

# Election Period Policy

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REVIEW	Policy to be reviewed by June 2023
RESPONSIBLE EXECUTIVE	General Manager Corporate Services
POLICY OWNER	Manager Governance

## 1. Purpose of the Policy

The period preceding elections is defined in the Local Government Act 2020 (the Act) as the 'Election Period'. Section 69 of the Act requires Council to develop, adopt and keep an Election Period Policy and to be included in Council's Governance Rules. The purpose of the Election Period Policy (the Policy) is to ensure that the business of local government in the City of Kingston continues throughout an election period in a responsible and transparent manner. This policy prescribes actions and procedures the organisation will implement in observance of statutory requirements and established election period

conventions in the interests of a fair election generally, during the election period. This Policy builds on the minimum statutory standards to enhance the accountability of the Council, Councillors and Council staff during the election period.

## **2. Scope**

The Policy applies to Councillors and Council staff during an election period prior to a General Election and by-election.

The election period for 2020 commences at 12.00pm on 22 September 2020 and ceases at 6.00pm on 24 October 2020.

## **3. Definitions**

Where terms used in this policy are defined in the Act, their use in this policy is consistent with the definitions set out in the Act.

## **4. Responsible Executive**

General Manager Corporate Services

## **5. Policy owner**

Manager Governance

## **6. Related Documents**

Council Expenses Policy

Ward Councillor Meetings Policy

Local Government Victoria Governance Practice Note No. 5 dated 9 March 2012

Local Government Act 2020 (Vic)

Councillor Code of Conduct

## 7. Delegation Authority

N/A

## 8. Policy Statement

During the election period the business of Council continues, and ordinary matters of administration still need to be addressed. The policy establishes a series of election period practices which aim to ensure that actions of the current Council do not bind an incoming Council and limit its freedom of action.

This policy covers:

- Prohibited decisions that are made by the Council during the election period;
- Scheduling consideration and announcement of Prohibited decisions;
- Significant decisions;
- Use of the Council's resources including material published by Council
- Access to information
- Council's online presence including social media
- Media
- Attendance and participation at Council organised activities and events
- Public Consultation during the election period.
- Proceedings of Councillor Conduct Panels

## 9. Policy Details

### 9.1. Roles and Responsibilities

#### 9.1.1. Responsibility of Councillors

Councillors should be mindful of their responsibilities in relation to improper use of position as outlined in the Act. Sections 123 and 124 of the Act\* prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 123 attracts serious penalties including possible imprisonment. Section 123 in relation to the election period ensures a fair election is held where council resources are not used for campaigning by sitting Councillors to increase advantage over other candidates or to influence voters.

\*sections 76D and 76E of the *Local Government Act 1989* until repeal date on 24 October 2020.

### **9.1.2 Role of the Chief Executive Officer**

The Chief Executive Officer will ensure, as far as possible, that all Councillors and Officers are informed of the application of this policy at least 30 days prior to the commencement of the election period. The Chief Executive Officer will issue guidelines to staff on their responsibilities in respect to the implementation of this Policy.

### **9.2. Policy Decisions during the Election Period**

Some decision making is impacted during the election period for a general election. Specifically, Prohibited Decisions cannot be made during this period.

The Chief Executive Officer will ensure, as far as possible, that matters of Council business requiring what would otherwise be prohibited decisions are scheduled for Council to enable resolution prior to the commencement of the election period or deferred where appropriate for determination by the incoming Council.

### **9.3. Prohibited Decisions**

Prohibited decisions are specified in section 69(2) of the Act, and decisions made in contravention of this section during the election period are invalid.

Further information about whether a decision falls within the list below is available by speaking with the Manager Governance.

Prohibited decisions include decisions under section 69(2)(d) of the Act - decisions which Council considers should not be made during the election period.

This policy nominates significant decisions as decisions which Council considers should not generally be made. These are decisions which:

- significantly affect the municipality; or
- unreasonably bind the incoming Council.

In the case of a decision that significantly affects the municipality or unreasonably binds the incoming Council, a number of factors will need to be considered including:

- The urgency of the issue (that is, can it wait until after the election);
- The possibility of financial and/or legal repercussion if it is deferred;
- Whether the decision is likely to be controversial; and
- The best interests of Council

Examples include decisions concerning community grants and direct funding to community organisations, major planning and development decisions and changes to the strategic objectives or strategies in the Council Plan.

