

CAMBRIDGE CITY COUNCIL

REPORT OF: Yvonne ODonnell
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TO: Licensing Committee 26th January 2016

WARDS: All

**INCORPORATION OF THE CRIMINAL JUSTICE AND POLICE ACT 2001 INTO
THE COUNCIL CONSTITUTION**

1. INTRODUCTION

- 1.1 The purpose of this report is to authorise Council officers to exercise the powers to close unlicensed premises which are contained in the Criminal Justice and Police Act 2001 (the "Act"). In particular, section 19 of the Act allows for police constables or an authorised officer of the local authority to issue a closure notices where there is evidence of the premises providing the unauthorised sale of alcohol.

2. RECOMMENDATION

- 2.1 The Licensing Committee is asked to recommend to Full Council that sections 19-28 of the Criminal Justice and Police Act 2001 be added to the scheme of delegations which are the responsibility of the Licensing Committee as found in Part 3 Section 5.6 of the Council's constitution.
- 2.2 Subject to Council approval for recommendation 2.1 above, that the Director of Customer and Community Services be given delegated powers to exercise the Council's functions under sections 19 - 28 Criminal Justice and Police Act 2001

3. BACKGROUND & LEGISLATIVE PROVISIONS

- 3.1 There have been a number of recent incidents where officers from the Licensing & Enforcement Team have encountered premises selling or potentially selling alcohol without the appropriate authority from the Licensing Authority.
- 3.2 Such situations may arise because of:
- Absence of a Premises Licence, Club Premises Certificate or Temporary Event Notice
 - Breach of a licence condition attached to a Premises Licence or Club Premises Certificate

- The premises does not have a Designated Premises Supervisor (DPS) or the DPS is absent/no longer involved in the business
 - The Premises Licence Holder is incorrect e.g. it has not been transferred to the current operator
- 3.3 The Licensing Act 2003 makes the retail sale of alcohol a licensable activity. To sell alcohol without authorisation is deemed to be an 'unauthorised licensable activity', which is a criminal offence (section 136 of the Licensing Act 2003). Upon summary conviction a person found guilty of such an offence is subject to an unlimited fine and/or a maximum six month's imprisonment.
- 3.4 The Licensing & Enforcement Team has, however, been reviewing other options to tackle the unauthorised sale of alcohol; this includes pro-active measures to limit the chance of unauthorised licensable activity taking place. The Criminal Justice and Police Act 2001 introduces the use of 'closure notices' and 'closure orders'. These powers would provide a two-step process leading to the closure of premises that continue to allow the unauthorised sale of alcohol to take place.

Closure notice

- 3.5 The first step in the process is the service of a 'closure notice'. Section 19 (3) of the 'Act' enables a police constable or a local authority officer to serve a closure notice where:
- Any premises are being used, or have been used within the last 24 hours, for the sale of alcohol for consumption on or in the vicinity of the premises; and
 - This activity is or was carried on without an authorisation (Premises Licence, Club Premises Certificate or Temporary Event Notice) or not in accordance with the conditions of an authorisation for the sale of alcohol.
- 3.6 The notice informs a person with control of, or responsibility for, the activities carried on at the premises (normally the licence holder or the Designated Premises Supervisor), that if unauthorised alcohol sales continue, an application may be made to a Justice of the Peace for an order to close the premises. Such an application cannot be made less than seven days or more than six months after the service of the closure notice.
- 3.7 It should be stressed that a closure notice does not require premises to physically close or cease licensable activities. Rather, the notice informs a person in control of, or responsible for, the premises that there is either no authority to sell alcohol or one or more of the conditions of an authorisation are not being met. The person in control needs to be warned that it is an offence to carry on the sale of alcohol without, or in breach of, an authorisation. However, it is at the discretion of the individual receiving the notice whether to close or to continue trading, with or without the sale of alcohol.
- 3.8 Although a closure notice has no power to close premises, a notice must be served before an application can be made under section 20 of the 'Act' for a

section 21 'closure order'. Service of a notice is evidence that the unauthorised sale of alcohol has been brought to the attention of the owner or management of the premises. This evidence can be useful at a subsequent review of the licence, or a prosecution for carrying on a licensable activity, or knowingly allowing it to be carried on, otherwise than in accordance with an authorisation.

- 3.9 A closure notice lasts until such time as it is cancelled by service of a 'notice of cancellation' (section 19 (7) of the 'Act'). Any cancellation notice served takes effect immediately.

Application for a closure order

- 3.11 Following service of a closure notice a police constable or a local authority officer may make a complaint to a Justice of the Peace for a closure order (section 20 (1) of the 'Act'). Such a complaint must be made no less than seven days but not more than six months after the service of the closure notice.

Closure order

- 3.12 If the Court is satisfied that a closure notice was served in accordance with section 19 (3) of the 'Act', and that the premises continue to be used or are likely to be used in the future for the unauthorised sale of alcohol, they may make a section 21 closure order. The court may order: the immediate closure of the premises; discontinuance of alcohol sales; or, payment of money into court, as a form of bond, until the other requirements of the order are met.

- 3.13 Breaching the requirements of a closure order is a criminal offence. Section 25 (4) of the 'Act' provides that

A person who, without reasonable excuse, permits premises to be open in contravention of a closure order shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both.

- 3.14 The closure order remains in effect until it is terminated in one of two ways:

(a) A Constable or as the case may be the Local Authority may serve a certificate on the Court that made the Order and the person against whom the Order is made notifying that they are satisfied that the need for the Order has ceased

(b) Any person on whom a Closure Notice is served or who has an interest in the premises concerned may make an application under Section 23 of the 'Act' for the discharge of the Closure Order.

- 3.15 In the event a closure order was issued, it is likely that the licensing authority would apply for a review of the Premises Licence or Club Premises Certificate. The licensing authority may resolve to remove or suspend a licensable activity or suspend or revoke the licence or certificate.

- 3.16 To allow Officers of the Local Authority to exercise such powers there is the necessity to incorporate these powers into the constitution and add to the delegation and responsibility of the Licensing Committee.
- 3.17 Subject to full Council's approval of the recommendation, the Licensing committee will then be able to delegate the powers to Council Officers to exercise the Councils' functions under section 19-28 of the Criminal Justice and Police Act 2001

4. CONSULTATIONS

- 4.1 No consultations are required for the inclusion of these powers into the constitution and subsequent delegation to Officers

5. CONCLUSIONS

- 5.1 The Licensing Authority's primary aim is to protect the public, and ensure that residents, businesses and visitors have a safe experience within the City boundary. There are a number of existing enforcement tools to allow Officers to do this following the Councils corporate Enforcement policy.
- 5.2 However, to allow the Licensing Authority to use its full range of enforcement powers to deal with the unlawful sale of alcohol it is important that the Council includes these powers contained within the 'Act' into the constitution and add to the delegation and responsibility of the Licensing Committee
- 5.3 To allow Officers to exercise the Councils' functions under section 19-28 of the Criminal Justice and Police Act 2001, it is important that the Licensing Committee delegate these powers to Officers.

BACKGROUND PAPERS:

Criminal Justice and Police Act 2001
Licensing Act 2003

The author and contact officer for queries on the report is Alex Beebe on Ext. 7723

Report file: M:\LICENSE/04 - Other Licences/Committee Reports

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