

## Section 7 – Protocol for Members in Relation to Licensing and Gambling Matters

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## **Purpose of the Code**

- (i) The purpose of the Code is to advise all Members of the City Council of appropriate practices and procedures in dealing with licensing and gambling matters.
- (ii) The Licensing Act 2003 has put local authorities in the centre of decision-making upon licences for regulated entertainment, the provision of alcohol, and late night refreshments. The Gambling Act 2005 has made licensing authorities responsible for the issue of various permits and the licensing of gambling premises. The role of the Elected Member, as part of the Licensing Committee, and Sub-Committees (hereafter referred to collectively as the Licensing Committees) will require them to balance the needs of the local community with the four objectives of the Licensing Act 2003, or the three objectives of the Gambling Act 2005. The system relies on mutual trust and understanding of the different roles of members and their professional advisers. It relies on each ensuring that they act in a way which is not only fair and impartial, but is clearly seen to be so. The Code of Conduct which was adopted by the Council provides guidance and standards for Members. This guidance is intended to assist Elected Members specifically in respect of Licensing Committee matters. Employees are guided by the Council's Code of Conduct for Employees.
- (iii) The Licensing Committees will be independent and will follow proper procedures which accord with regulations issued, the requirements of national justice and the right to a fair trial contained in Article 6 of the European Convention of Human Rights.
- (iv) The Code is based upon guidance prepared by the Local Authorities Co-ordinators of Regulatory Services. It is written with all Elected Members in mind not just those serving on Licensing Committees. It is intended that while advisory it should apply to the decision-making process of all applications. It is intended that the Code will be reviewed periodically in light of experience and, where necessary, amended to reflect changing practices and procedures.
- (v) If a Member is uncertain about the application of the Code they should seek guidance from the City Solicitor or the Director of Community and Cultural Services.

## **1.0 Application of the Code**

- 1.1 All Members of the Council should have regard to the principles contained in this Code when involved in licensing or gambling matters.

- 1.2 The Code applies to the determination of all licensing and gambling applications under the Licensing Act 2003 and Gambling Act 2005 through the Licensing Committees the reporting thereto by the Director of Community and Cultural Services or appropriate officers.

## **2.0 Relationship with Other Guidance**

- 2.1 The provisions of this Code supplement, but do not replace, the provisions of other guidance, including the Council's Code of Conduct for Members and co opted Members.
- 2.2 All Members must ensure that they comply with the law relating to the declaration of personal and prejudicial interest as set out in the Code of Conduct for Members and Co-opted Members.

## **3.0 The Code of Conduct for Members and Co-opted Members**

The Code of Conduct is set out in full elsewhere in the Constitution.

## **4.0 Personal and Prejudicial Interests**

- 4.1 Personal Interests:-

There are two types of personal interest.

In summary, a Member has a personal interest in any business of the Authority where it relates to or is likely to affect:

- (a) an interest that must be registered;
  - (b) an interest that is not on the register, but where the well-being or financial position of the Member or relevant persons including Members of their family, or people with whom they have a close association, is likely to be affected by the business of the Authority more than it would affect the majority of inhabitants of the Ward.
- 4.2 A Member who has a personal interest must declare the nature of that interest before the matter is discussed (except in the limited circumstances set out in paragraphs 9(2) to (7) inclusive of the Code).
- 4.3 Prejudicial Interests A personal interest will also be a prejudicial interest if all the following conditions are met:
- (a) The matter does not fall within one of the exempt categories of decision.

- (b) The matter affects the members' financial interests or relates to a licensing or regulatory matter.
- (c) A member of the public with knowledge of the relevant facts would reasonably regard the personal interest so significant that it is likely to prejudice the members' judgement of the public interest.

Paragraph 12(2) of the Code of Conduct provides that a member with a prejudicial interest in a matter may attend a meeting for the purposes of making representations, answering questions or giving evidence relating to the matter, provided the public are also allowed to attend the meeting for the same purpose and that after making representations, answering questions or giving evidence, the member must withdraw from the room where the meeting is being held. The member must also not seek to improperly influence a decision about the business.

- 4.4 Members of the public who are "interested parties" are entitled to speak in respect of all applications under the Licensing Act 2003 and Gambling Act 2005. A member who is also an "interested party" may exercise the rights under paragraph 12(2) of the Code notwithstanding that they have a prejudicial interest in the application.
- 4.5 Members should not sit on decision-making bodies, such as Licensing Committees, when they decide applications from an Authority or body on which they also serve.

