

Committee(s):	Date(s):	Item no.
Licensing Committee	30 March 2011	
Court of Common Council	5 May 2011	
Subject:	Public	
Sexual Entertainment Venue (SEV) Licensing Policy		
Report of:	For Decision	
Director of Environmental Services		

Summary

The City of London adopted new legislation in July 2010 giving it greater powers to regulate Sexual Entertainment Venues (SEV) – such as lap dancing clubs. This report asks the Licensing Committee to consider a policy to judge potential SEV applications and make recommendations to the Common Council accordingly.

The draft policy was prepared by ~~leading~~Leading Counsel, Mr Philip Kolvin QC (attached at Appendix ~~81~~) in line with best practice and, crucially, taking into account the results of a thorough consultation exercise conducted by independent consultants between December 2010 and February 2011 (results attached at Appendix ~~72~~). The exact terms of the consultation were agreed by the Licensing Committee at a special meeting in October 2010.

The consultation revealed that most respondents (67%) supported the adoption of a policy in relation to SEVs. Almost half of respondents (49%) felt that there were no localities in the City that were appropriate for SEVs, whereas less than a quarter (23%) thought that there were some (the remaining ~~(28%)~~ did not know). There were large majorities who considered that SEVs were inappropriate near specific types of premises (such as schools, places of worship, etc.).

One option in the policy (as set out in Policy 7, Appendix ~~81~~), which is now for Members to determine, concerns the number of SEVs that might be permitted in City. There are three broad options, all of which could be supported by the evidence ~~arisen~~arising from the consultation:-

- i. state that as a matter of policy there is no place within the City of London which, it could be said, is situated in a locality where it would be appropriate to license SEVs – i.e. the ‘zero’ option; or
- ii. (a) define specific localities within the City and set limits for each one – which could be one or two – and state that there is no

- other general locality within the City of London in which it would be appropriate to license a SEV; or
- (b) conversely, set a nil limit for particular localities and set criteria for consideration of applications in other localities. Any application made within such localities will be determined on the merits in the light of this and the remainder of the policies; or
- iii. consider each application on its merits in line with the criteria in the policy, and have no pre-determined number for any locality.

If it is decided that there *are* localities which are appropriate for SEVs, and so option (ii) (a) is accepted, then subject to compliance with all other policy statements, the most likely areas for a SEV given the data gathered during the consultation are:-

- a. Bishopsgate/Liverpool Street;
- b. Smithfield;
- c. Minories/Cross Wall (where there is an existing SEV).

The precise extent of such localities will be determined in the light of the precise location of any application and any representations made in response to it.

It is also necessary for your Committee to set the fee for SEV applications and the background to the proposed fee is provided. The City can cover the costs of preparing its policy, processing applications, conducting hearings and undertaking enforcement activity. As the number of applications is unclear, and may depend on the policy approved by your Committee, the recommendation is that the fee is reviewed after one year.

Recommendations

It is recommended that:-

- (a) the Committee recommends to the Court of Common Council the adoption of the Sexual Entertainment Venue Licensing Policy of the City of London Corporation, as attached at Appendix 18;
- (b) subject to (a) above, the Committee recommends the Court of Common Council:-
 - i. to state that as a matter of policy there is no place within the City of London which, it could be said, is situated in a locality where it would be appropriate to license SEVs – i.e. the ‘zero’ option; OR
 - ii. (a) to define specific localities within the City and set limits for each one – which could be one or two – and state that there is no other general locality within the City

of London in which it would be appropriate to license a SEV; OR

(b) conversely, set a nil limit for particular localities and set criteria for consideration of applications in other localities. Any application made within such localities will be determined on the merits in the light of this and the remainder of the policies; OR

iii. to have no pre-determined number for any locality with each application being considered on its merits in line with the criteria in the policy.

(c) that SEV applications attract a fee of £23,200 (to be reduced to £20,000 if the application is unsuccessful); and

(d) the level of fees be reviewed in March 2012, and every two years thereafter.

It is recommended that:-

the Sexual Entertainment Venue Licensing Policy of the City of London Corporation, as attached at Appendix 8, be submitted to the Common Council for approval, including in particular:-

a recommendation for which one of the options set out in Policy 7 (concerning numbers of SEVs in City localities) it should adopt, and

if option (ii) is recommended, a definition of the proposed localities and limits which will apply;

that SEV applications attract a fee of £23,200 (to be reduced to £20,000 if the application is unsuccessful); and

the level of fees be reviewed in March 2012, and every two years thereafter.

