

# Caretaker Policy 2012





This policy, which is to be read in addition to the requirements of the *Local Government Act 1989*, was adopted by resolution of Darebin City Council on ##### 2012.

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## PART 1 - PRELIMINARY

### 1 Policy Objectives

The objectives of this policy are:

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

### 2 Definitions

- (1) In this Policy, these terms have the same meaning as defined in section 3(1) of the Act-

- a) *Election Day*;
- b) *Election Period*;
- c) *Electoral Advertisement, handbill, pamphlet or notice*;
- d) *Electoral Matter*;
- e) *Entitlement Date*;
- f) *Major Policy Decision*; and
- g) *Publish*.

- (2) In this Policy, these terms have the following definitions -

**Act** means the *Local Government Act (Vic)* 1989;

**Pre-Election Period** means the period that-

- (a) starts at 4:00 pm on the entitlement date; and
- (b) ends at the commencement of the Election Period as defined in the Act.

### **Election Period and the Pre-election Period**

The Local Government Act defines the 'Election Period' as the period that starts on the last day on which nominations for that election can be received and ends at 6pm on election day. This policy defines an additional 'Pre-election period' as beginning at 4pm on the Entitlement Date and ending at the commencement of the Election Period.

For the 2012 general election, the dates are:



Note: For the avoidance of doubt, 'Midnight 25 September' refers to midnight at the end of the day on 25 September.

## **3 Legislation**

- (1) This policy should be read in conjunction with the Act, particularly the following sections-

### **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.
- (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.
- (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.

**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*  
*(\* The amounts are now \$150,000 for goods and services and \$200,000 for works.*
    - (ii) *1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year; and*
  - (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.*

## PART 2 - APPLICATION

### 4 Candidates for election

- (1) Councillors are expected to comply with this policy, regardless of whether they intend to nominate or have already nominated as candidates for election.
- (2) Council staff who are candidates for election are expected comply with this policy and in addition:
  - (a) take leave from their duties for the duration of the election period in accordance with section 29(3) of the Act (if not enough paid leave is accrued, unpaid leave will be available);
  - (b) return any Council equipment (including, but not limited to, motor vehicles, telephones and computers), documents or information which is not available to the public for the duration of the election period; and
  - (c) immediately resign upon election.
- (3) Council committee members who are candidates for election are expected to comply with this policy and in addition:
  - (a) submit apologies for any committee meetings or other activities held during the election period;
  - (b) return any council equipment, documents or information which is not available to the public for the duration of the election period; and
  - (c) immediately resign from the committee upon election.
- (4) Other candidates for election are expected to voluntarily comply with the obligations of this policy where they apply.

## PART 3 - POLICY

### 5 Council Resources

- (1) In accordance with Section 55D of the Act, Council will ensure that probity is observed in the use of all Council resources during the pre-election and election periods, and Council staff are required to exercise appropriate discretion in that regard. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer ("CEO"), Director Corporate and Business Services or the Manager Governance.
- (2) In determining whether the use of Council resources during the pre-election or election periods is appropriate, officers will have regard to whether these same resources are available to other candidates at the election. For example, the use by a candidate of a Council provided computer for the preparation of campaign material would not be permitted, regardless of whether such use comes at no cost to Council.
- (3) Council resources, including (but not limited to) offices, meeting rooms, support staff, hospitality services, photographs, equipment and stationery will be used exclusively for normal Council business during the pre-election and election periods, and will not be used in connection with any election campaign.
- (4) Reimbursements of candidates' out-of-pocket expenses during the pre-election period will only apply to costs that have been incurred in the performance of normal Council duties, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign.
- (5) No Council logos, publications, letterheads, or other City of Darebin branding will be used for, or linked in any way to, a candidate's election campaign.
- (6) Council funded telephone numbers and email addresses are not to be used in candidate election material.
- (7) Officers will not assist in preparing candidate election material.
- (8) Officers will not provide candidates with access to databases, contact lists, property counts, email addresses or any other information that would assist in mailing or other distribution of election material.

### 6 Information

- (1) The Council recognises that all election candidates have certain rights to information from the Council administration. However, it is important that sitting Councillors continue to receive information that is necessary to fulfil their elected roles. Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the election period.

- (2) Information and briefing material prepared by staff or the contractor (eg: the Victorian Electoral Commission) conducting the elections on behalf of Council during the election period will relate only to factual matters or to existing Council services. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.
- (3) An Information Request Register will be maintained during the election period. The Register will:
  - (a) include a record of all requests for information by Councillors and candidates, and the responses given to those requests (including those requests that were denied);
  - (b) be updated and published on Council's website each Monday morning during the election period and on the morning of the Thursday and Friday immediately prior to election day;
  - (c) wherever practicable, include full copies of the information provided to the candidate in relation to the request; and
  - (d) be updated immediately following election day and published on Council's website until at least the last day available for application for an inquiry into the election by a municipal electoral tribunal under Section 45 of the Act.
- (4) Public consultation of a limited kind normally associated with the routine administration of planning, building, traffic, parking or other matters will continue through the election period. However significant community or ward-wide consultation on major strategy or policy issues will not occur, or if already commenced should be discontinued during the election period.

