

# Councillor Gift Policy

**Responsible Directorate:** Chief Executive Office

**Authorised By:** Council

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## 1 Introduction

In accordance with section 138 of the *Local Government Act 2020*, this policy has been developed to provide guidance to councillors relating to the acceptance or otherwise of a gift or other benefits such as hospitality, favours, entertainment and services offered to a councillor.

This policy establish a framework and a clear understanding for the acceptance and declaration of gifts, benefits and hospitality by councillors to ensure the highest standard of integrity, transparency and accountability is maintained at all times.

### 1.1 Definitions

<b>Conflict of Interest</b>	<p>The <i>Local Government Act 2020</i> requires councillors to declare General or Material Conflicts of Interest.</p> <p>A conflict of interest is a conflict between a councillor’s public duty to act in the best interest of the Council and their private interests (financial or non-financial). A conflict exists whether it is:</p> <ul style="list-style-type: none"><li>• Real – it currently exists</li><li>• Potential – it may arise, given the circumstances</li><li>• Perceived – 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 Council, now or in the future.</li></ul> <p><b>Material Conflict of Interest and Disclosable Gifts</b> Section 128 - <i>Local Government Act 2020</i></p> <p>A 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. An affected person for this section of the Act includes:</p> <ul style="list-style-type: none"><li>(a) a family member of the relevant person;</li><li>(b) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;</li><li>(c) an employer of the relevant person, unless the employer is a public body;</li><li>(d) a business partner of the relevant person;</li><li>(e) a person for whom the relevant person is a consultant, contractor or agent;</li><li>(f) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;</li><li>(g) a person from whom the relevant person has received a disclosable gift</li></ul> <p><b>Disclosable gift</b> 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>
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	<p>(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</p> <p>(b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation</p> <p>A disclosable gift 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.</p>
<b>Gift</b>	<p>Section 3 - <i>Local Government Act 2020</i></p> <p>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>
<b>Gift Declaration Form</b>	The form a councillor uses to declare reportable gifts (Attachment 1).
<b>Gift disclosure threshold</b>	<p>Section 3 - <i>Local Government Act 2020</i></p> <p>\$500 or a higher amount or value prescribed by the regulations.</p>
<b>Gift Register</b>	A register of gifts offered to councillors whether accepted or declined. It records the date a gift was offered /received, information about the donor and recipient, the nature of the gift, its estimated value and how it was handled. The register is maintained by the Governance and Legal Department.
<b>Material value</b>	Means reasonably valued at more than \$50.
<b>Money or monetary</b>	Means any form of cash, credit or cash-like item, including, but not limited to, cheques, money orders, bank deposits, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts, points in any reward scheme, regardless of the amount or value.
<b>Official capacity</b>	A councillor is acting in an official capacity if they are performing their responsibilities under relevant legislation and their attendance at the event or function is related to providing good local governance for the municipality.
<b>Reportable gift</b>	Means a gift valued at more than \$50.

## 1.2 Objective

The objective of this policy is to:

- provide guidance to councillors on the receipt of gifts and hospitality with an estimated material value over \$50; and
- provide a transparent and accountable process with regard to declaring gifts and benefits that promotes public confidence in the City of Boroondara.

## 1.3 Background

Councillors may be offered gifts or benefits for a variety of reasons, and while they may be offered as a genuine expression of appreciation or as a gesture of goodwill, the acceptance of any gift carries risks, for example:

- That the giver will expect favourable treatment.
- That the recipient will feel a sense of obligation to the giver.
- That the recipient will be perceived as having been influenced by the gift.

Perceptions of undue influence are difficult to combat, and can be affected by many factors, including:

- **Transparency and openness.** If a gift is given in a public forum it is less likely to be perceived as a gift of influence than if it were offered outside the public eye.
- **The value of the gift.** Expensive gifts are more likely to be perceived as gifts to win favours. The regularity of gifts, or the cumulative value of gifts received over time, is also likely to influence perceptions.

Therefore as a guiding principle, councillors should not accept a gift, hospitality or other benefit if it is likely to be perceived by a 'reasonable person', as intended to, or likely to, influence him or her in the fair, impartial and efficient discharge of their duties as a councillor.

