

Caretaker Period Policy

POL-GVN 06



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 (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.

This Policy outlines the caretaker provision that are required by the *Local Government Act 1995* (the Act) and gives additional guidance to Council Members and City employees when making decisions or undertaking official duties within the Caretaker Period.

The primary objective of this Policy is to:

- Ensure compliance and alignment with the Caretaker Period provisions in the Act;
- 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 Act, being on the 44th day before 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.

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 or by a City officer under a delegated authority that are defined as a Significant Act under s3.73 of the Act.
- 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.
- e. Employee engagement with Candidates.

1. Role of the CEO in Implementing Caretaker Period Practices

The role of the Chief Executive Officer (CEO) in implementing the caretaker practices outlined in this Policy is as follows:

- a. The CEO will ensure as far as possible, that all Council Members and City employees are aware of this Policy and the Caretaker Period requirements under the Act and the *Local Government (Functions and General) Regulations 1996* (the Regulations) at least 30 days prior to the start of the Caretaker Period.
- b. To communicate awareness and the equitable access requirements that apply during a Caretaker Period, the CEO will ensure as far as possible, Candidates are provided with a copy of this Policy and the Caretaker Period requirements under the Act and the Regulations following their accepted nomination for a local government election.

2. Decision making by Council and City employees

2.1 Significant Acts – Restrictions on what local government may do during the Caretaker Period

Under section 3.73 of the Act and regulation 3A of the *Local Government (Functions and General) Regulations 1996* (the Functions and General Regulations), a local government is prohibited from doing, or deciding to do, any Significant Acts during the Caretaker Period unless otherwise allowed under section 3.73(4) to (6). This prohibition applies whether the decision is to be made by Council or by a City officer under a delegated authority.

A **Significant Act** means:

- a. making a local law (including making a local law to amend or repeal a local law)
- b. entering into, or renewing or terminating, the contract of employment of the CEO or of a senior employee
- c. entering into a major land transaction
- d. entering into a land transaction that is preparatory to entry into a major land transaction
- e. commencing a major trading undertaking
- f. entering into a contract, or other agreement or arrangement, with consideration over \$250,000
- g. calling for tenders, or tender exempt procurement, with an expected consideration above \$250,000
- h. making prescribed decisions under the *Planning and Development Act 2005* and *Planning and Development (Local Planning Scheme) Regulations 2015*
- i. publicly inviting persons to apply to join a panel of pre-qualified suppliers
- j. deciding to do any of the above

2.2 Provisions that allow for a Significant Act to be done during the Caretaker Period – s3.73(4) – (6)

In the following certain circumstances, a local government may be able to do the Significant Act:

- a. if the decision to do so was made before the Caretaker Period; or
- b. where the local government is required to do so by law, judicial order or contract.

The Director General of the Department of Local Government may also authorise a local government to do a Significant Act if they are satisfied it is necessary because of an emergency or to otherwise ensure the proper operation of a local government.

2.3 Scheduling consideration of Significant Acts – Council or Committees

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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 a Significant Act
- b. Elected Member Workshops, do not list for discussions matters that relate to a Significant Acts.

The CEO should reasonably ensure that Council decisions are either:

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

2.4 Scheduling consideration of Significant Acts - City Officers with Delegated Authority

City officers who hold delegated authority must ensure that they do not do, or do not decide to do, anything that constitutes a Significant Act during the Caretaker Period.

City officers should carefully consider the restrictions during the Caretaker Period when scheduling procurement activities and make appropriate allowances.

3. 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).

3.1 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.

3.2 Behaviours

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

The 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.

The 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;

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- 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.

The Attendance at 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.

3.3 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.

4. Caretaker Period Protocols – Elected Members

This section applies to all Elected Members:

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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*.

5. Caretaker Period Protocols – Candidates

This section applies to all candidates running for Council in the City local government election ('Candidates').

5.1 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.

5.2 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, a copy to the candidate will be sent, if requested.

5.3 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.

5.4 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.

5.5 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.

6. Caretaker Period Protocols - Administration

6.1 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.

6.2 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.

6.3 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.

6.4 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; or
- c. Accept employment (voluntary or paid) related to local elections in support of any candidate.

7. 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.

8. Definitions

Election Day means the day fixed under the *Local Government Act 1995* for the holding of any election.

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 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.

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Significant Act has the meaning given in section 3.73 of the Act

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

Responsible Department: Governance

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