## **5.0 Pre-determination and Bias**

- 5.1 Bias has been defined as an attitude of mind which prevents a Member from making an objective determination of the issues that he has to resolve. Procedural impropriety does not require actual bias, it is sufficient that there is an appearance of bias. The test is "whether a fair-minded and informed observer having considered the facts would conclude that there was a real possibility of bias".

Members should not sit as a member of a Licensing Committee where previous voting or statements of belief may alter the impression of objectivity.

Bias also includes the situation where it is felt the Member has pre-determined the case, i.e. where that impression is clearly given to members of the public or a lobbyist beyond conveying a mere pre-disposition, that the Member will approach the matter with a closed mind and without impartial consideration of all relevant issues.

In relation to applications within their ward, Members will need to be vigilant to ensure that their response to any lobbying is not seen as to give reasonable grounds to indicate pre-determination or bias.

## 5.2 'Structural' Bias

A potential issue concerning bias or pre-determination in relation to the Licensing Act 2003 and Gambling Act 2006, is where a Member sitting on the Licensing Committees is a Member for another authority function such as economic development/regeneration, where that function's policy/decisions either impliedly or explicitly support (or indeed, opposes) the application. This might, for example, include the scenario where an 'Open Spaces' plan has been agreed and indicates that some areas of the local authority land will be licensed for entertainment purposes under the Licensing Act 2003 (explicit support); or where an economic regeneration plan includes the provision to encourage more theatres and restaurants to an area (implicitly support). It has been stated that "...there is a degree of permissible structural bias built into the statutory framework for local authority decision-making". If in such circumstances the Member concerned is in doubt they should make a disclosure of his/her position, in advance, to the Licensing Committees which will consult its legal advisor to decide if the Member can take part in the decision-making. The Committees may where there is doubt, decide to exclude the Member from the decision-making.

## 5.3 Differences between the Personal/Prejudicial Interests provisions of the Code of Conduct, and Bias at Common Law.

Bias at common law and personal and prejudicial interests under the Code of Conduct are related but do differ as concepts and in their effect. Bias at common law includes those areas where the potential Licensing Committee Member has created a real danger of a perception that s/he has prevented him or herself from being able to make an impartial determination of the issues. This is also known as fettering one's discretion. Interests under the Code of Conduct only concern themselves with the definition of a personal interest and only then is the test as to whether or not that personal interest may be prejudicial then applied.

A Member who has a personal and prejudicial interest may take part in the Licensing Committees or attend the hearing solely for the purposes of making representations, answering questions or giving evidence relating to the matter as set out in paragraphs 4.3 and 4.4 above. However, a Member who has fettered his/her discretion through common-law bias may not sit as part of the Licensing Committees determining an application.

## 5.4 Applications submitted by the Local Authority.

The Council apply for their own Premises Licences.

Such applications must be, and seen to be dealt with fairly. During such an application process it is therefore important to be aware of any

potential appearance of bias. Such applications shall always be decided by the full Licensing Committees where there are relevant representations to minimise any potential appearance of bias.

Where no relevant representations are received, Section 18 of the Licensing Act 2003 requires the Licence to be granted in accordance with the application without a hearing. Where there are no representations under Section 161 of the Gambling Act 2006 the Premises Licence may be determined without a hearing.

### 5.5 Lobbying

5.5.1 It is recognised that lobbying has an important role in the local democratic process. Members, however should ensure that their response to lobbyists is not such as to give reasonable grounds for their impartiality to be questioned or to indicate that they have made their minds up on the same issue before they have heard all the evidence and argument. If a Member of the Licensing Committee who is lobbied before a meeting when a particular application is to be considered they:-

- (a) can listen politely to what is being said
- (b) give procedural advice (e.g. where and when any meeting is to be held, advise which Licensing Officer to approach and how to make representations).
- (c) refer the lobbyist to a Ward member who does not sit on the Committee/Sub-Committee or the Licensing Officer who can explain the process of decision-making;
- (d) refer the lobbyist to the Licensing officer so that their views can be recorded and included in the report to the meeting (provided they are allowed to do so as a responsible authority or interested party);
- (e) should not give details of voting intentions or otherwise enter into a commitment to approve or support the application;
- (f) should report all instances of significant, substantial or persistent lobbying to the monitoring officer and the Executive Director of City Services who will make a note on the file.

5.5.2 A Member who also has membership of a lobby/campaign group or other interested party affected by the application should not sit as a member of the Licensing Committees.

A. “Interested party” in the Licensing Act 2003 means any of the following:-

- (a) a person living in the vicinity of the premises;
- (b) a body representing persons who live in that vicinity;
- (c) a person involved in a business in that vicinity;
- (d) a body representing persons involved in such business;
- (e) a Member of the relevant licensing authority.