## 2 What may constitute a 'gift', 'benefit' or 'hospitality'

Councillors may be offered gifts or benefits for a variety of reasons which can be categorised as follows:

<b>Benefits</b>	Benefits can take many forms, and are often non-tangible (i.e. not a physical item). Benefits include, but are not limited to: <ul style="list-style-type: none"><li>• access to events or clubs</li><li>• preferential treatment (e.g. priority service, access to benefits or services not usually available)</li><li>• upgrades</li><li>• discounts</li><li>• access to confidential information</li><li>• free services (e.g. accommodation or travel)</li><li>• the promise of future employment or business opportunities</li></ul>
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	<p>The definition does not include:</p> <ul style="list-style-type: none"> <li>• discounted products or services that are reasonable and generally available or capable of being negotiated by others not connected with the City of Boroondara.</li> <li>• a benefit or benefits received in relation to personal membership of any industrial or professional organisation, club or other association or body.</li> <li>• a benefit or benefits received by a relative or associate a councillor had no knowledge of.</li> </ul>
<p><b>Gifts</b></p>	<p>Gifts can take many forms, such as:</p> <ul style="list-style-type: none"> <li>• free or heavily discounted items</li> <li>• tickets or passes to events, shows etc.</li> <li>• enduring items, such as works of art</li> <li>• consumables, such as food or stationery</li> <li>• memberships</li> <li>• property (real or otherwise)</li> <li>• transfers or loans of money</li> <li>• hospitality that exceeds common courtesy</li> <li>• door prize or voucher if an individual has not personally paid to attend</li> </ul> <p>The definition does not include:</p> <ul style="list-style-type: none"> <li>• discounted products or services that are reasonable and generally available or capable of being negotiated by others not connected with the City of Boroondara</li> <li>• a gift or gifts received in relation to personal membership of any industrial or professional organisation, club or other association or body.</li> <li>• a gift or gifts received by a relative or associate a councillor had no knowledge of.</li> <li>• a gift, award or prize received from the City of Boroondara.</li> </ul> <p>A <b>reportable gift</b>, whether <u>accepted or declined</u> includes:</p> <ul style="list-style-type: none"> <li>• of material value (i.e. valued at more than \$50); and/or</li> <li>• a gift of influence; and/or</li> <li>• a bribe or monetary gift;</li> </ul> <p>A gift may be:</p> <ul style="list-style-type: none"> <li>• offered or given to a councillor.</li> <li>• offered or given to a family member of the councilor.</li> <li>• purchased, home-made or home-grown.</li> <li>• of negligible, nominal, or significant value.</li> </ul>

<p><b>Gift types and purposes</b></p>	<p><b><u>Token gifts or benefits</u></b>  A gift that is offered in a business situation to a councillor for a practical purpose, or as a token or memento of an occasion.</p> <p>An example would be inexpensive stationery items such as pens or pads inscribed with a company logo handed out at a conference or training session.</p> <p><b><u>Gift of influence</u></b>  A gift that is:</p> <ul style="list-style-type: none"> <li>• intended to generally ingratiate the giver with the recipient for favourable treatment in the future; and / or</li> <li>• likely to affect, or be reasonably perceived to affect, the independent and impartial performance of the duties of a councillor.</li> </ul> <p>An example would be tickets to a social, cultural or sporting event offered by a contractor, which could be seen as reward for engaging them on past contracts, and or an inducement to engage them again in the future.</p> <p><b><u>Gift of gratitude</u></b>  A gift offered to a councillor in appreciation of the performance of specific tasks.</p> <p>Examples could include reasonably priced:</p> <ul style="list-style-type: none"> <li>• bottles of wine</li> <li>• boxes of chocolates</li> <li>• bunches of flowers</li> </ul> <p><b><u>Ceremonial gifts</u></b>  Ceremonial gifts are usually given from one organisation to another organisation, marking a special occasion, or at a special event.</p> <p>An example would be a gift given to Council by a visiting delegation. Gifts are often meaningful to organisations, for example Council has given other organisations a Boroondara flag as a ceremonial gift.</p> <p><b><u>Internal gift</u></b>  Gift received by the councillor from the Council. For example, the receipt of a gift at the end of a Mayoral term (in accordance and as provided for by the Councillor &amp; Member of a Delegated Committee Expenses Policy).</p>
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	<p><b><u>Bribes and cash gifts</u></b> Offering or accepting a bribe has particularly serious, criminal consequences. Consequently, any offer of 'money' is a reportable gift which must be refused and reported immediately to the Chief Executive Officer and /or the Public Interest Disclosure Coordinator and where relevant, the Victoria Police.</p> <p>Bribes and cash gifts also include gift cards, vouchers, shares or anything else that can be easily converted into money.</p>
<b>Hospitality</b>	<p>Hospitality is the friendly reception and entertainment of guests. Hospitality includes free or subsidised meals, beverages or refreshments or travel and accommodation provided in conjunction with an official meeting, function or related events such as:</p> <ul style="list-style-type: none"> <li>• training sessions and seminars.</li> <li>• workshops.</li> <li>• conferences.</li> <li>• council functions or events.</li> <li>• social functions organised by groups such as community organisations.</li> </ul>

### **3 Accepting or declining a gift, benefit or hospitality**

When considering whether to accept or decline a gift or benefit, in addition to other matters considered relevant by a councillor, consideration should include:

- Transparency - whether the gift is offered in public or private.
- The type of gift and the likely purpose (refer Section 2).
- The value of the gift, including the cumulative value of gifts from the donor.
- The \$500 disclosable gift threshold.
- The identity of the donor and their relationship with the recipient.
- How accepting the gift may be perceived by the Boroondara community.
- The proportionality of the gift or benefit in the context in which it was given.
- The public or Council benefit.
- Whether declining will cause offence or embarrassment.

