

Councillor Gifts, Benefits and Hospitality Policy



Merri-bek
City Council

Date Adopted by Council:

7 December 2022

Commencement Date:

7 December 2022

Review Date:

December 2024

Responsible Department

Business Transformation

1 INTRODUCTION

The community expects, and the law requires, that Councillors act with integrity, accountability, impartiality, fairness, equity and consistency, and in the public interest.

Councillors are required to act impartially and with integrity and must avoid conflicts of interest in the performance of their duties as a Councillor. This policy supports Councillor compliance with the conflict of interest provisions of the *Local Government Act 2020* and ensures the principles of good governance and accountability are followed by Councillors when they are offered gifts, benefits, bequests or hospitality in the course of their duties.

2 CONTEXT

2.1 Alignment

Council is committed to ethical and transparent decision-making that is open to scrutiny and free of improper influence.

Section 138 of the *Local Government Act 2020* requires Council to have in place a councillor Gift Policy that explains the procedures for the maintenance of the Gifts, Benefits and Hospitality register. Council's Public Transparency Policy provides that the Gifts, Benefits and Hospitality register will be made available on Council's website.

Councillors have committed to acting in accordance with the Councillor Code of Conduct and the Standards of conduct embedded within it, including complying with policies, protocols and legislation.

3 OBJECTIVES

This policy provides Council's position on responding to offers of gifts, benefits and hospitality; and provides the procedures for the maintenance of a Gifts, Benefits and Hospitality register.

Compliance with this Policy will support Councillors to avoid conflicts of interest and maintain high levels of integrity and public trust.

4 POLICY DETAILS

4.1 Statutory requirements

The *Local Government Act 2020* has a number of obligations and requirements in relation to the receipt of gifts by Councillors:

Section 3 Definitions

gift means –

any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- (a) the provision of a service (other than volunteer labour); and*
- (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 disclosure threshold means –

- (a) in the case of a Council, other than the Melbourne City Council, \$500 or a higher amount or value prescribed by the regulations;*

Section 128

A relevant person (Councillor) has a **material conflict of interest** in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

An affected person includes a person from whom the relevant person (Councillor) has received a disclosable gift.

disclosable gift means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of this subsection, the prescribed amount, received from a person in the 5 years preceding the decision on the matter –

(a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or

(b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation –

but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

Section 137 Anonymous gift not to be accepted

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.

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.

Section 134 / Local Government (Governance and Integrity) Regulations 2020

Gifts equal to or exceeding the disclosable gift threshold must be recorded on a Councillor's biannual personal interests return.

Section 306 / Local Government (Electoral) Regulations 2020

Gifts must be disclosed on an Election Campaign Donation return in accordance with the *Local Government Act 2020* and Regulations.

Section 138

All offers of gifts (including any offers of benefits or hospitality) will be recorded on the gift register.

4.2 Council Policy Position

Councillors have a duty to place the public interest above their private interests when carrying out their official functions. Councillors will be ethical, fair and honest in the conduct of official duties and not seek, solicit or use their position, to gain gifts, benefits or hospitality.

1. Councillors will not accept gifts, benefits or hospitality that could raise a reasonable perception of, or actual, bias or preferential treatment.
2. Councillors will not seek or accept (directly or indirectly) from any person or body, any immediate or future gift, reward, inducement or benefit for themselves or any other person or body, relating to their status with the Council, or their performance of any duty or work relating to the Council.
3. Councillors will decline offers of gifts, benefits and hospitality, or where an exception applies under this policy, seek endorsement to accept the offer;
4. If any gift or benefit (token or non-token) is offered by an external person or body, to a Councillor, disclosure must be made in writing on the Gifts, Benefits and Hospitality Declaration Form within 5 days (regardless of whether the gift is accepted or declined);
5. If a gift is accepted because refusal would offend or there was no opportunity to decline the gift, it will be declared, assessed, and disposed of in accordance with clauses 4.2.3 and 4.2.4.

6. Councillors will not accept any offers of money (including cash, gift cards, cheques etc).
7. Councillors will not accept gifts, benefits or hospitality made by a person or organisation with a primary purpose to lobby Councillors. If any gift or benefit (token or non-token) is offered by a lobbyist, to a Councillor, disclosure must be made in writing on the Gifts, Benefits and Hospitality Declaration Form within 5 days.