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 take effect it was necessary for your Committee and the Common Council to adopt the new legislation by formal resolution. At its meeting on 14 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 1 September 2010, which was agreed by the Court of Common Council on 15 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 had adopted the legislation from 1 September 2010.
5. Consequently, 1 September marked the beginning of the transitional period which lasts for one year. All applications for a SEV received on or before 1 March 2011, must be considered together. Any applications received after 1 March can only be considered once the outcomes of those received before this date has been determined. One application was received prior to the 1 March.
6. During the course of the debate at the Court of Common Council and when closing it, the Licensing Committee Chairman gave the following undertakings:
 - a. 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
 - b. When so doing, the Committee would also take account of:
 - The additional views received under the previous public consultation (Appendix [32](#)) since the Committee met on 14 June.
 - The views expressed by members of the Court during the debate.

- c. 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 to be considered.
7. At a special meeting of your Committee on Monday 11 October 2010 (to which all Members of the Court were invited to attend) you agreed the consultation process and the basis of a letter and questionnaire to be used during the process. You also agreed that an external consultant should be engaged to finalise the letter and questionnaire subject to the views of leading Counsel, and authority to approve the final version was delegated to the Town Clerk, in consultation with the Chairman and Deputy Chairman, with a copy to be sent beforehand to all Members of the Committee for their comments.
8. It was agreed that the consultation methodology would be as follows:
 - a. A questionnaire to be completed using telephone surveys or “on the street” polling with a fixed number of random residents and workers to be agreed with the consultant; a hard copy of the consultation questionnaire to be sent to every residential household in the City;
 - b. Businesses also to be contacted in some way, but rather than sending a hard copy of the questionnaire to every business voter, an email list of workers who had opted to be contacted about general issues could be utilised.
9. A geographical information system map was also to be placed on the City of London website and approval of the final consultation table was delegated to the Town Clerk in consultation with the Chairman and Deputy Chairman.
10. The final documents that formed the consultation are in the appendices to this report and comprise:
 - Appendix 4. ~~Draft Sexual Entertainment Venue Policy~~
 - Appendix 4. ~~Summary results of initial consultation~~
 - Appendix 4. Letter from the Chairman of the Licensing Committee
 - Appendix 5. SEV Questionnaire
 - Appendix 6. A map showing different uses of some premises across the City
 - Appendix 7. E-mail sent to City Businesses regarding the consultation
 - Appendix 8. Timetable for determining policy on SEVs

11. Four consultants were approached to undertake the consultation and GfK NOP Social Research were appointed on behalf of the City of London to carry out face-to-face interviews, process the data from all of the completed questionnaires, whether from online completion, hard copy or face-to-face. They were also contracted to provide data tables and compile a final report on the findings of the consultation.
12. In accordance with advice from ~~leading~~Leading Counsel and your instructions, the consultation took place for eight weeks commencing 18 December 2010 when the online questionnaire went live on the City of London website. On 7 January 2011, 6,124 letters were sent to residents, one to each household in the City. At the same time, an electronic letter was sent to over 3,800 businesses/workers that are on the City's consultation list, as well as City schools, Livery Companies, Guilds, the Lap Dancing Association of Great Britain, neighbouring SEVs and English Heritage. Between 4 January and 11 February 841 ~~Faceface~~-to-face on-street interviews were conducted with ~~841~~ residents and workers in the City.

Current Position

13. The results of the consultation were collated by GfK NOP and a report was compiled that analyses the outcome of the consultation (Appendix ~~28~~). In total, there were over 2,300 responses and the results of the survey have been used to inform the content of the SEV Licensing Policy.
14. The consultant has commented that: "overall, the level of agreement between the three different strands of the consultation is striking and, as a result, the findings provide clear guidance as to how residents and workers feel about this issue." One suggestion that was made previously was that some form of weighting could be done, but this is not recommended by the consultant and given the similarity of views, this would not change the results. ~~The figures below are taken from the face to face survey.~~
15. The summary of findings may be found on page 7 of the consultation report but the key elements were as follows:
 - a. 67% of respondents supported adoption of a policy.
 - b. There was a clear majority in support of policies for dealing with
 - (i) Suitability of the applicant (90%)

