

Objective

The City of Mandurah (the City) is committed to ensuring that local government elections are undertaken in a manner that is transparent, open and supports a high standard of integrity.

The Caretaker Period Policy (the Policy) establishes protocols to guide the conduct of Elected Members, Candidates and City employees during the Caretaker Period in the lead up to Election Day.

The primary objective of this Policy is to:

- Support appropriate decision making to avoid the City making decisions regarding Significant Acts prior to an election that would bind an incoming Council;
- Prevent the use of public resources for election purposes in ways that could be seen to be advantageous to, or promoting Candidates seeking election; and
- Ensure that the City's employees act impartially in relation to Candidates.

Statement

Caretaker Period

The Caretaker Period, for local government elections, means a period that:

- (a) begins at the close of nominations (as defined in section 4.49(a) of the *Local Government Act 1995* (the Act), for the relevant election; and
- (b) ends –
 - i. on the day after the day on which the returning officer declares the result of the relevant election under section 4.77 of the Act; or
 - ii. if section 4.57(1) of the Act applies to the relevant election – on the day after the day on which the close of nominations falls; or
 - iii. if section 4.58(1) of the Act applies to the relevant election – on the day after the day on which the candidate dies.

Noting that the prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

Applicability

This Policy applies to all Elected Members, Candidates and City employees during a Caretaker Period with respect to:

- a. Decisions that are made by the Council;
- b. Media and promotional materials;
- c. Use of the City's resources, access to the City's information and support;
- d. Attendance and participation at events and functions; and
- e. Employee engagement with candidates.

Prior to the election period commencing, the Chief Executive Officer (CEO) will make Elected Members and City employees aware of this Policy.

Candidates are provided with a copy of this Policy at the time of their nomination for election.

1. Decision making by Council

1.1 Significant Acts

This Policy supports appropriate decision making by the City by restricting certain decisions during Caretaker Period referred to in the Definitions as Significant Acts.

It is important to note that Significant Acts do not include any decision necessary in response to an Emergency.

1.2 Scheduling consideration of Significant Acts

During a Caretaker Period, unless Prevailing Circumstances apply, the CEO will reasonably ensure that:

- a. Council or Committee Agendas, do not include reports that constitute Significant Acts; and
- b. Elected Member Workshops do not list for discussions matters that relate to Significant acts.

The CEO should reasonably ensure that decisions are either:

- a. Considered by Council prior to the Caretaker Period commencing; or
- b. Scheduled for determination by the incoming Council.

1.3 Prevailing Circumstances

In some circumstances, the CEO may permit a matter defined as a Significant Act to be submitted to the Council during the Caretaker Period. The CEO is to have regard to a number of circumstances, including but not limited to matters where:

- a. the urgency of the issue is such that it cannot wait until after the election;
- b. the process has substantially commenced and / or approvals are in place;
- c. the possibility of legal and/or financial repercussions if a decision is deferred;
- d. the possibility of legal repercussions relating to planning applications; or
- e. the best interests of the City and community for the decision to be made as soon as possible.

Where the CEO determines that Prevailing Circumstances apply, the report to Council will include a statement outlining the reasons.

1.4 Decisions made prior to Caretaker Period

This Policy only applies to actual decisions made during a Caretaker Period. The City may carry out a Significant Act during the Caretaker Period if the decision was made prior to the Caretaker Period.

2. City of Mandurah Code of Conduct

Elected Members and Candidates must comply with the City of Mandurah Code of Conduct for Elected Members, Committee Members and Candidates (Code of Conduct).

2.1 General Principles

The Code of Conduct requires Elected Members and Candidates to adhere to, promote and support the General Principles that relate to Personal Integrity and Relationships with Others.

Personal Integrity outlines specific personal integrity principles, including the need to:

- a. act with reasonable care and diligence;
- b. act with honesty and integrity;
- c. act lawfully;
- d. identify and appropriately manage any conflict of interest; and
- e. avoid damage to the reputation of the local government.

Relationships with Others outlines principles including the need to treat others with respect, courtesy and fairness; and respect and value diversity in the community.

2.2 Behaviours

Elected Members and Candidates must also demonstrate the expected Behaviours as set out within the Code of Conduct relating to Personal Integrity, Relationships with Others and Attendance at Committee or Council Meetings.

Personal Integrity behaviours ensure that social media and other forms of communication comply with the Code of Conduct and must only publish material that is factually correct.

Relationships with Others behaviours include the requirement to:

- a. deal with the media in a positive and appropriate manner;
- b. not use offensive or derogatory language when referring to another person;
- c. not disparage the character of another council member, committee member, candidate or local government employee in connection with the performance of their official duties; and
- d. not impute dishonest or unethical motives to another council member, committee member, candidate or local government employee in connection with the performance of their official duties.

Council and Committee Meetings outlines the behaviours when attending a council or committee meeting, this includes that a council member, committee member or candidate must not:

- a. act in an abusive or threatening manner towards another person;
- b. repeatedly disrupt the meeting; or
- c. make a statement that they know, or could reasonably be expected to know, is false or misleading.

