

LICENSING COMMITTEE

Tuesday, 21 March 2017 at 7.00 p.m.

The Council Chamber, 1st Floor, Town Hall, Mulberry Place, 5 Clove
Crescent, London, E14 2BG

The meeting is open to the public to attend.

Members:

Chair: Councillor Rajib Ahmed
Vice-Chair: Councillor Peter Golds
Councillor Khales Uddin Ahmed
Councillor Suluk Ahmed
Councillor Amina Ali
Councillor Shah Alam
Councillor Dave Chesterton
Councillor Sirajul Islam
Councillor Denise Jones
Councillor Harun Miah
Councillor Md. Maium Miah
Councillor Candida Ronald
Councillor Vacancy
1 Vacancy

Ward Represented

Lansbury;
Island Gardens;
Bromley North;
Spitalfields & Banglatown;
Bow East;
Mile End;
Blackwall & Cubitt Town;
Bethnal Green;
St Katharine's & Wapping;
Shadwell;
Canary Wharf;
Blackwall & Cubitt Town;

[The quorum for this body is 3 Members]

Contact for further enquiries:

Antoinette Duhaney, Democratic Services,
1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, E14 2BG
Tel: 020 7364 4120
E-mail: antoinette.duhaney@towerhamlets.gov.uk
Web: <http://www.towerhamlets.gov.uk/committee>

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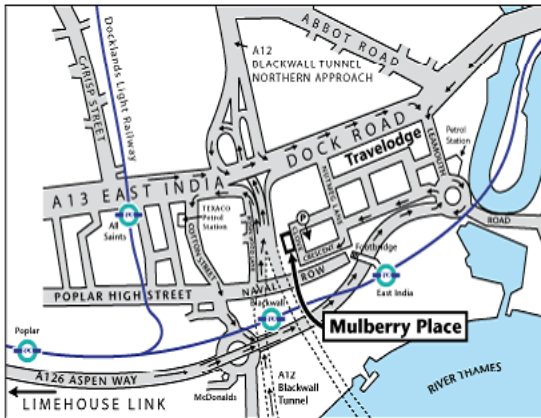
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APOLOGIES FOR ABSENCE

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST (Pages 1 - 4)

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Monitoring Officer.

| | PAGE NUMBER | WARD(S) AFFECTED |
|---|------------------------|-----------------------------|
| 2. MINUTES OF PREVIOUS MEETING(S) | | |
| | 5 - 10 | |
| To confirm the minutes of the meeting of the Licensing Committee held on 13 th December 2016 as an accurate record of the proceedings. | | |
| 3. ITEMS FOR CONSIDERATION | | |
| 3 .1 Revised Licensing Code of Conduct | 11 - 44 | All Wards |
| 3 .2 Review of Environmental Health Licence Fees/Registrations | 45 - 52 | All Wards |
| 3 .3 Update in Relation to Prosecutions and Appeals - Quarters 2 & 3 2016/2017 | 53 - 58 | All Wards |
| 4. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT | | |

Next Meeting of the Licensing Committee

To be confirmed.

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DECLARATIONS OF INTERESTS - NOTE FROM THE MONITORING OFFICER

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

Interests and Disclosable Pecuniary Interests (DPIs)

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

Effect of a Disclosable Pecuniary Interest on participation at meetings

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

Further advice

For further advice please contact:-

Graham White, Acting Corporate Director, Governance and Interim Monitoring Officer
Telephone Number: 020 7364 4800

APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

| Subject | Prescribed description |
|---|---|
| Employment, office, trade, profession or vacation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | <p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p> |
| Contracts | <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p> |
| Land | Any beneficial interest in land which is within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | <p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p> |
| Securities | <p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> |

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LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 7.10 P.M. ON TUESDAY, 13 DECEMBER 2016

THE COUNCIL CHAMBER, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5
CLOVE CRESCENT, LONDON, E14 2BG

Members Present:

Councillor Rajib Ahmed (Chair)
Councillor Peter Golds (Vice-Chair)
Councillor Shah Alam
Councillor Denise Jones
Councillor Joshua Peck
Councillor Candida Ronald

Apologies

Councillor Mahbub Alam
Councillor Dave Chesterton

Officers Present:

| | |
|---------------------|--|
| David Tolley | – Head of Environmental Health & Trading Standards |
| Tom Lewis | – Team Leader, Licensing |
| Vincent Fajilagmago | – Licensing Officer |
| Agnes Adrien | – Legal Services |
| Charles Yankiah | – Democratic Services |

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of interest.

2. MINUTES OF THE PREVIOUS MEETING

The minutes of the previous meeting held on 13th September 2016 were agreed as an accurate record of the proceedings.

3. ITEMS FOR CONSIDERATION

3.1 Application to Increase Licence Fee for the Tattoo Collective Event

The report was introduced by Tom Lewis, Team Leader, Licensing who advised the Committee that the report was requesting the setting of a non-standard licence fee of £1,916 for the Tattoo Collective which is a 3 day event due to take place at The Old Truman Brewery on the 17th-19th February 2017. The event involves around 150 Tattooists from around the UK providing tattoos to members of the public over the 3 days. A special treatment licence is required for the premises and a one-off licence fee is requested to ensure cost recovery, so that Officers can carry out the relevant checks, inspections and if needed, corrective actions to ensure that the event is safe and the risk associated with blood borne viruses are managed. The event has the same organisers as the London Tattoo Convention which is held each year at Tobacco Dock in Wapping Lane. The venue capacity for the event is 2500 persons at any one time for the 3 days and therefore there is an increased risk of the spread of infection due to the huge volume of visitors undergoing some sort of skin piercing activity.

The Committee raised the following issues: -

- The fee seemed quite low for such a large event, could the fee not be marginally increased to take into account officer time;
- Based upon the figures presented in Appendix 1, it works out to be that the officer time would be spent on average about 4 minutes per tattooist, is this enough time to complete inspections and health and safety checks;
- It doesn't seem long enough to inspect 150 individual tattooists;
- What were the costs last year;
- Are the 150 Tattooists individually checked;
- Would there be a corporate risk to Tower Hamlets by checking the Tattooists who may or may not be licensed or trained accordingly;
- What happens if a blood virus is spread, who is liable, Tower Hamlets or the Organisers; and
- Are the events monitored to gauge the accuracy of the officers time spent on inspections etc. and is the information used for future events.

Tom Lewis informed the Committee that the event is being run by the same organisers who run the London Tattoo Convention each year held at Tobacco Dock and as such there has already been a level of compliance. All the information submitted by the organisers in the "Event Plan" is checked prior to the event including individual Tattooists and whether they are trained and licenced. Spot checks are also completed by officers during the event. If someone contracts a blood borne infection then the organisers of the event are liable as they have a duty of care to the event and its customers. All costs are comparable and have taken into account legislation that only allows for cost recovery. Costs last year cannot be taken into account as it was a different event. He also informed the Committee that the event is monitored

including the officers time and this information is then used to influence future events regarding officers' time.

David Tolley, Head of Environmental Health and Trading Standards informed the Committee that the event will be well managed by the organisers who have previous experience and have a level of compliance including monitoring Tattooists and their needle kits and equipment bins, disposal of blood waste etc. as blood borne infection is a high risk and must be managed properly to avoid any incidents.

The Committee agreed: -

1. To thank the officers for presenting the report and providing the information; and
2. That a non-standard application fee for a massage and special treatment licence for the 2017 Tattoo Collective Event be set at £1,916.

