

# Councillor Gifts, Benefits and Hospitality

Policy Number:	2004/27	Directorate:	City Development – Finance and Governance
Approval by:	Council	Responsible Officer:	Manager Governance
Approval Date:	24 April 2021	Version Number:	5
Review Date:	April 2024		

## 1. Purpose

The purpose of this policy is to:

- identify the overriding responsibility of Councillors to act honestly and not to make improper use of their position;
- clearly define the behaviour required of Councillors in relation to gifts and benefits;
- provide a transparent and accountable process with regard to declaring gifts and benefits that promotes public confidence in Knox City Council (Council) and its elected representatives.

## 2. Context

Councillors will, on occasion, be offered gifts, benefits or hospitality from members of the public or other organisations. It is critical that Councillors do not accept gifts, benefits or hospitality that could raise an actual, or perceived, bias, preferential treatment or conflict of interest.

It is a basic principle that individuals who are elected or appointed to public office are entrusted with a range of powers in order to serve the public interest. These powers must not be used to further their own personal interests or the interests of people with whom they are closely associated.

Where a Councillor does have a personal or private interest, in relation to the receipt of a gift or hospitality, this may compromise their ability to act in the public interest. A failure to resolve an interest of this nature can create an appearance of impropriety that may undermine confidence in the individual and in the Council.

This policy provides guidance and direction to ensure Councillors maintain high levels of integrity, avoid conflicts of interest and are perceived as responsible, honest and applying sound judgement when dealing with gifts, benefits or hospitality.

## 3. Scope

This Policy relates to Knox City Council Councillors

This Policy does not cover donations made to candidates during election campaigns which are subject to Part 8 Division 10 of the Local Government Act 2020 (LGA 2020).

This policy does not cover the requirement upon Councillors to declare gifts on their Register of Interests pursuant to Section 81 of the Local Government Act 1989.

## 4. References

### 4.1 Community & Council Plan 2017-2021

- Goal 8 – We have confidence in decision making

### 4.2 Relevant Legislation

- Local Government Act 1989
- Local Government Act 2020

### 4.3 Charter of Human Rights

- This policy has been assessed against and complies with the charter of Human Rights.

### 4.4 Related Council Policies

- Councillor Code of Conduct

### 4.5 Related Council Procedures

- Nil

## 5. Definitions

Benefit  
(See also gift)

means preferential treatment, privilege access, favours or other advantage offered to an individual. May include, but not limited to:

- access to events or clubs
- preferential treatment (e.g. priority service, access to benefits or services not usually available)
- upgrades
- discounts
- a new job or promotion
- access to confidential information
- offers of secondary employment or contracts

Benefits do not include:

- discounted products or services that are reasonable and generally available or capable of being negotiated by others not connected with Council;
- benefits received in relation to personal membership of any industrial or professional organisation, club or other association or body;
- benefits received by a relative or associate of a Councillor had no knowledge of; and
- benefits received as a gift, award or prize from the Council, or under a Council policy.

Bribe	means money, or some other form of consideration, offered to a Councillor so as to persuade them not to exercise their common law or statutory powers or to bestow some privilege or favour.
Council	means Knox City Council, whether constituted before or after the commencement of this Policy.
Councillor	means an individual who holds the office of member of Knox City Council.

Gift (See also benefit)	means free or discounted items and any item that would generally be perceived by the public as a gift. May include, but not limited to: <ul style="list-style-type: none"> <li>• Free or heavily discounted items</li> <li>• Tickets or passes to events, shows etc.</li> <li>• Enduring items, such as works of art</li> <li>• Consumables, such as food or stationery</li> <li>• Less tangible benefits such as hospitality or services, memberships etc.</li> <li>• Hospitality that exceeds common courtesy</li> </ul>
Gift and Benefits Register	means a register of gifts offered to Councillor, whether accepted or declined. It records the date a gift was offered, information about the donor and recipient, the nature of the gift, its estimated value and how it was handled. The register is maintained by the Governance Department in an electronic format to facilitate reporting and analysis.
Gift Declaration Form	means the form a Councillor uses to declare gifts.
Gift Disclosure Threshold	means \$500 or a higher amount or value prescribed by the regulations.
Immediate Family Member	means a Councillor spouse or domestic partner, son, daughter, mother, father, brother or sister.
Material Value	means reasonably valued at more than \$30.
Money or monetary	means any form of cash, credit or cash-like item regardless of the amount or value, including but not limited to: <ul style="list-style-type: none"> <li>• cheques;</li> <li>• debit cards with credit on them;</li> <li>• prepayments such as phone or internal credit;</li> <li>• memberships or entitlements to discounts; or</li> <li>• points in any reward scheme.</li> </ul>
Officer	means an individual employed by Knox City Council, including the Chief Executive Officer, Directors, Managers and any person engaged as a short term employee or a contractor undertaking duties on behalf of Council.
Reportable Gift	means a gift or benefit within the meanings defined in Section 5, whether accepted or declined, that is: <ul style="list-style-type: none"> <li>• of material value (i.e. valued at more than \$30); and/or</li> <li>• a gift of influence (refer to section 6.2); and/or</li> <li>• a bribe or monetary gift (refer to section 6.2)</li> </ul> but is not modest hospitality offered in conjunction with an official meeting, function or other event (refer to section 6.2)
Token offer	means a gift, benefit or hospitality that is: <ul style="list-style-type: none"> <li>• of inconsequential or trivial value to both the person making the offer and the recipient. They will be infrequently offered and not of material value.</li> <li>• Complimentary entry to an event hosted by a community group where a Councillor has been invited for the purposes of engaging with the community group and the value is within the reasonable expectations of the community.</li> </ul>
Value	means the face value or current estimated retail value.

