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COUNCILLOR GIFT POLICY 2023

March 2023

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This policy, which incorporates the statutory requirements prescribed by the *Local Government Act 2020*, was adopted by resolution of the Darebin City Council on 27 March 2023.

Version	Date adopted by Council	Amendment
1.0	22 March 2021	
1.1	27 March 2023	Naming convention updated to 'Councillor Gift Policy', included HOST Test, clarity around functions/events at EGM venues, increased dollar value from \$5 to \$20, minor administrative updates

Legislation/Regulation	Local Government Act 2020
Author	Coordinator, Governance Services
Policy Owner	Manager, Corporate Governance
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<p>1. PURPOSE</p>	<p>The purpose of the Councillor Gift Policy is to:</p> <ul style="list-style-type: none"> • provide a transparent and consistent framework regarding offers of Gifts made to and by Councillors; and • minimise Gift offers made to and accepted by Councillors, in order to protect and promote public confidence in the integrity of the Council.
<p>2. SCOPE</p>	<ul style="list-style-type: none"> • This Policy applies to all Councillors. • This policy does not apply to offers of gifts or hospitality made to Councillors where the offer is not related to their role at Council. For example, an offer of a gift or hospitality made to a Councillor solely because of a family or personal association is not covered by this policy.
<p>3. DEFINITIONS</p>	<p>In this policy:</p> <p>Act means the <i>Local Government Act 2020</i>.</p> <p>Administration means the Chief Executive Officer or Council officers.</p> <p>Benefit includes preferential treatment, privileged access, favours or other advantages offered to Councillors (i.e. an invitation to sporting, cultural or social events, access to discounts or loyalty programs, personal services).</p> <p>Bribe means an offer of money or other inducement made with the intention to corruptly influence a Councillor in the performance of their duties.</p> <p>Councillor means a person who holds the office of member of the Council.</p> <p>Conflict of interest means conflict of interest between a Councillor's public duty to act in the best interest of the Council and their private interests (financial or non-financial). Conflicts may be:</p> <ul style="list-style-type: none"> • Actual means it currently exists. • Potential means it may arise, given the circumstances. • Perceived means the public or a third party 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. <p>Gift means:</p> <ul style="list-style-type: none"> • free or discounted items or services and any item or service that may be perceived by the public as a gift. Including without limitation to high and low value items, consumables and services; • benefits including preferential treatment, privileged access, upgrades, favours or other advantages offered to a Councillor, Including, without limitation, invitations to sporting, cultural or social events, access to discounted or loyalty programs or the promise of a new job; and

