

Councillor Gift Policy



Adopted 19 April 2021

(A4405341)

Lifestyle Capital of Victoria

1. Policy Statement

Council is committed to the principles of transparency, accountability and good governance.

The acceptance of *gifts* can create the perception that a *Councillor's* integrity has been compromised. Additionally, in some circumstances the acceptance of *gifts* can give rise to a conflict of interest.

This policy provides guidance to *Councillors* about receiving or being offered *gifts* in connection with their role as a *Councillor*, and sets out a transparent process for dealing with any offers of *gifts*.

2. Purpose

This policy has been prepared to satisfy the requirements of section 138 of the Local Government Act 2020 ('Act'). In accordance with the legislative requirements, it includes procedures for the maintenance of a *gifts register* and sets out the minimum value of *gifts* that must be disclosed.

3. Scope

This policy applies to *Councillors* in relation to the acceptance and declaration of *gifts* that may be offered to them in connection with their role as a *Councillor*.

4. Definitions

In this policy:

<i>anonymous gift</i>	means a <i>gift</i> given for the benefit of a <i>Councillor</i> , where the name and address of the person making the <i>gift</i> are unknown to the <i>Councillor</i> .
<i>benefit</i>	means a non-tangible item of value (eg. preferential treatment, privileged access, favours or some other advantage offered). For the purposes of this policy, <i>gifts</i> and <i>benefits</i> are treated in the same way and are considered to be interchangeable.
<i>Council</i>	means Frankston City Council.

<i>Councillor</i>	means a person who holds the office of a member of Frankston City Council.
<i>gift</i>	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. For the purposes of this policy, a <i>gift</i> includes a <i>benefit</i> or <i>hospitality</i> other than <i>reasonable hospitality</i> .
<i>gift declaration</i>	means the formal disclosure of any offer of a <i>gift</i> on a Gift Declaration form.
<i>gifts register</i>	means the file containing all Councillor Gift Declaration forms. The <i>gifts register</i> is maintained by the Governance team, and is available for public inspection.
<i>gift disclosure threshold</i>	means \$500 or a higher amount or value prescribed by the regulations.
<i>reasonable hospitality</i>	means hospitality that does not exceed common courtesy. It could include attending a business meeting to discuss Council's interests where a meal or beverage is provided, or attending a function or event (including a seminar or forum) in an official capacity as a Councillor, where you are representing Council, where food and beverages are supplied incidental to the substance of the event.

5. Authorisation

This policy is managed by the Governance and Information Department, and is approved by the Mayor and Chief Executive Officer (CEO):

Mayor, Frankston City Council

CEO, Frankston City Council

in accordance with the resolution made by Council at its meeting on 19 April 2021.

6. Policy

6.1 Principles

- (a) *Councillors* will scrupulously avoid situations which create the perception that a person or body may gain favourable treatment from an individual *Councillor* or from *Council* through the provision of a *gift*.
- (b) The acceptance of *gifts* has the potential to compromise a *Councillor's* position by conveying a sense of obligation or an expectation of favours, support or repayment. This may influence the *Councillor*, or give rise to a perception of influence over the *Councillor* in the exercise of their official duties and functions, and affect the public's perception of the integrity and independence of *Council*.
- (c) *Councillors* will take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive *gifts* that give rise to the perception of being an attempt to gain favourable treatment;

6.2 Anonymous gifts must not be accepted

- (a) Section 137 of the Act provides that it is an offence for a *Councillor* to accept an *anonymous gift* that has a value equal to or above the *gift disclosure threshold* (\$500 or a higher amount that may be prescribed in regulations).
- (b) A breach of this provision could result in a penalty of up to 60 penalty units and a requirement to pay the *Council* an amount equal to the value of the *gift*.
- (c) A *Councillor* is not in breach of this provision if the *anonymous gift* is disposed of to *Council* within 30 days.

Extract from Local Government Act 2020

s.137 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.