The following table illustrates what will constitute Prohibited Decisions.

Proposed Council Decision	Is it allowed?	Source
Employment or remuneration of a Chief Executive Officer under section 45, other than a decision to appoint an acting Chief Executive Officer	No *	This is prohibited by s69(2)(a) of the Act
Committing the Council to expenditure exceeding 1% of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year (estimated at \$1.42M for 2018/19)	No *	This is prohibited by s69(2)(b) of the Act
A decision which Council considers could be reasonably deferred until the next Council is in place	No.	This is prohibited by s69(2)(c) of the Act
Significant decisions, being decisions that significantly affect the municipality or unreasonably bind the incoming Council (such as decisions community grants and direct funding to community organisations, major planning and development decisions and changes to the strategic objectives or strategies in the Council Plan)	Generally, No.	This is prohibited by s69(2)(d) of the Act

A decision that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at an election.	No	This is prohibited by s69(3) of the Act
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- \* In accordance with s69 of the Act, any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is a matter under this proposed policy decision is entitled to compensation from the Council for that loss or damage.

**9.4. Public Consultation during the election period**

Public consultation” means a process that involves an invitation or invitations to individuals, groups or organisations, or the community generally, to comment on an issue or proposed action or proposed policy and includes discussion of that matter with the public.

- Public consultation may be undertaken during the election period to facilitate the day to day business of Council, however, consultation on any contentious or politically sensitive matter will not commence, or continue to occur, during the election period
- The above does not apply to public consultation required pursuant to the Planning and Environment Act 1987

All public consultation that is likely to run into the election period must have prior approval from the Manager Governance. Where approved, the results will not be reported to the Council until after the election period, unless the CEO decides otherwise.

**9.5. Council Events**

Council organised events and functions held during the election period will only be those essential to the everyday operation of the Council. This may be varied by a Council resolution or where prior approval has been given by the Chief Executive Officer. Where events do occur, Councillors should be advised that they are representing the Council and should not use the opportunity for electioneering.

## **9.6. Council Publications during the election period**

Section 304 of the Act imposes limitations on Council publications. This is to ensure that Council does not publish electoral material with public funds that may influence, or be seen to influence, voting in an election.

### **9.6.1. S304 Prohibition on publishing materials during the election period**

It is prohibited for a Councillor or a member of Council staff to use Council resources:

- (a) To print, publish or distribute; or
- (b) To cause, permit or authorise to be printed, published or distributed on behalf of, or purporting to be on behalf of Council;

any electoral material, unless the electoral material only contains information about the election process or is otherwise with, or under, any Act or regulation.

Failing to comply with this clause carries an offence of up to 60 penalty units (\$9,913.20 in the 2018/2019 financial year) under section 304 of the Act.

Best practice is for Council to avoid all publication activity during the election period except where essential for the conduct of Council operations. Where printing, publishing or distributing any material during the election period, certification from a panel consisting of General Manager Corporate Services, Manager Governance and Manager Communications & Community Relations is required for all publications. Publication should be read broadly to include electronic information and web-based productions.

Certification may be required prior to the election period if the material is to be distributed during the election period.

The procedure for certifying publications is:

#### **Process:**

All publications are sent to Communications and Community Relations (including job advertisements that are normally sent to People Support);

- General Manager Corporate Services, Manager Governance and Manager Communications & Community Relations are responsible to check that no election material is present unless it is factual election process information.
- Governance is responsible for maintaining the record of certification and certified documents.

Councillors are however, able to publish campaign material on their own behalf, but cannot purport for that material to be originating from, or authorised by, Council or the City of Kingston (e.g. By use of Council logos or official City of Kingston Councillor photos).

The controls do not cover newspaper advertisements which simply announce the holding of a meeting or the election process itself.

### **9.6.2 Kingston City Council online presence including social media**

Council has a number of social media sites including several Twitter feeds and Facebook pages (Kingston City Council site is the main corporate site; there are also separate pages for Kingston Arts, Libraries, Leisure Centres, Kingston Business and Youth which are managed by the relevant Council departments). Council's Communications and Community Relations department monitors Kingston City Council's corporate Facebook site and Twitter feeds between the hours of 9.00am and 5.30pm on weekdays (excluding public holidays). Any publication on social media sites like Facebook, Twitter and blog sites, which are auspiced by Council, will be subject to the certification process outlined in clause 9.5.1. Council auspiced social media must not be used for election campaigning.

