

Committee(s):	Date(s):	Item no.
Licensing Committee	11 October 2010	
Subject: Sexual Entertainment Venues Policy		Public
Report of: Director of Environmental Services		For Decision
<p style="text-align: center;"><u>Summary</u></p> <p>This report considers the approach that the City should take to the consultation process to determine its policy in relation to Sexual Entertainment Venues (SEVs) in its area. It outlines the consultation methodology and covers the legal aspects that need to be taken into account, as well as other issues that must be considered to comply with the undertakings given to the Court of Common Council, and the advice received from Leading Counsel on this matter.</p> <p>Recommendations</p> <p>I recommend that your Committee approves the:</p> <ul style="list-style-type: none"> • Consultation letter and questionnaire • Consultation methodology • GIS map to be placed on City of London website • Consultation timetable • Any other matters relevant to the nature of the locality and decision making process regarding the number of SEVs in the City. 		

Main Report

Background

1. The Policing and Crime Act 2009 ('the 2009 Act') came into force in April 2010 and introduced changes to the licensing regime for sex establishments. It reclassifies venues such as lap dancing clubs as 'sexual entertainment venues' (SEVs), which will require a specific licence to operate.
2. The new provisions of the Act enable local authorities to exercise greater control over SEVs than they had previously, as well as rejecting licence

applications and potentially limiting the number of SEVs in their areas. Local people can make representations concerning applications and conditions can also be imposed on licences for SEVs which have to be renewed at least annually, when there is the opportunity for any concerns to be raised again.

3. For the new provisions to taken effect it was necessary for your Committee and the Court of Common Council to adopt the new legislation by formal resolution. At its meeting on 14th June 2010 your Committee resolved to recommend to the Court of Common Council that the relevant provisions be adopted, and that they should come into effect on 1st September 2010, which was agreed by the Court of Common Council on 15th July 2010.
4. Following the July meeting of the Court of Common Council, as required under the legislation, advertisements were placed in the Evening Standard for two consecutive weeks at the end of July and the start of August, to confirm that the City has adopted the legislation from 1st September 2010.
5. Consequently, 1st September marked the beginning of the transitional period which lasts for one year. All applications for a SEV received on or before 1st March 2011, must be considered together. Any applications received after 1st March can only be considered once the outcomes of those received before this date have been determined.
6. During the course of the debate at the Court of Common Council and when closing it, your Chairman gave the following undertakings:
 - Your Committee would bring the matter of the maximum number of SEVs permissible in the City back to the Court for decision following a proper and thorough public consultation
 - When so doing, the Committee would also take account of:
 - The additional views received under the previous public consultation since the Committee met on 14th June.
 - The views expressed by members of the Court during the debate.
 - All members of the Court would be invited to attend the meeting of the Licensing Committee at which the results of the SEV consultation were considered.
7. It is therefore necessary for your Committee to consider its approach to a policy on the number of SEVs in the City.

Current position

8. To ensure that the City is following best practice and to protect its interests, Leading Counsel Philip Kolvin QC has been consulted in relation to the approach the City should take in this matter. Mr. Kolvin is an acknowledged leader in the field of licensing and Chairman of the Institute of Licensing. He recently published a book called 'Sex Licensing'.
9. Mr. Kolvin will address a meeting of Members on 8th October 2010 and has provided written advice to the Comptroller and City Solicitor in relation to this issue including a letter of consultation (Appendix 1 to this report).
10. The advice from Leading Counsel discusses the merits and demerits of adopting a policy on the number of SEVs in the City. He outlines the broad policy options that are available and your Committee will, ultimately, be required to decide which of the following options should be recommended to the Court of Common Council:
 - Set no maximum number of permitted SEVs within the City and deal with each application on its own merits;
 - Define specific areas of the City and set limits for each one which could be zero, one, two or some other number;
 - State that as a matter of policy there is no place within the City of London of which it could be said that it is situated in a locality in which it would be appropriate to license a SEV;
 - Set out the criteria or guidelines which will be taken into account in deciding whether the appropriate number would be exceeded by the grant of a licence.

