



Councillor Gift Policy

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| Version No. | 1.0, 16 February 2021 |
| Endorsement | Executive, 18 February 2021 Policy Review Panel, 2 March 2021 |
| Authorisation | Council, 15 March 2021 |
| Review date | 28 February 2025 |
| Responsible officer | Manager Legal and Governance |
| Policy owner | Governance Coordinator |

1. Purpose

The purpose of this policy is to set out both the law and Council’s position in relation to the receipt (or otherwise) of gifts by Councillors of the Council.

This policy is made in recognition of the requirements of the Act including the requirement to have such a policy. But moreover it is made in recognition of the importance Council places on its Councillors acting ethically, transparently and consistently, particularly in relation to matters which could give rise to a perceived (general) or actual (material) conflict of interest.

This policy aligns with the Overarching Governance Principles contained in the Act.

2. Scope

This policy applies only to Councillors.

This policy relates to all gifts offered, declined and/or received by Councillors except gifts received by Councillors from Melton City Council, such as at the end of a Mayoral or Councillor term.

3. Definitions

| Word/Term | Definition |
|----------------------|---|
| Act | means the <i>Local Government Act 2020</i> (Vic). |
| Conflict of Interest | <p>is set out in Part 6, Division 2 of the Act. Regard should be had to the Act itself.</p> <p>In summary, a conflict of interest may be a:</p> <ul style="list-style-type: none"> • general conflict of interest– a reasonable fair minded observer would think that the Councillor’s private interests could conflict with their public duty. This is a perceived conflict. ; • material conflict of interest– the Councillor or one of the persons/entities listed in the Act would receive a benefit or suffer a loss. This is an actual conflict. The benefit or loss may be direct or indirect, pecuniary (involve money) or non-pecuniary (not involve money). <p>A number of exemptions apply to circumstances which would otherwise be conflicts of interest. Again, regard must be had to the Act itself.</p> |

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| Disclosable Gift | <p>is set out in section 128 of the Act and 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—</p> <p>(a) if the Councillor held the office of Councillor at the time the gift was received; or</p> <p>(b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation—</p> <p>but does not include the value of any reasonable hospitality received by the Councillor at an event or function that the Councillor attended in an official capacity as a Councillor.</p> <p>As at the date of this policy no other amount has been prescribed in regulations.</p> |
| Gift | <p>has the same meaning as set out in section 3 of the Act.</p> <p>A 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—</p> <p>(a) the provision of a service (other than volunteer labour); and</p> <p>(b) the payment of an amount in respect of a guarantee; and</p> <p>(c) the making of a payment or contribution at a fundraising function.</p> <p>The definition in the Act is inclusive and not exhaustive. This means that the definition should be interpreted as widely as possible.</p> <p>Examples of gifts include:</p> <ul style="list-style-type: none"> • alcohol – a bottle or case of wine, bottle of spirits, carton of beer; • tickets to a sporting event; • use of a holiday home; • free or discounted travel; • free training at an event which otherwise incurs a fee; • door prize at an event which has been paid for by Council; • discounts • Christmas hamper • House painting, electrical work, plumbing work and any other trade or service. • Hospitality (except reasonable hospitality – see Reasonable Hospitality below • Ceremonial gifts including from official delegates or representatives from other Councils or organisations. |
| Reasonable Hospitality | <p>Reasonable Hospitality is not a gift. Reasonable Hospitality means hospitality that:</p> <p>(a) an independent fair minded observer would consider is appropriate and proportionate and not excessive; <u>and</u></p> <p>(b) that is received by the Councillor at an event or function that the Councillor attended in an official capacity as a Councillor.</p> |

It is noted that both elements must be present (reasonable and official capacity).

Examples of reasonable hospitality which are appropriate/proportionate and received by a Councillor in an official capacity include:

- Sandwiches and pastries (or similar) over a lunchtime meeting or at a free seminar;
- Coffee/tea and/or morning/afternoon tea at another organisation's premises before, after or during a meeting or seminar;
- A cup of coffee or tea at a café (unless the other person is a supplier, applicant in a current or future statutory process, involved in a current or future tender or EOI or would otherwise create a perceived (general) or actual (material) conflict of interest) where Council business is discussed.

