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COUNCILLOR GIFTS, BENEFITS AND HOSPITALITY POLICY 2021

March 2021

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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 22 March 2021

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| <p>1. PURPOSE</p> | <p>This policy states the Darebin City Council’s position on:</p> <ul style="list-style-type: none"> • responding to offers of gifts, benefits and hospitality; and • providing gifts, benefits and hospitality. <p>This policy is intended to support Councillors in the avoidance of conflicts of interest created through the receipt of gifts, benefits and hospitality and to deal with these matters in a manner that maintains high levels of integrity and public trust</p> |
| <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>a. Act: means the <i>Local Government Act 2020</i>.</p> <p>b. Benefit: Benefits include 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>c. Bribe: Bribe is an offer of money or other inducement made with the intention to corruptly influence a Councillor in the performance of their duties.</p> <p>d. Councillor: An elected representative of the Community.</p> <p>e. Conflict of interest: 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). The Act requires Councillors to declare General or Material Conflicts of Interest. Conflicts may be:</p> <ul style="list-style-type: none"> • Actual: it currently exists. • Potential: it may arise, given the circumstances. • Perceived: 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>f. Gift: A ‘gift’ will be as defined in the Act from time to time. On the date of adoption of this policy ‘gift’ is defined in section 3 of the <i>Local Government Act 2020</i> as ‘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> |

(c) The making of a payment or contribution at a fundraising function;

Gifts explanation to support definition - A gift is anything of monetary or other value that is offered by an external organisation or individual to a Councillor as a result of their role with the Council. It includes free or heavily discounted items or services, benefits or hospitality that exceeds common courtesy including but not limited to following:

- 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.

g. Gift disclosure threshold: is defined in the *Act* as \$500 or a higher amount or value prescribed by the regulations.

h. Gift of appreciation: Refers to a gift that is presented to a Councillor to express thanks and a feeling of goodwill on behalf of the giver where there is no expectation of repayment. These gifts are generally a one-off occurrence.

i. Gifts, Benefits and Hospitality Register: A comprehensive record, preferably digital, of all declarable Gifts, Benefits and Hospitality. This register is maintained by the Council Business Unit and is protected from unauthorised changes.

j. Hospitality: is the friendly reception and treatment of guests, ranging from offers of light refreshment at a business meeting to an expensive restaurant meals and sponsored travel and accommodation.

Hospitality is considered a gift unless the hospitality is reasonable and connected to a function and event at which the Councillor is attending in their official Council capacity.

k. Monetary gift: is defined as cash, cheques, money orders, travellers' cheques, direct deposits, lottery tickets, scratchies or items which can be easily converted to cash.

l. Official gift: A gift received by Councillors as representatives of the City or the Council. These gifts may be received from a Sister City, organisations or corporations that are bestowing a corporate gift (i.e. plaques, plates, vases, trophies, artwork) or souvenir to the City, or as a token of appreciation for a contribution to a conference or industry event.

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| | <p>m. Significant Occasion Gift: A gift, which may be given by Council to the Mayor or a Councillor as a gesture of goodwill for official or ceremonial purposes.</p> <p>n. Token Gift: Is of such a nature and value that it could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter. It cannot be worth more than \$5.</p> <p>o. Value: Value means the face value or estimated retail value.</p> |
| <p>4. POLICY STATEMENT</p> | <ul style="list-style-type: none"> • The Darebin City Council is committed to being open and transparent in its operations to minimise the risk of being placed in a compromising position that may have an adverse effect on its public endeavours and the promotion of trust within the community. • Darebin City Council recognises that Councillors will on occasion be offered gifts, benefits and hospitality however it should always be remembered that Councillors perform their roles to ensure the peace, order and good governance of the municipal district, 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). The organisation will provide support through initiatives such as this policy and training, but each Councillor must 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, Benefits and Hospitality Register</i>. |
| <p>5. POLICY PRINCIPLES</p> | <p>The City of Darebin is committed to and will uphold the following principles in applying this policy:</p> <ul style="list-style-type: none"> • Accountability: Councillors are accountable for appropriately responding to the offer and provision of gifts, benefits and hospitality. • Impartiality: Councillors have a duty to place public interest above their private interests when carrying out their official functions and will not accept any offer of a gift, benefit or hospitality that may jeopardise this trust or could be perceived to influence decision making or service delivery. Councillors must not accept offers from those whom are currently awarded or likely to apply for quotes, tenders and contracts. • Integrity: Council strives to earn and sustain public trust through responding to offers of gifts, benefits and hospitality in a manner |