3.2 Community Alcohol Partnership and Best Bar None Review 2016/17

The report was introduced by Vincent Fajilagmago, Licensing Officer who provided the Committee with an update relating to the Community Alcohol Partnership (CAP) initiative in Mile End and the Best Bar None (BBN) Scheme within the Borough. He informed the Committee of the following: -

- The aim of the CAP and BBN was to seek to lower alcohol related crime and anti-social behaviour (ASB) with the Borough.
- The first CAP area focussed on Bethnal Green and St Peter's Ward where the main issue of concern identified the underage sales by off-licences in the area. CAP referred these premises to a responsible retail training scheme that was being run by the Environmental Health and Trading Standards Service to address the concerns.
- A CAP survey was undertaken between November 2015 and December 2015 across Tower Hamlets to gauge residents' views on alcohol related crime and ASB. The results of the survey indicated Mile End as an area that suffered from public alcohol consumption and also highlighted that adults were the main cause of discomfort but with young people becoming involved with drinking and ASB.
- As a result of the survey and information relating to crime a CAP scheme was set up in Mile End.
- The CAP in Mile End concentrated on three main areas; Engagement, Education and Enforcement –
 - **Engagement** – a youth cohort was identified and the CAP strategy involved taking these youth off the streets through supporting and introducing structured sessions and employment opportunities. The Youth Employment Project (YEP) and the aesthetic improvements to the Mile End Park have assisted the cohort to become involved in other activities of seeking

- employment and improving local perceptions of the area and as a result over 40 young people have been engaged.
- **Education** – The CAP created a “Drop Down Day” product modelled on guidance from the Alcohol Education Trust and offered it free to schools and young groups within the area. This consisted of assembly talks on alcohol awareness being arranged with 4 schools to date and St Paul’s Way Academy now requesting alcohol related first aid sessions for their 243 young people. This has now been arranged with the Red Cross free of charge to be delivered to St Paul’s Way Academy.
 - **Enforcement** – The CAP introduced “Challenge 25” and issued free posters to the off-licenses in the Mile End area and its surrounding wards. Then compliance testing was carried out in August 2016 and test purchase operations with Trading Standards for underage sales in September 2016. 22 were tested with 5 failures that were issued with warning letters and offered training.
 - The CAP also went into the Urban Adventure Base (UAB), which a youth club based in Mile End and assisted them to effectively use their CCTV system to record evidence of ASB activity and to provide this evidence to the Safer Communities Tasking Group who then requested THEO patrols over 4 weeks. As a result there were 17 patrols conducted between 26 September to 24 October with 8 CSAS name and addresses request, 3 CSAS alcohol seizures and 1 cannabis warning.
 - BBN attracted 10 venues last year for the award and to date 27 venues have already applied.
 - This year the BBN have been successful in gaining the support of the Canary Wharf and the Truman Brewery who have agreed to be partners.
 - BBN has also been added to the proposed Town Centre Strategy to enhance its visibility and for the first time has invited restaurants who are licensed to sell alcohol to apply for this award.
 - 13 restaurants have applied and this should raise the standards of compliance within these premises and assist in reducing touting within Brick Lane.

The CAP has successfully engaged with both organisation and youths within the Mile End area resulting in diversionary and employment activities and opportunities. Initial reports are that all measures have worked to reduce alcohol related ASB within the Mile End area and the CAP intends to re-survey in January 2017 and it is estimated that this will demonstrate the CAPs successes and show a marked difference on the target area. Both these initiatives the CAP and BBN are funded on an annual basis from the Drug and Alcohol Action Team (DAAT) core budget that is not supported from the public health allocation. The resources support the fixed term post of a Licensing Project Officer within the Environmental Health and Trading Standards Service.

The Committee raised the following: -

- The work being done relating to the CAP and the BBN was quite good even though it proved to be tough at times;
- There is an opportunity to link in with the Council's employment section and use Council resources for some of the projects, rather than trying to create links that may already exist; and
- Is the funding for the post taken from the core budget.

Vincent Fajilagmago informed the Committee that he had already made contact with the Council and had re-newed links with the Princes Trust and that they were excited about 2017 and having a dynamic start to the year with training and employment to improve confidence and in keep the young people off the streets.

David Tolley, Head of Environmental Health and Trading Standards informed the Committee that the DAAT is a Council department and does not benefit from Public Health funding. However, services had to be commissioned and as such a bid was submitted last year and this year for the project which was successful and would again be submitted for next year.

The Committee: -

1. Thanked the officers for the report and the detailed information; and
2. Agreed the recommendations.

4. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

There was no urgent business.

The meeting ended at 7.45 p.m.

Chair, Councillor Rajib Ahmed
Licensing Committee

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| | |
|---|---|
| <p>Non-Executive Report of the:</p> <p>Licensing Committee</p> <p>21st March 2017</p> |  <p>TOWER HAMLETS</p> |
| <p>Report of: Graham White, Acting Corporate Director, Governance and Interim Monitoring Officer</p> | <p>Classification: Unrestricted</p> |
| <p>Revised Licensing Code of Conduct</p> | |

| | |
|-------------------------------|-------------|
| Originating Officer(s) | Paul Greeno |
| Wards affected | All |

Summary

This report advises as to the revised Licensing Code of Conduct at Part 5.3 of the Tower Hamlets Constitution.

Recommendations:

The Licensing Committee is recommended to:

1. Note the revised Licensing Code of Conduct.

REASONS FOR THE DECISIONS

- 1.1 Pursuant to the Local Government Act 2000 ('the 2000 Act') as the Council is operating Executive arrangements then it must have a Constitution and also ensure that this Constitution is kept up-to-date. Pursuant to Part 2 Article 15 of the Constitution it is a Monitoring Officer role to review the Constitution.
- 1.2 The Licensing Code of Conduct is an important Constitutional document as it is part of the Council's ethical framework and is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011.
- 1.3 As the work of the Licensing Committee is quasi-judicial and therefore there are a higher set of standards on Councillors who are involved in the decision-making process. The provisions of the revised Licensing Code are designed to better assist Councillors when determining such applications.

2. ALTERNATIVE OPTIONS

- 2.1 This is a noting report and therefore there are no alternative options.

3. DETAILS OF REPORT

- 3.1 Pursuant to the Local Government Act 2000 ('the 2000 Act') as the Council is operating Executive arrangements then it must have a Constitution and also ensure that this Constitution is kept up-to-date. Pursuant to Part 2 Article 15 of the Constitution it is a Monitoring Officer role to review the Constitution.
- 3.2 The Licensing Code of Conduct is an important Constitutional document as it is part of the Council's ethical framework and is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011.
- 3.3 Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process. The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions.
- 3.4 The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 3.5 Reasons for the changes from the former Code of Conduct fall into 4 categories:
- (i) Changes that bring the Code up to date in terms of legislative context, the organisational structure of the Council and/or current terminology;
 - (ii) Improvements to achieve better consistency with other documents in terms of content and style and structure;
 - (iii) The addition of information/explanation to aide understanding;
 - (iv) Material changes to the Code that will require members and/or officers to conduct themselves differently than under the existing Code
- 3.6 Changes relating to (i) and (ii) above have been made to all sections of the document and, as they are not material, have not been singled out.
- 3.7 Appendix 1 contains a Table identifying changes relating to categories (iii) and (iv) as it was felt that these changes in particular should be brought to Members' attention.
- 3.8 The revised Licensing Code was adopted by Council at its meeting on 5th December 2016 and this revised Code is at Appendix 2.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 There are no financial implications arising from this report, although the revision to the Code of Conduct should reduce the likelihood of successful appeals against decisions made by the Committee and the associated cost of those appeals.

