

Title	Councillor Gifts and Hospitality Policy
Description	A policy to provide guidance and direction to Councillors in relation to the treatment of offers of gifts, benefits and hospitality.
Category	Council
Type	Policy
Approval authority	Council
Responsible officer	Manager Governance and Integrity
Approval date	
Review cycle	Every four years
Review date	
Document Reference	D09/51567
Human Rights compatibility	This policy has been assessed and is compatible with the Victorian Charter of Human Rights and Responsibilities

1. Purpose

1.1. The purpose of the Councillor Gifts and Hospitality Policy is to:

- 1.1.1. provide guidance and direction to Councillors in relation to the treatment of offers of gifts, benefits and hospitality;
- 1.1.2. ensure integrity and transparency in the treatment of gifts and hospitality provided to or offered to Councillors;
- 1.1.3. provide procedures for the maintenance of a Councillor gift register;
- 1.1.4. satisfy Council's obligation under section 138 of the Local Government Act 2020 to adopt a Councillor gift policy.

2. Scope

2.1. This policy applies to:

- 2.1.1. offers of gifts, benefits or hospitality made to Councillors in their capacity as a Councillor of the City of Yarra.

2.2. This policy does not apply to:

- 2.2.1. offers of gifts or hospitality made to Councillors where the offer is not related to their role at Council. For example, a gift given to a Councillor by a family member or personal friend is not covered by this policy, unless it relates to Council business¹.
- 2.2.2. offers of gifts or hospitality made to Councillors from other Councillors or from Council itself.

3. Definitions

In this policy:

¹ Note that a gift received in a personal capacity may still trigger other disclosure obligations, such as the declaration of a conflict of interest, its inclusion on a personal interests return and/or the requirement to disclose certain election campaign donations.

Act	means the Local Government Act 2020.
Councillor	means a Councillor of the Yarra City Council.
Chief Executive Officer	means the Chief Executive Officer (or Acting Chief Executive Officer) of the City of Yarra or an officer delegated by them to fulfil the obligations of this policy.
Gift	has the same meaning as defined in the <i>Act</i> , and 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 the provision of a service (other than volunteer labour), the payment of an amount in respect of a guarantee, and the making of a payment or contribution at a fundraising function.
Gift Disclosure Threshold	has the same meaning as defined in the <i>Act</i> , and means \$500 or a higher amount or value prescribed by the regulations.
Token Gift Threshold	is calculated at an amount of one tenth of the <i>Gift Disclosure Threshold</i> which, at the time of writing this report, results in a threshold of \$50.

4. Policy

4.1. Legislative context

4.1.1. Section 138 of the *Act* provides that Council must adopt a Councillor gift policy, and that the adopted policy must include:

- procedures for the maintenance of a gift register; and
- any other matters prescribed by the regulations.

4.1.2. At the time of adopting this policy, no further matters have been prescribed.

4.2. Gifts to be declined

4.2.1. With the exception of gifts described in section 4.4 (token gifts), 4.5 (reasonable hospitality) and 4.6 (gifts on behalf of Council), *Councillors* cannot accept any gifts offered to them in their capacity as a councillor of the City of Yarra.

4.2.2. Wherever possible, gifts offered to *Councillors* should be refused at first instance.

4.2.3. Where gifts cannot be refused at first instance (such as gifts received by mail, or gifts thought at first to be of token value), they must be surrendered as soon as practicable to the *Chief Executive Officer*.

4.2.4. *Councillors* must disclose the offer of any gift refused or surrendered under this section to the *Chief Executive Officer*.

4.2.5. The *Chief Executive Officer* must ensure that all disclosures made by *Councillors* under this section are recorded in the Councillor Gift Register.

4.3. Gifts cannot be solicited

4.3.1. *Councillors* cannot solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position, regardless of value.

4.4. Acceptance of token gifts

4.4.1. Token gifts with a value of up to the *Token Gift Threshold* (\$50) may be accepted by *Councillors* provided:

- acceptance of the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result;
- the gift is not offered on a regular basis (leading to the total value of gifts accepted from the same giver exceeding the *Token Gift Threshold* in value in any calendar year);
- acceptance would not cause any perceived or actual compromise or conflict of interest;
- refusal of the gift would be discourteous or cause embarrassment; and
- the gift is not of cash or cash equivalent (gift cards, gambling chips or similar).

4.4.2. There is no requirement to record token gifts in the Councillor Gift Register.

4.5. Reasonable hospitality

4.5.1. *Councillors* will from time to time receive invitations of hospitality to attend various functions and events in an official capacity. Such events provide an opportunity to network or undertake business of a common purpose, professional development, or to act as a representative of the City of Yarra.

4.5.2. It is permissible for *Councillors* to accept offers of hospitality where:

- the hospitality is proportionate in the circumstances, given the nature of the event (for example, acceptance of a three-course dinner at a city hotel may be reasonable as part of a large-scale event attended by the Premier, but would not be reasonable following a five minute product launch by a Council contractor);
- acceptance of the hospitality does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result;
- the refusal of the hospitality would be discourteous or cause embarrassment; or
- where the hospitality cannot be practicably separated from attendance or participation in an event in a councillor's official capacity.

