (b) is specific to a candidate or candidates, to the exclusion of other candidates
or
- (c) draws focus to or promotes a matter which is a Major Policy Decision or which is an electoral campaign issue.

All City publications and communications proposed to occur immediately prior to, throughout or during, a Caretaker Period must be reviewed and approved by the Chief Executive Officer prior to publication or distribution.

7.3. City website and social media content

- (1) Website and social media content regarding Elected Members will be limited to Elected Member names, contact details, membership of committees and Council appointments as City delegates on external committees and organisations.
- (2) Historical website and social media content, published prior to a Caretaker Period, and which does not comply with this policy will not be removed.
- (3) New website or social media content which relates to Major Policy Decisions or election campaign issues will not be published during a Caretaker Period, unless Exceptional Circumstances apply.
- (4) Content posted by the public, candidates or Elected Members on the City's social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

7.4. Public Consultation

Unless public consultation is mandated under a written law or Exceptional Circumstances apply, public consultation relevant to Major Policy Decisions or potentially contentious election campaign issues, will not be initiated so that the consultation period is conducted immediately prior to, throughout or concluding during, a Caretaker Period.

7.5. City employees

During the Caretaker period no City employee may make any public statement that relates to an election issue unless the statements have been approved by the Chief Executive Officer.

Creation Date: 11 December 2018 (CJ229-12/18)

Amendments: 17 August 2021 (CJ126-08/21)

Related Documentation:

- *Local Government Act 1995*
- *Local Government (Elections) Regulations 1997*
- *Local Government (Model Code of Conduct) Regulations 2021*
- *Code of Conduct for Council Members, Committee Members and Candidates*