

Councillor Gift Policy

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1. TITLE

Councillor Gift Policy

2. OBJECTIVE

To:

- a) provide guidance and transparency on the acceptance and declaration of any gifts or benefits offered to, or received by, Councillors;
- b) maintain high levels of integrity and public trust by avoiding potential, actual or perceived conflicts of interest and reducing opportunities for fraud and corruption;
- c) provide for the maintenance of a gift register and any other matters prescribed by the regulations under section 138 of the *Local Government Act 2020*; and
- d) complement personal interest returns by recording gifts that are below the threshold for disclosure set by the Local Government (Governance and Integrity) Regulations 2020.

3. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
Anonymous Gifts	A gift given to a Councillor by an unknown donor.
Bribe	An offer of money or other inducement made with the intention to corruptly influence a Councillor, officer or Council contractor in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.
Conflict of Interest	<p>A conflict of interest as defined in the Local Government Act 2020, which requires Councillors to declare either Material or General Conflicts of Interest.</p> <p>Conflicts of interest may be:</p> <p>Actual: There is a real conflict between a Councillor's public duties and private interests.</p> <p>Potential: A Councillor has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.</p> <p>Perceived: The public or a third party could reasonably form the view that a Councillor's private interests could improperly influence their decisions or actions, now or in the future.</p>
Gift	<p>Has the meaning given in section 3 of the Local Government Act 2020 of any disposition of property otherwise than by will, made by a person or entity to another person without consideration in money or money's worth or with inadequate consideration, including -</p> <ol style="list-style-type: none">(a) the provision of a service (other than volunteer labour);(b) the payment of an amount in respect of a guarantee; and(c) the making of a payment or contribution at a fundraising function.
Gift Declaration Form	The Council form to be completed by Councillors to declare gifts, benefits and hospitality and which is available from the Co-ordinator of Council Business.
Gift Disclosure Threshold	\$500 or such higher amount prescribed by the Local Government (Governance and Integrity) Regulations 2020.
Gift Register	A register maintained by the Co-ordinator of Councillor Business which records details prescribed by the Local Government Act 2020 and regulations of Gifts, benefits and hospitality offered to or received by Councillors.

Token

In reference to gifts, benefits or hospitality means of a token nature with a value less than \$50 and unlikely to influence decision-making of a Councillor (as perceived by a reasonable person)

4. POLICY

Scope

- 4.1 This Policy applies to any gifts, donations or hospitality offered or made to Councillors in connection with their role as a Councillor.
- 4.2 It does not include election campaign donations made to council election candidates which are recorded in a prescribed form under section 306, Division 10 Election campaign donations of the Local Government Act 2020.
- 4.3 This Policy does not apply to gifts, benefits or hospitality where the value equals or exceeds the Gift Disclosure Threshold (declarations about these should be included in Councillors' personal interest returns).
- 4.4 This Policy does not apply to gifts Councillors receive from Council (e.g. a Mayoral album presented at the end of a Mayoral term).

Accountability

- 4.5 A Councillor who is offered a gift, benefit or hospitality, whether or not Token, Ceremonial or Anonymous, and whether accepted or not, must declare it by completing the Gift Declaration Form in accordance with this Policy.
- 4.6 Councillors must decline or return gifts, benefits and/or hospitality that are not Token unless an exception applies under this Policy.
- 4.7 Councillors must not accept gifts, benefits or hospitality that are likely to raise a reasonable perception of, or lead to, bias, benefit or preferential treatment.

Accepting Gifts that are not Token

- 4.8 This section outlines the process for accepting, declining and recording gifts, benefits and hospitality that are not Token.
- 4.9 If a Councillor is offered a gift, benefit or hospitality that is not Token and is not prohibited under any part of this Policy, before accepting it, the Councillor must:
 - a) consider whether the offer could be perceived as influencing them, or could actually influence them in performing their duties, or lead to reputational damage to the office of Councillor or to the Council;
 - b) be aware that the more valuable the offer, the more likely that an actual, potential or perceived conflict of interest or reputational risk exists;
 - c) seek the prior written approval of the Mayor; or where the gift, benefit or hospitality is to be accepted by the Mayor, seek prior written approval of the Chief Executive Officer; and
 - d) use the GIFT table below to assess whether acceptance is appropriate.

G	Giver	<p>Who is providing the gift, benefit or hospitality and what is their relationship to me? Does my role require me to select contractors, award grants, regulate industries or determine policies? Could the person or organisation benefit from a decision I make?</p>
I	Influence	<p>Are they seeking to gain an advantage or influence my decisions or actions? Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy or a token of appreciation or valuable non-token offer? Does its timing coincide with a decision I am about to make?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality? Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust? How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?</p>

Anonymous Gifts

4.10 As prescribed by section 137 of the Local Government Act 2020, anonymous gifts above the gift disclosure threshold must not be accepted:

Section 137:

- (1) *Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor the amount or value of which is equal to or exceeds the gift disclosure threshold unless-*
- (a) *the name and address of the person making the gift are known to the Councillor; or*
 - (b) *at the time when the gift is made-*
 - (i) *the Councillor is given the name and address of the person making the gift; and*
 - (ii) *the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.*

Penalty: 60 penalty units.

- (2) *If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.*
- (3) *In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.*

4.11 If a Councillor finds themselves in possession of a gift without knowing the name and address of the person, the Councillor must report the anonymous gift to the Coordinator Council Business, and seek advice on its disposal, within 30 days to avoid committing an offence.

