

MEMBERS' LICENSING CODE OF GOOD PRACTICE

BACKGROUND

Recent changes in legislation with the enactment of the Licensing Act 2003 and Gambling Act 2005 have transferred substantial additional responsibilities for licensing to local government and established the Council as the licensing authority for the regulation of various forms of licensable activities. The new responsibilities will be undertaken by the Licensing Committee and its sub-committees. However the Council has other licensing responsibilities that are undertaken by the Licensing and Protection Panel and associated application sub-groups. Whichever the forum, Members are acting in a quasi-judicial capacity in carrying out the Council's licensing functions.

This Code of Good Practice is designed to apply the principles contained in the Members Code of Conduct to Members' licensing responsibilities and to support and maintain high ethical standards in local government. It applies to the actions of the Council both in its statutory capacity as the licensing authority via the Licensing Committee and its non-executive functions that are the responsibility of the Licensing and Protection Panel. For the purposes of this Code, the Council is collectively described as the licensing authority.

This Code has regard to both the Members Planning Code of Good Practice previously adopted by the Council and LACORS' guidance on the role of elected members in relation to Licensing Committee hearings under the Licensing Act 2003.

INTRODUCTION

The aim of the Code is to ensure that in the operation of the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of licensing is to regulate certain activities in the public interest and to promote the licensing objectives defined in the legislation. In addition, the authority must have regard to statutory guidance issued by the Secretary of State and the Gambling Commission.

Your role as a member of the licensing authority is to make decisions openly, impartially, with sound judgement and for justifiable reasons.

This Code of Good Practice also applies to Members at all times when involving themselves in the licensing process. It applies equally to licensing enforcement and licensing policy issues as it does to licensing applications. This includes taking part in decision-making meetings of the licensing authority and when involved in less formal occasions, such as meetings with officers or the public and consultative meetings.

References to officers in this Code of Good Practice relate to employees of the Council.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his staff, preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- ◆ **Do** apply the rules in the Members' Code of Conduct first: these must always be complied with.
- ◆ **Do** then apply the rules in this Licensing Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of dealing with all licensing matters. If you do not abide by this Code of Good Practice, you may put:
 - the licensing authority at risk of proceedings as to the legality or maladministration of the related decision; and
 - yourself at risk of either being named in an Ombudsman's report made to the Corporate Governance Panel or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint to the Standards Board for England.

2. Licensing Proposals and Interests under the Members' Code

Your interest in a licensing matter may take a variety of forms. As a member of the Cabinet or the relevant executive councillor, you may have either collective or individual responsibility for premises in the Council's ownership or a licensable activity which the Council is promoting for which a licence is required or has already been granted. You may be a member of another organisation or body that is applying for a licence or is carrying out a licensable activity. You may be an employee of a responsible authority defined in the legislation or you may be an interested party because you live or have business premises in the vicinity of an application site or licensed premises. You may be a member of a lobby group or campaign. You may be the applicant for a licence or the provider of a licensable activity yourself or a member of a registered club that is doing so. You may be a supplier of goods to an applicant or an existing licensee or club or you may act in some capacity on their behalf. You may also be an existing licensee or a member of a club whose business may be affected if a licence or club premises certificate is granted for a similar activity elsewhere.

Whatever your interest,

- ◆ **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with employees and other members.
- ◆ **Do** then act accordingly.
- ◆ **Where your interest is personal and prejudicial:-**
 - **Do** disclose the interest and withdraw immediately from the room or chamber where a meeting is being held for the duration of any discussion and/or voting in the matter.
 - **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the licensing authority.
 - **Don't** represent an applicant or responsible authority at a licensing sub-committee hearing or applications sub-group meeting.

- **Don't** try to represent an interested party if you have played an active role in supporting or opposing an application for a licence. Ask another member to do so in your place.
Don't get involved in the processing of the application or the review of a licence or certificate that has already been issued.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a personal and prejudicial interest in a proposal to be put before a hearing or meeting, you will have to withdraw from the room or chamber whilst the hearing or meeting considers it, whereas an ordinary member of the public would be able to observe the meeting's consideration of it from the public gallery.)
- **Do** notify the Monitoring Officer in writing of your own interest and note that:
 - notification to the Monitoring Officer should be made no later than submission of the application; and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers.