## **7 Council Publications**

- (1) In accordance with Section 55D of the Act the Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the CEO.
- (2) All advertisements, handbills, pamphlets or notices for printing, publication or distribution during the election period will be certified by the CEO using Form 1 (attached) and the process for the certification will be as follows:
  - (a) publication authors are to check that no election material is included when preparing a publication and submit the completed publication to the Manager Governance for review;
  - (b) the Manager Governance is to confirm that no election material is included, and return the publication to the author (if election material is present) or submit it to the CEO for authorisation (if it complies with the requirements of the Act);

- (c) the CEO is to authorise or reject the publication and return it to the Manager Governance; and
  - (d) the Manager Governance is to maintain a register of all documents authorised under this section.
- (3) During the pre-election period, Council will publish a single municipal-wide edition of Darebin Community News or similar publication, provided that it contains photographs of councillors only with contact details (no columns), no Councillor photographs on the cover and a single Mayoral message which does not contain electoral matter.
- (4) During the pre-election period, Council will restrict Councillor details on the Council web-site to Councillor names, contact details and committee or other bodies Councillors have been appointed to by the Council.
- (5) For the avoidance of doubt, this policy does not prevent candidates from publishing their own campaign material from their own funds outside the Council, and not bearing any reference or inference that such material is from the Council, supported or endorsed by the Council and must not bear any Council identification such as logos or similar. Candidates must ensure that such publications comply with the requirements of the Act.

## **8 Publicity**

- (1) It is recognised that Council publicity is intended to promote Council activities and services. Council publicity will not be used in any way that might influence the outcome of a Council election.
- (2) During the pre-election period and election period, no Council employee may make any public statement that could be construed as influencing the election. Neither may a representative of any subsidiary organisation of Council make political statements during the pre-election period or election period. This does not include statements of clarification that are approved by the CEO.
- (3) During the pre-election period and election period, publicity campaigns, other than for the purpose of conducting the election, will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council service or function, it must be approved by the CEO. In any event, Council publicity during the pre-election period and election period will be restricted to promoting normal Council activities.
- (4) Any requests for media advice or assistance from Councillors during the pre-election period or election period will be channelled through the CEO, or the CEO's designated delegate. In any event, no media advice or assistance will be provided in relation to election campaign matters, or in regard to publicity that involves specific Councillors.
- (5) Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

## **9 Decisions**

- (1) Council will comply with section 55D of the Act with respect to making major policy decisions.
- (2) In addition to major policy decisions, other decisions may be controversial. Council management will present advice on these matters in the context of:
  - (a) Council obligations under relevant legislation;
  - (b) existing Council policies and strategies; and
  - (c) good professional practice.
- (3) The Council will, where possible, avoid making significant decisions during an election period, unless the matter under consideration is urgent and cannot be deferred without having a negative impact on the Council, the municipality or the local community.

## **10 Conduct of Council Meetings**

- (1) Public question time will be suspended at all Council meetings during the election period.
- (2) During the election period, Councillors will limit their discussion during debate to the topic under consideration and will avoid raising electoral matter where possible.
- (3) Councillors will not raise items of general business that contain or relate to electoral matter during the election period.

## **11 Events and Functions**

- (1) Councillors are able to continue to attend meetings, events and functions during the election period which are relevant to the Council and the community.
- (2) Council's annual program of events will continue during the election period however speeches will be contained to a short welcome, and should not contain any express or implied reference to the election. Any publicity will be mindful of the controls on electoral material outlined in these guidelines.
- (3) The annual Mayoral fundraising event (or similar) will not be held during the pre-election period or the election period.
- (4) Councillors are able to attend events or functions conducted by external bodies during the pre-election period and the election period, however when attending as a representative of Council, councillors must be mindful that they do not use that opportunity to promote their election campaign.

## **12 Assistance to Candidates**

- (1) The Council affirms that all candidates for the Council election will be treated equally.

- (2) Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated to all candidates in advance.
- (3) All election related inquiries from candidates will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the CEO, Director Corporate and Business Services or Manager Governance.

### **13 Miscellaneous**

- (1) During the Pre-election Period or the Election Period, the CEO may, at his absolute discretion, introduce additional provisions to this policy where he believes they are necessary to support the achievement of its stated Policy objectives.
- (2) Any changes made by the CEO will be reflected in an update to this policy and published on Council's website and sent to all Councillors and candidates.

### **14 Review**

- (1) This Policy will be reviewed in May 2016 unless an earlier review is required due to a legislative change or the conduct of a general election..

