

Part Nine - Codes and Protocols

Section A - Licensing Code of Practice

Introduction

- 1.1 Hackney Council has adopted licensing policy statements under both the Licensing Act 2003 and Gambling Act 2005, which set out the Council's policies when providing permissions to those wishing to carry out relevant licensable activities within the Borough.
- 1.2 Licensable activities under the Licensing Act 2003 consist of the sale and supply of alcohol, regulated entertainment and late-night refreshment. The Gambling Act 2005 defines gaming, betting and certain types of lotteries, as licensable activities.
- 1.3 The legislation has laid down procedures and rules governing how all parties should conduct themselves before and during a [Sub-Committee](#) meeting.
- 1.4 The [Licensing Code of Practice](#) provides guidance on how [Councillors](#) on the Council's Licensing Committee must conduct themselves when determining any application before them, both in the lead up to and at the Sub-Committee meeting itself.
- 1.5 This Code is supplementary to the [Councillor Code of Conduct](#) which sets out the parameters for acceptable behaviour for Members. The Licensing Code of Practice and the Councillor Code of Conduct should therefore be read side by side.
- 1.6 The Councillor Code of Conduct is set out at [Part 7, Section A](#) of the Constitution.
- 1.7 The key objectives of this Code are to ensure that Councillors of the Licensing Sub-Committee act reasonably and openly when dealing with matters that are before them and protect the Council and individual Councillors from allegations of unfairness, findings of maladministration and any legal challenge.
- 1.8 If at any time it appears that the rules and procedures set out in this document are not being followed, the Legal Adviser and/or Governance Services Officer will bring this to the attention of the Chair, who will take appropriate action. The matter may also be brought to the attention of the Director of Legal, Democratic and Electoral Services.

Failure to observe the Licensing Code of Practice

- 2.1 Failure by a Councillor to observe this Licensing Code of Practice will be a breach of the Councillor Code of Conduct.

How to avoid a conflict of interest and still assist your constituents

- 3.1 Sub-Committee members have to retain an open mind on any specific application before them for consideration as they are a part of the decision making process and cannot be seen to side with either the applicant or those who are making representations at the meeting at which the application would be determined. Adhering to the following rules will also ensure that public confidence in the Sub-Committee is maintained and serve to minimise the prospect of non-licensing related matters affecting the judgement of Sub-Committee members.
- 3.2 As decision makers, Licensing Sub-Committee members should neither be seen to be pre-judging the application before them for consideration, nor to be influenced by those with whom they have a special relationship, their political party or Councillors, at any stage prior to determination. Sub-Committee members should similarly avoid making public statements as to their support of, or opposition to, any application.
- 3.3 Where Sub-Committee members receive lobbying material about an application coming before the Licensing Sub-Committee through the post or by email, they should forward it to the Governance Service as soon as they realise it is lobbying material. If a Sub-Committee member is approached by an individual or an organisation in relation to a particular application on the agenda of an upcoming meeting, the Sub-Committee member should advise the person or organisation that it is not appropriate for them to personally comment on the application but that the person or organisation may:
 - (a) Write to the Licensing Service concerning the particular application who will then respond and update the person or organisation accordingly;
 - (b) Contact the Governance Service to request to speak at the Sub-Committee meeting, provided that they have written to the Licensing Service making a representation against the application; and
 - (c) Contact an alternative Member of the Council who is not to be part of the Sub-Committee meeting at which the application may be heard.
- 3.4 Councillors should represent the best interests of Citizens. Sometimes they may find themselves in a difficult situation where they are sent lobbying material. If a Councillor finds themselves in such a situation, they need to decide whether they wish to sit on the Sub-Committee and hear the application or to represent the interests of their Citizens.

- 3.5 Although ward Councillors who wish to make representations to the Sub-Committee may do so, they cannot hear applications within their particular ward.
- 3.6 If a Councillor is offered an inducement or is placed under pressure or is intimidated to make a decision in a particular way on an application, they must notify the Director of Legal, Democratic and Electoral Services.
- 3.7 If Sub-Committee members are under any doubt as to the implications of a view which they might have expressed or a role which they might have played on a licensing matter before going to the Sub-Committee meeting, they should seek advice from the Director of Legal, Democratic and Electoral Services in advance of the relevant meeting or from the Legal Adviser to the Licensing Sub-Committee before the meeting begins.