Ceremonial Gifts

- 4.12 (a) In this part, a Ceremonial Gift means a gift offered by official delegates or representatives from another non-profit organisation, community organisation or local or international municipality, town or city.
- (b) Where non acceptance of a Ceremonial gift may cause offence or embarrassment, the gift may be accepted on behalf of Council and becomes the property of Council.
- (c) A Gift Declaration Form must be completed with full details and entered on the Register. (e.g. International dignitaries giving gift to the Mayor to be kept on behalf of Council).
- (d) Ceremonial gifts may be given by Council or on behalf of Council.

Reasonable Hospitality

- 4.13 Councillors may only accept hospitality offered in connection with their role as a Councillor if it is Reasonable Hospitality as defined in part 4.14 of this Policy.
- 4.14 In this Policy, Reasonable Hospitality is the hospitality offered or available to Councillors in their capacity as Councillors or in connection with their role as Councillors, which:
- a) a reasonable person would consider reasonable;
 - b) does not give rise to a conflict of interest;
 - c) is unlikely to harm the reputation of Council;
 - d) is not unreasonable (as defined in part 4.16)
- 4.15 Examples of Reasonable Hospitality include:
- a) Light refreshments offered at a professional development seminar paid for by Council;
 - b) Light refreshments offered at a State Government information session or meeting attended by Councillors.
 - c) Light refreshments offered at a community event where the Councillor is attending by invitation and on behalf of Council.
- 4.16 Hospitality will be considered unreasonable and must be declined by Councillors, if the hospitality includes:
- a) fine dining that is not consistent with part 4.15 above;
 - b) tickets to, or attendance at sporting, musical or entertainment events, whether inside or outside the municipality (excluding local sporting and community events which do not require a ticket and have no entry fee);
 - c) hospitality paid for by a person or entity seeking an approval, permit, consent or other benefit or concession from Council.
 - d) contributions to the above.

Prohibited Gifts

- 4.17 Councillors must not accept any of the following gifts, benefits or hospitality:
- Anonymous Gifts - as defined in part 4.10 of this Policy
 - Unreasonable Hospitality - as defined in part 4.16 of this Policy
 - Award Points - Councillors must not obtain any form of award points for personal use in connection with any Council related activity
 - Bequests/Wills - Any bequests to Councillors resulting from their position with Council must be declined. An item that cannot be returned to the estate, must be donated to a registered charitable institution in the name of the donor
 - Free or significantly reduced accommodation or travel
 - Door prizes at events (paid for by Council) when attending in their role as a Councillor (e.g. mobile phones, iPads)
 - All offers from an individual or organisation currently providing a service to Council or prospective supplier where a tender or procurement process is being advertised, undertaken or is likely to be undertaken
- 4.18 Accepting a gift benefit or hospitality in breach of this Policy may constitute a misuse of a Councillor's position in breach of section 123 of the Local Government Act 2020. *(with a possible penalty of 600 penalty units or imprisonment for five years).*

- 4.19 Accepting a gift offered with the expectation of preferential treatment may constitute a bribe and may lead to criminal prosecution.

Soliciting of Gifts

- 4.20 Councillors must not seek or solicit gifts, benefits and/or hospitality for themselves, or others as it may constitute a misuse of their position under the Local Government Act 2020.

Token Gifts

- 4.21 Councillors may accept Token gifts, benefits or hospitality if the acceptance will not create a conflict of interest or lead to reputational damage to Council.

Bribe

- 4.22 Councillors should report suspected bribes in accordance with the Fraud and Corruption Policy and Procedure.

Maintenance of a Gift Register

- 4.23 Where indicated in this Policy, Councillors must complete a Gift Declaration Form and provide it to Council's Coordinator Councillor Business or the Councillor Business Officer for inclusion in the Gift Register.

- 4.24 Gift Declaration Forms must be submitted within two weeks of an offer or gift being made or received and must be completed whether accepted or declined.

- 4.25 In accordance with Council's Public Transparency Policy, the Gift Register will be available on Council's website.

- 4.26 Subject to clause 4.27 of this Policy, the Gift Declaration Form and the Gift Register will, at a minimum, include:

- (a) a description of the gift, benefit or hospitality;
- (b) the monetary value of the gift, benefit or hospitality;
- (c) the name of the person who gave or offered the gift, benefit or hospitality;
- (d) if the gift, benefit or hospitality was given or offered on behalf of another person or body, the name of the other person or body;
- (e) the date the gift, benefit or hospitality was offered or received;
- (f) the name of the intended recipient of the gift, benefit or hospitality;
- (g) whether the gift was accepted or declined or what was done with the gift (e.g. anonymous gift).

- 4.27 The Co-ordinator Councillor Business may determine that certain information is confidential and protect that information from public disclosure on the basis of legal advice or if required by law.

5. HUMAN RIGHTS CHARTER COMPATIBILITY

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

6. ASSOCIATED INTERNAL DOCUMENTS

Councillor Code of Conduct
Public Transparency Policy
Fraud and Corruption Policy

7. EXTERNAL REFERENCES/RESOURCES

Local Government Act 2020
Local Government (Governance and Integrity) Regulations 2020
Charter of Human Rights and Responsibilities Act 2006 (Vic)
Local Government Victoria - Conflict of Interest Guides
The Victorian Public Sector Commission - Gifts, benefits and hospitality resource suite