B. “Interested Party” in the Gambling Act 2006 means the following:-

- (a) a person who lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- (b) a person who has business interests that may be affected by the authorised activities;
- (c) a person who represents persons who satisfy (a) or (b).

Interested parties can be persons who are democratically elected such as Councillors and MPs.

## **6.0 Licensing and Gambling Considerations and Officers’ Advice**

6.1 Licensing decisions should only be made on licensing considerations (i.e. the Statement of Licensing Policy the four statutory objectives and any guidance issued by the Secretary of State – see Appendix B for full details). A Member when reaching a decision must give reasons for the decision in accordance with the Authority’s and any statutory requirement.

6.2 Gambling decisions should only be made on the relevant gambling considerations (i.e. the Statement of Licensing Policy (Gambling Act 2005) the three statutory objectives and the guidance issues by the Gambling Commission - see Appendix C for details). A Member when reaching a decision must give reasons for the decision in accordance with the Authority’s and any statutory requirements.

- 6.3 All Members should pay particular attention to the professional advice and recommendations from officers. Should Members propose not to accept the officers' advice, they should do so only with good reasons, based upon relevant licensing grounds/gambling considerations.
- 6.4 It is the responsibility of officers in preparing reports to Members to act impartially, to identify the material licensing or Gambling Act considerations and to advise Members about those matters which are immaterial. Unlike planning matters, there is no legal provision for Licensing Officers to make recommendations to the Sub-Committee in respect of the application.

## **7.0 Contact between Members and Officers**

- 7.1 All Members and officers must ensure that contact between them in connection with these matters accords with the requirement of mutual respect and should not undermine the good working relationships, or do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the Authority.

(Officers are available to discuss the issues relating to licensing or gambling applications with Members and to inform them of all the facts and circumstances relating to the application).

- 7.2 Members must not pressurise Licensing Officers to make any particular decisions or recommendations.

## **8.0 Meetings with Applicants**

- 8.1 Generally, Members should not meet with any current or prospective applicant and should instead refer the applicant to the Licensing Officer. Members should consider whether it may affect their ability subsequently to consider the matter when it formally comes before the Licensing Committees and should consult and be advised by the appropriate Chief Officer. If they decide to meet an applicant, they must be accompanied by an appropriate officer.

- 8.2 Any Member approached by an applicant should inform the Executive Director of City Services, Head of Law and Governance and the relevant Committee Chairman.

(Approaches may occur at various stages, sometimes before the Council is officially involved and, on other occasions, not until an application has been made. Care must be taken at all times.)

Members should ensure:-

- (a) that they are not, nor that they appear to be prejudiced by any discussions;



- (b) that all parties are treated equally;
  - (c) that the Council's procedures are seen to be fair and not open to criticism and
  - (d) that decisions are made on the basis of proper information and full advice.
- 8.3 The appropriate Chief Officer should make arrangements for meetings and his representatives should be invited to attend. Full notes of the discussions should be agreed and copies placed on the application file.

Where discussions have taken place Members ought to declare this at any meeting which the matter is discussed (even though the matter may not amount to a personal or prejudicial interest).

## **9.0 Ward Interests**

- 9.1 The principles of this Code apply equally to Members who are acting in respect of matters arising in their Wards.

Members must ensure that the integrity of the licensing process is not affected by their Ward interest.

A Member of the Licensing Committees who represents a Ward affected by an application can be in a difficult position if it is a controversial matter around which lobbying takes place. Members who find themselves in this situation should consider referring the matter to another Member who is not a member of the Licensing Committee/Sub-Committee. Alternatively, they could forward the concerns which have been expressed to them to officers, so that they can be fully incorporated as part of the consideration of the application as coming from interested parties, provided they come within the definition given in paragraph 5.3.

In most cases, this can be achieved without the Member actually committing him/herself to objecting or supporting an application.

If a Member responds to lobbying by deciding to go public in support or opposition, it will be extremely difficult for the Member to argue that he/she has approached the actual decision impartially. In these circumstances, a Member may not sit as part of the Licensing Committees hearing the application.

- 9.2 Under the Licensing Act 2003 and the Gambling Act 2005, Ward Members are "interested parties" and can make representations as such.

## **10.0 Gifts and Hospitality**

- 10.1 Members should avoid knowingly accepting gifts or hospitality from persons who are currently or likely to be promoting or opposing licensing or gambling applications or from others connected with such persons.

The offer or receipt of gifts and hospitality can easily cause damage to public confidence in local government and affect the perceived integrity of the licensing system. Any offer of a gift, favour or hospitality should be treated with extreme caution, especially where it is from a current or potential applicant/objector to a licensing application.

