

Licensing Committee

Grand Jury Room, Town Hall

11 March 2009 at 6:00pm

The Licensing Committee deals with

licensing applications for public entertainments, hackney carriages and private hire vehicles, sex establishments, gaming and lotteries, door registration scheme and other appeals.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at www.colchester.gov.uk.

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

Access

There is wheelchair access to the Town Hall from West Stockwell Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call, and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets are located on the second floor of the Town Hall, access via the lift. A vending machine selling hot and cold drinks is located on the ground floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Colchester Borough Council, Angel Court, High Street, Colchester
telephone (01206) 282222 or
textphone 18001 followed by the full number that you wish to call
e-mail: democratic.services@colchester.gov.uk
www.colchester.gov.uk

**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
11 March 2009 at 6:00pm**

Members

Chairman : Councillor Cook.
Deputy Chairman : Councillor Garnett.
Councillors Blundell, Chuah, Cope, Hogg, Lilley, Martin,
Oxford, Quarrie, Sykes and Tod.

Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item

on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 2

To confirm as a correct record the minutes of the meetings held on 26 November and 17 December 2008.

7. Penalty Point Scheme

3 - 8

See report by the Head of Environmental and Protective Services.

8. Member Training

9 - 12

See report by the Head of Environmental and Protective Services.

9. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE

26 November 2008

Present: - Councillor Cook (Chairman)
Councillors Hogg, Lilley, Quarrie and Sykes

The Committee resolved under Section 100A(4) of the Local Government Act 1972 and the Local Government (Access to Information)(Variation) Order 2006 to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A to the Local Government Act 1972

16. Hackney Carriage Driver's Licence // Appeal

The Committee considered a report by the Head of Environmental and Protective Services on an appeal against the condition imposed by the Council on the grant of the Hackney Carriage Vehicle Licence that:-

- Must not sell the business for a period of 5 years from first issue, except in circumstances where it was accepted by the Council that there was an exceptional or compelling need to do so.

The Licensing Manager and the appellant and his witness attended, presented their cases, then withdrew.

RESOLVED that-

- (i) the appeal be upheld.
- (ii) after careful consideration of the evidence presented, the Licensing Committee considered that there were exceptional and compelling circumstances to grant the appeal.

LICENSING COMMITTEE

17 December 2008

Present: - Councillor Cook (Chairman)
Councillors Garnett, Lilley, Sykes and Tod

The Committee resolved under Section 100A(4) of the Local Government Act 1972 and the Local Government (Access to Information)(Variation) Order 2006 to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A to the Local Government Act 1972

17. Hackney Carriage/Private Hire Driver's Licence // Appeal

The Committee considered a report by the Head of Planning, Protection and Licensing on an appeal against the Licensing Manager's decision to refuse to grant a hackney carriage/private hire driver's licence.

The Licensing Manager and the appellant and his witness attended, presented their cases, then withdrew.

RESOLVED that-

- (i) the appeal be upheld.
- (ii) a one year probationary licence be granted subject to the condition that "if during the period of this probationary licence you receive any criminal or motoring convictions, or do not fully comply with the Council's hackney carriage and private hire driver and vehicle licensing conditions, then this licence will be automatically revoked".



Licensing Committee

Item

7a

11 March 2009

Report of	Head of Environmental and Protective Services	Author	Simon Harvey
Title	Update on Penalty Point Scheme		☎ 282701
Wards affected	All		

This report concerns an update to the Penalty Point Scheme for hackney carriage/private hire drivers/operators.

1. Decision(s) Required

- 1.1 To agree the inclusion, in the Colchester Borough Council's Penalty Point Scheme for hackney carriage/private hire drivers/operators, of the offences set out in paragraph 5.1 below.
- 1.2 That these offences come into immediate effect.

2. Reasons for Decision(s)

- 2.1 To update the penalty point scheme to reflect the needs of the service.

3. Alternative Options

- 3.1 No alternative options are presented.

4. Supporting Information

- 4.1 The penalty point scheme was approved by the Committee in July 2006 and amended in February 2008. It has given the Licensing Authority and its licensing enforcement officers a far greater degree of flexibility and transparency when investigating complaints and/or breaches of licence conditions and in administering appropriate sanctions. Prior to the introduction of the scheme the Licensing Authority could only suspend or revoke a licence or issue a warning letter.
- 4.2 It has become apparent in the course of the enforcement officers' work in relation to hackney carriage/private hire drivers/operators that the offences set out below and highlighted in Appendix 1 need to be added to the scheme to be able to administer appropriate proportionate and transparent sanctions against hackney carriage/private hire drivers and operators.