Examples of hospitality that are not reasonable/proportionate /appropriate and/or that are not received by a Councillor in an official capacity and therefore constitute a gift include:

- A 'fine dining and wines' working lunch at another organisation's premises
- An offer to pay for a working lunch at a restaurant (with or without alcohol)
- An offer of a free spot on an industry golf day

4. Policy

A Councillor must not solicit a gift from any person or body for themselves or for any other person. To do so may constitute misuse of a Councillor's position, which is an offence under the Act.

A Councillor who is offered a gift will carefully consider, taking a reasonable yet conservative approach, the purpose of the gift, whether it relates to official Council business or the Councillor's role, the amount and proportionality of the gift and the likely public perception of the gift.

Finally, a Councillor must also consider the cumulative amount from one person or body over the preceding 5 years and whether or not the amount(s) make the gift a **Disclosable Gift**.

The Councillor will then decide, based on all the circumstances, whether or not the gift should be accepted.

Regardless of whether or not the gift is accepted, and regardless of the amount (or estimated amount) of the gift, the relevant declaration form must be completed, the details of which will be placed on a public register as soon as practicable after the end of the financial quarter. The gift declaration form must be completed within 7 business days of the date of the offer of the gift, non-acceptance of the gift, or receipt of the gift, whichever is the latter.

In addition, if the cumulative amount given by one person or body is \$500 in the preceding 5 years (excluding **Reasonable Hospitality** received in an official capacity as a Councillor), then the Councillor must declare this on his/her personal interests return and will result in a material conflict of interest in relation to any matter where that person or body has a direct or indirect interest in a matter, vis-à-vis the Councillor in receipt of the gift(s).

The policy sets out examples of Gifts that should be declined and examples of Gifts that may be accepted. These are examples only. Ultimately, it is up to the Councillor to make the final decision as to whether or not a gift should be declined, accepted or accepted and given to the organisation/Council.

Developed by the Victorian State Services Commission, the GIFT test is a good summary of Council's policy and the questions Councillors should ask themselves when deciding whether to accept or decline a gift (which includes a benefit or hospitality).

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| 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 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? 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> |

4.4. Examples of Gifts that should be declined

The following are examples of gifts that should be declined and actively avoided. These examples are not intended to be exhaustive

4.4.1. Gifts in any way connected to a statutory process

Any gift given where a statutory process or an administrative decision is on foot or planned or likely to be commenced in the next 6 months (e.g. planning permit application, infringement review application, permit application pursuant to the Local Law). This includes a *review* of a process/application/decision.

4.4.2. Gifts in any way connected to a tender or EOI process

Any gift given where an Expression of Interest (EOI) process or tender is on foot or planned or likely to be commenced in the next 6 months.

4.4.3. Money or equivalent

Any gift of money or which could be easily converted into or are the equivalent of money (this includes gift cards, shares, casino chips, winning betting slips).

Any offer of money which the Councillor reasonably believes has been offered by way of a bribe or inducement must immediately be reported to the Public Interest Disclosure Coordinator (currently the Manager Legal and Governance) or the CEO.

4.4.4. Fly buys, Frequent Flyer and other similar schemes

Any rewards points which will be for a Councillor's personal use or be collected in their personal name. This includes when taking airline travel or making purchases.

4.4.5. Anonymous Gifts

s137 Local Government Act 2020 - Anonymous gift not to be accepted

- (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.

If for any reason a Councillor finds themselves in possession of a gift when they do not know the name and address of the person who gave the gift, the Councillor can give the gift to the Council within 30 days to avoid committing an offence. The gift may be added to an end of year staff raffle, if perishable it may be used at a Council event or given to a local charity or foodbank. It may also be returned to the sender.

4.4.6. Gifts of a high value

Any gifts of a high value, including but not limited to, travel, accommodation, experiences or things that would be considered to be luxurious or exclusive.

4.4.7. Frequent gifts from the same source

Any gifts repeatedly given from the same source (including but not limited to free or discounted cups of coffee or other minor hospitality, free or discounted parking, sporting tickets or upgrades).

4.4.8. Alcohol

Alcohol should be declined unless to do so would embarrass the person giving the gift (e.g. on stage at a speaking event or given at Christmas or Easter) and provided that the total of the alcohol offered/received is not valued at more than \$50 (whether one or multiple bottles).

