

Colchester Borough Council

Licensing Committee Procedure Rules

INTRODUCTION

Under the Local Government Act 1972 the Council is required to establish committees to undertake non-executive functions under powers delegated from full Council. Licensing is not an executive function and cannot be discharged by the Cabinet.

The Council has delegated its licensing functions to the Licensing Committee.

The Licensing Committee has delegated to Sub-Committees of the Licensing Committee authority to hear and determine applications that may arise in a variety of circumstances under the Licensing Act 2003 and the Gambling Act 2005. Meetings of Sub-Committees are referred to in these Procedure Rules as Hearings. Sub-Committee meetings in relation to Licensing Act 2003 matters will comply at all times with The Licensing Act 2003 (Hearings) Regulations 2005 (“the Hearings Regulations”). Sub-Committee meetings in relation to Gambling Act 2005 matters will comply with The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (“the Proceedings Regulations”).

1. Application of the Meetings General Procedure Rules

- (1) The Meetings General Procedure Rules shall apply to all meetings of the Licensing Committee and Licensing Sub-Committees except as varied by these Licensing Committee Procedure Rules.

2. Terms of Reference of the Licensing Committee

- (1) To be responsible for all the Council's licensing and registration functions as detailed in Part B of Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

[NB. The Committee has delegated to the Assistant Director - Environment: -

- (a) determination of all licensing applications under the Local Government (Miscellaneous Provisions) Acts where no objections have been received; including Hackney Carriages, Private Hire vehicles and drivers, and Sex Establishments;
 - (b) determination of all licensing applications under the Licensing Act 2003 where no objections and /or representations have been received; including applications for the sale by retail of alcohol, the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club, the provision of regulated entertainment and the provision of late night refreshment; and
 - (c) determination of all gambling applications under the Gambling Act 2005 where no objections and /or representations have been received; including applications for, variation of or transfer of a premises licence, application for a provisional statement and club gaming/club machine permits.]
- (2) To hear and determine licensing applications and appeals where objections and /or representations have been received; including applications under the Local Government (Miscellaneous Provisions) Acts for Hackney Carriages and Private Hire Vehicles and drivers, Sex Establishments, Sexual Entertainment Venue and any other licensing matters as may from time to time require determination by the Committee.

- (3) To deal with all licensing functions pursuant to the Licensing Act 2003 including the determination, amendment and review of the Council's Statement of Licensing Policy.
- (4) To deal with all gambling functions pursuant to the Gambling Act 2005 including the determination, amendment and review of the Council's Statement of Gambling Policy.

3. Terms of Reference of Licensing Sub- Committees

- (1) To hear and determine applications where objections and /or representations have been received in respect of Licensing Act 2003 applications namely: -
premises licences, provisional statements, variation of a premises licences, variation in the details of an individual specified in a premises licence as the designated premises supervisor, transfer of premises licences, review of premises licences, review of a premises licence following a closure order issued by the police and the exercise of powers by a magistrates' court, club premises certificates, variation of club premises certificates, review of club premises certificates,
- (2) To hear and determine applications where objections and /or representations have been received in respect of Gambling Act 2005 applications namely:-
premises licences, variation of premises licences, transfer of a premises licences, grant of a provisional statements, grant of club gaming/ club machine permits, applications for other permits, cancellation of licensed premises gaming permits, applications of other permits, cancellation of licensed premises gaming machine permits, consideration of temporary use notices and consideration of occasional use notices.

