

Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

COUNCIL

25TH MARCH 2010

CODE OF PRACTICE FOR MEMBER INVOLVEMENT IN LICENSING MATTERS

REPORT OF THE DIRECTOR, LEGAL SERVICES

1. PURPOSE OF REPORT

This report is to enable the necessary approvals to be given for a Code of Practice for Member involvement in licensing matters.

2. SUMMARY

- 2.1 So as to maintain the integrity of Member involvement in the licensing decision-making process, it is important that the Council has a Code of Practice similar to the Code of Practice for Member Involvement in Development Control decisions.

3. RECOMMENDATIONS

3.1 Council

3.1.1 Council is asked to approve the Code of Practice and confirm that the Code will come into effect once approved by Council.

3.1.2 Council is asked to delegate authority to the Director, Legal Services, in consultation with the Director, Environmental Services, and in consultation with the Chair of the Licensing Committee, to make any further amendments to the Code should this be required in consequence of Council deliberations and any future changes to the Members' Code of Conduct.

4. REPORT

- 4.1 As a requirement of the coming into force of the Licensing Act 2003, the Council approved a Code of Practice for Hearings. This primarily is a procedural Code. It is now recognised as good practice that in support of improvement of the ethical framework of Member involvement in regulatory decision-making there should also be a Code for Member Involvement in Licensing Matters.

- 4.2 Accordingly, officers have worked up a Code that can be read in conjunction with the existing Code of Practice. The proposed Code is attached as Appendix 1.
- 4.3 The key features of the proposed Code are:
- Clarification of its relationship to the Member Code of Conduct.
 - Emphasising the importance of the public perception of probity and the need for members to be impartial in the decision-making process.
 - Guidance for Members who wish to participate on behalf of constituents.
 - How to deal with lobbying.
 - Gifts and hospitality.
 - Principles of decision-making.
- 4.4 As a consequence of the proposed Code, the Director, Environmental Services, is reporting to this committee to make some consequential changes to the existing Code of Practice for hearings to ensure consistency and to prevent duplication.
- 4.5 The Code highlights the importance of the requirements that Members involved in licensing decision-making must have training to understand the processes but also undertake annual refresher training. It is proposed that the refresher training for 2010 will focus on the new Code to ensure its provisions can be understood by Licensing Committee Members.
- 4.6 The Code is based on a draft prepared by the Association of District Secretaries and Solicitors together with a suggested draft Model Licensing Protocol prepared by Standards for England.
- 4.7 Delegated authorisation is requested to be given to the Director, Legal Services, together with the Director, Environmental Services, in consultation with the Licensing Committee Chair, to make any consequential amendments to the proposed Code dependent on any further changes to the Member Code of Conduct.
- 4.8 This report is being considered by both the Standards Committee and the Licensing Committee for their respective comments. Standards Committee involvement reflects its role to ensure ethics and probity in regulatory decision-making. The Licensing Committee has a role, too, in ensuring the provisions of the Code will assist Members involved in licensing decision-making.
- 4.9 The attached Code has been amended to take into account comments made by the Standards Committee at its meeting on 13th January 2010. The Code also incorporates the necessary revisions arising from the coming into force of the Policing and Crime Act 2009 which enables all Members now to be interested parties under the 2003 Licensing Act and therefore able to make representations to the Council on applications for the grant, variation or review of premises licences.
- 4.10 Licensing Committee Members did not want a specific addition to be made to the Code to make clear that the primary responsibility in relation to licensing matters in any ward is with one or more of the Members representing that ward and that where a non-ward

Member wishes to be involved they will contact one of the Ward Members. Provisions dealing with this have been incorporated in the Code of Conduct for Member Involvement in Development Control Decisions.

- 4.11 When the Code was considered at the Licensing Committee meeting, a Member queried the situation with regard to Members who had a personal and prejudicial interest and whether notwithstanding they could still attend hearings or Licensing Enforcement Subcommittee meetings under the exemption provisions in the Member Code of Conduct at paragraph 10(2).

For this paragraph to apply, a Member with a personal and prejudicial interest can only attend a hearing or subcommittee meeting provided either the public are allowed to attend for the purpose of making representations or there is a right (statutory or otherwise).

At present the Council does not permit public speaking at meetings. The Council's current Code of Practice for hearings only enables participation by an applicant or licence holder, as the case may be, and the statutory interested parties. There is no right of general public speaking. The only participants are the applicant / premises licence holder and the statutory interested parties.

