

Report to: **Planning and Licensing Committee**
Date: **8 December 2015**
Title: **Approval of Licensing Policy for Horse Drawn Hackney Carriage/ Omnibus**
Portfolio Area: **Customer First**
Wards Affected: **All**
Relevant Scrutiny Committee:

Urgent Decision: **Y** Approval and clearance obtained: **Y**

Date next steps can be taken: **Full Council on 8th December 2015 – see below recommendation**

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Recommendations:

1. That the Planning and Licensing Committee recommends to Council that the draft Horse Drawn Hackney Carriage/Omnibus Policy, is adopted at the meeting on 8th December 2015.
2. That the Planning and Licensing Committee resolves to amend their resolution of the 10th February 2015 to exclude the requirement to prepare Byelaws, and to amend the proposed fees and charges, so that the fees for a driver licence shall be the same as the current hackney carriage fee, and the carriage fee shall be £200.

1. Executive summary

- 1.1 On the 10th February 2015 the Planning and Licensing Committee resolved to recommend that Council:
- (i) Adopt a procedure for the licensing of Horse Drawn Omnibuses, drivers and conductors within the West Devon Borough Council area, and for the drafting of the related licensing procedures, conditions and code of conduct, and preparation of Byelaws, together with the power to grant, revoke, suspend or refuse to transfer or renew an omnibus licence, driver, conductors licence, to the Head of Environmental Health and Housing/ Service Group Manager; and
 - (ii) To approve an initial annual fee of £550 for the application to grant an omnibus licence and £150 for the application to grant an omnibus drivers or conductors licence and to delegate the review of fees to the Planning and Licensing Committee.
- 1.2 Since this resolution was passed the community of practice for Environmental Health and Housing has developed the Horse Drawn Hackney Carriage/Omnibus Policy, which is ready for adoption.
- 1.3 Having consulted the Community of Practice Lead for Legal it is no longer felt prevalent to draft Byelaws in relation to the behaviour of the drivers, as the Council does not have any Byelaws for other types of Hackney Carriage drivers.
- 1.4 Having undertaken much wider research on the licensing arrangements with both neighbouring authorities and other local authorities with a long standing horse-drawn taxi trade, the proposed in February no longer appear to be in line with others.
- 1.5 The policy provides guidance to both applicants and the Council on how we will determine an application for a horse-drawn omnibus, and a horse-drawn omnibus driver licence.

2. Background

- 2.1 The reason for introducing this policy was on the basis of an approach made by a member of the public who wishes to run a Horse Drawn Omnibus business running between Yelverton and Burrator, and around Burrator lake.

- 2.2 There is no legal requirement for a local authority to have a licensing policy, however a policy is seen as an integral part of the decision-making process, informing and guiding any decisions. However it is important to recognise that a policy is only guidance and that the discretion of the Council is not fettered by the policy.
- 2.3 When drafting the policy the officer has taken in account policies produced by neighbouring authorities at both Plymouth City Council and Torbay Council, as well as authorities with a longstanding Horse Drawn Hackney Carriage industry such as Blackpool Borough Council.
- 2.4 The draft Policy is believed to deliver the aims of the policy which are:-
- (i) The protection of public health and safety;
 - (ii) The protection of the welfare of animals used in this trade;
 - (iii) The promotion of a well respected horse drawn hackney carriage trade
- 2.5 No consultation has been undertaken with the trade as currently there is no trade within West Devon and it was felt inappropriate to include consultation with a single interested party.
- 2.6 Due to the cost of producing Byelaws, the lengthy process to do so, and the lack of Byelaws covering other Taxi licensing it is no longer felt that there is a need to adopt Byelaws for this type of driver licences.

Byelaws are required should we wish to prosecute a driver for failing to comply with them. A Hackney Carriage driver licence cannot be granted with conditions attached, as such some authorities have passed byelaws to control drivers. West Devon does not have byelaws and should a driver fail to comply with the code of conduct then this would be used to determine whether they were a fit and proper person when considering renewing their licence, if the breach was serious enough then the case would be brought before the Planning and Licensing Committee to seek approval for immediate revocation of the licence.