4. Composition of the Licensing Committee

- (1) The Licensing Committee when meeting to hear and determine sex establishment applications and sexual entertainment venue licences, shall comprise three Councillors, all of whom shall have undertaken suitable training in accordance with the criteria set out in (4) below.
- (2) The Licensing Committee when meeting to hear and determine hackney carriage, private hire appeals and applications, shall comprise three Councillors, all of whom shall have undertaken suitable training in accordance with the criteria set out in (4) below.
- (3) The Licensing Committee when meeting to consider Licensing Act 2003 and Gambling Act 2005 matters shall comprise eleven Councillors, all of whom shall have undertaken suitable training in accordance with the criteria set out in (4) below.
- (4) The following criteria shall apply in respect of training:
 - Attendance must be at the training sessions provided within the context of the member training programme which will be provided on a modular basis.
 - Attendance must be for the duration of each training session.
 - Membership of the Committee does not provide any exemption from attendance at a training session.
 - A record of attendance at training sessions will be maintained and updated each year by the Democratic Services and will be circulated to all members at the start of the year.

5. Composition of Licensing Sub-Committees

- (1) Licensing Sub-Committees shall comprise three members of the Licensing Committee. Provided always that a member of the Licensing Committee shall not be eligible to be a member of a Licensing Sub-Committee which is determining an application based in the Ward which that Councillor represents.

6. Licensing Committee meetings and Sub-Committee Hearings – when and where?

- (1) Meetings may be called from time to time as and when appropriate. The Licensing Committee and Licensing Sub-Committees shall meet at the Town Hall, High Street, Colchester or another location to be agreed by the Chairman of the Licensing Committee.
- (2) Meetings of the Licensing Committee shall be arranged by the Proper Officer who will normally give a minimum of five clear working days' notice and comply with the Access to Information Rules set out in Part 4 of this Constitution.
- (3) Sub-Committee Hearings may be called as and when appropriate. There may be the need to convene more than one Licensing Sub-Committee on a particular day depending on the amount or urgency of business to be transacted. Hearings shall be arranged by the Proper Officer in accordance with the appropriate statutory notice periods as prescribed by the Hearings Regulations and the Proceedings Regulations from time to time depending on the nature of the matters to be determined.

7. Public or private meetings of the Licensing Committee and Licensing Sub-Committees?

- (1) Meetings of the Licensing Committee will be held in public except in so far as the matters for decision relate to issues which can be dealt with in private in accordance with the Access to Information Rules set out in Part 4 of this Constitution.
- (2) Licensing Sub-Committee Hearings will normally be held in public except that the Sub-Committee may decide to exclude the public from all or part of its proceedings if it is in the public interest in accordance with the Hearings Regulations and Proceedings Regulations (as appropriate).

8. Quorum

- (1) The quorum for the Licensing Committee shall be six members which must be maintained for the duration of the meeting.
- (2) The quorum for the Licensing Committee when determining hackney carriage and private hire appeals shall be two members which must be maintained for the duration of the meeting.
- (3) The quorum for the Licensing Committee when determining sex establishments and sexual entertainment venue licences shall be two members which must be maintained for the duration of the meeting.
- (4) The quorum for Licensing Sub-Committees shall be two members which must be maintained for the duration of the Hearing.

9. Voting

- (1) All members of the Licensing Committee and Licensing Sub-Committees are entitled to vote.

HOW ARE LICENSING COMMITTEE AND LICENSING SUB-COMMITTEE HEARINGS CONDUCTED?

10. Who presides?

- (1) Licensing Committee meetings will be chaired by a Chairman who shall be appointed by the Committee on an annual basis. In the absence of the Chairman the members present may appoint a Chairman for the meeting from those present.
- (2) Licensing Sub-Committee Hearings will be chaired by a Chairman who shall be appointed from those members present at the Hearing.

11. Who may attend Licensing Committee and Licensing Sub- Committee Hearings?

- (1) Members of the public may attend meetings of the Licensing Committee except:
 - (a) when it is sitting in a quasi-judicial capacity i.e. considering an application for a licence, Have Your Say! does not apply; or
 - (b) when exempt or confidential information is being considered where the press and public, may be excluded by resolution of the Committee in accordance with the Access to Information Rules contained in Part 4 of this Constitution or where it is in the public interest in accordance with the Hearings Regulations or the Proceedings Regulations (as appropriate).
- (2) Members of the public may attend Licensing Sub-Committee Hearings except:
 - (a) they may not address the Sub-Committee; or
 - (b) the public (including a party and any person assisting or representing a party) may be excluded from all or part of a Hearing where the Sub-Committee considers that the public interest in doing so outweighs the public interest in the Hearing, or that part of the Hearing, taking place in public.

