

Cunninghame House,
Irvine.

3 December 2015

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 **WEDNESDAY 9 DECEMBER 2015** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2. Minutes

The accuracy of the Minutes of the Committee held on 18 November 2015 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

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

Submit report by the Chief Executive 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).

4. Civic Government (Scotland) Act 1982: 1. "No Smoking" Policy; 2. Dress Code Policy

Submit report by the Chief Executive on clarification of the existing policy on dress code (copy enclosed).

5. Urgent items

Any other items which the Chair considers to be urgent.

Licensing Committee

Sederunt: Ian Clarkson (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
John Easdale
Grace McLean
Catherine McMillan
Ronnie McNicol
Donald Reid
Vacancy

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
18 November 2015

IRVINE, 18 November 2015 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ian Clarkson, Robert Barr, Tom Marshall, Grace McLean, Catherine McMillan, Ronnie McNicol, Donald Reid.

In Attendance

W. O'Brien, Solicitor (Licensing) and K. Sharkey, Solicitor (Contracts and Licensing); A. Toal, Administrative Assistant; and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

Also In Attendance

Inspector J. Conway (Police Scotland).

Chair

Councillor Clarkson in the Chair.

Apologies for Absence

John Bruce.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Councillors Code of Conduct.

2. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 28 October 2015 was confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

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

Submitted report by the Chief Executive on Hearings to be determined and applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982.

Part A: Hearings

3.1 Public Charitable Collection: West Kilbride Yuletide

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was present.

The applicant addressed the Committee, providing details of the proposed event and responded to questions.

The Committee noted that the application for a collection on Wednesday 18 December 2015 from 6.00 p.m. until 9.00 p.m. was outwith Council policy that street collections should not be permitted during the week or after 6.00 p.m. The Committee considered whether or not the particular case could be treated as an exception to the policy.

Decision

The Committee unanimously agreed, having regard to the information presented, to grant the application under Section 119(5) of the Civic Government (Scotland) Act 1982 on Wednesday 18 December 2015 from 6.00 p.m. to 9.00 p.m., subject to the Council's usual conditions.

3.2 Public Charitable Collection: Royal British Legion Scotland (Largs Branch)

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was not present, but was represented.

The applicant's representative addressed the Committee, providing details of the proposed event and responded to questions.

The Committee noted that the application for a collection on Thursday 3 December 2015 from 5.00 p.m. until 9.00 p.m. was outwith Council policy that street collections should not be permitted during the week or after 6.00 p.m. The Committee considered whether or not the particular case could be treated as an exception to the policy.

Decision

The Committee unanimously agreed, having regard to the information presented, to grant the application under Section 119(5) of the Civic Government (Scotland) Act 1982 on Thursday 3 December 2015 from 5.00 p.m. to 9.00 p.m., subject to the Council's usual conditions.

3.3 Public Charitable Collection: Irvine Meadow X1 FC

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was neither present nor represented. A written submission was provided by the applicant.

The Committee noted that the application for collection on Tuesday 29 December 2015 was outwith Council policy that street collections should not be permitted during the week. The Committee considered whether or not the particular case could be treated as an exception to the policy.

Decision

The Committee unanimously agreed, having regard to the information presented, to grant the application under Section 119(5) of the Civic Government (Scotland) Act 1982 on Tuesday 29 December 2015, subject to the Council's usual conditions excepting the condition relating to times of collections.

3.4 Taxi Driver's Licence: Matthew Steel: TDL/00115

The licenceholder, having been duly cited to attend, was present. Representatives of Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Having issued a verbal warning to the applicant in terms of his obligations in terms of disclosing all convictions when making any future application, the Committee unanimously agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.5 Public Entertainment Licence: Irvine Bay Events

The Chair advised that this application would be submitted to a future meeting.

The Committee agreed that an unaccompanied site familiarisation visit be held prior to any future consideration of the application by the Committee.