3. Fettering Discretion in the Licensing Process

- ◆ **Don't** fetter your discretion and therefore your ability to participate in licensing decision-making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), as to how you will vote on any licensing matter prior to its formal consideration at a hearing or meeting of the licensing authority and hearing the representations and evidence on both sides. Fettering your discretion in this way and then taking part in the decision will put the licensing authority at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- ◆ **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for a proposal. (This is more than a matter of membership of both the proposing and licensing determination bodies, but because through your significant personal involvement in preparing or advocating the proposal you will be, or could be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)

- ◆ **Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below -
 - another local or public authority of which you are a member; or
 - a body to which you have been appointed or nominated by the Council as its representative
 - you must exercise your discretion in deciding whether or not to participate in each case and where:
 - you have been **significantly** involved in the preparation, submission or advocacy of a licensing proposal or in an activity that has been licensed on behalf of such a body; or
 - you are a trustee or company director of the body submitting the proposal and were appointed by the Council
 - you should always disclose a prejudicial as well as personal interest and withdraw.

- ◆ **Don't** sit as a member of a licensing sub-committee or applications sub-group if the applicant lives or the premises are situated in the Ward that you represent or if an application is being made to review a licence or certificate held by a resident or premises in your Ward.

- ◆ **Don't** sit as a member of a licensing sub-committee or applications sub group where you have fettered your discretion. Because of the limited size of licensing sub-committees and applications sub-groups, you should advise officers as soon as it becomes apparent to you that you have fettered your discretion and certainly before the meeting commences to enable an alternative sub committee to be convened. You do not have to withdraw from the room where the meeting is taking place, but it would be preferable for you to do so.

- ◆ **Do** take the opportunity (if you not sitting on the licensing sub-committee or applications sub group or you do not have a personal and prejudicial interest) to exercise your rights as a member to speak on behalf of an applicant or interested person even if you have represented your views or those of others before the meeting and fettered your discretion.

4. **Contact with Applicants, Developers and Objectors**

- ◆ **Do** refer those who approach you for licensing, procedural or technical advice to officers.
- ◆ **Don't** attend any meeting with applicants or interested parties if you are a member of a sub-committee or sub-group. Pre-application discussions, if held for clarification purpose will involve officers only who will ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the sub-committee or application sub-group.

- ◆ **Do** otherwise meet with an applicant or interested party if you are considering representing their interests or speaking on their behalf at a hearing of a sub-committee or meeting of an applications sub-group of which you are not a member.

5. Lobbying of Councillors

- ◆ **Do** explain, if you are a member of a sub-committee or sub-group, to those who may be attempting to lobby you that you cannot listen to what is said as this will prejudice your impartiality and therefore your ability to participate in the decision making process.
- ◆ **Do** remember that, as a member of the Licensing Committee or Licensing and Protection Panel, you will probably be unaware whether an application will be determined by a sub-committee or sub-group or whether you will be a member of that determining body until you have been notified by officers. If you have been lobbied by an applicant or interested party, you should notify officers as soon as it comes to your attention that you have been invited to sit on a relevant sub-committee or sub-group. In such circumstances, you should not take part in that hearing or meeting and officers will make arrangements for the application to be dealt with by another sub-committee or for another member to take your place on a sub-group.
- ◆ **Don't** feel constrained, if you are not a member of a sub-committee or sub-group, to receive an approach from an applicant or interested party and, having considered the information that they have supplied, to agree to speak or make representations on their behalf at a meeting of a sub-committee or sub-group.
- ◆ **Do** remember, if you are a member of a sub-committee or sub group, that your overriding duty is to the whole community and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- ◆ **Don't** accept gifts or hospitality from any person involved in or affected by a licensing application or who may be providing a licensable activity. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Monitoring Officer where its value is over £25 in accordance with the Members' Code of Conduct.
- ◆ **Do** copy or pass on any lobbying correspondence you receive if you are a member of a sub-committee or sub-group to the Head of Administration or Central Services Manager at the earliest opportunity in order that it can be placed on the appropriate licensing file and is open for inspection before a decision is made.
- ◆ **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- ◆ **Do** note that, unless you are a member of a sub-committee or sub-group or you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Licensing Code of Good Practice through:

