8.2 CARETAKER PROVISIONS FOR 2012 COUNCIL ELECTIONS  
(CNCL6)

Submitting Councillor: Cr Geoff Lake

NOTICE OF MOTION
That Council amends the Councillors’ Code of Conduct as detailed in Attachment 1 to this Notice of Motion.

INTRODUCTION
This motion concerns the proposed amendment of the Councillors’ Code of Conduct for the City of Monash, in relation to the ‘caretaker period’ for the 2012 Council elections.

BACKGROUND
Council adopted the current Councillors’ Code of Conduct on 27 November 2009 following a review of its Code of Conduct, as required by the Local Government Act 1989.

DISCUSSION
Election Day for the 2012 Council elections is 27 October 2012.

During the election period, ie from 25 September 2012 to Election Day, the Council is in a ‘caretaker’ period and restricted in its decision-making by the requirements of the Local Government Act 1989.

The Councillors’ Code of Conduct includes a Statement of Caretaker Procedures.

The Procedures ensure that the ordinary business of Local Government in the municipality continues throughout an election period in a responsible and transparent manner, and in accordance with statutory requirements and established ‘caretaker’ conventions. The procedures commit Council during the ‘caretaker period’ to:

1. Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
2. Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election.

It is proposed that Section 4 of the existing procedures be amended by an addition of a sub-section specifically relating to the use of Council-provided resources to Councillors (see page 9 of the Code of Conduct). It is considered
that the amendment provides clarification on the incidental use of such resources by Councillors during the election period. Once adopted, the Code of Conduct will become publicly available, including via the Council’s website.
This Code of Conduct was adopted by resolution of the Monash City Council on 17 November 2009 and in accordance with section 76C of the Local Government Act 1989.
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1. **COUNCILLOR CONDUCT PRINCIPLES**

In carrying out their role as Councillors, Councillors will:

1. act with integrity;

2. exercise their responsibilities impartially in the interests of the local community;

3. not make improper use of their position to advantage or disadvantage any person;

4. avoid conflicts between their public duties as Councillors and their personal interests and obligations;

5. act honestly and avoid making oral or written statements and avoid actions that may mislead a person;

6. treat all persons with respect and will show due respect for the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other people;

7. exercise reasonable care and diligence and they will submit to lawful scrutiny that is appropriate to their office;

8. try to ensure that public resources are used prudently and solely in the public interest;

9. act lawfully and in accordance with the trust placed in them as elected representatives of their community; and

10. support and promote these principles by leadership and example so as to ensure the public has confidence in the office of Councillor.
2 Disclosure of Conflict of Interest

Council Meetings and Special Meetings

1. If a Councillor has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or the special committee, the Councillor must disclose the conflict of interest.

2. A Councillor who has a conflict of interest and is attending the meeting of the Council or Special Committee, must make a full disclosure of that interest—

   (a) by either—
      (i) advising the Council or special committee at the meeting of the details required immediately before the matter is considered at the meeting; or
      (ii) advising the Chief Executive Officer in writing of the details required; and
   (b) by classifying the type of interest that has given rise to the conflict as either—
      (i) a direct interest; or
      (ii) an indirect interest and specifying the particular kind of indirect interest;
   (c) describing the nature of the interest; and
   (d) if the Councillor advised the Chief Executive Officer of the details the Councillor must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.

3. A Councillor who has a conflict of interest and will not be attending the meeting of Council or special committee must make a full disclosure of that interest to the Chief Executive Officer or Mayor or Chairperson of the special committee, that—

   (a) is in writing; and
   (b) classifies the type of interest that has given rise to the conflict as either—
      (i) a direct interest; or
      (ii) an indirect interest and specifying the particular kind of indirect interest; and
   (c) describes the nature of the interest.

4. If the Mayor or the Chairperson of the special committee has been given a written disclosure, they must give the written disclosure to the Chief Executive Officer.

5. While the matter is being considered or any vote is taken in relation to the matter, the Councillor must—
(a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
(b) remain outside the room and any gallery or other area in view or hearing of the room.

6. The Mayor or the Chairperson of the special committee must cause the Councillor to be notified that he or she may return to the room after—
(a) consideration of the matter; and
(b) all votes on the matter have been taken.

Assembly of Councillors
1. If a Councillor considers that they have a direct or indirect interest in a matter before an assembly of Councillors, they have a conflict of interest.

2. If a Councillor has a conflict of interest in a matter, they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest, and leave the room in which the assembly is being held during any discussion, debate and vote on the matter.
3. DISPUTE RESOLUTION PROCEDURES

1. Councillors commit to working effectively together at all times and to developing good working relationships. In the event of any dispute occurring where Councillors are unable to resolve interpersonal conflicts that unduly affect the operation of the Council adversely, the parties to the dispute agree to work together with openness and transparency to resolve the dispute, and will agree to the appointment of a mediator where appropriate.

2. In the event that a dispute cannot be resolved through application of these processes, it may be referred to a Councillor Conduct Panel.

3. If the dispute relates to an apparent offence under the Local Government Act 1989 it should be referred to the Minister for Local Government and not be the subject of an application to a Councillor Conduct Panel.

