



City of Westminster

Licensing Committee Report

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| Meeting: | <i>Licensing Committee</i> |
| Date: | <i>14th March 2012</i> |
| Classification: | <i>For General Release</i> |
| Title: | <i>Licensing Urgency Sub-Committee – 5 January 2012</i> |
| Wards Affected: | <i>All</i> |
| Financial Summary: | <i>None</i> |
| Report of: | <i>The Operational Director for Premises Management</i> |

1. Executive Summary

- 1.1 The report formally advises the Licensing Committee of the Licensing Urgency Sub-Committee decisions on 5th January 2012 relating to amending the fees for Sex Establishment licences and establishing a new fee structure for Sexual Entertainment Venue licences.

2. Recommendations

- 2.1 That the Licensing Committee notes the contents of the 5th January 2012 Licensing Urgency-Sub Committee reports and decisions relating to the Sex Establishment licence fees.

3. Background

- 3.1 On the 5th January 2012 the Licensing Urgency Sub-Committee formally agreed to create a new fee structure for Sexual Entertainment Venues and to amend the fees for all other Sex Establishments. These decisions are attached at Appendix B and D to this report.
- 3.2 The Licensing Urgency Sub-Committee reports, attached to this report as Appendix A and C were put before a Licensing Urgency Sub-Committee due to the need to have the licence fees established prior to receiving SEV applications or the standard sex establishment renewals at the end of January.

4. Financial and Legal Implications

- 4.1 Members should refer to the Financial and Legal Implications sections in both the Sex Establishment Fee Review Report and the Sex Entertainment Venue Fee Review Report.

Appendices

- Appendix A – Sex Establishment Fee Review Report (including Appendices)
- Appendix B – Decision of the Licensing Urgency Sub-Committee on 5th January 2012 for the Sex Establishment Fee Review.
- Appendix C – Sex Entertainment Venue Fee Review Report (including Appendices)
- Appendix D – Decision of the Licensing Urgency Sub-Committee on 5th January 2012 for the Sex Entertainment Venue Fee Review.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Mr Kerry Simpkin, Assistant Service Manager on 020 7641 1840 or email ksimpkin@westminster.gov.uk

BACKGROUND PAPERS

None



City of Westminster

Licensing Urgency Sub-Committee Report

| | |
|---------------------------|---|
| Meeting: | <i>Licensing Urgency Sub-Committee</i> |
| Date: | <i>Thursday 5th January 2012</i> |
| Classification: | <i>For General release</i> |
| Title: | <i>Sex Establishment Licensing Fees Review</i> |
| Wards Affected: | <i>All</i> |
| Financial Summary: | <i>The proposed fees will allow the Council to recover its reasonable costs for processing applications, administering licences and ensuring compliance with this licensing regime in 2012/2013 licensing period. The estimated revenue over a full year is £262k based on the current number of licences. This is a reduction in income of £145k. This reduction in income is offset by the estimated income in Sexual Entertainment Venues (SEV's) and by reallocating compliance and enforcement resources and their associated costs to the Licensing Act 2003. It is anticipated that those additional compliance costs for the Licensing Act 2003 will be covered by the amendment to the Act enabling the council to recover its costs in relation to that regime.</i> |
| Report of: | <i>The Operational Director for Premises Management</i> |

1. Executive Summary

- 1.1 The report sets out the proposed fee structure for Sexual Establishment licensing (excluding Sexual Entertainment Venues) following a review of the overall costs of processing applications and ensuring compliance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

2. Recommendations

- 2.1 To agree the proposed fee structure as set out in Appendix 1 to the report with effect from the decision date.
- 2.2 That any applicant that submits a 2012 renewal application which is accompanied by the renewal fee (£29,102) fee prior to the new renewal fee coming into effect will have the fee difference (£10,365) refunded to them.
- 2.3 That the Committee notes that the proposed fees will be reviewed once the 2012/2013 budgets have been set to ensure that the assumptions made within this report are correct. Any changes to the fee structure made following that review will ensure that the Council can fully recover its actual costs in relation to the sex establishment licensing regime.

3. Reasons for Decision

- 3.1 The proposed fees at Appendix 1 will cover the estimated costs of processing applications, administration and ensuring compliance of the licensing regime.
- 4.1 The Council, under paragraph 19 of Schedule 3, Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) can set a reasonable fee to cover the costs of processing, administering and ensuring compliance of the sex establishment licensing regime.
- 4.2 The Council currently has 14 licensed premises which pay an annual renewal fee for their licences.
- 4.3 The fees for sex establishments (excluding SEV's) were last reviewed in 2004 when the following fees were set:

| Application Type | Fee |
|-------------------------|------------|
| New | £29,102 |
| Renewal | £29,102 |
| Variation | £782 |
| Transfer | £1,334 |

