

<b>DECISION-MAKER:</b>	COUNCIL
<b>SUBJECT:</b>	LOCALISM ACT 2011 – REVISED STANDARDS ARRANGEMENTS
<b>DATE OF DECISION:</b>	16 MAY 2012
<b>REPORT OF:</b>	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
None	

### **BRIEF SUMMARY**

This report informs members of the changes to the standards regime brought about by the Localism Act 2011 which makes fundamental changes to the system of regulation and recommends proposals for the drawing up of a revised Code of Conduct for adoption by Council, together with arrangements for dealing with complaints where a Member has breached the Code. The report has been considered by the Standards and Governance Committee at its meeting on 16<sup>th</sup> April 2012 and Audit Committee informally on 16<sup>th</sup> April 2012 and endorsed. The only recommended addition is that of an appeal process regarding a finding against a member.

### **RECOMMENDATIONS:**

- i. That it delegates to the Head of Legal, HR and Democratic Services authority to:-
  - (a) prepare a Code of Conduct based upon a draft that is currently being prepared by the Association of Council Secretaries and Solicitors (ACSeS) and that this is considered by the Standards and Governance Committee prior to it being presented to Council for adoption;
  - (b) advertise for and appoint two Designated Independent Persons;
  - (c) appoint two independent co-opted members from the current appointees to serve on the proposed Governance Committee on standards issues only from 1st July 2012.
- ii. once the new standards regime comes into force;
  - (a) the role of the current Audit Committee be extended to one of overall governance to be called the “Governance Committee” in accordance with the draft terms of reference (appendix 1) and from which (i) Standards Sub Committee and (ii) Standards Appeals Sub Committee be formed;
  - (b) that both the Standards and Appeals Sub Committees consist of three Members, politically balanced, together with one co-opted and non voting independent member (as (c) above) to deal with any Code of Conduct issues that may be referred to it by the Monitoring Officer and that they have the terms of reference as attached at appendix 2 ;

- (c) delegates authority to the Monitoring Officer, after consultation with a Designated Independent Person, to where appropriate (i) determine whether a complaint in relation to Member misconduct merits formal investigation (ii) refuse to accept complaints that are trivial, vexatious, repetitive or political and at his discretion to refer such decisions on investigation to the Standards Sub Committee (iii) agree local settlements;
  - (d) delegate to both the Standards and Appeals Sub Committees power to take such actions as it lawfully can in respect of a Member who is found to have failed to comply with the Code of Conduct;
  - (e) delegates to both the Monitoring Officer and Standards Sub Committee the authority to grant dispensations under the Act;
  - (f) that the Designated Independent Persons be paid an annual retainer of £645.00 each and that this be reviewed and agreed after the first year of operation by the Head of Legal, HR and Democratic Services after consultation with the Leader of the Council;
  - (g) that the current Code remain in place until a revised code of conduct is adopted by Council;
- iii. That once further clarification has been received regarding the remaining detail of the revised standards regime including the role of the Designated Independent Person, a further report is presented setting out the position relating to that appointment.

## **REASONS FOR REPORT RECOMMENDATIONS**

1. As a result of the Localism Act 2011 the current standards regime is radically changing which requires the Council to put in place new arrangements to deal with matters of ethics, probity and Members conduct

### **DETAIL (Including consultation carried out)**

2. Previously a report has been presented to the Standards Committee in respect of the Localism Act proposals for the standards regime. At the meeting of the Committee on 13th December 2011, it discussed the Act and its ramifications as far as it could bearing in mind that at that stage much was unclear as to how matters would work in practice. This report seeks to both update Members and recommend options for a way forward. At that stage the Committee felt that a robust system was still needed and some form of committee should remain to deal with complaints etc. Members also felt that it was important that independent members, appointed by the Council, were included to assist the Council in demonstrating that it has high standards and transparency.
3. The Localism Act received royal assent on 15 November 2011. The Act brings about a number of fundamental changes to the standards regime and it will be necessary for the Council to make arrangements which comply with the new legal requirements.