Part B: Applications for Licence and Renewal of Licences

3.6 TDL/00119 (New) Nicol Harris

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.7 TDL/01519 (New) Darren Coughtrie

The Committee unanimously agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.8 TDL/01999 (New) William Anderson

The Committee unanimously agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.9 TL/125 (Partnership) Anton Docherty

The licenceholder requested the Committee's consent to make a material change under Paragraph 9(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing.

4. Urgent Items

The Chair agreed that the following items of business be considered as a matter of urgency to allow the matters to be actioned without delay.

4.1 Public Charitable Collection: Saltcoats Action Group

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The Committee noted that the application for a collection on Friday 20 November 2015 from 5.30 p.m. until 7.30 p.m. was outwith Council policy that street collections should not be permitted during the week or after 6.00 p.m. The Committee considered whether or not the particular case could be treated as an exception to the policy.

Decision

The Committee unanimously agreed, having regard to the information presented, to grant the application under Section 119(5) of the Civic Government (Scotland) Act 1982 for the collection to take place on Friday 20 November 2015 from 5.30 p.m. until 7.30 p.m, subject to the Council's usual conditions.

4.2 Taxi Driver's Licence: Peter McGuinness: TDL/00061

The Committee considered a request by the licenceholder to vary the dress code condition attached to his licence. The licenceholder submitted a letter from his GP in support of his request.

The Committee unanimously agreed, on the basis of the information presented, to refuse the request to vary to dress code condition attached to this licence.

4.3 Public Charitable Collection: Stevenston Christmas Lights

The Committee considered an application for a Public Charitable Collection under Section 119 of the Civic Government (Scotland) Act 1982.

The Committee noted that the application for a collection on Friday 4 December 2015 from 5.30 p.m. until 7.30 p.m. was outwith Council policy that street collections should not be permitted during the week or after 6.00 p.m. The Committee considered whether or not the particular case could be treated as an exception to the policy.

Decision

The Committee unanimously agreed, having regard to the information presented, to grant the application under Section 119(5) of the Civic Government (Scotland) Act 1982 for the collection to take place on Friday 4 December 2015 from 5.30 p.m. until 7.30 p.m, subject to the Council's usual conditions.

The meeting ended at 10.45 a.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

9 December 2015

Licensing Committee

Title:	Civic Government (Scotland) Act 1982: Licensing Matters
Purpose:	To advise the Committee of Hearings to be determined all in terms of the Civic Government (Scotland) Act 1982.
Recommendation:	That the Committee considers and determines the matters before it.

1. Executive Summary

- 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.
- 1.2. A meeting of a local authority is open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under:
 - (a) the rule about 'confidential information' (as defined) or
 - (b) by Resolution.

(Local Government (Scotland) Act 1973, Section 50A, and especially Subsection 50A(4)).
- 1.3. Under the Resolution procedure, the Committee is entitled to resolve to exclude from the Meeting the press and the public for any one or more items of business on the grounds that otherwise "Exempt Information" of any type described in Part 1 of Schedule 7A to the Act might be disclosed.

1.4. The types of "Exempt Information" which may arise during Committee business include those described in Paragraphs 14 and 15 of that Schedule:

14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

15. "The identity of a Protected Informant" (where "Protected Informant" is defined in Part III to mean a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.)

1.5. Such a Resolution, once made, continues until the end of the Meeting unless the Committee earlier Resolves to revoke it.

2. Background

2.1 Appendix A:

Licences where Hearings have been convened.

3. Proposals

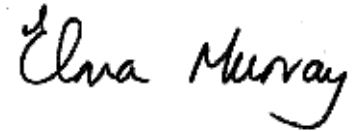
3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

4. Implications

Financial:	There are possible financial implications in relation to the refusal of any application.
Human Resources:	None
Legal:	There are possible legal implications in relation to the refusal of any application.
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	None
Community Benefits:	None

5. Consultation

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

A handwritten signature in black ink that reads "Elma Murray". The signature is written in a cursive, flowing style.

