

# Council Policy

<b>Council policy title:</b>	<b>Councillors Gift and Hospitality Policy</b>
<b>Council policy sponsor:</b>	Director Corporate Services
<b>Adopted by:</b>	Bayside City Council
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([Council Policy](#) is a high level public statement formally resolved by Council, which clearly states Council's requirements, intent or position with regard to a particular matter or issue. It is not intended to be procedural in nature.)

## Policy Summary

- Gifts must never be sought.
- Gifts offered to Councillors must be politely declined and a declaration made indicating the gift was declined.
- A gift or a token of an nominal value up to \$15.00 may be accepted, only if deemed rude or disrespectful to refuse the gift, and a declaration must be completed indicating the gift was accepted.
- A gift may be accepted where a Councillor is undertaking a presentation or guest speaker, however a declaration form must be completed indicating the duties performed, and the gift was accepted or declined.
- A Councillor may only accept hospitality when representing Bayside City Council and undertaking their public duty as a Mayor or Councillor and hospitality is reasonable.

## 1. Policy intent

Bayside City Council acknowledged that as part of business or cultural practices at times Councillors will be presented a gift in appreciation. While Council is appreciative of such acts of generosity it is Council policy that gifts should not be accepted and be politely refused.

This policy places additional obligations on each Councillors by:

- Defining gifts that must not be accepted even if such gifts are not prohibited under the legislation;
- Clarifying the types of gifts that may be accepted;
- Requiring the declaring of all gifts that are accepted or declined in a Gift and Hospitality Register including those below the gift declaration threshold.

The acceptance of gifts, benefits and hospitality can create perceptions that a Councillor's integrity has been compromised.

By adopting this policy, Council is encouraging Councillors to not only consider their legal obligations but also the perceived ethical impact of accepting gifts on their and Council's real or perceived reputation. It aims to ensure that:

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

## 2. Policy purpose

This policy establishes a framework for the acceptance and declaration of gifts and hospitality by councillor and to avoid any potential conflicts of interest or breaches of the Local Government Act.

## 3. Legislative Context

Bayside City Council is a public body subject to the Local Government Act 2020 (LGA). The objective of the Act is to establish a legislative framework that provides for Councils to be accountable to their local communities in the performance of functions and exercise of power and use of resources.

Section 138 requires Council to adopt a Councillor Gift Policy within the period of 6 months after this section comes into operation.

## 3. Glossary - Definitions and Abbreviations

Term	Meaning
Disclosable Gift	<p>A disclosable gift means any gift valued at or above \$500 or a higher prescribed amount that a relevant person received in the preceding five years if:</p> <ul style="list-style-type: none"> <li>• the relevant person was a councillor, member of council staff or member of a delegated committee at the time the gift was received, or</li> <li>• the gift was an election campaign donation.</li> </ul> <p>If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.</p> <p>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.</p> <p>A failure to comply is an offence that can be prosecuted in court. If found guilty a fine of up to 60 penalty units may be imposed, the value of the gift must be paid to the Council and the Councillor may be required to pay the costs of the prosecution.</p>

<p><b>Gift (section 3 LGA definition)</b></p>	<p>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  (b) the payment of an amount in respect of a guarantee; and  (c) the making of a payment or contribution at a fundraising</p>
<p><b>Gifts explanation to support definition</b></p> <p>includes:</p> <ul style="list-style-type: none"> <li>• Items &amp; services</li> <li>• Benefits</li> <li>• hospitality</li> </ul>	<p>A gift is anything of monetary or other value that is offered by an external organisation or individual to a Councillor, Officer or contractor as a result of their role with the agency. It includes free or discounted items or services, benefits or hospitality that exceeds common courtesy. Examples include:</p> <ul style="list-style-type: none"> <li>• A bottle of wine or spirits</li> <li>• Tickets to sporting events</li> <li>• Gift Voucher</li> <li>• Corporate hospitality at a corporate facility</li> <li>• Discounted products for personal use</li> <li>• Use of a holiday home</li> <li>• Free or discounted travel</li> <li>• Free training excursions</li> <li>• Door prize or voucher if an individual has not personally paid to attend.</li> </ul>
<p><b>Items or services</b></p>	<p>For example:</p> <ul style="list-style-type: none"> <li>• Christmas hamper</li> <li>• Desk calendar</li> <li>• Box of chocolates</li> <li>• Bottle of wine</li> <li>• Commemorative object</li> <li>• Door prize at a function</li> <li>• Tree lopping</li> <li>• House painting</li> </ul>
<p><b>Benefits</b></p>	<p>For example:</p> <ul style="list-style-type: none"> <li>• Preferential treatment</li> <li>• Privileged access</li> <li>• Access to discount or loyalty programs</li> <li>• Promise of a new job</li> </ul>
<p><b>Hospitality</b></p>	<p>Hospitality is considered a gift unless the hospitality was reasonable and you were attending the function or event in an official Council capacity.</p> <ul style="list-style-type: none"> <li>• <u>Reasonableness test</u>: the hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive.</li> <li>• <u>Official capacity test</u>: it must clearly be your duty as a Councillor to attend the relevant function or event.</li> </ul>

