



City of Stonnington

Receiving Gifts, Benefits and Hospitality Policy and Procedure

Version	4
Date	21 September 2020
	City of Stonnington
Owner	Governance & Integrity

1. PURPOSE

This policy is to establish guidelines for the receiving of gifts, benefits and hospitality by Councillors and Council staff to avoid any potential conflicts of interest or breaches of the *Local Government Act 2020* (LGA).

This policy ensures that the City of Stonnington will:

- Protect and preserve the Council's integrity, autonomy, democratic freedom and reputation;
- Maintain the highest standards of fiduciary integrity and ethical conduct; and
- Undertake appropriate due diligence of prospective donors and gifts.

Public trust and ethical conduct

The City of Stonnington will:

- abide with all applicable laws relating to gifts;
- protect and preserve the Council's integrity, autonomy, academic freedom and reputation;
- maintain the highest standards of fiduciary integrity and ethical conduct;
- undertake appropriate due diligence of prospective donors and gifts;
- only accept gifts that are consistent with the legislative objects of the LGA; and
- not act as a conduit to collect gifts for external entities.

2. SCOPE

This policy applies to all Councillors, staff, contractors or volunteers in relation to any gifts, benefits or hospitality offered to or received by Councillors or Council staff from external parties.

3. COUNCIL POLICY

The City of Stonnington acknowledges that as part of business or cultural practices, at times Councillors and/or staff members will be presented a gift in appreciation. While the Council is appreciative of such acts of generosity it is Council policy that gifts should not be accepted and be politely refused. Should any gifts be received they will be recorded in Council's Register of Gifts and Hospitality and where non-perishable or consumable, will become the property of the City of Stonnington.

Philanthropists may also offer gifts to Council as part of their contribution to the Community and to recognise special causes or events.

4. DEFINITIONS

Bribe

To give money or some other form of consideration to a public official so as to persuade the official not to exercise his or her common law or statutory powers, or to bestow some privilege or favour.

Conflict of Interest

A conflict of interest means a general conflict of interest within the meaning of section 127 of the LGA 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.

Councillor means a person who holds the office of member of a Council.

Disclosable Gift

A Disclosable Gift has the meaning given to it in section 128(3)(h) of the LGA and includes one or more gifts with a total value of, or more than, \$500 that was received from a person in the 5 years preceding the decision on the matter:

- (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
- (b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation—

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.

To accord with the LGA on public transparency, The City of Stonnington policy is that ALL gifts, or offers whether accepted or not, are disclosable.

Gift means 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—

- (a) the provision of a service (other than volunteer labour); and
- (b) the payment of an amount in respect of a guarantee; and
- (c) the making of a payment or contribution at a fundraising function.

Gift disclosure threshold means—

(a) in the case of a Council, other than the Melbourne City Council, \$500 or a higher amount or value prescribed by the regulations.

Gifts are offered in the course of a business relationship to express gratitude for assisting with a matter however the general purpose may be to create a feeling of obligation in the recipient. Such gifts may include alcohol, vouchers, products, food such as chocolates, cakes or meals, flowers, tickets/ invitations to social events, entertainment or gift hampers. These can be broken into two categories:

Token or Nominal Value Gifts

Generally speaking nominal value gifts and moderate acts of hospitality could be offered for speaker roles, community appreciation or event marketing and may include:

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- Gifts of a nominal value (\$20.00 or less) that are infrequently offered;
- Gifts of single bottles of reasonably priced alcohol, meals / refreshments of a modest nature, and/or beverages provided to Councillor/s or staff members at an official event or function;
- Broadly distributed marketing or corporate mementos such as ties, scarves, pens, coasters, tie pins, diaries or chocolates;
- Flowers and small amounts of beverages; or
- Invitations to appropriate out of hours functions or social events organised by groups such as Council committees and community organisations.

Gifts/Benefits of Value (non-exhaustive list)

A gift or benefit of something of more than a nominal or token value and may be:

- Invitations to a corporate box at a sporting event or other entertainment;
- Free or discounted tickets to major sporting events, corporate hospitality at a corporate facility at a major sporting event, products for personal use, the frequent use of facilities such as gyms, use of holiday homes, travel or vehicles, free training excursions, gift hampers or vouchers;
- Payment by suppliers for Councillors or staff members to attend training seminars, conferences or other promotional or educational activities;
- Free or subsidised meals, of a modest nature, and/or beverages provided by a potential supplier or contractor; or
- Free or subsidised meals, of a modest nature (generally seen as a one course meal with no alcohol) and/or beverages provided infrequently and/or reciprocally, that have been arranged primarily for, or in connection with, discussion of official business.

