



Ararat Rural City

# Councillor Gifts Policy

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Chief Executive Officer

Governance and Administration Coordinator

# Councillor Gifts Policy



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## INTENT

This Policy is to ensure that all Councillors exercise care and discretion when being offered gifts, gratuities and favours in kind to ensure that there is no actual or perceived conflict of interest.

## POLICY

This policy is founded on the requirement for transparency and seeks to minimise improper practices and maintain the Council's good reputation.

Councillors should at all times be aware of the Local Government Act 2020 provisions regarding gifts especially in relation to conflict of interests and election donations. Councillors will take action as required by this policy.

Accordingly, the actions of Councillors must be consistent with those principles.

The following general principles apply:

### Gift Disclosure Threshold

Councillors are prohibited from accepting gifts that equal or exceed the gift threshold unless they know the name and address of the person making the gift.

### Anonymous Gifts

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.

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

### 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.

### 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.

### Prohibited Gifts

Monetary gifts of any value must not be accepted. This includes cash, gift cards and vouchers.

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## Token Gifts

Gifts of a token values (less than \$50) may be accepted by Councillors, provided that the Councillor advises the Mayor of the gift.

The following should be used as a guide in determining whether to accept token gifts. Such gifts may be accepted only when the following has 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
- The gift is not offered on a regular basis.

There is no requirement to record token gifts in the Gift Register, unless the cumulative value of a gift from the same provider exceeds \$50.

## Official Gifts

From time to time individuals or organisations may offer gifts of goodwill to the Council organisation. The Chief Executive Officer will ensure that any such official gift is recorded in the Council Gifts Register.

Councillors may be involved in conferences or social, cultural, community, industry events where official gifts are presented or exchanged. Where it would appear to be impolite or inappropriate to decline the offer, it is reasonable for official representatives of Council to accept official gifts on behalf of Council. Unless otherwise determined as set out below, such gifts shall be considered to be the property of Council and may be displayed in an appropriate and secure location for public viewing.

In some circumstances, including where the item may not be 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 use of the official gift.

A record will be made in the Council's Gift Register in the event that the gift is used for purposes other than Council purposes.

## Significant Occasion Gifts

A Councillor may accept a significant occasion gift on behalf of Ararat Rural 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 Register.

## Gifts of Appreciation

Demonstrating appreciation for services received from 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.

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 is to be surrendered to the Chief Executive Officer for a decision as to the appropriate disposal.

Multiple gifts from the same person/organisation are considered inappropriate and should not be accepted.

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All gifts of appreciation, whether accepted or declined, are to be recorded in the Council Gifts Register.

## 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.

Incidental refreshments at meetings, working lunches, 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 Local Government Act 2020.

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.

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, the offer of hospitality should be politely declined.

Offers of hospitality, whether accepted or declined, must be recorded in the Council Gifts Register.

## Awards and Prizes Won at Conferences/ Seminars

Prizes or awards valued at over \$50 that are won at functions attended at Council's expense, must immediately become the property of Council. The Supreme Court has ruled that such prizes or awards are owned by the person/organisation providing 'consideration' for the attendance.

Councillors attending functions as Council representatives, and who make no financial contribution to the attendance, lose entitlement to any award or prize won as a result of attending the function;

- Circumstances in which a person may be entitled to keep a prize or award over \$50 are where personal payment has been made for the attendance, or the person pays for a raffle ticket that wins a prize. In each case the recipient has provided consideration for the prize/award and may lay legal claim to its title; and
- From an ethics point-of-view, recipients of such prizes could potentially be seen as being influenced by the sponsor of the prize. Prizes and awards valued at over \$50 must therefore be reported as soon as possible to the Chief Executive Officer, who must determine the ownership of the item and the appropriate action to be taken, as per this policy.

## Benefits

A Councillor must not knowingly accept travel or hospitality (including meals and accommodation) sponsored wholly or partly by any person, organisation or business, where such acceptance implies an obligation on the recipient.

However, reasonable hospitality may be accepted in circumstances where it is:

- approved by the Mayor on the advice of the Chief Executive Officer;
- provided at a function or event where the person is acting in an official capacity on behalf of Council;
- provided at rates that are openly available to people other than Councillors; or
- of value less than \$50 and by reason of its triviality could not be construed as creating an obligation.