	<ul style="list-style-type: none"> • any kind of hospitality. <p>A 'gift' as defined in s 3 of the Act is '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> <ul 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; (c) the making of a payment or contribution at a fundraising function. <p>Gift Disclosure threshold means:</p> <ul style="list-style-type: none"> (a) in the case of a Council, other than the Melbourne City Council, \$500 or a higher amount or value prescribed by the regulations; <p>Gifts to support the definition, but is not limited to:</p> <ul style="list-style-type: none"> • A bottle of wine or spirits • Tickets to sporting events • 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 • Door prize or voucher if an individual has not personally paid to attend.
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	<p>Councillor Gift Register is the record of Non-Token Gifts whether accepted or declined.</p> <p>Non-Token Gift means a gift offered to a Councillor that is, or may be perceived to be, of more than inconsequential value by the recipient or by the wider community. All offers estimated to be worth more than \$20 (either individually or aggregated over the preceding 12-month period) are Non-Token offers and must be refused and recorded on the Councillor Gift Register (whether accepted or declined).</p> <p>Token Gift means a Gift offered to a Councillor that is of inconsequential or trivial value. The primary determinant of a Token Gift is that it would not be reasonably perceived to influence or raise a conflict of interest. A Gift with an estimated value of equal to or less than \$20 is a Token Gift (unless the same offeror has made several Token Gift offers in the preceding 12-month period, which when aggregated exceed \$20).</p>
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<p>4. POLICY STATEMENT</p>	<ul style="list-style-type: none"> • Council considers that the proper management of Councillor Gifts is a practical demonstration of Councillors' integrity, impartiality and accountability and contributes to community confidence in the Council's decision making. • This policy is an important step in proper management of Councillor Gifts and satisfies Council's obligations under s 138 of the Act to adopt a Councillor gift policy. • Darebin City Council recognises that Councillors will on occasion be offered gifts, benefits and hospitality however, Councillors in performing their roles ensure good governance and not to derive undue personal benefit. • Receipt of a gift from a person or organisation can result in a conflict of interest, or a perceived conflict of interest, in a matter. Councillors need to familiarise themselves with the conflict of interest provisions of the <i>Local Government Act 2020</i> (the Act). and take personal responsibility for their own compliance. • The offer of a gift to a Councillor may also affect perceptions of bias. This Policy confirms that gifts that are declined should also be recorded in the <i>Gifts Register</i>.
<p>5. POLICY PRINCIPLES</p>	<p>Councillors will uphold the following principles in applying this policy:</p> <ul style="list-style-type: none"> • Accountability: Councillors ensure they and their fellow Councillors are accountable in accordance with this policy. • Impartiality: Councillors have a duty to place public interest above their private interests when carrying out their official duties as a Councillors. • Integrity: Council strives to earn and sustain public trust through responding to offers of Gifts in a manner that is consistent with community expectations. • Risk-based approach: Councillors must ensure they consider the reputational and legal risks inherent with Gifts when dealing with offers.
<p>6. RESPONSIBILITIES</p>	<p>All Councillors are expected to read and understand this policy and effectively implement and both support and demonstrate a positive commitment to the policy.</p>
<p>7. ORGANISATIONAL VALUES</p>	<p>Council's organisational values enable and support the effective design and application of this policy by guiding Councillors in the course of their work.</p>

<p>8. STRATEGIC LINKS</p>	<p>This Policy is developed in accordance with the provisions of section 138 of the <i>Local Government Act 2020</i></p> <p>This Policy operates in conjunction with:</p> <ul style="list-style-type: none"> ➤ Council’s <i>Councillor Code of Conduct 2021</i> (Section 13) and be at all times ethical, fair and honest in the conduct of official duties and report any incidences where a bribe and/or cash is offered immediately to the Chief Executive Officer or the relevant General Manager. ➤ <i>Safeguarding Children Code of Conduct 2020</i>, where Council representatives are prohibited from giving personal gifts to children and young people to whom Council provides programs and services. However, it is permissible to give promotional, corporate, or recognition of service (student placement) gifts, for example a Council logo pin, library bag or drink bottle, to children or young people visiting Council as part of a school group visit. In this case each child or young person in the group should receive the same items. ➤ <i>Public Transparency Policy 2020</i>. ➤ Audit and Risk Committee Charter ➤ Council’s Fraud & Corruption Control Policy & Risk Management Framework ➤ Council’s values of Integrity and Accountability, as well as Councillors commitment to Transparency.
<p>9. BREACH OF POLICY</p>	<p>Any breach of this policy will be treated seriously. Any concerns about non-compliance should be reported immediately to the owner of this policy.</p>

10. GIFT ASSESSMENT

- 10.1 Councillors must not seek, solicit, demand or request Gifts for themselves or anyone else, in any form.
- 10.2 When deciding whether to accept an offer of a Gift, 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.
- 10.3 Councillors must consider the GIFT test¹ outlined in Figure 1. below when offered a Gift.

¹ The GIFT test as developed by the State of Victoria (Victorian Public Sector Commission) 2016.