It should be pointed out that whatever policy is adopted, applications for SEVs can still be made and each application would need to be properly considered in the light of the policy, as there may be exceptional circumstances that would need to be taken into account.

11. Whilst there are many factors that can be taken into account when considering the policy, and these will be explored in the full and final report to your Committee early next year, Leading Counsel suggests that the best way of proceeding is first to consult the community as to whether there should be a policy and as to what it might contain.

Consultation

12. The 2009 Act does not provide any statutory procedure for consultation. However, extensive case law indicates that a proper consultation will comprise four basic principles:
 - Consultation should occur when the proposals are still at a formative stage;
 - There should be adequate information on which to respond;
 - Adequate time to respond should be given, and
 - There should be conscientious consideration by the Authority of the consultation response.
13. Furthermore, although the Act does not provide for consultation on a policy nor is there a statutory process for consultation, if a local authority does consult on its proposed policy, it is legally bound to do so properly and material failures may lead to the policy being quashed.
14. The Home Office guidance on SEV's indicates that the Secretary of State expects that any consultation exercise will be "fair and meaningful". Local Authorities should seek to make any relevant information available to local people in order to inform their understanding and publish the outcomes of the consultation on the internet. For the purposes of this duty "local people" are defined as anyone who lives or works in the local authority area.
15. In addition to undertaking a public consultation, an independent consultant could be commissioned to undertake research into the impact of Sexual Entertainment Venues located in the City, or a literature search to examine research carried out to date.
16. The Act allows local authorities to set a figure for the number of SEV's in its area, which may be nil, but must be "the number which the authority consider is appropriate for the locality". To assist consultees, key premises and buildings that make up the City could be mapped using a Geographic Information System (GIS) and placed on the City's website. An example of what could be produced is shown in Appendix 2, but other sites could be included if your Committee considers this is necessary.

SEV policy and letter options

17. Leading Counsel's proposed letter and questionnaire focuses on a proposal for the City to have an overall policy on SEVs. Such a policy would be

drafted following evaluation of the consultation and could include all the aspects referred to in his advice. This exceeds the commitment that you gave to the Court to consider a maximum number of SEVs in the City, but in the light of the advice from Leading Counsel may be considered appropriate.

18. Although Leading Counsel drafted a letter of consultation, this has been amended slightly, mainly so as to contain a paragraph on how recipients may obtain further information, and to indicate that the questionnaire could also be can also be completed on line. The draft may be found as Appendix 3.
19. The letter and questionnaire proposed by Leading Counsel could be considered to be too long and detailed, and therefore not attract many responses. It could also lead to the need for a more comprehensive policy than one that relates purely to the number of SEVs in the City. The potential cost of engaging Leading Counsel to draft such a policy cannot be accurately estimated, as it would be charged at an hourly rate.
20. The Comptroller and City Solicitor and I have drafted a more concise letter and questionnaire that may be found as Appendix 4. The use of a shorter questionnaire should have the benefit of increasing the likelihood that a broad range of “local people” will take the time to complete it and also reduce the costs associated with the consultation (printing / postage / other consultation methods – see below).
21. The results would be used to determine a numbers policy based on the options outlined in paragraph 10 above. Leading Counsel has been consulted on this proposal and his advice will be available at your meeting.
22. Whichever approach is approved, it should be noted that when considering any representations received from consultees, case law¹ prevents any objections on purely moral grounds or values being taken into account. The letters have been drafted to focus respondents on issues that can be considered and only relevant representations will be accepted.
23. There are, therefore, two options that your committee can consider regarding a SEV policy:
 - 1) Use the letter and questionnaire proposed by Leading Counsel in Appendix 3 and base any policy, which could be more comprehensive than just a maximum number, on the responses.

¹ R v Newcastle upon Tyne City Council ex parte The Christian Institute [2001] B.L.G.R. 165

- 2) Use the letter and questionnaire in Appendix 4 towards determining a numbers policy.