- 10.2 Members should be guided by the Code of Conduct and, if in any doubt, seek guidance from the Head of Law and Governance.

## **11.0 Applications by Members**

- 11.1 Members should never take part in the processing of licensing or gambling applications submitted on their own behalf or on behalf of their relatives, friends or neighbours nor should Members who deal with licensing or gambling applications act as professional agents for persons pursuing a licensing application.

- 11.2 Members should notify the Executive Director of City Services of applications involving their relatives, friends or neighbours, of which they are aware. In such circumstances, Members should not otherwise attempt to use their position to influence the processing of the application.

## **12.0 Site Visits**

- 12.1 Site visits by Members of the Licensing Committee/Sub-Committee are generally unnecessary, and may put Members at risk of accusations of bias if they are not conducted properly.

- 12.2 A site visit should only be arranged with the prior agreement of the relevant Committee or, in exceptional circumstances, the Executive Director of City Services in consultation with the Committee Chairman and where it is agreed it will assist in considering the application.

- 12.3 Members should confine any remarks they make to matters of fact and avoid expressing any views or opinions which suggest they have prejudged the application.

A site visit is only likely to be necessary in the following cases:-

- (a) where the impact of licensable or gambling activity is difficult to visualise from plans and supporting material, or
- (b) where there is a good reason why the comments of the applicant or objectors cannot be expressed adequately in writing.

No applicant or objector or their agents should attend site visits or participate in any discussion about the application. Where it is not possible to visit the site without contact with either the applicant or objector, they will be advised that no representations can be made at the site visit. Any representations made, verbally or otherwise, should be ignored by Members.

Decisions will not be made on site visits but will be made at a subsequent meeting of the appropriate Committee.

### **13.0 Contact with the Media**

- 13.1 All Members should ensure that any contact, which they may have with the media, should accord with the principles of this Code and should not affect the integrity of the licensing system.

### **14.0 Members' Training**

- 14.1 Members of the Licensing Committees should attend training sessions, which may be organised from time to time.

### **15.0 Breach of the Protocol**

- 15.1 If any person is concerned that the provisions of this Code are not being followed, they should bring the relevant matter to the attention of the monitoring officer in writing.

## Appendix A – References

<ul style="list-style-type: none"><li>• Guidance on Licensing Committee Hearings and Licensing Guidance for Elected Members</li></ul>	LACORS (Local Authorities Co-ordinators for Regulatory Services)
<ul style="list-style-type: none"><li>• Code of Conduct for Members</li></ul>	Constitution
<ul style="list-style-type: none"><li>• Code of Conduct for Employees</li></ul>	Constitution
<ul style="list-style-type: none"><li>• City Council Rules of Procedure</li></ul>	Constitution

## Appendix B – Licensing Act 2003 Considerations

1. The Licensing Act 2003 supported by Subordinate Regulations and Government Guidance marks the integration of six existing licensing regimes into a single system operated by the local authorities.
2. The legislation provides a clear focus on the promotion of four statutory objectives which must now be addressed when licensing functions are undertaken. These are:-
  - the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm.

3. Each of the licensing objectives has equal importance. Any representations made in relation to an application must be about the likely effect of granting the application on the promotion of the licensing objectives.
4. In addition the Act requires that in carrying out the licensing functions the Licensing Authority must also have regard to its:-

Statement of Licensing Policy which each Council is required to publish under Section 5 of the Act;

Any guidance issued by the Secretary of State under Section 182.

5. It should be noted in respect of the licensing objectives the mandatory wording in each case requiring their promotion. In respect of the Council's statement of licensing policy and the Government guidance the duty is merely to have regard to these documents.
6. The Licensing Act 2003 states unless there are 'relevant representations' the application must be granted. A 'relevant representation' may only be made by an 'interested party' or 'responsible authority'.

'Interested party' is defined in Section 13(3) as meaning:-

- (a) a person living in the vicinity of the premises;

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- (b) a body representing persons who live in that vicinity;
- (c) a person involved in a business in that vicinity;
- (d) a body representing persons involved in such business.

'Vicinity' is not defined by the Act.