12. What business?

- (1) Meetings of the Licensing Committee will include the following business:
 - (a) Have Your Say!
 - (b) Consideration of the minutes of the last meeting;
 - (c) Urgent Items;
 - (d) Declarations of interest, if any;
 - (e) Consideration of any matter within the Committees Terms of Reference.

13. Recording of Decisions of the Licensing Committee

- (1) All decisions will be made by a simple majority of the members of the Committee present at the meeting.
- (2) Following a meeting of the Committee at which a report (whether oral or in writing) has been received and a recommendation has been made, the Proper Officer shall ensure that a written statement is kept which must include the following: -

- (a) record of the decision;
- (b) record of reasons for the decision;
- (c) record of any conflict of interest declared; and
- (d) any dispensation granted by the Monitoring Officer, where appropriate.

14. Licensing Sub-Committee Hearing Determinations

- (1) All determinations shall be made in accordance with the Hearings Regulations and the Proceedings Regulations (as appropriate) and the Proper Officer shall ensure that a permanent record of the Hearing shall be taken.
- (2) Where a Hearing is in relation to: -
 - (a) counter notice following police objection to a temporary event notice;
 - (b) review of a premises licence following closure order;

the Sub-Committee will make its determination at the conclusion of the Hearing.

- (3) For other Hearings the Sub-Committee will make its determination within the period of five working days beginning with the day or the last day on which the Hearing was held. Notification of the Sub-Committee's determination shall be given in accordance with the Hearings Regulations or the Proceedings Regulations (as appropriate).

PROCEDURE FOR THE DETERMINATION OF LICENCES

15. Introduction

- (1) The Licensing Act 2003 and the Hearings Regulations and the Gambling Act 2005 and the Proceedings Regulations provide that the Council as Licensing Authority may determine its own procedures to be followed at a Hearing. Sub-Committee Hearings are required to observe the rules of natural justice and the parties are entitled to a fair hearing under the Human Rights Act 1998. The Licensing Authority is required to explain to the parties the procedure which it proposes to follow at the hearing. The Licensing Authority will permit the parties to have an equal maximum period of time in which to exercise their rights to:
 - give further information and call any witness in support of their application, representations or notice (as applicable),
 - question any other party or witness, and
 - address the Sub-Committee.
- (2) Those present at a Hearing under the Licensing Act 2003 may be the Applicant, any person representing or supporting the Applicant, plus any witnesses; the Council's Licensing Officer, representatives from Responsible Authorities and their witnesses; objectors to the application, a Legal Advisor and Committee Administrator for the Council. In addition, members of the public and press may attend but not address the Sub-Committee.
- (3) Those present at a Hearing under the Gambling Act 2005 may be the Applicant, any person representing or supporting the Applicant, plus any witnesses; the Council's Licensing Officer, representatives from Responsible Authorities and their witnesses; objectors to the application, Ward Councillors who have submitted representations (in accordance with the Proceedings Regulations in writing beforehand; a Legal Advisor and

Committee Administrator for the Council. In addition, members of the public and press may attend but not address the Sub-Committee.

- (4) Meetings of the Licensing Committee will normally be held in public unless it decides to exclude the public and the press from all or part of the proceedings by resolution of the Committee in accordance with the Access to Information Rules contained in Part 4 of this Constitution. If any other Councillors are present who are not members of the Committee, they must withdraw as well.
- (5) Licensing Sub-Committees will follow the procedure set out in Schedule A when hearing and determining Licensing Act 2003 applications.
- (6) Licensing Sub-Committees will follow the procedure set out in Schedule B when hearing and determining Gambling Act 2005 applications.
- (7) The Licensing Committee will follow the procedure set out in Schedule C when determining sex establishment and sexual entertainment venue applications and Schedule D when hearing hackney carriage and private hire applications and appeals.

