

## TENDRING DISTRICT COUNCIL

THE LOCAL AUTHORITIES (MODEL CODE OF CONDUCT) (ENGLAND) ORDER 2001  
(referred to below as “the Regulations”)



### **MEMBERS' CODE OF CONDUCT** (Adopted by the Council on 26 June 2007)

(Code as regards the conduct which is expected  
of Members and co-opted Members of  
Tendring District Council)

## SCHEDULE 1

THE MODEL CODE OF CONDUCT - AUTHORITIES OPERATING  
EXECUTIVE ARRANGEMENTS

## PART 1

## GENERAL PROVISIONS

*Introduction and interpretation*

1. (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code  
"meeting" means any meeting of
  - (a) the authority;
  - (b) the executive of the authority;
  - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;"member" includes a co-opted member and an appointed member.
- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

*Scope*

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you
  - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

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- 3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

*General obligations*

3. (1) You must treat others with respect
- (2) You must not
  - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be
    - (i) a complainant,
    - (ii) a witness, or
    - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
  - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

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4. You must not
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
    - (i) you have the consent of a person authorised to give it;
    - (ii) you are required by law to do so;
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
    - (iv) the disclosure is
      - (1) reasonable and in the public interest; and
      - (2) made in good faith and in compliance with the reasonable requirements of the authority; or
  - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of your authority
    - (i) act in accordance with your authority's reasonable requirements;
    - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
- (a) your authority's chief finance officer; or
  - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

**PART 2****INTERESTS***Personal Interests*

8. (1) You have a personal interest in any business of your authority where either—
- (a) it relates to or is likely to affect—
- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - (ii) any body
    - (1) exercising functions of a public nature;
    - (2) directed to charitable purposes; or
    - (3) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
  - (iii) any employment or business carried on by you;
  - (iv) any person or body who employs or has appointed you;
  - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (vi) Any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

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- (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
    - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of
      - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
      - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
      - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

*Disclosure of personal interests*

- 9.** (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(1), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
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- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000].

*Prejudicial interest generally*

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business
  - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of your authority in respect of
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

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- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

*Prejudicial interests arising in relation to overview and scrutiny committees*

- 11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

*Effect of prejudicial interests on participation*

- 12.** (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;
  - (b) you must not exercise executive functions in relation to that business; and
  - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

**Part 3****REGISTRATION OF MEMBERS' INTERESTS**

- 13.** (1) Subject to paragraph 14, you must, within 28 days of
- (a) this Code being adopted by or applied to your authority; or
  - (b) your election or appointment to office (where that is later),
- register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

*Sensitive information*

- 14.** (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## APPENDIX

### THE TEN PRINCIPLES

The Ten Principles are a reminder of the purpose of the Code of Conduct and define the standards that Members should uphold. **They do not form part of the Code of Conduct**

1. **Selflessness** – Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
2. **Honesty and integrity** – Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.
3. **Objectivity** – Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
4. **Accountability** – Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
5. **Openness** – Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
6. **Personal judgement** – Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
7. **Respect for others** – Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.
8. **Duty to uphold the law** – Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.
9. **Stewardship** – Members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.
10. **Leadership** – Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

**PROTOCOL ON MEMBER / OFFICER RELATIONS****1 INTRODUCTION**

1.0 The purpose of this Code is to provide Members and officers of the Council with guidance regarding their relationships with one another in order to ensure the smooth and effective operation of the Council.

1.1 Its contents, which are set out in detail in the following sections, cover: -

Roles Of Members And Officers, And Member-Officer Relations

Officer / Portfolio Holder / Committee Chairman Relationships

Officer Relationships With Party group

Members In Their Ward Role

Member Access To Documents And Information

Press Releases

Correspondence

1.2 This Code is not intended to be either prescriptive or comprehensive but given the variety and complexity of Member / officer relations it seeks to provide guidance on some of the issues that are most likely to arise. It is hoped that the principles inherent in the advice given on these specific issues will serve as appropriate guidance when dealing with other issues.

