

Councillor Gift and Hospitality Policy

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1 Document Information

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RESPONSIBLE GENERAL MANAGER	General Manager Corporate Services
RESPONSIBLE MANAGER (Policy Owner)	Manager Governance
ADOPTED BY	Council
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VERSION HISTORY	This Policy Replaces 12/95318

2 Purpose

Section 138 of the Local Government Act 2020 stipulates that Council must adopt a Councillor Gift Policy. This policy establishes a framework for the acceptance and declaration of gifts and hospitality by Councillors.

3 Definitions

the Act means the Local Government Act 2020

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.

donation period means the period –

- (a) commencing on whichever is the later of –
 - i. 30 days after the last general election for the Council; or
 - ii. 30 days after the last election for the Council at which the person required to give the election campaign donation return was a candidate; and

ending 30 days after election day in the current election for the Council.

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;
- in the case of the Melbourne City Council, \$500 or a higher amount or value prescribed by regulations made under the City of Melbourne Act 2001;

material conflict of interest a relevant person 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.

The benefit may arise or the loss incurred—

- (a) directly or indirectly; or
- (b) in a pecuniary or non-pecuniary form.

4 Scope

This policy applies to all Councillors of the Kingston City Council where gifts are offered to, or received by, Councillors from sources external to Council.

5 Policy Details

5.1 Council's Policy Statement

Councillors have a responsibility to act with integrity in their interactions with the community and business.

Acceptance of gifts, benefits or hospitality may influence or appear to influence the actions of Councillors and could bring them and the Council into disrepute. To prevent allegations of potential or actual bias, or to potentially expose themselves to conflicts of interest, Councillors must be aware of their responsibilities in relation to gifts and hospitality.

This policy enhances the legislation by placing extra obligations on each Councillor by:

- Clarifying the types of gifts that may be accepted (refer section 5.3.3 and 5.3.4)
- Requiring the declaration of all gifts over the value of \$50 that are accepted or declined in a Councillor Gift and Hospitality Register (refer section 6)

This policy encourages Councillors to not only consider their legal obligations but also the ethical impact of accepting gifts on their and Council's reputation. It aims to ensure that:

- Council activities are not influenced, or an impartial, fair-minded person would not consider the Councillor to be influenced, by the receipt of goods, benefits or hospitality
- Decision making by Councillors is impartial and promotes public confidence
- Gifts that are accepted or declined are disclosed and managed in a fully transparent manner.

5.2 Roles and Responsibilities

Councillors should at all times be aware of the Local Government Act provisions regarding gifts especially in relation to conflict of interest, election donations and personal interest returns.

Councillors will take action as required by this policy.

The Governance Department will be responsible for maintaining the Councillor Gift and Hospitality Register under this policy.

Manager Governance is the appropriate officer for further advice relating to this policy.

5.3 Overarching Principles

The objective of the principles below is to encourage behaviours that will earn and sustain community and government confidence and trust.

5.3.1 *Acceptance of gift or hospitality must not compromise the public responsibility of the Councillor*

When Councillors are offered gifts or hospitality, they must take into consideration the following:

- Whether an impartial, fair-minded person would consider the gift is intended to, or likely to, influence them in the fair, impartial and efficient discharge of their duties as a Councillor.
- Whether an impartial, fair minded person would determine a conflict of interest with past, present or future duties or where the object of the gift or hospitality is to maintain or return a favour.

The below table provides a useful reference to appropriately respond to a gift offer:

G	Giver	Who is offering the gift, benefit or hospitality and what is their relationship to me? Does my role require me to award contracts or grants, approve planning matters or determine Council 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 token of appreciation or 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?

5.3.2 Councillors must comply with their legislative responsibilities regarding gifts and hospitality

For further information for Councillor's legislative responsibilities in regard to gifts, refer to section 5.4 of this Policy.

5.3.3 Token gifts may be generally accepted

Councillors may accept gifts when the gift would generally be regarded as a small gesture of appreciation of a token value to a maximum of \$50 and an impartial, fair-minded person would not consider the gift to influence the Councillor's actions. Examples of token value gifts:

- Chocolates or other like confectionary
- Flowers
- Modest bottle of wine
- Inexpensive pens or stationery

Where a Councillor receives multiple token gifts from the same person or organisation, the cumulative value of the offers, or an impartial, fair-minded person would consider that they may influence a Councillor, may result in them becoming non-token and must be managed accordingly.