Gifts Never to be Accepted

These gifts or benefits are considered totally inappropriate and should not be accepted:

- Any gift valued at or over \$250.00;
- Money, regardless of the amount;
- Access to confidential information;
- Promise of a new job;
- Preferential treatment (may include reciprocal favours given in return for a service provided by Council);
- Disposition of property or bequest, not necessarily land can include goods and chattels (furniture, vehicles, etc), by one person to another without payment; or
- Anything whatsoever that could be considered an inducement by its nature.

Philanthropic Gifts or Donations

The transfer of money, property or other assets to Council, made with philanthropic intent, where:

- the transfer is made voluntarily;
- the transfer arises by way of benefaction;
- no material benefit or advantage is received by the donor by way of return; and
- the money, property or other assets will be owned in full by the Council once received.

Gifts may be financial (i.e. gifts of monetary sum, including foreign currency, paid by cash, cheque, credit card or electronically) and non-financial (i.e. gifts of any asset other than cash, cheque, credit card including, but not limited to, property, shares and trading stock). Gifts may

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be designated for a specific purpose by the donor (e.g. scholarships, research, and programs) or undesignated.

Where any doubt exists the matter should be referred to the Governance & Integrity team for guidance.

Hospitality

Hospitality is often offered in the course of business to demonstrate a good working relationship.

Soliciting

Is the seeking or requesting of undue reward in order to influence the decision or provision of service.

Staff Member/Officer

Is any person employed directly by the City or Stonnington, including the Chief Executive Officer and any person engaged as a short term employee or a contractor undertaking duties on behalf of Council.

5. RESPONSIBILITIES

Note: This section outlines the obligations under the LGA and similar provisions will also apply under other legislation that Council operates under.

Legal Obligations – LGA 2020

Councillors and staff members must familiarise themselves with their obligations under the LGA 2020 in respect to gifts, particularly the following clauses:

Councillors

Section 123 - misuse of position

Section 125 - dealing with Confidential Information

Sections 126, 127, 128, 129, 130 and 131 –Conflict of interests (note landmark case: *Winky Pop Pty Ltd v Hobsons Bay City Council* [2007] VSC 468

Sections 132, 133, 134, 135 and 136 – Personal Interests return

Section 137 – Anonymous gifts not be accepted

Section 300 – bribery, treating and undue influence in respect to Council elections

Sections 306 and 309– election campaign donations

Section 319 – persons who are liable for offences for breaches of the LGA.

Officers/Contractors

Section 130 – staff to disclose any conflict of interest in respect of a number of matters, including matters under consideration at meetings, matters that arise in the course of the exercise of a power of delegation by a member of Council staff or arises in the course of a statutory function under the LGA.

Sections 132, 133, 134, 135 and 136 – Personal Interests return

Section 319 – persons who are liable for offences for breaches of the LGA.

6. PROCEDURE

As Councillors or staff members, at some stage in your term of office or employment, you may be offered a gift or benefit. The gift or benefit could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if Councillors or staff members accept a gift or benefit. Once it has been accepted, your position as Councillor or staff member may be compromised as often persons attempting to corrupt Councillors or staff members start with small inducements that appear to have no improper motive behind them.

While a Councillor or staff member may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on their part, as a general rule Councillors or staff members should not accept gifts, benefits or hospitality. By politely refusing such gifts, benefits or hospitality, Councillors or staff members can avoid feeling compromised and contributing to a public perception of bias either at the time or in future dealings.

Before accepting any gift, benefit or hospitality you must consider the ramifications/perceptions of such offer and ask yourself whether a conflict of interest may arise. Clarification of what may constitute a Conflict of Interest can be sought from referring to this policy, talking to the Governance & Integrity Team or to your respective Manager. Managers must consider the relationship between the gift provider and the gift recipient in making their decision and this should also be recorded on the gifts register.

