HYNDBURN BOROUGH COUNCIL

MEMBER’S LICENSING CODE OF GOOD PRACTICE

BACKGROUND

This Code of Good Practice applies to the conduct of Members appointed to the Licensing and Judicial Committees. All references to the Licensing and / or Judicial Committee in this Code include any sub committee of those Committees. This code is in addition to Hyndburn's Member Code of Conduct and the Constitution of the Council.

INTRODUCTION

The aim of this code of good practice: to ensure that in the carrying out of the Council’s licensing functions there are no grounds for suggesting that a decision has been biased, partial, or not well founded in any way.

The key purpose of Licensing: to implement and manage the various regulatory regimes that fall within the terms of reference of the Licensing and Judicial Committees in accordance with the relevant statutory provisions.

Your role as a member of the Licensing and/ or Judicial Committee: to make licensing decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Practice applies: this code applies to members at all times when they involve themselves in the licensing process. It therefore applies to meetings with officers or the public and consultative meetings.

If you have any doubts about the application of this code to your own circumstances you should seek advice from the Monitoring Officer or her staff, and preferably before any meeting takes place.

1. RELATIONSHIP TO THE MEMBER’S CODE OF CONDUCT

1.1 The rules in the Member's Code of Conduct must always be complied with. This is both the rules on interests, Disclosable Pecuniary Interests and any
other interests identified by the Council, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

1.2 The Guidance in this Licensing Code of Good Conduct explains and supplements the Member’s Code of Conduct with specific reference to the Council’s licensing functions.

1.3 If you do not abide by this Code of Good Practice, your conduct may put the Council at risk of proceedings on the legality of the related decision or maladministration, You may also put yourself at risk of being reported to the Standards Committee which could result in you being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

2. DECLARATION AND REGISTRATION OF INTERESTS

2.1 The Members Code of Conduct requires you to notify the Council’s Monitoring Officer of any Disclosable Pecuniary Interests and any Personal Interests. You are also required to declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest. This could be done by registering or declaring those interests in accordance with the Member’s Code of Conduct.

2.2 Disclosable Pecuniary Interests

The definition of a Disclosable Pecuniary Interest is set out in the Members Code of Conduct.

You should in addition take into account when approaching a decision the principle of integrity which is defined in terms that “Holders of public office must avoid placing themselves under an obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends.

They must declare and resolve any interests and relationships
If you have a Disclosable Pecuniary Interest in any matter that is being considered by the Licensing / Judicial Committee;

You must not participate in any discussion of the matter at the meeting.
You must declare the interest at the meeting
You must not participate in any vote taken on the matter at the meeting.
If the interest is not registered and is not the subject of a pending notification you must register the interest in your register of member’s interests within 28 days.
You must leave the room whilst any matter in which you have a Disclosable Pecuniary Interest is being discussed or voted on.

The Member’s Code of Conduct explains how failure to comply with the requirements relating to Disclosable Pecuniary Interests can amount to a criminal offence.

Paragraph 2 (f) of the Members Code of Conduct provides that members must “declare any private interests, both pecuniary and non pecuniary, that relates to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures in the code.

In such situations it may be advisable to decline an invitation to sit on a Licensing subcommittee or Judicial Committee if one of your friends, for example, is making an application or objection

If you have substantial interests, or other interests that would prevent you from voting on a regular basis, you should avoid serving on the Licensing and/or Judicial Committees.
2.3 **Personal Interests**

The definition of a Personal Interest can be found in the Members Code of Conduct. If you have a Personal Interest in any matter before the Licensing/Judicial Committee you must declare it. You do not however have to leave the meeting as you may take part in the discussion and voting.

2.4 As a Member of the Licensing and/or Judicial Committee you should try to minimise your social contacts with known and regular applicants and refrain altogether from such contacts when licensing policy or their applications are under consideration.

2.5 You should not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment because of your position as a Councillor. This would include, where you have an interest in an application, using your position to discuss that application with officers or Members when other members of the public would not have the same opportunity to do so. If you have a Declarable Pecuniary Interest in an application don’t participate or give the appearance of trying to participate in the making of any decision on the matter whether it is being dealt with by an officer pursuant to delegated powers or by the Licensing/Judicial Committee.

2.6 If you are not a member of the Licensing Committee and speak at a meeting of the Committee on the subject of a particular application you should make it clear whether you are speaking in your capacity as an interested party (as defined by section 13 of the Licensing Act 2003 (as amended)) or as a representative of interested parties.

2.7 Do notify the Monitoring Officer of your own applications. It is advisable that you employ an agent to act on your behalf in dealing with officers and any public speaking at Committee.

3. **EXERCISING DISCRETION IN THE LICENSING PROCESS**

3.1 Don’t restrict your discretion and therefore your ability to participate in a licensing decision by making up your mind or clearly appearing to have made up your mind on how you will vote on any licensing matter prior to formal
consideration of that matter by the Committee and of your hearing the officers presentation and the representations made by applicant’s and objectors.

