



Brighton Council

POLICY NAME: GIFTS AND BENEFITS

POLICY NO: 2.1

ADOPTED BY COUNCIL: 9/6/15 (Finance); 16/6/15 (OCM)

POLICY:

The purpose of this policy is to:

- Outline the obligations and responsibilities of Council's officials when dealing with offers of gifts or benefits and to
- Assist Council officials make appropriate judgements in relation to gifts and benefits and therefore avoid being placed in a situation where they may become vulnerable to undue influence or threaten community confidence in the fairness, impartiality and integrity of the Council.
- Council officials are defined as Mayors, Councillors, Council staff (including staff engaged through an employment agency), Council committee members, volunteers and contractors.

SCOPE:

The policy applies to all gifts and benefits offered to or received by all Council officials in their role as officers of the Council.

DEFINITIONS:

Council official – Mayors, Councillors, Council staff (including staff engaged through an employment agency), Council Committee members, volunteers and contractors

Gift – is usually a tangible item provided at no charge. Gifts may include, but are not limited to items such as cash, property (real or otherwise), goods and services made available at heavily discounted prices, alcohol, clothes, products, invitations to social functions and tickets to sporting, theatrical or music events.

Cumulative gift – a series of gifts of nominal value from the same person or organisation over a specified period which may have an aggregate value that is significant.

Gift of influence – a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future

Gift of gratitude – a gift offered to an individual or department in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to staff who speak at official functions may be considered an example of gifts of gratitude.

Benefit – a non-tangible item which is believed to be of value to the receiver (i.e. preferential treatment such as queue jumping, access to confidential information and hospitality)

Hospitality – the provision of accommodation, meals, refreshments or other forms of entertainment.

Bribe – a gift or benefit given specifically for the purpose of winning favours or to influence the decision or behaviour of a Council official to benefit someone or something.

Cash – money or vouchers which are readily convertible

Nominal value – is the monetary limit of the value of gifts or benefits that may be accepted (i.e. total value of gift or benefit received). A gift or benefit is of nominal value when it has no significant or lasting value

Significant value – a gift or benefit that has a value above the nominal value limit.

Token - often mass produced (i.e. pens, calendars, ties or items with a company logo on them), offered in business situations to individuals. Usually have a value under the nominal value limit.

Non token – items that are of a more individual nature, with a value above the nominal value limit. Items may include, free or discounted travel; use of holiday homes; corporate hospitality at major sporting events; free training excursions; tickets to major events and access to confidential information.

Conflict of interest – any situation in which an individual or corporation (either private or government) is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.

Public perception – the perception of a fair-minded person in possession of the facts

Gifts and Benefits Declaration Form – a form to be completed (example template at attachment 1), when an individual receives a gift or benefit of a non token nature above the nominal limit or receives a series of token gifts or benefits in a specified time that may have significant aggregate value (Cumulative Gift)

Gifts and Benefits Register – a register maintained by Council of all declared gifts and benefits (attachment 2).

LEGISLATION:

The particular legislation relevant to this policy is the Tasmanian *Local Government Act 1993*. Section 339A specifies penalties in relation to the misuse of office by councillors and employees; Section 28E deals with the Code of Conduct for councillors and Section 62 identifies the functions and powers of the general manager.

This policy should be read in conjunction with any other relevant State and Federal legislation.

APPLICATION

In a private context gifts and benefits are usually unsolicited and meant to convey a feeling on behalf of the giver such as gratitude. There is ordinarily no expectation of repayment. Gifts given in a private context are not the focus of this policy.

Gifts and benefits may also be offered to individuals in the course of business relationships. Such gifts and benefits are often given for commercial purposes and serve to create a feeling of obligation in the receiver. Gifts and benefits given in the course of business relationships is the focus of this policy.

The policy is to be applied in conjunction with provisions in the Councils Codes of Conduct and other relevant Council policies and procedures.

POLICY STATEMENT:

1. General

Council officials at all times and in all circumstances must be seen to be fair, impartial and unbiased.

Council officials should actively discourage offers of gifts and benefits and must not solicit gifts or benefits.

Council officials must not take advantage of their official position to secure an unreasonable personal profit or advantage.

People doing business with the Council should be encouraged to understand that they do not need to give gifts or benefits to Council officials to get high quality service.

From time to time Council officials may be offered gifts or benefits. In some limited circumstances gifts and benefits may be accepted. Token gifts of nominal value may generally be received. Non - token gifts of significant value should not generally be accepted.

Council officials should at all times be aware of the wider situation in which an offer of a gift or benefit is being made. For example, Council officials should consider whether the donor is in or may be seeking to enter into a business relationship with Council or may be applying to Council in relation to the exercise of Councils functions.

Council officials must avoid situations that suggest that a person or body, through the provision of gifts or benefits is attempting to secure favourable treatment from Council.

When deciding whether to accept or decline a gift or benefit, consideration should be given to both the value of the gift or benefit and also the intent of the gift or benefit being offered.

2. Acceptable gifts and benefits

Gifts or benefits of a token nature at or below nominal value may generally be accepted by Council officials without disclosing details to a supervisor, General Manager or Mayor and without recording the details of the gift or benefit on the Gifts and Benefits Declaration Form or Register (attachment 1 and 2).

That said, Council officials who receive more than the specified number of token gifts of a nominal value from the same person or organisation, in a specified period must disclose that fact in the gifts and benefits register.

If a Council official has any doubt if a gift or benefit is token or of nominal value they should discuss it with a supervisor, General Manager or Mayor.