ELMA MURRAY
Chief Executive

Reference : PAT

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324305

Background Papers

None

Hearings		
Hearing 1	Taxi Driver's Licence	TDL/00119
Applicant and Address	Nicol Harris 14 Sersley Drive Kilbirnie KA25 6EZ	
Hearing 2	Taxi Operator's Licence	TL/125
Applicant and Address	Anton Docherty 2C Braehead Place Saltcoats KA21 5LB	
Hearing 3	Public Entertainment Licence	PEL/274
Applicant and Address	Irvine Bay Events Ltd 89 Seward Street Glasgow G41 1HS	
Proposed Site	Nobel Business Park Stevenston	

NORTH AYRSHIRE COUNCIL

Agenda Item 4

9 December 2015

Licensing Committee

Title:	Civic Government (Scotland) Act 1982 1. "No Smoking" Policy 2. Dress Code Policy
Purpose:	To update the Committee/provide clarification of Existing Policy
Recommendation:	That the Committee reviews the Policy and Licence Condition and gives guidance in their application.

1. Executive Summary

- 1.1 In terms of the Civic Government (Scotland) Act 1982, the Council as the Licensing Authority may attach Conditions to the grant of a licence for the driving and operation of both Taxis and Private hire Cars.
- 1.2 In terms of the Civic Government (Scotland) Act 1982, the Council operate a policy on "dress code" for licensed drivers.

2. Background

- 2.1 The Smoking Condition for taxi drivers and private hire car drivers is currently:
"Condition 3 - **No smoking** is permitted in the licensed vehicle. This prohibition relates to both passengers and drivers and applies in the vehicle at all times irrespective of whether or not it is on hire."
- 2.2 The Dress Code Condition for taxi drivers and private hire car drivers is currently:
"Condition 4 - When the vehicle is operating as a taxi the licenceholder must conduct himself/herself in a proper and civil manner and be clean and tidy in appearance. The Licensing Authority operates a **dress code** in respect of licenceholders and when working as a taxi driver male licenceholders are required to wear trousers or slacks and, for female licenceholders, a skirt, trousers or slacks, and all drivers a shirt, polo shirt, a blouse or similar top. You are not permitted to wear track suits, shorts or similar articles of casual clothing or articles more commonly associated with sporting activities. If you wish to wear a tie then the Licensing Authority requires, for reasons of your safety, that it be a clip on tie."

- 2.3 The Operator's licence also has a Condition "The licenceholder must ensure that, when the vehicle is operating as a taxi, **the driver** is clean and tidy in appearance".

The Private Hire Car Licence has a similar condition.

3. Proposals

- 3.1 The "no smoking" policy was adopted some years ago and since then a considerable number of people are now using 'E' cigarettes. This includes hire-car drivers smoking 'E' cigarettes within the confined space of their vehicles.

Most 'E' Cigarettes contain a battery, an atomiser and a replaceable cartridge. The cartridge contains nicotine in a solution of either propylene glycol or glycerine and water, and sometimes flavourings. When the user sucks on the device, a sensor detects the air flow and starts a process to heat the liquid inside the cartridge, so it evaporates to form water vapour. Inhaling this vapour delivers a dose of nicotine straight to the user's lungs.

'E' cigarettes are not illegal. The Smoking, Health and Social Care (Scotland) Act 2005, Part 1 is concerned with the health risks of passive smoking of tobacco. The Committee are invited to consider whether or not 'E' Cigarettes should be exempt from the current "no smoking policy" operated by the Licensing Committee and to give guidance.

The fact that the current Licence condition does not refer to 'E' cigarettes creates an enforcement problem. The potential consequence of a breach of a Licence condition is that the Licensing Authority may suspend the Licence due to a breach of condition (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11(2)(d)). The fact that the licence-holder might not have been convicted of a criminal offence would not prevent the Licensing Authority from proceeding. It may therefore happen that an officer of the Licensing Authority becomes aware of an apparent breach of the condition. The licence-holder might admit that he was 'smoking', but say that he was using an 'E' cigarette. The Licensing Authority might consider that in cases of uncertainty, the licence-holder should be given the benefit of the doubt, but this might mean that a person who had breached the 'no smoking' condition might have evaded it.