5. LEGAL COMMENTS

- 5.1 Any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved. In implementing the Code, Councillors will ensure that decisions are taken for Licensing reasons only and should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The report does not propose any direct expenditure. Rather, it is concerned with ensuring that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. Whilst this might not lead to fewer appeals, the implementation of the Code should result in a much decreased chance of success on such appeals and which should reduce cost implications for the Council on any such appeals.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 It is not considered that there are any environmental implications.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This proposed revision of the Licensing Code of Conduct is designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The overall aim is therefore to reduce risk.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 In considering Licensing applications, the Council has to have regard to Crime and Disorder and by ensuring that licensing decisions are taken on proper licensing grounds this should reduce assist reduce crime and disorder.
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Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- Appendix 1 - Table 1 - Changed sections and reason for change
- Appendix 2 –Revised Licensing Code of Conduct.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None.

Officer contact details for documents:

- N/A

Table 1: Changed sections and reason for change

| Changes to improve quality/clarity of information or explanation | | Additional/ Material changes to the Code affecting members and / or officers | |
|--|--|--|--|
| Former Version | Revised Version | Former Version | Revised Version |
| 1. Introduction 2. Legal Background 3. Before the hearing 3.1 Training for Councillors 3.2 Application by a councillor or officer 3.3 Lobbying 3.5 Discussions before the hearing 4. At the Hearing 4.2 Conduct at the Hearing 5. Councillors who are not on the committee 6. Record Keeping | 1. Introduction 2. Human rights Act 3. Quasi-Judicial Hearings 6. Training for Councillors 7. Application by Councillor or Officer 9. Lobbying 10. Pre-hearing Discussions 13. Conduct of the Hearing 14. Councillors who are not on the committee 17. Record Keeping | 4.1 Interests | 4. Predisposition, Predetermination or Bias 5. Interests 8. Application by the Council (or where the Council is the landowner) 11.Site Visits 12. Relationship between members and officers 15. Making the Decision 16. Appeals 18. Procedure Notes |

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Part 5.3

Licensing Code of Conduct

| | |
|---------------------------------------|---|
| Date Last Reviewed: | 5th December 2016 |
| Approved By: | Council |
| Date Approved: | 5th December 2016 |
| Version No. | 2 |
| Document Owner: | Paul Greeno |
| Post Holder: | Senior Corporate and Governance Lawyer |
| Date of Next Scheduled Review: | 30th November 2017 |

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| 4 | Predisposition, Predetermination, or Bias |
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| 7 | Application by a Councillor or an Officer |
| 8 | Application by the Council (or where the Council is the landowner) |
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1. INTRODUCTION

- 1.1** The Licensing Code of Conduct has been adopted by Tower Hamlets Council to regulate the performance of its licensing functions that fall within the Terms of Reference for the Licensing Committee. Its major objectives are to guide Councillors and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-Committees and the expression "Licensing Committee" should be interpreted accordingly.
- 1.2** The Licensing Code of Conduct is in addition to the Code of Conduct for Members adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Code of Conduct for Members and apply this Code in light of that Code. Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process.
- 1.3** The provisions of this Code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 1.4** This Code is part of the Council's ethical framework and in addition to the Code of Conduct for Members should be read in conjunction with the Member/Officer Protocol. If a Councillor does not abide by the Code then that Councillor may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Councillor may be at risk of either being named in a report to the Standards Advisory Committee or Council. A failure to abide by the Code is also likely to be a breach of the Code of Conduct for Members and which could result in a complaint being made to the Monitoring Officer.
- 1.5** **If a Councillor has any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

2. HUMAN RIGHTS ACT

- 2.1** The Human Rights Act 1998, which came into full effect on 2nd October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such a way as to conform to Convention rights. Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.
- 2.2** Councillors of the Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

Article 6: Right to a fair trial

In the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 8: Right to respect for family and private life

1. Everyone has a right to respect for his or her private life, and his or her home and correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1: of the First Protocol: Protocol of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- 2.3 Article 6 is an 'absolute' right and cannot be interfered with. This means that these rights can never be detracted from because it is considered to be fundamental to the rights of people. The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' Court, so satisfying the provisions of Article 6. The Licensing Committee must however conduct a fair hearing in accordance with the rules of natural justice.
- 2.4 Article 8 and Article 1 of the First Protocol are both qualified rights and the Council can interfere with these provided that such interference had a clear legal basis. In therefore deciding whether to interfere with this right, Councillors should consider the matter within the framework of a 'fair balance' test. This requires that a balance be struck between the protection of the right of property and the general interests of the community. An interference with a person's rights must be proportionate and go no further than is necessary.

- 2.5** Specifically as to Article 1 of the First Protocol, an existing licence is a possession under this Article and therefore if a person does not currently hold a licence then it will not apply. Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.
- 2.6** As to Article 14, whilst this is also an ‘absolute’ right it does not create an independent right as it only operates to prevent discrimination in the exercise of other convention rights. If there is discrimination however in respect of a particular protected right then there is no need to show a violation of the article giving such right for there to be a breach of Article 14. All it is necessary to show is that there has been discrimination. Accordingly, in exercising its Licensing Functions, the Council must not treat persons differently where such persons are placed in an analogous situation.

3. QUASI-JUDICIAL HEARINGS

3.1 A quasi-judicial hearing is one:

- which affects a person’s livelihood;
- which involves disciplinary action; or
- which affects property

3.2 These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the Convention that a hearing is both “fair” and presided over by an “independent and impartial tribunal” are met.

3.3 There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing and the applicant should have disclosure of the nature of the objections/ representations as well as knowing who is objecting/ making a representation so that they can prepare a response to the points raised in such objections/ representations.

3.4 The rules of natural justice could also include asking questions of other parties. In respect of ‘Alcohol and Entertainment Licensing’ however, the Licensing Act 2003 (Hearings) Regulations 2005 (‘the 2005 Regulations’) provide that the hearing should take the form of a discussion led by the authority and cross-examination should not be permitted unless the Licensing Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

3.5 As to sufficient notice of the hearing, in respect of ‘Alcohol and Entertainment Licensing’, the 2005 Regulations also address this point as they specify the period of time within which a hearing must be commenced; the minimum time before the hearing that notice should be given; persons to whom notice of hearing is to be given; and the documents to accompany notice of hearing. The 2005 Regulations do provide that a failure to comply with the Regulations does not of itself render the proceedings void but where there is such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.

- 3.6** The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.7** Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Committee must be impartial – not only must there be no actual bias but there must be no perception of bias.
- 3.8** The procedure rules which govern hearings of the Licensing Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, Councillors sitting on the Licensing Committee must strictly observe those procedure rules.
- 3.9** The use of a party political whip is inconsistent with the rules of natural justice and must be avoided by Councillors sitting on the Licensing Committee.

4. PREDISPOSITION, PREDETERMINATION OR BIAS

- 4.1** Section 25 of the Localism Act 2011 ('the 2011 Act') provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 4.2** As to predetermination, this is a legal concept and is used in situations where a decision maker either has, or appears to have, a closed mind. That is s/he has made up his/her mind in advance of proper consideration of an issue and the merits of an application. Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however, as no one should decide a case where they are not impartial or seen to be impartial. Critically, Councillors need to avoid any appearance of bias or of having a predetermined view before taking a decision. Indeed, Councillors should not take a decision on a matter when they are actually biased in favour or against the application, or where it might appear to a fair and informed observer that there was a real possibility of bias, or where a Councillor has predetermined the matter by closing his/her mind to the merits of the decision.
- 4.3** Councillors must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the Councillor hearing the evidence and arguments on both sides. A Councillor should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind.

4.4 Any licensing decision made by a Councillor who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.

4.5 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition).

4.6 If a Councillor considers that s/he does have a bias or cannot be impartial then they should withdraw from being a Member of the Licensing Committee for that application.