1.3 The Protocol is to a large extent no more than a written statement of practice and convention developed over many years' operation under the former committee-based structures. It seeks to promote greater clarity and certainty. If the advice is followed, it should ensure that Members receive objective and impartial advice and that officers are protected from accusations of bias and from any undue influence from Members.

1.4 The Code also seeks to reflect the principles contained within the respective Member and Officer Codes of Conduct and the recognised practices that apply to Members and officers. The object is to enhance and maintain the integrity (real and perceived) of local government and, therefore, to require very high standards of personal conduct.

**2 ROLES OF MEMBERS AND OFFICERS AND MEMBER-OFFICER RELATIONS**

2.0 The underlying standards are set out clearly in the National Code of Local Government Conduct which Members undertake to be guided by in their declaration of acceptance of office:-

*“Both Members and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. officers are responsible to the Council. Their job is to give advice to Members and the Council, and to carry out the Council’s work under the direction and control of the Council, their committees and sub-committees.*

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*Mutual respect between Members and Officers is essential to good Local Government. Close personal familiarity between individual Members and officers can damage this relationship and prove embarrassing to other Members and officers.*

*The law and Standing Orders lay down rules for the appointment, discipline and dismissal of staff. You must ensure that you observe these scrupulously at all times. Special rules apply to the appointment of assistants to political groups. In all other circumstances, if you are called upon to take part in appointing an officer, the only question you should consider is which candidate would best serve the whole Council. You should not let your political or personal preferences influence your judgement. You should not canvass the support of colleagues for any candidate and you should resist any attempt by others to canvass yours."*

- 2.1 Consistent with the above reference to "mutual respect" it is important that any dealings between Members and officers should observe reasonable standards of courtesy and that neither should seek to take unfair advantage of their position.
- 2.2 Members should not raise matters relating to the conduct or capability of a Council employee or of employees collectively at meetings held in public. This is based on long-standing tradition, since employees have no means of responding to such criticisms in public. If a Member feels that he has not been treated with proper respect or courtesy (or has any concern about the conduct or capability of a Council employee), he should raise the matter with the appropriate Management Board member or the Chief Executive. The Management Board member or the Chief Executive will then look into the facts, take the appropriate action and report back to the Member.
- 2.3 Where an officer feels that he has not been treated with proper respect and courtesy, or is concerned about any action or statement relating to himself or a colleague by a Member, then he should raise the matter with their line manager. The line manager will consider the issues raised and, if necessary, discuss them with the appropriate Management Board member. It is possible that in such circumstances he will not feel able to discuss the matter directly with the Member concerned. In these circumstances the Head of Service or Management Board member will take appropriate action either by approaching the individual Member or Group Leader as appropriate.
- 2.4 The Council recognises that there may be close social or personal relationships between Members and officers that commenced before or after a Member is elected to the Council, or before or after a person becomes employed by the Council. In such circumstances, the Member should disclose this relationship to his Group Leader. The Officer should similarly advise his Head of Service. The Group Leaders and Head of Service concerned will endeavour to ensure that neither the Member, nor the officer, is placed in a position where such a relationship between the Member and the officer will be seen to cause any conflict with any of the provisions of this code.

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**3 OFFICER / LEADER / PORTFOLIO HOLDER / COMMITTEE CHAIRMAN RELATIONSHIPS**