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| | <p>that is consistent with community expectations. Councillors will refuse any offer that may lead to an actual, perceived or potential conflict of interest. The acceptance of gifts, benefits and hospitality may be considered to influence, reflect bias or preferential treatment to the giver.</p> <ul style="list-style-type: none"> • Risk-based approach: Council, through its policies, processes and Audit and Risk Committee, will ensure gifts, benefits and hospitality risks are appropriately assessed and managed. |
| 6. RESPONSIBILITIES | All Councillors are expected to read and understand this policy and effectively implement and both support and demonstrate a positive commitment to the policy. |
| 7. ORGANISATIONAL VALUES | Council's organisational values enable and support the effective design and application of this policy by guiding Councillors in the course of their work. |
| 8. STRATEGIC LINKS | <p>This Policy is developed in accordance with the provisions 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) where Councillors agree to adhere to the Council's Gifts, Benefits and Hospitality Policy 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 our commitment to Transparency. |
| 9. BREACH OF POLICY | Any breach of this policy will be treated seriously. Any concerns about non-compliance should be reported immediately to the owner of this policy. |

10. THE GIFT TEST

The GIFT test (developed by the Victorian State Services Commission) is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

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| 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?</p> <p>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?</p> <p>Is it a courtesy, a token of appreciation or highly valuable?</p> <p>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?</p> <p>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?</p> <p>What would my colleagues, family friends or associates think?</p> |

11. GIFTS, BENEFITS AND HOSPITALITY

a. Gifts must never be sought

Councillors must not solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position.

b. No sense of obligation

No gift may be accepted that could influence, or be perceived to influence, a Councillor in the performance of their public or professional duties.

c. Anonymous Gifts and Gift Disclosure threshold

- Councillors are prohibited from accepting gifts that equal or exceed the gift disclosure threshold unless they know the name and address of the person making the gift.
- 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 can give the gift to the Council within 30 days to avoid committing an offence.

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.*

d. Conflict of Interest

Councillors are prohibited from accepting a gift that creates a conflict of interest (real, potential or perceived).

e. Prohibited Gifts

In addition to other limitations imposed by this policy, monetary gifts (of any value) must never be accepted.

f. Token Gifts

Gifts of token value may be accepted by Councillors provided that the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result of the gift. It may include promotional items such as pens and note pads, and the modest hospitality that would be considered a basic courtesy. A token offer cannot be worth more than **\$5**.

The following should be used as a guide for Councillors in determining whether to accept token gifts. Such gifts may be accepted only when the following have been considered:

- Such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- Acceptance would not cause any potential perceived or actual compromise or conflict of interest;
- The gift does not have a significant monetary value (as a guide, less than \$5);
- The gift is not offered on a regular basis;
- There is no requirement to record token gifts in the Council Gifts, Benefits and Hospitality Register.

g. Non-token offers

Councillors can only accept non-token offers if they have a legitimate business benefit.

All non-token offers received must be reported with CEO review and recorded in the *Gifts, Benefits and Hospitality Register*.

All accepted non-token offers must be endorsed by the CEO, recorded in the *Gifts, Benefits and Hospitality Register* and be consistent with the following requirements:

- it does not raise an actual, potential or perceived conflict of interest or have the potential to bring the individual or Council into disrepute; and
- there is a legitimate business reason for acceptance. It is offered in the course of the Councillor's official duties, and has a benefit to Council or the municipality.

Where the acceptance of a gift would be likely to bring the Council into disrepute, the Councillor should decline the gift in the first instance, or return the gift if the opportunity to decline was not available. The Councillor should either return the gift or transfer ownership to Council to mitigate this risk.

h. Official Gifts

- Councillors may be involved in conferences, social, cultural, community or industry events where official gifts are at times presented or exchanged. Such gifts may be enduring, such as a work of art, or consumables and can range in value from token gifts to gifts of significant value.
- In circumstances where it would be impolite or inappropriate to decline the gift, it is reasonable for official representatives of the Council to accept official gift on behalf of the Council.
- The Chief Executive Officer will ensure that any such official gift is recorded in the Council's *Gifts, Benefits and Hospitality Register* as a gift to the Council.
- The gift will be considered the property of Council, and where suitable, the gift will be displayed in an appropriate and secure location for public viewing.
- Where an item is not suitable for public display or the gift is of a personal nature to the recipient, the Chief Executive Officer will use their discretion as to the appropriate disposal/utilisation of the official gift. A record will be made in the Council Gifts, Benefits and Hospitality Register of the determination of the Chief Executive Officer

i. Significant Occasion Gifts

- A Councillor may accept a significant occasion gift on behalf of Darebin City Council.
- A significant occasion gift to the Mayor must not exceed \$500. A significant occasion gift to a Councillor must not exceed \$250.
- All significant occasion gifts must be declared, and the details recorded in the Council Gifts, Benefits and Hospitality Register.

j. Gifts of Appreciation

Demonstrating appreciation for services received from the Council should not involve the presentation of a gift or benefit. Acceptable alternatives may include a letter of thanks or a thank you card as these are considered less likely to result in a situation that may compromise or be perceived to compromise either party.