In relation to receiving hospitality, councillors must give consideration to whether it:

- Is not excessive and directly relates to their public duty as a councillor (i.e. the councillor is performing a role in an official capacity at a function).
- It does not advantage the gift giver in dealings with Council.
- Does not compromise the impartiality of the councillor.
- Could be perceived as a conflict of interest.

Should hospitality be accepted, it must be of a standard and type that a 'reasonable person' would consider appropriate and not excessive.

Councillors should discourage the offers of gifts and benefits and should not take advantage of their position to secure an unreasonable personal advantage. Overall, councillors should not solicit gifts, hospitality or other benefits for themselves or others.

Councillors must declare any reportable gift they accept, but in the interests of transparency, are encouraged to declare any gift that is accepted or declined.

### **3.1 Accepting a gift, benefit and hospitality**

All reportable gifts (whether accepted or declined) estimated to be over \$50 in value, are to be declared by completing a 'Councillor - Gift Declaration Form' (**Attachment 1**). It is the responsibility of the councillor accepting a gift to complete the form and forward it to the Manager Governance and Legal.

#### **3.1.1 Treatment and retention of accepted gift**

The following matters will be relevant to the treatment and retention of a gift once it has been accepted:

- Whether Council has an appropriate use for the gift.
- Whether a gift is of cultural or historical significance.
- Whether the gift or benefit received was as a consequence of the expenditure or dedication of Council funds or resources or labour.
- Whether it may be appropriate to donate the gift, or the proceeds from the gift, to charity.
- Whether it is possible or appropriate to return the gift.
- Where a gift has been received on behalf of Council, the gift becomes the property of the Council and is to become part of the civic collection. For transparency and accountability purposes, these gifts will be recorded in the Gift Register with a notation the gift is the property of Council. Where appropriate a letter of appreciation will be sent to the gift's donor or hospitality provider on behalf of the councillor.

### **3.2 Declining a gift, benefit or hospitality**

Councillors must not accept (directly or indirectly) a gift, benefit or hospitality if:

- The gift is cash, credit or a cash-like item (refer to Definitions).
- If the gift is anonymous (section 137 of the Local Government Act 2020 and section 3.2.1 of this Policy).
- The gift could be perceived as intended to, or likely to, influence him or her in the fair, impartial and efficient discharge of his or her duties as a councillor.
- There is or may be, the perception of a conflict of interest with past, present or future duties or where the object of the gift is to maintain or return a favour.
- The gift may affect how a duty or function is performed at Council.
- Public disclosure of the gift would be embarrassing or damaging to Council.
- The nature of the gift or the integrity of the donor may bring Council into disrepute.
- The donor is engaged in a competitive tendering process with Council.
- The donor has applied for a Council permit or service or if any other statutory or regulatory process or activity is underway.

When declining a gift, care should be taken to avoid causing offence or embarrassment to the giver.

If a councillor refuses a gift on the basis they believe the gift was a deliberate attempt to receive 'special treatment' or offered for the purposes of influencing their behaviour, then such instances are to be reported to the Chief Executive Officer.

### **3.2.1 Anonymous gifts not to be accepted**

Section 137 of the *Local Government Act 2020* outlined as follows, highlights it is an offence to accept an anonymous gift that has a value of more than the gift disclosure threshold (\$500).

Section 137 - *Local Government Act 2020*

- (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.*

Where an anonymous gift is received, Councillors should disclose the receipt and disposal of such anonymous gifts. This information will be recorded on the Gift Register.

### **3.3 Procedures for the maintenance of the Gift Register**

Following the receipt of the 'Councillor - Gifts Declaration Form', the Manager Governance and Legal is responsible for the following information to be recorded on the Gift Register:

- The name of the councillor who received the gift, benefit or hospitality.
- The date the gift, benefit or hospitality was offered or received.
- The estimated dollar value of the gift, benefit or hospitality.
- The name of the individual or organisation who was the donor of the gift, benefit or hospitality.

- How the gift was allocated (i.e. declined, retained, donated to the civic collection etc.).