2.1.1. Token gifts and benefits

Gifts or benefits of a token nature do not create the appearance of a conflict or interest and include:

- Items with a company logo on them, ties, scarves, coasters, diaries, chocolates, flowers
- Books given to individuals at functions, public occasions or in recognition of exceptional work done
- Gifts of single bottles of reasonably priced alcohol given to individuals at functions, public occasions or in recognition of exceptional work done
- Free or subsidised meals of a modest nature and/or beverages provided infrequently (and or reciprocally) that have been arranged for or in connection with the discussion of official business
- Free meals of a modest nature and or beverages provided to Council officials who formally represent Council at work related events such as training, education sessions and workshops
- Invitations to approved social functions organised by groups such as Council Committees and community organisations

2.1.2. Nominal value

For the purpose of this policy the current nominal value limit is identified in section 11.

3. Non acceptable gifts and benefits

Accepting gifts of money is prohibited.

Council officials should generally not accept gifts or benefits that appear to be non-token in nature or more than of a nominal value.

If a gift or benefit of a non-token nature or above nominal value is offered and cannot reasonably be refused (as this action may cause embarrassment), the offer and receipt of the gift or benefit must be declared via completion of A Gifts and Benefits Declaration Form (at attachment 1) and the details must be recorded on the Council Gift Register (at attachment 2).

If a Council official refuses a gift or benefit because they believe that the gift was a deliberate attempt to receive “special treatment”, then such instances are to be reported to a supervisor, the General Manager or Mayor.

3.1.1. Non token gifts and benefits

Gifts or benefits of a non-token nature include:

- Free or discounted travel
- Use of holiday homes
- Tickets to major sporting events
- Corporate hospitality at a corporate facility or sporting venue
- Free training excursions
- Access to confidential information
- Discounted products for personal use
- Goods and services provided via a determination in a Will

At times a gift of a non-token nature may be given from one authority to another. Such gifts are often provided to a host authority. These gifts may be given as an expression of gratitude without obligation on the receiver to respond. The gratitude usually extends to the work of several people in the authority and therefore the gift is considered to be for the authority, not a particular individual.

3.1.2. Significant value

For the purpose of this policy a gift or benefit with significant value has a value above the specified nominal value limit.

4. Actual or perceived effect of the gift or benefit

Accepting gifts where a reasonable person could consider that there may be influence applied as a result of accepting the gift or benefit is prohibited. (gift of influence).

Where it is suspected that a gift or benefit has been offered for the purpose of influencing the behaviour of someone acting in their official capacity, the gift or benefit must be declined and the matter should be reported immediately to the relevant supervisor, General Manager or Mayor.

5. Bribes

Council officials must not offer or seek a bribe. A person offered a bribe should refuse it and report the incident as soon as possible to their supervisor, General Manager or the Mayor (in the case of Councillors). Council will take steps to report the matter to Police immediately.

Receiving a bribe is an offence under both the common law and Tasmanian Legislation.

6. Family members

Council officials must take all reasonable steps to ensure that immediate family members do not receive gifts or benefits of a non-token nature or gifts or benefits above the nominal value. Immediate family members include parents, spouses, children and siblings.

7. Records - Gifts and Benefits Registers

Council officials, who receive more than the specified number of token gifts or benefits near the nominal value limit from the same person or organisation, (cumulative gift) must disclose that fact on the Gifts and Benefits Declaration Form and Register (attachment 1 and 2). The specified number is included in section 11.

If an official of the Council receives a non-token gift or benefit in circumstances where it cannot reasonably be refused or returned, the receipt of the gift or benefit should be disclosed and the details recorded on a Gifts and Benefits Declaration Form (at attachment 1) and in the Gifts and Benefits Register (at attachment 2).

The Register will be available for public inspection.

The content of the Registers will be monitored by the General Manager on a regular basis

8. Disposal of gifts

A supervisor, General Manager or Mayor will determine whether a gift or benefit of a non-token nature should be disposed.

There are options for the disposal of gifts that have been accepted because they could not reasonably be refused, but should not be retained by an individual. Examples of such circumstances where gifts or benefits may be received include:

- Gifts accepted for protocol or other reasons, where returning it would be inappropriate
- Anonymous gifts (received through the mail or left without a return address)
- A gift received in a public forum where attempts to refuse or return it would cause significant embarrassment.
- A gift or benefit of significant value provided to a Council official through a Will, where the relationship between the giver and recipient was essentially a council related business relationship.

Options for disposal include:

- Surrendering the gift to Council for retention
- Distributing the gift or benefit amongst a selection of Council's officials - where a reasonable person would agree that the allocation was appropriate, (public perception).
- Donating the gift to an appropriate charity.

9. Breaches of Policy

All Council officials are obliged to comply with this policy and sanctions may be applied if the policy is breached.

Any person may report an alleged breach of this policy by an official of the Council to the General Manager or Mayor as appropriate who shall investigate any report received and take such action as is considered necessary.

If this policy has been breached, such action may include counselling, censure motions, disciplinary action (including termination of employment), the laying of charges and the taking of civil action

10. Review process and endorsement

This policy, including the amounts and frequencies specified, may be varied by resolution of the Council. When varied, the amounts and frequencies that apply to the policy must be updated and included in section 10.

This policy should be reviewed as required, but at least every four years following the conduct of Local Government elections.

11. Detail of amounts and frequencies specified in the policy

For the purpose of this policy the current nominal value limit is (\$150.00).

Council officials who receive more than (three) nominal gifts of a token nature from the same person or organisation, in a six-month period must disclose that fact in the gifts and benefits register.