- No Councillor is to accept a gift of appreciation that has significant monetary value (as a guide, more than \$50) or involves significant personal effort. Where such gifts are offered, the Councillor should politely refuse the offer explaining that it is against the Council's policy to accept such a gift.
- If such a gift is offered in an open or public forum and refusal would be obviously discourteous or acceptance would cause any potential perceived or actual compromise or conflict of interest, the gift may be accepted but should be referred to the Chief Executive Officer for a decision as to the appropriate treatment.
- All gifts of appreciation, whether accepted or declined, are to be recorded in the Council *Gifts, Benefits and Hospitality Register*.

k. Repeat Offers

Receiving multiple offers (token or non-token) from the same person or organisation can generate a stronger perception that the person or organisation could influence you. Multiple gifts from the same person/organisation are considered inappropriate and should not be accepted.

l. Hospitality

- Councillors, in an official capacity, will from time to time receive invitations of hospitality to attend various functions and events.
- Where hospitality is only modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations. Examples of such hospitality would include incidental refreshments at meetings, working lunches, community events, or similar, are not considered to be a gift and need not be recorded unless they occur at a frequency that may give rise to the perception of a conflict of interest under the Act.
- Offers of Hospitality should be politely declined and recorded in the Council *Gifts, Benefits and Hospitality Register* if acceptance of the hospitality is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor, or could be perceived as a conflict of interest.
- In some circumstances a Councillor may attend the event if the Council either fully reimburses the organisation for the full cost of the hospitality or if the Councillor personally pays for their own attendance.
- Where possible, any offer of hospitality made to Councillors should be declared and approved prior to the event.

- All offers of Hospitality must be declared regardless of them being accepted or declined and recorded in the *Gifts, Benefits and Hospitality Register*.

m. Tickets and Events

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.

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.

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.

Where an event is hosted and run directly by Darebin City Council, the [Darebin Gifts and Hospitality Registration Form](#) will not be required to be completed.

n. Gifts, Benefits and Hospitality from actual or potential Suppliers / Contractors

- No gift, benefit, or hospitality from any actual or potential supplier or contractor to Council or any other parties that may benefit from Council decisions shall be accepted or solicited.
- All offers in this instance must be declared, regardless of their actual or assumed value and recorded in the Disclosure of Gifts Benefits & Hospitality Register.

o. Improper Behaviour/Attempts to Bribe

If a Councillor believes they have been offered a bribe it is important that they immediately act to minimise any potential for negative consequences by taking the following steps:

- (a) Terminate the interaction with the person.
- (b) Keep a clear record of the events by making notes about what you saw and heard, using terminology such as “I said....”, “he said.....” to ensure accuracy.
- (c) Report the matter to, the Chief Executive Officer with all details and as a matter of priority, confirm what action he/she has taken.
- (d) Prepare a formal report to include the:
 - (i) Date, time and place of the incident;
 - (ii) Circumstances of the offer (bribe);
 - (iii) What the offer (bribe) involved;
 - (iv) What you believe the offer (bribe) intended to achieve;
 - (v) Who offered the bribe;
 - (vi) The details of what you/they said, any other relevant information; and
 - (vii) Your signature and date.
- (e) Discuss with the Chief Executive Officer exactly how future interactions should be conducted with the person offering the bribe; and
- (f) Confirm that the Mayor has been informed.

- (g) Report the matter or any observed concerns in accordance with the *Public Interest Disclosure Act 2012*, if required.

12. PROVIDING GIFTS, BENEFITS AND HOSPITALITY

Gifts, benefits and hospitality may be provided when welcoming guests, to facilitate the development of community or business relationships, to further Council outcomes and to celebrate achievements. The CEO or their delegate will determine the appropriateness of any such gift, benefit or hospitality. When deciding whether to provide gifts, benefits or hospitality or the type of gift, benefit or hospitality to provide, the CEO must ensure:

- any gift, benefit or hospitality is provided for a business reason that furthers the conduct of official business or other legitimate organisational goals, or promotes and supports Council policy objectives and priorities;
- that any costs are proportionate to the benefits obtained for the Council, and would be considered reasonable in terms of community expectations; and
- it does not raise an actual, potential or perceived conflict of interest.