The ability for members of the public to post comments on Council's social media sites such as Facebook and Twitter will continue during the election period, but will be monitored (during business hours, afterhours and weekends) by the Governance and Communications and Community Relations teams, who will have the editing access to remove any material posted by the public that is:

- a) content posted by a candidate irrespective of content
- b) content that makes reference to a candidate, or
- c) the 2020 election – unless it is a query about the election process itself.

At the start of the election period information on Council's website (or any other Council communication platforms) about Councillors who are candidates will be restricted to name, ward and contact details. Any new material published on council's website during the election period must be subject to the certification process in clause 9.5.1. Council agendas and minutes of meetings do not require certification if published in the usual way on the website. Any references to the election will only relate to the election process.

### **9.6.3. Council Publications**

Any Council publication which is potentially affected by this policy will be subject to the certification process in clause 9.5.1 to ensure that any circulated, displayed or otherwise publicly available material during the election period does not contain material that may be construed as "electoral matter".

Council will review its brochures and pamphlets in Customer Service Centres and remove any which might contain electoral matter prior to the election period.

Any references to Councillors in Council publications printed, published or distributed during the election period must not include promotional text.

#### **a. Kingston Your City (KYC)**

Edition(s) of KYC published during the election period will contain only general information pertaining to the election process. It will not contain any photograph of a candidate or Councillor, or any statement by a candidate or Councillor. Articles will minimise references to specific Councillors and will not identify any Councillor in a manner that could promote a Councillor as an election candidate. The "Ward Columns" section will not appear in this edition(s).

#### **b. Email**

Emails that are part of the normal conduct of Council business should not require certification. However, emails with multiple addressees, used for broad communication with the community, should at all times be arranged via the Communications Team. These will be sent via MailChimp (or similar) and should be subject to the certification process.

### **c. Correspondence**

Mass mail outs or identical letters sent to a large number of people by or on behalf of Council must be subject to the certification process.

Council staff should not prepare Councillors' private mail or electoral correspondence and such material must not be printed on Council stationery or using Council equipment.

### **d. Title of Councillor**

Councillors may use the title "Councillor" in their election material, as they continue to hold that position during the election period. To avoid confusion, Councillors should be advised to ensure that any election publication using the title "Councillor" clearly indicates that it is their own material and does not represent Council.

### **e. Events**

Material printed or disseminated during the election period to publicise a function or event must be subject to the certification process. Function or events for the purpose of electioneering must not be resourced or publicised by Council.

### **f. Photo boards**

Public photo boards containing photographs of current Councillors on display at Council premises will be removed during the election period.

### **g. Annual Report**

Council is statutorily required to produce an Annual Report which may occur during the election period. This publication is not considered an 'advertisement, handbill, pamphlet or notice' and does not require certification.

The annual report must not include material that is electioneering or that publicises the attributes or achievements of individual Councillors.

A summary version of the annual report is regarded as a pamphlet and must be subject to the certification process in clause 9.5.1.

In an election year, the Mayor must present the annual report at a Council meeting on a day not later than the day before election day, in accordance with section 100 of the Act.

A text version is lodged with the Minister of Local Government as soon as practicable after the end of the financial year.

Printed copies of the text version of the Annual Report will only be distributed upon request until the expiration of the election period.

## **9.7. Council Resources**

It is prohibited under the Act for a Councillor or member of Council staff to use resources in a way that is intended to, or likely to influence the result of an election. Failing to comply with this clause carries an offence of up to 60 penalty units (\$9,913.20 in the 2018/2019 financial year) under section 304 of the Act.

Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. Council staff should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. 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 General Manager Corporate Services, Manager Governance and Manager Communications & Community Relations.

### **9.7.1. Council Resources**

Council resources (including offices, staff, hospitality services, equipment, computer, tablet PC, all media material including photos and official Council social media accounts, stationery and mayoral vehicle) should be used exclusively for normal Council business during the election period by Councillors and Council staff and shall not be used in connection with an election campaign.

It should be noted that the prohibition on the use of Council resources for electoral purposes is not restricted to the election period.

### **9.7.2. Support to the Mayor, Deputy Mayor and Councillors**

No member of Council staff, including the Executive Assistant to the Mayor, will be asked to undertake tasks connected directly or indirectly with a Councillor's election campaign.