4.2.1 Definitions

Term	Definition
Benefit	Preferential treatment, privileged access, favours or other advantage offered to an individual. May include invitations to sporting, cultural or social events, access to discounts and loyalty programs and promises of a new job. Benefits are considered a gift .
Bribe	Money, reward or service offered to procure an action, decision, or preferential treatment - a corrupt inducement to reward.
Gift	Goods and services given of a commercial value including property, tickets, souvenirs, promotional items, vouchers, flowers, chocolates, fruit baskets and discounted or free services. Gifts also include hospitality and benefits.
Gifts, Benefits and Hospitality Register	A comprehensive record of all offers gifts, benefits and hospitality, who the offer was made by and to, the value of the offer and whether it was accepted. The Gifts, Benefits and Hospitality register is published on Council's website.
Hospitality	Hospitality is the provision of food, beverages, travel or services (accommodation, entertainment, etc.) Hospitality is a form of Gift .
Lobbyist	A person, company or organisation who is paid or engaged by a third-party client to influence government outcomes. Lobbyists seek to influence public sector employees or politicians to support an outcome favourable to their third-party client.
Reasonable Hospitality	Hospitality received at an event or function that the Councillor attended in an official capacity, such as light refreshments during a meeting. Usually Reasonable Hospitality would <i>not</i> include a sit down catered meal or an invitation to a function.
Monetary gifts	Cash, cheques, money orders, gift vouchers, traveller's cheques, direct deposits loans.
Official gifts	Gifts officially given to Council as part of Council business operations e.g.: sister city arrangements, individuals and organisations bestowing a corporate gift which is in the public interest e.g.: plaques or art works.
Sponsorship	Where items or services are exchanged and identified as part of a formal written sponsorship agreement between Council and a third party.
The Regulations	The <i>Local Government (General) Regulations 2015</i> .
Token Offer	A token offer is a gift, benefit or hospitality that is of inconsequential or trivial value to both the person making the offer and the recipient (such as basic courtesy). A token offer cannot be valued at more than \$50 and should not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. Examples include: <ul style="list-style-type: none"> • Flowers; • Food – chocolates and cakes; • Single bottle of reasonably priced wine; and • Trinkets (ties, scarves, coasters, tie pins).

Non Token Offer	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 valued at more than \$50 are non-token offers.
Value	Face value or estimated retail value.

4.2.2 Token offers

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. It may include promotional items such as pens and note pads, or home made/grown items or produce and modest hospitality that would be considered a basic courtesy, such as light refreshments during a meeting. A token offer is valued less than \$50.

All offers (even if not accepted) must be declared via the the Gifts, Benefits and Hospitality Declaration Form for inclusion on Council’s Gifts, Benefits and Hospitality register.

4.2.3 Non-token offers

Councillors can only accept non-token offers if they have a legitimate business benefit. All accepted non-token offers must be approved in writing by the Chief Executive Officer (CEO), recorded in the Gifts, Benefits and Hospitality register and be consistent with the following requirements:

- it does not raise an actual, potential or perceived conflict of interest or have the potential to bring the individual or Council into disrepute; and
- there is a legitimate business reason for acceptance. It is offered in the course of the individual’s official duties, relates to the individual’s responsibilities, and has a benefit to Council or the municipality.

Councillors may be offered a gift or hospitality where there is no opportunity to seek written approval from the CEO prior to accepting. For example, they may be offered a wrapped gift that they later identify as being a non-token gift. In these circumstances , the Councillor must disclose receipt of the gift within five business days and forward the gift to the Manager Governance and Strategy for disposal in accordance with clauses [4.2.5](#), [4.2.6](#) and [4.2.7](#).

Where the gift would likely bring the Councillor or Council into disrepute, the Councillor should return the gift immediately and complete the Gift, Benefit and Hospitality Declaration Form.