The provision of gifts to outgoing Councillors in recognition of their contribution will be at the discretion of the CEO and declared in the Gifts, Benefits and Hospitality Register.

13. PROCEDURAL GUIDELINES

a. Disclosure Requirement

- Councillors must declare all offers of gifts or benefits, and all hospitality (except reasonable hospitality) including those offers that have been declined, using *Gift, Benefits and Hospitality Declaration Form* (GBH Declaration Form).
- **Councillors**, upon receipt or refusal of a gift, benefit or hospitality must complete the GBH Form - Councillors (**Appendix A**), sign it, have it endorsed by the CEO and submit to Council Business Unit through email council.business@darebin.vic.gov.au **within 7 days** for inclusion in the Register.
- 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 lodgement of preceding initial or biannual personal interest returns, unless:
 - gift is from a family member;
 - gifts disclosed in an election campaign donation return
 - any reasonable hospitality at an event or function attended in an official capacity as a Councillor
- A Councillor who has a conflict of interest as a result of receiving a gift or gifts must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules.
- 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.

b. Gifts, Benefits and Hospitality Register

- Council Business Unit will maintain *Gifts, Benefits and Hospitality Register* (GBH Register).
- All Gifts, benefits and hospitality received/declined by Councillors, regardless of their value, must be recorded in the GBH Register.
- It is the responsibility of a Councillor to declare a gift/benefit/hospitality or an offer of same on the appropriate form and forward it to the Council Business Unit within 7 days of receipt/offer. The Gifts, Benefits and Hospitality Register will contain the following information:
 - Category (gift/benefit/hospitality)
 - Date the gift, benefit or hospitality was received or declined
 - Recipient of the gift, benefit or hospitality
 - Name of gift/benefit/hospitality provider
 - Description of the gift/benefit/hospitality
 - Estimated value of the gift/benefit/hospitality
 - Treatment of the gift/benefit/hospitality (accepted/declined/re-distributed/disposed)
- GBH Register for Councillors will be reported to EMT in July and January each year for the preceding six-month period.
- GBH Register for Councillors will be reported to the Audit and Risk Committee in July and January (or at the next meeting thereafter) each year for the preceding six-month period.
- GBH Register for Councillors will be updated quarterly and maintained for the duration of the current Council term on Council's website.

14. TRAINING AND AWARENESS

The Council will support Councillors to understand the meaning and potential impacts of gifts, benefits and hospitality, including their obligations to report such matters. All incoming Councillors will complete training on managing gifts, benefits and hospitality.

Thereafter, all elected Councillors will complete refresher training on managing gifts, benefits and hospitality biannually. The Council will maintain a record of training completed.

To promote awareness and compliance, the Council will regularly communicate its stance on gifts, benefits and hospitality to internal and external stakeholders.

15. REPORTING CONCERNS

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:

Internal Reporting Options:

- Chief Integrity and Conduct Officer
- Public Interest Disclosure Coordinator
- CEO

External Reporting Options:

- Local Government Inspectorate, for detailed process and information go to <https://www.lgi.vic.gov.au/make-complaint-local-government-inspectorate>
- Independent broad-based anti-corruption Commission (IBAC), for detailed process and information go to <https://www.ibac.vic.gov.au/reporting-corruption/report>

16. GENERAL

Implementation of this policy and statutory obligations relating to gifts requires constant alertness regarding perceptions of probity. Probity concerns will be managed in an environment that encourages disclosure. Where any person is concerned regarding a lack of clarity in relation to the requirements of the policy or the *Local Government Act 2020*, they should disclose the matter.

Appendix A

GIFTS, BENEFITS AND HOSPITALITY 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 *Gifts, Benefits and Hospitality 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 Council Business Unit through email council.business@darebin.vic.gov.au within 7 days for inclusion in the Council's Gifts, Benefits and Hospitality Register.

| | | |
|----|--|--|
| 1. | Councillor Name | |
| 2. | Date of offer/receipt of Gift/Benefit/Hospitality | |
| 3. | Name of the Individual/Group/Company providing Gift/benefit/hospitality | |
| 4. | Category and brief description of gift/benefit/hospitality | |
| 5. | Reason for gift/benefit/hospitality | |
| 6. | Estimated value | \$ |
| 7. | Have you previously received any offer from this individual/group/company | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| 8. | Treatment of gift, benefit or hospitality (eg - Accepted, declined, donated to...) | |

Councillor's Signature: _____

Date: _____

CEO's Signature: _____

Date: _____