4. It makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was proposed to be 1 April 2012, but the Department of Communities and Local Government (CLG) confirmed that this has been put back until 1<sup>st</sup> July 2012. In the meantime, the Standards for England quango (SfE) ceased its regulatory functions on 31st January 2012 and was to be abolished on 31st March 2012.
5. The remaining elements of the current regime including the model Code of Conduct and the statutory Standards Committees with the power to suspend councillors will be abolished on 1 July 2012. There still remain numerous unanswered questions as to some aspects of the new regime and both secondary legislation and statutory guidance is awaited which will inform much of the detail of the processes etc to be followed. For example, DCLG has recently indicated that it may permit current independent members to become the new “designated independent person(s)” notwithstanding the current bar in the Act. It is not known how this can happen lawfully given the constraints of the Act but serves to illustrate the complexities of the new regime.
6. From 1st July all standards matters will be handled under new “arrangements”. 1st July will also see new standards arrangements which include a “Nolan-based” Code, the involvement of a Designated Independent Person and a new criminal offence for failing to declare or register certain interests coming into force.
7. In order to implement the standards provisions the Council will need to consider the following:-
  - a. What Code of Conduct should be put in place and adopted by the Council;
  - b. Whether the Council should establish a new Standards Committee or use another committee in the Council to deal with Standards issues and if not, how should Standards issues be deal with;
  - c. What “Arrangements” the Council should adopt and put in place to investigate complaints that a Member has failed to comply with a Code of Conduct and within these “Arrangements” what sanctions can lawfully be imposed where a Member has failed to comply with a Member Code of Conduct;
  - d. The need to arrange for the recruitment of the Designated Independent Person and to decide whether more than one will be required.
8. The following sections of this report describes the changes to the Standards regime in more detail and the actions that are now required to make sure that arrangements are in place by 1st July 2012 when these changes are indicated to come into effect.
9. The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members and the following set out what is now required in order for the Council to meet this duty.

## THE CODE OF CONDUCT

10. The current ten General Principles and Model Code of Conduct will be repealed, however the Council will be required to either revise its existing code or adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles :-
  - Selflessness
  - Objectivity
  - Openness
  - Leadership
  - Integrity
  - Accountability
  - Honesty
11. The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs). There will be no definition of what constitutes a DPI until the regulations are made, but they are expected to broadly equate to the current registerable financial interests.
12. The Act also requires the Code to contain appropriate requirements for the registration (and disclosure) of "pecuniary interests and interests other than pecuniary interests", but it does not define what these shall be. It is therefore for the Council to decide what other pecuniary and non-pecuniary interests should be included in the Code in addition to DPIs.
13. The result is that it is not possible yet to draft the Code provisions which reflect the definition of DPIs which will appear in regulations. The Regulations are not expected to be published until late June. It may be that the Code requires registration and disclosure for those interests which would today amount to personal and / or prejudicial interest under the current Model Code.
14. The Head of Legal, HR and Democratic Services is currently working on a draft code which will be presented to Standards and Governance Committee in late June before being presented to Council in July for adoption. It will be necessary to produce a Code that takes account of advice received from the Government, ACSes, the Local Government Association and elsewhere to ensure consistency in its application across Hampshire at least bearing in mind the different bodies that Members are appointed to ie Fire and Police, all of which require new codes.
15. The Act prevents Members with a DPI in any matter which is under consideration at a meeting from taking part in any discussion of that matter or taking part in any vote. Under the Act, the Council can also choose to adopt a Standing Order excluding a Member from a meeting if they have a DPI. There is no similar power under the Act to exclude a Member from a meeting merely because they have some other pecuniary or non-pecuniary interest.
16. The Council's new Code of Conduct will have to deal with the following matters:-
  - General conduct rules, to give effect to the seven principles. This corresponds broadly with paragraphs of the current Code of Conduct.

In practice, the easiest course of action could be simply to re-adopt paragraphs of the existing Code of Conduct. Members are familiar with this and the Council can amend its Code of Conduct subsequently if the need arises. Alternatively, the Council could adopt a Code of Conduct drafted by ACSeS and / or the LGA. The ACSeS version is recommended as this appears to be the approach being taken by other authorities.