Any alcohol valued at more than \$50 should be declined, regardless of the circumstances. If a Councillor finds themselves in receipt of a gift of alcohol over \$50 that cannot be returned, then it should be donated to the organisation/Council.

4.4.9. Any other gift which the Councillor considers should be declined

Any other gift which the Councillor considers should be declined, taking a reasonable yet conservative approach, in consideration of the purpose of the gift, whether it relates to official Council business or the Councillor's role, the amount and proportionality of the gift and the likely public perception of the gift.

4.5. Examples of Gifts that may be accepted

The following are examples of gifts that may be accepted, taking into account all the circumstances. These examples are not intended to be exhaustive

4.5.1. Gifts of a low or token value

Small or token gifts, particularly if given in relation to Christmas, Easter or in respect of a speech given by a Councillor, including but not limited to a box of chocolates, flowers,

alcohol with a total value of less than \$50, stationary, calendar or diary, tie pin, badge, small donation in the name of the Councillor to a charity.

4.5.2. Hospitality which is Reasonable Hospitality – see definitions

Hospitality which is Reasonable Hospitality may be accepted but should not be accepted if one of the categories above apply (connected to a statutory process, connected to an EOI or tender, of a high value etc.).

For the avoidance of doubt it is noted again that Reasonable Hospitality is not a gift and does not go towards the threshold of a Disclosable Gift.

4.5.3. Any other gift which the Councillor considers should be accepted.

Any other gift which the Councillor considers should be accepted, taking a reasonable yet conservative approach, in consideration of the purpose of the gift, whether it relates to official Council business or the Councillor's role, the amount and proportionality of the gift and the likely public perception of the gift.

4.6. Accepted gifts may be donated to Council

A Councillor who accepts a gift, or finds themselves in receipt of a gift may donate the gift to the organisation/Council. This should be noted on the gift declaration form. What Council does with the gift will vary depending upon the gift itself. The gift may be added to an end of year staff raffle, if perishable it may be used at a Council event or given to a local charity or foodbank. It may also be returned to the sender.

4.7. Gift Declaration Forms and Register

Regardless of whether or not the gift is accepted or declined and regardless of the amount or estimated amount of the gift, a gift declaration form must be completed. Information from completed declaration forms will be placed on the Gift Register on Council's website in accordance with Council's **Public Transparency Policy**.

4.7.1. Gift Declaration Form

The Gift Declaration Form is at **Appendix 1**. The form will be available from the Councillor portal. The form should be completed within 7 business days of the receipt or decline of the gift.

4.7.2. Gift Declaration Register

Information from completed forms will be up uploaded to the Councillor Gift Register on a quarterly basis, as soon as possible after the end of a quarter. The Councillor Gift Register will be available on Council's website in accordance with the Act, any prescribed regulations and Council's **Public Transparency Policy**.

At a minimum the register will include:

- the name of the Councillor
- a description of the gift
- the estimated monetary value of the gift
- the name of the person who gave the gift;
- if the gift was given on behalf of another person or body, the name of that person or body;
- the classification of the gift provider;
- whether the gift was accepted or declined or accepted and then donated to Council.

An example of the register is at **Appendix 2**.

5. Responsibility /Accountability

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| 5.1 | Individual Councillors <ul style="list-style-type: none">• Responsible for complying with the Act and this policy and making a decision in accordance with both as to whether or not to accept or decline an offer of a gift.• Responsible for completing a gift declaration regardless of whether or not the gift is declined or accepted.• Responsible for reporting any suspected bribe or inducement to Council's Public Interest Disclosure Coordinator (currently the Manager Legal and Governance) or the CEO who will take action in accordance with Council's Public Interest Disclosure Procedure. |
| 5.2 | Manager Legal and Governance <ul style="list-style-type: none">• Responsible for keeping abreast of legislative updates relevant to this policy. |
| 5.3 | Governance Coordinator <ul style="list-style-type: none">• Responsible for uploading the gift declaration forms to the Councillor Portal and updating the gift register on Council's website on a quarterly basis. |

6. References and links to legislation and other documents

| Name | Location |
|--|---|
| Local Government Act 2020 | www.legislation.vic.gov.au |
| Public Transparency Policy | www.melton.vic.gov.au |
| Public Sector Commission 'Gifts, Benefits and Hospitality resource suite' (June 2018) | https://vpsc.vic.gov.au/resources/gifts-benefits-and-hospitality-resource-suite/?_ga=2.3353520.18856138.1613388524-1047080612.1595479743 accessed on 16 February 2021 |
| Local Government Victoria, via Engage.com 'In the Public Interest. A conflict of interest guide for councillors, delegated committee members and council staff' (October 2020) marked 'working draft'. | https://engage.vic.gov.au/local-government-act-2020/co-design-priorities-conflict-interest#:~:text=The%202020%20Act%20uses%20the,external%20members%20of%20delegated%20committees . Accessed on 16 February 2021. |

Above links are correct as at date of Policy.