## 6. Council Policy

Councillors may be offered gifts, benefits or hospitality for a variety of reasons, and while they may be offered as a genuine expression of appreciation or as a gesture of goodwill, the acceptance of any gift carries risks, for example:

- that the giver will expect favourable treatment.
- that the recipient will feel a sense of obligation to the giver.
- that the recipient will be perceived as having been influenced by the gift.

Perceptions of undue influence are difficult to combat, and can be affected by many factors, including:

- The relationship between the donor and the Councillor. If the Councillor makes decisions which could affect the interests of the donor, gifts are more likely to be perceived as inappropriate.
- Transparency and openness. If a gift is given in a public forum it is less likely to be perceived as a gift of influence than if it were offered outside the public eye.
- The value of the gift. Expensive gifts are more likely to be perceived as gifts to win favours. The regularity of gifts, or the cumulative value of gifts received over time, is also likely to influence perceptions.

The consequences of failing to recognise the risks associated with accepting gifts may be:

### For Councillors

- embarrassment
- internal or external inquiry
- disqualification
- criminal prosecution

### For Council

- embarrassment
- external inquiry
- legal action
- loss of public trust

All reportable gifts received by a Councillor are considered the property of Council, until such time as the Gift Declaration Form has been completed and an assessment made as to the treatment of the gift.

Where a gift or benefit is retained by Council, it may, at the discretion of the Chief Executive Officer, in consultation with the Mayor, be shared with all Councillors and/or any relevant Council officers.

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

Notwithstanding the nature of the gift or hospitality, it is the obligation of the Councillor to be attentive to its cumulative value to avoid the likely creation of a conflict of interest. A statutory arises when one or more gifts with a value of, or more than \$500 is received in the five (5) years preceding the decision or exercise of the power, duty or function (but does not include the exemptions listed in Sec 78C of the Local Government Act 1989).

## 6.1. Responsibilities

**Councillors** are responsible for:

- refusing:
  - any monetary gift or items easily converted to money.
  - gifts, benefits or hospitality from people or organisations about whom they are likely to make decisions.
  - gifts, benefits or hospitality that may result in them having an actual or perceived conflict of interest.
  - gifts, benefits or hospitality that could be reasonably perceived as undermining the integrity and impartiality of Council or themselves.
  - bribes. All bribery attempts must be reported to the Mayor, Chief Executive Officer and/or Victoria Police.
- declaring reportable gifts whether accepted or declined.
- taking reasonable steps to ensure immediate family members do not receive gifts, benefits or hospitality that may be intended to influence the Councillor.
- taking care not to offer gifts, benefits or hospitality to others, where they would not be acceptable under this Policy.
- being aware of this policy and available for appropriate training as required.

The **Manager Governance** is responsible for:

- implementing this policy, including monitoring its effectiveness;
- maintaining the Gifts and Benefits Register; and
- providing the Executive Management Team with a quarterly report on all gifts, either accepted or refused, registered in Council's Gifts and Benefits Register.

The **Chief Executive Officer**, in consultation with the Mayor (or Deputy Mayor as applicable) is responsible for:

- reviewing, determining and approving the actions to be taken in respect of each declaration of a reportable gift, benefit or hospitality

## 6.2. Gift types and purposes

Councillors may be offered gifts or benefits for a variety of reasons which can be categorised into the following:

### Token gifts or benefits

A gift that is offered in a business situation to an organisation or Councillor for a practical purpose, or as a token or memento of an occasion. The gift must be of a non-material value (under \$30). An example would be inexpensive stationery items such as pens or pads inscribed with a company logo handed out at a conference or training session.