Figure 1. Gift test

G	Giver	<p>Who is providing the gift, benefit or hospitality and what is their relationship to me?</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>
I	Influence	<p>Are they seeking to influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy, a token of appreciation or highly valuable? Does its timing coincide with a decision I am about to make?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers of the last 12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would I feel if the gift, benefit or hospitality became public knowledge? What would my colleagues, family friends or associates think?</p>

- 10.4 Councillors are encouraged to seek advice from the Council's Governance Department if they have doubts about accepting a Gift, Benefit or Hospitality, regardless of the value.
- 10.5 Councillors must refuse all offers of Gifts which are:
- 10.5.1 likely to influence them in the course of their duties;
 - 10.5.2 likely to raise a material or general conflict of interest for the Councillor either immediately or in the future;
 - 10.5.3 of money, vouchers, credit or similar;
 - 10.5.4 made in secret with an express or implied expectation that the Councillor will not publicly disclose the Gift.

Token Gift Offers

- 10.6 Councillors may accept Token Gift offers without declaring the offer on the Councillor Gift Register, unless the offer must be refused in accordance with clause 10.5. A Token Gift cannot be worth more than \$20.

Non-Token Gift Offers

- 10.7 Councillors must not accept any Non-Token Gift offers.
- 10.8 All Non-Token Gift offers must be recorded in the Councillor Gift Register.
- 10.9 It is a Councillor responsibility to notify and provide adequate information to the Governance Department to enable registration of a Non-Token Gift offer on the Councillor Gift Register.

- 10.10 Councillor may be offered a Non-Token Gift where there is no opportunity to decline prior to accepting. For example, they may receive a parcel in the post which contains a Gift. At first instance the Councillor should return the gift to the sender. If that is not possible due to it being an anonymous Gift, the Councillor must dispose of the Gift to the Council within 30 days of the Gift being received.

In accordance with Section 137 of the 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.

Attendance at events and functions

- 10.11 This policy does not apply to invitations to and reasonable hospitality provided at events and functions that a Councillor is required to attend in an official capacity, including where:
- 10.11.1 the Councillor is invited to open or speak at the event or function or is otherwise involved in the proceedings;
- 10.11.2 the Councillor is a Council appointed representative of a committee or group involved in or relevant to the event or function; or
- 10.11.3 a majority of Councillors or the Mayor consider that it is appropriate and aligned with community expectations for the Councillor to attend the event or function.
- 10.12 Invitations to attend events and functions in an official capacity are not considered Gifts under this policy and are not required to be declared on the Councillor Gifts Register.
- 10.13 Councillors are discouraged from attending gambling venues when representing Council in an official capacity. However, there may be circumstances where the Councillor determines the event warrants attendance and can exercise their discretion.
- 10.13.1 Council will not purchase tickets on behalf of a Councillor to attend any function/event held at gambling venues.
- 10.14 If a Councillor is invited to attend a function or event and is not required to do so in an official capacity, determined in accordance with clause 10.11, the invitation to attend must be treated as a Token Gift offer or Non-Token Gift offer in accordance with this policy, save that the Councillor is not required to declare Non-Token Gift

offers of this kind on the Councillor Gift Register.

- 10.15 Councillors should seek advice from Governance staff if they are unsure if their attendance at an event is or would be in an official capacity. However, it is ultimately for the Councillor to determine.

Tickets and events

- 10.16 There is a general expectation that Councillors attend Darebin Council-funded or co-sponsored shows or art performances. As such, invitations to significant events (such as opening nights) are often purchased by Council or provided by the organiser and may be offered to Councillors.
- 10.17 All invitations to ticketed events will be plus one guest, non-transferrable and RSVPs must be sent by the date set or tickets will be returned to the Box Office for re-sale.
- 10.18 Tickets or invitations that are accepted to these events are to be recorded in the Council Gifts, Benefits and Hospitality Register by completing the relevant Form.
- 10.19 Where an event is hosted and run directly by Darebin City Council, it will not be required to be declared on the Councillor Gifts Register.