4.7 Councillors should note that, unless they have a disclosable pecuniary interest or a significant personal interest (see section 5 below), they will not appear to be predetermined through-

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to prejudging the issue and the Councillor makes clear that they are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided the Councillor explains their actions at the start of the meeting or item and makes it clear that, having expressed the opinion or ward/ local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

4.8 The following advice applies:

- Councillors must not make up their mind, or appear to have made up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and of the Councillor hearing evidence and arguments on both sides. This includes deciding or discussing how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. If a Councillor has an interest in a local lobby group or charity or pressure group they may appear predetermined by their actions and/ or statements made in the past. The Councillor should take advice from the Legal Adviser to the Licensing Committee on how to deal with this.
- It must be noted that if a Councillor is predetermined then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- A Councillor may appear pre-determined where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. This would arise where that through the Councillor's significant personal involvement in preparing or advocating the proposal the Councillor will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.

- Councillors should recognise that in being a Councillor of a political group they are allowed to be predisposed in relation to licensing policies of the Council or to licensing policies of the Councillor's political party, providing that predisposition does not give rise to a public perception that the Councillor has, due to his/ her political membership, predetermined a particular matter.
- When considering a licensing application, Councillors must:
 - act fairly and openly;
 - approach each application with an open mind; carefully weigh up all relevant issues; and
 - determine each item on its own licensing merits
- And Councillors must not:
 - take into account irrelevant issues;
 - behave in a manner that may give rise to a public perception that s/he may have predetermined the item; and
 - behave in such a manner which may give rise to a public perception that s/he may have been unduly influenced in reaching a decision.

5. INTERESTS

5.1 In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the hearing.

5.2 There are three (3) categories of interests, namely:

- Disclosable pecuniary interests (DPIs);
- Other registerable interests; and
- Non registerable interests

5.3 Chapter 7 of the 2011 Act places requirements on Councillors regarding the registration and disclosure of their pecuniary interests ('DPI') and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The definitions of DPI taken from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are set out in paragraph 5.1 of the Code of Conduct for Members. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. These interests can be either an interest of the Member or an interest (of which the Member is aware) of a spouse, civil partner or a person that the Member is living with as a spouse or civil partner. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

5.4 A failure to register or declare a DPI or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor has a DPI, are criminal offences.

5.5 A DPI relating to an item under discussion requires the immediate withdrawal of the Councillor from the Licensing Committee. In certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business and which could arise where the Councillor is the applicant or has made a representation for or against the application.

- 5.6** Having regard to the rules of natural justice and the requirement that a Councillor who has an interest in an application must be disqualified from considering it, then consideration must also be given to other non-DPI personal interests that are either registrable as required by the Code of Conduct for Members or are personal interests that do not require registration.
- 5.7** A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or
- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
 - any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.
- 5.8** If a Councillor has a personal interest in any licensing application or other matter before the Licensing Committee then the Member shall, if present, disclose the existence and nature of the interest at the start of the meeting and, in any event, before the matter is discussed or as soon as it becomes apparent. The full nature of the interest must be declared. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion or voting provided that the personal interest is not so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest (see 5.9 below).
- 5.9** The position is different however where a member of the public, with knowledge of the relevant facts, would reasonably regard the personal interest as so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest. Examples of this are working closely with an applicant or a group of objectors to achieve a certain outcome; lobbying other Councillors on the Committee; acting as an agent for a person pursuing a licensing matter with the Council; or generally declaring voting intentions ahead of the meeting etc.
- 5.10** A Councillor with a personal interest which might appear to a fair and informed observer that there was a real possibility of bias must not participate in the discussion on the application and must leave the room immediately when the discussion on the item begins or as soon as the interest becomes apparent. S/he cannot seek to influence the decision, save that if a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then a Councillor will have the same right. Once the Councillor has exercised that right then the Councillor must withdraw from the room for the rest of that item and play no further part in the discussion or vote.
- 5.11** Being a Councillor for the ward in which particular premises are situated is not necessarily declarable and as a general rule Councillors of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. Councillors should remember, however, that their overriding duty is to the licensing objectives and not to the residents and businesses within their ward. Councillors have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any

person, company, group or locality. If a Member feels that they cannot do this then the Member must leave the room when the discussion on the item begins.

- 5.12** More information on what constitutes an interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part 5.1 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer or the Service Head Legal Services are available to give advice if required.

6. TRAINING OF COUNCILLORS

- 6.1** As the technical and propriety issues associated with licensing are not straightforward, Councillors on the Licensing Committee must participate in a programme of training on the licensing system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. The aim of the training is to assist Members in carrying out their role properly and effectively. If a Councillor fails to participate in the compulsory elements of the training this may result in that Councillor being asked to stand down as a Councillor of the Licensing Committee.
- 6.2** Councillors should be aware that training is particularly important for Councillors who are new to the Licensing Committee and for Councillors who have not attended training in the recent past. Other Councillors are free to attend the training in order to gain an understanding of licensing issues.
- 6.3** Where a Member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

7. APPLICATION BY A COUNCILLOR OR OFFICER

- 7.1** The Licensing Committee may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. For the avoidance of doubt, the term Councillor or an officer includes any former Councillors or officers. In such cases, it is vital to ensure that such application is handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows-
- (a) On receipt of such an application, a copy of the application will be referred to the Corporate Director.
 - (b) The Corporate Director will pass a copy of the application to the Monitoring Officer who will satisfy himself/ herself that the application can be, and is being, processed and determined without suspicion or impropriety.
 - (c) If a Councillor or an officer submit their own proposal to the Council which they serve, they must take no part in its processing or the decision making process.
 - (d) The Councillor making the application would almost certainly have a DPI and should not address the Committee as the applicant but should appoint an independent agent to represent his/her views.

- (e) Councillors of the Licensing Committee must consider whether the nature of any relationship with the person (either a Member or an officer) making the application requires that they make a declaration of interest and if necessary also withdraw from the meeting.
- (f) In respect of former Councillors or former officers the above requirements shall apply for a period of three (3) years following their departure from the Council.

8. APPLICATION BY THE COUNCIL (OR WHERE THE COUNCIL IS THE LANDOWNER)

- 8.1** Councillors may need to determine an application submitted by the Council for the Council's own land or in respect of land where the Council is the landowner. It is perfectly legitimate for such applications to be submitted to and determined by the Licensing Authority. Applications should be treated with the same transparency and impartiality as those of other applicants so as not to give rise to suspicions of impropriety.
- 8.2** If a Councillor has been heavily committed or involved in an area of policy/issue relating to such an application (e.g. as a Cabinet Member), then that Councillor must consider whether they have an interest which should be disclosed. In such circumstances, the Councillor should seek advice from the Legal Adviser to the Licensing Committee.

9. LOBBYING

- 9.1** Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. This can happen prior to an application being made or at any time after the application is made. Whilst lobbying is a normal and perfectly proper part of the political process, it can cause the perception of bias or predetermination especially when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing.
- 9.2** To avoid such perception, if a Member is approached then s/he should:
 - (a) inform such applicant or agent or interested party/ objector that such approach should be made to officers or to elected Councillors who are not Councillors of the Licensing Committee;
 - (b) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned; and
 - (c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.
- 9.3** If the Councillor does discuss the case then in no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental. As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

- 9.4** If a Councillor who is not a Councillor of the Licensing Committee is contacted by an applicant, objector or interested party then that Councillor can discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will, provided it is lawful, include the relevant information in the report to the Licensing Committee. If a Councillor wishes to make their own representations about a matter they should likewise make those representations to the appropriate Licensing officer.
- 9.5** When attending a public meeting at which a licensing issue is raised, a Councillor of the Licensing Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application. As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee
- 9.6** Correspondence received by any Councillor (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director so that all relevant views can be made available to those Councillors or officers responsible for determining the application. A reply by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.
- 9.7** Councillors should not accept gifts or hospitality from any person involved in or affected by licensing application. If a degree of hospitality is entirely unavoidable, then the Councillor must comply with the provisions in the Code of Conduct for Members on Gifts and Hospitality.
- 9.8** Councillors should not become a member of, lead or represent a national charity or local organisation whose primary purpose is to lobby to promote or oppose licensing applications. If a Councillor does then it is likely to appear to a fair and informed observer that there is a real possibility of bias and that Councillor will be required to withdraw from the debate and decision on that matter.
- 9.9** Councillors must also not lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any licensing decision is to be taken.