16. Licensing Sub-Committee General Powers

- (1) Any time limit provided for in the Hearings Regulations or the Proceedings Regulations may be extended for a specified period where the Licensing Authority or a Sub-Committee considers this to be necessary in the public interest. In this instance notice to all parties will be given forthwith.
- (2) A Sub-Committee may adjourn a Hearing to a specified date or arrange for a Hearing to be held on specified additional dates where it considers this necessary for its consideration of any representations or notice made by a party. The Sub-Committee must give notice forthwith of its decision to all parties of the date, time and place to which the Hearing has been adjourned or the additional date at which the Hearing is to be held.

Provided that a Sub-Committee shall not exercise the powers referred to in paragraphs (1) and (2) above where the effect would be that an application would fail to reach a determination on a review under section 167 of the Licensing Act 2003 (review of premises licence following closure order) within the 28 day period specified in subsection (3) of that section or the determination of an application or a review under sections 162(1) or 201(4) of the Gambling Act 2005.

Schedule A

Licensing Sub-Committee Hearing Procedure for Hearings under the Licensing Act 2003

- (1) All questions and statements will be directed through the Chairman.
- (2) The Chairman will at the beginning of the Hearing explain to the parties the procedure to be followed and shall consider any request made by a party for permission for another person to appear at the Hearing.
- (3) The Hearing shall take the form of a discussion led by the Council's representative.
- (4) Cross examination shall not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may be.
- (5) The Chairman of the Sub-Committee may require any person attending the Hearing who in his opinion is behaving in a disruptive manner to leave the Hearing and may:
 - (a) refuse to permit that person to return, or
 - (b) permit him to return only on such conditions as the Sub-Committee may specify.

Provided that any such person may before the end of Hearing submit to the Council in writing any information which they would have been entitled to give orally had they not been required to leave.

- (6) A party who wishes to withdraw any representations they have made may do so:
 - (a) by giving notice to the Council no later than 24 hours before the day or first day on which the Hearing is to be held, or
 - (b) orally at the Hearing.
- (7) The Sub-Committee in considering any representations or notice made by a party may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the Hearing, or with the consent of all other parties, at the Hearing.
- (8) The Sub-Committee shall disregard any information given by a party or any person to whom permission to appear at the Hearing had been given which is not relevant to:
 - (a) their application, representations or notice(as applicable) or in the case of another person, the application representations or notice of the party representing their appearance, and
 - (b) the promotion of the licensing objectives or, in relation to a Hearing to consider a notice given by a chief officer of police, the crime prevention objective.
- (9) If a party has informed the Council that he does not intend to attend or be represented at a Hearing, the Sub-Committee may decide to proceed with the Hearing in his absence.
- (10) If a party has not informed the Council that he does not intend or be represented at a Hearing and fails to attend or be represented at a Hearing, the Sub-Committee may:
 - (a) where it considers it to be necessary in the public interest adjourn the Hearing to a specified date (notice being given forthwith to the parties concerned of the date, time

and place to which the Hearing has been adjourned), or

(b) hold the Hearing in the party's absence.

Where the Sub-Committee agrees to hold the Hearing in the absence of a party, the Sub-Committee shall consider at the Hearing the application, representations or notice made by that party.

The Council's case: -

(11) The Chairman will invite the Council's representative to summarise the report relating to the application under consideration.

The Applicant's case: -

(12) The Applicant and/or representative will begin with their opening remarks and present their case.

(13) The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.

(14) The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

Submissions from other persons or their representatives and from Responsible Authorities: -

(15) Each party will present their case.