2.3 Relationships with Employees

Division 4 of the Code of Conduct also applies to Elected Members, Committee Members and Candidates relationships with employees. The Code of Conduct states that Elected Members, Committee Members and Candidates must not:

- a. Direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or act in an abusive or threatening manner towards a local government employee.
- b. When attending a Committee or Council Meeting or event, make a statement (orally or in writing) that a local government employee is incompetent or dishonest; or use an offensive or objectionable expression when referring to a local government employee.

This Policy must be read in conjunction with Code of Conduct.

3. Caretaker Period Protocols – Elected Members

This section applies to all Elected Members:

3.1 Media and Publicity

Elected Members should avoid using their position as an elected representative to gain media attention in support of their or any candidate's election campaign.

All Elected Members requests for media advice or assistance, will be referred to the CEO or delegate for review.

3.2 Social Media

Elected Members must not provide any responses to posts, statements or questions on the City's social media pages, in relation to their own candidacy or the candidacy of another person.

In accordance with the Code of Conduct, Elected Members and Candidates must ensure that their use of social media and other forms of communication complies and must only publish material that is factually correct.

3.3 Use of Local Government Resources

Elected Members must ensure that Local Governance Resources are only used for purposes associated with their role as an Elected Member, in accordance with section 2.10 of the Act.

Elected Members are prohibited from using any Local Government Resources at any time for any election campaign purposes, either in support of their own candidacy or the candidacy of another person.

An Elected Member who uses City resources either directly or indirectly for the purpose of persuading electors to vote in a particular way is in breach of regulation 17 of the *Local Government (Model Code of Conduct) Regulations 2021*.

This prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

3.4 Access to information

Elected Members must not use or access City information for the purpose of gaining electoral advantage or disadvantage relevant to their candidacy or any other person's candidacy.

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 in accordance with s.5.92 of the Act.

3.5 Events and Functions

During the Caretaker Period, Elected Members may continue to fulfil their role through attendance at events and functions.

Where an Elected Member has been invited to attend in their official capacity as an Elected Member, they are prohibited from using an event or function held during a Caretaker Period to promote an election campaign purpose or distribute any Election Material.

3.6 Elected Member speeches

Permits all Elected Members to deliver a speech or address at events or functions delivered, sponsored or supported by the City if the Mayor and Deputy Mayor are unavailable. Noting that if the Mayor and Deputy Mayor are unavailable, the CEO will be required to determine the Elected Member to perform these duties, which will be on a rotational basis.

3.7 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 for any purpose associated with an election campaign purpose, including recruiting campaign assistance, distributing Election Material or to promote their own candidacy or the candidacy of another person.

3.8 Campaigning at Council or Committee Meetings

Any attempt to promote any electoral campaign during a Council or Committee meeting is prohibited and will be addressed as irrelevant and must restrict remarks to the motion or amendment under discussion (clause 8.4), in accordance with the *City of Mandurah Standing Orders Local Law 2016*.

4. Caretaker Period Protocols – Candidates

This section applies to all Candidates:

4.1 Requests for information

All Candidates shall be provided with equitable access to the City's public information in accordance with s.5.94 of the Act.

During the Caretaker Period any requests for information, with the exception of publicly available information will be recorded, along with the response given to those requests. Requests for information will be reviewed by the CEO or delegate and where the subject of the information is considered as relevant to a campaign issue, the CEO or delegate will have discretion to determine if the information or advice is/is not provided.

All election process enquiries from Candidates, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the CEO.

4.2 Candidate Requests on behalf of Electors, Residents or Ratepayers

Where a Candidate requires the assistance of the City to respond to a request made by an Elector, Resident or Ratepayer, then the City will provide the response directly to the requesting Elector, Resident or Ratepayer.

4.3 Candidate Campaign and Electoral Materials

In any campaign Electoral Material, Candidates are prohibited from using the City's official crest, logo or photographs or using City's publications without acknowledgment.

4.4 Candidate participation at Council or Committee Meetings

For the purposes of transparency and the benefit of the public gallery, Candidates who are not sitting Elected Members, are requested to identify themselves as a Candidate prior to asking public question, public statement or deputation at a Council or Committee meeting.

All Candidates must comply with the Code of Conduct when attending Council or Committee Meetings.

4.5 Social Media

Candidates must not provide any responses to posts, statements or questions on the City's social media pages, in relation to their own candidacy or the candidacy of another person.

In accordance with the Code of Conduct, Candidates must ensure that their use of social media and other forms of communication complies and must only publish material that is factually correct.

5. Caretaker Period Protocols - Administration

5.1 Media and Publicity

During the Caretaker Period, media and publicity will be limited to operational matters and matters previously resolved by Council, rather than Significant Acts. Media content which relates to Significant Acts will not be published during a Caretaker Period unless approved by the CEO.

The Mayor, as the City's spokesperson, will continue to be quoted in media statements during the Caretaker Period when providing information.