- 3.0 It is important that there should be a close working relationship between the Cabinet, the Leader, portfolio holders, the Chairmen of committees and sub-committees and the officers who work with them. Care should be taken to ensure that such relationships do not affect impartiality.
- 3.1 The Leader, in the case of the Cabinet and Chairman of a Committee or Sub-Committee will naturally be closely involved in the process of formulating an agenda for a meeting, and Committees and/or Chairmen or, in the case of the Cabinet, members of the Executive may of course request that matters be placed on the agenda. In addition, Members will appreciate that in certain circumstances an officer will be under a professional duty to submit a report. A Head of Service or other senior officer will be responsible for the contents of any report submitted in his name and therefore any amendment to the report will only be made if such amendment reflects the professional judgement of the author of the report. Any issues arising between a portfolio holder or Chairman and a chief or senior officer should be referred to the appropriate Management Board member or Chief Executive for resolution.
- 3.2 Notwithstanding any provisions in this Code, the Council confirms that in all arrangements for relationships between Members and officers and in respect of advice from officers, the statutory responsibilities of the following will not be compromised:-
- Head of Paid Service (Chief Executive) – appointed under Section 4 of the Local Government and Housing Act 1989, with the responsibilities defined within that Act for the overall corporate management and operational activities (including those relating to staff) of the Council.
  - Head of Finance Services – appointed under Section 151 of the Local Government Act 1972 with overall responsibility for the conduct and legality of the Council's financial administration.
  - Monitoring Officer - appointed under Section 5 of the Local Government and Housing Act 1989 who has responsibility for ensuring the lawfulness of any proposals, decisions or omissions of the Council and for the promotion and maintenance of high standards of conduct within the Council.
- 3.3 In discharging their duties, the Statutory Officers referred to above will ensure the impartiality of any advice or instruction given.

**4 OFFICER RELATIONSHIPS WITH PARTY GROUP**

- 4.0 Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Member of the Council.
- 4.1 There is now statutory recognition for party groups. It is common practice for such groups to give preliminary consideration to matters of Council business, in advance of such matters being considered by the relevant Council decision making body. Officers may support and contribute to such deliberations by party group, but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.

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- 4.2 Certain points must, however, be clearly understood by all those participating in this type of process, Members and officers alike. In particular: -
- (a) Requests for an officer to attend any party group meeting must be made through the appropriate Management Board member. The Management Board member will advise the Monitoring Officer of any requests made.
  - (b) Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not present at meetings or those parts of meetings, when matters of party business are due to be discussed.
  - (c) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
  - (d) Any request for advice, together with the advice given to a political group or Member, will be treated with strict confidentiality by the officers concerned and will not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will be available to all political groups.
  - (e) It must not be assumed by any political group or Member that any officer is supportive of any policy or strategy developed, because of that officer's assistance in the formulation of that policy or strategy.
  - (f) Officers must respect the confidentiality of any party group discussions at which they are present, in the sense that they should not relay the content of any such discussion to another party group.
  - (g) Where officers provide information and advice to a party group meeting in relation to a matter of Council business, this process cannot act as a substitute for providing all necessary information and advice to the Council, the Leader, the Cabinet, individual portfolio holders, a committee or sub-committee, when the matter in question is considered.
  - (h) Unless otherwise agreed in advance with the appropriate Management Board member, officers will not attend party group meetings that include persons who are not members of the Council. However, where exceptionally attendance in these circumstances has been agreed by the appropriate Management Board member, special care needs to be exercised by officers involved in providing information and advice to such party group meetings. Persons who are not Members will not be bound by the Local Government Codes of Conduct, in particular, the provisions concerning the declaration of interests and confidentiality. For this and other reasons, officers may not be able to provide the same level of information and advice as they would to a Members only meeting.

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**5 MEMBERS IN THEIR WARD ROLE**

- 5.0 It is important for officers to keep Members informed about major issues concerning the Council and more specifically about issues and events affecting the Wards that Members represent.
- 5.1 Whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be informed or involved, as appropriate, before the outset of the exercise. Similarly, whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should, as a matter of course, be invited to attend the meeting.

**6 MEMBER ACCESS TO DOCUMENTS AND INFORMATION**

- 6.0 The legal rights of a Member to inspect Council documents are covered partly by statute and partly by the common law and are also affected by the National Code of Conduct.

**7 PRESS RELEASES**

- 7.0 The Council's Communications and Public Relations Manager serves the Council and must operate within the limits of the Local Government Act 1986. That Act prohibits the Council from publishing material that appears to be designed to affect public support for a political party.
- 7.1 Consequently, officers will normally draft Council press releases. They will often contain quotations (within the limits of the Local Government Act 1986) from the Executive Leader, a portfolio holder, the Chairman or Vice-Chairman of an overview and scrutiny committee or one of the other regulatory committees, or from the Chairman or Vice Chairman of the Council (normally in respect of ceremonial events). Such press releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Members to indicate their party political affiliation.
- 7.2 All official Council press releases are published in a way, which makes it clear that they originate from the Council's Communications and Public Relations Manager. That format is not available for use by individual Members. When Members do wish to issue personal / political statements to the press or other media, it is accepted that this may sometimes be done using Council headed notepaper. However, to avoid any impression that the content of the statement is official Council policy, **Members should always clearly indicate that the views expressed are either personal or on behalf of a particular political group or other body.**
- 7.3 Members should also refer to the Council's media protocol which is available on request from the Head of Human Resources and Customer Services.