	<p>Hospitality that <u>exceeds</u> common courtesy includes:</p> <ul style="list-style-type: none"> <li>• A 'fine dining and wines' working lunch at another organisation's premises</li> <li>• An offer to pay for a working lunch at a café</li> <li>• An offer of a free spot on an industry golf day</li> </ul> <p>Hospitality that does <u>not</u> exceed common courtesy and is therefore <u>not</u> a gift includes:</p> <ul style="list-style-type: none"> <li>• Sandwiches and pastries over a lunchtime meeting</li> <li>• A cup of coffee at another organisations premises</li> <li>• A cup of coffee at a café (unless there is a conflict of interest)</li> </ul>
<b>Ceremonial gifts</b>	<ul style="list-style-type: none"> <li>• 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, community.</li> <li>• Ceremonial gifts are the property of Bayside City Council, irrespective of value. The receipt of ceremonial gifts should be recorded on the register but does not need to be published online.</li> </ul>
<b>Gestures that are not considered gifts</b>	<ul style="list-style-type: none"> <li>• 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. For example ties, pens or mugs.</li> <li>• Small gestures of appreciation from the community or customers such as cut flowers from their garden or homemade baked goods.</li> <li>• Door prizes and raffle prizes at functions or conferences are <u>not</u> considered a gift if the individual has personally paid for their attendance, or where the individual has paid for the raffle ticket.</li> </ul>
<b>Internal Gifts</b>	<p>Gifts received by Councillors from Bayside City Council are not covered by this policy and do not need to be declared.</p> <p>For eg. recognition gifts after the end of the Mayoral term or Councillor term</p>
<b>Bribe</b>	<p>Means an offer of money or other inducement made with the intention to corruptly influence a Councillor, officer or contractor in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.</p>

Conflict of Interest	<p>The Local Government Act 2020 requires Councillors to declare General or Material Conflicts of Interests.</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>• <b>Real</b> – it currently exists</li> <li>• <b>Potential</b> – it may arise, given the circumstances</li> <li>• <b>Perceived</b> – 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>
Councillor	Means an elected personal who holds the office of member of the Council.
Token or Nominal Value Gifts	<p>Means a nominal value of gifts and moderate acts of hospitality includes</p> <ul style="list-style-type: none"> <li>• Gifts of a nominal value (\$15.00 or less) that are infrequently offered</li> <li>• Gifts of single bottles of reasonable priced alcohol as acknowledgement for giving a presentation or being the guest speaker.</li> <li>• Free meal of a modest nature, and/or beverages provided to Councillor who are formally representing the Council at a work related event such as training, workshop or seminar.</li> <li>• Refreshments of a modest nature provided at a conference where a Councillors is the guest speaker.</li> <li>• Marketing or corporate mementos such as ties, scarves, pens, coasters, tie pins, diaries or chocolates,</li> <li>• Flowers,</li> <li>• Invitations to appropriate out-of-hours functions or social events organised by community groups.</li> </ul>

#### 4. Scope

This policy applies to all councillors of Bayside City Council where gifts, benefits or hospitality are offered to, or received by, Councillors from sources external to Council, and the policy highlights the legal and ethical issues that should be taken into account in deciding whether to accept a gift, benefit or hospitality.

