

COUNCILLOR GIFT POLICY

Policy Reference No.	POL/291
File No.	HCC20/482
Strategic Objective	5.3 Provide responsible and transparent governance, services and infrastructure which responds to and supports community needs
Adopted Council	by 12 April 2021
Re-Adopted Date for Review	12 April 2025
Responsible Officer	Manager Governance
Department	Governance

COUNCILLOR GIFT POLICY

1 PURPOSE

- 1.1 Hume City Council is committed to ensuring that Councillors act honestly and with integrity when performing their duties.
- 1.2 The acceptance of gifts, benefits and hospitality can create perceptions that a Councillor's integrity has been compromised.
- 1.3 This Policy states Council's position on responding to offers of gifts, benefits and hospitality.
- 1.4 This policy is intended to support Councillors to avoid conflicts of interest and maintain high levels of integrity and public trust.

2 SCOPE

This policy applies to all gifts or hospitality offered to, or received by, Councillors.

3 LEGISLATIVE CONTEXT

s138 *Local Government Act 2020* – Councillor gift policy

- (1) A Council must adopt a Councillor gift policy within the period of 6 months after this section comes into operation.*
- (2) A Councillor gift policy must include:
 - a) Procedures for the maintenance of a gift register; and
 - b) Any other matters prescribed by the regulations.
- (3) A Council may review and update the Councillor gift policy.

*s138 came into operation on 24 October 2020

4 DEFINITIONS

Bribe	means dishonestly providing or offering a benefit, or causing it to be provided or offered, with the intention to influence a Councillor in the exercise of their official duties. The benefit may be intangible, such as the provision of hospitality or entertainment.
Gift (has the same meaning as in section 3 of the Act)	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— <ol 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;
Gift disclosure threshold (has the same meaning as in section 3 of the Act)	means \$500 or a higher amount or value as prescribed by the regulations.

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5 GENERAL PRINCIPLES

- 5.1 Councillors will avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.
- 5.2 Councillors will take all reasonable steps to ensure that our family members do not receive gifts, benefits or hospitality that give rise to the appearance of being an attempt to gain favourable treatment.
- 5.3 Councillors will not accept gifts either in our role as Councillor or where it could be perceived to influence us in our role as a Councillor except in accordance with this Policy.

6 REPUTATION RISK – THE GIFT TEST

- 6.1 When deciding whether to accept an offer of a gift, benefit or hospitality Councillors 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.
- 6.2 Developed by the Victorian State Services Commission, the GIFT test below is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

G	Giver	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?
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 courtesy or 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?

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7 PROHIBITED GIFTS

7.1 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.

7.2 PROCUREMENT & TENDER PROCESS

7.2.1 Councillors must not accept 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.

7.2.2 Where gifts are offered or there are irregular approaches from suppliers, the Councillors must notify the Mayor and CEO and lodge a Gift Declaration Form.

7.2.3 If a Councillor visits a current supplier's premises when not on official business they should avoid discussing any contractual matters with the supplier and must not misuse their position to:

- a) gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; and
- b) cause, or attempt to cause, detriment to the Council or another person.

7.3 REGULATORY PROCESSES

Where a Council regulatory process is underway (e.g. a planning permit application; or an infringement appeal) a Councillor must not accept any gifts from any individual or group that may be involved with the permit application or regulatory activity.

7.4 MONEY OR EQUIVALENT

Councillors are prohibited from accepting money. This includes gift cards (e.g. gift vouchers) or those easily converted into money (e.g. shares).

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7.5 DONATIONS, BEQUESTS & WILLS

Councillors are prohibited from accepting any donations or bequests resulting from their position with Council. Arrangements must be made to return the donation or bequest to the family.

Councillors may accept donations as a candidate running in a local government General Election.

7.6 CONFERENCES

Gift offers in relation to conferences (sponsored attendance, participation, travel or accommodation) must be declined unless there is clear justification, such as where the invitation is issued by a government department or the offeror is a local government peak body.

7.7 CONSEQUENCE OF ACCEPTING PROHIBITED GIFTS

Accepting a prohibited gift may constitute misuse of position in accordance with section 123 of the Act. 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.

8 HOSPITALITY

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

8.2 Where such hospitality is inconsequential in nature and is not provided as part of official Council business it may be appropriate to accept such invitations.