- Registration and disclosure of pecuniary interests and non-pecuniary interests – effectively, replacing the provisions on personal interests contained in the current Code. The Act requires that the Code contains “appropriate” provisions for the registration and disclosure of pecuniary and non-pecuniary interests but leaves it up to each authority to decide what these should be. It would seem sensible therefore, as stated above, to simply retain the existing financial and other interests contained in the current Code. Provisions for the registration and disclosure of DPis will have to be added in later when the regulations have been published.

### **Standards Committee**

17. The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for the Council to appoint a Standards Committee in the future. However, there will still be a need for the Council to uphold standards of ethics and probity and receive and deal with complaints that a Member may have breached the new Code, so that it may remain convenient to have some form of a Standards Committee. The alternative is that all matters will need to be referred to full Council which is not considered either appropriate or expedient.
18. The Council must have some form of governance arrangements that are able to deal with standards issues particularly where there have been investigations, so as to determine the allegations and either dismiss or impose sanctions.
19. If Members were minded to recommend a Standards Committee it is important to note that any such committee would be a normal committee of Council, without the unique features which were conferred by the previous legislation. Committees as well as adhering to the rules on proportionality may have co-opted members that are purely advisory and non voting; normal schedule 12A exempt information rules apply.
20. An alternative to having a separate Standards Committee could be to consider extending the terms of reference of the Audit Committee and the Committee become an overall “Governance Committee” that could then also deal with Standards issues by way of a Sub Committee. A similar analogy is the way the Licensing Committee has Panels that deal with Licensing matters.
21. If the functions and responsibilities of the Audit Committee were extended as suggested above, the Committee would still adhere to the rules on proportionality, any co-opted members would purely be non-voting and advisory, normal schedule 12A exempt information rules would apply. Any Standards Sub Committee for example, could be made up of three Members

appointed from the Members that make up the Audit Committee whilst still maintaining the political proportionality. Additionally, the Standards and Governance Committee at its meeting on 16<sup>th</sup> April 2012 considered this draft report and proposals and recommended an Appeals Sub Committee in relation to findings of a breach against a member, such sub committee to have the same numbers of members. It is therefore recommended that this is the simplest way forward.

22. In addition, the current co-opted independent members will cease to hold office. This is a significant change and could be seen as a retrograde step as they currently add both transparency and obviously an element of independence to the process. Consideration therefore needs to be given as to whether there should still be independent members co-opted to the new Committee bearing in mind it will now become comprised solely of elected Members. To do so would retain the element of “independence” that would otherwise be lost. Such members would not be able to vote but would play a significant part in the process. It is recommended that one non voting co-opted independent member also sits on the Sub Committees.
23. The Act establishes a new specific category of Designated Independent Persons (DIPs) who must be consulted at various stages, but the existing co-opted independent members cannot serve as Independent Persons for 5 years, although as referred to above this may possibly change. ACSes has sought Leading Counsel’s opinion on this point which confirms that it is not permissible for a past Independent member who has served as an Independent Member in the past 5 years to serve as a DIP under the Act. The position is therefore currently confusing and unresolved.

## **DEALING WITH MISCONDUCT COMPLAINTS**

### **“Arrangements”**

24. The Act requires that the Council must have in place “arrangements” under which allegations that a Member may have breached the Code of Conduct can be investigated and under which, decisions on allegations can be made. The arrangements must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.
25. The advantage is that the Act repeals the requirements for separate Referrals, Review and Hearings Sub Committees, and enables the Council to establish its own, perhaps simpler, process which can include delegation of decisions on complaints.
26. The statutory provisions no longer give a Standards Committee or Monitoring Officer special powers to deal with complaints, so it will be necessary for Council to delegate appropriate powers to any Standards Committee or such other Committee that may be given the remit and to the Monitoring Officer.
27. A brief overview of the current Standards process is as follows:-
  - a. An Initial Assessment Sub Committee of the Standards Committee chaired by an independent member is formally convened within 20 working days of receiving a complaint and decides whether to take no

action/refer the matter for “other action”/refer to the SfE for investigation/refer for local investigation.

