



Ararat Rural City

# Councillors Gifts, Gratuities and Favours in Kind Policy

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Governance and Administration Coordinator

## SUMMARY

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 provisions regarding gifts especially in relation to indirect interests, conflict of interest 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:

### **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.

### **Token Gifts**

Gifts of a token values (less than \$20) 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 \$20.

### **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 Gifts 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 or a Council officer 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.

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 1989.

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 \$20 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 \$20 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 \$20 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 \$20 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 s77A (4) of the Local Government Act 1989, the Councillor will not be considered to have a conflict of interest.

## Campaign Donation Returns

Division 9 of the Local Government Act 1989 outlines the requirements in relation to Campaign Donation Returns.

- Section 628 - Certain gifts not to be accepted

It is unlawful for a Councillor or Candidate or a person acting on behalf of a Councillor or Candidate to receive during the donation period a gift made to or for the benefit of the Councillor, 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 past, present or future conflict of interest.

As outlined in Section 78C of the Local Government Act 1989 a Councillor has an indirect interest because of receipt of an applicable gift if:

- One of more gifts with a total value (or more than) over the gift disclosure threshold (\$500 over a five year period) are received from a person in the five years preceding the decision or exercise of the power, duty or function, this does not include:
  - a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, Councillor, member of Staff or member of a Special Committee;
  - b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, member of Staff or member of a Special Committee.
- A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from:
  - (a) a person who has a direct interest in the matter; or
  - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
  - (c) a person who gives the applicable gift to the person on behalf of a person, company or body, that has a direct interest in the matter.

## PROCEDURAL GUIDELINES

### Declaration of Gifts

Any gift, benefit, award or prize over \$20 must be declared and the details recorded on the Council Gifts 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.

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

As suggested in the model policy on the Victorian Public Sector Commission's website 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 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 highly valuable? 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 of 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 I feel if the gift, benefit or hospitality became public knowledge? What would my colleagues, family friends or associates think?</p>

GIFT	VALUE	ACTION
Any Gift, Benefit, Award or Prize	Under \$20	Nil
Any Gift, Benefit, Award or Prize	\$20 - \$50	Declare and Retain
Any Gift, Benefit, Award or Prize	Over \$50	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 Council's C.1.6 Councillor Code of Conduct Support Guide May 2016:

Councillors must scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council. Councillors must adhere to Councillors Gifts, Gratuities and Favours in Kind Policy.

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.

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 indirect 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.

Under the provisions of section 78C of the Act, Councillors can be seen to have an indirect interest if they have received an applicable gift or gifts with a total value of \$50 or more directly or indirectly from:

- a person who has a direct interest in the matter; or
- a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
- a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter

In addition to disclosing an interest in this instance, any gift, goods, service or other item of value worth \$50 or more that is offered by an external person, company or body, whether accepted or returned, must be promptly reported on the appropriate disclosure form to the CEO. This includes token gifts and acts of hospitality.

Any breaches of this Policy in the case of a Councillor will be to the provisions of the Local Government Act 1989.

## 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.

## TERMS/DEFINITIONS

TERM	DEFINITION
Applicable Gift Local Government Act 1989 section 78C	Means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include— a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.
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 corrupt inducement to reward.
Gift	Section 3 of The Local Government Act 1989 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

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	<p>a) the provision of a service (other than volunteer labour); and</p> <p>b) the payment of an amount in respect of a guarantee; and</p> <p>c) the making of a payment or contribution at a fundraising function.</p>
Gift Disclosure Threshold	Means \$500 or a higher amount or value prescribed by the regulations and notwithstanding the limits specified in this policy.
Hospitality	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.
Official Gift	A gift received by Councillors or Council Officers 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.
Prohibited Gift	Monetary gifts of any value including: cash, credit, gift cards, vouchers
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.
Token Gift	Is of such a nature and minimal value (under \$20) 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.
Register of Interest Returns	These are completed by nominated officers, Councillors, and members of special committees to declare any interests they may have (e.g. property owned, gifts over \$500 received) as required by the Local Government Act 1989. The Primary return is completed initially, followed by Ordinary returns twice yearly.

## REFERENCES

- Local Government Act 1989 (section 78c and section 87(7)).
- Councillor Code of Conduct, and Councillor Code of Conduct Support Guide May 2016
- Register of Interest Form
- Gifts, Gratuities, Hospitality and In Kind Favours Register Form
- Gift Register

## APPENDICES

Nil