5. Proposals

- 5.1 It is proposed that the following be added to the penalty points scheme-
 42. Failing to conform to statutory road signs or illegally parking.
 43. Drinking or eating in a licensed vehicle or whilst the vehicle is in motion.

44. Playing of a radio or other sound producing equipment without the express permission of the hirer.
45. Causing excessive noise from any radio or sound producing equipment which annoys anyone either in or outside of the vehicle.
46. Proprietor displaying an unauthorised sign i.e. commercial advertisement on vehicle.
47. Failure to carry an assistance dog without exemption certificate.
48. Failure to attend at the requested time for a pre arranged booking without sufficient good cause.
49. Driving a licensed vehicle which is not properly maintained.
50. Leaving a Hackney Carriage vehicle on a taxi rank parked and unattended without reasonable excuse.
51. Allowing a Hackney carriage to remain on a taxi rank in such a position as to cause obstruction to other hackney carriage vehicles.
52. Driver smoking in a vehicle.
53. Driver allowing a hirer to smoke in a licensed vehicle.
54. Smoking or allowing smoking in Operators premises.
55. Failing to deal with lost property in an appropriate manner.
56. Failure to comply with Council vehicle livery.

6. Standard References

- 6.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.



COLCHESTER BOROUGH COUNCIL



Local Government (Miscellaneous Provisions)
Act 1976

PRIVATE HIRE DRIVER'S PENALTY POINT SCHEME TABLE

(Note Colchester Borough Council issues combined
Private Hire and Hackney Carriage Licences)

	Offence/Breach of Conditions	Maximum Points applicable	Driver	Vehicle Owner or operator
1	Providing false or misleading information on licence application form, or failing to provide relevant information.	6*	x	x
2	Driver not holding a current Hackney Carriage/Private Hire driver licence	12*	x	x
3	Failure to notify the Council of change of address within 7 days	3*	x	x
4	Refusal to accept hiring without reasonable cause e.g. Drunk or rude customer.	4*	x	
5	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6*	x	
6	Private hire touting/specking	9*	x	x
7	Failure to display a current vehicle excise licence	12*		x
8	Using unlicensed vehicle or vehicle without insurance.	12*		x
9	Failure to produce relevant documents within timescale when requested.	4*	x	x
10	Unsatisfactory condition of vehicle, interior or exterior.	4	x	x
11	Failure to produce Hackney Carriage or Private Hire vehicle for testing when required.	4*		x
12	Using a vehicle subject to a suspension order issued by the licensing officer or a police officer.	12	x	x
13	Using a vehicle for which the licence has been suspended or revoked.	12*	x	x
14	Failure to report within 72 hours accident or damage to licensed vehicle.	4*	x	x
15	Overloading of licensed vehicle (including exceeding the licensed number of passengers)	6*	x	

16	Failure to display external licence plate as required.	6*		x
17	Failure to notify transfer of Private Hire or Hackney Carriage vehicle licence within 14 days.	4*		x
18	Failure to maintain an operational fire extinguisher in accordance with the conditions, where fitted.	3		x
19	Failure to maintain records in a suitable form of the commencement and cessation of work of each driver each day.	5*		x
20	Failure to produce on request records of drivers work activity.	5*		x
21	Using incorrect tariff or an uncertified taximeter.	6*	x	x
22	Obstruction of an authorised officer or police officer.	6*	x	x
23	Displaying any feature on private hire vehicle that may suggest it is a Taxi.	6*		x
24	Using a Private Hire vehicle the appearance of which suggests it is a Hackney Carriage.	6*		x
25	Driver not holding a current DVLA Licence.	12*	x	x
26	Failure to display driver's badge.	4*	x	
27	Failing to notify change in medical circumstances.	6	x	x
28	Unsatisfactory appearance of driver or not conforming to dress code.	3	x	
29	Failure to observe rank discipline.	3*	x	
30	Operator failure to maintain proper records of private hire vehicle.	3*		x
31	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced.	6*		x
32	Failure to produce tariff or advise charges when requested by a hirer.	3	x	x
33	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspension of such licence.	4*		x