- listening or receiving viewpoints from residents or other interested parties as long as you make yourself equally available to those of differing viewpoints if requested to do so;
- making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting in support of an application or in expressing representations on behalf of an interested party

6. Lobbying by Councillors

- ◆ **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose licensing proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- ◆ **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals, such as a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the licensing authority that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- ◆ **Don't** excessively lobby fellow members regarding your concerns or views nor attempt to persuade them how they should vote in advance of the meeting at which any licensing decision is to be taken.
- ◆ **Don't** decide or discuss how to vote on any licensing application or policy matter at any sort of political group meeting, or lobby any other member to do so. Political group meetings should never dictate how members should vote on any licensing issue.

7. Site Visits

- ◆ **Do** try to attend site visits organised by the licensing authority if you are a member of the licensing sub-committee or applications sub-group. If you are unable to take part in a site visit, you will be unable to take part in the sub-committee hearing or sub-group meeting. You should therefore notify officers of the Democratic Services Section as soon as it comes to your attention that you are unable to attend a site visit that has been organised. Where a site visit takes place, Members will be accompanied by officers of the authority.
- ◆ **Do** ensure that you treat the site visit only as an opportunity to observe the site.
- ◆ **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- ◆ **Don't** hear representations from the applicant or an interested party at the site visit. Where you are approached by the applicant or an interested party, direct them to or inform the officer present.
- ◆ **Don't** express opinions or views to anyone.
- ◆ **Do** exercise your discretion, if you are not a member of the sub-committee or sub-group, as to whether to accept an invitation to visit a site which is the subject of an application or provides a licensable

activity. Where you do accept an invitation, do exercise caution and ensure you comply with these good practice rules.

8. Public Speaking at Meetings

- ◆ **Don't** allow members of the public to communicate with you in isolation if you are a member of a sub committee or sub-group during the hearing or meeting proceedings (orally or in writing) as this may give the appearance of bias.

9. Officers

- ◆ **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Administration or Central Services Manager but hearing or meeting reports will contain only representations that have been submitted in the manner prescribed by the legislation. Your attention is drawn to the danger of fettering your discretion on a matter which is covered in Section 3 of this Code.)
- ◆ **Do** recognise that officers are part of a management structure and discuss a proposal, outside of any arranged meeting, only with the Head of Administration or Central Services Manager or those officers who are authorised by them to deal with the proposal at a member level.
- ◆ **Do** recognise and respect that officers involved in the processing and determination of licensing matters must act in accordance with the Council's Code of Conduct for Employees and the requirements of the licensing legislation. As a result, licensing officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence and the promotion of licensing objectives, which may on occasion be at odds with the views or opinions of members.

10. Decision-Making

- ◆ **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- ◆ **Do** comply with the licensing legislation and make decisions in accordance with statutory licensing objectives, having regard to guidance that has been issued under the relevant legislation and the authority's statement of licensing policy.
- ◆ **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information and, if necessary, adjourn the hearing or meeting until the information has been provided and you have had an opportunity to consider it.
- ◆ **Don't** vote or take part in the hearing or meeting on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- ◆ **Do** make sure that if you are proposing, seconding or supporting a decision contrary to the licensing objectives or the statutory guidance issued by the Secretary of State or Gambling Committee or the authority's statement of licensing objectives, that you clearly identify

and understand the reasons leading to this conclusion/decision. These reasons must be given prior to the vote being taken and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

11. Training

- ◆ **Don't** participate in decision making at hearings and meetings dealing with licensing matters unless you have attended suitable licensing training provided by the Head of Administration.
- ◆ **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures statutory guidance and licensing policy beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.