

THE CITY OF  
GREATER GEELONG

# COUNCILLOR GIFT POLICY

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**VERSION: 1**

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**Authorising Officer:** Chief Executive Officer

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# Contents

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<b>Introduction</b> .....	<b>3</b>	Reporting.....	12
Purpose.....	3	Inconsequential Gifts.....	12
Scope.....	3	Gifts, Benefits and Hospitality.....	12
<b>Definitions</b> .....	<b>4</b>	Gifts Register.....	12
<b>Principles</b> .....	<b>7</b>	Training.....	12
Obligations.....	7	<b>References</b> .....	<b>14</b>
Public interest.....	7		
Integrity.....	7		
Risks.....	7		
Processes.....	7		
<b>Policy</b> .....	<b>8</b>		
Prohibited Gifts.....	8		
Gift Disclosure threshold.....	8		
Anonymous Gifts.....	8		
Conflict of Interest.....	9		
Money or equivalent.....	9		
Regulatory processes.....	9		
Bequests/Wills.....	9		
Rewards programs.....	9		
Procurement & Tender Process.....	9		
Recording prohibited gift offers.....	9		
Consequence of accepting prohibited gifts.....	9		
Attempts to Bribe.....	9		
No Soliciting of Gifts.....	10		
Inconsequential Gifts.....	10		
Hospitality.....	10		
Conflict of Interest.....	10		
Direct or indirect.....	10		
Pecuniary or non-pecuniary.....	10		
Reputation Risk – The GIFT Test.....	11		
Donations.....	11		
<b>Implementation</b> .....	<b>12</b>		

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# Introduction

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## **PURPOSE**

To establish guidelines for the acceptance of gifts or hospitality by Councillors and Delegated Committee members in order to avoid any potential conflicts of interest or breaches of the *Local Government Act 2020*.

The objective is to minimise Gift Offers made or accepted. This helps to protect and promote public confidence in the integrity of the Council.

Gift offers are discouraged and must not be accepted unless there is clear justification, consistent with the prohibitions in this policy, to do so.

## **SCOPE**

This policy applies to all gifts or hospitality offered to, or received by, Councillors and Delegated Committee members.

Internal gifts received by Councillors from the City are not covered by this policy and do not need to be declared; for example, recognition gifts after the end of the Mayor term or Councillor term.

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# Definitions

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This section defines the key terms used in this policy.

## **BRIBE**

A bribe is an offer of money or other inducement made to influence a person in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.

## **CASH**

Means money, or vouchers which are readily convertible.

## **CITY**

The City of Greater Geelong organisation led by the Chief Executive Officer (CEO).

## **COMMON COURTESY**

Common courtesy is polite, basic and modest conduct. It does not raise a conflict of interest. Whether a gift offer exceeds common courtesy depends on the circumstances. That is, what is offered, by whom, to whom, when and why? Examples include a cup of coffee or a modest working lunch at another organisation's premises (unless there is a conflict of interest). Alcohol is not common courtesy.

## **CONFLICT OF INTEREST**

The Act requires Councillors and delegated committee members to declare general or material conflicts of interest.

A conflict of interest is a conflict between a person's public duty to act in the best interests of the City and their private interests, whether it is financial or non-financial. A conflict exists whether it is a:

- **real conflict of interest** – it currently exists;
- **potential conflict of interest** – it may arise, given the circumstances; or
- **perceived conflict of interest** – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the person's performance of their duty to the City, now or in the future.

A gift offer that involves a conflict of interest, whether real, potential or perceived can:

- introduce a personal interest that did not previously exist.
- encourage a person to prioritise a personal gain over their requirement to act in the public interest.
- create an intimidation threat from the possibility of a gift offer being made public.

The existence and significance of a conflict will depend on the nature, value, and intent of the gift offer.

## **COUNCIL**

The City of Greater Geelong Council comprised of elected Councillors and led by the Mayor.

## **DIRECT OR INDIRECT GIFT OFFERS**

- A gift offer may be direct or indirect.
- Direct gift offers are those made directly to a person.
- An indirect gift offer is a gift offer made to a relative or close associate of a person.

## **GIFTS**

Section 3 of the Act defines a "gift" as "*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*".

