



NORTH AYRSHIRE
COUNCIL

Cunninghame House,
Irvine.

21 June 2012

Licensing Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **TUESDAY 26 JUNE 2012** at **2.00 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

- 1.1** Submit report by the Chief Executive on the requirements of Standing Orders and Section 5 of the Code of Conduct for Councillors in relation to declarations of interest (copy enclosed).
- 1.2** Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2. Civic Government (Scotland) Act 1982: Licensing Matters

Submit report by the Solicitor to the Council on (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).

3. Regulation of Public Processions

Submit report by the Solicitor to the Council on a process of public consultation, with a view to revising its Standard Conditions (copy enclosed).

4. Public Entertainment Licences

Submit report by the Solicitor to the Council on the procedure for reviewing its Resolution (copy enclosed).

5. Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee

Sederunt: Ronnie McNicol (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
Ian Clarkson
Ruth Maguire
Alex McLean
Alan Munro
Donald Reid
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

NORTH AYRSHIRE COUNCIL

Agenda Item 1.1

26 June 2012

Licensing Committee

Subject: **Declarations of Interest: Advice to Elected Members**

Purpose: To highlight the requirements of Standing Orders and Section 5 of the Code of Conduct for Councillors in relation to declarations of interest.

Recommendation: That Members note the report and ensure (i) that they are familiar with the requirements of Section 5 of the Code of Conduct for Councillors in relation to declaring interests; and (ii) consider the need to declare financial or non-financial interests in any contract or any other matter as defined by Section 5 of the Councillors' Code Conduct when attending meetings of the Council and its committees.

1. Introduction

- 1.1 The purpose of this report is to highlight the requirements of the Council's Standing Orders and Section 5 of the Code of Conduct in relation to declarations of interest.

2. Current Position

- 2.1 Standing Order 16 provides that if any Member of the Council has a financial or non-financial interest in any contract or any other matter as defined by Section 5 of the Councillors' Code Conduct, and is present at any meeting at which that matter is to be considered, he/she must, as soon as practicable after the meeting starts, disclose that he/she has an interest and importantly, state the nature of this interest.
- 2.2 To facilitate such declarations, a heading "Declarations of Interest", routinely appears as the first item on agendas for all meetings of the Council and its committees. All declarations of interest are recorded in the minutes of the meeting and are therefore a matter of public record.

- 2.3 All Members of the Council must observe the Code of Conduct for Councillors. Section 5 of the Code, which is appended to this report, sets out the rules in relation to declarations of interest. It is important that all Members are familiar with the rules on making declarations of interests. Such declarations produce transparency in regard to interests which might influence, or be thought to influence, the actions of a Councillor.
- 2.4 Whilst Committee clerks and other officers may provide advice if asked, in terms of the Code of Conduct, it is the personal responsibility of Elected Members to determine when a declaration of an interest is required. Members should also determine whether the nature of the interest is such that he/she is precluded from taking part in consideration of that matter and whether he/she must leave the meeting while that matter is under discussion.

3. Proposals

- 3.1 It is proposed that Members note the report and ensure:-
- (i) that they are familiar with the requirements of Standing Orders and Section 5 of the Code of Conduct for Councillors in relation to declaring interests; and
 - (ii) they consider the need to declare financial or non-financial interests in any contract or any other matter as defined by Section 5 of the Councillors' Code Conduct when attending meetings of the Council and its committees.
- 3.2 In future, Committee Chairs, when dealing with the Declarations of Interest item on the agenda, should invite Members to declare any interests in terms of Standing Order 16 and Section 5 of the Code of Conduct for Councillors.
- 3.3 The Member making the declaration is expected to make a statement which is sufficiently informative to enable those at the meeting, or anyone reading the minute, to understand the nature of the interest. If the nature of the interest is not clear, the Committee clerk will ask for clarity.

4. Implications

Financial Implications

- 4.1 None arising from this report.

Human Resource Implications

- 4.2 None arising from this report.

Legal Implications

- 4.3 Failure by Members to declare interests is a breach of the Councillors' Code of Conduct and can result in action being taken by the Standards Commissioner for Scotland.

Equality Implications

- 4.4 None arising from this report.

Environmental Implications

- 4.5 None arising from this report.

Implications for Key Priorities

- 4.6 None arising from this report.

5. Consultations

- 5.1 The Solicitor to the Council has been consulted in the preparation of this report and agrees with its content.