- 4.4 Over the past 7 years the Council's Premises Licensing Inspectors have been carrying out active compliance checks on existing licensed premises and enforcement on those operating illegally. The level of active enforcement on unlicensed establishments for the next licence period (February 2012 – January 2013) is anticipated to reduce from just over 5 unlicensed premises to 1 or less. The Council is attempting to close down all unlicensed sex establishments within Westminster by the end of 2012. This will allow the current licensed premises to trade on an equal footing to their competitors and also remove those premises that are operating illegally and do not meet the strict requirements set out by the Council for such establishments.
- 4.5 Due to the anticipated decrease in compliance/enforcement costs during the next licence period the Licensing Service have reviewed the current sex establishment (excluding SEV's) licence fees to ensure that they adequately reflect the costs associated with processing, administration and compliance of this licensing regime. The proposed fees reflect this reduction in costs and will enable the Council to reasonably recover its costs.

5 Proposed fees

- 5.1 In calculating the fee for these categories of sex establishment licences (sex shop, sex cinema and hostess bar) we have re calculated the approximate processing, administration, determination and compliance costs associated with each application type. All costs are calculated based on officer time and the associated on costs for each officer. A full breakdown of the estimated

processing, administration and determination time and costs has been detailed in Appendix 2 to this report. The estimated costs and officer time associated with ensuring compliance with the licence and legislation has been detailed in Appendix 3 of this report.

- 5.2 Twelve out of fourteen of the current licences are renewable on the 31st January each year. As this is before the Council are in a position to set the 2012/2013 budget all of the following fees have been calculated from the existing 2011/2012 expenditure. The Licensing Service intends to review these fees once the 2012/2013 budgets have been set. Any increase or decrease in budgetary costs will be reflected in the fee level for the following licence period.

New Application Fee

- 5.3 The proposed fee for new licence applications will be £19,973. This is a reduction of £9,129 from the current new application fee. The cost relating to processing new applications is projected to be £2,255 which includes the processing, administration and determination process (including Legal and Environmental Health costs). £1,640 of that sum specifically relates to the licensing process and legal costs; £442 to the cost of Environmental Health Consultation Team and £173 is the cost associated with continual policy review and development. The remaining £17,718 will cover the amended compliance costs for the licensing regime. All new sex establishment licence applications will be consulted upon and put before the Licensing Sub-Committee to be determined in line with the Council's delegations for sex establishments.

Renewal Application Fee

- 5.4 The proposed renewal fee is £18,737 which is a reduction of £10,365 from the current renewal fee. The proposed renewal fee will consist of £1,019 for the processing, administration determination (including Legal and Environmental Health costs) and ongoing costs associated with reviewing and maintaining the council's policy. £754 of that sum specifically relates to the licensing process (including legal costs), £88 for the ongoing costs of Environmental Health Consultation Team and £177 for continual policy review and development. The remaining £17,718 will cover the ongoing costs for the compliance and inspection regime. These applications will be consulted upon and can be opposed. If the application is opposed it will have to be determined by the Licensing Sub-Committee.

Variation Application Fee

- 5.5 A licence can be varied at any point during the period in which it is in operation. The holder of a licence can apply to vary any terms, conditions or restrictions on or subject to which the licence is held. The proposed fee for variation applications is £1,251 which is an increase of £469 from the current fee. The

increase in fee relates to the increased costs associated with processing and consultation on these applications. The proposed fee is made up of £1,001 for the licensing process, which includes legal costs and £250 for Environmental Health Consultation Team. There is no compliance costs associated with this type of application as the compliance costs are accounted for on the new or renewal licence application fees.

- 5.6 It should be noted that the council can, following receipt of a variation application grant the variation specified in the application, or make any such variations as it thinks fit or refuse the variation application. These applications will be consulted upon and the specific variation proposals considered by the council. Any opposed variation applications will be determined by the Licensing Sub-Committee unless those objections are withdrawn prior to the hearing date. This fee is anticipated to cover the council's costs in relation to processing, considering and determining those applications.

Transfer Application Fee

- 5.7 The licensee or a person proposing to carry on the licence can apply to transfer the licence to a named person at any stage during the licence period. The proposed transfer fee is £202 which is a reduction from £1,132. The council have amended its procedure for processing transfer applications which has significantly reduced the cost of processing those applications. The proposed fee covers the costs relating to processing these applications within the Licensing Service. There are no costs associated with the Environmental Health Consultation Team or for compliance and inspections.
- 5.8 The estimated income for sex establishments (excluding SEV's) for the 2012/2013 licence period is £262,318. This is based on the 14 licensed premises renewing their licences in January 2012. It is not possible to state whether the Council will receive any applications for the transfer or variation of a sex establishment licence during this period. Over the past five years the council have only received one transfer application. For the purpose of this fee review the additional income from transfer or variation applications has been estimated at nil.

