

**REPORT TO: LICENSING COMMITTEE      DATE: 15<sup>th</sup> September 2016**

**HEADING: CREATION OF A HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY**

**PORTFOLIO      ENVIRONMENT  
HOLDER:**

**KEY DECISION: NO      SUBJECT TO CALL IN: NO**

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## **1. PURPOSE OF REPORT**

The purpose of this report is to recommend the adoption of a new Hackney Carriage and Private Hire Licensing Policy. Ashfield District Council currently has in place a number of policies and guidance notes for the Hackney Carriage and Private Hire industry but there is currently no overarching policy that combines them. As a result, a policy has been created for the benefit of both the Licensing Authority and the licensed trade.

## **2. RECOMMENDATION**

It is recommended:

- 2.1 That the Hackney Carriage and Private Hire Licensing Policy is approved and the policy be implemented on 17th October 2016.
- 2.2 Authority for the policy to be applied to both new and existing applicants of Hackney Carriage and Private Hire Drivers, Vehicles and Operators;
- 2.3 Authority be delegated to the Service Director, Places and Communities to make any minor amendments to the Policy.

## **3. BACKGROUND**

- 3.1 Ashfield District Council ("The Licensing Authority") is responsible for the regulation of the Hackney Carriage and Private Hire trades within the District of Ashfield.
- 3.2 Ashfield District Council recognises the important role of Hackney Carriages and Private Hire vehicles in enabling people to travel around the District and portraying a positive image of Ashfield.

- 3.3 The Licensing Authority recognises all its drivers/operators as Ambassadors for the District and with this there is an expectation to provide a positive customer experience by transporting customers safely on every journey.
- 3.4 Presently, the Licensing Authority issues only issued guidance notes and terms and conditions but does not have a policy in place.
- 3.5 The proposed policy has been developed by Ashfield District Council in consultation with other Statutory Agencies, the Public and the Licensing Trade and also takes in account the following:
- The Council's licensing objectives;
  - Legislation;
  - The Office of Fair Trading "The Regulation of Licensed Taxi and PHV Services in the UK" 2003;
  - Taxi and PHV Licensing Criminal Conviction' Policy, LGA;
  - Guidance on the Rehabilitation of Offenders Act 1974 – March 2014;
  - Disclosure & Barring Service Information Note on Rehabilitation of Offenders Act 1974 and Police Act 1997 Orders – 2013;
  - Regulators' Code 2014;
  - The Department for Transport "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" March 2010.
- 3.6 The proposed policy is in line with best practice and seeks to make a number of changes to the Licensing process for Hackney Carriage and Private Hire Licences. These are all incorporated into a new Policy to illustrate a clear and transparent approach when the Licensing Authority is undertaking any Hackney Carriage and Private Hire licensing function.
- 3.7 The Policy will outline the Council's expectations and requirements of the Hackney Carriage and Private Hire trade.
- 3.8 The proposed policy will act as a single source of information relevant to this area of licensing and is attached at **Appendix One**.

3.9 Public safety has remained at the heart of all of the changes and the proposed changes will make the licensing processes more robust. The Policy will incorporate the processes for Drivers, Vehicles and Private Hire Operators and includes the following proposed changes -

- Drivers to undertake annual Disclosure & Barring Service [“DBS”] check (previously known as a criminal record check) and a DVLA check for driving history – the change in law now means licences should be granted for a period of 5 years (Operators) and 3 years (Drivers) respectively unless there are cogent reasons to offer a licence for a lesser period. The annual checks will enable the Licensing Authority to be satisfied that the ‘fit and proper’ test is met throughout the duration of the licence;
- A revised Convictions Policy, which will take into account all convictions, cautions, reprimands, warnings etc. This is policy that has been agreed across Nottinghamshire to provide a greater level of consistency for those Local Authorities who choose to adopt it;
- A requirement for all new Applicants, existing Drivers and Operators to attend and pass a Safeguarding Vulnerable Passengers Course prior to submitting their application;
- Greater responsibilities for Operators and Drivers, specifically in relation to fitness to drive, vehicle defects, driver hours, complaints handling and reporting.
- Removed the mandatory requirement for a first aid kit and fire extinguisher;

#### 4. CONSULTATION PROCESS

- 4.1 Letters were sent to all licensed drivers and Private Hire Operators notifying them of the proposed policy. The policy was made available both in hard copy and on the Council’s website.
- 4.2 The consultation process commenced on 18<sup>th</sup> July 2016 and ended on 14<sup>th</sup> August 2016. A copy of the letter relating to this is attached at **Appendix Two**.
- 4.3 Whilst a number of Licensees contacted the Council for clarification on the Policy, the Local Authority only received three written representations and one verbal in response to the consultation:
- 4.3.1 Verbal Representation 1 contained a request for smaller, greener engines (hybrid and electric) to reduce pollution.

