

COUNCILLOR GIFT, BENEFITS AND HOSPITALITY

► POLICY

POLICY NUMBER: 84 (C)

NAME OF POLICY: Councillor Gift, Benefits and Hospitality Policy

DATE OF NEXT REVIEW: 26 August 2029

DATE APPROVED: 26 August 2025

RESPONSIBLE OFFICER: Chief Executive Officer

REFERENCES:

- Local Government Act 2020*
- Fraud Prevention Policy*
- Model Councillor Code of Conduct*
- Public Transparency Policy*
- Council Expenses and Resources Policy*
- Public Interest Disclosures Procedures*
- Procurement Policy*
- Governance Rules and Election Period Policy*
- Councillor Gifts, Benefits and Hospitality Declaration Form*

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1. INTRODUCTION

The aim of this policy is to provide clear guidelines to ensure Councillors are not compromised in the performance of their duties by accepting gifts or benefits or hospitality which may result in a sense of obligation or could be interpreted as an attempt to influence.

The requirement for a Gift Policy was introduced as stipulated in section 138 of the *Local Government Act 2020* to complement personal interest returns by recording gifts that may be below the threshold for disclosure in a personal interest return or that may have been received since the latest return was lodged.

1.1. SCOPE

This policy applies to all gifts, benefits or hospitality offered to, or received by, Councillors from external sources and to any gifts, benefits or hospitality offered by Councillors to external entities or individuals.

This policy does not apply to:

- Donations and gifts (including benefits and hospitality) acquired during Council Election Period (Caretaker), which are covered under Campaign Donation Returns in accordance with the *Local Government (Electoral) Regulations 2020*;
- Donations and gifts (including benefits and hospitality) valued at over \$500, which are covered under the Personal Interest Return and governed by the *Local Government (Governance and Integrity) Regulations 2020*;
- Discounts that are commonly available to any individual that do not specifically relate to Council business related activities. Examples may include corporate discounts for leisure centres, bulk purchase discounts for solar panels, etc;
- Council's operational policy - Acceptance of Gifts, Hospitality and Other Gratuities by Employees applies to Council employees (including contractors, consultants, and volunteers).

2. DEFINITIONS

Definition	Meaning
Benefits	Benefits include preferential treatment, privileged access, favours or other advantage offered to an individual. They may include invitations to sporting, cultural or social events, access to discounts and loyalty programs and promises of a new job. The value of benefits may be difficult to define in dollars, but as they are valued by the individual, they may be used to influence the individual's behaviour.
Bribe	To give money or some other form of consideration to a public official so as to persuade the official not to exercise his or her common law or statutory powers or to bestow some privilege or favour.
Business associate	An individual or body that the public sector organisation has, or plans to establish, some form of business relationship with, or who may seek commercial or other advantage by offering gifts, benefits or hospitality.
Conflict of Interest	Conflicts of interest as defined in Division 2- Section 126 to section 131 of the <i>Local Government Act 2020</i>. <u>General conflicts of interest:</u> A general conflict of interest in a matter can occur if an impartial, fair-minded person would consider that the person's private interest could result in that person acting in a manner that is contrary to their public duty. <u>Material conflicts of interest:</u> A material conflict of interest in a manner can occur if an affected person could gain a benefit or suffer a loss depending on the outcome of the matter. Reference: <i>Local Government Act 2020</i> – Sections 126 to 131.
Gift	Gifts are free or discounted items or services and any item or service that would generally be seen by the public as a gift. These include items of high value (e.g. artwork, jewellery, or expensive pens), low value (e.g. small bunch of flowers), consumables (e.g. chocolates) and services (e.g. painting and repairs). Fundraising by public sector organisations that is consistent with relevant legislation and any government policy is not prohibited under the minimum accountabilities.

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Gift disclosure threshold	A value of under \$500. Donations and gifts (including benefits and hospitality) valued at over \$500 are covered under the Personal Interest Return and governed by the <i>Local Government (Governance and Integrity) Regulations 2020</i> .
Gifts, Benefits and Hospitality Register	A register of all declarable gifts, benefits and hospitality, including those declined.
Hospitality	Hospitality is the friendly reception and entertainment of guests. Hospitality may range from light refreshments at a business meeting to expensive restaurant meals and sponsored travel and accommodation.
Legitimate business benefit	A gift, benefit or hospitality may have a legitimate business benefit if it furthers the conduct of official business or other legitimate goals of Council.
Money	Includes cash, cheques, money orders, travellers' cheques, direct deposits, shares, vouchers or items which can be easily converted to cash. This includes gift vouchers and credit notes.
Value	Is the actual value or current estimated retail value.