6. Conclusion

- 6.1 The key principles of the Code of Conduct for Councillors, especially those which specify integrity, honesty and openness, are given practical effect by the requirement for Councillors to declare interests at meetings which they attend. The rules on declaration of interest, along with the rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, the actions of a Councillor.

- 6.2 It is important therefore that all Members are aware of the requirements of the Code. If any Member of the Council has a financial or non-financial interest in any contract or any other matter as defined by Section 5 of the Councillors' Code Conduct and is present at any meeting at which that matter is to be considered, he/she must, as soon as practicable after the meeting starts, disclose that he/she has an interest and state the nature of this interest. Such declarations will be recorded in the minutes for the meeting.



ELMA MURRAY
Chief Executive

Reference :

For further information please contact Martyn McKeown, Committee Services Manager on 01294 324130.

Background Papers

None.

Standards Commission for Scotland

Code of Conduct for Councillors

Section 5: Declarations of Interests

5.1 The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at meetings which you attend. The rules on declaration of interest, along with the rules which require registration of interests, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

5.2 It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor in regard to a particular matter. You can, of course, seek advice from appropriate Council officers or from other sources which may be available to you. In making decisions for which you are personally responsible you are advised to err on the side of caution.

5.3 You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test (“the objective test”) which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.

5.4 Much of the content of the rules set out in this section of the Code refers to Council or Committee meetings. The principles relating to declaration of interests are not confined to such meetings. You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing your Council.

Interests which Require Declaration

5.5 Interests which require to be declared (if known to you) may be financial or non-financial. They may or may not cover interests which are registrable in terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with; your financial interests; your non-financial interests and the interests, financial and non-financial, of other persons.

Your Financial Interests

5.6 You must declare, if it is known to you, ANY FINANCIAL INTEREST (including any financial interest which is registrable under any of the categories prescribed in Section 4 of this Code and any interest as defined in a specific exclusion defined in paragraph 5.18).

There is no need to declare:-

- (i) an interest where a general exclusion, as defined in paragraph 5.18, applies but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a general exclusion or a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

Your Non-Financial Interests

5.7 You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:-

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code; or
- (ii) that interest would fall within the terms of the objective test.

There is no need to declare:-

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a general exclusion or a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.8 As a councillor you will serve on other bodies as a result of express nomination or appointment by your Council or otherwise by virtue of being a councillor. Your membership of statutory Joint Boards or Joint Committees which are composed exclusively of councillors does not raise any issue of declaration of interest in regard to Council business. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare a non-financial interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between the Council and another body. Keep particularly in mind the advice in paragraph 3.18 of this Code about your legal responsibilities to any limited liability company of which you are a director.

5.9 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a councillor. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest, you should consider whether your interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a councillor as opposed to the interest of an ordinary member of the public.

The Financial Interests of Other Persons

5.10 The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

You must declare if it is known to you ANY FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;

- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality;
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare an interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded other than in the following circumstances.

There is no need to withdraw in the case of:-

- (i) an interest covered by a specific exclusion; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.11 This Code does not attempt the task of defining "relative" or "friend" or "associate". Not only is such a task fraught with difficulty but is also unlikely that such definitions would reflect the intention of this part of the Code. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor and, as such, would be covered by the objective test.

The Non-Financial Interests of other persons

5.12 You must declare if it is known to you ANY NON-FINANCIAL INTEREST of:-

- (i) a spouse, a civil partner or a co-habitee;
- (ii) a close relative, close friend or close associate;
- (iii) an employer or a partner in a firm;
- (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- (v) a person from whom you have received a registrable gift or registrable hospitality; or
- (vi) a person from whom you have received registrable election expenses.

There is no need to declare the interest unless it is clear and substantial.

There is only a need to withdraw from the meeting if the interest is clear and substantial.

Making a Declaration

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

5.14 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words "I declare an interest". The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

Frequent Declarations of Interest

5.15 Public confidence in a local authority is damaged by perception that a Council's decisions are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings of a particular committee or in respect of any role which you are asked to discharge as a councillor, you should not accept a role or appointment with that attendant consequence. Similarly, if any Council appointment or nomination to another body would give rise to objective concern because of your existing personal involvements or affiliations, you should not accept the appointment or nomination.

Dispensations

5.16 In some very limited circumstances dispensations may be granted by the Standards Commission in relation to the existence of financial and non-financial interests which in terms of this Code would otherwise prohibit participation in discussion and voting.

