

# Policy and Sustainability Committee

10am Tuesday 6 August 2019

## Policy on advertising and sponsorship

Executive/routine Wards Council Commitments	Executive All
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### 1. Recommendations

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- 1.1 It is recommended that the Policy and Sustainability Committee:
- 1.1.1 approves the policy on advertising and sponsorship as set out in appendix 1 of this report;
  - 1.1.2 notes the potential impact on Council income and viability of certain initiatives/events if the policy was extended beyond the scope in the proposed policy; and
  - 1.1.3 recognises that this policy may be amended in future to reflect changes to legislation or regulations brought about by changes to legislation or UK Government, the Scottish Government and the Advertising Standards Authority.

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## Policy on advertising and sponsorship

### 2. Executive Summary

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- 2.1 On 25 October 2018, Council agreed a motion by Councillor Main on sponsorship and advertising and requested that officers draft a policy on sponsorship and advertising and bring it to Corporate Policy and Strategy Committee within three cycles. An interim report to Corporate Policy and Strategy Committee on 14 May 2019 noted progress.
- 2.2 This report:
- 2.2.1 provides the proposed policy in appendix 1;
  - 2.2.2 outlines the consultations on the impact of food and drink advertising which UK Government and Scottish Government have in progress; and
  - 2.2.3 notes the impact that changes in legislation, industry codes and policy or guidance may have on the Council's previously agreed income maximisation targets.

### 3. Background

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- 3.1 On 25 October 2018, Council agreed a motion by Councillor Main on Council sponsorship and advertising requesting that officers draft a policy on sponsorship and advertising and bring it to Corporate Policy and Strategy Committee within three cycles. A copy of the text of the motion is included in Appendix 2 to this report.
- 3.2 In the interim report to Corporate Policy and Strategy Committee on 14 May 2019, it was noted that:
- 3.2.1 an overarching policy on advertising and sponsorship would help to protect the Council financially, legally and reputationally as well as making sure that there is a consistent approach taken across the Council to such arrangements;
  - 3.2.2 such a policy would also provide clarity to those engaged in the advertising industry, and potential sponsorship partners;

- 3.2.3 Scottish Government and UK Government are both concerned about the impact of food and drink advertising in relation to citizen health and well-being. Both governments have consulted on the impact of food and drink and advertising are considering changes to legislation in relation to this; and
- 3.2.4 under current contractual agreements, the Council generates substantial income from sponsorship and advertising on its assets. In 2018/19, the income was in the region of £2.5 million from advertising-related contracts.

## 4. Main report

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- 4.1 The Council fully supports well-managed advertising and sponsorship arrangements which both contribute to the delivery of its services and support achieving its objectives, including income maximisation.
- 4.2 The proposed policy on advertising and sponsorship covers the Council as the direct owner of assets on which advertising may appear, or when considering sponsorship opportunities offered to the Council.
- 4.3 The proposed policy in appendix 1:
- 4.3.1 establishes a corporate approach and standards to guide advertising and sponsorship agreements;
  - 4.3.2 ensures the Council complies with legislation, nationally recognised industry codes and other Council policies;
  - 4.3.3 supports the Council securing Best Value, income maximisation and the development of commercial partnerships;
  - 4.3.4 establishes governance arrangements that ensure that future advertising and sponsorship proposals are considered by appropriate Council directorates/divisions prior to approval; and
  - 4.3.5 upholds the Council's reputation and brand as well as safeguards citizens and the image and environment of the areas within the Council's boundaries.
- 4.4 In any advertising and sponsorship policy, the Council must:
- 4.4.1 adhere to the terms of current legislation including the Local Government Act 1986, the Town and Country Planning (Scotland) Act 1997 and various regulations on supply of goods and services, consumer and business protection;
  - 4.4.2 adhere to nationally recognised strict industry codes, particularly those of the Advertising Standards Authority; and
  - 4.4.3 take cognisance of existing Council policies which impact on advertising and sponsorship or regulate the installation of structures on which advertising is placed as set out in the proposed policy in appendix 1.
- 4.5 It was noted in the interim report to the Corporate Policy and Strategy Committee on 14 May 2019 that the UK Government and the Scottish Government have

consulted on the impact of food and drink advertising. It is expected that their findings will inform further advertising restrictions and changes to legislation. In turn this may impact on the Council's advertising and sponsorship policy.