## 5. Key principles and accountabilities

The key principles are:

- **Obligations:** Councillors act in accordance with their respective obligations with good governance.
- **Public interest:** Councillors have a duty to act in the public interest above their private interests when carrying out their official functions, in compliance with this policy.
- **Culture of integrity:** Bayside City Council fosters a culture of integrity with Councillors obliged to declare all gifts.
- **Accountability:** The Council's procedures are transparent and accountable. Councilors are accountable for Declaring all gifts, and Declaring declined gifts, or where an exception applies under this policy.

### Consistent with the Minimum Accountabilities

The Victorian Public Sector Commission has set binding minimum accountabilities for the appropriate management of gifts, benefit and hospitality. The Council's policy is also consistent with the Department of Environment, Land, Water and Planning (DWELP) model policy on *Gifts, benefits and hospitality – responding to gift offers*, which is published by DWELP.

This policy also incorporates:

1. the recommendations from the IBAC review of Local Government Integrity Frameworks 2019. A self-assessment was undertaken in 2019 and reported to Council's Audit & Risk Committee. This Policy has included all the recommendations for good practice.
2. Conflicts of Interest in Local Government – Victorian Ombudsman - That councils have clear rules on accepting gifts and hospitality. All gifts and hospitality, however trivial, should be declared.

## 6. Policy statement

Councillors are likely at some stage during the term of office, to be offered a gift or benefit. The gift or benefit could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if Councillors accept a gift or benefit. Once it has been accepted the position of Councillor can be comprised as often persons attempt to corrupt Councillors with small inducements that appear to have no improper motive behind them.

While a Councillor may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on their part, as a general rule Councillors should not accept gifts, benefits or hospitality. By politely refusing such gifts, benefits and hospitality, Councillors can avoid feeling compromised and contribute to a public perception of bias either at the time or potentially in a future decision.

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

## Anonymous Gifts

### section137 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.

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 must give the gift to the Council within 30 days to avoid committing an offence.

## **Gifts that must NOT be accepted**

Councillors **must not** accept a gift even if its acceptance is not prohibited under the Act.

- If the gift could be perceived as intended to, or likely to, influence him or her in the fair, impartial and efficient discharge of his/her duties as a Councillor.
- Where 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.
- Cash or monies regardless of the amount (this does not apply to Election Campaign donations)

## **Gifts that may be accepted**

Councillors may accept gifts when:

- The gift would generally be regarded as only having a token value and could not be perceived to influence the Councillor's actions.
- Non acceptance of the gift may cause offence or embarrassment (ie: overseas dignitary visits or gifts is culturally sensitive) in which case the gift may be accepted on behalf of Council and becomes the property of Council.
- Receiving reasonable hospitality where:
  - There is a clear value to the work of Council (for example building relationship with community groups)
  - It directly relates to their public duty as a Mayor or Councillor
  - It does not advantage the gift giver in dealings with Council.

## **Hospitality is not a gift if the following conditions are met:**

- Where attending a function is an official capacity of Mayor or Councillor; or
- The hospitality is reasonable (ie: appropriate and not excessive). Refer to definitions.

## **Hospitality IS a gift where a Councillor attends an event or function:**

Gift offers of hospitality that exceed common courtesy must be avoided as they are often inconsistent with community expectations and have a high risk of creating a conflict of interest. Examples of gift offers of hospitality that exceed common courtesy include:

- Attending as a guest in a corporate box at the football or races;
- Attending a concert or theatre event;
- Attending an industry golf day at a reduced fee;
- Being 'shouted' a meal at a restaurant;
- Accepting discounted or complimentary tickets for a family member to attend the tennis;
- Where free tickets are received and you have NO official duties to perform;
- Free membership; or
- The hospitality is generous. For example a two-three course meal with alcoholic beverages at an unpaid training event.

Reasonable hospitality does not need to be declared. See the definitions of Hospitality.

## **Christmas Events**

Christmas is a time when Councillors are often offered gifts and invitations to attend functions. Annual notification to Councillors of their obligations in respect to the receipt of gifts and invitations will be provided by the Governance Department.



## **Other**

Gifts received from guests to Council in the course of official business remain the property of Council not the Councillors to whom they may have been presented.

