

## LICENSING COMMITTEE

2.11.15

## REVIEW OF FEES FOR SEX ESTABLISHMENT LICENSEES Tracey Aldworth

**1 Purpose**

- 1.1 For Members of Licensing Committee to agree the reviewed fees for licences of sex establishments.

**2 Recommendations/for decision**

- |     |   |
|-----|---|
| 2.1 | To agree the licensing fees as set out in Appendix 1. |
|-----|---|

**3 Supporting information**

- 3.1 On the 1 December 2010 Full Council agreed to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the '1982 Act') as amended by Section 27 of the Policing and Crime Act 2009 with effect from 1 September 2011. At the meeting of the Council, the Licensing Committee were delegated the power to determine applications for Sex Entertainment Venues licences, formulate a policy, set fees and standard conditions and all the Council's other functions arising from the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended.
- 3.2 Apart from agreeing substantial delegations to Licensing Committee the effect of adoption was to broaden the scope of licensing of sex establishments. The Council already had power to licence sex shops and sex cinemas. This decision brought Sex Entertainment Venues (e.g. Lap dancing clubs) within the description of sex establishments.
- 3.3 In July 2011 Licensing Committee agreed a policy on sex establishment licensing, standard conditions and the fees. The new regime took effect on the 1 September 2011. In practice only one existing business was affected by the new licensing system, namely Mirage who operate as a night club at weekends and a lap dancing club for a couple of days during the week. The club were operational prior to then and were regulated under the provisions of the Licensing Act 2003 only. As this legislation could not fully address issues arising from entertainment of a sexual nature the Government introduced the adoptive powers mentioned in paragraph 3.1.
- 3.4 Since adoption the Council have not received any applications for sex establishments other than Mirage, who renew their licence every year. The legal position remains the same and without any changing landscape of this area of business within Aylesbury Vale, the Council's Sex Establishment Licensing Policy, conditions and Procedures remain fit for purpose. However, given recent senior court judgements and 4 years experience of implementing the licensing regime it is necessary to review the fees for Sex Establishment Licences.
- 3.8 Schedule 3 to the 1982 Act states that an application for the grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities. Whilst the term "reasonable fee" appears to give the Licensing Authority a wide discretion, the European

Services Directive ensures that the fee is limited to cost recovery in respect to the processing and determination of an application and any subsequent compliance costs arising.

- 3.9 In setting fees reference is made to the European Services Directive, implemented by the Provision of Services Regulations 2009. In essence this says that Councils must ensure that any fees charged are proportionate and transparent and that the charging process must ensure that any costs that are additional to the initial processing of the application can be refunded to unsuccessful applicants. Fees must not be used as an economic deterrent.
- 3.10 There are essentially four licensing processes arising from sex establishments – initial grant, renewal, variation and transfer. Based on experience previous to the current regime of processing applications for sex establishments, it was assumed that initial applications would be significantly contested, resulting in considerable administration time and the need for a hearing to determine the application and possibly some form of further appeal. If this were the case, following the receipt and validation of the application and entering the details on the computer management system, it would then have to be copied and sent to the nominated consultees. The application would then be subject to certain redactions and made available for public scrutiny. Objections would require acknowledging with details of the consequent hearing, names and addresses redacted and sent on to the applicant. A committee report would then have to be prepared and circulated to all the parties. The hearing would likely be a significant length of time. The decision notice would need to be written up in detail and then sent to all parties. Notional time lengths for each process multiplied by the grade of the post responsible were used to cost a contested application and resulted in a fee of £2020.
- 3.11 Applications for sex establishment licences draw particular attention and scrutiny, it is therefore proposed to continue to charge the full fee for all new, transfer and variation applications. However with the only current venue in Aylesbury Vale to hold a sex entertainment venue licence having made no changes to its operating style, hours or having been reviewed in the three years it has been running, it would be unfair to levy the full cost of a hearing in the renewal of the licence, however reserve the right to obtain the balance of the licence fee if a hearing is required. Appendix 1 sets out the new fees list for 2016.
- 3.12 If a hearing is required to determine the application then the full fee must be received prior to the hearing being held. Failure to provide the full fee would render the application incomplete and therefore unable to be determined. A new, transfer or variation to a licence, if uncontested, would receive a proportionate, partial refund. Whereas an unsuccessful application would receive a smaller refund equal to the costs of compliance inspections. Appendix 1 sets out the proposed fees list for 2016.

#### **4 Options considered**

- 4.1 To retain the current fee structure, however this would be in contradiction to the EU Services Directive and leave the council vulnerable upon scrutiny.

**5 Reasons for Recommendation**

5.1 This is a statutory renewal and enables to continued licensing of Sex Entertainment Venue with balanced and proportionate fees.

**6 Resource implications**

6.1 none

Contact Officer	Peter Seal x 5083
Background Documents	None

## Appendix 1

### Sex Establishment Licensing – Fees

#### Initial application:

Application fee - £2020 (N.B. £160 refundable if application unsuccessful)  
£1540 refunded if uncontested.

#### Transfer of licence

Application fee - £2020 (N.B. £160 refundable if application unsuccessful)  
£1540 refunded if uncontested.

#### Renewal of licence:

If application uncontested - £480

If contested the balance of £1540 to be paid (N.B. £160 refundable if application unsuccessful)