**8 CORRESPONDENCE**

- 8.0 Correspondence between an individual Member and an officer may, where it can be made available under the Freedom of Information Act, be shared with any Member or Officer.
- 8.1 Letters that create contractual, legal or other obligations or which give instructions on behalf of the Council **must never** be sent out in the name of a Member.

## TENDRING DISTRICT COUNCIL



### LICENSING GUIDANCE FOR COUNCILLORS AND OFFICERS

ADOPTED BY THE COUNCIL ON 15 OCTOBER 2008

issued by  
Legal Services, Westleigh House, Carnarvon Road  
Clacton-on-Sea, Essex CO15 6QF

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## TENDRING DISTRICT COUNCIL LICENSING GUIDANCE FOR COUNCILLORS AND OFFICERS

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**Note:** References in this Guidance to “**Licensing Committee**” and/or “**licensing**” include, where applicable, references to the Council’s Licensing Committee and its associated sub-committees and its and their functions and delegated powers as set out in the Council’s Constitution.

<u>Annex Name</u>	<u>Annex Reference</u>
Licensing Committee Site Visit Procedure	Annex A
Member’s/Councillor’s Written Declaration of Interest Form (interest in a licensing application/matter)	Annex B
Officer’s Written Declaration of Interest Form (interest in a licensing application/matter)	Annex C

#### General Guidance and Introduction

- 1.1 The Licensing Committee’s function is a non-Executive function of the Council. Councillors are elected to represent the interests of the whole community in licensing matters. Councillors must be willing to listen properly to all sides of the argument and any decisions taken by the Council must be made solely on proper licensing grounds. A Councillor must not, therefore, involve themselves in formal decision-making by the Council on a licensing matter where they have a prejudicial interest in the matter concerned and/or there is an appearance of bias. The definition of “prejudicial interest” is set out in the Members’ Code of Conduct. Bias arises when a fair-minded and informed observer would conclude that the Councillor was biased in the sense of approaching the decision with a closed mind and without fair consideration of all relevant licensing issues.

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- 1.2 The Council has adopted a Members' Code of Conduct. This Guidance does not form part of that Code, but it does contain some important advice about how to deal with licensing matters.
- 1.3 If a Councillor or Officer does not follow this Guidance, it may put the Council at risk of legal proceedings, a complaint alleging maladministration or an application for costs at an appeal to the Magistrates' Court. For a Councillor, it could result in a complaint to the Standards Committee. If an Officer acts in breach of this Guidance, this may result in action under the Council's disciplinary procedures.
- 1.4 If you have any doubts about the application of this Guidance to your own circumstances, you should seek advice from the Monitoring Officer (or the Deputy Monitoring Officer).

**2.0 The Role of Councillors**

- 2.1 The licensing system exists to consider licensing matters in the light of the wider public interest. Councillors participating in formal decision-making on licensing matters must take into account the interests of the whole District and act in a way that is fair and is clearly seen to be fair.
- 2.2 Thus, in making decisions on any licensing matter, Councillors must:
- act fairly and openly and be willing to listen properly to all sides of the argument;
  - carefully weigh up all the material licensing considerations available at the time;
  - decide each licensing matter with an open mind and in the wider public interest;
  - avoid undue contact with interested parties;
  - not lobby or pressurise other Councillors or Officers; and
  - keep confidential all information which has a confidential status.
- 2.4 Councillors can expect Officers to give them every reasonable help in answering questions on licensing matters.
- 2.5 Councillors should not put pressure on any Officer to make a particular recommendation on any licensing matter.