While a single gift or benefit may be of modest value, when viewed in total, the value of the hospitality or gifts may be substantial. Councillors and staff members have a legal obligation to aggregate the value of even token gifts or hospitality over the past five years and if the hospitality exceeds the threshold of \$500 in that period it can give rise to a material conflict of interest.

Any offers of gifts or benefits even those of a nominal value, accepted or rejected, should be recorded on the Gifts, Benefits and Hospitality immediately. This form is available on Pulse and is accessible by a Quick Link on the Council's intranet.

A Councillor or staff member must not seek or accept a bribe or other improper inducement by virtue of their position, acquire a personal profit or advantage, which has a monetary value, other than one of a token value.

Councillors must not take advantage of their position to improperly influence Council staff in the performance of their public or professional duties to secure a private benefit for themselves, or for somebody else.

Similarly, staff members should not take advantage of their position to improperly influence a Councillor in their decision making or public duties to secure a private benefit for themselves, or for somebody else.

Councillors or staff members, must not take advantage (or seek to take advantage) of their status or position with, or functions performed for, Council in order to obtain unauthorised or unfair benefit by:-

- Seeking or accepting any payment, gift or benefit intended or likely to influence, or that can be reasonably perceived by an impartial observer as intended or likely to influence them to:

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- act in a particular way (including making a particular decision);
- fail to act in a particular circumstance; or
- otherwise deviate from the proper exercise of their duties.

Councillors must dispose of any anonymous gifts within 30 days of the gift being received in line with the requirement in section 137(2) of the LGA 2020.

Functions/Events

Part of the role of Councillor requires attendance at functions and receptions.

Councillors need to be aware that, in accordance with the adopted Councillor Code of Conduct:-

- a) They must refrain from accepting directly or indirectly any fee, gift or benefit for themselves, family member or for any other person or body, for anything done or action taken in pursuit of their Councillor duties.
- b) Should gifts be presented to an individual Councillor in a public forum it will be regarded as a gift to the Council, and should be acknowledged and accepted as such. A letter of thanks will be prepared and sent by Council staff acknowledging the gift to Council and not the individual Councillor. More information about philanthropic gifts is provided below.

Gifts must be handed to the Chief Executive Officer (CEO) who will decide where such gifts are best displayed or handled. The CEO may determine that some of the items could be donated to charity.

- c) Details of the gift received will be recorded in the Gifts, Benefits and Hospitality Register.
- d) Some functions may be conducted by groups from differing cultural backgrounds, and in some circumstances, it may be considered offensive to refuse the offer of a gift, particularly where it is of moderate value.

The offer of a gift may, in some situations, have cultural significance and/or the gift is intended as an expression of appreciation, and the value of the gift is secondary.

- e) Exceptions to these rules regarding gifts or benefits may be token gifts or those of a promotional or advertising nature where there is no suggestion of personal obligation.
- f) Councillors are required to comply with the conflict of interest provisions of the LGA, when accepting gifts, favours, offers or hospitality.

Hospitality is not a gift if the following conditions are met:

- Where attending a function in an official capacity.
- The hospitality is reasonable. For most this is sandwiches and tea/coffee.

Hospitality is a gift where you attend an event or function:

- From free tickets received and you have NO official duties to perform;
- Free membership; or
- The hospitality is generous. For example a two-three course meal with wine at an unpaid training event.

Christmas

Christmas is a time when Councillors and staff are often offered gifts and invitations to functions. Annual notification to all staff and Councillors of their obligations in respect to the receipt of gifts and invitations is sent out by the Governance and Integrity team in early December.

Philanthropic Gifts or Donations

On occasions where philanthropists wish to donate gifts to Council this may be accepted as long as the gift;

- Is officially recognised as a gift solely to the Council and the people of Stonnington;
- Remains in the custody of the Council and on Council premises;
- The gifter has no current or proposed matters pending decision by Council; and
- The gift is recognised as a Council asset and recorded as such.

Where any doubt exists the matter should be referred to the Governance & Integrity team for guidance.