## **Regulatory processes**

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

## **Bequests/Wills**

Any bequests to Councillors resulting from their position with Council must not be accepted. Arrangements may be made to donate the bequest to a charitable institution in the name of the donor or returned to the immediate family.

## **Fly buy/Frequent Flyer**

Councillors must not collect rewards for personal use via rewards programs for any Council related transactions (i.e.: fly buys or frequent flyers). This relates to any claims for reimbursement of expenses incurred in accordance with the Council Expense Policy.

## **Procurement & Tender Process**

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.

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.

All Expressions of Interest and Tender specifications (specification and contract) must state that "No offers of gifts, or whatever value, must be made to Councillors and that any such offer in the process will automatically exclude that participant in the tender process.

## **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 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 immediately. They must:

- Immediately notify the CEO and lodge a gift declaration form, so their refusal can be properly recorded,
- Report the matter to the CEO or Public Interest Disclosure Co-ordinator (Manager Governance & Reporting) (who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-corruption Commission).
- 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 as a public interest disclosure in accordance with Councils 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.

## **Gestures that are not gifts**

Individuals may accept gestures without approval or declaring the offer on the Bayside City Council Gift Register.

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

A gesture 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 individual has personally paid for their attendance, or where the individual has paid for the raffle ticket.

## **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 peak body, and
- Prior written approval granted by the CEO (Mayor for Councillors, CEO for Mayor) or other responsible person. The signed and dated approval must be attached to the gift offer declaration and noted in the gifts register.

## **Corporate gifts**

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.

## **Donations and Bequests of Gifts to Council**

Bayside City Council may be offered or bequested gifts or donations. Such gifts include:

- Real property
- Donations
- Art work
- Free Training & Services

Bayside City Council 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 the offer.

## **Bequests**

In relation to Bequests, consideration will be given to:

- The expressed wishes and intentions of the bequestor, as outlined in the will, are paramount in determining the purpose for which the gift will be used.
- Where Council is unable to honour the intentions of the will, all appropriate legal measures will be taken to determine a purpose for the gift that most closely aligns to the bequestor's intentions.

## **Disclosure requirements**

- 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.
- A Councillor who has a conflict of interest as a result of receiving a gift or gifts from a person must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules.
- Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return.
- Gifts must also be disclosed in the Councillor gift register.

## **Gifts, Benefits & Hospitality Register**

The Governance Department maintains the Gifts Register for all gift declarations (for Councillors, Staff and Contractors).

Gifts accepted or declined over \$15.00 will be included in the register. The Register contains:

- A description of the gift and its estimated value
- The name of the gift giver
- What was done with the gift (was it retained by the Councillor, handed to the council, etc.)
- Gifts Declined
- Gifts offers from suppliers (irregular approaches from suppliers)

In accordance with the Bayside City Council's Public Transparency Policy, the Gifts Register will be available on Council's website.

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.

The Manager Governance is to monitor and report 6 monthly to the Executive Team on any identified systematic pattern of gifts offered and accepted to ensure that unacceptable cultures do not develop within sections of the Council. A report is to be presented annually to the Audit & Risk Committee.

### **Victorian Charter of Human Rights and Responsibilities Act**

In developing this policy, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established under the Victorian Charter of Human Rights and Responsibilities Act 2006 is in any way limited, restricted or interfered with by the contents of this policy.

It is considered that the Councillor Gifts and Hospitality Policy is consistent with the rights outlined in the Charter. The human rights most relevant to this policy are the rights to:

- protection of privacy and reputation (section 13)

### **Monitoring, evaluation & review**

This policy to be reviewed every four years or unless legislative changes impact upon the policy.

### **Roles & Responsibilities**

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

### **Related documents**

<b>Legislation</b>	Local Government Act 2020
<b>Other</b>	Councillor Code of Conduct Victorian Ombudman’s Report – Conflict of Interest in Local Government IBAC Local Government Integrity Framework review 2019 Local Government Victoria – Conflict of Interest Guides

**Please note:** This policy is current as at the date of approval. Refer to Council’s website ([www.bayside.vic.gov.au](http://www.bayside.vic.gov.au)) to ensure this is the latest version.