Consultation Methodology options

24. Presented below are two options for the way in which the City Corporation could consult on the adoption of a SEV policy. Given that the number of consultation responses may be high, it is recommended that an external consultant be engaged to manage the entire consultation process (including analysis of the results) on the City Corporation's behalf. The estimated costs will be available at your meeting.

Option 1:

- **Residents:** a hard copy of the consultation questionnaire is sent to every residential household in the City (approximately 6,100 households) for completion and return via an enclosed postage paid envelope.
- **Workers:** a hard copy of the consultation questionnaire is sent to every business voter on the edited Ward List (approximately 10,000 workers) for completion and return via an enclosed postage paid envelope.

OR

- **Workers:** questionnaires completed via telephone survey or 'on the street' polling with a fixed number of City workers. Participants selected at random, but researchers asked to ensure good mix of participants with regard to age, gender etc.

Option 2:

- **Residents:** questionnaires completed via telephone survey or 'on the street' polling with a fixed number of City residents. Participants selected at random, but researchers asked to ensure good mix of participants with regard to age, gender etc.
- **Workers:** questionnaires completed via telephone survey or 'on the street' polling with a fixed number of City workers. Participants selected at random, but researchers asked to ensure good mix of participants with regard to age, gender etc.

- A minimum of 1,100 participants is considered to be the industry standard for an opinion polling exercise. The number of participants polled could be increased if required.
 - Opinion polling does not allow every resident or worker to participate in the consultation process as only a fixed number are surveyed for each category. As a result, there may be some residents or workers who are not surveyed but who wish to submit their views to the City Corporation.
25. Should Option 2 be selected, it is recommended that any unsolicited consultation responses be acknowledged, collated and made available to Members in the Reading Room – but not included in the data analysis (ie the graphs produced showing the results of the opinion polling).

Proposals

26. I propose that your committee approves:

- The consultation letter and questionnaire (Appendix 3 or 4);
- The Consultation methodology it considers most appropriate and cost effective;
- The use of a GIS map on the City of London website (Appendix 2);
- The Consultation timetable (Appendix 5);
- Any other matters relevant to the nature of the locality and decision making process regarding the number of SEVs in the City.

Financial and Risk Implications

27. At its meeting on 27th July 2010 allocated resources from the City Fund as a contingency to cover the costs of initial Counsel advice, any expert report and associated consultation. Approximately £24,800 remains for any further advice and for the consultation process.
28. As indicated above, applications can now be made for a SEV licence. Although these do not need to be considered until after 1st March 2011, if there is a considerable delay in determining applications due to the City not having a policy in place, applicants could seek a Judicial Review, although this is thought to be unlikely.

Strategic Implications

29. This report supports the City's Sustainable Community Strategy theme: '... is safer and stronger' specifically supporting the objective 'to minimise any aspects of the emerging night time economy which are detrimental to the City, whilst continuing to support a vibrant and culturally rich environment.'

Consultees

30. The Town Clerk and Comptroller & City Solicitor have been consulted in the preparation of this report and their comments incorporated.

Conclusion

31. To enable a policy to be determined with regard to SEVs in the City, a consultation exercise needs to be undertaken to inform any future policy regarding the number of SEV's in the City.

Background Papers:

- a. **Home Office Guidance on Sexual Entertainment Venues**
- b. **Report to Licensing Committee 14 June 2010 and minutes of same**
- c. **Report to the Court of Common Council 12 July 2010 and minutes of same**

Appendices:

- 1. **Leading Counsel's advice in relation to SEVs**
- 2. **Example of GIS map**
- 3. **(i) Draft consultation letter and (ii) questionnaire based on advice from Leading Counsel**
- 4. **Alternative draft consultation letter (i) and questionnaire (ii)**
- 5. **Timetable for determining policy on SEVs**

Contact:

Jon Averbs

020 7332 1603

jon.averms@cityoflondon.gov.uk