6. Financial Implications

- 6.1 As stated above the reason for the review of the sex establishment (excluding SEV's) fees is due to the predicted reduction in the level of compliance costs of unlicensed establishments.
- 6.2 The 2011/2012 costs, including compliance costs in relation to sex establishments are detailed below.

| |
|------------------|
| 2011/2012 |
|------------------|

| Cost type | Cost amount |
|--|--------------------|
| Direct Expenditure (including employee costs, etc) | £33,527 |
| Net Expenditure (excluding Compliance) | £40,329 |
| Compliance Net Expenditure (excluding SEV's) | £385,807 |
| Total Expenditure (Direct and Net) | £459,663 |

6.3 The overall budgetary commitment for compliance and enforcement costs for Premises Inspections across the Service will not reduce in 2012/2013. However, there will be a reduction in officer time and resources in relation to compliance and enforcement for sex establishments (excluding SEV's) in the next licence period. This is because the level of unlicensed establishments has significantly diminished and it is hoped that they will be reduced further during 2012. Some of the £385,807 cost for compliance and enforcement that was allocated to Sex Establishments (£75,800) will be used for the new Sexual Entertainment Venue licensing regime which will be commencing in 2012. The level of compliance/enforcement costs has increased with regard to the Licensing Act 2003 licensing regimes. Some of the officer time and resource costs (£61,951) that was allocated to Sex Establishments will now be redirected to Licensing Act 2003 compliance and enforcement. This re allocation of compliance and enforcement costs is shown in the graph below.

6.4 Taking into account the amended compliance and enforcement costs for Sex Establishments (excluding SEV's) the following costs represent the estimated expenditure in relation that licensing regime for 2012/2013.

| 2012/2013 | |
|---|--------------------|
| Cost type | Cost amount |
| Direct Expenditure (including employee costs, etc) | £33,527 |
| Net Expenditure (excluding Compliance) | £40,329 |
| Compliance Net Expenditure (including SEV compliance costs) | £323,856 |
| Total Expenditure (Direct and Net) | £397,712 |

6.5 The estimated income for the 2012/2013 licence period will be £262,318. This is based on the current 14 premises renewing their licences in January 2012. The council anticipates receiving £136,975 in income from SEV applications in the first quarter of 2012. This is an estimated income as this is a new licensing regime. It is anticipated that 25 premises will apply for a new SEV licence as these premises currently hold a premises licence under the Licensing Act 2003 which allows them to carryout SEV entertainment until the 31st September 2012. The total income for sex establishments, including SEV's is estimated at £399,293 for 2012/2013.

6.6 The fee levels will be reviewed after the budgets for 2012/2013 have been set along with the assumptions relating to the number of renewal applications received in January and the estimated income from SEV new applications.

7. Resources Implications

- 7.1 There are no resource implications at present. However, the reduction in compliance costs (£61,951) and associated officer time for the sex establishment licensing regime is being redirected to active compliance of the Licensing Act 2003 regime. It is anticipated that the recent change in the Licensing Act 2003 relating to cost recovery will, following the Secretary of State specifying the new fee levels offset any budget deficit in the next financial year. If the anticipated amended fee levels for the Licensing Act 2003 are not sufficient to cover the costs of that regime then a review of costs and resources will need to be undertaken to identify costs savings to ensure that the Licensing Service is cost neutral.

8. Legal Implications

- 8.1 The Council can set its own fees under paragraph 19 of Schedule 3 of the 1982 Act. This paragraph states "An applicant for the grant, renewal, variation or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority". For the purposes of this schedule the appropriate authority is the Council.
- 8.2 The fee must be reasonable and cover the Council's costs in the administration of those application types and further costs to ensure compliance.
- 8.3 Sex Establishments are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds. The fees as proposed should enable to Council to recover its reasonable costs.
- 8.4 A Judicial Review has been lodged at the High Court challenging the current sex establishment fees and the council's effect and interpretation of the European Service Directive. The claimant argues that it is not lawful to charge licensed establishments the cost of enforcement against unlicensed establishments. The council disputes that interpretation and this Judicial Review is likely to be resolved by the Courts next year.
- 8.5 If the proposed fee structure results in a surplus or loss for the financial year there will be an appropriate reduction or increase in fees as the case may be for the following financial year.

Appendices

- Appendix 1 – Proposed Sex Establishment (excluding SEV's) Licence Application Fees
- Appendix 2 – Breakdown of costs associated with each application type for administration and processing (Licensing and Environmental Health Consultation Team)
- Appendix 3 – Breakdown of costs associated with each application type for compliance (Licensing Inspectorate)

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Mr Kerry Simpkin, Assistant Service Manager on Tel: 020 7641 1840 or Email: ksimpkin@westminster.gov.uk

BACKGROUND PAPERS

- Local Government (Miscellaneous Provisions) Act 1982
- The European Services Directive: Guidance for Local Authorities
- 2011/2013 Expenditure/Income Budget for Sex Establishments and Licensing Act 2003.