4.5.3. *Councillors* must disclose the acceptance or offer of any hospitality (regardless of whether or not it has been accepted) with a value greater than the *Token Gift Threshold* to the *Chief Executive Officer*.

4.5.4. The *Chief Executive Officer* must ensure that all disclosures made by *Councillors* under this section are recorded in the Councillor Gift Register.

4.6. Acceptance of gifts on behalf of Council

4.6.1. *Councillors* may be involved in conferences, social, cultural, community or industry events where official gifts are at times presented or exchanged. Such gifts may range in value from token gifts to gifts of significant value.

4.6.2. It is permissible for *Councillors* to accept an official gift on behalf of the Council where:

- the refusal of the gift would be discourteous or cause embarrassment; and
- after acceptance, the gift is surrendered as soon as practicable to the *Chief Executive Officer*.

4.6.3. *Councillors* must disclose the acceptance of any gift on behalf of Council to the *Chief Executive Officer*.

4.6.4. The *Chief Executive Officer* must ensure that all disclosures made by *Councillors* under this section are recorded in the Councillor Gift Register.

4.6.5. The *Chief Executive Officer* will determine the appropriate treatment of all gifts received by Council, which may include, but is not limited to, return to the gift giver, consideration for inclusion in the City of Yarra Art and Heritage Collection, storage, sale, donation or disposal.

4.7. Gift register

4.7.1. A Councillor Gift Register will be maintained by the Governance Branch and a summary will be published on Council's website.

4.7.2. Data provided in the public summary will include the name of the gift recipient (or intended recipient), the date the gift was offered, the nature of the gift, the estimated value of the gift and the details of the gift giver.

4.7.3. In order to comply with the Privacy and Data Protection Act 2014, the gift giver's personal information will not be released, and will instead be substituted with a descriptor to enable the reader to understand the relationship of the giver to Council and the recipient (or intended recipient). For example, a gift may be shown as being from "aged care client", "Richmond library user" or "resident of Main Street" rather than using their name. Names of businesses or organisations will be provided.

5. Further obligations

In addition to the obligations set out in this policy, *Councillors* should be aware of additional obligations potentially arising from the offer or acceptance of gifts. This policy does not seek to set out those specific obligations, but they are included here to enable *Councillors* to seek further advice in relation to their specific circumstances.

5.1. Material conflict of interest

5.1.1. Section 128 of the *Act* provides that a *Councillor* has a material conflict of interest if a person from whom the *Councillor* has received a disclosable gift would gain a benefit or suffer a loss depending on the outcome of the matter.

5.1.2. A disclosable gift is defined at section 128(4) of the *Act*.

5.1.3. The receipt of a disclosable gift is not, of itself, a breach of the *Act*, but a failure to declare a conflict of interest that arises in accordance with the process set out in Council's Governance Rules would be.

5.1.4. The disclosure of a gift under this policy does not substitute for the disclosure of a material conflict of conflict of interest under Council's Governance Rules.

5.2. Personal interests returns

5.2.1. Section 124 of the *Act* provides that a *Councillor* must include in a biannual personal interests return the details of any gift received by them with a value greater than the *Gift Disclosure Threshold*, including gifts in the form of goods or services and multiple gifts that together equal or exceed the *Gift Disclosure Threshold*, which was received at any time since the lodgement of the previous initial or biannual personal interests return.

5.2.2. There are some exemptions to this requirement, including for gifts received from a family member, gifts disclosed in an election campaign donation return and reasonable hospitality received in the *Councillor's* official capacity.

5.2.3. The disclosure of a gift under this policy does not substitute for the disclosure of a gift on a personal interests return.

5.3. Election campaign donations

5.3.1. Section 306 provides that *Councillors* must submit an election campaign donation return within 40 days of election day which contains prescribed details in respect of any gifts received during the donation period by or on behalf of the *Councillor*, to be used for or in connection

with the election campaign, the amount or value of which is equal to or exceeds the gift disclosure threshold.

5.3.2. The donation period and the gift disclosure threshold is defined at section 3 of the *Act*.

5.3.3. The disclosure of a gift under this policy does not substitute for the disclosure of an election campaign donation return.

5.4. Bribery and corruption

5.4.1. An offer of a gift or any personal benefit to a *Councillor* or another person may constitute an attempt to bribe that *Councillor* or otherwise engage in corrupt behaviour.

5.4.2. *Councillors* should remain alert to efforts to bribe or otherwise engage in corrupt activity, or to undertake grooming activity that may lead to such behaviour.

5.4.3. If a *Councillor* believes they have been offered a bribe or otherwise been approached inappropriately, it is important that they immediately act in accordance with the City of Yarra Fraud and Corruption Policy and Control Plan. This includes prompt reporting to:

- Council's Fraud and Corruption Response Team;
- Independent Broad-based Anti-corruption Commission;
- Victorian Ombudsman; and/or
- Council's "Your Call" external reporting service.

5.4.4. The disclosure of a gift under this policy does not substitute for the disclosure of corrupt behaviour under Council's Fraud and Corruption Policy and Control Plan.

6. Related Documents

- Local Government Act 2020
- Privacy and Data Protection Act 2014
- Yarra City Council Councillor Code of Conduct
- Yarra City Council Governance Rules
- Yarra City Council Fraud and Corruption Control Plan