A token benefit may include complimentary entry to a function or event hosted by a community group to which a Councillor has been invited in their capacity as Councillor. This is because the invitation is offered in order to facilitate engagement with Councillors / Council (and may include a request that the Councillor speak at the event). Typical events include season or building openings, and social or commemorative events. Complimentary event tickets must however, be assessed on a case-by-case basis.

Where tickets are of considerable value; are limited in availability to a select group, or where there is limited engagement opportunity of benefit to Council; a complimentary ticket may not be perceived as a token benefit, but as a gift of influence and therefore a Reportable Gift.

### Gift of influence

A gift that is:

- intended to generally ingratiate the giver with the recipient for favourable treatment in the future; and/or
- is likely to affect, or be reasonably perceived to affect, the independent and impartial performance of the Councillor's duties.

An example would be tickets to a social, cultural or sporting event offered by a contractor or supplier. These could be seen as reward for engaging them on past contracts, and or an inducement to engage them again in the future.

### Gift of gratitude

A gift offered to an individual Councillor or the organisation in appreciation of the performance of specific tasks or for exemplary performance of duties. For example a gift to a Councillor who speaks at a conference.

### Ceremonial gifts

A gift usually given from one organisation to another organisation, marking a special occasion or at a special event. The gift is generally meaningful to the organisations. An example would be a gift given to a host organisation by a visiting delegation such as Council paraphernalia.

### Hospitality

Free or subsidised meals, beverages or refreshments provided in conjunction with the official business, or work related events: such as:

- Council events such as training sessions, seminars and conferences, workshops and other Council events, Council Meetings and briefings.
- Events and functions attended as either a ward councillor or Council's representative, hosted by community and sporting groups, individuals and corporations.

Modest hospitality that is proportionate to the occasion will typically not be considered a reportable gift or benefit. However, where hospitality is extravagant, or beyond what would be considered reasonable in terms of community expectations, it should be considered a gift of influence and therefore a Reportable Gift.

### Bribe and/or cash gift

A gift that is offered to a Councillor as a corrupt inducement for a particular action or decision. Offering or accepting a bribe has particularly serious criminal consequences. If a Councillor is offered a gift of money, or other gift or benefit, which they believe is meant to be a bribe they must immediately notify the Chief Executive Officer and the Mayor. Where relevant, Victoria Police may also be notified.

### 6.3. Prohibited gifts

Monetary gifts of any value, including cash, gift cards and/or vouchers, must never be accepted by Councillors.

Any offer of money, is a reportable gift as defined in this policy. Consequently, the Chief Executive Officer must be notified immediately.

#### **Anonymous Gifts**

Section 137 of the Local Government Act 2020 (the Act) prohibits a Councillor accepting, 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 the gift is made the Councillor
  - i. Is given the name and address of the person making the gift; and
  - ii. Reasonably believes that the name and address so given are the true name and address of the person making the gift.

Failure to comply with this section of the Act may result in the Councillor being penalised 60 penalty units. In addition to this penalty a Councillor who is found guilty of receiving an anonymous gift must pay to the Council the amount or value of the anonymous gift accepted.

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 under \$500 from anonymous sources are not prohibited under the Act, but should be declined and treated as Reportable Gifts for the purposes of this policy.

## 6.4. Assessing gifts

When deciding whether to accept a gift, benefit or offered hospitality the Councillor, Mayor or Chief Executive Officer should first consider if the offer could be perceived as influencing them in the performance of their duties or lead to reputational damage for Council.

The GIFT test (developed by the Victorian State Services Commission) provides general guidance on the assessment of gifts and benefits.

<b>G</b>	Giver	<p><b>Who is providing the gift, benefit or hospitality and what is their relationship to me? To Council?</b></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>
<b>I</b>	Influence	<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 there a clear distinction between public and private roles in this case?</p> <p>Is it a courtesy or a token of appreciation or valuable non-token offer?</p> <p>Does its timing coincide with a decision I am about to make or my endorsement of a product or service?</p> <p>Is the hospitality proportionate to the occasion, or is it lavish or extravagant so as to be influential? (Consider particularly how the availability and quantity of alcoholic beverages might be perceived.)</p> <p>Is free entry to an event of token value to enable engagement, or a valuable benefit intended to influence?</p>
<b>F</b>	Favour	<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?</p> <p>Has the person or organisation made several offers over the last 12 months?</p> <p>Would accepting it create an obligation to return a favour?</p>
<b>T</b>	Trust	<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?</p> <p>Would accepting free entry / hospitality uphold the reputation of the sector?</p> <p>What would my colleagues, family, friends or associates think?</p>

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. Further, any gifts, benefits or hospitality accumulated to \$500, from a single source, over a 5 year period will give rise to the Councillor having a conflict of interest in accordance with section 78C of the *Local Government Act 1989* (the Act).