### **9.7.3. Expenses Incurred by Councillors**

Reimbursement of Councillor expenses incurred during the election period should only apply to costs incurred in the performance of normal Council duties, in accordance with the Council Expenses Policy. It is not for campaigning and for

expenses that could be perceived as supporting or being in connection with a candidate's election campaign.

#### **9.7.4. Mobile phones**

Mobile phone costs associated with electioneering will not be paid by Council. Councillors will be required to provide a signed declaration prior to Council paying mobile phone bills that relate to mobile phone calls made during the election period. All calls in relation to election campaigning are of a private nature, not incurred in undertaking normal Council business, and will not be reimbursed.

Councillors with their own private mobile phones may continue to seek reimbursement of telephone expenses incurred in undertaking Council business related calls. Councillors will be required to declare that those expenses were incurred in undertaking normal Council business.

#### **9.7.5. Travel and Accommodation**

During the election period Councillors shall not participate in any interstate or overseas travel in their capacity as a Councillor. In circumstances where it is imperative that the Mayor (or nominee) represent Council on a delegation or forum, Council may by resolution approve such attendance. If consideration by Council is impractical the Chief Executive Officer may determine the issue.

#### **9.8. Ward matters**

Ward meetings will not be held within six months before an election.

#### **9.9. Media and media services**

Council's media services (through the Communications and Community Relations team) are intended to promote Council activity or initiatives and must not be used in any way that might favour a candidate.

##### **9.9.1. Media Advice**

Any requests for media advice or assistance from Councillors during the election period will be channelled through the Chief Executive Officer. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves a Councillor or Councillors.

### **9.9.2. Media releases/spokespersons**

Media releases will not refer to a Councillor or Councillors. Where it is necessary to identify a spokesperson in relation to an issue, the Chief Executive Officer will determine the appropriate person.

### **9.9.3. Publicity campaigns**

During the election period, publicity campaigns, other than for the purpose of conducting the election will be avoided where possible. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer. In any event, Council publicity during the election period will be restricted to communicating normal Council activities and initiatives.

### **9.9.4. Council Branding and Logos**

No Council logos, letterheads, or other corporate branding will be used for, or linked to, a candidate's election campaign.

### **9.9.5. Councillors**

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

### **9.9.6. Speeches**

Any publication or distribution of Councillors' speeches by the Council must be subject to the certification process as prescribed at clause 9.5.1. Council staff and resources should not be used to prepare or publish speeches that contain electoral matter.

### **9.9.7. Council employees**

During the election period no Council employee may make any public statement that relates to an election issue, unless approved in advance by the Chief Executive Officer.

### **9.10. Information**

Councillors shall continue to receive information necessary to fulfil their existing role as a Councillor during the election period.

Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns and there shall be

complete transparency in the provision of all information and advice during the election period. Information and briefing material prepared by staff/ contractor conducting elections on behalf of Council during the election period will only relate 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 might be perceived to be connected with a candidate's election campaign.

No other information other than what would normally be made available to any member of the general public upon request is to be provided to a Councillor

No information other than what would normally be made available to any member of the general public upon request is to be provided to a candidate who is not a Councillor.

#### **9.10.1. Information Request Register**

All election process related enquires from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or where the matter is outside the responsibilities of the Returning Officer, to the Manager Governance.

An Information Request Register will be maintained by the Governance department during the Election Period. This 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 response given to those requests.

#### **9.10.2. Equal Accessibility to Information for Candidates**

To ensure all candidates have equal access to information held by Council during the election, where a request for information is granted by the Governance Department as recorded in the Information Request Register (see 9.9.1) it will be made publicly available on Council's website for all candidates and the public to access.

#### **9.11. By- Elections**

The content of this policy shall be observed during any by-election, except that:

- a Clauses 9.2 and 9.3 (which restrict Council decision making) shall not apply;
- b Provisions of relevance to the municipality as a whole shall be limited in application to the ward of the subject by-election.

For the avoidance of doubt, it is prohibited during a by-election for any Council decision-making, Councillor or member of Council staff to use Council resources in a way that -

- a is intended to; or
  - b is likely to -
- affect voting or the result of an election.

**10. Decision Guidelines**

None.

**11. Transition/Translation arrangements**

Not applicable.

**12. Review**

Policy to be reviewed by June 2023.