- 3.2 Condition 3 of the Taxi Driver's licence states "no smoking" is permitted within the licensed vehicle. Condition 3 of the Private Hire Car Driver's licence is similar. This prohibition relates to both passengers and drivers and applies within the vehicle at all times irrespective of whether or not the vehicle is on hire.

- 3.3 The following amendments of the Conditions in the Driver's Licences are suggested:

"Licence-holders must, when operating the licensed vehicle (whether or not it is at the time under hire), conform to the following 'Dress Code'.

1. Male drivers - trousers; a shirt or tee shirt (in either case, with a collar);
2. Female drivers - slacks or a skirt; and a blouse or similar top;
3. No clothing shall have printing or lettering;
4. No hat, cap or other headwear may be worn while driving;
5. The licenceholder is not entitled, while working as a hire-car driver, to wear tracksuits, shorts, casual clothing, or articles (including head-gear and foot-wear) which in the opinion of the Licensing Authority are associated with sporting activities. Any tie must be a 'clip on' tie.

- 3.4 Where the licence-holder is told by an officer of the Licensing Authority that, in the officer's opinion, the licence-holder's clothing is not consistent with the 'Dress Code', the licence-holder shall cease operating under the Licence and shall not resume unless and until he/she has changed clothing and an officer of the Licensing Authority has told him/her that the new clothing is consistent with the 'Dress Code' ".

- 3.5 The purpose of the Licensing Authority having a 'Dress Code' is to make clear to drivers, the public, and Council staff what is permitted, and what is not permitted. By stating what is not permitted, the Licensing Authority is giving an indication to licence-holders that wearing unsuitable clothing while driving a hire-car may indicate that he is not a fit and proper person to be the holder of a Licence, and that the Licensing Authority may consider that there are grounds to suspend the Licence or to refuse renewal of it.

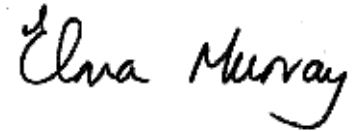
- 3.6 If the conditions are not amended as suggested then this would mean that the Dress Code could be evaded, as there might be doubt as to what was or was not prohibited. For example, the following might be put forward as suitable: jeans of any description or colour, training shoes, sandals, baseball caps, beanie hats, headbands, shirts or tee shirts without a collar, tracksuit bottoms, hooded sweatshirts, cargo pants, shorts, military-style clothing.

4. Implications

Financial:	none
Human Resources:	<p>E Cigarettes - A four month education phase would be carried out by the enforcement officer only warning those offending drivers.</p> <p>The Committee might also request that the Council's Press Office publicise any change to the 'Dress Code' or the approach to 'E' cigarettes</p>
Legal:	Any Licence Condition has the potential to be the basis of a decision to Suspend the Licence or to refuse to renew it.
Equality:	<p>Dress Code: Any Condition which seeks to impose a dress code runs the risk of challenge under the European Convention on Human Rights, Article 10 ("Freedom of expression"). The Article 10 issue comes up often in employment law, where an employer seeks to impose restrictions on employee appearance. The view is that when a person chooses what to wear he/she is exercising "freedom of expression", just as much as voicing opinions. Drivers are not Council employees. However the new Conditions may be thought reasonable to reflect an expectation of members of the public that Taxi/Private Hire Car Drivers will adhere to an acceptable standard of dress, and that their journey will be a positive experience.</p>
Environmental & Sustainability:	none
Key Priorities:	none
Community Benefits:	none

5. Consultation

- 5.1 No consultations are appropriate where the Committee reviews its own policy.

A handwritten signature in black ink that reads "Elma Murray". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

ELMA MURRAY
Chief Executive

Reference : WO'B/DR/PAT

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324305

Background Papers

none