3.2 Limiting your discretion in this way and then taking part in the decision will put the Council at risk of legal proceedings seeking to revoke the decision made on the grounds of there being a danger of bias or pre determination or of a failure to take into account all of the factors enabling the application to be considered on its merits. There is also a risk of the decision being referred to the Ombudsman for an investigation into any maladministration.

3.3 This rule should not however be interpreted in such an unnecessarily restrictive way so as to limit the quality of debate or stifle valid discussion.

3.4 Section 25 of the Localism Act 2011 clarifies the rule on pre-determination by providing that

“A decision maker is not to be taken to have had, or appear to have had, a closed mind when making the decision just because-

a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took or would or might take, in relation to a matter, and

b) the matter was relevant to the decision

The advice issued by the Department for Communities and Local Government is that members should not have to avoid campaigning, talking to constituents or publicly expressing views on local issues for fear of being accused of bias or facing legal challenge, Instead they should play and active role in local discussions. This will help members to better represent their constituents and enrich local debate

3.5 Don't speak and vote on a matter where you have openly and uncompromisingly limited your discretion. You do not have to withdraw but you may prefer to do so for the sake of appearances.
3.6 Do explain that you do not intend to speak and vote because you have or could reasonably be perceived as having pre judged the matter so that this may be recorded in the minutes.

3.7 If you are appointed as a member of a Licensing Sub-Committee or a Judicial Committee and you believe that you have fettered your discretion then contact Member Services to arrange for the appointment of a replacement member.

4 LOBBYING OF COUNCILLORS

4.1 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, expressing an intention to vote one way or another or such a firm point of view that it amounts to the same thing, prejudices your impartiality and therefore your ability to participate in the Committee’s decision making process.

4.2 If as a member of the Licensing and/ or Judicial Committee you are lobbied in relation to a particular licensing application or other similar matter you should restrict yourself as far as is practical, to giving advice about rules and procedures, including suggesting to those who are lobbying that they should speak or write to the relevant officer or another Ward Member.

4.3 If as a member of the Licensing and/ or Judicial Committee you decide to go public in support of a particular outcome - or even campaign actively for it – you must consider whether you have limited your discretion and whether you can take part in the Committee discussion or vote. Any significant contact with an applicant or objector should be declared at the Licensing/Judicial Committees.

4.4 Don’t accept gifts or hospitality from any person involved in or affected by a Licensing application. If a degree of hospitality is entirely unavoidable, ensure that it is of a minimum; its acceptance is declared a soon as possible and remembers to register the gift or hospitality where its value is over £100 (in accordance with the Council’s rules on gifts and hospitality).

4.5 Do copy or pass any lobbying correspondence you receive to the Licensing Manager at the earliest opportunity.
4.6 Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will in turn advise the appropriate officers to follow this matter up.

4.7 You will not have restricted your discretion or breached this Licensing Code of Good Practice just because you have listened to comments from residents or other interested parties or by making comments to residents, interested parties other Members or appropriate officers, provided they do not consist of or amount to pre judging the issue and you make clear you are keeping an open mind.

5. LOBBYING BY COUNCILLORS

5.1 Don’t become a member of, or lead or represent an organisation whose primary purpose is to lobby in respect of licensing matters. If you do you will have restricted your discretion.

5.2 Don’t excessively lobby fellow Councillors regarding your concerns or views not attempt to persuade them that they should decide how to vote in advance of the meeting at which any licensing application is to be discussed.

5.3 Don’t decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group meetings should never dictate how Members should vote on a particular application.

5.4 You should not put undue or improper pressure on officers for a particular decision when a licensing application is being dealt with under delegated powers. This does not prevent you from asking questions of the officer or responding to consultation.

6 COMMITTEE PROCEDURES AND DECISIONS

6.1 When you are considering a licensing application as a member of the Licensing and /or Judicial Committee you must do so with an open mind and
make sure that you have regard to any statutory criteria, policy or guidance relating to the determination of the application in question.

6.2 When hearing an application for a licence or permit, or other form of approval, as a member of the Licensing and/or Judicial Committees you should conduct yourself in a manner that does not create the reasonable perception that you have predetermined the application. Questions should be asked only to ascertain facts to assist in the decision-making process not to seek to enhance or reduce a point of view.

6.3 Don’t allow members of the public to communicate with you during the Committee’s proceedings (orally or in writing) other than as applicants, witnesses or objectors.

6.4 Do come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel that there is insufficient time to digest new information or that there is simply insufficient information before you request that further information. If necessary defer or refuse but ensure that the Committees reasons for deferring are recorded.

6.5 Don’t vote or take part in the meetings discussion of an application unless you have been present to hear the entire debate, including the officer’s introduction to the matter.

7 TRAINING

7.1 Members are required to attend any training organised by the Council before they participate in decision making at meetings dealing with Licensing matters.

GENERAL

8.1 This Code of Good Practice will be kept under annual review by the Executive Director Legal and Democratic Services. It will also be reviewed following any relevant change in the Council’s Constitution and Rules of Procedure.

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