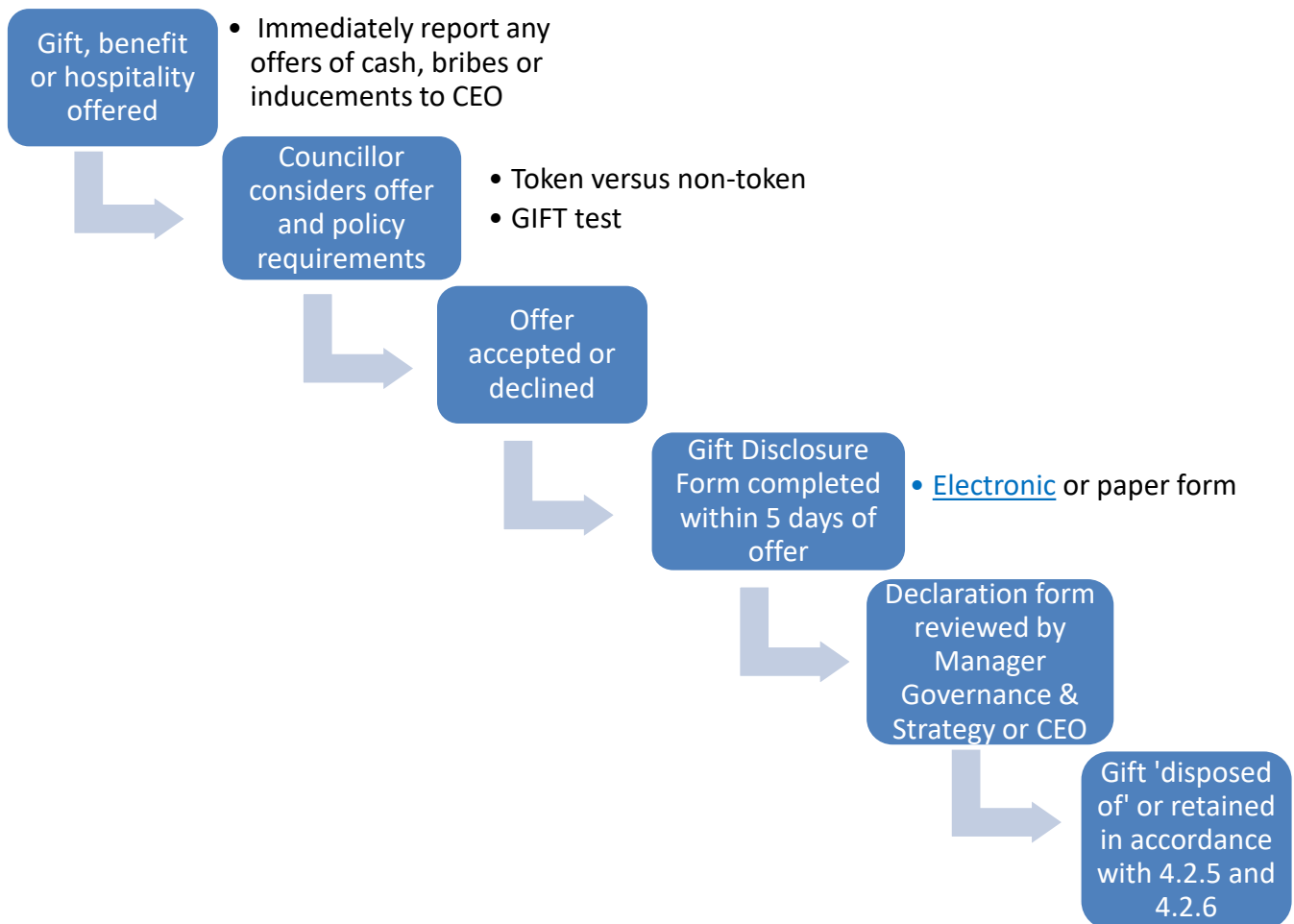
4.2.4 Ceremonial gifts

Ceremonial gifts are official gifts provided as part of the culture and practices of communities and government, within Australia or internationally. Ceremonial gifts are the property of the organisation, irrespective of value, and should be accepted by individuals on behalf of Council.

4.2.5 Process

Value of Gift	Declare	What to do with Gift
Up to \$50	Token gift – Submit Gift Declaration Form	Retain subject to endorsement by Manager Governance and Strategy
\$50-\$500	Non-token gift –Submit Gift Declaration Form	Decline offer if possible Return to donor CEO may endorse acceptance by Council of gift with legitimate business benefit
Over \$500	Non-token gift – Submit Gift Declaration Form	Decline offer or return to donor

4.2.6 Procedure



Details of all Gift Disclosure Forms included on Gifts, Benefits and Hospitality Register – published to website

4.2.7 Disposal of Gifts

If a gift does not have a public value the recipient may, at the discretion of the CEO, buy the gift from Council. The purchase price must be the manufacturer's wholesale value of the gift in the place of origin at the time of purchase as determined by the CEO. If there is difficulty in assessing the value, a valuation must be obtained by Council from an appropriately experienced person or body.