The situation has been double-checked with Standards for England. They can only give guidance as it is for the courts to interpret the law. It is accepted, however, that a Member who has a personal and prejudicial interest because they are personally affected (eg, as an applicant or licence holder) may in such a capacity attend a hearing or subcommittee for the purpose of making representations only.

Where a Member is a statutory interested party so that they are able to make representations on applications for the grant, variation or renewal of premises licences but also have a personal and prejudicial interest, they may not participate in any hearing unless they also live in the vicinity of the premises in question.

Arising from this, section 5 of the Code has been amended.

- 4.12 Formal approval of the Code under the Council's Constitution is required via Full Council.

5. FINANCIAL AND LEGAL IMPLICATIONS

5.1 Financial Implications

None.

5.2 Legal Implications

Covered in the report.

6. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within Supporting Information
Equal Opportunities	No	
Policy	No	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	Yes	Throughout
Elderly/People on Low Income	No	

7. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Relevant legislation, court decisions and guidance from Standards for England.

8. CONSULTATIONS

Cllr Sarah Russell, Cabinet Lead for the Environment
Adrian Russell, Director, Environmental Services
Mike Broster, Head of Licensing
Cllr John Thomas, Chair, Licensing Committee
Licensing Briefing – 30.11.09

9. REPORT AUTHOR

Anthony Cross, Head of Litigation, Legal Services, x296362

10.

KEY DECISION	REASON	APPEARED IN FORWARD PLAN	EXECUTIVE OR COUNCIL DECISION
NO	NOT APPLICABLE	NOT APPLICABLE	COUNCIL

LEICESTER CITY COUNCIL

CODE OF PRACTICE FOR MEMBER INVOLVEMENT IN LICENSING MATTERS

1 Introduction

This Code applies to Members appointed to serve on the City Council's Licensing Committee from which Members may be appointed to serve on the Licensing Enforcement Subcommittee or on Hearings under the Licensing or Gambling Acts. It should be read in conjunction with the Council's political conventions and the Code of Practice for Hearings.

2 Relationship to the Member Code of Conduct

2.1 Do comply with the rules of the Member Code of Conduct at all times.

2.2 Do then apply the rules of this Code of Practice which supplements the Member Code of Conduct and the Code of Practice for Hearings. If you do not comply with this Code you may:

put the Council at risk of proceedings in relation to the legality of the decision or in relation to a complaint of maladministration; and

put yourself at risk of being investigated by the Council's Standards Committee.

3 General

3.1 In this Code reference to licensing and Licensing Enforcement Subcommittee refers to matters within the terms of reference of the Subcommittee, eg, hackney carriage licences (vehicles and drivers) and private hire (vehicles and drivers). Reference to Hearings includes hearings under the Gambling and Licensing Acts.

3.2 At the start of each four-year local election cycle Members who wish to serve on the Licensing Committee must undertake initial training in licensing and a decision-making role.

3.3 Licensing Committee Members (and any substitute Members) must participate in annual refresher training.

3.4 Unlike the Licensing Enforcement Subcommittee, Hearings are not defined as formal Council committees. This means the "political balance" rules do not apply. Hearings and the Licensing Enforcement Subcommittee, however, are quasi-judicial. In the case of Hearings they will follow the procedure laid down by the Licensing and Gambling Acts.

3.5 This Code seeks to enhance the Council's role as a successful licensing authority which requires mutual trust and respect of all participants. This includes trust between Councillors and Officers and the avoidance of any political whip. In particular, a Member appointed to serve on the Subcommittee or a Hearing must acknowledge that

the public perception of probity is crucial and therefore there is a need to maintain his/her appearance of impartiality especially during the decision-making process.

- 3.6 Decision-making at Hearings under the Licensing and Gambling Acts requires the balance of private proposals against the wider public interest as provided by the four licensing objectives (1 prevention of crime and disorder, 2 public safety, 3 prevention of public nuisance and 4 protection of children from harm) and the three gambling objectives (1 preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, 2 ensuring that gambling is conducted in a fair and open way and 3 protecting children and other vulnerable persons from being harmed or exploited by gambling). Often much is at stake and conflicting views may be held by relevant parties. While decision-making Members may take into account those views, Members should not favour any person, company, group or locality or put themselves in a position where this might arise.
- 3.7 A Member appointed to serve on the Licensing Enforcement Subcommittee or a Hearing cannot act as the appointed representative of any party to the Hearing.
- 3.8 Where the Hearing involves premises within the ward of a Member appointed to serve on a Hearing, if the Member feels s/he is under any pressure to deal with the matter in any particular way which would run the risk of the Member concerned being accused of bias or predetermination, that Member may notify the Council's Democratic Services Section so that a substitute Member can be found.