**3.0 Lobbying and Expressing Views**

- 3.1 If Councillors are to undertake fully their constituency roles, it is inevitable that they will be subject to lobbying on specific licensing applications or matters. However, in relation to the Council's formal decisions on any licensing matters, Councillors must act and be seen to act fairly and openly. Councillors participating in decision-making on a particular licensing application or matter should therefore avoid any contact with interested parties which could create the impression of unfairness or an appearance of bias for or against a particular proposal.
- 3.2 A Councillor who has been exposed to extensive lobbying, whether by contact with an interested party, attendance at a promotional event, an interested party's site visit or otherwise should always ask themselves whether this exposure means the Councillor has the appearance of being biased in one way or another. If the answer is "yes", the Councillor ought not to participate in any decision-making or voting on the particular matter and needs to be aware that their participation could render the Council's decision on the matter unlawful and subject to legal challenge. A Councillor with any doubts or questions about this guidance should contact the Council's Monitoring Officer or Deputy Monitoring Officer.

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- 3.3 In certain circumstances, it is acceptable for Councillors who will not be involved in any decision-making on a particular licensing matter to openly express their views or even campaign about it. For instance, a Councillor who is neither a Licensing Committee (LC) (or substitute LC) member is entitled to openly express their views about a particular matter, provided that they do not disclose confidential information and do not undermine the integrity and fairness of the licensing process.
- 3.4 The Members' Code of Conduct prohibits any Councillor with a prejudicial interest in a licensing application or matter from attending or speaking at the LC meeting, whether or not that Councillor is a member of the LC. Any Councillor with a prejudicial interest in an application may not attend or speak at the LC meeting, even as an objector or member of the public.
- 3.5 Councillors not involved in the decision-making on a particular matter should not lobby other Councillors or Officers in a way that creates the impression of unfairness. Cabinet members should not comment about a licensing application in a way that creates the impression they are trying to unduly influence the LC or its members.
- 3.6 The Monitoring Officer and the Council's legal officers have a duty to ensure that the Council acts lawfully and that correct procedures are followed. The LC will receive advice from legal officers when a problem arises or is foreseen. This may be contained in a written officer report or may be given direct by the legal officer present to the meeting.
- 3.7 Where a LC member is also a parish or town councillor, they can properly vote on a particular licensing application at parish/town council and again as a TDC Councillor at the LC provided that they act in accordance with paragraph 2.2 above and do not have a prejudicial interest. All Councillors are entitled to their own views provided that this does not amount to a prejudicial interest, apparent bias or unwillingness to listen to all sides of the argument. The question is whether a fair-minded observer (not the Councillor concerned), knowing the background, would consider that there is a real danger of bias or predetermination. The Courts have made it clear that the view of the fair-minded observer with knowledge of all the relevant facts is more than likely to outweigh a contrary view or statement from the Councillor concerned about the danger of bias or predetermination.
- 3.8 There is nothing improper in a Councillor receiving comments and representations from their ward constituents. However, a Councillor who is a LC member must adopt a completely impartial stance in dealing with any party making a representation to them about any licensing matter and should not get involved in discussions with that party. Councillors receiving comments or representations should as soon as possible direct the person who has approached him or her towards the relevant officers so that they can explain the correct procedures for the making of representations.
- 3.9 Similarly, it is possible that an applicant, member of the public, or interested party will seek to invite a LC Councillor(s) to a promotional event or site visit on non-Council premises unaccompanied by officers. Councillors should be aware that mere attendance at such a site visit or promotion can (depending on the circumstances) create a perception of bias or predetermination. Councillors in any doubt about the matter should therefore consult the Monitoring Officer or Deputy Monitoring Officer and obtain clear advice that it is in order to attend before attending any such promotions or site visits. In relation to a current licensing application, LC Councillors should not attend such promotional events or site visits unaccompanied by officers.