For practical purposes, a transfer of any type of property, or property entitlement, from one person to another that isn't paid for (in whatever way) at its full monetary value is a gift. This includes gifts as services, gifts in kind and donations at fundraisers.

Supporting this definition, gifts are unsolicited and meant to convey a feeling of goodwill on behalf of the giver where there is no expectation of favours or repayment.

It includes free or discounted items or services, benefits or hospitality that exceeds common courtesy. Examples include:

- a bottle of wine or spirits
- tickets to sporting events
- a gift voucher
- corporate hospitality at a corporate facility
- discounted products for personal use
- use of a holiday home
- free or discounted travel
- free training excursions
- a door prize or voucher if an individual has not personally paid to attend.

## **GIFT DISCLOSURE THRESHOLD**

\$500 or higher amount as prescribed in the Regulations.

## **DISCLOSABLE GIFT**

Any gift valued at or above the gift disclosure threshold that a Councillor or member of a delegated committee received in the preceding five years.

If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.

A gift includes any good or service (other than volunteer labour) that is provided for free or at an inadequate price. It includes a payment or contribution at a fundraising function.

## **HOSPITALITY**

Hospitality is considered a gift unless the hospitality was reasonable and you were attending the function or event in an official Council capacity.

- Reasonableness test: the hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive.
- Official capacity test: it must clearly be your duty as a Councillor to attend the relevant function or event.

The following offers exceed common courtesy:

- a 'fine dining and wines' working lunch at another organisation's premises
- an offer to pay for a working lunch at a café
- an offer of a free spot at an industry golf day.

The following offers do not exceed common courtesy:

- a cup of coffee at another organisation's premises
- a modest working lunch, such as sandwiches and pastries, at another organisation's premises
- a cup of coffee at a café (unless there is a conflict of interest).

## **PROHIBITED GIFT OFFER**

A gift that must be declined and reported in accordance with this policy

## **REPORTABLE GIFT OFFER**

A reportable gift offer is any gift, hospitality or benefit offer.

A gift offer of a prohibited gift is a reportable gift offer.

## **THE ACT**

*Local Government Act 2020.*

## **THE REGULATIONS**

*Local Government (Governance and Integrity) Regulations 2020.*

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# Principles

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## **OBLIGATIONS**

Councillors and Delegated Committee members act in accordance with their respective obligations and with good governance practice.

## **PUBLIC INTEREST**

Councillors and Delegated Committee members act in the public interest, in compliance with this policy.

## **INTEGRITY**

The City fosters a culture of integrity.

The City provides support for persons to raise any unresolved gift offer issues.

## **RISKS**

The City assesses, manages and monitors gift offer risks.

## **PROCESSES**

Processes are in place to ensure that Councillors and Delegated Committee members are aware of the requirements of this policy.

# Policy

Council is committed to being open and transparent in its endeavours to achieve the best outcomes for the local community. The acceptance of gifts, benefits and hospitality can create perceptions that a Council's integrity has been compromised.

Councillors and Delegated Committee members must:

- be ethical, fair and honest in the conduct of their official duties;
- be aware that fraudulently receiving a gift, including hospitality, is an offence under both common law and the Act;
- be fully accountable and responsible for their actions and ensure that the methods and processes they use to arrive at decisions are beyond reproach and can withstand public scrutiny;
- not seek, solicit, or use their position with Council to obtain gifts or benefits from external organisations or individuals;
- ensure that a person, company or organisation is not placed in a position in which they feel obliged to offer gifts or hospitality in order to secure or retain Council business; and
- report any incidences where a bribe and/or cash is offered in accordance with Council's Public Interest Disclosure Procedures.

## PROHIBITED GIFTS

Any gifts that are inconsistent with community values and could bring a Councillor's integrity, or that of the Council, into disrepute (eg. that accepting a gift would be perceived as an endorsement of a product or service) must be declined. All Councillors and Delegated committee members must refuse all of the gift offers outlined below.

### Gift Disclosure threshold

Councillors and Delegated Committee members are prohibited from accepting gifts that equal or exceed the gift disclosure threshold (\$500) unless they know the name and address of the person making the gift.