5.17 Applications for dispensations will be considered by the Standards Commission which will be able to consider requests for dispensations which will apply generally to a class or description of councillors who are all affected by a particular category of interest. In situations where general or category dispensations are not granted by the Standards Commission, applications for particular dispensations should be made as soon as possible in advance of any meetings where dispensation is sought. You should take no part in consideration of the matter in question unless, and until, the application for dispensation is granted.

Definition of Exclusions

5.18 The following paragraphs refer to General Exclusions and Specific Exclusions

(1) The General Exclusions

The general exclusions referred to in this section of the Code are in relation to interests which a councillor may have:-

- (i) as a Council tax payer or rate payer or in relation to the Council's public services;
- (ii) in relation to setting the Council tax;
- (iii) in relation to matters affecting councillors' remuneration, allowances, expenses, support services and pension; or
- (iv) as a Council house tenant.

In relation to (i), a councillor does not have an interest which has to be declared as a Council tax payer or ratepayer or, in respect of any issue relating to the terms of services which are offered to the public generally, as a recipient or non-recipient of those services.

In relation to (ii), a councillor does not have a financial interest which has to be declared in connection with:-

- (a) the setting of Council tax (including the approval of the total estimated expenses of the authority to be incurred during the year in question); and
- (b) the setting of any substitute Council tax (including the approval of any revised total estimated expenses)

notwithstanding that the councillor may have an interest in any item of expenditure.

In relation to (iii), a councillor does not have an interest which has to be declared in connection with any matter relating to councillors' remuneration, allowances, expenses or support services or in relation to councillors' pension arrangements, including the investment of superannuation funds.

In relation to (iv), a councillor does not have an interest which has to be declared in connection with any matter relating to council house matters, notwithstanding that the councillor has an interest in the tenancy of council housing accommodation (including any garage), always provided:-

- (a) this exclusion does not apply in respect of any matter which is concerned solely or mainly with the particular tenancy from which an individual councillor's interest derives; and
- (b) this exclusion does not apply to any councillor who is in arrears of rent in respect of his or her council house (or garage as appropriate).

(2) The Specific Exclusions

The specific exclusions referred to in this section of the Code are in relation to interests which a councillor may have:-

- (i) as a member, or director of, an outside body; or
- (ii) as a member of the Cairngorms National Park Authority (“CNPA”).

In relation to (i), the exclusion applies to any councillor who has been nominated or appointed or whose appointment has been approved by the councillor’s local authority and who has registered an interest under Section 4 of the Code as a member or director of:-

- (a) devolved public body as defined in Schedule 3 to the Act;
- (b) a public body established by enactment or in pursuance of statutory powers or by the authority of statute or a statutory scheme;
- (c) a body with whom there is in force an agreement which has been made in pursuance of Section 19 of the Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that body of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise;
- (d) a body being a company:-

- i. established wholly or mainly for the purpose of providing services to the councillor’s local authority; and
- ii. which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority.

So as to enable the councillor to take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question the councillor is required to declare his or her interest at all meetings where matters relating to the body in question are to be discussed. This is always provided the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.

In relation to (ii), the exclusion applies to (a) Decisions on Planning Applications where the CNPA have submitted comments to the Council and (b) Decisions on Planning

Applications where the CNPA have decided not to call-in the Applications, as follows:-

(a) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have submitted comments, representations or objections to the Council in relation to a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-

i. this exclusion only applies where the councillor has not participated in the decision to make comments, representations or objections and has not attended during the item of the relevant CNPA meeting to decide on the comments, representations or objections to be submitted.

ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

Code to deal with the planning application.

(b) the exclusion applies to any councillor who is also a member of the CNPA where the CNPA have decided not to call-in a planning application so as to enable the councillor to take part in the consideration and discussion of, and to vote upon, the determination of the planning application by the Council, subject to the following:-

i. this exclusion only applies provided the CNPA have, in reaching their decision not to call-in, confined themselves to the question whether the application should be called-in and not discussed the merits of the application in so deciding.

ii. this exclusion applies to meetings of the Council and of any committee or sub-committee of the Council and to other meetings as referred to in paragraph 5.4 of the Code to deal with the planning application.

NORTH AYRSHIRE COUNCIL

Agenda Item 2

26 June 2012

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982: Licensing Matters**

Purpose: To advise the Committee of (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982.