- The authority accepted that this was a reasonable request and has made changes to the proposed policy at paragraph 6.3.
- 4.3.2 Written Representation 1 – Disclosure and Barring Service (DBS) should be free for Drivers and paid for by the Local Authority.
- This is not something that can be accommodated by the Licensing Authority because the contract is between the applicant and the DBS. Furthermore, it is for the applicant to satisfy the ‘fit and proper’ test by providing the Licensing Authority with an enhanced DBS certificate.
- 4.3.3 Written Representation 2 – drivers leaving their engines running whilst waiting on ranks (Fox Street and Forest Street) for extended periods of time increasing potential pollution.
- The authority accepted that this was a reasonable request and has made changes to the proposed policy at paragraph 6.13 requiring Hackney Carriage drivers to turn off their engines whilst stationary on any taxi rank in order to reduce the potential for pollution.
- 4.3.4 Written Representation 3 – (i) Safeguarding training should not be annual, (ii) does not agree with regular DBS checks; (iii) does not agree with the age limit for vehicles on initial applications being less than 2 years old.
- (i) The policy does not require annual safeguarding training;
  - (ii) DBS checks are required to satisfy the ‘fit and proper’ test. Annual checks are deemed reasonable and proportionate;
  - (iii) The Local Authority seeks to maintain a high standard of vehicles throughout its licensed fleet. These age limits have been in place for a number of years now and have worked effectively.
- 4.4 Members should note that some minor amendments have been made to the policy to correct spelling mistakes and clarify some points. The changes have been tracked for Members to view.

## **5. OPTIONS AVAILABLE**

- 5.1 To approve the recommendations – This is the recommended option as it will provide the relevant safeguards necessary to protect the public.

- 5.2 To approve an amended version of the recommendations – This is not the recommended option as any changes will not have been included within the consultation process and may leave the Council open to challenge.
- 5.3 To reject the recommendations - This is not the recommended option as it will undermine public safety.

## **6. IMPLICATIONS**

### **6.1 Corporate Plan**

Licensing regulation assists the Council with a means of reducing crime and disorder, as well as minimising risk to vulnerable persons. Public safety is paramount.

### **6.2 Human Resources**

There are no direct HR implications contained within this report.

### **6.3 Legal**

- 6.3.1 Section 51(1) of the Local Government (Miscellaneous Provisions) Act 1976 ('the Act') provides that a District Council shall not grant a Private Hire Drivers Licence unless it is satisfied that the applicant is a 'fit' and 'proper' person to hold such a licence.
- 6.3.2 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 had the effect of including licensed drivers within the 'regulated occupations' for the purposes of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; this effectively means that the provisions apply to applicants for Hackney Carriage and Private Hire Drivers Licences but not to Private Hire Operators. The Convictions policy will ensure that all applications are determined in a fair and consistent manner.
- 6.3.3 The Local Authority may not fetter its discretion and each application must be considered on its own merits and within the remit of the law. The revised Hackney Carriage and Private Hire Licensing Policy will assist Authorised Officers and Members in reaching fair and proportionate decisions.
- 6.3.4 Any applicant refused a licence or an existing driver, vehicle proprietor or operator who has their licence suspended or revoked has a right to appeal to a Magistrates Court under the provisions of the Local Government (Miscellaneous Provisions) Act 1976.

6.3.5 Human Rights – There are human rights issues arising from the subject of Hackney Carriage and Private Hire licensing. Under Article 1 of the First Protocol of the European Convention of Human Rights every person is entitled to the peaceful enjoyment of their possessions. A ‘possession’ for this purpose includes a licence. For a public authority to interfere with a licence, it must be both lawful and proportionate to do so in the interest of the wider community.

6.4 Financial

There will be no impact on the Licensing Section’s budget.

6.5 Environmental Sustainability

Smaller, greener vehicle engines will impact on the environment as the potential of pollution is reduced in line with European and National Guidelines.

6.6 Diversity and Equality

No impact.

6.7 Community Safety

Making procedures for Hackney Carriage and Private Hire Licensing more robust will assist the Council in reducing crime and disorder. Public safety is of paramount concern and as such, this policy will ensure that all applicants that apply for a Hackney Carriage and Private Hire licence are fit and proper to do so.

6.8 Other Implications

None.

**6. BACKGROUND PAPERS**

Guidance issued by the Department of Transport and Local Government Association.

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