#### **4.0 Councillors' and Officers' Interests in Licensing Matters**

##### Councillors

- 4.1 The rules on the disclosure of interests are set out in the Members' Code of Conduct. If any Councillor is unsure whether an interest should be declared, advice should be sought from the Monitoring Officer. As soon as any Councillor becomes aware that they have an interest in a licensing application they should complete and send to the Monitoring Officer a written Councillor's Declaration of Interest Form as per Annex B to this Guidance. Completed Declarations will be put on the Members' Register of Interests and a copy will be placed on the public licensing file.
- 4.2 Councillors involved in formal decision-making on any particular licensing application or proposal should not accept gifts or hospitality from anybody with an interest in that application or proposal. This is also addressed in the Members' Code of Conduct.

##### Officers

- 4.3 Any Officer involved in licensing work or involved with the Council's Legal Services with an interest in any licensing application or matter should (immediately they become aware of it) declare it in writing by completing the Officer's Written Declaration Form (see Annex C to this Guidance), and should send the original completed Form to the Monitoring Officer and a photocopy to their Head of Service. An interest may arise as applicant, objector or because the officer has a conflict of personal interest as described in the Council's Staff Handbook. The original completed Officer's Written Declaration Form will be kept in a central public register at Westleigh House, Clacton and a further copy of it will be kept on the relevant public licensing application file. The Officer must take no part whatsoever in processing or determining that particular licensing application or matter.
- 4.4 Officers with an interest in any particular licensing application or policy proposal must not accept gifts or hospitality from anybody with an interest in that application or proposal.

#### **5.0. The Role of Officers**

- 5.1 In making recommendations on licensing matters, Officers will:
- give professional and impartial advice;
  - make sure so far as they reasonably can that all the information required for a proper licensing decision to be made is provided;
  - explain the licensing application or matter in its proper context, both in terms of the Council's Licensing policy and all other material licensing considerations;
  - give a clear and accurate written analysis of the licensing issues when reporting; and
  - give clear recommendations.
- 5.2 Officers will give advice only unless they have delegated powers under the Council's Constitution to determine the application or related matter.
- 5.3 Officers are responsible for giving effect to the decisions of the LC and (where applicable) the full Council.

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**6.0 Officer Discussions and Meetings with Applicants, Objectors and Interested Parties**

6.1 Where consultations and agreement, particularly on technical matters, can narrow the Licensing issues, Officers may have meetings with prospective applicants before they submit a licensing application. Officers attending such meetings must make an accurate contemporaneous and concise note summarising the meeting.

6.2 Officers will make it clear at such meetings that:-

- No confidential information can be disclosed;
- Officers can only give informal and provisional views; and
- no binding decisions can be made.

6.3 Where Officers are invited to attend public meetings, their role should be to explain the details of the material being considered by the meeting and the processes by which it is being dealt with. Councillors must not put undue pressure on Officers to attend meetings where Officers are likely to get drawn into a debate about the merits or otherwise of applications or policies or on matters which extend beyond their professional advisory capacity.

**7.0 Site Visits**

7.1 In relation to licensing applications, most sites are visited by Officers as part of the application consideration process. Councillors may want to visit specific sites to consider issues to be raised at a LC meeting. Councillors should not carry out site visits alone and unaccompanied, but should instead move that the LC makes a formal site visit. Councillors moving a formal LC site visit should clearly identify what needs to be looked at on site and give proper reasons why the application should be deferred for that purpose. The reasons for the site visit will be recorded in the minutes.

7.2 Ward Councillors and all Councillors who are members of the LC will be invited to attend the site visit. An appropriate Officer will attend all site visits.

7.3 The purpose of the site visit is fact finding only. The public does not have the right to attend. Site visits will normally involve entry onto private land to which the public does not have a right of access and the applicant or owner may therefore legitimately refuse to allow access. Even though the purpose of the site visit is fact finding only, under no circumstances should any Councillor with a prejudicial interest in the application attend. Not only would such Councillor's presence give rise to the risk of a legal challenge, but it would create the perception that the Council was not acting impartially on the matter in question.

7.4 When on site visits, Councillors should not discuss the merits of the case or make any comment which could give the impression that they have already formed a view on the merits of the application. No decision on the application will be made until a subsequent formal meeting of the LC, where Councillors will have before them all the information required to make a decision.