Recommendation: That the Committee considers and determines the matters before it.

1. Introduction

- 1.1 In terms of the Civic Government (Scotland) Act 1982, the Council, as Licensing Authority, requires to determine issues in respect of the grant, renewal or suspension of licences.

2. Current Position

- 2.1 The attached appendices detail the matters before the Committee for determination as follows:-

Appendix A:

Licences where Hearings have been convened; and

Appendix B:

Applications for the grant or renewal of licences and permits.

3. Proposals

- 3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

4. Implications

Financial Implications

- 4.1 There are possible financial implications in relation to the refusal of any application.

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3 There are possible legal implications in relation to the refusal of any application.

Equality Implications

- 4.4 None

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 None.

5. Consultations

- 5.1 Consultations have been undertaken with Strathclyde Police, Strathclyde Fire and Rescue, and the appropriate Council Services.

6. Conclusion

- 6.1 The Committee is requested to consider and dispose of the matters before it.



IAN T MACKAY
Solicitor to the Council

Reference : PAT

For further information please contact William O'Brien, Snr Solicitor on 01294 324305

Background Papers

None

APPENDIX A

Hearings

Hearing 1	Market Operator's Licence	MOL/035
Applicant and Address	Ernest Kaspar Ribbeck Leac - An - Tobar West Mayish Brodict Isle of Arran KA27 8AF	
Premises	Vulcan Garage Auchrannie Road Brodict Isle of Arran	
Hearing 2	Taxi Driver's Licence	TDL/00478
Applicant and Address	Deborah Bell 76 Chapelhill Mount Ardrossan KA22 7LY	
Hearing 3	Taxi Driver's Licence	TDL/00717
Licenceholder and Address	Robert McLeish 61 Mains Road Beith KA15 2AP	
Hearing 4	Taxi Driver's Licence	TDL/01773
Licenceholder and Address	Colin Bennett 12 Alford Place Irvine KA11 1RZ	
Hearing 5	Taxi Driver's Licence	TDL/01775
Applicant and Address	Aso Jamal 36 Wallace Avenue Stevenston KA20 4BN	

Hearing 6

Taxi Operator Licences

TL/19 and TL/194 Renewals TL/048 Grant

Licenceholder and Address

Fiona **Wagstaff**
19 Stair Drive
Drongan
KA6 7DL

APPENDIX B

Applications for Licences/Renewal of Licences

Type of Licence/Reference Number	Details of Applicant	Details of Vehicle/Premises	Comments
MDL/038 (New)	Robert Kerr 5 Martin Avenue Irvine KA12 9NU	None	Police observation received
PEL/067 (Variation)	North Ayrshire Council Education and Skills Cunninghame House Irvine KA12 8EE	Volunteer Rooms High Street Irvine	Extension of licensed hours to 2.00am on 25th August 2012
TDL/00939 (Renewal)	Eric Forrest 6 Wardrop Terrace Beith KA15 2EX		Police observation and failure to disclose conviction
TDL/01244 (New)	Elizabeth Conway 3 Alexander Terrace Kilwinning KA13 7HQ		Police observation received
TDL/01513 (New)	Steven Robb 2 Sersley Drive Kilbirnie KA25 6EZ		Police objection received
TDL/01519 (Renewal)	Darren Samuel Coughtrie 49 Hamilton Crescent Stevenston KA20 4JD		Police objection received and failure to disclose during term of licence.
TDL/01779 (New)	John Shepherd 32 Kings Road Beith KA15 2BJ		Police observation received
TDL/01780 (New)	John Swindle 110 Ardoch Crescent Stevenston KA20 3PG		Police objection received and failure to disclose on application form

TDL/01789 (New)

Alan **Thom**
7A Barassie Street
Troon
KA10 6LU

Police observation and
failure to disclose on
application form

TL/119 (Renewal)

Robert and Susan
Chalmers
26 Glencairn Street
Stevenston
KA20 3BY

Police observation and
failure to disclose during
term of licence and on
application form

NORTH AYRSHIRE COUNCIL

Agenda Item 3

26 June 2012

Licensing Committee

Subject: **Regulation of Public Processions**

Purpose: To seek approval to a process of review in relation to the Regulation of Public Processions.

Recommendation: That the Committee agrees to a review of the Regulation of Public Processions.