(16) Each party's witnesses (if any) will give evidence in support of the party's case.

(17) Each party and their witnesses may be questioned by the Chairman and members of the Sub-Committee.

(18) Each party may question their witness again to clarify any points which may have arisen.

(19) If the Applicant or other parties wish to question each other, questions may be directed through the Chairman.

(20) Closing Statements may be made by the Applicant and/or representative.

(21) The Chairman will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the Sub- Committee

(22) The Applicant and/or representative, other persons, Responsible Authorities and the members of the public and the press will leave the room to allow the Sub-Committee to determine the application. During this process the Sub-Committee members may ask for legal advice from the Legal Advisor.

(23) The Applicant and/or representative, other persons, Responsible Authorities and the members of the public and the press will be invited to return to the room when the Sub-Committee's determination will be announced. Written details of the determination and the grounds upon which it is based will be sent to all parties concerned in accordance with the Hearings Regulations.

Schedule B

Licensing Sub-Committee Hearing Procedure for Hearings under the Gambling Act 2005

- (1) The Hearing shall take place in public unless the Sub-Committee is satisfied, having regard to all the circumstances of the case, that it is necessary to hold all or part of the hearing in private. The Sub-Committee shall have regard to any unfairness to a party that is likely to result from holding the Hearing in public and the need to protect as far as possible the commercial or other legitimate interests of a party.
- (2) All questions and statements will be directed through the Chairman.
- (3) The Chairman will at the beginning of the Hearing explain to the parties the procedure to be followed and shall consider any request made by a party for permission for another person to appear at the Hearing.
- (4) The Hearing shall take the form of a discussion led by the Council's representative.
- (5) Cross examination shall not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may be.

Exclusion of Disruptive Persons

- (6) The Chairman of the Sub-Committee may require any person attending the Hearing who in his opinion is behaving in a disruptive manner to leave the Hearing and may:
 - (c) refuse to permit that person to return, or
 - (d) permit him to return only on such conditions as the Sub-Committee may specify.

Provided that any such person may before the end of Hearing submit to the Council in writing any information which they would have been entitled to give orally had they not been required to leave.

Failure of Parties to attend the Hearing

- (7) The Sub-Committee may proceed with a Hearing in the absence of a party or party's representative if the party has-
 - (a) informed the Council that they do not intend to attend or be represented at the Hearing (and has not subsequently advised the Council otherwise);
 - (b) failed to inform the Council whether they intend to attend or be represented at the hearing;
 - (c) left the Hearing in circumstances enabling the Sub-Committee reasonably to conclude that they do not intend to participate further.
- (8) If a party has informed the Council that they intend to attend or be represented but fail to attend or be so represented, the Sub-Committee may-

- (a) adjourn the hearing to a specified date if it considers it to be in the public interest, or
- (b) proceed with the Hearing in the Party' absence.

Where the Hearing is adjourned notice shall be given forthwith to the parties concerned of the date, time and place to which the Hearing has been adjourned.

- (9) Where the hearing proceeds in the absence of a party, the Sub-Committee shall consider at the Hearing the application or representations made by that party.

The Council's case: -

- (10) The Chairman will invite the Council's representative to summarise the report relating to the application under consideration.

The Applicant's case: -

- (11) The Applicant and/or representative will begin with their opening remarks and present their case.
- (12) The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
- (13) The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

Submissions from other parties (these will include interested parties, Ward Councillors (who are an interested party themselves or are acting in the capacity as a representative of an interested party) and representatives from responsible authorities: -

- (14) Each party will present their case.
- (15) Each party's witnesses (if any) will give evidence in support of the party's case.
- (16) Each party and their witnesses may be questioned by the Chairman and members of the Sub-Committee.
- (17) Each party may question their witness again to clarify any points which may have arisen.
- (18) If the Applicant or the interested parties wish to question each other, questions may be directed through the Chairman.
- (19) Closing Statements may be made by the Applicant and/or representative.
- (20) The Chairman will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the Sub- Committee