### 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.

If for any reason a Councillor finds themselves in possession of a gift when they don't 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.

## **Conflict of Interest**

Councillors and Delegated Committee members are prohibited from accepting a gift that creates a conflict of interest (real, potential or perceived).

## **Money or equivalent**

Councillors and Delegated Committee members are prohibited from accepting money, This includes gift cards (eg. gift vouchers) or those easily converted into money (eg. shares).

## **Regulatory processes**

Where a Council regulatory process is underway (eg. a planning permit application; infringement appeal) a Councillor is prohibited from accepting any gifts from any individual or group that may be involved with the permit application or regulatory activity.

## **Bequests/Wills**

Councillors are prohibited from accepting any bequests resulting from their position with Council. Arrangements may be made to donate the bequest to a charitable institution in the name of the donor or returned to the immediate family.

## **Rewards programs**

Councillors must not collect rewards for personal use via rewards programs for any Council related transactions (eg. flybuys, Frequent Flyers, etc). This relates to any claims for reimbursement of expenses incurred in accordance with the Council Expenses Policy.

## **Procurement & Tender Process**

Councillors are prohibited from accepting 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.

Councillors must not visit a current supplier's premises without invitation and when not on official business.

## **Recording prohibited gift offers**

To assist the Council in monitoring the frequency and nature of prohibited gifts, it is essential that all such offers are disclosed. Councillors and Delegated Committee members must lodge a gift declaration form and details will be included in the register.

## **Consequence of accepting prohibited gifts**

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.

## **ATTEMPTS TO BRIBE**

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

- immediately notify the CEO and lodge a gift declaration form, so their refusal can be properly recorded;
- report the matter to the CEO or report the matter as a public interest disclosure in accordance with Council's Public Interest Disclosure Procedures.

A Councillor who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must notify the CEO or report the matter in accordance with Council's Public Interest Disclosure Procedures.

## **NO SOLICITING OF GIFTS**

Councillors must not solicit gifts for themselves or anyone else, in any form. To do so may constitute misuse of their position. It may also constitute corruption and lead to criminal prosecution.

## **INCONSEQUENTIAL GIFTS**

Inconsequential gifts may be accepted and must be recorded on Council's Gift Register.

An example of an inconsequential gift is an object with no monetary value such as flowers cut from the person's garden or homemade baked goods.

It may also be a souvenir received from a person or company as a result of attending a seminar or conference held, conducted or sponsored by them, for which an appropriate fee was paid to attend. An example of this is a tie, pen or mug.

Door prizes and raffle prizes at functions or conferences are not considered a gift if the Councillor or Delegated Committee member has personally paid for their attendance, or where they have paid for the raffle ticket.

## **HOSPITALITY**

Councillors and Delegated Committee members, in the normal course of their duties, will from time to time receive invitations of hospitality to attend various functions and events.

Where such hospitality is modest in nature and provides an opportunity to undertake business of a common purpose, it may be appropriate to accept such invitations. Where practical, approval should be obtained prior to the attendance.

Examples:

- A business meeting to discuss matters of Council business at which a meal or refreshments are served; or
- Attendance as a Councillor or Delegated Committee member on official Council business.

If, however, acceptance of the hospitality is likely to create the impression of compromised impartiality of the Councillor or Delegated Committee member, or could be perceived as a conflict of interest, the offer of hospitality should be politely declined.

Networking and maintaining stakeholder relationships would not be considered official Council business.

Hospitality does not constitute a gift if it is paid for by Council, or by the person receiving the hospitality.

## **CONFLICT OF INTEREST**

Councillors and Delegated Committee members should be aware that any gift or hospitality in the amount of \$500, received from one source, over a five year period, will give rise to a conflict of interest, which must be declared in accordance with the Governance Rules and the Act.

The Act states that a benefit or loss, for material conflicts of interest, includes benefits or losses that are:

- direct or indirect; and
- in a pecuniary or non-pecuniary form.

### **Direct or indirect**

A direct benefit or loss includes where the affected person is the immediate recipient or suffers the loss themselves. An indirect benefit or loss includes where the person is affected because of the impact on another person or body, or as an indirect effect of a process.