- 4.6 The [Scottish Government's consultation](#), part of the Diet and Healthy Weight Delivery Plan, sought views on restricting the promotion and marketing of food and drink high in fat, sugar or salt with little or no beneficial nutritional value where they are sold to the public. The public consultation closed on 9 January 2019 and Council officers are actively engaged with the Scottish Government's policy team which is developing the response and any policy changes. In addition, the Council has offered engagement with the Council's existing contractual partners where the contracts include advertising and sponsorship arrangements.
- 4.7 The UK Government launched a consultation on [proposals](#) which include future advertising restrictions focused on foods high in fat, sugar and salts (HFSS) products that are linked to childhood obesity which closed on 10 June 2019. It is understood that the UK Government might, for example, seek to restrict advertising of food high in fat, salt or sugar on broadcast media to after the watershed.
- 4.8 The interim report to the committee meeting of 14 May 2019 noted that:
- 4.8.1 the advertising industry operates under a heavily legislated and regulated landscape with strict industry codes. The Advertising Standards Authority (ASA) is the UK's independent regulator of advertising across online and offline media. Section 8 of this report has more detail on the role of the ASA and the current regulatory regime;
- 4.8.2 the Council generates a substantial income from sponsorship and advertising on its assets. In 2018/19, the income was in the region of £2.5 million from advertising-related contracts. Any additional controls on what may be the subject of advertising or sponsorship opportunities will have a negative impact on the Council's ability to maximise income; and
- 4.8.3 the budget approved at a meeting of the full Council on 21 February 2019 seeks to maximise income including generating additional income from the advertising.
- 4.9 In generating this report consideration was given as to the extent to which the policy should apply to assets not owned by the Council, but in which the Council has a direct interest, and/or third party events which utilise public realm space. An example of the former would be bus stops which are owned by a third party but generate advertising revenue which is shared with the Council. Examples of the latter would be the Christmas and Hogmanay, Foodies and Oktoberfest festivals/events. Whilst the application of such policy to pre-existing contractual arrangements might in any event not be possible without the agreement of the third party in question, the assessment concluded that to seek to include such assets and events risked an adverse effect upon the Council's ability to generate income. In addition, if the Council sought to restrict the sponsorship or advertising opportunities available to such events that could place their viability at risk. The

Council already includes specific protection around such matters in any contracts that it enters into in respect of them, and it was felt that these, in conjunction with the other generic protections, from industry guidance and statutory regulation as referred to in this report, provide a suitable level of oversight and control.

- 4.10 By way of additional explanation, the draft policy does not stipulate that any proposed advertising/sponsorship must seek to achieve or advance certain outcomes if it is to be permitted, for instance improving the health of the public. Instead, the main operative provisions of the draft policy are framed so as to prohibit certain proposals that clearly would not be acceptable eg those with violent imagery. This approach was taken to give clarity to the policy and its application, whilst also recognising that proposals might be acceptable even where they do not actively support/align to a strategic objective of the Council, or not clearly do so. However, the policy is clear that amongst its aim is to (at section 1.3.4) support the Council's strategic objectives, and (at section 1.3.8) support the safeguarding of citizens' interest and their well-being. The draft policy also proposes a strong governance framework for the approval of any advertising/sponsorship proposal.
- 4.11 It is recommended that the Policy and Sustainability Committee:
- 4.11.1 approves the policy on advertising and sponsorship as set out in appendix 1 of this report;
  - 4.11.2 notes the potential impact on Council income and viability of certain initiatives/events if the policy was extended beyond the scope in the proposed policy; and
  - 4.11.3 recognises that this policy may be amended in future to reflect changes to legislation or regulations brought about by changes to legislation or UK Government, the Scottish Government and the Advertising Standards Authority.