- (21) The Applicant and/or representative, interested parties, Ward Councillors, responsible authorities and the members of the public and the press will leave the room to allow the Sub-Committee to determine the application. During this process the Sub-Committee members may ask for legal advice from the Legal Advisor.
- (22) The Applicant and/or representative, interested parties and Ward Councillors, responsible authorities and the members of the public and the press will be invited to

return to the room when the Sub-Committee's determination will be announced. Written details of the determination and the grounds upon which it is based will be sent to all parties concerned.

Schedule C

Licensing Committee Procedure relating to Sex Establishment Licences made under the Local Government (Miscellaneous Provisions) Act 1982

- (1) All questions and statements will be directed through the Chairman.
- (2) The Chairman will make opening remarks which introduce those present and ensuring that all those present understand the procedure.
- (3) The Chairman will invite the Council's Licensing Officer to summarise the report relating to the application under consideration.

The Applicant's case: -

- (4) The Applicant and/or representative will begin with their opening remarks and present their case.
- (5) The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
- (6) The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

Submissions from Objectors (including Councillors who have made written objections to the Council stating in general terms the grounds of their objection to the grant, renewal or transfer of the licence not later than 28 days after the date of the application).

The Applicant and/or representative may address the Committee on a point that arisen on their case following the submissions by the Objectors.

- (7) The Applicant and their witnesses and the Objectors may be questioned by the Chairman and members of the Committee.
- (8) Each party may question their witness again to clarify any points which may have arisen.
- (9) If the Applicant or the objectors wish to question each other, questions may be directed through the Chairman.
- (10) Closing Statements may be made by the Applicant and/or representative.
- (11) The Chairman will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the Committee

- (12) The Applicant and/or representative, the objectors, Ward Councillors, the representatives from the Police, the Fire Authority and the Council and the members of the public and the press will leave the room to allow the Committee to determine the application. During this process the Committee members may ask for legal advice from the Legal Advisor.

- (13) The Applicant and/or representative, the objectors, Ward Councillors, the representatives from the Police, the Fire Authority and the Council and the members of the public and the press will be invited to return to the room when the Committee's decision will be announced. Written details of the decision and the grounds upon which it is based will be sent to all parties concerned as soon as possible.

Schedule D

Licensing Committee Procedure relating to Hackney Carriage Licences and Private Hire Vehicle Licences made under the Local Government (Miscellaneous Provisions) Acts.

- (1) All questions and statements will be directed through the Chairman.
- (2) The Chairman will make opening remarks which introduce those present and ensuring that all those present understand the procedure.

The Council's case: -

- (3) The Council's representative will begin with their opening remarks and present their case.
- (4) The Council's witnesses (if any) will give evidence in support of the Council's case.
- (5) The Council's representative and/or representative may question the Council's witness again to clarify any points which may have arisen.

Submission from the Applicant: -

- (6) The Applicant and/or representative will begin with their opening remarks and present their case.
- (7) The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.
- (8) The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.
- (9) Each party and their witnesses may be questioned by the Chairman and members of the Committee.
- (10) Each party may question their witness again to clarify any points which may have arisen.
- (11) If the Applicant or the objectors wish to question each other, questions may be directed through the Chairman.
- (12) Closing Statements may be made by the Council and/or representative.
- (13) The Chairman will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the Committee

- (14) The Applicant and/or representative, the objectors, Ward Councillors, the representatives from the Council and the members of the public and the press will leave the room to allow the Committee to determine the application. During this process the Committee members may ask for legal advice from the Legal Advisor.

- (15) The Applicant and/or representative, the objectors, Ward Councillors, the representatives from the Council and the members of the public and the press will be invited to return to the room when the Committee's decision will be announced. Written details of the decision and the grounds upon which it is based will be sent to all parties concerned as soon as possible.