10. PRE HEARING DISCUSSIONS

- 10.1** Discussions between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by Councillors of the Licensing Committee.
- 10.2** Generally, any contact with applicants and/ or objectors should only be conducted with and through officers and should always be reported to the Licensing Committee. Requests to a Councillor for a meeting should be passed to the Corporate Director.

11. SITE VISITS

- 11.1** If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committee. A site visit may also assist Councillors in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Councillors should avoid expressing opinions during site visits to any person present, including other Members. Councillors can, of course, rely upon their own local knowledge.
- 11.2** During site visits, Councillors of the Licensing Committee shall not engage individually in discussion with applicants or objectors.
- 11.3** On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Councillors features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.
- 11.4** A Councillor of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:
- (i) their reason for the request; and
 - (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the Councillor provides these at least one week prior to the relevant meeting, a site visit will not proceed.

- 11.5** If any Councillor of the Licensing Committee wishes to informally view an application's site then that viewing must only take place if it can be done from a public place. Councillors of the Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a Councillor is unable to attend an official site visit that has been arranged, a site visit by an individual Councillor may be carried out provided that the Councillor is accompanied by a licensing officer.

12. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS

- 12.1** Councillors of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 12.2** Any criticism by Councillors of the Licensing Committee or an officer in relation to the handing of any licence application should be made in writing to the Corporate Director and/ or the Monitoring Officer and not to the Officer handling the application.

- 12.3** If any officer feels or suspects that pressure is being exerted upon him/ her by any Councillor of the Council in relation to any particular application, s/he shall forthwith notify the matter in writing to the Monitoring Officer.
- 12.4** If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare this interest in the public register held by the Monitoring Officer and take no part. This public register is to be available for inspection at the Licensing Committee meeting.
- 12.5** No officer of the Council shall engage in any paid work for any licensing matter for which Tower Hamlets is the Licensing Authority other than on behalf of the Council.

13. CONDUCT AT THE HEARING

- 13.1** The essence of the rules of natural justice is that Councillors not only act fairly but are also seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than an officer from Democratic Services or the Legal Advisor to the Committee.
- 13.2** Councillors of the Licensing Committee shall refrain from personal abuse and party-political considerations shall play no part in the Committee's deliberations. Councillors shall be respectful to the Chair and to each other and to officers and Members of the public including applicants, their agents and objectors and shall not bully any person.
- 13.3** When questioning witnesses at a meeting of a Licensing Committee, Councillors shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 13.4** Councillors must ensure that they hear the evidence and arguments for and against the application, in accordance with the rules of natural justice. Councillors must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity in advance of the hearing to prepare their case in answer to the objectors/ interested parties/ responsible authorities.
- 13.5** If a Councillor of the Licensing Committee arrives late for a meeting, s/he will not be able to participate in any item or application already under discussion. Similarly, if a Councillor has to leave the meeting for any length of time, s/he will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, s/he should ask the Chair for a short adjournment

- 13.6** It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 13.7** In considering objections/ representations Councillors are advised that if such are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then they carry no weight whatever and must be ignored. Further Councillors are advised that the mere number of objections irrespective of their content can never be a good reason for refusing an application. What matters are the grounds on which such are based.
- 13.8** Also in considering the application, it may well be that hearsay evidence is presented. Councillors are advised that the strict rules of evidence do not apply in licensing applications and therefore hearsay is admissible. Indeed, hearsay might by its source, nature and inherent probability carry a greater degree of credibility than first hand evidence. What must be discounted, however, are gossip, speculation and unsubstantiated innuendo. In considering hearsay evidence, it should only be accepted where it can fairly be regarded as reliable although Councillors must give the other side a fair opportunity of commenting on it and contradicting it. Ultimately, hearsay evidence must be treated with great reservation by Councillors, who must make an assessment of its weight and credibility.
- 13.9** When new matters are raised as objections by any person at a hearing, the Licensing Committee is not obliged to hear them. However, if Councillors feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to 'Alcohol and Entertainment Licensing' under the Licensing Act 2003 or 'Gambling Licensing' under the Gambling Act 2005, as new objections cannot be raised at the hearing).

14. COUNCILLORS WHO ARE NOT ON THE COMMITTEE

- 14.1** A Councillor who is not a member of the Committee may speak at the meeting, with the agreement of the Chair, as an advocate for either the applicant or the objectors. A Councillor wishing to speak should submit a written statement within the relevant consultation period. The applicant has the right to see any objections in advance. S/he also has a right of reply.
- 14.2** Councillors addressing the Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, the objectors or their respective agents and whether they are speaking on behalf of any of those people at the meeting.
- 14.3** A Councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Committee to demonstrate that they are not taking part in the discussion, consideration or vote. S/he should not communicate with Councillors on the Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Committee if it retires to deliberate in private..

- 14.4** Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

15. MAKING THE DECISION

- 15.1** The decision whether or not to grant a licensing application is a decision for the Councillors of the Licensing Committee only. The assessment of the weight and credibility of evidence is also for Councillors alone to decide.
- 15.2** Councillors shall retire to decide the matter in closed session. The Legal Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer will only provide advice on legal issues relating to the application and will assist in the drafting of any proposed conditions to ensure that they are legally enforceable.
- 15.3** In accordance with regulations, Councillors considering applications relating to ‘Alcohol and Entertainment Licensing’ under the Licensing Act 2003 or ‘Gambling Licensing’ under the Gambling Act 2005 should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police
- 15.4** Councillors will normally return to open session to announce its decision and give reasons for the same but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising them of the determination.
- 15.5** Written notice of the decision together with Councillors’ reasons will always be given and such notice will set out any rights of appeal against the decision.
- 15.6** Councillors own knowledge of the circumstances surrounding an application is valid provided that they are put to the applicant for a response. In reaching their decision Councillors must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and Councillors have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 15.7** Councillors considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Councillors must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of “Wednesbury reasonableness”.

15.8 In considering applications, Councillors must also have due regard to any Council Policy (e.g. the Council's Statement of Licensing Policy) and any statutory guidance (e.g. Licensing Guidance issued under section 182 of the Licensing Act 2003). Any departure from such should be justified and based on the facts before them.

15.9 Councillors should be aware that an unreasonable decision taking into account the above criteria is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and will likely have to pay costs. The role of officers is to point this out and advise Councillors as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council's fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

16. APPEALS

16.1 The Licensing Committee's decision is not a final one and applicants (and in certain cases interested parties and responsible authorities) have the right to appeal to the Magistrates Court and beyond in certain cases.

16.2 An appeal must be lodged within a prescribed time of receiving written notification of the decision.

16.3 On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence. Councillors who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.

16.4 Taking this factor into account along with the real risk of costs against the Council, Councillors must be wary of relying on any matters which could not readily be proved in evidence. Essentially, for Committee decisions to "stand up" on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

17. RECORD KEEPING

17.1 In order that licensing procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every licensing application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Councillors. Records will be kept in accordance with the Council's Information Governance Framework and, specifically, the Council's Records Management Policy.

