

Management report to Council

Agenda item 6.3

Councillor Gift Policy

Council

Presenter: Michael Tonta, Director Governance

30 March 2021

Purpose and background

1. The purpose of this report is to present a Councillor Gift Policy (Policy) to Council for adoption.
2. The *Local Government Act 2020* (LGA 2020) (section 138) requires Council to adopt a gift policy by 24 April 2021.
3. The Policy makes provision for a gift register to be published on-line and includes a minimum value of gifts that must be disclosed, consistent with the statutory threshold under the LGA 2020 of \$500. The Policy also complies with the public transparency principles.
4. Council does not have a gift policy, but does have an online register capturing gifts, benefits or hospitality received and kept by Councillors for the period from 1 November 2016. The Register will be maintained and updated to reflect the new Policy provisions.
5. The Policy sets out a framework for the management of the offer of gifts, benefits and hospitality that is generally consistent with current practice and sets the disclosure threshold at the Statutory amount of \$500.

Key issues

6. The Policy is consistent with the provisions of the Council's Councillor Protocol document as it relates to gifts, benefits and hospitality.
7. As a Capital City Council, it is important for the Council to be represented at a range of cultural, community, business and sporting events (including where Council has a speaking role and where the activity or event is staged or supported by the City or by an external source). The Policy provides for the acceptance of gifts of function/event tickets and associated hospitality to enable Councillors to undertake their representational role in the City.
8. Councillors were consulted on the content of the Policy.

Recommendation from management

9. That Council adopts the Councillor Gift Policy set out in Attachment 2 to this report.

Attachments:

1. Supporting Attachment (Page 2 of 6)
2. Councillor Gift Policy (Page 3 of 6)

Supporting Attachment

Legal

1. Section 138 of the LGA 2020 requires Council to adopt a gift policy within six months of the commencement of that section (24 April 2021).

Finance

2. Implementation of the Policy is covered under the recurrent budget.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

Health and Safety

4. In developing this proposal, no OHS issues have been identified.

Stakeholder consultation

5. The Policy is a statutory requirement and applies to Councillors only. Councillors were consulted in the preparation of the Policy.

Relation to Council policy

6. This is a new Council policy, required under s 138 of the LGA 2020.

Environmental sustainability

7. In developing this proposal, environmental sustainability issues or opportunities were not considered relevant.

COUNCILLOR GIFT POLICY

Purpose

This gift policy (**Policy**) sets out the position of the City of Melbourne (**Council**) on the acceptance of gifts, benefits and hospitality by Councillors. The purpose of this Policy is to provide guidance to Councillors on the types of gifts, benefits and hospitality that can be accepted or those that must be declined.

Context/Rationale

As a Capital City Council, the City of Melbourne is presented with a range of opportunities for the Council to be represented at various cultural, community, business and sporting events (including where Council has a speaking role and where the activity or event is staged or supported by the City or by an external source). This Policy provides for the acceptance of gifts of function/event tickets and associated hospitality to enable Councillors to undertake their representational role in the City, consistent with the Council adopted *Councillor Protocol*.

The receipt of a gift by a Councillor could create a conflict between a Councillor's public duty and their personal interests. A Councillor who has a conflict of interest as a result of receiving a gift must identify, manage and disclose the conflict in accordance with sections 126 to 131 of the *Local Government Act 2020 (Vic) (Act)* and Chapter 5 of the Council's Governance Rules.

The obligation on Councillors to disclose gifts received under this Policy is one of the specific Councillor Conduct Obligations under section 2.3.6 of the Councillor Code of Conduct 2020 (**Code**). In some instances failure to disclose a gift in accordance with this policy could constitute misconduct under the Code.

All gifts that are accepted that equal or exceed \$500 in value must be declared and recorded in the Councillor Gift Register.

Within five business days of receipt of the gift, or within five days of return from travel, Councillors must complete a Gift Declaration form and submit the form to the Director Governance.

Consistent with Council's Public Transparency Policy, the Councillor Gift Register (Register) will be published on the Council website and updated on a quarterly basis.

Application

This policy applies to all Councillors of the City of Melbourne.

This policy does not apply to gifts, benefits and hospitality received from a family member of a Councillor.