## Remote or Insignificant Interest

If the acceptance of a gift, benefit or hospitality relates to an interest that is remote or insignificant in accordance with s128 of the Local Government Act 2020, the Councillor will not be considered to have a conflict of interest.

## Campaign Donation Returns

Division 10 of the Local Government Act 2020 outlines the requirements in relation to Campaign Donation Returns.

- Section 309 - Certain gifts not to be accepted

It is unlawful for a Candidate or a person acting on behalf of a \ Candidate to receive during the donation period a gift made to or for the benefit of the Candidate, being a gift 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 person receiving the gift; or
- b) at the time when the gift is made
  - i. the person making the gift gives to the person receiving the gift the person's name and address; and
  - ii. the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

## Conflict of Interest

Gifts must not be accepted which give the appearance of a conflict of interest. A conflict of interest means a general conflict of interest within the meaning of section 127 of the Local Government Act and a material conflict of interest within the meaning of section 128 of the LGA.

A general conflict of interest is where an impartial, fair-minded person would consider that a person's private interests could result in that person acting in a manner that is contrary to their public duty.

A material conflict of interest is where an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss incurred either directly or indirectly and in a pecuniary or non-pecuniary form. A relevant person means a person who is a Councillor, member of a delegated committee or a member of Council staff.

## Records of gifts in Personal Interests Returns

Councillors must lodge an initial and biannual interests returns, which contain matters prescribed in the Local Government (Governance and Integrity) Regulations 2020.

A personal interests return must include the details of any gift received by the specified person, the value of which equals or exceeds \$500 or the threshold amount fixed by the Secretary, including gifts in the form of goods or services and multiple gifts that together equal or exceed that amount, which was received at any time since the specified person lodged the preceding initial or biannual personal interests return.

A summary of the personal interests returns are made available on Council's website.

## PROCEDURAL GUIDELINES

### Declaration of Gifts

Any gift, benefit, award or prize over \$50 must be declared and the details recorded on the Council's Gift Register which is administered by the Governance Unit. It is the individual's responsibility to complete the appropriate form and forward it to the Governance Unit.

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The following details are required at a minimum when declaring a gift:

- Name and signature of Councillor
- Received from
- Date received, offered or declined
- Relationship to gift provider
- Description of gift
- Value of gift (estimated if unknown)

Surrendered gifts immediately become 'public property' and will be disposed of in accordance with the 'Disposal of Gifts' process as set out below.

A gift declined must also be disclosed. Disclosure that the gift has been declined and returned protects the Councillor and highlights any systematic patterns. Gifts declined in the presence of the gift giver do not need to be disclosed.

## The GIFT Test

The Victorian Public Sector Commission's 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, 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>                  |

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|----------|--------------|--|
| <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> |
|----------|--------------|--|

| GIFT                              | VALUE        | ACTION                |
|-----------------------------------|--------------|-----------------------|
| Any Gift, Benefit, Award or Prize | Under \$50   | Nil                   |
| Any Gift, Benefit, Award or Prize | \$50 - \$100 | Declare and Retain    |
| Any Gift, Benefit, Award or Prize | Over \$100   | Declare and Surrender |
| Cash or Gift Card                 | Any Value    | Decline and Declare   |

## Disposal of Gifts

The Chief Executive Officer may dispose of gifts by any of the following methods:

- Return to the original recipient;
- Return to sender;
- Disposal by resolution of Council;
- Transfer to other public agencies or authorities;
- Transfer as a gift to a recognised charitable, aid or non-profit organisation;
- Archival action by the Victorian Museum or State Library;
- Reduction to scrap; or
- Destruction.

If a gift does not have a public value or is not of particular significance regarding its historical, cultural or protocol value, or was given to a Councillor by virtue of the discharge of that person's duties, the recipient may, at the discretion of the Chief Executive Officer, buy the gift from Council. The purchase price must be the manufacturer's wholesale value of the gift in the place of origin at the time of purchase as determined by the Chief Executive Officer, less \$50. If there is difficulty in assessing the value, a valuation must be obtained by Council from an appropriately experienced person or body.