## **5. Next Steps**

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- 5.1 If approved the policy on advertising and sponsorship will be rolled out across the Council.
- 5.2 The policy will inform future Council advertising, sponsorship and contractual arrangements for advertising and sponsorship on Council-owned assets (excluding public realm areas, parks/greenspace and Council-owned development/brownfield sites).
- 5.3 Amendments to the policy may be required in future following publication of the results of the UK and Scottish Government consultations and any legislative or industry regulations changes which may emerge.

## 6. Financial impact

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- 6.1 Under current contracts, the Council generates a substantial income from advertising. In 2018/19, the income was in the region of £2.5 million. Any restrictions beyond the proposed policy is likely to have the following impact:
- 6.1.1 the Council's Christmas and Hogmanay provider has indicated that it receives a substantial level of sponsorship income, and a reduction in that would in turn likely decrease the income to the Council from the Christmas event contract and increase the cost to the Council of the Hogmanay event contract.
- 6.1.2 JCDecaux, the Council's external advertising partner, has examined the revenue received from their assets in Edinburgh during 2018. Based on the campaign bookings taken for the year, they have estimated that, should restrictions in relation to HFSS products be placed on advertising content, income would have been reduced by 24%. This would feed through to a reduction in income to the Council through the contract payments.

## 7. Stakeholder/Community Impact

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- 7.1 The Council has engaged with current contract partners to estimate the potential financial impact of any changes to legislation, industry codes or policy might have on income from advertising or through sponsorship.
- 7.2 The Council is also engaging with the Scottish Government health policy team following its consultation on restricting the promotion and marketing of food and drink high in fat, sugar or salt.

## 8. Background reading/external references

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- 8.1 The Advertising Standards Authority (ASA) is the UK's independent regulator of advertising across all online and offline media. The UK advertising codes lay down rules for advertisers, agencies and media owners to follow. The ASA proactively monitors advertising for compliance as well as responding to complaints, and issues rules on its investigations. The ASA codes of practice are the 'rule books' which cover two areas:
- 8.1.1 non-broadcast advertising and direct and promotional marketing ([CAP code](#)): the central principle of this code for all marketing communications is that they should be legal, decent, honest and truthful.
- 8.1.2 for broadcast media ([BCAP code](#)): the overarching principles of this code are that advertisements should not mislead or cause serious or widespread offence or harm, especially to children or the vulnerable.
- 8.2 The ASA regulations cover a wide range of guidance including: misleading advertising; political advertisements; alcohol; tobacco; and electronic cigarettes. The codes also include specific rules where children are concerned and on food or

soft drink products that are assessed as high in fat, salt or sugar in accordance with the Department of Health nutrient profiling model. ASA monitors government consultations closely and will amend their codes as required to reflect the any amendments to legislation.

- 8.3 Current UK legislation and regulations which have impact on advertising and sponsorship are also noted in the proposed policy in appendix 1.

**9. Appendix 1: [NB insert when saved as PDF]**

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## 10. Appendix 2: Council sponsorship and advertising policy

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The following motion by Councillor Main was submitted in terms of Standing Order 16:

“Council notes:

The Council does not have in place a city branding and advertising policy to inform decisions made about sponsorship and advertising by the council or those contracted to do so on its behalf.

Schools policy on sponsorship was agreed by the Education, Children and Families Committee in 2016.

Under the 2013 Planning Committee decision under ‘planning for the city’, decisions are informed by the Code of the Advertising Standard Agency only. However also notes further development including, ‘neighbourhood plans’, referred to in the report have not been brought forward.

Agrees that:

Council advertising and sponsorship should support the strategic aims of the Council, including the health and well-being of citizens.

Where sponsorship and advertising has a direct association with the Council, there is a risk of impact on the Council and city reputation.