3. KEY PRINCIPLES

The key principles are:

- **Accountability:** Councillors are accountable for declaring all gifts, and declaring declined gifts, or where an exception applies under this policy.
- **Public interest:** Councillors have a duty to place the public interest above their private interests when carrying out their official functions.
- **Impartiality:** Councillors will not accept gifts, benefits or hospitality that could raise a reasonable perception of, or actual, bias or preferential treatment. Councillors do not accept offers from those about whom they are likely to make business decisions.
- **Integrity:** Councillors strive to earn and sustain public trust through providing or responding to offers of gifts, benefits and hospitality in a manner that is consistent with community expectations. Councillors will refuse any offer that may lead to an actual, perceived or potential conflict of interest.
- **Risk-based:** Council, through its policies, processes and audit committee, will ensure gifts, benefits and hospitality risks are appropriately assessed and managed. The Chief Executive Officer and Mayor will ensure they are aware of the risks inherent in Council's work and functions and monitor the risks to which their Council is exposed.

3.1. MINIMUM ACCOUNTABILITIES

This policy is compliant with the Victorian Public Sector Commission's minimum accountabilities for the appropriate management of gifts, benefit and hospitality.

4. RECEIVING OFFERS OF GIFTS, BENEFITS OR HOSPITALITY

4.1. CONFLICT OF INTEREST AND REPUTATIONAL RISKS

When deciding whether to accept an offer, Councillors should first consider if the offer could be perceived as influencing them in performing their duties or lead to reputational damage. The more valuable the offer, the more likely that a conflict of interest or reputational risk exists.

The GIFT test is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality:

G	Giver	Who is providing the gift, benefit or hospitality and what is their relationship to me? Does my role require me to select suppliers, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make?
I	Influence	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 a valuable non-token offer? Does its timing coincide with a decision I am about to make?
F	Favour	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?
T	Trust	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?

Source: Victorian State Services Commission

4.2. REQUIREMENT FOR REFUSING OFFERS

Councillors should consider the GIFT test and the requirements below to help decide whether to refuse an offer. Councillors must:

- declare gifts, benefits and hospitality regardless of whether they are accepted and/or declined. (Recording all offers of gifts, benefits and hospitality enables Council to monitor external approaches and possible attempts to inappropriately influence Council decisions.);
- decline non-token offers of gifts, benefits and hospitality, or where an exception applies under this policy, seeking approval to accept the offer;
- decline all anonymous gifts, as required by section 137 of the Act;
- decline all offers of gifts, benefits or hospitality from those about whom they are likely to make business decisions;
- decline all gifts, benefits and hospitality from current or prospective suppliers, grant applicants, and developers;
- decline gifts that could compromise the public's trust that you will perform your public duties in an impartial manner, or the public's trust in the impartiality of your organisation;
- decline a gift that is not consistent with community expectations;
- decline gifts, benefits and hospitality made in secret;
- decline gifts, benefits and hospitality made by a person or organisation with a primary purpose to lobby Council, Councillors or staff; and
- not request the provision of gifts, benefits or hospitality.

4.2.1. ATTEMPTS TO BRIBE

A Councillor who receives a gift offer that they believe is an attempted bribe or inducement must refuse the offer. They must:

1. Immediately notify the CEO or the Manager Governance and Risk (who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-Corruption Commission);
2. Lodge a gift declaration form, so their refusal can be properly recorded.

4.3. REFUSING AN OFFER

Where a Councillor has decided not to accept the offer of a gift, benefit or hospitality, it is important that the offer is declined in a way that does not cause offence to the donor or damage relationships. This can be achieved by explaining Council's policy and ensuring the donor understands that the offer is appreciated.

Where the gift would likely bring the person or the organisation into disrepute, the organisation should return the gift. If it represents a conflict of interest, the organisation should either return the gift or transfer ownership to the organisation to mitigate this risk.

4.4. TOKEN OFFERS (UP TO \$50)

A token offer is an offer of a gift, benefit or hospitality that is of inconsequential or trivial value to both the person making the offer and the individual recipient. It may include promotional items such as pens and note pads, and modest hospitality that would be considered a basic courtesy, such as light refreshments during a meeting. The minimum accountabilities state that token offers cannot be worth more than \$50.

Councillors may generally accept token offers without approval as long as the offer does not create a conflict of interest or lead to reputational damage.

4.5. NON-TOKEN OFFERS (\$50 AND OVER)

A non-token offer is a gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value. All offers worth more than \$50 are non-token offers and must be recorded on the gifts, benefits and hospitality register, including those refused.

Councillors can only accept non-token offers if they have a legitimate business benefit that aligns with legitimate goals of the organisation.

Councillors may be offered a gift or hospitality where there is no opportunity to seek approval prior to accepting. For example, they may be offered a wrapped gift that they later identify as being a non-token gift. In these cases, they must complete the Gifts, Benefits and Hospitality Declaration Form (Appendix 1) within five business days.