Proposed Sex Establishment (excluding SEV) Licence Application Fees

| Application Type | Processing, administration and Determination (Licensing Service) | EH Consultation Team (Consultees) | Ongoing policy costs. | Compliance (Licensing Inspectorate) | Fee Amount |
|-----------------------|--|-----------------------------------|-----------------------|-------------------------------------|----------------|
| New Application | £1,640 | £442 | £173 | £17,718 | £19,973 |
| Renewal Application | £754 | £88 | £177 | £17,718 | £18,737 |
| Variation Application | £1001 | £250 | £0 | £0 | £1,251 |
| Transfer Application | £202 | £0 | £0 | £0 | £202 |

Please note that the costs and fee amounts have been rounded up or down.

Breakdown of costs associated with each application type for administration and processing (Licensing and Environmental Health Consultation Team)

Please note: Officer hourly rates are calculated using employee's salary costs and a pro-rata element of the teams total spend budget. The Licensing Service, Legal and Environmental Health Consultation Team have different total spend budgets which is why some officers have higher hourly on cost rates than officers with the same job title or those who have more responsibility or training.

NEW APPLICATIONS

| Licensing Service (Including Legal) | | | |
|---|----------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 3 hours | £67 | £201 |
| Environmental Health Case Officer | 10 hours | £81 | £810 |
| Assistant Service Manager (Licensing) | 30 minutes | £92 | £46 |
| Legal | 3 hours 50 minutes | £98.61 | £378 |
| Service Management | 5 minutes | £82 | £6.83 |
| Licensing Policy & Strategy Manager | 2 hours | £99 | £198 |
| Total | 19 hours 25 minutes | | £1639.83 |
| Environmental Health Consultation Team | | | |
| Officer | Officer time | Officer hourly rate | Total on cost |

| | | | |
|----------------------------------|---------------------------|-----|----------------|
| | | | |
| Senior Technical Support Officer | 30 minutes | £79 | £39.50 |
| Environmental Health Officer | 4 hours | £64 | £256 |
| Senior Licensing Surveyor | 2 hours | £64 | £128 |
| Assistant Service Manager (EH) | 10 minutes | £69 | £11.50 |
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 6 hours 45 minutes | | £441.83 |

| | | | |
|-------------------------------------|---------------------------|----------------------------|----------------------|
| Policy development | | | |
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Policy & Strategy Manager | 2 hours 45 minutes | £99 | £173.25 |
| Total | 2 hours 45 minutes | | £173.25 |

Total processing and determination costs per new application is **£2,254.91**

RENEWAL APPLICATIONS

| Licensing Service (Including Legal) | | | |
|--|---------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 2 hours | £67 | £134 |
| Environmental Health Case Officer | 6 hours | £81 | £468 |
| Assistant Service Manager | 30 minutes | £92 | £46 |
| Legal (legal Advice) | 30 minutes | £98.61 | £49.31 |
| Service Management | 5 minutes | £82 | £6.83 |
| Licensing Policy & Strategy Manager (Policy and Strategy advice) | 30 minutes | £99 | £49.50 |
| Total | 9 hours 35 minutes | | £753.64 |

| Environmental Health Consultation Team | | | |
|---|---------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Tech Support Officer | 30 minutes | £79 | £39.50 |
| Environmental Health Officer | 30 minutes | £64 | £32 |
| Assistant Service Manager (EH) | 10 minutes | £69 | £9.83 |

| | | | |
|--------------------|--------------------------|-----|---------------|
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 1 hour 15 minutes | | £88.16 |

| Continual policy development | | | |
|-------------------------------------|--------------------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Policy & Strategy Manager | 25 hours | £99 | £2,475 |
| Total | 25 hours | | £2,475 |
| Total for each licence | £2,475 divided by 14 premises | | £176.79 |

Total Processing and determination costs per renewal application is **£1,018.59**

VARIATION APPLICATIONS

| Licensing Service (Including Legal) | | | |
|--|----------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 3 hours | £67 | £201 |
| Environmental Health Case Officer | 8 hours | £81 | £648 |
| Assistant Service Manager | 30 minutes | £92 | £46 |
| Legal (legal Advice) | 30 minutes | £98.61 | £49.31 |
| Service Management | 5 minutes | £82 | £6.83 |
| Licensing Policy & Strategy Manager (Policy and Strategy advice) | 30 minutes | £99 | £49.50 |
| Total | 12 hours 35 minutes | | £1000.64 |

| Environmental Health Consultation Team | | | |
|---|---------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Tech Support Officer | 30 minutes | £79 | £39.50 |
| Environmental Health Officer | 3 hours | £64 | £192 |
| Assistant Service Manager (EH) | 10 minutes | £69 | £11.50 |

| | | | |
|--------------------|--------------------------|-----|----------------|
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 3 hour 45 minutes | | £249.83 |

Total Processing and determination costs per variation application is **£1,250.47**