4 Role of Members

- 4.1 Subject to paragraph 5.3 and 5.4, any Member can now make representations as an Interested Party about any premises subject to the Licensing and Gambling Acts.
- 4.2 Subject to paragraph 5.3 and 5.4, Ward Councillors may participate in any Licensing Act Hearing as the appointed representative of any Interested Party but in such circumstances should not discuss the application with Members of the Hearing. (Interested Parties need to have made a formal objection to the Council before a Ward Councillor can be approached to act as their representative.)
- 4.3 In the case of matters dealt with by the Licensing Enforcement Subcommittee, as these are Council committees Ward Councillors may attend and, at the discretion of the Committee Chair, may be permitted to address the Subcommittee provided they do not have a personal and prejudicial interest.

5 Members' Interests

- 5.1 Where a Member is personally affected by a Licensing, Licensing or Gambling Act application as an Applicant / Premises Licence Holder, they are entitled to make representations to the Council (Licensing Section) as if they were an individual. In such circumstances the Member must make explicit that they are making representations as an individual and not as a Member.
- 5.2 Similarly, where Members have a personal interest in any Licensing, Licensing or Gambling Act application, they should submit written representations to the Council in an individual capacity rather than in a capacity as a Member.

- 5.3 Where paragraph 5.1 applies and a Member has a personal and prejudicial interest under the Code of Conduct but is an Applicant / Premises Licence Holder, s/he can under an exemption to the Code of Conduct attend a Hearing for the purpose of making representations only (and not participating in decision-making). In such circumstances, however, a Member may wish to consider how such participation might be viewed by members of the public.
- 5.4 Where paragraph 5.2 applies and a Member has a personal and prejudicial interest, they may not take part in any Licensing Enforcement Subcommittee. As the Council at present does not operate public speaking at committees, a Member with a personal and prejudicial interest may not remain and speak as a member of the public.

In relation to a Licensing Hearing, a Member with a personal and prejudicial interest who makes representations as an Interested Party and lives in the vicinity of the premises, s/he may attend the Hearing to make representations only (not participating in decision-making). In all other circumstances, where a Member has a personal and prejudicial interest in any Licensing Act Hearing, s/he may not participate because the Council does not permit public participation at Hearings.

- 5.5 Merely visiting licensed premises (even on a regular basis) will not necessarily give rise to an interest under the Code of Conduct. Members need to consider, however, whether having visited licensed premises could give rise to an appearance of bias.
- 5.6 Members who have been involved in Council meetings which have approved overall policies can take part in any Hearing or Licensing Enforcement Subcommittee subject to paragraph 5.4.

6 Gifts and Hospitality

- 6.1 Members should be aware of public perception when accepting any gift or hospitality from licensed premises and so should act with extreme caution when accepting any gift irrespective of monetary value. (Members are reminded that under the Code of Conduct they are required to add to their Register of Interests any gift or hospitality where its value is over £25.)

7 Lobbying

- 7.1 Licensing Committee Members need to take special care to avoid getting into a position where they might have a predetermined or biased view of any matter that could be the subject of a referral to the Licensing Enforcement Subcommittee or a Hearing. Therefore, Members involved in a Licensing Enforcement Subcommittee or a Hearing should not get involved in the lobbying process.
- 7.2 Where Members of a Hearing are approached by any person about the Hearing, they should explain that it cannot be discussed and refer the person to the Licensing Officer.
- 7.3 Any documentation received by Members at the Licensing Enforcement Subcommittee or a Hearing must be passed to the Licensing Officer.
- 7.4 Approaches/receipt of documentation should be declared at the start of the Hearing.

- 7.5 Members should not seek to influence Council Officers with regard to the content of any report to be considered by a Hearing or decisions to be taken by Officers under Delegated Powers.