- b. If the decision is to take “no action” the complainant has a right of appeal (within 30 days) to a Review Sub Committee.
- c. Where the matter is referred for a local investigation a detailed report must be produced within 6 months. The subject Member and complainant have the opportunity to comment on the draft report.
- d. The Investigating Officer concludes whether there has been a breach of the Code on the balance of probabilities but makes no recommendation as to sanctions.
- e. If the report finds there has been no breach of the code, a Hearings Sub Committee of the Standards Committee is formally convened to decide whether or not to accept the recommendations.
- f. It may conclude that there may have been a breach in which case a separate meeting must take place to hear the evidence and determine any appropriate action.
- g. If the report finds that there has been a breach a Hearings Sub Committee must be convened within 3 months. Witnesses may be called and the investigator and subject Member are present and may make representations.
- h. There is a right of Appeal against the decision to the 1st tier tribunal (Standards for England).
- i. The Hearing is in public and the outcome should be made public.

### **Decision whether to investigate a complaint**

28. In practice, the SfE guidance on initial assessment of complaints which we have been familiar with for some years now has provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. However, the criteria does not go far enough to stop vexatious, repetitive or clearly solely political complaints. It would appear prudent to take advantage of the new flexibility and delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the DIP and the ability to refer particular complaints to a Standards Committee or Sub Committee, where the Monitoring Officer feels that it would be inappropriate for him to take a decision on it.
29. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation, Members will need to consider who should take a decision on whether the complaint merits formal investigation, for example:
  1. The Monitoring Officer
  2. The Monitoring Officer in consultation with the DIP
  3. A Committee / Sub Committee

### **Investigations which result in a finding of no breach of the Code**

30. Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to a Hearings Sub Committee of the Standards Committee and the Committee take the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to a Committee or Sub Committee if they think appropriate.

### **Investigations which result in a finding of a breach of the Code**

31. Where a formal investigation finds evidence of failure to comply with the Code of Conduct, the Monitoring Officer should still explore the opportunity for local resolution if appropriate, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a Member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome.
32. In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee / Sub Committee to hold a hearing at which the Member against whom the complaint has been made can respond to the investigation report. The Committee / Sub Committee can then determine whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

### **SANCTIONS - Action in response to a Hearing finding or failure to comply with the Code**

33. The Act removes the previous array of sanctions and does not give the Council or its committees or officers any powers to impose sanctions such as suspension or requirements for training or an apology. So, where a failure to comply with the Code of Conduct is found, the range of actions which the Authority can take in respect of the Member is limited to censure and such other actions which are permitted under general local government law.
34. ACSeS has sought advice from Leading Counsel on the nature and scope of any action lawfully available to authorities in respect of those Members found to have failed to comply with an Authority's Code of Conduct.
35. Leading Counsel has indicated that the following are lawfully available subject of course to the particular facts and circumstances and a lawful and proportionate manner of application:
- Reporting its findings to Council for information;
  - Recommending to the Member's Group Leader that he/she be removed from any or all committees or sub committees of the Council subject to statutory and constitutional requirements;
  - Formal letter from the Authority or one of its committees to a Member.
  - Formal censure through a Motion.



36. Therefore, the Council would need to delegate to the Standards Committee or Sub Committee such powers as set out above in order that the appropriate action can be taken against a Member who is found to have failed to comply with the Code of Conduct.

### **APPEALS**

37. There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the Authority had no power to impose. As indicated above the Standards and Governance Committee recommend that an appeals sub committee be included in the new arrangements.

### **DESIGNATED INDEPENDENT PERSON(S)**

38. The Council's current Standards Committee includes three independent Members. The requirement to have a Standards Committee in this form will cease, however the requirement to have an independent element will remain albeit in a different form.
39. The Act specifies that "Arrangements" adopted by Council must include provision for the appointment by Council of at least one DIP. The DIP must be appointed through a process of public advertisement, application and appointment.
40. A person is considered not to be "Independent" if –
- He/she is, or has been within the last 5 years, an elected or co-opted member or an officer of the Council.
  - He/she is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub Committee of the Council (which would preclude any of the co-opted independent members of Standards Committee from being appointed as an Independent Person); or
  - He/she is a relative or close friend of a current elected or co-opted member or officer of the Council.