4. The dispute resolution procedure is not intended to resolve differences in policy or decision-making, which are appropriately resolved through debate and voting in Council and Committee meetings.
4 STATEMENT OF CARETAKER PROCEDURES

The purpose of these procedures is to ensure that the ordinary business of local government in the City of Monash continues throughout an election period in a responsible and transparent manner, and in accordance with statutory requirements and established “caretaker” conventions. These procedures commit Council during the caretaker period to:

1. Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
2. Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election.

Use of Council Provided Resources to Councillors

Councillors must not unreasonably use any Council resource for campaign purposes during the caretaker period or seek reimbursement from Council for costs incurred for a campaign related purpose.

Incidental use of Council provided resources (such as a vehicle in the case of the Mayor, mobile phone or other device), in connection with any campaign-related purpose and as part of the ordinary course of that Councillor's daily and typical use of such a resource, does not breach Council policies or, in the view of Council, any applicable electoral laws. Council considers that the provision of such resources and their continued use during the caretaker period, including their incidental use in respect of any campaign purpose, does not confer any particular, unreasonable or unfair electoral advantage on a councillor-candidate compared to other candidates.

In reaching this position, Council notes the position expressed in its expenses policy that it is reasonable for councillors to use these resources for both Council and incidental non-Council related purposes and that any out of pocket costs arising from such use for non-Council purposes should not be claimed as reimbursement from Council.

Council has also considered that the use of mobile phones, computers and cars is almost universal in the wider community today and that there is no unique or special advantage conferred on a Councillor-candidate by merely continuing to have access to one or more of these resources during the caretaker period.

Council considers that it would be impractical for a Councillor to have to operate two mobile phones or two of any of the other resources merely to avoid use of any one of those Council provided resources in connection with a campaign purpose.
Council further notes that there is no cost or other impact for Council if a Councillor uses one of these resources for non-Council purposes. Moreover, Council's expenses policy expressly contemplates this sort of arrangement in relation to mobile phone use and deals with the process for attributing the out of pocket costs of the phone calls between Council related calls and non-Council related calls. However, during the election period, Councillors should be especially mindful not to seek reimbursement for any out of pocket costs which arise from a campaign related purpose.

Accordingly, Council has formed the view and this is the position adopted in this policy that it is impractical and unnecessary for current councillors who are seeking re-election to have to go out and purchase their own devices merely for use during the caretaker period. In fact it is considered that it would be an unreasonable and unnecessary imposition on councillor-candidates, who for the past four years of their term have had these resources provided by Council, and who if re-elected, would have the reasonable expectation that these resources will continue to be provided to them, if they were forced to have to purchase such resources personally for the purposes of only a matter of a few weeks for use during the caretaker period.

Council further notes that this approach is consistent with the approach adopted in the Victorian Parliament and the Australian Parliament for Members of Parliament in those places.

Major Policy Decisions

Section 93A of the Local Government Act 1989 prohibits the making of “Major Policy Decisions” (Major Policy Decisions has the same meaning as the Local Government Act 1989) during the election period, which is from Entitlement day until 6:00 pm on the Election Day. “Major Policy” decisions are defined by the Act to be decisions:

a) relating to the employment or remuneration of a Chief Executive Officer under section 94 of the Local Government Act 1989, other than a decision to appoint an acting Chief Executive Officer;

b) to terminate the appointment of a Chief Executive Officer under Section 94 Local Government Act 1989;

c) to enter into a contract the total value of which exceeds whichever is the greater of $100 000 or such higher amount as may be fixed by Order in Council under section 186(1) of the Local Government Act 1989; or 1% of the Council's revenue from rates and charges levied in the preceding financial year;

d) to exercise any power under section 193 if the sum assessed under section 193(5A) of the Local Government Act 1989 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 of the Local Government Act 1989 in the preceding financial year. If the Council considers that there are
extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government, in accordance with section 93A(2) of the *Local Government Act* 1989.
1. The Council commits to the principle that it will ensure that council resources are not used inappropriately during a council election.

2. Council will ensure that it complies with section 55D of the *Local Government Act 1989* which requires that a Council does not 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 unless it only contains information about the election process.

3. Council will review all publications prior to the commencement of the caretaker period, and during the caretaker period, prior to publication, to ensure that any such publications comply with the requirements of section 55D of the *Local Government Act 1989*.

The following definitions from the *Local Government Act 1989* are noted:

Section 3 (1) "**electoral advertisement, handbill, pamphlet or notice**" means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"**publish**" means publish by any means including by publication on the Internet.
APPENDIX 1

Section 93A of the *Local Government Act 1989*— Conduct of Council

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 of the *Local Government Act 1989*;

   (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) of the *Local Government Act 1989*; or

      (ii) 1% of the Council’s revenue from rates and charges levied under section 158 of the *Local Government Act 1989* in the preceding financial year;

   (d) to exercise any power under section 193 if the sum assessed under section 193(5A) of the *Local Government Act 1989* 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 of the *Local Government Act 1989* in the preceding financial year.
APPENDIX 2

Section 55D of the *Local Government Act 1989 – Prohibition on Council*

55D A Council must not 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 unless it only contains information about the election process.

Definitions –

Section 3 "electoral advertisement, handbill, pamphlet or notice" means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"publish" means publish by any means including by publication on the Internet;