5.3.4 All gifts over the value of \$50 should be declined unless certain circumstances apply

Offence or embarrassment

Gifts may be accepted if non-acceptance of the gift may cause offence or embarrassment (i.e. overseas dignitary visits, community functions or gift is culturally sensitive) in which case the gift may be accepted on behalf of Council and becomes the property of Council.

Conferences, events or information sessions

All gifts/gift bags received in the ordinary course of attending conferences, events or information sessions where the Council has paid for the attendance. Such gifts can be accepted as they are contained in the attendance fees and are offered equally to all attendees. This includes food and beverages provided at the conferences, minor value corporate branded merchandise (such as pens, notepads), events or information sessions.

5.3.5 *Hospitality to only be accepted if it is reasonable in the circumstances*

Reasonable hospitality may be accepted where the Councillor has determined that:

- there is clear value to the work of Council (for example, building relationships with community groups)
- it clearly relates to the responsibility of a Councillor to attend the relevant function or event (e.g. in which the invitation to attend the event has been processed through formal Council mechanisms, such as consideration of invitations at Councillor briefings)
- it does not advantage the gift giver in dealings with Council.

Hospitality which is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor or an impartial, fair-minded person would determine a conflict of interest would arise should be declined.

5.4 Legislative Requirements

The Local Government Act 2020 (the Act) imposes obligations on Councillors about receiving gifts. These obligations require Councillors to consciously:

- Implement prescribed declarations about any gift over the gift disclosure threshold
- Assess whether the acceptance of the gift gives rise or will likely give rise in the future to a material conflict of interest
- Declare gifts in the Councillor Gifts and Hospitality Register.

5.4.1 *Anonymous gift not to be accepted*

Under section 137 of the Act, Councillors 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.

Non-compliance with this section carries a penalty of 60 penalty units. In addition, if a Councillor is found guilty of this breach, the Councillor must pay to the Council the amount or value of the gift accepted in contravention of that breach.

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 if the Councillor disposes of the gift to the Council within 30 days of the gift being received.

5.4.2 Conflict of Interest

Under section 127 of the Act, gifts that are accepted and accumulate to an amount of \$500 or more (i.e. disclosable gift) creates a material conflict of interest in a matter if they have received a disclosable gift from a person who would gain a benefit or suffer a loss depending on the outcome of the matter in which the Councillor is concerned and that will require a power to be exercised, or a duty or function to be performed, or a decision to be made by the Council, delegated committee or community asset committee to which the Councillor is a member of.

5.4.3 Declaration of gifts in Personal Interest Returns

Any gifts received by Councillors with a value of which equals or exceeds \$500 must be disclosed in a Personal Interest Return. These include gifts in the form of goods and services and multiple gifts that together equal or exceed that amount. The details to be disclosed must include:

- the description of the gift; and
- the monetary value of the gift; and
- the name of the person who gave the gift; and
- if the gift was given on behalf of another person or body, the name of that person or that body.

The gift must be disclosed in the next scheduled Personal Interest Return.

6 Declaration of Gifts in the Councillor Gifts and Hospitality Register

All gifts over the value of \$50 (whether accepted or declined) and disclosable gifts must be declared and details included on the Councillor Gifts and Hospitality Register which is administered by the Governance Department. It is the responsibility of a Councillor wishing to declare a gift to complete the appropriate form and forward it to the Governance Department including the following information:

- The type of gift;
- Whether the gift was accepted or declined;
- Who the gift was received from; and
- The approximate value.

The Councillor Gifts and Hospitality Register will be made available on Council's website in accordance with the Public Transparency Policy.

7 Complaints received in relation to this policy

Any complaints received in relation to this policy will be considered in accordance with Chapter 6 of the Councillor Code of Conduct.

8 Delegation Authority and Decision Guidelines

Nil

8.1 Delegations/Authorisations

Nil

8.2 Exemptions

Nil

8.3 Human Rights Charter

This policy has been reviewed against and complies with the Charter of Human Rights and Responsibilities Act 2006.

9 Related Documents and Resources

Legislation

- Local Government Act 2020

City of Kingston Documents

- Councillor Code of Conduct
- Public Transparency Policy

Resources / External Documents

- Gifts, Benefits and Hospitality Policy Guide – Victorian Public Sector Commission – June 2018
- DELWP – Model Policies for Agencies and Boards – Gifts, Benefits and Hospitality – June 2019
- Ombudsman’s Report – Conflict of Interest in Local Government – March 2008

10 Transition arrangements

Nil.