TRANSFER APPLICATIONS

| Licensing Service (Including Legal) | | | |
|--|---------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 1 hour | £67 | £67 |
| Environmental Health Case Officer | 1 hour | £81 | £81 |
| Assistant Service Manager | 15 minutes | £92 | £23 |
| Legal (legal Advice) | 15 minutes | £98.61 | £24.65 |
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 2 hours 35 minutes | | £202.48 |

| Environmental Health Consultation Team | | | |
|---|---------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Total | 0 | | £0 |

Total Processing and determination costs per transfer application is £202.48

**Breakdown of costs associated with each application type for compliance
(Licensing Inspectorate)**

| Sex Shop Compliance Costs 2012/2013 | | | | | |
|---|--|-----------------------------|---|--------------------------|-----------------|
| Number of Premises | Number of Programmed Inspections per year | Hours per Inspection | Cost per hour | Cost per premises | Total |
| 14 | 4 | 4 | £66.00 | £1,056 | £14,784 |
| | Test Purchases | | | | £5,000 |
| | Management time | Hours per Year | | | |
| | ASM | 10 | £77.00 | £770 | £10,780 |
| | SM | 2 | £89.00 | £178 | £2,492 |
| | | | | | £33,056 |
| Illegal Enforcement Costs | | | | | |
| Period | Number of illegal Sex Shops | FTE | Justification | Cost | |
| February 2012 to June 2012 | 5+ | 3.48 | Active enforcement including raids, legal action, court appearances, viewing etc. | £155,000 | |
| July 2012 to January 2013 | 1 to 5 | 1.48 | Active enforcement including raids, legal action, court appearances, viewing etc. | £60,000 | |
| Total Illegal Enforcement Costs | | | | | £215,000 |
| Total Compliance Costs (February 2012 to January 2013) | | | | | £248,056 |

LICENSING URGENCY SUB-COMMITTEE

Thursday 5 January 2012

Membership: Councillor Audrey Lewis (Chairman), Councillor Nicholas Evans and Councillor Ahmed Abdel-Hamid

Legal Adviser: Harjinder Bhela

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Also present: Kerry Simpkin (Assistant Service Manager)

Sex Establishment Licensing Fees Review

Executive Summary:

The report set out the proposed fee structure for Sexual Establishment licensing (excluding Sexual Entertainment Venues) following a review of the overall costs of processing applications and ensuring compliance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

Decision (including reasons):

The proposed fee structure was approved by the Sub-Committee as set out in Appendix 1 of the report with effect from the date of the decision (5 January 2012).



Licensing Urgency Sub-Committee Report

| | |
|---------------------------|--|
| Meeting: | <i>Licensing Urgency Sub-Committee</i> |
| Date: | <i>Thursday 5th January 2012</i> |
| Classification: | <i>For General Release</i> |
| Title: | <i>Sex Establishment Licence Application Fees for Sexual Entertainment Venues</i> |
| Wards Affected: | <i>All</i> |
| Financial Summary: | <i>The proposed fees will allow the authority to recover more of its costs in processing applications, administering licences and ensuring compliance with this new licensing regime. The estimated additional revenue over a full year is £137k (new licenses) and with an annual income of £97 from the 2013/14 (depending on the number of renewals and any variation in fee levels).</i> |
| Report of: | <i>The Operational Director for Premises Management</i> |

Note: This report was originally sent to the Cabinet Member for Enterprise and Volunteering in September 2011 for a decision as it was believed that the setting of these fees was an executive function. However, after receiving further clarification on the interpretation of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 it is now clear that setting fees for Sex Establishments is a non-executive function.

1. Executive Summary

- 1.1 The report sets out the proposed fee structure for the new Sexual Entertainment Venue Licence Licences types under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009).

2. Recommendations

- 2.1 To agree the proposed fee structure as set out in Appendix 1 to this report with effect from the date of decision.

3. Reasons for Decision

- 3.1 The Council made a resolution to adopt the new licensing regime for Sexual Entertainment Venues from the 1st October 2011. By approving the fee structure as proposed the Council will be able to recover its reasonable costs relating to this new licensing regime. The fee structure will come into effect from the date of the decision.

4. Background, including Policy Context

- 4.1 In 2009 the Policing and Crime Act 2009 (2009 Act) was given Royal Assent. The 2009 Act, amongst other things amended the Local Government (Miscellaneous Provisions) Act 1982 (1982 Act) introducing a new category of sex establishments called 'sexual entertainment venues'. This amendment allows the Council to regulate lap dancing clubs and other similar venues as sex establishments. In addition the Council can also control the number and location of such venues.
- 4.2 The Council resolved to adopt this legislation on the 4th April 2011 with effect from 1st October 2011 (defined as the 1st appointed day). Applications can be made from the 1st appointed day. Any operator who holds a Licensing Act 2003 Premises Licence that currently permits sexual entertainment (defined by the 1982 Act as relevant entertainment) can continue to provide that entertainment under their existing licence until 30th September 2012 or until such time as their application is determined (whichever is the later). Any operator that does not currently have a licence that enables them to provide relevant entertainment cannot provide that entertainment without a sex establishment licence being in force. No applications for sexual entertainment venue licences can be granted before 1st April 2012 (defined as the 2nd appointed day). From the 1st October 2012 no operator can offer relevant entertainment without a sex establishment licence issued by the Council (apart from existing operators who may be awaiting the outcome of any appeal where their application has been rejected by the Council).
- 4.3 The Council currently has 25 premises that can provide sexual entertainment under their existing Licensing Act 2003 Premises Licences. It is anticipated that all of these premises will apply for a Sex Establishment Licence to enable them to continue to offer relevant entertainment after the 1st October 2012.