Councillor Gift Register

- 10.20 Access to amend the Councillor Gift Register is restricted to relevant persons within the Council.
- 10.21 Council's Audit and Risk Committee will receive a report at least annually on the Councillor Gift Register.
- 10.22 The Councillor Gift Register is maintained by the Governance Department.
- 10.23 The Councillor Gift Register is made available to the public, including publication on the Council's website.
- 10.24 The Councillor Gift Register will include any information the Governance Department consider from time to time is legal and relevant to disclose including the recipient's name, date the Gift was offered, a description of the Gift, the reason the Gift is being offered, accepted or declined, the estimate value of the Gift and the name of the organisation or individual offering the Gift.

Ceremonial Gifts

- 10.25 Ceremonial Gifts are the property of the Council, irrespective of value, and should be accepted by Councillors on behalf of the Council.
- 10.26 Councillors accepting a Ceremonial Gift on behalf of the Council must:
- 10.26.1 a significant or ceremonial Gift to the Mayor must not exceed \$500;
 - 10.26.2 a significant or ceremonial Gift to a Councillor must not exceed \$250;
 - 10.26.3 arrange registration of the Gift on the Councillor Gift Register; and
 - 10.26.4 discuss with the Governance Department and other Councillors an appropriate means of displaying, disposing of or storing the Gift.
- 10.27 Note: In the event a consensus is not reached in discussions, the Manager Corporate Governance in consultation with the General Manager Governance & Engagement will determine whether and how to display, dispose of or store the Gift.

Providing Gifts

10.28 Councillors must consider the HOST test² outlined in Figure 2. below when providing Gifts.

Figure 2. HOST test

H	Hospitalsity	<p>To whom is the gift or hospitality being provided?</p> <p>Will recipients be external business associates, or individuals of the host organisation?</p>
O	Objectives	<p>For what purpose will hospitality be provided?</p> <p>Is the hospitality being provided to further the conduct of official business? Will it promote and support government policy objectives and priorities? Will it contribute to staff wellbeing and workplace satisfaction?</p>
S	Spend	<p>Will public funds be spent?</p> <p>What type of hospitality will be provided? Will it be modest or expensive, and will alcohol be provided as a courtesy or an indulgence? Will the costs incurred be proportionate to the benefits obtained?</p>
T	Trust	<p>Will public trust be enhanced or diminished?</p> <p>Could you publicly explain the rationale for providing the gift or hospitality? Will the event be conducted in a manner which upholds the reputation of the public sector? Have records in relation to the gift or hospitality been kept in accordance with reporting and recording procedures?</p>

Considerations when providing Gifts

10.29 Councillors providing Gifts must ensure that:

- 10.29.1 any Gift, Benefit or Hospitality is provided for a business purpose in that it furthers the conduct of official business or other legitimate Council goals, or promotes and supports the Council's policy objectives and priorities;
- 10.29.2 it does not raise an actual, potential or perceived conflict of interest;
- 10.29.3 any costs are proportionate to the benefits obtained for the Council, and would be considered reasonable in terms of community expectations;
- 10.29.4 costs are contained wherever possible, and expenditure complies with principles of financial probity and efficient use of resources.

Personal celebrations

10.30 Gifts provided to Councillors for personal celebrations will not be funded by the Council. This includes anniversaries or birthdays of a Councillor. Nothing in this

² The HOST test as developed by the State of Victoria (Victorian Public Sector Commission) 2016.

policy will prohibit Councillors or Council staff from personally paying for a Gift for such occasions.

Mayoral and Councillor Gifts

- 10.31 At the end of each Mayoral term the Council provides gifts chosen by the administration, not to exceed the following nominal amounts:
- 10.31.1 \$150 – to the Mayor
 - 10.31.2 \$50 – to the Deputy Mayor
- 10.32 These gifts are a memento in recognition of the importance of these roles for the Darebin City Council.
- 10.33 At the end of the Councillor term the Council, at its discretion, may provide a gift to all Councillors which will not exceed the following nominal amount:
- 10.33.1 \$100 per councillor.
- 10.34 These gifts:
- 10.34.1 must be registered by the Council on the Gift Register
 - 10.34.2 are otherwise exempt from this Policy (as in the individual may accept the gift)
- 10.35 The choice of gift remains the sole discretion of the administration.
- 10.36 Gifts that are donations on behalf of the gift recipient (or in the name of the Council) must only be to a registered charity.