18. PROCEDURE NOTES

18.1 Appendix A to this Code of Conduct sets out the Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003.

18.2 Appendix B to this Code of Conduct sets out the Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended)

TOWER HAMLETS**LICENSING COMMITTEE**

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
PREMISES LICENCES
AND OTHER PERMISSIONS
UNDER THE LICENSING ACT 2003**

| | |
|---------------------------------------|---|
| Date Last Reviewed: | 14th June 2016 |
| Approved By: | Licensing Committee |
| Date Approved: | 14th June 2016 |
| Version No. | 2 |
| Document Owner: | Paul Greeno |
| Post Holder: | Senior Corporate and Governance Lawyer |
| Date of Next Scheduled Review: | 31st March 2017 |

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under the Licensing Act 2003, as set out in the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) ('the Hearings Regulations'). The Procedures take into account the Licensing Act (Premises Licences and Club Premises Certificates) Regulations 2005.
- 1.2 Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-committees and the expression 'Licensing Committee' should be interpreted accordingly.
- 1.3 The Hearings Regulations provide (Regulation 21) that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.
- 1.4 These Procedures, therefore, set out the way in which Licensing Committee Meetings will be conducted under the Licensing Act 2003, following the requirements of the Hearings Regulations.
- 1.5 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations (Regulation 31) save that in any case of such an irregularity, the Licensing Committee shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination (Regulation 32).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will consist of three (3) members and no business shall be transacted unless three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Sub-Committee. In such cases the Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.

- 3.4 The Licensing Committee will then consider any requests by a party for any other person to be heard at the hearing in accordance with the Regulations. Permission will not be unreasonably withheld provided proper notice has been given.
- 3.5 The Chair will then explain how the proceedings will be conducted, and indicate any time limits that may apply to the parties to the application. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee must have regard to the requirement to allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing if it considers it to be necessary in the public interest. An adjournment will not be considered where due to the operation of the Hearing Regulations it would not be possible to adjourn.
- 3.8 If the Licensing Committee adjourns the hearing to a specified date it must specify the date, time and place to which the hearing has been adjourned and why it is considered necessary in the public interest.
- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application, representation or notice given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any representations withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to present a summary of the nature and extent of the application. This should be brief, avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Council's Licensing Policy, where appropriate, and respond to the written representations received. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence on behalf of the applicant or who has made a representation in favour of the application.

- 3.14 The application is to be presented within the time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 Members of the Licensing Committee may ask questions of the person presenting the case after their address as well as any other person who has spoken in support of the application. Members can also ask questions of the applicant as well as any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask the persons who have made representations against the application to address the Licensing Committee within the time limit that has been set. They should not repeat what is already set out in their representations or notice or raise new matters. In their address they should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence.
- 3.19 Members of the Licensing Committee may then ask questions of the persons making representations against the application and any other person who has spoken in support of such representation. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003. Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Licensing Committee will disregard any information given by a party, or any other person appearing at the hearing, which is not relevant to:
- a) their application, representation or notice; and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the police
- 3.23 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.24 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.
- 3.25 There is no right for any party to sum up but they may be permitted to do at the discretion of the Chair and within time limits prescribed by the Chair.

- 3.26 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.27 The Licensing Committee will normally return to open session to announce its decision but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

TOWER HAMLETS**LICENSING COMMITTEE****RULES OF PROCEDURE****GOVERNING APPLICATIONS FOR****SEX ESTABLISHMENT LICENCES**

**UNDER SECTION 2 OF AND SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1982**

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|---------------------------------------|---|
| Date Last Reviewed: | 22nd September 2016 |
| Approved By: | Licensing Committee |
| Date Approved: | 14th June 2016 |
| Version No. | 2 |
| Document Owner: | Paul Greeno |
| Post Holder: | Senior Corporate and Governance Lawyer |
| Date of Next Scheduled Review: | 31st March 2017 |

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under section 2 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

2. Composition of the Licensing Committee

- 2.1 The Licensing Committee will consist of fifteen (15) members and no business shall be transacted unless at least three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Committee. The Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.4 The Chair will explain how the proceedings will be conducted, and indicate any time limits that will be imposed on the parties. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee should allow each party an equal amount of time.
- 3.5 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.6 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing.
- 3.7 If the Licensing Committee adjourns the hearing it should specify the date, time and place to which the hearing has been adjourned.
- 3.8 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application or objection given by that party.

- 3.9 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any objections withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.10 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.11 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.12 The Chair will then ask the applicant or their representative, if present, to state their case. This should avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Sex Establishment Licensing Policy, where appropriate; address, where appropriate, the matters stated in the Sex Establishment Licensing Policy that the Licensing Committee will take into account when considering applications; and respond to the written objections received. The submission may be followed by the evidence of any person who is giving supporting evidence on behalf of the applicant or who has made a representation in favour of the application.
- 3.13 The application is to be presented within any time limit that has been set.
- 3.14 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.15 The objectors (or their representative) will be invited to question the applicant.
- 3.16 Members of the Licensing Committee may ask questions of the applicant and/ or their representative as well as any other person who has spoken in support of the application. Members can also ask questions of any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask objectors against the application to state their case within any time limit that has been set. The objectors should not repeat what is already set out in their objections. In stating their case, the objectors should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who is giving supporting evidence.
- 3.19 The applicant (or their representative) will be invited to question the objectors.

- 3.20 Members of the Licensing Committee may then ask questions of the objectors and any other person who has spoken given evidence in support. Members can also ask questions of any other person present who they consider can assist.
- 3.21 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.22 Petitions will be considered but Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.23 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.24 The objectors (or their representative) will then be permitted to “Sum Up”.
- 3.25 The applicant (or their representative) will then be permitted to “Sum Up”.
- 3.26 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.27 The Licensing Committee will normally return to open session to announce its decision but where they consider it appropriate for the determination to be given at a later time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place later and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

DO'S AND DO NOT'S**1. Councillors must:**

- (a) Attend compulsory training sessions;
- (b) Be open minded and impartial;
- (c) Declare any actual interest;
- (d) Listen to the arguments for and against;
- (e) Carefully weigh up all relevant issues;
- (f) Ask questions that relate only to licensing considerations relevant to the particular application;
- (g) Make decisions on merit and on licensing considerations only;
- (h) Respect the impartiality and integrity of the Council's officers;
- (i) Report any lobbying from applicants, agents, objectors or any other Councillor;
- (j) Promote and support the highest standards of conduct; and
- (k) Promote equality and not discriminate unlawfully against any person, and treat all people with respect.

2. Councillors must not:

- (a) Be biased or give the impression of being biased;
- (b) Improperly confer an advantage or disadvantage on any person nor seek to do so;
- (c) Act to gain a financial or other benefit for themselves, their family, friends or close associates;
- (d) Place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member (e.g. by accepting gifts or hospitality from any person involved in or affected by a licensing application);
- (e) Place themselves in a position where their integrity might reasonably be questioned;
- (f) Participate in a meeting where they have a DPI;
- (g) Participate in a meeting where they have an interest which does or could be reasonably considered as giving rise to bias; and
- (h) Express opinions during any site visit to any person present, including other Members.

Agenda Item 3.2

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|----------------------------|-----------------------------------|---------------------|
| Committee : | Date | Classification |
| Licensing Committee | 21st March 2017 | Unrestricted |

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| Report of David Tolley – Head of Environmental Health and Trading Standards Originating Officer - Tom Lewis Team Leader- Licensing and Safety Team | Title Review of Environmental Health Licence Fees/Registrations Wards affected: All |
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1 SUMMARY

- 1.1 This report advises Members of a review that has taken place with regards to Environmental Health licence fees that can be set locally. The fees under consideration are those for massage and special treatments, performing animals' registration and variation, dangerous wild animals, pet shops, riding schools, and animal boarding.
- 1.2 As advised by the Finance Officer, all such fees should be increased by 2% in line with the general fee increases agreed by Cabinet.