5 Proposed fees

- 5.1 In calculating the fee for this category of sex establishment licence we have calculated the approximate processing, administration, determination and compliance costs associated with each application type. We have also calculated the costs associated with adoption of the 2009 Act and the set up costs for establishing the application process and policy. All costs have been calculated based on estimated officer time and the associated on costs for each

officer. A breakdown of the estimated processing, administration and determination time and costs has been detailed in Appendix 2 to this report. The estimated costs and officer time associated with ensuring compliance with the licence and legislation has been detailed in Appendix 3 of this report.

- 5.2 The proposed fee for new licences will be £5,479. The cost relating to processing new applications is projected to be £2,447 which includes the processing, administration and determination process (including legal and Environmental Health costs). £1,411 of that sum specifically relates to the licensing process and legal costs; £594 is the costs associated with adoption and setting up this licensing regime; £442 to the cost of the Environmental Health Consultation Team. The remaining £3,032 will cover the costs to ensure compliance with the licence and legislation. All new sexual entertainment venue applications will be put before the Council's Licensing Sub-Committee to be determined in line with the Council's delegation for sex establishments.
- 5.3 The licence period for sex establishments is 1 year. Any licence that is issued will be renewable on the anniversary of its grant. The renewal fee of £3,863 will consist of a £831 for the processing, administration, determination (including legal and Environmental Health costs) and ongoing costs associated with maintaining the council's policy. £543 of that sum specifically relates to the licensing process (including legal costs), £200 for further policy development; and £88 to the cost of the Environmental Health Consultation Team. £3,032 will be for the ongoing compliance and inspection regime. These applications will be consulted upon and can be opposed. If the application is opposed it will have to be determined by the Licensing Sub-Committee. It is anticipated that the proposed fee will cover the council's costs associated with each licence.
- 5.4 A licence can be varied at any point during the period in which it's in operation. The holder of a licence can apply to vary any terms, conditions or restrictions on or subject to which the licence is held. The proposed fee for these variation applications is £1,022. This fee is made up of £772 for the licensing process, which includes legal costs and £250 for Environmental Health Consultation Team. There are no compliance costs associated with this type of application as the compliance costs are payable via the new or renewal licence application fees.
- 5.5 It should be noted that the council can, following receipt of a variation application make the variation specified in the application, or make any such variations at it thinks fit or refuse the variation application. These applications will be consulted upon and the specific variation proposals considered by the council. Any opposed variation applications will be determined by the Licensing Sub-Committee unless those objections are withdrawn prior to the hearing date. This fee is anticipated to cover the council's costs in relation to processing, considering and determining those applications.

- 5.6 The licensee or a person proposing to carry on the licence can apply to transfer the licence to a named person at any stage during the licence period. The proposed fee for that application is £202. This fee will cover the anticipated costs relating to the processing and determination of transfer applications within the Licensing Service (including legal costs). There are no costs associated with the Environmental Health Consultation Team or for compliance.
- 5.7 The estimated income for new sexual entertainment venues for this financial year is £136,975. This is based on the assumption that 25 premises apply for this category of licence. It is not possible to calculate the number of transfer or variation applications that will be received within the first year of operation of this new licensing regime. As such no estimated income has been projected.

6. Financial Implications

- 6.1 This is a new licensing regime and the projected income has been made on assumptions that there will be 25 applications this financial year. It should be noted that the income for applications made between the 1st and 2nd appointed days (1st October 2011 and 1st April 2012) will fall within this financial year. It is possible that some of the 25 may not apply at all or may apply after the 2nd appointed day. In that case the estimated income will be less than predicted for this financial year. If any new applications are made after the 2nd appointed day they will fall within the 2012/13 financial year. Although the fees are set to recover the costs of the service the costs associated with determining the application at a hearing will not occur until the 2012/13 financial year.
- 6.2 The estimated income for the 2011/2012 financial year will be £136,975, assuming that all 25 premises apply within the period between the 1st and 2nd appointed days. This new premises application fee income is broken down in Appendix 1 to this report. The cost for ensuring compliance with the licence and legislation will cover the period from the grant of the licence. If the new applications are made by existing operators that hold a Licensing Act 2003 Premises Licence then those licences will come into force on the 3rd appointed day (1st October 2012). The total fee income is estimated to cover the costs relating to staffing and Council infrastructure in carrying out this Licensing regime. As the fees will straddle two years, the appropriate accounting treatment will be applied to ensure income and expenditure are matched in the relevant year.
- 6.3 The fee structure will be evaluated after the 1st October 2012 to ascertain if the assumptions associated with these proposed fees were met. The Council will then consider if the new application fee should be amended for the next financial year.
- 6.4 As mentioned in paragraph 4 above these licences, once granted will not take effect until the 3rd appointed day (1st October 2012). The licences will be granted

for a year and will be renewable on or before the 1st October 2013. As such the Council will not receive any income via renewals until the 2013/2014 financial year. Unless the renewal fee is amended the estimated income for those 25 premises for the 2013/14 financial year is £96,575.