Where gifts are accepted because refusal may give offence or there was no opportunity to decline, they should be forwarded to the CEO who may dispose of these gifts by any of the following methods:

- Disposal by resolution of Council;
- Retention by the Council;
- Transfer to other public agencies or authorities;
- Transfer as a gift to a local recognised charitable, aid or non-profit organisation;
- Archival action by Museums Victoria or the State Library Victoria;
- Reduction to scrap; or
- Destruction.

The CEO may delegate decision making powers in relation to (b) to (g) above to the Director Business Transformation.

4.2.8 Exemptions

All gifts/hospitality received in the ordinary course of attending conferences, seminars, events and information sessions (including gifts for presentations) whereby Council has paid a fee for attendance are exempted from the scope of this policy. Such gifts/hospitality can be accepted as they are contained in the attendance fee and are offered equally to all attendees and as such do not need to be declared. Other exemptions include gifts / prizes / hospitality received as part of a sponsorship arrangement or 'official gifts and or donations' received by an individual on behalf of Council which will become a Council asset and should be listed on Council's asset register.

4.2.9 Bribes or inducements

If a Councillor believes they have been offered a bribe or inducement, the offer must immediately be reported to the CEO, Manager Governance and Strategy or Director Business transformation (who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-corruption Commission).

4.3 Breaches

Breaches of this policy will be dealt with in accordance with the *Councillor Code of Conduct*. Compliance with the policy will be monitored by the Manager Governance and Strategy and anomalies highlighted and brought to the attention of the CEO and/or the Mayor.

4.4 Reporting

Completed Gifts, Benefits and Hospitality Declaration Form are to be forwarded to the Manager Governance and Strategy for recording in the Gifts, Benefits and Hospitality register.

The Register of Gifts, Benefits and Hospitality will be maintained by the Governance unit and will be forwarded to the CEO, Director Business Transformation and Manager Governance and Strategy on a quarterly basis for review.

The Register of Gifts, Benefits and Hospitality will be made available for public inspection on Council's website and updated quarterly.

5 ROLES AND RESPONSIBILITIES

Party/parties	Roles and responsibilities	Timeline
Chief Executive Officer, Director Business Transformation and Manager Governance and Strategy	Ensure legislative requirements are met, research, coordinate consultation, review and updating of this policy.	Ongoing
Unit Manager Governance	<ul style="list-style-type: none">• Maintain the Register of Gifts, Benefits and Hospitality.• Ensure this Policy is available on Council's website and to all Councillors	Ongoing
Team Leader Governance	<ul style="list-style-type: none">• Provide a copy of the Register of Gifts, Benefits and Hospitality to the Manager Governance and Strategy, Director Business Transformation and CEO quarterly.• Place the quarterly update of the Register of Gifts, Benefits and Hospitality on Council's website.	Quarterly
Executive Assistant to Mayor and Councillors	Support Councillors to complete online Gift Form and / or provide hard copy of forms	As required

6 MONITORING, EVALUATION AND REVIEW

The Manager Governance and Strategy will ensure this policy is reviewed as required and as a result of changes to applicable legislation.

7 ASSOCIATED DOCUMENTS

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 (Victorian Public Sector Commission)

G	Giver	<p>Who is providing the gift, benefit or hospitality and what is their relationship to me?</p> <p>Does my role require me to select and/or manage suppliers, award grants, regulate industries or determine government 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?</p> <p>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?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>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?</p> <p>How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?</p>

- Councillor Code of Conduct
- Fraud and Corruption Prevention Policy
- Fraud and Corruption Control Plan
- Procurement Policy 2021-25

8 REFERENCES

- Local Government Act 2020 and associated regulations
- Gifts, Benefits and Hospitality Resource Suite, Victorian Public Sector Commission
- VLGA Improved governance - guide for Councils
https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0017/48032/Improved-governance-guide-for-councils-PDF-211215.pdf
- Investigation into the Regulation of Lobbying, Access and Influence in NSW -
<https://www.icac.nsw.gov.au/investigations/past-investigations/2021/operation-eclipse>