Policy

This following gifts *may* be accepted by Councillors:

- **Ceremonial gifts.** Ceremonial gifts will become the property of the Council, irrespective of value, and should be accepted by Councillors on behalf of the Council for possible inclusion in the City Collection. Where an item is included in the City Collection it will be recorded in that accession register. If an item is not accepted into the City Collection it will be returned to the Councillor for their retention, if they wish. Regardless, the receipt of the ceremonial gift should be recorded on the Register but will not need to be published online.
- **Gifts of reasonable hospitality.** Gifts of reasonable hospitality that do not exceed common courtesy, for example:
 - Attendance at a business meeting to discuss the Council's interests where a meal or beverages are provided.
 - Representing the City at functions and events in a manner consistent with the Council adopted *Councillor Protocol* document.
 - Industry seminars/forums where food and beverages are supplied incidental to the substance of the event.

The following gifts *must* be declined by Councillors:

- Cash (or its equivalent e.g. gift card), cheques or other payments regardless of their value but excluding election campaign donations.
- Payments, loans or discounts for the purchase, hire or use of property or services for private purposes.
- Lottery or raffle tickets.
- Gifts, benefits or hospitality when given with the expectation of favourable treatment, or perception of favourable treatment in relation to compliance issues (for example, parking, street trading, licensing, health inspection, building inspection, permits etc.).
- Gifts likely to influence the Councillor, or be perceived to influence the Councillor, in the course of their duties or that raise an actual, potential or perceived conflict of interest.
- Gifts, benefits or hospitality that could bring the Council into disrepute.
- If likely to be a bribe or inducement to make a decision or act in a particular way.
- Where acceptance could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the giver/sponsor in future procurement decisions.
- Made by a person or organisation with a primary purpose to lobby Councillors.
- Gifts equal to or above the statutory gift disclosure threshold (currently \$500) where the name and address of the person making the gift is unknown. In such circumstances the Councillor must surrender the gift to the Council within five days.
- A gift made in order to influence or affect their or another person's election conduct. A Councillor who engages in such conduct commits an offence under the Act. Engaging in such conduct could also constitute a breach of the Code or the Council's Public Interest Disclosure Policy.
- Wills or bequests to Councillors resulting from their position with the Council. Arrangements may be made to donate the will or bequest to a charitable institution in the name of the donor or returned to the immediate family.

Definitions

For the purposes of this Policy, the following definitions apply:

- **Benefits** include preferential treatment, privileged access, favours or other advantage offered to an individual. They may include invitations to sporting, cultural or social events, access to discounts and loyalty programs and promises of a new job. The value of benefits may be difficult to define in dollars, but as they are valued by the individual, they may be used to influence the individual's behaviour.
- **Ceremonial gifts** are official gifts provided as part of the culture and practices of communities and government, within Australia or internationally. Ceremonial gifts are usually provided when conducting business with official delegates or representatives from another organisation, community or foreign government. Ceremonial gifts should be accepted by Councillors on behalf of the Council for possible inclusion in the City Collection. Where an item is included in the City Collection it will be recorded in that accession register. If an item is not accepted into the City Collection it will be returned to the Councillor for their retention, if they wish.

Conflicts of interest may be:

- **General:** a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.
- **Material:** a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

Election Conduct:

- The way in which the person votes at an election.
- The person's nomination as a candidate for an election.
- The person's support of, or opposition to, a candidate at an election.
- The doing of any act or thing by the person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of a voter.

Family member:

A family member is a:

- Spouse or domestic partner of the relevant person;
- Parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or their spouse; or
- Any other relative that regularly resides with the relevant person.

Gifts and 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.

Examples of gifts include but are not limited to:

- Meals
- Beverages
- Tickets to events
- Conference registration
- Airline tickets
- Accommodation
- Taxi fares
- Airline upgrades
- Door prizes and raffle prizes won whilst on Council business
- Flowers
- Personal services
- Food/gift baskets

Gift disclosure threshold is \$500 or a higher amount or value prescribed by regulations made under the *City of Melbourne Act 2001* (Vic).

Hospitality is provision of travel, accommodation, entertainment, food or beverages.