When to declare an interest

- 4.1 In line with the provisions of the Councillor Code of Conduct, every Councillor has a duty to notify the Council's [Monitoring Officer](#) in writing of any disclosable pecuniary interests they may have within 28 days of:
- (a) The Code being adopted by [Full Council](#); or;
 - (b) The Member's election or appointment (if that is later).
- 4.2 In addition, subject to agreement with the Monitoring Officer that the interest is a sensitive one as defined in the Councillor Code of Conduct, a Councillor or voting co-optee has a duty, within 28 days of becoming aware of any new pecuniary interest or any change to any pecuniary interest notified to the Monitoring Officer, to notify the Council's Monitoring Officer in writing of that new pecuniary interest or change.

Disclosable pecuniary interest

- 5.1 As a Councillor, you have a disclosable pecuniary interest if it is of a description specified in regulations made by the [Secretary of State](#) and either:
- (a) It is an interest of yours, or
 - (b) It is an interest of:
 - (i) your spouse or civil partner
 - (ii) a person with whom you are living as husband and wife, or
 - (iii) a person with whom you are living as if you were a civil partner and you are aware that that other person has the interest.

Pecuniary interests in matters considered at meetings

- 6.1 If you attend a meeting including a Licensing Sub-Committee meeting and are aware that you have a disclosable pecuniary interest in any matter to be considered, or being considered, at that meeting, you must - subject to paragraph 8.1 below - disclose that interest to the meeting.
- 6.2 If any doubt exists in a Sub-Committee member's mind, they are advised to seek advice from the Director of Legal, Democratic and Electoral Services in advance of the Sub-Committee meeting, or from the Legal Adviser to the Sub-Committee before the start of the meeting. In the final analysis, the duty to declare and the decision as to whether an interest should be disclosed rests with the Councillor, not with [Officers](#).

What to do when a disclosable pecuniary interest is declared?

- 7.1 Once you have disclosed a pecuniary interest at the meeting, you may not – unless you have obtained a dispensation from the Council's Monitoring Officer:
- Participate, or participate further, in any discussion of the matter at the meeting; or;
 - Participate in any vote, or further vote, taken on the matter at the meeting.
- 7.2 Additionally, you will be excluded from a meeting while any discussion or vote takes place that you are not permitted to participate in, as a result of paragraph 6.1 above.
- 7.3 Restrictions in paragraphs 7.1 and 7.2 above do not apply where you attend the meeting for the purposes of answering questions or otherwise giving evidence relating to that decision, action or matter.

Dispensation

- 8.1 As a Councillor, you may submit a written request to the Monitoring Officer well in advance of meeting, for dispensation relieving you from the restrictions on a participation in and voting on a disclosable pecuniary interest subject to the provisions set out in the Councillor Code of Conduct. It should be noted that some requests may need to go to the Standards Committee.
- 8.2 It is important to note that the rules relating to declarations of interest apply equally to any Councillor who may from time to time wish to attend a meeting of the Licensing Sub-Committee and speak on a particular matter. Each Councillor who attends a meeting must make an assessment of whether they have an interest in the matter under discussion, whether they intend to participate in proceedings or not. However, if a Councillor has a disclosable

pecuniary interest, they must withdraw from the meeting room for the duration of the discussion on that item subject to paragraph 7.3 above where a Councillor wishes to answer questions or give evidence. However, if a Councillor who has a disclosable pecuniary interest does not wish to speak, they must leave the room when the agenda item is under discussion.

Predetermination or bias

- 9.1 Councillors must hear all licensing applications with an open mind. They must not make up their mind on an application before they have heard the full application and any representations made for or against it.
- 9.2 Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Councillor. You may have even directly or indirectly expressed a view on a matter which may be relevant to a decision. However, you should avoid placing yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- 9.3 Where a licensing matter is under consideration relating either an external body that you sit on as a Councillor, or an individual whom you actively engage in supporting, or an organisation which you actively engage in supporting, then such an interest must be declared and you should not participate in the meeting to discuss or vote on the matter (see 'When to Declare an Interest' in paragraph 4.1 above). By becoming involved in a licensing application prior to the Sub-Committee meeting other than to read the Licensing Officer's report and any additional documentation provided, the Councillor risks the Sub-Committee decision being challenged or overturned on appeal.