- 2.7 When setting charges for taxi licensing there are two elements, the taxi driver licence and the taxi vehicle licence. The Council has formally adopted the Local Government (Miscellaneous Provisions) Act 1976, and this inhibits a local authority's discretion in relation to the charges set.

In effect Section 53 of the Local Government (Miscellaneous Provisions) Act requires that the driver fees are set at a reasonable level with a view to recovering the costs of issue and administration of the licence.

Having now written the policy it is felt that the requirements of licensing drivers will be very similar to those required to licence Motorised Hackney Carriages, as such it is felt that the driver licence fee should be £101.00 for a licence and renewal and £45.00 for a new driver licence on top of the licensing fee.

- 2.8 There is no such restriction on the level of fee that can be charged in regards to the issuing of Hackney Carriage Vehicle Licences. In the February committee it was resolved to set this fee at £550. Having reviewed other local authorities fees and charges, in the main they are the same as their Motorised Hackney Carriage fee, a table is set out below of the fees found:-

Council	Fees for 2015/16
Cornwall Council	£227
Plymouth City Council	£182
Torbay Council	£115
Blackpool Borough Council	£120
West Devon Borough Council (Motorised Hackney Carriage)	£168

Based on this table it can be seen that setting such a high figure for this type of vehicle licence may lead to criticism of the local authority. I would therefore recommend that the fee for a horse drawn vehicle licence should be £200. This reflects the additional cost of having to consult on the approved route.

- 2.9 Neither the suggested revised driver fee or vehicle fees include the costs of other tests and fees that the driver would have to pay separately such as vets fees, carriage inspector fee, driving test fee, health checks etc. as mentioned in the policy.

3. Outcomes/outputs

3.1 The Planning and Licensing Committee have already resolved to recommend the adoption of a policy by Council. The outcome of this meeting is that the Planning and Licensing committee accept the draft Horse Drawn Hackney Carriage/Omnibus policy in appendix A as the policy put forward for adoption by the Council on the 8th December 2015.

4. Options available and consideration of risk

- 4.1 Failure to have a licensing statement in regards to Horse Drawn Hackney Carriages/ Omnibuses means that the Council will have to determine any application without the benefit of guidelines to refer to.
- 4.2 Should the Statement not be adopted, the Council would be open to criticism and legal challenge should they determine applications without having considered all material issues.

5. Proposed Way Forward

- 5.1 The Licensing Committee recommends to Council that the draft Horse Drawn Hackney Carriage/ Omnibus Licensing Policy, is adopted by the Council on 08 December 2015.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/ Governance	Y	A Council may adopt a licensing policy for horse drawn hackney carriages/omnibus but decisions must be made on the merits of the application, as shown in the case of <i>Stringer v Minister of Housing and Local Government</i> .
Financial		The associated preparation and publication costs will be met in full from applications and annual fees income. Therefore, there are no financial implications to the Council from this report.
Risk		Failure to produce a Horse Drawn Taxi/Omnibus Policy will leave the committee and officers with no clear guidelines on how to determine an application. Not adopting Policy could leave Council open to criticism and legal challenge.
Comprehensive Impact Assessment Implications		
Equality and Diversity		There is the duty on the Council when considering applications or enforcement action to comply with Human Rights Act 1998.
Safeguarding		Protecting public health and safety is one of the key aims of the draft licensing policy.
Community Safety, Crime and Disorder		
Health, Safety and Wellbeing		Protecting public health and safety is one of the key aims of the draft licensing policy.
Other implications		

Supporting Information

Appendices:

Appendix A – Horse Drawn Hackney Carriage/Omnibus Policy

Background Papers:

- Town Police Clauses Act 1847
- Local Government (Miscellaneous Provisions) Act 1976
- Minutes of the Planning and Licensing Committee held on the 10th February 2015.

Process checklist	Completed
Portfolio Holder briefed	Yes/No
SLT Rep briefed	Yes/No
Relevant Exec Director sign off (draft)	Yes/No
Data protection issues considered	Yes/No
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	Yes/No