Agrees that draft policy on sponsorship and advertising is brought to Corporate Policy and Strategy Committee within 3 cycles.”

### **Motion**

To approve the motion by Councillor Main.

- moved by Councillor Main, seconded by Councillor Booth

# Advertising and sponsorship policy

## 1. Objectives

- 1.1 To provide policy on proposals for (i) advertising by third parties which would be installed on assets directly owned by the Council, and (ii) third party sponsorship of Council events or initiatives.
- 1.2 To set out existing recognised industry codes, legislation, regulations and Council policies and guidance which influence and impact upon advertising and sponsorship activities.
- 1.3 This policy aims to:
  - 1.3.1 establish a corporate approach and standards to guide the consideration of proposals for advertising and sponsorship as set out in this policy;
  - 1.3.2 establish governance arrangements that ensure that future advertising and sponsorship proposals are considered by appropriate Council directorates/divisions prior to approval;
  - 1.3.3 ensure the Council complies with its legislative obligations, and Council policies, and is also guided by relevant nationally recognised industry codes;
  - 1.3.4 support the Council's strategic objectives;
  - 1.3.5 support the Council securing Best Value and maximisation of income;
  - 1.3.6 support the Council's development of suitable commercial partnerships;
  - 1.3.7 uphold the Council's reputation and brand;
  - 1.3.8 support the safeguarding of citizens' interests and their well-being, and the image and environment of those elements of the local authority area which are within the control of the Council, and not the subject of separate regulation or control; and
  - 1.3.9 support the alignment of the Council's involvement in advertising and sponsorship to the Council's corporate social responsibility.

## **2. Advertising and sponsorship: descriptions**

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- 2.1 Advertising and sponsorship can encompass goods, services, ideas, causes, opportunities, prizes and gifts.

### **Advertising**

- 2.2 Advertising is a form of communication used to raise awareness, encourage or persuade an audience - viewers, readers or listeners or a specific group of people - to do or believe something. Advertising is usually paid for by an organisation.
- 2.3 Advertising messages can take a variety of forms and can be viewed through a wide range of media and platforms including, but not limited to, newspapers, magazines, television commercials, radio advertising, out of home advertising, direct mail, online and digital such as paid social media, blogs and other electronic platforms. Advertising mediums change rapidly in the digital and electronic age. This policy aims to be sufficiently flexible to encompass platforms which are yet to be developed.
- 2.4 The Council seeks to generate and maximise income from Council-owned assets. This policy is intended to cover third party advertising which would be installed on assets directly owned by the Council, but not advertising in public realm areas, park and greenspace and Council-owned development/brownfield sites which are subject to separate contractual agreements.
- 2.5 The Council uses advertising for a range of activities which promote the Council's commitments and strategic objectives, and ultimately enhance and maintain the Council's reputation. When undertaking such advertising, be it on assets owned by the Council or by third parties, the Council already adheres to existing relevant nationally recognised industry codes, legislation, regulations and Council policies. This practice would continue.

### **Sponsorship**

- 2.6 To sponsor something is to support an event, activity, person or organisation financially or by providing products or services. The relationship should be mutually beneficial. Sponsorship should not be confused with other types of funding which the Council provides such as grants, and which are not subject to this policy.
- 2.7 Sponsorship is a business relationship between the provider of funds, resources or services and an individual, event or organisation which offers in return rights and association that may have commercial advantage in return for the investment.
- 2.8 There can be cross over between how advertising and sponsorship works in practice. For example, advertising on Council-owned roundabouts may be referred to as sponsorship because the advertising income supports the cost of maintaining those sites. This policy is intended to cover third party sponsorship of Council events or initiatives.

## Extent of policy application

- 2.9 Subject to the terms of this policy, this policy is not intended to cover (i) pre-existing contractual arrangements the Council has entered into, (ii) any current or future grant funding arrangements entered into by the Council, (iii) any matters which are the subject of separate regulation, for instance matters regulated by separate planning or licensing regimes, (iv) the activities or operations of the Lothian Pension Fund, or (v) the activities of school parent councils.