Where the gift would likely bring you or the organisation into disrepute, the organisation should return the gift. If it represents a conflict of interest for you, the organisation should either return the gift or transfer ownership to the organisation to mitigate this risk.

Non-token gifts with a legitimate business benefit that have been accepted by a Councillor or committee member for their work or contribution may be retained by them where the gift is not likely to bring them or Council into disrepute, and where the Mayor or Chief Executive Officer has provided written approval (that is an approved Gifts, Benefits and Hospitality Declaration Form).

4.6. CEREMONIAL GIFTS

Ceremonial gifts are official gifts provided as part of the culture and practices of communities and government. Ceremonial gifts are usually provided when conducting business with official delegates or representatives from another organisation, community or foreign government.

Ceremonial gifts are the property of the public sector organisation, irrespective of value, and should be accepted by individuals on behalf of the public sector organisation. The receipt of ceremonial gifts should be recorded on the register.

4.7. HOSPITALITY

Gift offers of hospitality that exceed common courtesy must be avoided are often inconsistent with community expectations and have a high risk of creating a conflict of interest. Examples of gift offers of hospitality that exceed common courtesy include:

- Attending as a guest in a corporate box at the football or races;
- Attending a concert or theatre event;
- Attending an industry golf day at a reduced fee;
- Being 'shouted' a meal at a restaurant;
- Accepting discounted or complimentary tickets for a family member to attend the tennis.

Reasonable hospitality does not need to be declared. See the definitions of Hospitality.

4.8. CONFERENCES

Gift offers in relation to conferences (sponsored attendance, participation, travel or accommodation) must be declined unless there is:

- Clear justification, such as where the invitation is issued by a government department or the offeror is a peak body, and
- Prior written approval granted by the CEO (Mayor for Councillors, CEO for Mayor). The signed and dated approval must be attached to the gift offer declaration and noted in the gifts register.

4.9. PROHIBITED GIFTS

4.9.1. ANONYMOUS GIFTS

Under section 137 of the *Local Government Act 2020* (the Act) it is an offence for a Councillor to receive an anonymous gift that has a value of or more than the gift disclosure threshold. The gift disclosure threshold is defined to be \$500 or a higher amount or value prescribed in Section 3 of the Act. A breach of these provisions could result in a maximum penalty of 60 penalty units

and a requirement to pay the Council an amount equal to the value of the gift. A Councillor is not in breach of this clause if the anonymous gift is disposed of to the Council within 30 days.

4.9.2. CONFLICT OF INTEREST

Councillors are prohibited from accepting a gift that creates a general or material conflict of interest pursuant to section Division 2 – sections 126 to 131 of the *Local Government Act 2020*.

4.9.3. MONEY OR EQUIVALENT

This includes gift cards (e.g. gift vouchers) or those easily converted into money (e.g. shares).

4.9.4. REGULATORY PROCESSES

Where a Council regulatory process is underway (e.g. a planning permit application; infringement appeal) a Councillor should not accept any gifts from any individual or group that may be involved with the permit application or regulatory activity.

4.9.5. BEQUESTS/WILLS

Any bequests to Councillors resulting from their position with Council must not be accepted. Arrangements may be made to donate the bequest to a charitable institution in the name of the donor or returned to the immediate family.

4.9.6. FLY BUYS/FREQUENT FLYER

Councillors must not collect rewards for personal use via rewards programs for any Council related transactions (i.e.: fly buys or frequent flyers). This relates to any claims for reimbursement of expenses incurred in accordance with the Council Expenses and Resources Policy.

4.9.7. PROCUREMENT AND TENDER PROCESS

Councillors must not accept any gifts, benefits and hospitality from a current or prospective supplier or any offer that is made during a procurement or tender process by a person or organisation involved in the process.

Where gifts are received or there are irregular approaches from suppliers, the Councillors must notify the Mayor and CEO and lodge a gift declaration form, so their refusal/action can be properly recorded.

4.9.8. REPEAT OFFERS

Receiving multiple offers (token or non-token) from the same person or organisation can generate a stronger perception that the person or organisation could influence decisions.

Councillors should refuse repeat offers from the same source if they create a conflict of interest or may lead to reputational damage.

4.10. DISPOSAL OF GIFTS

The Chief Executive Officer may dispose of gifts by any of the following methods:

- Return to the original recipient;
- Return to giver;
- Disposal by resolution of Council;
- Transfer as a gift to a recognised charitable, aid or non-profit organisation;
- Archival action by a local historical society or museum, Victorian Museum or State Library;
- Reduction to scrap; or
- Destruction.