- (ii) Detailed operating rules (87%)
- (iii) Character of localities for location of SEVs (86%)
- (iv) Compatibility with neighbouring uses (85%)
- (v) There was also majority support for a policy dealing with the internal layout of the venue (54%)

16. Respondents were asked whether there were any localities within the City of London which were appropriate for SEVs. Almost half of respondents (49%) felt that there were no localities in the City that were appropriate for SEVs, whereas less than a quarter (23%) thought that there were some (the remaining 28% did not know). In general, fewer women than men considered that there were localities in which SEVs were appropriate.
17. The consultation revealed that large majorities of respondents considered SEVs to be inappropriate near to certain uses: schools (94%); places of worship (91%); family leisure facilities (87%); residential (87%); youth facilities (82%); historic buildings (77%); and cultural facilities (71%). There was a more even split as to financial institutions (27% saying compatible and 44% saying incompatible); and retail (28% v 46%). The only types of use attracting a majority view of compatibility were areas with lots of late night entertainment or late night shopping (67% v 21%).
18. The issues of locality and juxtaposition were not the only issues considered to be important by respondents in deciding whether or not to grant a licence. Very large majorities considered the following issues to be very or fairly important: safety and treatment of workers (94%); community safety issues (93%); the ability to supervise (90%); safety and treatment of customers (89%); the quality of the venue (76%); and disabled access (75%).
19. In view of the large percentage of people supporting the adoption of a policy, Leading Counsel Philip Kolvin QC was subsequently engaged to draft the Policy ~~and this is attached as~~ (Appendix 1). Mr. Kolvin has advised the City Corporation throughout this process and addressed Members of the Court of Common Council on 8 October 2010.
20. The benefits of having a SEV policy are that:
 - ~~It~~ enables a local authority to set out its approach to the licensing of SEVs for operators;

- **It** provides guidance and reassurance to residents, workers and other public authorities;
- **It** ensures transparency and consistency of the local authority's approach;
- **It** gives guidance and focus for your Committee in determining applications.

Options

21. Within the draft policy there are specific policies for particular aspects in relation to SEVs that were consulted upon. There are some parts that are relatively straightforward and are in any case best practice, and also reflect the results of the consultation. However, some issues are contentious, so options for these need to be considered in more detail, and are addressed first rather than in the order in the policy document.
22. The most contentious issues relate to the policy regarding the number of SEVs that might be permitted in the City, the definition of 'relevant locality', and the matters that need to be taken into account when determining the number for relevant localities, such as their character and the use to which any premises in the vicinity are put. These elements of the policy are inextricably linked so are considered together.

Policies 7, 8 and 9: The Number of Sex Establishments, Character of Locality and Vicinity

Rationale

23. One of the reasons behind the new legislation was the perception that the Licensing Act did not give authorities enough control over SEVs. The Licensing Act focuses on four main objectives:
 - (i) Prevention of crime and disorder
 - (ii) Public safety
 - (iii) Prevention of public nuisance
 - (iv) Protection of children from harm
24. A well-run SEV could exist perfectly well within these principles, and yet people still felt that to have a SEV in their area would be detrimental to it. There are discretionary grounds in the amended Act that enable the

character of the neighbourhood to be taken into account and allow the local authority to limit the numbers of SEVs in the 'relevant locality'.

25. Specifically, the authority can refuse a licence because the number of sex establishments in the locality exceeds the appropriate number (which can be nil), because the establishment would be inappropriate having regard to the character of the locality or because it would be inappropriate having regard to the use of buildings in the vicinity. In deciding whether these grounds apply, case law dictates that authorities may not take into consideration moral grounds, but otherwise the discretion is a wide one. Refusals on these grounds are not appealable to the magistrates' courts. Whether or not the Common Council adopts a policy, applications must be considered on the merits of the individual case. Therefore, adoption of a policy, even a nil policy for all localities in the City, does not preclude an application being made or being considered; and nor does a decision not to adopt a policy require that applications be granted.