6.3 The gift disclosure threshold

- (a) The *gift disclosure threshold* in the Act, currently \$500, applies to a *gift* or *gifts* given to a *Councillor* by any person, company or body but does not include *reasonable hospitality* received by the *Councillor* at an event or function attended by the *Councillor* in an official capacity.
- (b) Where multiple *gifts* are given to a *Councillor* by the same person, company or body, the cumulative value of the *gifts* will be relevant to the *gift disclosure threshold*.
- (c) A *gift* or *gifts* equal to or above the statutory *gift disclosure threshold* received during the period described in section 128(4) of the Act (ie in the 5 years preceding the decision on the matter) may give rise to a material conflict of interest.

6.4 Statutory disclosure requirements

- (a) A *Councillor* must disclose any *gift* valued at or over \$500 in their biannual personal interests return (Local Government (Governance and Integrity) Regulations, r. 9(1)(k)).
- (b) A *Councillor* who has a conflict of interest as a result of receiving a *gift* or *gifts* must disclose the conflict of interest in accordance with the procedures outlined in Chapter 6 of the Governance Rules.
- (c) *Gifts* above the *gift disclosure threshold* that are election campaign donations must also be disclosed in an election campaign donation return, in accordance with section 306 of the Act.

6.5 Requirement to complete a gift declaration form for any gift of \$50 or more

- (a) A *Councillor* must declare any offer of a *gift* with a value equal to or above \$50 (even if the *gift* is not accepted) within 7 days of the offer, by completing a Gift Declaration Form. This will enable the *gift* to be recorded in the *Councillor gifts register*.
- (b) Where multiple *gifts* are offered to a *Councillor* by the same person, company or body, the cumulative value of the *gifts* will be relevant to the requirement to complete a *gift declaration*.
- (c) Where a *gift* is received on behalf of *Council*, the *gift* becomes the property of *Council*. For transparency and accountability purposes, any such *gift* will be recorded in the *Councillor gifts register* with a notation that it is the property of *Council*.

6.6 The Councillor gifts register

- (a) The details of any *gift* offered to and/or received by a *Councillor* must be recorded on the *Councillor gifts register* by completion of a Gift Declaration Form, and submission of the form to the Governance team.
- (b) The *Councillor gifts register* will be maintained by the Governance team and will be available for public inspection.
- (c) An extract of the *Councillor gifts register* data will be published on Council's website, on a quarterly basis. The extract will include:

- i. the name of the Councillor to whom the gift was offered;
- ii. a description of the gift;
- iii. the reason the gift was offered (if known);
- iv. the date of the offer;
- v. the estimated value of the gift;
- vi. the decision regarding the gift offer (declined, retained by self, donated, other);
and
- vii. a generic description of the person, company or body who offered the gift (eg. resident, customer, member of the public, local business, sport association, developer etc).

(d) The extract of *Councillor gifts register* data will be presented to Council's Audit and Risk Committee for review every six months.

7. Roles and responsibilities

Each *Councillor* is responsible for ensuring that they are familiar with the requirements of this policy, and is accountable for managing their own compliance. This includes the accurate completion and timely submission of a Gift Declaration form whenever required, in accordance with this policy.

Clarification or advice about the interpretation of this policy may be sought in the first instance from the Chief Financial Officer (CFO) or the Manager Governance and Information.

8. Policy non-compliance

Failure to comply with this policy may constitute a breach of the Councillor Code of Conduct and/or the Local Government Act 2020.

Non-compliance with this policy also has the potential to negatively impact on the reputation of individual *Councillors* and of *Council* itself.

9. Related documents

Legislation and Statutory Rules:

- Local Government Act 2020
- Local Government (Governance and Integrity) Regulations 2020
- Privacy and Data Protection Act 2014

Council Documents:

- Councillor Code of Conduct 2021
- Governance Rules
- Public Transparency Policy
- Staff Gifts and Hospitality Policy

10. Implementation of the Policy

This Policy will be published on Council’s website and will be available for access by Councillors on the Councillor portal.

11. Document History

Date approved	Change Type	Version	Next Review Date
19 April 2021 (TBC)	New	1	April 2025