## Policy Breaches

As per the Councillor Code of Conduct, Councillors committed to the following:

- We commit to compliance with our statutory obligations in relation to gifts and hospitality. We also undertake to comply with Council's policy to disclose all gifts, gratuities and favours in kind offered and/or accepted in my capacity as a Councillor, in accordance with the Council's Gifts, Gratuities and Favours in Kind Policy.
- In addition, we commit to notify the Chief Executive Officer if in the conduct of our duties, we receive an inappropriate offer of a gift or hospitality of any kind.

Councillors also committed to ensure their behaviours do not bring discredit to Council and committed to not intentionally misuse their position to gain or attempt to gain directly or indirectly, an advantage for themselves or for any other person.

Councillors must take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

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Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Council's Gift Register.

Gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to an interest because of receipt of an applicable gift.

Campaign donations must be disclosed in the campaign donation return.

Councillors must not seek or accept any immediate or future reward or benefit in return for performance of any duty or work for the Council.

Any breaches of this Policy in the case of a Councillor will be to the provisions of the Local Government Act 2020.

## TERMS/DEFINITIONS

| TERM                                       | DEFINITION   |
|--|--|
| Benefit                                    | Something which is believed to be of value to the receiver, such as a service i.e. access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services, pleasure or holidays.   |
| Bribe                                      | A bribe is 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.   |
| Conflict of Interest (LGA 2020 s126-131)   | <p>The Local Government Act 2020 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>• <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> |
| Gift (LGA 2020 s3(1))                      | <p>Section 3 of the Local Government Act 2020 defines a gift as meaning 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> <ol style="list-style-type: none"> <li>a) the provision of a service (other than volunteer labour); and</li> <li>b) the payment of an amount in respect of a guarantee; and</li> <li>c) the making of a payment or contribution at a fundraising function.</li> </ol>  |
| Gift Disclosure Threshold (LGA 2020 s3(1)) | Means \$500 or a higher amount or value prescribed by the regulations and notwithstanding the limits specified in this policy  |
| Gift Disclosure (LGA                       | Section A Disclosable Gift means one or more gifts with a total value of,  |

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|   |   |
|---|---|
| <p>2020 s128 (3)(h) and (4)</p>                         | <p>or more than \$500 that was received from a person in the 5 years preceding the decision on the matter:</p> <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>but 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, member of Council staff or member of a delegated committee.</p> <p>To accord with the LGA on public transparency, The Ararat Rural City Council policy is that ALL gifts, or offers whether accepted or not, are disclosable.</p> |
| <p>Hospitality</p>                                      | <p>Where a meal or service is offered which has more than nominal value and is not viewed as being connected to official Council business or part of the accepted meal at a conference or seminar.</p>  |
| <p>Official Gift</p>                                    | <p>A gift received by Councillors as representatives of the City or Council. These gifts may be received from a Sister City, organisations or corporations that are bestowing a corporate gift (e.g. plaques, plates, vases, trophies, art work) or souvenir to the City, or as a token of appreciation for a contribution to a conference or industry event.</p>   |
| <p>Personal Interests Returns<br/>LGA 2020 s132-136</p> | <p>Councillors must lodge an initial and biannual personal interests returns with the Chief Executive Officer, which contain matters prescribed in the Local Government (Governance and Integrity) Regulations 2020.</p>  |
| <p>Prohibited Gift</p>                                  | <p>Monetary gifts of any value including: cash, credit, gift cards, vouchers</p>  |
| <p>Significant Occasion Gift</p>                        | <p>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>Token Gift</p>                                       | <p>Is of such a nature and minimal value (under \$50) that it could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter. The token gift does not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. In the event that a gift might reasonably be perceived to influence, or appear to influence, the recipient, it cannot be defined as a token gift.</p>  |

## ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively, Examples include a change to the name of a Council department, a change to the name of a Federal or State department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

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## REFERENCES

- Local Government Act 2020.
- Local Government (Governance and Integrity) Regulations 2020
- IBAC Local Government Integrity Framework Review (March 2019)
- Victorian Public Sector Commission – ‘GIFT’ test
- Gift Register
- Gifts Register Form
- Personal Interest Return

## RELATED DOCUMENTS

- Councillor Code of Conduct
- Fraud and Corruption Policy
- Public Transparency Policy

## APPENDICES

Nil.