In accordance with Council’s Public Transparency Policy, the Gift Register will be available on Council’s website and may be made available for public inspection upon request.

### 3.4 Reporting to the Audit and Risk Committee

The Manager Governance and Legal is to monitor the Gift Register and report to the Audit and Risk Committee annually, on any identified systematic patterns of gifts offered and accepted.

### 3.5 Election campaign donations

Election campaign donations are outside the scope of this policy. Election campaign donations must be accounted for and disclosed in accordance with the provisions in the *Local Government Act 2020*.

## 4 Accountabilities

Person/s responsible	Accountability
All councillors	All councillors are responsible for: <ul style="list-style-type: none"> <li>• Declaring a reportable gift, whether accepted or declined.</li> <li>• Refusing a gift or benefit that may result in them having an actual or perceived conflict of interest.</li> <li>• Refusing a gift or benefit that could be reasonably perceived as undermining the integrity and impartiality of the City of Boroondara or themselves.</li> <li>• Refusing bribes.</li> <li>• Refusing any monetary gift or items easily converted to money.</li> <li>• Taking reasonable steps to ensure that family members do not receive gifts and benefits that give rise to the appearance of being an attempt to gain favourable treatment.</li> </ul>
Manager Governance and Legal	Manager Governance and Legal is responsible for: <ul style="list-style-type: none"> <li>• Being available to give advice on the interpretation of the policy.</li> <li>• Implementing this policy, including monitoring the effectiveness of the policy.</li> <li>• Maintaining the Gift Register.</li> </ul>
Chief Executive Officer	Chief Executive Officer is responsible for: <ul style="list-style-type: none"> <li>• Ensuring councillors are aware of the policy and any associated Guidelines.</li> </ul>

For all queries or feedback regarding the Councillor Gift Policy, please use the contact details for the responsible department below.

<b>Position Title</b>	<b>Contact number</b>	<b>Contact department email</b>
Manager Governance and Legal	9278 4470	<a href="mailto:boroondara@boroondara.vic.gov.au">boroondara@boroondara.vic.gov.au</a>

## **5 References**

### **5.1 Legislation**

This policy does not remove any other obligations under the *Local Government Act 2020* and any other legislation, or relevant codes, guidelines and policies adopted from time to time by Council and/or the Chief Executive Officer.

This policy should be read in conjunction with the:

- Local Government Act 2020
- Local Government (Governance and Integrity) Regulations 2020
- Councillor Code of Conduct
- Councillor and Member of a Delegated Committee Expenses Policy
- Public Transparency Policy
- Guidelines - Councillor Gift Policy

## **6 Review**

This policy and any associated guidelines should be reviewed as required, but at least every four years.

Councillor - Gift Declaration Form

*All Gifts over \$50 are to be declared.*  
**To be completed by councillors**  
**(Completed forms to be given to the Manager Governance and Legal for the Gift Register)**

Name: \_\_\_\_\_

Date gift received or offered:     /     / 20                      Estimated dollar value: \$ \_\_\_\_\_

What is the gift / hospitality?  
\_\_\_\_\_  
\_\_\_\_\_

Who is the gift / hospitality from?  
\_\_\_\_\_  
\_\_\_\_\_

When & how was the gift / hospitality received? (i.e. what setting – at a function, on site...)?  
\_\_\_\_\_  
\_\_\_\_\_

***To my knowledge the gift giver is not currently subject to any tender, permit application process or matter under consideration, for which this gift may be perceived as exercising a beneficial interest.***

Councillor's Signature: \_\_\_\_\_ Date :     /     / 20

Manager Governance and Legal Comments:  
\_\_\_\_\_  
\_\_\_\_\_

CEO Comments (where applicable):  
\_\_\_\_\_  
\_\_\_\_\_

**Gift Allocation**

- |  |   |
|--|---|
| <input type="checkbox"/> Gift to be retained by councillor | <input type="checkbox"/> Gift to be retained and provided to an appropriate charity |
| <input type="checkbox"/> Gift to be returned to donor      | <input type="checkbox"/> Gift to be retained and included in the Civic Collection   |
| <input type="checkbox"/> Other                             |   |

**Privacy Statement:** The personal information requested on this form is being collected by Council for the purpose of maintaining the Council Gift Register. The personal information will be used by Council for that primary purpose or directly related purposes. As the Gift Register will be available for public inspection, some information (including the name of the donor) will be disclosed to the public. Failure to provide the requested information may result in a breach of the Councillor Gift Policy. The councillor understands the personal information provided is for purpose of maintaining the Council Gift Register and that he or she may apply to council for access to and/or amendment of the information. Requests for access and/or correction should be made to Council's Privacy Officer.