1. Introduction

- 1.1 Public processions are regulated by Civic Government (Scotland) Act 1982, Part V (Sections 62 – 66) as amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 Sections 70-72.
- 1.2 With one exception, all processions require to follow the statutory procedure of giving 'notification' to the Council at least 28 days in advance. The Council then informs the Police. The exception is that a funeral procession organised by a funeral director acting in the ordinary course of his business does not require this. The Scottish Ministers can prescribe other exemptions, but have not done so. The Council can waive the 28-day notice period in exceptional circumstances (eg a decision to close a factory or an unexpected announcement of redundancies). Until the 2006 Act 'processions commonly or customarily held' were also exempt, but this exemption was removed, and accordingly such processions require the same procedure as any others.
- 1.3 Unlike the majority of licensing legislation, where a person wanting a licence cannot operate unless and until the Council grants the licence application, the legislation on public processions operates on the basis that a person should be free to express his beliefs and to associate with others without any formal permission, and that those freedoms should only be restricted where it is necessary for public interest reasons. Therefore, instead of applying for a 'procession licence', an organiser requires to give the Council 28 days notice of his proposal, and the Police are informed. There is no public consultation, no intimation to residents along the route, and no opportunity for objections or representations. The Council advertises the notification on its website.

- 1.4 The legislation's approach is not 'why should this procession be allowed to take place?' but rather 'is there a good reason to prohibit it?'. Accordingly the Council's has powers (not duties) to prohibit processions or attach conditions. It often happens that an organiser engages with the Police in advance, and agrees things like the timing of the procession, its route, the points of assembly and dispersal, and stewarding. The decision to attach the Council's usual standard conditions is delegated to officers, and therefore the great majority of Processions are never considered by Committee.
- 1.5 The Police are entitled to request the Council either to prohibit the procession altogether or to attach conditions beyond the Council's usual standard conditions. In practice, both are uncommon, but where they did happen the committee would have to consider the proposal itself.
- 1.6 When deciding whether to prohibit a procession or to impose conditions on it, the Council must consider factors including —
- (a) the likely effect of the holding of the procession in relation to—
 - (i) public safety;
 - (ii) public order;
 - (iii) damage to property;
 - (iv) disruption of the life of the community;
 - (b) the extent to which the containment of risks arising from the procession would (whether by itself or in combination with any other circumstances) place an excessive burden on the police (Government Guidance is that Police costs are not a consideration);
 - (c) the conduct of a previous procession held by the same organiser or involving the same participants.

2. Current Position

- 2.1 Many organisations wishing to hold processions need to give a notification (e.g. such as the Boys Brigade, the Orange Order, political parties, community groups holding traditional processions, and groups protesting about the closure of a local school or factory).

- 2.2 For several years the Council has applied standard conditions to processions after notification has been given.
- 2.3 Other Councils, after representations from Strathclyde Police, have reviewed their approach to processions. However, the fact that other Councils have adopted certain conditions does not oblige the Council to do the same, and the Council should make its own assessment of any representations made.
- 2.4 The Council's standard conditions have been reviewed, and a draft is attached for the Committee's consideration.

3. Proposals

- 3.1 The Committee is invited to consider a possible sequence of events:
- (a) Consultation on the proposed draft standard conditions, by the Committee:
 - (i) writing to the Police and organisations who have held processions in North Ayrshire in the past two years, and
 - (ii) placing a public notice on the Council's website;in each case inviting written representations to the Clerk.
 - (b) after the summer recess the Committee might invite parties who had made written representations to a Meeting;
 - (c) the Committee might then meet to consider the oral and written representations made by all parties, and to adopt a new version of the standard conditions.

4. Implications

Financial Implications

- 4.1 None.

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3 If the Council prohibits a procession, or attaches conditions, the organiser (but not any objector) can appeal to the Sheriff, who may raise the prohibition or allow the procession to proceed with varied conditions. There is unlikely to be a successful appeal where the only conditions challenged are standard conditions which have been adopted following a consultation with all interested parties. A procession would only be prohibited, or extra conditions would be attached, following a hearing at the Committee itself to which the organiser would be invited.

Equality Implications

- 4.4 None.

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 The Conditions and the direct involvement of the Police highlight the relevance of crime and disorder. When reviewing the Conditions, the Committee should have regard to Single Outcome Agreement Priority 9: "We live our lives safe from crime, disorder and danger".

5. Consultations

- 5.1 No consultation is necessary when the Committee wishes to start a review of its own conditions. The review itself involves consultation.