### **Pecuniary or non-pecuniary**

A pecuniary benefit or loss is one that can be measured in money. However, a benefit or loss does not have to be pecuniary.

## Reputation Risk – The GIFT Test

Deciding whether to accept an offer, Councillors and Delegated Committee members should first consider if the offer could influence or 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.

Developed by the Victorian State Services Commission, the GIFT test is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

<b>G</b>	<b>Giver</b>	<b>Who is providing the gift, benefit or hospitality and what is their relationship to me?</b> 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?
<b>I</b>	<b>Influence</b>	<b>Are they seeking to gain an advantage or influence my decisions or actions?</b> 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?
<b>F</b>	<b>Favour</b>	<b>Are they seeking a favour in return for the gift, benefit or hospitality?</b> 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?
<b>T</b>	<b>Trust</b>	<b>Would accepting the gift, benefit or hospitality diminish public trust?</b> How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?

## DONATIONS

The City may be offered or bequeathed gifts or donations. Such gifts include:

- real property
- donations
- artwork
- free training and services.

The City does not encourage and will not automatically accept a gift or donation. Given the potential for a vast range in terms of quality, relevance and the ongoing responsibility and maintenance requirements, Council reserves the right to decline an offer.

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# Implementation

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## REPORTABLE GIFT OFFERS

Councillors or Delegated Committee members who receive a reportable gift offer must, regardless of whether the gift is accepted:

- verbally disclose the gift offer to the Mayor or CEO (in the case of the Mayor) as soon as practicable;
- lodge a properly completed gift offer declaration within fourteen days of receiving the gift offer.

## REPORTING

### Inconsequential Gifts

Shall be recorded on the declaration form and completed forms are to be forwarded to the Governance Unit.

### Gifts, Benefits and Hospitality

Details of gifts, benefits or hospitality shall be recorded on the declaration form. The Mayor in respect of Councillors, and the CEO in respect of the Mayor, will determine the most appropriate treatment of the gift or hospitality. Completed forms are to be forwarded to the Governance Unit for recording in the Gifts Register.

### Gifts Register

A Gifts Register will be maintained by the Governance Unit and reported to the Audit & Risk Committee every six months. This register will be made publicly available and contains the following information:

- date (reported and received);
- description of the gift, benefit or hospitality;
- estimated value;
- recipient;
- provider name (individual or company); and
- treatment.

### Biannual Personal Interest Returns

Details of any gifts received in the period since lodging a Personal Interests Return, where the value equals or exceeds \$500 or the gifts in form of goods or services and multiple gifts equal or exceed that amount must be declared in Biannual Personal Interest Returns.

## TRAINING

The City must ensure that all Councillors and Delegated Committee members receive induction training and refresher training in the operation of this policy and associated procedures, including:

- information about the aim, principles, accountabilities, and requirements of this policy;
- practical guidance on how to comply with this policy; eg. where to obtain gift offer declaration forms and how to refuse a gift without giving offence;
- advice that a breach of this policy may constitute a breach of a binding code of conduct or may constitute a bribe or a form of corruption.

## FURTHER INFORMATION

A conflict of interest resulting from the acceptance of a gift, benefit or hospitality is not always clear to those who have them. Councillors who are unsure about the acceptance of a gift, benefit or hospitality, or the application of this policy, should speak with the CEO or Director, Governance, Strategy & Performance.

Seeking advice does not abrogate an individual's responsibility to make the right decision.

## QUALITY RECORDS

Quality Records shall be retained for at least the period shown below.

Record	Retention / Disposal Authority	Retention Period	Location
Gifts, Benefits and Hospitality declaration forms	Governance Unit	As per PROV	EDRMS
Gifts Register	Governance Unit	As per PROV	EDRMS

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# References

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- Councillor Code of Conduct
- Council Expenses Policy
- Gifts, benefits and hospitality - Responding to gift offers - model policy  
Department of Environment, Land, Water and Planning, Melbourne (December 2016)
- Governance Rules
- IBAC Local Government Integrity Frameworks review (2019)
- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- Local Government Victoria – Draft Conflict of Interest Guide (2020)
- Public Interest Disclosures Procedure