7.5 The procedure at LC site visits is set out in Annex A and may be reviewed and amended from time to time by the Monitoring Officer.

7.6 The Council may organise formal site visits in relation to emerging policy matters. In the event of such a site visit being arranged, the same principles apply as outlined above. In relation to unofficial site visits, promotions or events, Councillors are reminded of the need to be seen to

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be acting fairly and in a way which is completely free from bias (see paragraphs 3.2 and 3.7 above).

8.0 Meetings of the Licensing Committee

8.1 Committee agenda papers will normally be published at least 5 clear working days before the meeting.

8.2 Each application to be determined by the LC will be accompanied by a full written report from the Officers. The only exception is where it is not reasonably possible to do this because the meeting has to be convened at short notice to comply with statutory requirements.

8.3 Any relevant admissible licensing information that is received after the written report has been prepared will be presented or reported in summary form to the LC by Officers where possible. If significant new information is received, Officers may recommend deferral.

8.4 Any substitute LC members must exercise their own independent judgement on all the matters to be decided.

**ANNEX A****LICENSING COMMITTEE SITE VISIT PROCEDURE**

- A.1 The Chairman will remind Councillors that the purpose of the site visit is for Councillors to look and listen (not for debate or decision-making) and that no decision will be made until the application is considered at a subsequent formal meeting of the Licensing Committee.
- A.2 The applicant and their agent or representative may need to be present to facilitate the visit, but must remain well out of earshot of Officers and Councillors at all times when the business of the site visit is being conducted.
- A.3 The Chairman will invite the Licensing Officer present to explain briefly:-
- Why the LC resolved to visit the site;
  - The relevant facts of the application; and
  - Site features which Councillors should observe.
- A.4 The members of the Committee may ask questions of the Officer about the proposal.

Whilst the above order of business will normally be followed, the Chairman has the right to vary these guidelines where he considers the circumstances make this appropriate. The Chairman's decision will be final.

ANNEX B

TENDRING DISTRICT COUNCIL

(Please complete this form in black ink and write clearly and legibly, using block capitals)

LOCAL GOVERNMENT ACT 2000  
REGISTER OF MEMBERS' INTERESTS

WRITTEN NOTIFICATION BY MEMBER/COUNCILLOR OF INTEREST IN A LICENSING APPLICATION OR MATTER MADE TO OR TO BE CONSIDERED BY TENDRING DISTRICT COUNCIL

My full name is (block capitals)

.....  
and for placing on the public Register of Members' Interests and the public licensing file, as a Member of **TENDRING DISTRICT COUNCIL** (referred to below as "the authority"), **I GIVE NOTICE of the following matters** concerning a planning application or matter made to or to be considered by the authority:

<b>Application No</b> (if known).....
<b>Address (or description sufficient to identify the location) of the <u>site</u> the subject of the proposed application or other licensing matter</b> ..... .....
<b>Description of application or other licensing matter</b> ..... ..... .....
<b>Description/Nature of my interest in the application or other licensing matter</b> ..... ..... .....

Signed: .....Dated: .....

RECEIVED:  
Signed : .....Dated.....  
(Monitoring officer of Tendring District Council)

ANNEX C

TENDRING DISTRICT COUNCIL

(Please complete this form in black ink and write clearly and legibly, using block capitals)
OFFICER'S DECLARATION OF INTEREST IN A LICENSING APPLICATION
OR MATTER MADE TO OR TO BE CONSIDERED BY TENDRING DISTRICT COUNCIL

My full name is (block capitals).....,

My post and job title is.....
and for placing on the public Register of Officer's Licensing Interests and the public licensing file, as
an officer of TENDRING DISTRICT COUNCIL (referred to below as "the authority"), I GIVE NOTICE
of the following matters concerning a licensing application or matter made to or to be considered by
the authority:

Application No (if known).....
Address (or description sufficient to identify the location) of the site the subject of the
application or other licensing matter
.....
Description of proposed application or other licensing matter
.....
Description/Nature of my interest in the application or other licensing matter
.....

Signed: .....Dated: .....

RECEIVED:

Signed : .....Dated.....
(Monitoring officer of Tendring District Council)