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

8.4 Networking and maintaining stakeholder relationships, outside of official opportunities such as those run by government peak bodies are not considered official Council business.

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

9 OTHER GIFTS

9.1 INCONSEQUENTIAL GIFTS

9.1.1 Councillors may accept inconsequential gifts. Inconsequential gifts do not need to be disclosed or recorded on the Gift Register.

9.1.2 An inconsequential gift is an object with no or minimal monetary value (less than approximately \$50) such as:

- a) Flowers cut from the person's garden or homemade baked goods;
- b) Souvenirs, such as pens and notebooks, 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.

9.2 CORPORATE GIFTS

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9.2.1 In certain cases it may be appropriate for example as a thank you to provide corporate gifts to individuals or organisations on behalf of the Council. These should be limited to token gifts. Each case will be dealt with on its individual merits. The practice of giving gifts should not be common or frequent. Approval must be obtained from the CEO.

9.2.2 Corporate gifts may be given to Councillors from Council, such as recognition gifts after the end of the Mayor term or Councillor term.

9.3 CEREMONIAL GIFTS

9.3.1 Ceremonial gifts are official gifts provided as part of the culture and practices of communities and government, within Australia or internationally. Ceremonial gifts are usually provided when conducting business with official delegates or representatives from another organisation or community.

9.3.2 Ceremonial gifts which are presented to the Council remain the property of Council, irrespective of value.

9.3.3 Ceremonial gifts which are presented to an individual Councillors may be retained by that Councillors, irrespective of value.

9.3.4 Ceremonial gifts do not need to be disclosed or recorded on the Gift Register.

9.4 REFUSAL OF GIFT NOT IN THE PUBLIC INTEREST

Where refusal may cause offence or embarrassment the gift will be accepted on behalf of the Council.

10 ATTEMPTS TO BRIBE COUNCILLORS

10.1 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.

10.2 The CEO must comply with their requirements under the IBAC Act in relation to reporting corrupt conduct and should report any criminal conduct to Victoria Police.

11 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.

12 CONFLICT OF INTEREST

12.1 Councillors are to be mindful of their conflict of interest requirements under the Act when accepting any gift, benefit or hospitality.

12.2 Section 128(4) of the Act states that a disclosable gift, in relation to conflict of interest, means one or more gifts with a total value of, or more than, \$500 in the preceding 5 years. This does not include the value of any reasonable hospitality received by a Councillor at an event or function where they attended in their official capacity as a Councillor.

13 DISCLOSURE REQUIREMENTS

13.1 A Councillor who receives any offer of a gift, benefit or hospitality, must disclose this within 7 days of receiving the offer. This disclosure must be made whether the gift is accepted or declined. This is to ensure that the combined total of offers made from a single source in the last 12 months does not exceed the disclosable threshold of \$500.

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- 13.2 Any donations or bequests offered to Councillors in their role as Councillors must be disclosed within 7 days of receiving the offer.
- 13.3 Declarations must be made on Council's Gift Declaration Form available in the Councillor Portal.
- 13.4 A Councillor must disclose any gift valued at \$500 or more in their biannual personal interest return unless the gift is from a family member or was disclosed in an election campaign donation return.
- 13.5 A Councillor who has a conflict of interest as a result of receiving a gift, benefit or hospitality must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules.
- 13.6 Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return.
- 13.7 Gifts, benefits or hospitality must also be disclosed in the Councillor gift register.

14 GIFTS REGISTER

- 14.1 The Governance Unit maintains the Gifts Register for all gift declarations.
- 14.2 Gifts accepted or declined will be included in the register. The Register contains:
 - 14.2.1 A description of the gift and its estimated value;
 - 14.2.2 The name of the gift giver; and
 - 14.2.3 What was done with the gift (was it declined, retained by the Councillor, handed to the Council, etc.)
- 14.3 In accordance with Council's Public Transparency Policy, the Gifts Register will be available on Council's website.
- 14.4 Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice a proposed development or business venture, legal advice or legal proceedings.
- 14.5 The Manager Governance is to monitor the Gifts Register and a report is to be presented annually to the Audit and Risk Committee.

15 CONTACTS FOR 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 Manager Governance.

16 RELATED DOCUMENTS

- 16.1 Local Government Act 2020
- 16.2 Councillor Code of Conduct
- 16.3 Fraud and Corruption Policy
- 16.4 Public Interest Disclosure Policy

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