2. RECOMMENDATIONS

The Licensing Committee is recommended to agree:-

- 2.1 That the fee for Massage and Special Treatment licences, including Intense Pulse Light laser treatment, be increased by 2% thus increasing Massage and Special Treatment Licences from £322 to £328.40 and Intense Pulse Light laser treatment licences from £518 to £528.40.
- 2.2 That where a business operates a selection of beauty treatments and Intense Pulse Light laser treatment, that only the higher fee is payable.
- 2.3 That the fee for Performing Animals registration be increased by 2% from £364 to £371.30.
- 2.4 That the fee for a Variation of a Performing Animals registration be increased by 2% from £272.00 to £277.50.
- 2.5 That the fee for a Dangerous Wild Animal Licence be increased by 2% from £472.34 to £481.70.

- 2.6 That the fee for a Pet Shop Licence be increased by 2% from £220.82 to £225.20.
- 2.7 That the fee for a Riding School Licence be increased by 2% from £235.31 to £240.
- 2.8 That the fee for an Animal Boarding Licence be increased by 2% from £363 to £370.30.
- 2.9 That all fees are non- refundable once an application has been submitted, due to the commencement of processing the licence.
- 2.10 That these fees will commence on 5th April 2017 and will apply to all new and renewed licences applications and all performing animal registrations and variation applications received on or after that date.

3. BACKGROUND

- 3.1 When considering licence fees, Members must have regard to the requirement that charges must be proportionate and reasonable in the circumstances to the fees or costs payable under the provisions of the scheme. In essence, the fees must not exceed the costs of the procedures and formalities (effectively the costs to administer the process). The costs of paying for enforcement of the unlicensed operators should not be a consideration when setting fees.
- 3.2 The Licensing Committee terms of reference enables the Committee to determine the licence fees for the licences specified above.

London Local Authorities Act 1991 – Massage and Special Treatment Licences and Pulse Light Laser Treatments

- 3.3 The London Local Authorities Act 1991 required all business that offers any of the following treatments to be licensed by the Local Authority:
- Massage
 - Manicure
 - Acupuncture
 - Tattooing
 - Cosmetic Piercing
 - Chiropody
 - Light Treatment
 - Electric Treatment
 - Other Treatment of a Like Kind
 - Vapour
 - Sauna or Other Baths (Including Infra-red Sauna cabin)

- 3.4 However, exemptions do apply if any of the following situations are applicable and if the operators of the massage or special treatment are:
- Supervised by registered medical practitioners
 - Bona fide members of a body of health practitioners
 - Appropriately registered dentist practising acupuncture
 - Hospital registered Nursing Homes.
- 3.5 The Local Authority is able to set a local fee to enable cost recovery from the process of issuing such licences. Currently there are over 200 licence holders in the Borough.
- 3.6 An increase of 2% has been added to the licence fee as agreed by the Licensing Committee last year. When adding the increase, the Massage and Special Treatment licence fee increases from £322 to £328.40 and the Intense Pulse Light licence increases from £518 to £528.

Performing Animals (Regulation) Act 1925 - Performing Animals Registration and Variation

- 3.7 The registration for the performance of animals is controlled under the Performing Animals (Regulation) Act 1925 and anyone who wishes to use animals to perform must first register with the local authority. Applications must contain details about the animals and the performances they are to take part in. Applications are subject to a fee.
- 3.8 The Local Authority is able to set a local fee to enable cost recovery from the process of issuing such licences.
- 3.9 The registered person may make an application to have the details entered in the register varied, and where there is such a variation to the details, then the existing registration must be cancelled and a new one issued. The Council may charge a fee as appears to be appropriate for processing an application made under the legislation.
- 3.10 The increase has been added to the current licence fee as agreed by the Licensing Committee previously. When adding the increase, the Performing Animal Registration fee increases from £364.00 to £371.30 and the performing animal variation from £272 to £277.50.

Dangerous Wild Animals Act 1976- Dangerous Wild Animal Licence

- 3.11 The Dangerous Wild Animals Act 1976 requires no persons to keep animals considered to be dangerous in the schedule to the Act 'Kinds of Dangerous Wild Animals' unless they are licenced by the local authority.

- 3.12 The Local Authority is able to set a local fee to enable cost recovery from the process of issuing such licences.
- 3.13 The 2% has been added to the current licence fee as agreed by the Licensing Committee previously. When adding the increase, the Performing Animal Registration fee increases from £472.34 to £481.70

Pet Animals Act 1951- Pet Shop Licence

- 3.14 The Pet Animals Act 1951 requires persons keeping a pet shop to be licenced by the local authority. A pet shop licence must be renewed every year.
- 3.15 The Local Authority is able to set a local fee to enable cost recovery from the process of issuing such licences.
- 3.16 The 2% has been added to the current licence fee as agreed by the Licensing Committee previously. When adding the increase, the Pet Shop fee increases from £220.82 to £225.20.

The Riding Establishments Act 1964 and 1970- Riding Establishment Licence

- 3.17 The Riding Establishment Act requires persons operating a riding establishment to be licenced by the local authority. A riding establishment licence must be renewed every year.
- 3.18 The Local Authority is able to set a local fee to enable cost recovery from the process of issuing such licences.
- 3.19 The 2% has been added to the current licence fee as agreed by the Licensing Committee previously. When adding the increase, the Riding Establishment Licence fee increases from £235.31 to £240.

Animal Boarding Establishments Act 1963 – Animal Boarding Establishment Licence

- 3.20 The Animal Boarding Establishments Act 1963 requires any persons keeping an animal boarding establishment in a private or commercial property to be licenced by the local authority. Animal boarding establishments include overnight accommodation facilities and animal day care facilities.
- 3.21 The Local Authority is able to set a local fee to enable cost recovery from the process of issuing such licences.
- 3.22 The 2% has been added to the current licence fee as agreed by the Licensing Committee previously. When adding the increase, the Animal boarding establishment licence fee increases from £363 to £370.30.

- 3.23 It is recommended that these fee increases will apply from the commencement of the new financial year, 5th April 2017.

4. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 4.1 The annual review of Fees and Charges report was presented to Cabinet on 10th January 2017. The report advised on the strategic approach and guiding principles to the review as part of the financial and business planning process.
- 4.2 In general fees and charges recover some or all of the costs of services from Users. This generates income which reduces the costs of services to Council tax payers and can also be used to achieve other strategic objectives, such as encouraging the use of services. A decision to charge for, or to subsidise services needs to be based on rational considerations, which in the case of the services in this report is to enable cost recovery.
- 4.3 The proposals presented to the Licensing Committee are consistent with those agreed by Cabinet. Unless there is a compelling reason for amending the approved discretionary fees and charges, the recommendation is to increase by a minimum of RPI (2% as at September 2016).
- 4.4 The financial impact of the increase in fees have been included in the Medium Term Financial Strategy and reflected in the income budgets for 2017/18 and future years.

5 LEGAL COMMENTS

- 5.1 This report is seeking to have the Licensing Committee set fees for certain types of licence applications.
- 5.2 Special treatments licences are granted in accordance with Part II of the London Local Authorities Act 1991 (as amended). Such licences authorise the activities listed in paragraph 3.3 of the report. Section 7(6) of that Act provides that an applicant for the grant, renewal or transfer of a license shall pay such a reasonable fee as determined by the Council.
- 5.3 The Performing Animals (Regulation) Act 1925 places restrictions on the exhibition and training of performing animals without formal registration with the Local Authority. Section 1(2) of that Act provides (that “Every local authority shall keep a register for the purpose of this Act, and any person who exhibits or trains animals as aforesaid on making an application in the prescribed form to the local authority of the district in which he resides, or if he has no fixed place of residence in Great Britain, to the local authority of such one of the prescribed districts as he may choose, and on payment of [such fee as appears to the local authority to be appropriate] shall be registered under this Act, unless he is a

person, who, in pursuance of an order of the court made under this Act, is prohibited from being so registered”.