### Summary of Caretaker Restrictions

		<b>Pre-election Period</b>	<b>Election Period</b>
4(2)	Council staff standing as a candidate	No restriction	Must take leave and return all Council equipment and information
4(3)	Committee member standing as a candidate	No restriction	Must lodge apologies for meetings and return all Council equipment and information
5(3)	Council resources used in conjunction with an election campaign	Not permitted	Not permitted
5(4)	Reimbursement of out of pocket expenses to Councillors	Cannot include expenses that could be perceived as electoral expenses	Cannot include expenses that could be perceived as electoral expenses
5(5)- 5(6)	Use of Council logo, branding of phone number in campaign material	Not permitted	Not permitted
5(7)	Officer assistance in preparing campaign material	Not permitted	Not permitted
5(8)	Officer provision of databases and contact lists	Not permitted	Not permitted
6(3)	Maintenance of an Information Request Register	Not required	Required
6(4)	Routine community consultation	Permitted	Permitted
6(4)	Significant community consultation	Permitted	Not permitted
7(1)	Printing, publishing or distributing a handbill, pamphlet or notice containing electoral matter	Permitted	Not permitted
7(1) - 7(2)	Printing, publishing or distributing a handbill, pamphlet or notice <u>not</u> containing electoral matter	Permitted	Permitted following certification by the CEO
7(3)	Publication of the Darebin News or similar publication	Permitted, subject to restrictions	Not permitted

		<b>Pre-election Period</b>	<b>Election Period</b>
7(4)	Councillor details on Council's website	Restricted to names, contact details and committee or other appointments	Restricted to names, contact details and committee or other appointments
8(2)	Employee of Council or subsidiary organisation making a public statement that could be construed as influencing the election	Not permitted, apart from clarifications made by the CEO	Not permitted, apart from clarifications made by the CEO
8(3)	Publicity campaigns for Council services or functions	Should be avoided where possible, and otherwise approved by the CEO	Should be avoided where possible, and otherwise approved by the CEO
8(4)	Councillor requests for media assistance	Must be approved by the CEO or delegate but cannot relate to election campaigns or promote individual Councillors	Must be approved by the CEO or delegate but cannot relate to election campaigns or promote individual Councillors
9(1)	Council making Major Policy Decisions	Permitted	Not permitted, except in accordance with the Act
9(3)	Council making significant decisions	Permitted	To be avoided, except where it is urgent and cannot be deferred
10(1)	Public question time at Council Meetings	Continues as normal	Suspended
10(2)-10(3)	Discussion of matters and raising of general business	Continues as normal	Comments by Councillors not to include Electoral Matter
11(1)	Councillor attendance at meetings, events and functions	Permitted	Permitted
11(2)	Speeches by candidates at Council events	Permitted	Limited to a short welcome, with no reference to the election.
11(3)	Annual Mayoral fundraising event (or similar)	Not permitted	Not permitted
11(4)	Attendance by Councillors at external events as representatives of Council	Permitted, but Councillors not to use the opportunity to promote their election campaign.	Permitted, but Councillors not to use the opportunity to promote their election campaign.
12(3)	Enquiries to Council from candidates	Shall be referred to the Returning Officer	Shall be referred to the Returning Officer

		<b>Pre-election Period</b>	<b>Election Period</b>
13(1)	Introduction of additional provisions by the CEO	Permitted	Permitted



## REQUEST FOR CERTIFICATION OF PUBLICATION DURING THE ELECTION PERIOD

**1**

### Author to complete

Document description (attach document)	<input type="text"/>
Intended distribution channel	<input type="text"/>
I declare that this material contained in the attached document has been checked by me and to the best of my knowledge does not contain any electoral matter.	
Name and Title	<input type="text"/>
Signature	<input type="text"/>
Date	<input type="text"/>

**2**

### Manager Governance (or delegate) to complete

I have reviewed the material contained in the attached document can advise that to the best of my knowledge it does not contain any electoral matter.	
Name and Title	<input type="text"/>
Signature	<input type="text"/>
Date	<input type="text"/>

**3**

### Chief Executive Officer to complete

In accordance with section 55D(1) of the <i>Local Government Act 1989</i> , I certify that the attached advertisement, handbill, pamphlet or notice may be printed, published or distributed during the election period on behalf of the City of Darebin	
	<input type="text" value="Rasiah Dev, Chief Executive Officer"/>
Signature	<input type="text"/>
Date	<input type="text"/>

**4**

### Manager Corporate Governance (or delegate) to place on Register



## SUBMISSION TO INFORMATION REQUEST REGISTER

**1**

**Council officer to complete**

Name of Councillor or candidate making the request	<input type="text"/>			
Date of request	<input type="text"/>			
Information requested (attach documents if required)	<input type="text"/>			
Was information provided?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No (if no, got to 2)
Date information provided	<input type="text"/>			
Information provided (attach documents if required)	<input type="text"/>			

**2**

**Submit to Manager Governance (or delegate) within 24 hours**

**3**

**Manager Governance (or delegate) to place on Register**