7. Resources Implications

- 7.1 It is anticipated that there will be no resource implication for the Council in administering this regime. The new regime will be administered using existing resources and the fee income will cover the costs associated with administering, processing, determining and ensuring compliance.

8. Legal Implications

- 8.1 The Council can set its own fees under paragraph 19 of Schedule 3 of the 1982 Act. This paragraph states “An applicant for the grant, renewal, variation or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority”. For the purposes of this schedule the appropriate authority is the Council.
- 8.2 The fee must be reasonable and cover the Council’s costs in the administration of those application types and further costs to ensure compliance.
- 8.3 Sex Establishments are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implement the EU Services Directive into UK law requires that fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the council’s costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds. The fees as proposed should enable to Council to recover its reasonable costs.
- 8.4 If the proposed fee structure results in a surplus or loss for the financial year there will be an appropriate reduction or increase in fees as the case may be for the following financial year.

Appendices

Appendix 1 – Proposed Sexual Entertainment Venues Licence Application Fees

Appendix 2 – Breakdown of costs associated with each application type for administration and processing (Licensing and Environmental Health Consultation Team)

Appendix 3 – Breakdown of costs associated with each application type for compliance (Licensing Inspectorate)

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Mr Kerry Simpkin, Assistant Service Manager on Tel: 020 7641 1840 or Email: ksimpkin@westminster.gov.uk

BACKGROUND PAPERS

- Policing and Crime Act 2009
- Local Government (Miscellaneous Provisions) Act 1982
- Home Office Guidance for England and Wales for Sexual Entertainment Venues
- The European Services Directive: Guidance for Local Authorities
- LACORS guidance on the impact of the Services Directive on Council's setting and administering local licence fees within the service sector

Proposed Sexual Entertainment Venues Licence Application Fees

| Application Type | Processing, administration and Determination (Licensing Service) | EH Consultation Team (Consultees) | Adoption, Set up or ongoing policy costs. (Licensing and Legal) | Compliance (Licensing Inspectorate) | Fee Amount |
|-----------------------|--|-----------------------------------|---|-------------------------------------|---------------|
| New Application | £1,411 | £442 | £594 | £3,032 | £5,479 |
| Renewal Application | £543 | £88 | £200 | £3,032 | £3,863 |
| Variation Application | £772 | £250 | £0 | £0 | £1,022 |
| Transfer Application | £202 | £0 | £0 | £0 | £202 |

Please note that the costs and fee amounts have been rounded up or down.

Breakdown of costs associated with each application type for administration and processing (Licensing and Environmental Health Consultation Team)

Please note: Officer hourly rates are calculated using employee's salary costs and a pro-rata element of the teams total spend budget. The Licensing Service, Legal and Environmental Health Consultation Team have different total spend budgets which is why some officers have higher hourly on cost rates than officers with the same job title or those who have more responsibility or training.

NEW APPLICATIONS

| Licensing Service (Including Legal) | | | |
|---|----------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 2 hours | £67 | £134 |
| Environmental Health Case Officer | 8 hours | £81 | £648 |
| Assistant Service Manager (Licensing) | 30 minutes | £92 | £46 |
| Legal | 3 hours 50 minutes | £98.61 | £378 |
| Service Management | 5 minutes | £82 | £6.83 |
| Licensing Policy & Strategy Manager | 2 hours | £99 | £198 |
| Total | 16 hours 25 minutes | | £1410.83 |
| Environmental Health Consultation Team | | | |
| Officer | Officer time | Officer hourly rate | Total on cost |

| | | | |
|----------------------------------|---------------------------|-----|----------------|
| | | | |
| Senior Technical Support Officer | 30 minutes | £79 | £39.50 |
| Environmental Health Officer | 4 hours | £64 | £256 |
| Senior Licensing Surveyor | 2 hours | £64 | £128 |
| Assistant Service Manager (EH) | 10 minutes | £69 | £11.50 |
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 6 hours 45 minutes | | £441.83 |

| Regime adoption and policy development | | | |
|---|---------------------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Assistant Service Manager (Licensing) | 15 hours | £92 | £1,380 |
| Environmental Health Case Officer | 43 Hours | £81 | £3,483 |
| Licensing Policy & Strategy Manager | 101 hours | £99 | £9,999 |
| Total | 159 hours | | £14,862 |
| Total for each licence | £14,862 divided by 25 premises | | £594.48 |