6. Conclusion

- 6.1 The Council's conditions should be kept under review and amended following consultation.



IAN T MACKAY
Solicitor to the Council

Reference : WO'B

For further information please contact William O'Brien, Snr Solicitor on 01294 324305

Background Papers

None

DRAFT

North Ayrshire Council

Conditions regarding Processions

Preliminary

1. The application form shall include:
 - (a) the Organiser's details (name, address, and date and place of birth);
 - (b) the Chief Steward's details (name, address, and date and place of birth);
 - (c) the details of all bands (name, address);
 - (d) for each band, details for the band member responsible for it: name, address, and date and place of birth;
2. The Organiser shall be responsible for the observance of all of these Conditions both by the participants in the Procession and any person accompanying the Procession. If any of the Conditions are breached, the Council may take this into account in deciding whether or not to prohibit future Processions proposed by the Organiser or any body with which the Organiser is associated.

Stewarding Plan

3. The Organiser shall prior to the event agree a Stewarding Plan with Strathclyde Police as to:
 - (a) the route of the Procession, including any marshalling or assembly areas;
 - (b) its timing,
 - (c) the arrangements for stewarding it.
4. The Organiser shall:
 - (a) keep to the Stewarding Plan, except in so far as the Police Officer in Charge (POIC) agrees or instructs otherwise;
 - (b) ensure that the Stewarding Plan and these Conditions are brought to the notice of persons, bodies and bands participating.

Conduct of Procession

5. The Organiser and the Chief Steward shall identify themselves to the POIC at the commencement of the Procession and shall remain with the Procession and easily contactable by the POIC (e.g. by mobile phone) throughout.

6. All stewards and marshals shall be easily identifiable (for example, by wearing high-visibility jackets).

7. Those marching, including marshals, shall not do so more than four abreast and shall keep to the near-side or left-hand side of the street, except in one-way streets where they will keep to the right-hand side.

8. All participants shall follow POIC instructions as to:

- (a) altering the route taken by any parts or all of the Procession;
- (b) altering the timing of any parts or all of the Procession;

These instructions may be given at any times and may relate to any part or parts or all of the Procession. Different instructions may be given (e.g. one part of the Procession might be directed on the original route, another part might be instructed to wait until other traffic or pedestrians have cleared the route, and another part might be instructed to proceed along a different route).

Activity

9. No musical instrument shall be played (including a drum or other sound-generating instrument marking time), no loudspeaker may be used, and no shouting, singing or making of noise shall take place:

- (a) at any time of day, within 200 metres of any place of worship (whether or not that place of worship is currently being used for a religious service); or
- (b) in any place, before 9.00 a.m. or later than 6.00 p.m..

Sectarian and other criminal behaviour

10. No person in the Procession, or accompanying the Procession, may display (whether by spoken words, singing, the display of banners or otherwise) any Religious Prejudice.

“Religious Prejudice” means malice and ill-will based on another person’s membership of or association with (or presumed membership of or association with) a religious group, or of a social or cultural group with a perceived religious affiliation.

“Religious Group” means a group of persons defined by reference to their religious belief or lack of religious belief; or membership of, adherence to, or support for the culture and traditions of a church or religious organisation; or participation in activities associated with such a culture or such traditions.

11. All statutes and common law provisions concerning public order shall be observed by all persons in the Procession, and any person accompanying the Procession; in particular:

- (a) the Public Order Act 1936 in relation to the prohibition of the wearing of uniforms signifying association with political organisations etc.;
- (b) the Terrorism Act 2000 in relation to the wearing of clothing or items in support of a proscribed organisation;
- (c) the Criminal Justice (Scotland) Act 2003 in relation to offences aggravated by religious prejudice;
- (d) the Criminal Justice and Licensing (Scotland) Act 2010 in relation to offences of threatening or abusive behaviour;
- (e) local Byelaws as to drinking of alcohol in public.

Finally

12. The Organiser shall co-operate with the Council and Strathclyde Police in reviewing the conduct of the Procession afterwards.

NORTH AYRSHIRE COUNCIL

Agenda Item 4

26 June 2012

Licensing Committee

Subject: **Public Entertainment Licences**

Purpose: To inform the Committee of a change in the legislation.

Recommendation: That the Committee initiate the procedure for reviewing its Resolution.

