

## **LICENSING AND SAFETY COMMITTEE**

**19 SEPTEMBER 2012**

### **MEMBERS' LICENSING CODE OF GOOD PRACTICE**

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#### **Summary**

Following the repeal of the previous Member Code of Conduct and the adoption of a new Member Code of Conduct, and amendments to the Licensing Act 2003, the current Members' Licensing Code of Good Practice requires updating.

#### **1. Budget and Policy Framework**

- 1.1 The Council approved the existing Members' Licensing Code of Good Practice (the Licensing Code) on 15 April 2010. A new Members' Code of Conduct was adopted on 26 July 2012.
- 1.2 As part of the Constitution, adoption of the Licensing Code is ultimately a matter for Council.

#### **2. Background**

- 2.1 Part 7 of Chapter 5 of the Constitution contains the Licensing Code, which gives members of this Committee, its sub-committee and hearing panels advice on probity issues, insofar as they relate to licensing. The Licensing Code does not form a part of the adopted Members' Code of Conduct but is a separate document, which is both supportive of the Members' Code of Conduct and the source of expanded guidance in the particular area of licensing. The Licensing Code is intended to provide advice to Members so as to minimise the prospect of legal or other challenge to decisions. A copy of the current Licensing Code is attached as an Appendix to this report.
- 2.2 Following the provisions in the Localism Act 2011 relating to member standards coming in to force, Medway Council adopted a new Member Code of Conduct in July this year. There have also been changes to the Licensing Act 2003, which change the position on who may make representation. As a result, the existing Licensing Code requires updating.

### **3. Effects of the legislation**

- 3.1 The Localism Act 2011 brought to an end the previous standards regime and enabled local authorities to adopt a locally determined code. Medway Council adopted a new Code on 26 July 2012. The Localism Act, together with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, introduced the new concept of “Disclosable Pecuniary Interests” (DPIs). Members are required to notify the Monitoring Officer of their DPIs and may not take part in a discussion or vote on any matter in which they have a DPI. Failure to do this, with reasonable excuse, is now a criminal offence. Medway’s Code of Conduct also requires Members with DPIs to withdraw from the room during a discussion on a matter in which they have a DPI.
- 3.2 Guidance from the Department for Communities and Local Government states that a member may not participate in any discussion or vote at any committee or sub-committee where have a disclosable pecuniary interest *relating* to any business that is or will be considered at the meeting. The guidance goes on to state that this prohibition applies to any form of participation, including speaking as a member of the public at such a meeting. There are provisions in the Localism Act 2011 which permit a Member with a DPI to apply for a dispensation from the Council to allow the Member to take part in a discussion or vote.
- 3.3 DPIs include ownership of land (including the Member’s home), employment or sponsorship. The full list of DPIs is set out in the Members Code of Conduct.
- 3.4 As a result of the above changes it will be necessary to amend the Licensing Code to replace advice on prejudicial and personal interests with advice on DPIs in relation to licensing matters.
- 3.5 In addition, the Licensing Act 2003 was recently amended to remove the vicinity test for interested parties. This now means that any person may make a relevant representation in respect of an application under the Licensing Act 2003. The Licensing Code therefore requires amendment in relation to the advice given to members of Licensing Hearing Panels and Councillors wishing to make representations to Licensing Hearing Panels.
- 3.6 Officers are currently working on redrafting the Licensing Code. Members are requested to inform officers whether there are any areas on which they require more or clearer advice, so that this can be incorporated in to the revised Licensing Code. Members are also requested to make any further comments on the current Code as they think fit. Officers will then feed this input in to the final version for reporting to Council.

3.7 It is anticipated that the revised Licensing Code, together with the revised Planning Code, will be reported to Council on 18 October 2012. As there are no further meetings of this committee before that date, it is intended that after this meeting, the revised draft Licensing Code will be circulated to all members of this Committee for final comment prior to reporting to Council.

#### **4. Financial and legal implications**

4.1 There are no financial implications

4.2 The legal implications are contained in the body of the report.

#### **5. Recommendation**

5.1 The Committee is asked to note that the revised Licensing Code will be reported to Council on 18 October 2012 and to provide any comments to the Head of Legal Services for consideration in finalising the revised draft Code.

#### **Background papers**

None

#### **Lead officer contact**

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