'Responsible Authority' is defined in Section 13(4) as meaning:-

- (a) the Chief Officer of Police for any police area in which the premises are situated;
- (b) the fire authority for any area in which the premises are situated;
- (c) the enforcing authority within the meaning given by Section 18 of the Health and Safety at Work etc. Act 1974 for any area in which the premises are situated;
- (d) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (C8) for any area in which the premises are situated;
- (e) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health;
- (f) a body which –
  - (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm; and
  - (ii) is recognised by the Licensing Authority for that area for the purpose of this section as being competent to advise it on such matters;
- (g) any Licensing Authority (other than the relevant licensing authority) in whose area part of the premises is situated;
- (h) in relation to a vessel –
  - (i) a navigation authority (within the meaning of Section 221(1) of the Water Resources Act 1991 (C57) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, navigated at a time when it is used for licensable activities;

- (ii) the Environment Agency;
  - (iii) the British Waterways Board; or
  - (iv) the Secretary of State;
- (i) a person prescribed for the purposes of this section.

In respect of Section 13(4)(i) Inspectors of Weights and Measures (Trading Standards Officers) have been prescribed as a Responsible Authority.

7. The Government have also issued various Regulations under the Act to which members will be referred to as appropriate in the officer's report.

## Appendix C - Gambling Act 2005 Considerations

1. The Gambling Act 2005 which came into force on the 1<sup>st</sup> September, 2007 has created a unified regulator for gambling - The Gambling Commission. The Gambling Commission will regulate commercial gambling except for the National Lottery and spread betting. They will issue operating and personal licences.
2. The Gambling Act 2005 also transfers all responsibility for licensing gambling premises to licensing authorities (the Local Authority).
3. The Gambling Act 2005 contains three licensing objectives that underpin the entire legislation. These are:-
  - preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime;
  - ensuring that gambling is conducted in a fair and open way;
  - protecting children and other vulnerable people from being harmed or exploited by gambling.
4. Licensing authorities must have regard to the three objectives when exercising their function in relation to Premises Licences, Temporary Use Notices and some permits.
5. In addition, Section 153 of the Act provides that in exercising its functions under Part 8 of the Act a licensing authority should aim to permit the use of premises for gambling insofar as it thinks fit:-
  - (a) in accordance with any relevant code of practice;
  - (b) in accordance with any relevant guidance issues by the Gambling Commission;
  - (c) reasonably consistent with the licensing objectives (subject to paragraphs (1) and (b)); and
  - (d) in accordance with Statement of Licensing Policy (Gambling) published by the Authority.
6. In deciding whether or not to grant a licence a licensing authority must not have regard to the expected demand for the gambling premises that are the subject of the application.



7. The licensing authority are obliged to consider relevant representations from “Responsible Authorities” and “Interested Parties”. The only representations which are likely to be relevant are those that relate to the licensing objectives.

Responsible authorities under Section 157 of the Act are:-

- (a) a licensing authority in England and Wales in whose area the premises are wholly or partly situated;
- (b) the Gambling Commission;
- (c) the Chief Officer of the Police;
- (d) the fire and rescue authority for the same area;
- (e) the local planning authority;
- (f) Environmental Services;
- (g) a body designated to advise about the protection of children from harm;
- (h) H.M. Revenue and Customs;
- (i) Navigation Authorities;
- (j) any other person prescribed in regulations by the Secretary of State.

“Interested Parties” under Section 158 of the Act is a person who:-

- (a) lives sufficiently close to the premises to be affected by the authorised activities; or
- (b) has business interests that might be affected by the authorised activities; or
- (c) represents persons in either of these two groups.

Interested parties can be persons who are democratically elected such as Councillors or MPs.

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8. Local Authorities as Licensing Authorities are now responsible for issuing Premises Licences for the following activities:-
  - bingo;
  - betting;
  - adult gaming centres;
  - family entertainment centres;
  - casinos;
  - sporting tracks, including horse racing and dog tracks.
9. They are also responsible for issuing permits for:-
  - gaming machines in alcohol licensed premises, such as pubs;
  - gaming machines for members clubs;
  - other gaming activities in members clubs;
  - Category D machines in unlicensed family entertainment centres;
  - prize gaming.
10. The licensing authority also register and issue:-
  - small society lotteries;
  - occasional and temporary use notices;
  - provisional statements.

### 11. Premises Licences – Conditions

There are a number of conditions attached to the Premises Licences under the Act, and additional conditions may be attached both by the Secretary of State and the Licensing Authority.

Mandatory conditions are set by the Secretary of State. A licensing authority has no power to remove or vary these conditions.

Default conditions are attached in the same way as mandatory conditions, however, the licensing authority may remove or replace them.

The licensing authority may also attach individual conditions to a licence, for example door supervision officers can make recommendations to add conditions to Premises Licences.

12. Hearings

The Licensing Committee/Sub Committee must consider an application at a hearing if relevant representations are made and not withdrawn, or if the licensing officer proposes that individual conditions should be attached to the licence.