34	Unsatisfactory behaviour or conduct of driver. e.g. Abusive language etc.	3-9*	x	
35	Failure to notify the Council of any motoring or criminal convictions or cautions, in writing within seven days, during period of current licence.	6*	x	x
36	Failure to display internal licence plates.	4	x	x
37	Late application for renewal on expiry of a licence.	6	x	x
38	Failure to return drivers badge within 14 days after due notice being given.	4*	x	
39	Standard of driving unacceptable, witnessed by authorised officer or police officer.	6	x	
40	Misuse of mobile telephone (includes using the mobile telephone whilst the vehicle is in motion)	3	x	
41	Failing to accept Travel tokens for an legitimate journey	3	x	x
42	Failing to conform to statutory road signs or illegally parking	3	x	
43	Drinking or eating in a licensed vehicle whilst the vehicle is in motion.	3	x	
44	Playing of a radio or other sound producing equipment without the express permission of the hirer.	3	x	
45	Causing excessive noise from any radio or sound producing equipment which annoys anyone either in or outside of the vehicle.	3	x	
46	Proprietor displaying an unauthorised sign. i. e. commercial advertisement on vehicle.	3		x
47	Failure to carry assistance dog without exemption certificate.	3	x	x
48	Failure to attend at the requested time for a pre arranged booking without sufficient good cause.	3	x	x
49	Driving a licensed vehicle which is not properly maintained.	6	x	x
50	Leaving a Hackney Carriage vehicle on a taxi rank parked and unattended without reasonable excuse.	3*	x	

51	Allowing a Hackney Carriage to remain on a taxi rank in such a position as to cause obstruction to other hackney carriage vehicles.	3*	x	
52	Driver smoking in vehicle. (effective 1/7/2007)	3	x	
53	Driver allowing hirer to smoke in licensed vehicle. (effective 1/7/2007)	3	x	
54	Smoking or allowing smoking in Operators premises. (effective 1/7/2007)	3		x
55	Failing to deal with lost property in the appropriate manner.	3	x	
56	Failure to comply with Council vehicle livery	3	x	x

Matters identified with an asterisk are direct contraventions of the Town Police Clauses Act 1847 or Local Government (Miscellaneous Provisions) Act 1976 or other statutory requirements and may result in prosecution in addition to any points penalty incurred.



Report to the Licensing Committee

Item
7b

11 March 2009

Report of	Head of Environmental and Protective Services	Author	Simon Harvey ☎ 282701
Title	Member Development Programme		
Wards affected	All		

This report concerns the implementation of the member development programme

1. Decision Required

- 1.1 To review the progress of the member development programme in the light of its operation over the past 7 months.
- 1.2 To amend the constitution to reflect that “attendance must be at the training sessions provided within the context of the members training programme”.

2. The delivery of the Member Development Programme

New Member training

- 2.1 The new programme obviously started some way into the new municipal year and therefore it has not been able to run its full course in particular the introduction phase for members new to the Committee. However despite this a number of key elements have been introduced and the progress of each area is indicated below.

Introductory Training

Introduction to the relevant officers
Committee procedure rules
Roles and responsibilities
Explanation of the training programme - **Not completed although some elements have been covered**

Core training

Key Skills – for members to determine their own training requirements from the sessions provided under the member development charter. The skills of particular relevance to licensing are communication and challenge skills – **Ongoing**

Key Knowledge – the acts relating to licensing (in particular the Licensing Act 2003 and hackney carriage/private hire licensing legislation), responsibilities under the Crime and Disorder Act and human rights, equality and diversity law. Whilst Council officers are there to advise the Committee on law, practice and procedure however, individual members are required to have some knowledge of legal principles, common procedures and structured decision making tools - **Completed**

Activities – observation of two Licensing Sub-Committee Hearings dealing with Licensing Act applications and one Licensing Sub-Committee meeting dealing with a hackney carriage/private hire appeal before being able to hear and determine an application/appeal and attendance at a post sitting review to discuss any issues – **Completed in part**

Review – to take place at the end of the municipal year to provide a mechanism to enable members to appraise the training provided and to suggest topics for possible inclusion in the modular programme – **Not yet completed**

2.2 New members of the Committee have completed courses in the Licensing Act 2003, the Gambling Act 2005 and in Hackney Carriage/Private Hire Licensing. These courses have been provided externally. In addition, they all attended meetings as observers on both Licensing Act applications and hackney carriage/private hire appeals before taking part in meetings as a full member of the Committee.

2.3 The corporate training programme is in operation and is being developed as part of the East of England Charter for Elected Member Development. Some general skills training has taken place and if any member identifies a specific development/training need; this can be met on an individual basis by using the training budgets allocated to each group.