Total set up, processing and determination costs per new application is **£2,447.14**

RENEWAL APPLICATIONS

| Licensing Service (Including Legal) | | | |
|--|---------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 1 hours | £67 | £67 |
| Environmental Health Case Officer | 4 hours | £81 | £324 |
| Assistant Service Manager | 30 minutes | £92 | £46 |
| Legal (legal Advice) | 30 minutes | £98.61 | £49.31 |
| Service Management | 5 minutes | £82 | £6.83 |
| Licensing Policy & Strategy Manager (Policy and Strategy advice) | 30 minutes | £99 | £49.50 |
| Total | 6 hours 35 minutes | | £542.64 |

| Environmental Health Consultation Team | | | |
|---|---------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Tech Support Officer | 30 minutes | £79 | £39.50 |
| Environmental Health Officer | 30 minutes | £64 | £32 |
| Assistant Service Manager (EH) | 10 minutes | £69 | £9.83 |

| | | | |
|--------------------|--------------------------|-----|---------------|
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 1 hour 15 minutes | | £88.16 |

| Continual policy development | | | |
|-------------------------------------|--------------------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Policy & Strategy Manager | 50 hours 30 minutes | £99 | £4,999.50 |
| Total | 50 hours 30 minutes | | £4,999.50 |
| Total for each licence | £5,000 divided by 25 premises | | £199.98 |

Total Processing and determination costs per renewal application is **£830.78**

VARIATION APPLICATIONS

| Licensing Service (Including Legal) | | | |
|--|---------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 2 hours | £67 | £134 |
| Environmental Health Case Officer | 6 hours | £81 | £486 |
| Assistant Service Manager | 30 minutes | £92 | £46 |
| Legal (legal Advice) | 30 minutes | £98.61 | £49.31 |
| Service Management | 5 minutes | £82 | £6.83 |
| Licensing Policy & Strategy Manager (Policy and Strategy advice) | 30 minutes | £99 | £49.50 |
| Total | 9 hours 35 minutes | | £771.64 |

| Environmental Health Consultation Team | | | |
|---|---------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Tech Support Officer | 30 minutes | £79 | £39.50 |
| Environmental Health Officer | 3 hours | £64 | £192 |
| Assistant Service Manager (EH) | 10 minutes | £69 | £11.50 |

| | | | |
|--------------------|--------------------------|-----|----------------|
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 3 hour 45 minutes | | £249.83 |

Total Processing and determination costs per variation application is **£1,021.47**

TRANSFER APPLICATIONS

| Licensing Service (Including Legal) | | | |
|--|---------------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Licensing Support Officer | 1 hour | £67 | £67 |
| Environmental Health Case Officer | 1 hour | £81 | £81 |
| Assistant Service Manager | 15 minutes | £92 | £23 |
| Legal (legal Advice) | 15 minutes | £98.61 | £24.65 |
| Service Management | 5 minutes | £82 | £6.83 |
| Total | 2 hours 35 minutes | | £202.48 |

| Environmental Health Consultation Team | | | |
|---|---------------------|----------------------------|----------------------|
| Officer | Officer time | Officer hourly rate | Total on cost |
| Total | 0 | | £0 |

Total Processing and determination costs per transfer application is £202.48

Appendix 3

Breakdown of costs associated with each application type for compliance
(Licensing Inspectorate)

| Licensing Compliance Costs | | | | | |
|--|--|-----------------------------|------------------------------|--------------------------|----------------|
| Number of Premises | Number of programmed Inspections per Year | Hours per Inspection | Officer Cost per hour | Cost per Premises | Total |
| 25 | 4 | 4 | £66 | £1,056 | £26,400 |
| | Covert Visits per Year | | | | |
| | 1 covert visit will be carried out on half of the licensed premises per year | 16 | £66 | £528 | £13,200 |
| | Management time | Hours per Year | | | |
| 25 | ASM | 10 | £77 | £770 | £19,250 |
| 25 | SM | 2 | £89 | £178 | £4,450 |
| Test purchases of entertainment | | | | £500 | £12,500 |
| TOTAL | | | | | £75,800 |
| Total cost per premises (£75,800 ÷ 25 premises) | | | | | £3,032 |

LICENSING URGENCY SUB-COMMITTEE

Thursday 5 January 2012

Membership: Councillor Audrey Lewis (Chairman), Councillor Nicholas Evans and Councillor Ahmed Abdel-Hamid

Legal Adviser: Harjinder Bhela

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Also present: Kerry Simpkin (Assistant Service Manager)

Sex Establishment Licence Application Fees for Sexual Entertainment Venues

Executive Summary:

The report set out the proposed fee structure for the new Sexual Entertainment Venue Licence Licences types under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009).

Decision (including reasons):

The proposed fee structure was approved by the Sub-Committee as set out in Appendix 1 of the report with effect from the date of the decision (5 January 2012).