5. PROVIDING GIFTS, BENEFITS OR HOSPITALITY

Gifts, Benefits or Hospitality may be provided when welcoming guests, to facilitate the development of business relationships, further Council business outcomes, and to celebrate achievements. When deciding whether to provide hospitality, Councillors must ensure:

- The hospitality is provided for a business reason that furthers the conduct of official business or other legitimate organisational goals, or promotes and supports Council policy objectives and priorities;
- That any costs are proportionate to the benefits obtained for the Council, and would be considered reasonable in terms of community expectations; and
- The Hospitality does not raise an actual, potential or perceived conflict of interest.

6. DISCLOSING GIFTS, BENEFITS OR HOSPITALITY

Councillors are required to declare all offers of gifts, benefits or hospitality provided by externally, whether accepted or declined, on the Gifts, Benefits and Hospitality Declaration Form.

Gifts, benefits or hospitality offers must be declared in the following manner:

1. The Councillor completes the Councillor Gifts, Benefits and Hospitality Declaration Form (Appendix 1);
 - a. If the gift, benefit or hospitality is a token gift (under \$50), submit the completed form (either via the online form or the word form) within five business days of the offer being made;

- b. If the gift, benefit or hospitality is non-token (\$50+) submit the completed form Mayor or Chief Executive officer within five business days of the offer being made.
2. The form will be assessed, and the Councillor will be advised of the outcome;
3. If the gift, benefit or hospitality is non-token (\$50+), the gift will be recorded on the register.

7. BREACHES

Accepting a prohibited gift may constitute misuse of a Councillor's position, a breach of this policy may result in serious misconduct allegations for Councillors. In addition, if the gift was offered with the expectation of something in return, such as preferential treatment, accepting it may constitute a bribe or other form of corruption and lead to criminal prosecution.

Breaches of this policy will be investigated by the Chief Executive Officer or the Manager Governance and Risk, and managed in accordance with the Model Councillor Code of Conduct or relevant legislation.

If a Councillor believes gifts, benefits and hospitality may not have been declared, are not being appropriately managed, or that a conflict of interest has occurred, they have a duty to notify the Chief Executive Officer of their concerns.

Anyone who believe they have observed corrupt conduct may also make a Public Interest Disclosure, in accordance with the [Public Interest Disclosure Procedures](#).

8. MONITORING AND REPORTING

The Chief Executive Officer and the Mayor are responsible for overseeing management of the acceptance or refusal of non-token gifts, benefits and hospitality, modelling good practice and promoting awareness of gifts, benefits and hospitality policies and processes.

The Gifts, Benefits and Hospitality register will be maintained by the Governance and Risk team.

The register will include:

Gifts accepted or declined over \$50 will be included in the register. The Register contains:

- Who the gift was offered to or received by;
- A description of the gift and its estimated value;
- The name of the gift giver; and
- What was done with the gift (was it retained by the Councillor, handed to the council, etc.);
- Who approved the Councillor Gifts, Benefits and Hospitality Declaration Form (Mayor, Chief Executive Officer, or Manager Governance and Risk)

The Gifts, Benefits and Hospitality register will be published on Councils' website in accordance with the *Local Government (Governance and Integrity) Regulations 2020*.

All completed Gifts, Benefits and Hospitality Declaration Forms will be kept in Council's electronic records management system.

The Manager Governance and Risk will provide a report to the Audit and Risk Committee annually within the fourth quarter of the financial year. The report will include a copy of the register, notification of any breaches and how they were managed and/or reported.

Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice a proposed development or business venture, legal advice or legal proceedings.

9. APPENDIX 1: COUNCILLOR GIFTS, BENEFITS AND HOSPITALITY DECLARATION FORM

To be completed by Councillors upon an offer of or receipt of a gift, benefit or hospitality from individuals or organisations external to Council.					
Date of declaration					
Name					
Did you (tick the box):		☐ Donated the gift to charity: _____ ☐ Retain the gift for personal use ☐ Declined the offer ☐ Transfer ownership of the gift to Council ☐ Returned the gift			
Date offered or received		Estimated or actual value	\$		
Describe the gift, benefit or hospitality (<i>be specific</i>)					
Name of person or organisation making the offer (anonymous gifts must be surrendered to Council)					
Why is the offer being made?					
Would accepting the offer create an actual, potential or perceived conflict of interest? <i>If yes, the offer must be declined or returned.</i>				☐ Yes ☐ No	
Would accepting the offer bring you or Council into disrepute? <i>If yes, the offer must be declined or returned.</i>				☐ Yes ☐ No	
Is there a legitimate business benefit to the organisation for accepting the offer? <i>If no, the offer must be declined or returned.</i> <i>If yes, provide details of the business benefit below: (e.g. was it offered during the course of your official duties? Does it relate to your official responsibilities? Does it have a benefit to Council? Is it a ceremonial gift?)</i>				☐ Yes ☐ No	
Approved by	☐ Mayor ☐ CEO	Date		Signature	