Experienced Member training

2.4 Licensing Development Programme

Committee Reviews - using post sitting reviews to identify good practise and identify any problems – **Not yet completed**

Modular Training units - to attend a certain number during the year from the courses offered under the programme to be chosen by members to address their individual training needs – **Programme is running**

Self directed online learning – the use of an online facility to update and refresh skills if wished – **Module is available and details are about to be circulated on this.**

Modular Learning

2.5 The programme of modular sessions has started and listed below are the sessions that have either taken place or are planned to take place this municipal year –

- Under age drinking and trading standards
- Enforcement/Evening visit with the Licensing Enforcement Officers
- Legal principles (compulsory)
- Drugs awareness
- Self directed online learning on licensing
- Premises awareness (compulsory)

Chairman's Programme

2.6 The programme for a new Licensing Chairman centres upon their role in directing a quasi-judicial hearing and will address the following-

- Role and responsibilities under the various licensing legislation.
- Role of the Chairman in the meeting room in directing the meeting, addressing the needs of all parties attending the hearing and managing conflict.

- Role of the Chairman in private session in leading discussions, highlighting key issues, managing conflict, structured decision making, agreeing and preparing decisions and the reasons for such decisions - **Not yet completed**

3.0 Changes to the Training Programme// Matters to be considered

- 3.1 The Constitution requires that members should complete a minimum of 12 points of training in any one year. It was envisaged by officers that approximately 6 modules would be provided from which members would need to complete 4. It suggested because of the importance of the compulsory modules that these should be weighted and worth 4 points each. The other module courses would be worth 2 points each.
- 3.2 It is hoped that in the new municipal year a programme of modules will be available as early as possible in the new municipal year to enable members to choose at the beginning of the year and plan accordingly. It is envisaged that the compulsory modules will be repeated to ensure that members new to the Committee will have the benefit of this information.
- 3.3 In addition, it is necessary to make a change to the scheme to recognise the external training that members of the Committee might do outside of the modular programme. It is suggested that 2 points be awarded for such attendance. Details of courses that may be of interest to Licensing Committee members will be circulated to the Committee members as and when they become available.
- 3.4 It is apparent from the training record that some members have had no difficulty in reaching the points of training required whilst others would appear to be finding it difficult. This matter has been discussed with the Groups who expressed the view that members should complete the training and achieve the 12 points required if appointed to the Committee and those members who cannot complete the required training levels will not be able to sit on the Committee.
- 3.5 Only two compulsory modules have been run so far and it is considered that both of these are essential to the effective operation of the Committee. In the light of the "Wirral case", it is increasingly important that the Committee's decisions are as sound and beyond legitimate challenge as possible. It is an unnecessary weakness to have members on the Licensing Committee who do not have the necessary training and this lack of knowledge is a matter which could provide an opportunity to successfully challenge the Committee's decision.
- 3.6 The wording of the Constitution relating to the Licensing Committee Member Development Programme needs a minor amendment to reflect that "attendance must be at the training sessions provided within the context of the members training programme". This removes the focus on the sessions in the modular programme to recognise all the training sessions.

4. Strategic Plan References

- 4.1 The increased relevance of the training programme to the needs of members has the potential to deliver a better, more consistent and robust licensing service which will contribute to meeting the demands of the strategic plan for the development of safer communities and tackling anti-social behaviour. Quality Customer Service underpins the Strategic Plan and this scheme has a key role to play in the delivery of a high quality licensing service.

]

5. Consultation

- 5.1 The operation of the scheme and the proposed changes have been discussed with the Chairman and Deputy Chairman of the Licensing Committee. The issue of attendance at training courses has also been discussed with the political Groups. As the report concerns member development wider public consultation is not considered appropriate.

6. Publicity Considerations

- 6.1 As this matter concerns member development, publicity on this matter is not considered appropriate.

7. Financial Implications

- 7.1 The costs associated with the training provided under the modular programme so far have been minimal and this is expected to continue. There will still be the requirement to fund attendance at external courses but these numbers should be smaller than in the past. Some training may be funded from the Groups individual training budget and some provided under the corporate development budget. It is not anticipated that extra funding will be required beyond the budgets currently available.

8. Equality, Diversity and Human Rights Implications

- 8.1 The scheme will ensure that the Members' responsibilities in respect of equality and diversity and the implications of the Human Rights Act are addressed.

9. Community Safety Implications

- 9.1 The training scheme will address the Committee's responsibilities in relation to community safety.

10. Health and Safety Implications

- 10.1 There are no particular health and safety implications.

11. Risk Management Implications

- 11.1 There are no particular risk management implications.