## 3. Industry codes

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- 3.1 The advertising industry operates within a heavily legislated and regulated landscape with strict industry codes. The Council will always adhere to the terms of any current legislation and relevant nationally recognised industry codes.
- 3.2 The Advertising Standards Authority (ASA) is the UK's independent regulator of advertising across all online and offline media. The UK advertising codes lay down rules for advertisers, agencies and media owners to follow. The ASA proactively monitors advertising for compliance as well as responding to complaints, and issues rules on its investigations.
- 3.3 The ASA codes of practice are the 'rule books' which cover two areas:
- 3.3.1 non-broadcast advertising and direct and promotional marketing ([CAP code](#)): the central principle of this code for all marketing communications is that they should be legal, decent, honest and truthful. All marketing communications should be prepared with a sense of responsibility to consumers and society and should reflect the spirit, not merely the letter, of the code; and
- 3.3.2 broadcast media ([BCAP code](#)): the overarching principles of this code are that advertisements should not mislead or cause serious or widespread offence or harm, especially to children or the vulnerable.
- 3.4 The ASA codes cover a wide range of guidance including:
- misleading advertising;
  - harm and offence;
  - political advertisements;
  - environmental claims;
  - medicines, medical devices, health-related products and beauty products;
  - weight control and slimming;
  - financial products;
  - gambling;
  - lotteries;
  - alcohol;
  - tobacco, rolling papers and filters;
  - electronic cigarettes; and

- specific guidance when featuring or addressing children.

3.5 The ASA provisions on food, food supplements and associated health or nutrition claims highlights that the ASA rules must be read in conjunction with the relevant legislation which applies to all marketing communications for food products, including the Food Safety Act 1990, the Food Information Regulations 2014 and Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (the EU Regulation).

3.6 The ASA code also highlights that:

“Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers.”

3.7 The ASA codes include specific rules on "HFSS products" ie those food or soft drink products that are assessed as high in fat, salt or sugar in accordance with the Department of Health nutrient profiling model. It also includes guidance on HFSS advertising in proximity to schools.

## **4. Legislation and regulations**

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4.1 Legislation and regulations which have impact on advertising and sponsorship currently include:

4.1.1 Local Government Act 1986;

4.1.2 the Town and Country Planning (Scotland) Acts which include regulations which control the display of advertising, such as on billboards.

4.1.3 the Communications Act 2003 also specifies strict rules to which media service providers must adhere;

4.1.4 Supply of Goods and Services Act 1982;

4.1.5 Consumer Protection from Unfair Trading Regulations 2008; and

4.1.6 Business Protection from Misleading Marketing Regulations 2008.

## **5. Advertising and sponsorship principles**

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5.1 This policy applies to proposals for (i) advertising by third parties which would be installed on assets directly owned by the Council, and (ii) third party sponsorship of Council events or initiatives.

- 5.2 Whether advertising and/or sponsorship proposals within the scope of this policy should be approved by the Council will be decided on a case-by-case basis on the merits of each opportunity or request, as assessed taking into account this policy. Council directorates/divisions assessing such proposals must consult with the appropriate Council specialists set out in section 6.
- 5.3 The Council welcomes opportunities to collaborate with third parties on sponsorship/advertising proposals. The Council does, however, reserve the right to refuse an advertising or sponsorship proposal where such a proposal, including an association with the party in question, may cause reputational damage to the Council or the city.
- 5.4 Advertising or sponsorship should not put the Council or the third party in question in a position where it could be said that the proposal may be perceived:
- 5.4.1 as seeking to unduly influence the Council; and/or
  - 5.4.2 as aligning the Council with any organisation which conducts itself in a way which directly conflicts with Council strategic priorities and values.
- 5.5 An advertisement or sponsorship proposal will not be approved if, in the opinion of the Council, it does any of the following, or might reasonably be perceived as doing so:
- 5.5.1 does not adhere to relevant nationally recognised industry codes, legislation or Council policies;
  - 5.5.2 may result in the Council being subject to legal proceedings;
  - 5.5.3 appears to promote racial or sexual discrimination, or discrimination based on disability, faith, gender or age, or would result in the Council being in breach of its legal obligations;
  - 5.5.4 is disparaging any person or class of persons;
  - 5.5.5 promotes or incites illegal, violent or socially undesirable acts;
  - 5.5.6 promotes tobacco or tobacco related products (such as vaping), weapons, gambling or illegal drugs;
  - 5.5.7 is deemed inappropriate for children or young people, eg violent or pornographic imagery;
  - 5.5.8 infringes any intellectual property rights, eg trademark, copyright or patent rights, of a third party;
  - 5.5.9 includes claims or representations in violation of advertising or consumer protection laws; and/or
  - 5.5.10 associates the Council to or lends support to any particular political party or a cause identified with any particular political party.