11. PROCEDURAL GUIDELINES

11.1 Disclosure Requirement

- 11.1.1 Councillors must declare all offers of gifts or benefits, and all hospitality (except reasonable hospitality) including those offers that have been declined, using *Gift Declaration Form*.
- 11.1.2 **Councillors**, upon receipt or refusal of a gift, benefit or hospitality must complete the Gift Declaration Form - Councillors (**Appendix A**), sign it, have it endorsed by the CEO and submit to Governance Services team via email governance.services@darebin.vic.gov.au **within 7 days** for inclusion in the Register.
- 11.1.3 Councillors must disclose in their biannual Personal Interest Returns the details of any gift valued at \$500 or more (or the threshold fixed by the Secretary) including the gifts in the form of goods or services and multiple gifts that together equal or exceed \$500, received at any time since the lodgment of preceding initial or biannual personal interest returns, unless:
- 11.1.3.1 gift is from a family member;
 - 11.1.3.2 gifts disclosed in an election campaign donation return;
 - 11.1.3.3 any reasonable hospitality at an event or function attended in an official capacity as a Councillor.
- 11.1.4 A Councillor who has a conflict of interest because of receiving a gift or gifts must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules.

11.1.5 Nothing in this policy shall be construed to override the provisions of the Act. In the event of any apparent inconsistency, the provisions of the Act will prevail.

12. REPORTING CONCERNS

12.1 Councillors who consider that a gift, benefits or hospitality received has not been declared in accordance with the provisions of this Policy or it is not being appropriately managed, can report the matter to:

12.2 Internal Reporting Options:

12.2.1 Manager, Corporate Governance

12.2.2 Public Interest Disclosure Coordinator (PIDCoordinator@darebin.vic.gov.au)

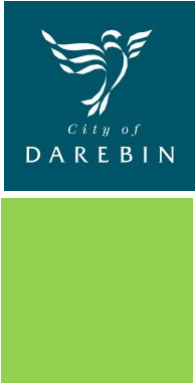
12.2.3 CEO

12.3 External Reporting Options:

12.3.1 Local Government Inspectorate, for detailed process and information
<https://www.lgi.vic.gov.au/make-complaint-local-government-inspectorate>

12.3.2 Independent broad-based anti-corruption Commission (IBAC), for detailed process and information <https://www.ibac.vic.gov.au/reporting-corruption/report>

Appendix



A

GIFTS DECLARATION FORM COUNCILLORS

The Councillor Code of Conduct 2021 provides information relating to the acceptance of gifts, benefits and hospitality and should be read in conjunction with the Gifts Policy 2021

All Gifts, Benefits & Hospitality (received or declined) regardless of their value, must be declared.

Please complete and sign the form, get endorsed by the CEO and submit to the Governance Services team via email governance.services@darebin.vic.gov.au within 7 days for inclusion in the Council's Gifts Register.

Table with 8 rows and 2 columns. Row 1: Councillor Name. Row 2: Date of offer/receipt of Gift/Benefit/Hospitality. Row 3: Name of the Individual/Group/Company providing Gift/benefit/hospitality. Row 4: Category and brief description of gift/benefit/hospitality. Row 5: Reason for gift/benefit/hospitality. Row 6: Estimated value with a dollar sign symbol. Row 7: Have you previously received any offer from this individual/group/company with 'No' and 'Yes' checkboxes. Row 8: Treatment of gift, benefit or hospitality (eg - Accepted, declined, donated to...)

Councillor's Signature: _____

Date: _____

CEO's Signature: _____

Date: _____