Decision Making – Permitted Considerations

- 10.1 Councillors should only consider the merits of an application as set out before the Sub-Committee, as allowed for under the relevant legislation, before determining whether or not to grant an application in full or in part. Sub-Committee members must not give weight to non-licensing matters that may be raised by any party involved in the Sub-Committee meeting.
- 10.2 Further, an applicant or objector may not raise any substantial new information at a meeting (including by way of correspondence, other documents or photographs) at the Sub-Committee meeting without due notice and agreement by the Chair of the Sub-Committee and all parties attending the meeting. Any attempt by applicants or those making representations (or their agents) to

introduce such information without the necessary agreement is not permitted under the hearing regulations.

- 10.3 Applications must be determined in accordance with the relevant legislation and the Council's licensing policy statement(s).
- 10.4 If a decision of the Licensing Sub-Committee is seen to be made on other than sound permitted grounds it could be open to legal challenge, and if the court deems the decision to be flawed, it may be overturned. This could have serious cost implications for the authority.
- 10.5 Any decision by the Sub-Committee must be substantiated by reasons, based on the relevant legislation and the Council's licensing policy statement, and these must be agreed by the Sub Committee and included in the minutes of the meeting by the Governance Officer.

Site Visits Protocol

- 11.1 Councillors are advised against attending site visits, unless it's absolutely necessary, as the decisions are based on the application made and the representations received, which is then determined following a discussion at the Sub-Committee meeting.
- 11.2 If in exceptional circumstances a site visit is required the Member attending should advise Governance Services of the time/date of the site visit, those Councillors in attendance and any other relevant information.
- 11.3 Councillors are reminded that they are required to retain an open mind on applications and must not discuss pre-empt a decision when undertaking site visits.

Pre-meeting Meetings

- 12.1 It is generally a good practice to have a pre-meeting of Councillors of the Licensing Committee and officers to clarify issues and to consider additional documents submitted by applicants and objectors. However, Members are advised to maintain an open mind and not to make a decision on any application at the pre-meeting.

Members' Training

- 13.1 All members of the Licensing Committee **MUST** attend appropriate and ongoing training before exercising their right to be involved in the decision-making process at a Sub-Committee meeting.

Behaviour at Meetings

- 14.1 Members of the Sub-Committee who are not present for the entirety of a particular item for whatever reason must refrain from participating in the discussion on that item and must not be involved in the decision-making process.
- 14.2 Members of the Sub-Committee must be seen to act fairly. They must not discuss, or appear to discuss, any matter with members of the public during the course of the meeting or in the lead up to it. Nor should Councillors accept letters or documents from members of the public at any time before or during the meeting, in case this is misinterpreted.
- 14.3 Councillors who are not members of the Licensing Sub-Committee may only speak at a Sub-Committee meeting if they have made a representation or are acting on behalf of someone who has. Councillors should sit separately from the members of the Licensing Sub-Committee and they should declare whether they have had any contact with the applicant / representor / responsible authority or their agents and whether they are speaking on behalf of a third party and if so, who.
- 14.4 Councillors who are not members of the Licensing Sub-Committee must not communicate with the members who are part of the Sub-Committee in any other manner than that described above in the lead up to or during the course of the Sub-Committee meeting.

Political Whip

- 15.1 Licensing Sub-Committee proceedings are quasi-judicial and should never run on party political lines. Councillors sitting on Licensing Sub-Committee's should neither be whipped nor lobbied by other Members. Licensing Sub-Committee Councillors are advised that any political group meeting prior to the Licensing Sub-Committee meeting must not be used to decide how Councillors will determine items before the Licensing Sub-Committee meets.

Members as Community Advocates

- 16.1 Councillors who are not sitting on the Licensing Sub-Committee may represent the interests of their constituents at that Licensing Sub-Committee meeting.
- 16.2 A Councillor may advocate on behalf of their constituents and may stay in the meeting room after making representations.
- 16.3 A Councillor who has a disclosable pecuniary interest in an application before the Licensing Sub-Committee may speak at the meeting about their objection and their constituents' objections to the application, in regard to the licensing

objectives. The Councillor must however, then leave the meeting room when the application is being considered unless they have been granted dispensation.

Breach of the Code

17.1 Where a Councillor believes the Code has been breached, this must be brought to the attention of the Monitoring Officer.

Offences

18.1 It is a criminal offence if a Councillor or voting co-optee fails, without reasonable excuse to disclose their own or their spouse's or civil partner's pecuniary interest within 28 days of their taking office or fails to disclose a disclosable pecuniary interest that they are aware of at a meeting where any matter to be considered relates to their interest.