Media and publicity distributed during a Caretaker Period must not include content that:

- a. may actually, or be perceived to, persuade voting in an election; or
- b. is specific to a Candidate or Candidates, to the exclusion of other Candidates.

5.2 Publications

- a. Reference to Elected Members or Candidates in the City's publications printed, published or distributed during the Caretaker Period must not include promotional text.
- b. Publications that are potentially affected by this Policy will be reviewed by the CEO or delegate to ensure that any circulated, displayed or otherwise publicly available material

during a Caretaker Period does not contain material that may be construed as Electoral Material.

- c. All City publications proposed to occur throughout or during a Caretaker Period must be reviewed and approved by the CEO or delegate prior to publication or distribution.

5.3 City of Mandurah Website and Social Media

- a. Publication of electoral material on the City's Website and Social Media platforms will only promote the upcoming Local Government Elections and encourage people to vote or enrol, including links to candidate information on the WA Electoral Commission candidate website.
- b. Social media will not promote or link to any Elected Member or candidate's social media accounts or share any Elected Member or candidate's social media posts.
- c. During the caretaker period, the City website content regarding Elected Members who have nominated for election, will be limited to: names, profile photos and contact details.
- d. 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.

5.4 Employee engagement with Elected Members

The City's Code of Conduct for Employees sets out the appropriate standards of behaviour for engagement with Elected Members.

During the Caretaker Period, City employees need to consider how their actions may have an actual or perceived potential to influence voting in the election.

City employees are not permitted to:

- a. Authorise, use or allocate the City's resource for any purpose which may influence voting in the election;
- b. Assist Candidates in a way that is or could create a perception that they are being used for electoral purposes;
- c. Accept employment (voluntary or paid) related to local elections in support of any candidate; or
- d. Interact with Candidates on their personal social media platforms, which may be perceived as influencing voting in the election.

6. Complaints

Refer to the City's Code of Conduct for Elected Members, Committee Members and Candidates or Code of Conduct for Employees.

Failure to comply with the Code of Conduct may give rise to a complaint regarding the conduct of Elected Members, Committee Member or Candidate, which may lead to the Council making a formal finding of a breach and requiring remedial action by the individual. Complaints about a candidate cannot be dealt with unless the candidate is elected.

7. Definitions

Election Day

The day fixed under the *Local Government Act 1995* for the holding of any election.

Electoral Material

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 in accordance with Section 4.87(3) of the *Local Government Act 1995*; or
- b. Any materials exempted under regulation 78 of the *Local Government (Elections) Regulations 1997*; or
- c. Any materials produced by the City of Mandurah 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.

Emergency means the occurrence, or imminent occurrence, of an event, situation or condition that is a hazard under the definition of that term in the *Emergency Management Act 2005* section 3; or (b) a public health emergency as defined in the *Public Health Act 2016* section 4(1) or by the City in accordance with s.6.8(1)(c) of the *Local Government Act 1995*.

Land Transaction has the meaning given in section 3.59(1) of the Act.

Local Government Resources includes, but is not limited to employee time or expertise; City provided equipment; business cards; stationery; hospitality; images; communications including council email address; services; and reimbursements and allowances provided by the City.

Local Government Election has the meaning given by section 4.4 of the *Local Government Act 1995*.

Major Land Transaction has the meaning given in section 3.59(1) of the Act.

Major Trading Undertaking has the meaning given in section 3.59(1) of the Act.

Senior Employee means a senior employee under section 5.37 of the Act.

Significant Acts

Refers to:

- a. entering into, or renewing or terminating, the contract of employment of the CEO or of a senior employee;
- b. Decisions relating to the City of Mandurah entering into a sponsorship or funding agreement.
- c. decisions that commit the City of Mandurah to significant actions which might be brought about through a Notice of Motion by an Elected Member;
- d. decisions that adopt a new policy or service, or significantly amends an existing policy or service, unless the decision is necessary to comply with legislation;
- e. decisions that commit the City to unbudgeted expenditure or actions that are significant to the operations or strategic objectives of the City and may have significant impact on the City of Mandurah and community;
- f. reports requested or initiated by an Elected Member, Candidate, or member of the public, may be perceived within the general community as an electoral issue and has the potential to call into question whether decisions are soundly based and in the best interests of the community;
- g. entering into a major land transaction;
- h. entering into a land transaction that is preparatory to entry into a major land transaction;

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- i. commencing a major trading undertaking;
- j. making a local law (including making a local law to amend or repeal a local law).

Significant acts do not include any decision necessary in response to an Emergency.

Legislative Context

Local Government Act 1995

Local Government (Election) Regulations 1996

Local Government (Model Code of Conduct) Regulations 2021

City of Mandurah Standing Orders Local Law 2016

Related Documents

Code of Conduct – Elected Members,
Committee Members and Candidates
Code of Conduct – Employees
Elected Members Media and Communications Policy POL-CRM 11

Responsible Directorate: Business Services

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