1. Introduction

1.1 Under Section 41 of the Civic Government (Scotland) Act 1982, a "Public Entertainment Licence" (PEL) is required for the use of premises as a "place of public entertainment". Prior to 1 April 2012 a PEL was required for any place (with statutory exceptions) where:

(a) "on payment of money or money's worth", members of the public could use facilities for entertainment or recreation, if

(b) those facilities were contained in the Council Resolution.

1.2 The words quoted in (a) are significant, as the payment condition was removed by the Criminal Justice and Licensing (Scotland) Act 2010 with effect from 1 April 2012. Previously, an event which fell within the Resolution could avoid the need to be licensed if it was either free of charge or if it was 'donation-based', i.e. with the public being invited to make a donation. However, from 1 April 2012 all events within the current North Ayrshire Council Resolution, whether free, donation-based or fee-charging, need a PEL. This meant that free community events which had never needed Licences before now did.

1.3 In March 2012, prior to the Local Government Election on 3 May 2012, the Committee approved interim arrangements which were to operate until the post-election Committee carried out the review procedure:

'A place does not require a Public Entertainment Licence if:

(a) it is either owned or operated by the Council (or both), or

(b) all four of the following conditions are satisfied:

- (1) admission to the place is free of charge,
- (2) there is no charge for the use of any facilities for entertainment,
- (3) no donations towards the cost of the facilities or the costs of the place (such as rent, heating and lighting) are invited, and
- (4) the function is held by a charitable, religious, youth, recreational, community, political or similar organisation.'

1.4 The Council Resolution as to PEL activities was adopted in 2002. The Resolution should be reviewed, partly in the light of that change in legislation and partly because circumstances have changed in the period of over 20 years that the original Resolution has had effect. That Resolution was adopted at a time when the law focused on events that charged, and there was then no need for the Committee to consider events that were free and community-based.

1.5 Resolutions can be adopted, varied and rescinded following a statutory procedure prescribed by Section 9 of the 1982 Act. The procedure involves advertisement of the Committee's proposals, and an opportunity for the public to make representations. The Committee then considers these representations, and amends the Resolution as appropriate.

2. Current Position

2.1 The current NAC Resolution requires a PEL for:

"An open air pop concert, a large fete with one or more marquees for the public, a boxing, wrestling or other spectacle, an exhibition, motor cycle scrambling, a circus, a fairground, a fireworks display, an ice rink, a swimming pool, a billiards, snooker and/or pool hall, an amusement arcade other than one Licensed under the Gaming Act 1968 or the Lotteries and Amusements Act 1976, a musical, dramatic or other stage or floor or radio or television performance or activity, dancing, a discotheque or amplified sound."

2.2 That Resolution is qualified by the interim arrangements described.

3. Proposals

3.1 It is suggested that the Committee proceeds as follows:

- (a) the Committee agrees to the establishment of a Member-Officer working group which should review the existing Resolution and propose a draft for the Committee's consideration;

- (b) the Committee should consider that draft, and amend it as appropriate;
- (c) the amended draft would be used in the statutory review procedure;
- (d) after consideration of any representations from the public, the Committee would adopt an amended Resolution.

4. Implications

Financial Implications

- 4.1 A PEL costs at least £285. Extending or restricting the number of PELs required would increase or decrease fee income for the Council.

Human Resource Implications

- 4.2 Similarly, increasing the number of PELs would impact on staff resources. There would be an increased need for licensing staff to process applications and check documentation, and for Building Standards staff to inspect sites and machinery.

Legal Implications

- 4.3 Since the Council is acting within its powers by following a statutory procedure for reviewing its Resolution - the review itself does not impose a requirement where none existed before - there is no prospect of the Council being successfully challenged.

Equality Implications

- 4.4 None.

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 The 'Single Outcome Agreement for North Ayrshire', Paragraph 11a is "Levels of voluntary action and community involvement have increased". The Committee will have regard to that when considering the review.

Community Benefit Implications

- 4.7 If the revised Resolution continues the interim arrangements adopted in March 2012, the events which were free of the need to be licensed prior to the change in the law would avoid the burdens of licensing.

5. Consultations

- 5.1 The statutory procedure involves public consultation.

6. Conclusion

- 6.1 The Committee is invited to carry out a review of its Resolution.



IAN T MACKAY
Solicitor to the Council

Reference : WO'B

For further information please contact William O'Brien, Snr Solicitor on
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Background Papers

None