### **Statutory functions of the Designated Independent Person**

41. The functions of the DIP(s) are:–
- They must be consulted by the Authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member.
  - They may be consulted by the Authority in respect of a standards complaint at any other stage; and
  - They may be consulted by a Member or co-opted member of the Council against whom a complaint has been made.

### **How many?**

42. The Act gives discretion to appoint one or more DIP, but appears to provide that the DIP must be consulted before any decision is taken on a complaint which has been investigated. In light of the ability for both the complainant

and the Members complained of to consult the DIP, it may well be that on occasions there could be a conflict of interests and accordingly it may be prudent to appoint at least two.

### **Remuneration**

43. As the DIP is not a member of the Authority or of its committees or sub committees, the remuneration of the Independent Person no longer comes within the scheme of members' allowances, and can be determined without reference to the Independent Remuneration Panel. Accordingly, it is suggested that an initial annual retainer of £645.00 be paid and that it would be appropriate to undertake a proper review of the function before setting the remuneration next year. This is the sum, rounded up, that is currently paid to co-opted members.

### **THE REGISTER OF MEMBERS' INTERESTS**

44. The Act abolishes the concepts of personal and prejudicial interests. Instead regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and be available on the Council's website.
45. At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current financial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.
46. The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

### **Registration on election or co-option**

47. Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
48. In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
49. Members will be expected to register new interests as they arise. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
50. The Monitoring Officer is required to prepare and maintain a register of these interests and to ensure that all Members are informed of their duty to register.

### **DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS**

51. As set out above, as far as officers are aware DPIs are to be broadly equivalent to prejudicial interests.
52. The duty to disclose and withdraw arises whenever a Member attends any meeting of Council, a committee or sub committee, or of Cabinet, and is aware that he/she has a DPI in any matter being considered at the meeting.

53. Where the Member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
54. If a Member has a DPI in any matter, he/she must not –
  - (a) Participate in any discussion of the matter at the meeting; or
  - (b) Participate in any vote on the matter,unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
55. Failure to comply with the requirements becomes a criminal offence, rather than leading to sanctions.
56. The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.

### **Sensitive Interests**

57. The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.
58. So, where a Member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of Members' interests would lead to the Member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".
59. If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of Members' interests.

### **Dispensations**

60. The provisions on dispensations are greatly changed by the Act. In future, it will be much easier to obtain a dispensation and the power to grant a dispensation can be delegated to the Monitoring Officer. This will enable dispensations to be granted at short notice, if for example where business cannot be transacted at a meeting because a majority of Members are conflicted out leaving the meeting inquorate.

### **CONCLUSION**

61. This report sets out the changes to the standards regime brought about by the Localism Act 2011, as understood by officers at the current time and recommends proposals for the drawing up of a revised Code of Conduct for Members for adoption by Council, together with arrangements for dealing with complaints that a Member has breached the Code.

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

62. All options are considered in this report.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

63. There will be a cost arising from the requirement to appoint DIP(s) as such persons will be entitled to receive an allowance and expenses but this will be offset by the remuneration that is currently paid to the existing Independent Members of the Standards Committee.

64. A decision will need to be made about the remuneration or payment of expenses of the newly appointed DIP(s) which is outside the scope of the Members' allowances scheme and which can be agreed locally.

### **Property/Other**

65. N/A

## **LEGAL IMPLICATIONS**

### **Statutory Power to undertake the proposals in the report:**

66. Chapter 7 Localism Act 2011

### **Other Legal Implications:**

67. None

## **POLICY FRAMEWORK IMPLICATIONS**

68. None

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**SUPPORTING DOCUMENTATION**

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

**Appendices**

1.	Draft terms of reference for the Governance Committee
2.	Draft terms of reference for the Standards Sub Committee

**Documents In Members' Rooms**

1.	None
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**Integrated Impact Assessment**

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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**Other Background Documents**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	None	
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**Integrated Impact Assessment and Other Background documents available for inspection at:**

<b>WARDS/COMMUNITIES AFFECTED:</b>	None
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