Appendix 1



Councillor Gift Declaration Form

COUNCILLOR DETAILS

| | |
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| Name: | |
| Phone: | |

GIFT DETAILS

| | |
|---|----------------------|
| Full Name of Provider: | |
| Classification of Provider: <i>(e.g. Resident, Business, Community Group, Developer)</i> | |
| Description of Gift received: | |
| Reason for Gift <input type="checkbox"/> Services provision <input type="checkbox"/> Thank you gift – please state what prompted the ‘thank you’, if known. <input type="checkbox"/> Celebration gift (Birthday, Christmas etc.) <input type="checkbox"/> Unsolicited <input type="checkbox"/> Other (please state) | Supporting comments: |
| Date received: | |
| Estimated value (\$): | |
| Source of estimate (Please list the specific website and date of accessing): | |

DETAILS OF WHETHER GIFT IS RETAINED BY COUNCILLOR OR DONATED

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| Gift retained by Councillor (Y/N): | |
| Gift donated to: | |

DECLARED BY COUNCILLOR

| | |
|-----------|--|
| Signature | |
| Dated | |

REVIEWED BY CHIEF EXECUTIVE OFFICER

| | |
|-----------|--|
| Signature | |
| Dated | |

Send completed forms to Governance

| | |
|------------------------|--|
| Date received | |
| Input on Gift Register | |

PRIVACY NOTICE: Please note that your gift, benefit or hospitality declaration is recorded in the Councillor Gift Register. Please also note that the Councillor Gift Register is published on the Council website in accordance with Council’s Public Transparency Policy

Definitions

| Word/Term | Definition |
|------------------------|---|
| Gift | <p>has the same meaning as set out in section 3 of the Act.</p> <p>A 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—</p> <ul style="list-style-type: none"> (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. <p>The definition in the Act is inclusive and not exhaustive. This means that the definition should be interpreted as widely as possible.</p> <p>Examples of gifts include:</p> <ul style="list-style-type: none"> • alcohol – a bottle or case of wine, bottle of spirits, carton of beer; • tickets to a sporting event; • use of a holiday home; • free or discounted travel; • free training at an event which otherwise incurs a fee; • door prize at an event which has been paid for by Council; • discounts • Christmas hamper • House painting, electrical work, plumbing work & any other trade or service. • Hospitality (except Reasonable Hospitality – see below) • Ceremonial gifts including from official delegates or representatives from other Councils or organisations. |
| Reasonable Hospitality | <p>Reasonable Hospitality is not a gift. Reasonable Hospitality means hospitality that:</p> <ul style="list-style-type: none"> (a) an independent fair minded observer would consider is appropriate and proportionate and not excessive; and (b) that is received by the Councillor at an event or function that the Councillor attended in an official capacity as a Councillor. <p>It is noted that both elements must be present (reasonable and official capacity).</p> <p>Examples of reasonable hospitality which are appropriate/proportionate and received by a Councillor in an official capacity include:</p> <ul style="list-style-type: none"> • Sandwiches and pastries (or similar) over a lunchtime meeting or at a free seminar; • Coffee/tea and/or morning/afternoon tea at another organisation's premises before, after or during a meeting or seminar; • A cup of coffee or tea at a café (unless the other person is a supplier, applicant in a current or future statutory process, involved in a current or future tender or EOI or would otherwise create a perceived (general) or actual (material) conflict of interest) where Council business is discussed. <p>Examples of hospitality that are not reasonable/proportionate /appropriate and/or that are not received by a Councillor in an official capacity and therefore constitute a gift include:</p> <ul style="list-style-type: none"> • A 'fine dining and wines' working lunch at another organisation's premises • An offer to pay for a working lunch at a restaurant (with or without alcohol) • An offer of a free spot on an industry golf day |