- 5.4 The Dangerous Wild Animals Act 1976 requires animals considered to be dangerous in the Schedule to the Act to be licensed by the local authority. Section 1(1) (e) says that a licence application should be accompanied by such a fee as the authority may stipulate (being a fee which is in the authority’s opinion sufficient to meet the direct and indirect costs which it may incur as a result of the application).
- 5.5 The Pet Animals Act 1951 states that no person shall keep a pet shop without a licence. Section 1(2) says that every local authority may, on application being made to them for that purpose by a person who is not disqualified from keeping a pet shop, grant a licence at premises in their area subject to compliance with such conditions specified in the licence and on payment of such fee as may be determined by the local authority.
- 5.6 The Riding Establishments Act 1964 and 1970 states that riding establishments are required to be licensed by the local authority. The licence is granted, on payment of such fee as may be determined by the local authority.
- 5.7 The Animal Boarding Establishments Act 1963 makes the boarding of cats and dogs a licensable activity. Section 1(2) of that Act deals with grants upon application for a licence and expressly refers to payment of a fee to be determined by the local authority.
- 5.8 Pursuant to its terms of reference, it is a function of the Licensing Committee “to determine fees and charges for the issue, approval, consent, license, permit or other registration for functions for which the Committee has responsibility”, which includes inter alia the above.
- 5.9 As per section 4 above fees are set on a costs recovery basis. There is an annual increase to ensure that fees are kept in line with the -costs to the Council.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 No adverse impacts have been identified

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 There are no adverse impacts identified

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The Council will be at risk of legal challenge if its decision making process on determining fees is not transparent and evidentially based.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 One of the key licensing objectives is to prevent licensed premises from being a source of crime and disorder. This report supports and assists with crime and disorder reduction by controlling those who manage premises open to members of the public and imposing conditions on relevant premises licences.

10. BEST VALUE (BV) IMPLICATIONS

- 10.1 The review of fees and adoption of revised fees ensures that the Council can demonstrate that it has complied with its best value duty in this specific technical area to ensure that costs are recovered but that charges do not exceed the costs associated with the operation of the licencing regime.


11. APPENDICES

None

LOCAL GOVERNMENT ACT, 1972 Section 100D (as amended)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

None

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| | |
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| <p>Non-Executive Report of the:</p> <p>Licensing Committee</p> <p>21 March 2017</p> |  <p>TOWER HAMLETS</p> |
| <p>Report of: Acting Corporate Director & Monitoring Officer Governance</p> | <p>Classification: Unrestricted</p> |
| <p>Update in Relation to Prosecutions and Appeals- Quarters 2 &3 2016/2017</p> | |

| | |
|-------------------------------|--------------|
| Originating Officer(s) | Agnes Adrien |
| Wards affected | All wards |

Summary

- 1.1 At its meeting on 4th June 2013, the Licensing Committee requested that regular reports should be prepared for the Licensing Committee giving details of licensing enforcement activity and specifically as to outcomes of prosecutions and appeals.
- 1.2 This report provides details of completed licensing related prosecutions and appeals for Quarters 2, 2016/2017 (July to September) and Quarter 3 2016/17 (October to December).

Recommendations:

The Licensing Committee is recommended to:

1. Consider and comment upon the information provided in the report.

1. REASONS FOR THE DECISIONS

- 1.1 This report is for the information of the Committee and no specific decisions are required.

2. ALTERNATIVE OPTIONS

- 2.1 N/A

3. DETAILS OF REPORT

- 3.1 The London Borough of Tower Hamlets is a Licensing Authority and amongst its functions it is required to ensure compliance with conditions imposed on Premises Licences; take action against unlicensed premises; and act as a

respondent on Appeals against decisions of the Licensing Sub-committee in respect of applications that come before it.

3.2 Where the Licensing Authority takes enforcement action to ensure compliance with conditions etc. then it does so in accordance with the Council's Enforcement Policy. The Enforcement Policy provides that the Council's approach to enforcement is founded on firm but fair regulation, around the principles of:

- raising awareness of the law and its requirements
- proportionality in applying the law and securing compliance
- consistency of approach
- transparency about the actions of the Council and its officers
- targetting of enforcement action.

3.3 Further, as a Licensing Authority the Council has a duty under section 4 of the Licensing Act 2003 to carry out its Licensing functions with a view to promoting the Licensing Objectives and in carrying out such functions must also have regard to its own statement of licensing policy and the Licensing Guidance issued pursuant to section 182 of the Licensing Act 2003.

Prosecutions

3.4 In Quarter 2, 2016/2017, no proceedings were issued in respect of Licensing matters.

Appeals

3.5 During quarter 2, 2016/2017, one (1) Appeal was concluded.

The Outcome of the Appeal is set out below:

| No. | Outcome |
|-----|--|
| 1 | Hearing scheduled for 15.9.2016 . The Appellant wrote to the court in advance of the hearing date and requested that the matter be adjourned in his absence. The court refused the request in writing prior to the hearing. The Appellant did not attend court and the court dismissed the matter. |

The Appeal was in respect of a new premises licence.

Prosecutions

3.6 In Quarter 3, 2016/2017, no proceedings were issued in respect of Licensing matters.

Appeals

3.7 During quarter 3, 2016/2017, one (1) Appeal was concluded.

| No. | Outcome |
|-----|--|
| 1 | Matter concluded by Consent Order dated 13.10.2016. Alcohol permitted to be sold between 8am to 11pm Monday to Sunday. Conditions regarding the installation of CCTV and its usage imposed together with ensuring staff are aware of their responsibilities in relation to age verification, training records to |

| | |
|--|--|
| | be maintained , Challenge 25 Scheme (or similar) to be in place. Named individuals to be excluded from the premises and not to be involved in the business in any way. Contribution to Costs £1500 |
|--|--|

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report describes the Council's licensing enforcement activity and the outcomes of prosecutions and appeals for Quarters 2 & 3 2016/2017.
- 4.2 There are no financial implications arising from the recommendations in this report.

5. LEGAL COMMENTS

- 5.1 Any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 6.2 The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.
- 6.3 The exercise of the Council's various enforcement functions consistent with the enforcement policy and its principles should also help achieve the following key Community Plan themes-
- A Safe and Cohesive Community. This means a safer place where people feel safer, get on better together and difference is not seen as a threat but a core strength of the borough.
 - A Great Place to Live. This reflects the aspiration that Tower Hamlets will be a place where people live in quality affordable housing, located in clean and safe neighbourhoods served by well-connected and easy to access services and community facilities.
 - A Prosperous Community. This encompasses the objective that Tower Hamlets will be a place where everyone, regardless of their background and circumstances, has the aspiration and opportunity to achieve their full potential.
- 6.4 An equality analysis was conducted prior to approval of the revised enforcement policy by Cabinet on 3 October 2012. A further equality analysis

was done on 16th September 2011 in relation to touting prosecutions. It is recognised that Enforcement action may lead to indirect discrimination in limited circumstances but prior to taking any proceedings, an assessment as to whether the case meets the two stages in the Code for Crown Prosecutors is undertaken so that there is both a realistic prospect of a conviction and that it is in the public interest to prosecute. Further, proceedings are kept under review once initiated.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 There are no specific best value implications arising from this noting report

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to the Council's policies, the Licensing Objectives, the Council's Statement of Licensing Policy and the section 182 guidance will ensure that risks are properly managed. .

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 One (1) of the four (4) Licensing Objectives is Crime and Disorder and enforcement promotes that Licensing Objective. Enforcement will also play its part in helping to drive down crime and which in turn will reduce fear of crime and ASB levels helping to promote a healthier, happier and more cohesive community. This will have efficiency benefits for adult social care and public health costs by keeping people healthier and more active for longer.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.

Officer contact details for documents: Agnes Adrien 0207 364 4972

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