8 City Council Applications

- 8.1 Where the City Council submits any licence application, the application must be considered in exactly the same way as any other application. Members taking the decision should give no regard to the interests of the Council.
- 8.2 Members who have taken a role in any decision to submit the application must not sit at any Hearing or Licensing Enforcement Subcommittee which determines the application.
- 8.3 Members should take care when expressing any views about the City Council application so as to avoid appearing to have a predetermined or biased view.

9 Conduct at Hearings / Licensing Enforcement Subcommittee

- 9.1 Members should not communicate directly with any applicant or parties to an application other than publicly through the Chair.
- 9.2 Questioning of speakers is to clarify arguments and to test evidence. Members should not express any view on the application and should frame questions so as not to intimidate.
- 9.3 Any material considered by Members must be provided by a relevant party to any application subject to compliance with any relevant procedural regulations.
- 9.4 Members must not vote or take part in the decision-making process unless they have been present throughout, which includes the presentation of any officer report.

10 Decision-making

- 10.1 Decisions of the Licensing Enforcement Subcommittee will be based on the relevant statutory powers outlined in the Subcommittee report. With regard to Hearings, applications must be considered on the basis of whether they promote the licensing/gambling objectives.
- 10.2 In reaching a decision the Licensing Enforcement Subcommittee or a Hearing must have regard to all relevant considerations including (not limited to):
- 10.2.1 the relevant statutory provisions
 - 10.2.2 relevant statutory guidance and case law
 - 10.2.3 the objectives (Licensing and Gambling Act Hearings only)
 - 10.2.4 the material facts based on relevant evidence presented and representations received
 - 10.2.5 the individual merits of each case
 - 10.2.6 the public interest.

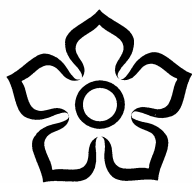
- 10.3 This means irrelevant considerations must be disregarded, eg, information or evidence which is not relevant to the application or to the promotion of the licensing or gambling objectives.
- 10.4 Members of a Licensing Enforcement Subcommittee or Hearing must act fairly, objectively and impartially throughout. The Chair will ensure compliance with procedural rules, for example, the Code of Practice for Hearings.
- 10.5 Members of the Licensing Enforcement Subcommittee or a Hearing must have an open mind and not pre-judge any application, express any views on the merits of any report/application or organise any support or opposition to any application in advance of the Licensing Enforcement Subcommittee or a Hearing. Any Member appointed to a Licensing Enforcement Subcommittee or a Hearing who feels s/he has a closed mind should stand down and inform Democratic Services Section at the earliest opportunity so an alternative Member can be appointed.
- 10.6 Members of the Hearing may make notes with regard to the information provided. For this purpose the attached decision-making sheet may be used for Licensing Act Hearings. A revised version of the decision-making sheet will be used for Gambling Act Hearings. The decision-making sheet can also be adopted for use by Members of the Licensing Enforcement Subcommittee.
- 10.7 Members are required to give reasons for all decisions. These reasons must be based on relevant considerations to reflect findings of fact.
- 11 **Review**
- 11.1 The Monitoring Officer will review this Code annually with the Chairs of the Licensing and Standards Committees.

15.3.10
AJC/DG

STRUCTURED DECISION NOTES

IN COMING TO A DECISION MEMBERS ARE REMINDED THAT A DECISION MUST BE MADE IN ACCORDANCE WITH THE FOUR LICENSING OBJECTIVES: THESE ARE PARAMOUNT:

- 1) PREVENTION OF CRIME AND DISORDER
- 2) PUBLIC SAFETY
- 3) PREVENTION OF PUBLIC NUISANCE
- 4) PROTECTION OF CHILDREN FROM HARM



Leicester
City Council

Date:

LICENSING HEARING

Members' Notes & Record of decision

Name & Address of Premises

Constitution of the Board: Cllr

CHAIR:

Other Councillors Present

Legal Advisor : Mr/s

Committee Administrator : Mr/s

Licensing Officer : Mr/s

Applicant/Applicant's representative(s):

Relevant Authority Officers (*Environmental Health, Police, Fire, etc., officers*)

Interested Parties (Objectors & Supporters)

Represented by

Witnesses:

On behalf of:

1. Findings of Fact *(the relevant facts accepted from the evidence available)*

2. Decision Reached and relevant conditions to be attached

An explanation of why:

- [illegible]