- 5.6 This advertising and sponsorship policy should be applied alongside existing Council policies and guidance, where relevant, including the following:
- 5.6.1 [Policy and procedures on sponsorship of events targeted at school pupils](#);
  - 5.6.2 Approved Edinburgh Planning Guidance on [Advertisements, Sponsorship and City Dressing](#) policy which gives guidance on proposals for advertisements, sponsorship, city dressing, and the location of flagpoles, flags and banners – set out by Planning and the [approval process](#) for city dressing led by Culture Services;
  - 5.6.3 [Edinburgh Design Guidance](#) led by Planning;
  - 5.6.4 the [approved policy for advertising](#) on on-street structures led by Planning;
  - 5.6.5 proposed revised Edinburgh Planning Guidance on Outdoor Advertising and Sponsorship;
  - 5.6.6 the Council's Contract Standing Orders.
- 5.7 The Council must ensure a return on investment when it is receiving sponsorship.
- 5.8 As regards sponsorship, (i) the proposed sponsorship must support or further the Council's strategic objectives, (ii) reasonable steps must be taken to ensure the party the proposed sponsorship relates to discloses any current regulatory applications/consents relating to them/related organisations/close associates in respect of the Council area, or if they are involved in any current dispute with the Council or if there are outstanding debts owed to the Council, (iii) a suitable risk assessment must be conducted in respect of the event or activity in question, and (iv) the Executive Director of Communities and Families must be consulted should any proposed sponsorship event or activity be focused on children or young people. There must be no risk of misperception that the party the sponsorship arrangement is with will be looked upon sympathetically for other purposes such as access to elected members outside the sponsored event or activity, and the sponsorship proposal must secure Best Value with any benefits conferred by it being proportionate.
- 5.9 All sponsorship or advertising proposals shall be the subject of a suitable agreement between the Council and the third party in question.
- 5.10 The use of Council branding and logos, and any other intellectual property of the Council, by any third party is not permitted except with the prior written agreement of the Council and must adhere to the Council's brand guidelines.
- 5.11 The size and positioning of third party logos on any Council promotional material, goods or signage must be considered by the appropriate lead officer in consultation with the Council's communications team.

## **6. Responsibility for approving and monitoring**

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- 6.1 The lead officer in the Council service responsible for approving an advertising or sponsorship proposal must make sure that any proposed arrangement does not constitute unlawful financial aid or is not permitted under relevant legislation, regulations, nationally recognised industry codes and existing Council policy and guidance, including in terms of this policy.
- 6.2 An officer may only offer or accept advertising or sponsorship proposals on the Council's behalf with authorisation from the relevant Head of Service and Executive Director, subject to the Council's Scheme of Delegation, and after having consulted with the following specialist Council teams:
- Commercial and Procurement Services;
  - Communications;
  - Legal Services; and
  - Property and Facilities Management.
- 6.3 Certain advertising or sponsorship proposals may require specific committee approval, in terms of the Council's Scheme of Delegation and related governance framework.