Financial accountability

The City of Stonnington will:

- meet its legal obligations under the LGA;
- provide for consistent and transparent receipt and acknowledgement of gifts;
- receipt tax deductible gifts in accordance with Australian Taxation Office requirements;
- use all gifts, when undesignated, for purposes as the Council judges best;
- take the greatest care to honour donor intentions for the use of designated gifts;
- endeavour to discuss with donors or their representatives alternative uses for their gift, should circumstances render the Council unable to direct the gift to the purpose originally intended; and
- produce factual and accurate reports on the use and management of gifts, as required.

Other

Gifts received under purchase incentive schemes are the property of Council and will be reported as such.

Gifts received from guests to Council in the course of official business remain the property of Council and not the Councillor to whom they may have been presented.

Election Campaign donations

A Councillor should never accept an offer of money, regardless of the amount except when it is provided as part of an election campaign and is fully declared on the Electoral Campaign Donation Return set out in section 306 of the LGA.

Within 40 days after election day, a person who was a candidate in the election must give an election campaign donation return to the Chief Executive Officer.

An election campaign donation return must be in the prescribed form and contain the prescribed details in respect of any gifts received during the donation period by or on behalf of the candidate, to be used for or in connection with the election campaign, the amount or value of

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which is equal to or exceeds the gift disclosure threshold. A gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.

A candidate is not required to specify the prescribed details of an amount in a return if the amount was a gift made in a private capacity to the candidate for the candidate's personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to the election.

Two or more gifts made by the same person to or for the benefit of a candidate are to be taken to be one donation.

A person who—

- (a) fails to give a return that the person is required to give under section 306 of the LGA; or
 - (b) gives a return that contains particulars that the person knows are false or misleading in a material particular; or
 - (c) provides information that the person knows is false or misleading in a material particular to a person required to give a return under this section—
- is guilty of an offence and liable to a fine not exceeding 60 penalty units.

If no details are required to be included in a return under this section in respect of a candidate, the return—

- (a) must be given; and
- (b) must include a statement to the effect that no gifts of a kind required to be disclosed were received.

EOIs/Tender Specifications

Expression of Interest (EOIs) and tender documentation (specification and contract) must state that “No offers of gifts, of whatever value, must be made to Councillors or staff and that any such offer in the process will automatically exclude that participant in the tender process”.

Register of Gifts and Hospitality

All offers of gifts and acts of hospitality must be declared. To ensure transparency, a Gifts Register is available on Pulse and must be filled out by the Councillor or staff member.

An exception to this is within the Aged, Diversity and Community Planning team, where any gifts received from clients must be reported to the In-Care Services Coordinator, who will maintain a separate Register and will provide details to the Governance & Corporate Support Officer biannually, at the end of January and June each year.

Failure to declare gifts or hospitality over the nominal amount could result in disciplinary action for Council staff and/or penalties under the LGA for both Councillors and Council staff.

7. REFERENCES

- The Local Government Act 2020
- The Crimes Act 1958
- City of Stonnington Councillors Code of Conduct
- Integrity & Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019;
- Conflict of Interest: A Guide for Councillors 2012, Local Government Victoria; and
- City of Stonnington Employee Code of Conduct

8. FORMS/CHECKLIST

Form 1 - As attached.

9. REVIEW

This policy is to be reviewed every two years following adoption by Council.


SCHEDULE OF REVIEWS

No.	Details	Reviewed By	Adopted by Council
1.	New Policy	Manager Governance & Corporate Support	24 May 2011
2.	Revised and adopted by Council	Manager Governance & Corporate Support	3 October 2011
3	Update and Revision 2019	Manager Risk Safety & Assurance	16 July 2019
4.	Update and Revision 2020 following IBAC review and new Local Government Act 2020	Executive Manager Governance & Integrity	5 July 2020
5	Revised version approved by Council	Council	21 September 2020

GIFT OR BENEFIT NOTIFICATION FORM

FORM 1

Gift or Benefit Notification Form



City of
STONNINGTON

***To be completed by Recipient or Refuser of gift or benefit**


Recipient's information


Councillor's / staff member's name *

Recipient's contact details *

Job title *

Division *

Date received / offered * 

Time received / offered * 

Provider's information

Received / offered from *

Provider contact details *

Estimated value of gift / benefit / hospitality in dollars (\$) *

Relationship between gift provider and gift recipient *



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Reason for gift / benefit / hospitality (if known)

Description of gift / benefit / hospitality *

Response to offer *

Accepted

Refused

Please clarify the justification of your decision *

Submit