## 6.5. Accepting gifts

There are limited circumstances in which a reportable gift, benefit or hospitality should be accepted and only after an assessment has been completed by the Chief Executive Officer in consultation with the Mayor. (If the recipient is the Mayor then the Chief Executive Officer shall consult with the Deputy Mayor.)

Councillors must declare any Reportable Gift they accept but in the interests of transparency, are encouraged to declare any gift that is accepted.

It is good practice to inform the donor that the gift will be declared, and this will include their identity as the donor.

## 6.6. Declining gifts

When declining a gift, care should be taken to avoid causing offence or embarrassment to the giver. Councillors must declare any Reportable Gift, even if it is declined but in the interests of transparency, are encouraged to declare any gift that is declined.

It is good practice to inform the donor that the offer will be declared, and this will include their identity as the donor.

## 6.7. Declaring gifts

Reportable gifts or benefits, whether accepted or declined, must be declared on a Gifts and Benefits Declaration Form available in hardcopy or online. It is strongly encouraged that all non-material and token gifts are also declared using the Gifts and Benefits Declaration Form available in hardcopy or online.

It is the individual Councillor's responsibility to complete the appropriate form and forward it to the Manager Governance.

The details of all declarations will be maintained in the Gifts and Benefits Register; however this does not relieve Councillors (as required) from their obligations under the Act to disclose gifts in their registrable Primary or Ordinary Return(s) or as part of a conflict of interest disclosure.

In accordance with the Knox Public Transparency Policy, the Gifts Register will be available on Council's website.

Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice a proposed development or business venture, legal advice or legal proceedings.

The Manager Governance will monitor the Gifts and Benefits Register and report 6 monthly to the Executive Team on any identified systematic pattern of gifts offered and accepted to ensure that unacceptable cultures do not develop within sections of the Council.

## 6.8. After a gift has been accepted

Any gift of gratitude, ceremonial gift or gift of influence offered to and accepted by a Councillor that is a reportable gift, is deemed to be the property of Council.

Where the item is not suitable for public display or the gift is of a personal nature to the Councillor, the Chief Executive Officer (in consultation with the Mayor) will use their discretion as to the appropriate action.

The Chief Executive Officer may determine to return the gift, allow the Councillor to retain the gift or dispose of the gift.

The following matters are considered relevant to the treatment and retention of gifts once they have been accepted:

- Whether the gift was given to the Council or a Councillor.
- Whether multiple gifts or benefits have been offered by the giver in the past.

- Whether the donor intended to recognise an individual, a team or Council.
- Whether Council has an appropriate use for the gift.
- Whether a gift is of cultural or historical significance.
- Whether the gift or benefit received was as a consequence of the expenditure or dedication of Council funds, resources or labour.
- Whether it may be appropriate to donate the gift, or the proceeds from the gift, to charity.
- Whether it is possible or appropriate to return the gift.

### 6.9. Disposal of Gifts

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

- Return to the original recipient;
- Return to the giver;
- 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.

## 7. Breach of policy

Each Councillor is obliged to comply with this Policy. If this Policy has been breached, Council may take such action as prescribed in legislation and detailed in the Councillor Code of Conduct.

Any person may report an alleged breach of this policy to the Chief Executive Officer in writing. An alleged breach by Councillor may be reported to Council's Protected Disclosure Coordinator for investigation.

## 8. Administrative Updates

From time to time, circumstances may change leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation (or updates consequential to the commencement of the Local Government Act 2020) that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by the Chief Executive Officer.

Recipient Name		
Donor's Name		
<b>Details of Gift, Benefit or Hospitality</b>		
Description of Gift, Benefit or Hospitality	<input type="checkbox"/> Accepted on _____ <input type="checkbox"/> Declined on _____ <div style="display: flex; justify-content: space-around; font-size: small;"> <span>Date</span> <span>Date</span> </div>	
	<input type="checkbox"/> Token Gift / Benefit <input type="checkbox"/> Ceremonial Gift <input type="checkbox"/> Gift of Influence <input type="checkbox"/> Hospitality <input type="checkbox"/> Gifts of Gratitude <input type="checkbox"/> Bribe / Cash gift	
Estimated value and description of how value was determined	\$	
Description of business benefits / reasons for accepting the gift		
Suggested utilisation / disposal		
Signature	Date of Declaration	

## REVIEW BY CHIEF EXECUTIVE OFFICER (For gifts and benefits above \$30)

Disposal of Gift		
Comments		
Signature	Date	

The personal information on this form is collected in accordance with Council's adopted Gifts Benefits and Hospitality Policy. The information may be disclosed publically on a gift register maintained in accordance with Council's policy and relevant legislation (ie the Local Government Act 2020).