26. In his book on 'Sex Licensing', Philip Kolvin advises as follows regarding 'what is an appropriate number?'

'Once the locality has been established, the authority should then consider what the appropriate number of sex establishments is within that locality, whether overall or by type. It is suggested that a number of factors might be taken into account, what follow are examples rather than an exclusive list:

- The general character of the area. Is it a family residential, family leisure or educational area?
- The presence of sensitive uses such as places of worship, schools, youth clubs, community centres, women's refuges, libraries, parks or swimming pools.
- Is it a night-time leisure zone with sufficient representation of sex-oriented uses? Would one further premises cause the character of the neighbourhood to change?
- A caucus of feeling in the locality as revealed, for example, by a survey.
- Gender equality. Would further uses deter women from using the area comfortably or at all?
- Would further sex-oriented uses raise the fear of crime in the locality? This has been held to be a material planning

consideration¹ provided that the fear and concern has a reasonable basis², and is potentially relevant to licensing by analogy.

- Effects on regeneration and tourism.
- Level of genuine demand. Excess supply may drive down standards and lead to non-compliant conduct.

Ultimately, the judgment to be made is a planning-type judgement which simply requires to be underpinned by rational considerations. Provided that the authority has acted sensibly on credible material, its judgement is unlikely to be challenged successfully.’

27. However, ‘relevant locality’ is not clearly defined in the legislation, so what is it in terms of the City? Case Law dictates that it cannot be the City as a whole, so we are obliged (if Members want to have set numbers of SEVs at all) to consider sections of the City as localities. Due to the homogenous nature it is difficult to define specific areas, but there are ways in which this might be done.
28. Members will note that the consultation results showed that fewer than a quarter of respondents thought there were any areas of the City suitable for a SEV, and that of the locations where an SEV might be sited, the most favoured was in an area of late night entertainment or late night shopping. So how might these be defined?
29. The report commissioned from Dr. Philip Hadfield (review of Statement of Licensing Policy 2010: Proposed Stress Areas) focussed on four areas that provide late night entertainment: Leadenhall, Bow Lane, Smithfield and Carter Lane as these are where many of the night time venues are located.
30. The most recent analysis by the City of London Police indicates that the following wards are the most closely linked to the night time economy: Bishopsgate, Farringdon Within, Tower, Langbourn, Castle Baynard and Farringdon Without. These could therefore be considered to be the main wards where late night entertainment is prevalent. This is not to say, however, that a locality can or should be defined purely by ward.
31. On the other hand, respondents to the consultation were very clear about the types of area in which they do not want wish to see SEVs which are:

¹ *West Midlands Probation Committee v Secretary of State for the Environment* (1997) JPL 323

² *Smith v First Secretary of State* [2005] EWCA Civ 859. .

- areas with schools (94% in the face-to-face, 93% in the postal and 93% in the online consultations);
 - places of worship (91% in the face-to-face, 87% in the postal and 82% in the online consultations);
 - mainly residential areas (87% in the face-to-face, 91% in the postal and 87% in the online consultations);
 - areas with family leisure facilities (87% in the face-to-face, 92% in the postal and 91% in the online consultations).
32. So Members can see what this might mean, a map is attached (Appendix 9) that shows where schools and nurseries, youth hostels, children's play areas, places of worship, residential areas (as per the City of London Core Strategy 2010), family leisure facilities and iconic buildings/tourist sites are located.
33. Appendix 10 shows the wards in which most night time entertainment takes place, the four areas that were evaluated in the Hadfield report, and the main shopping areas in the City.
34. There is a risk that by defining a locality exactly, if an application is made on the edge of it, in determining such an application the adjoining locality would have to be ignored, or your Committee would need to have regard to the character of more than one locality. The alternative option is that the precise extent of any localities is determined in the light of the precise location of any application and any representations made in response to it. This would mean that Members were saying that they were prepared to determine whether a SEV should be in an area, without being too precise about the exact boundary of that area, leaving this point to be decided in each case.
35. One benefit of providing for a limited number of sexual entertainment venues in particular localities in the City is that the licence can be made subject to conditions which provide a high degree of control, e.g. regarding advertising, leafleting, solicitation, "cruising" etc. If licences are not granted for premises in the City, this may influence the number of SEVs permitted in adjoining boroughs over whose promotional activities the City would have little or no control.
36. One of the reasons for refusing to grant a licence is that it would be inappropriate having regard to the use of which any premises in the vicinity are put. Some have argued that 'vicinity' should be measured simply as a distance from a particular type of establishment. I have therefore attached a map (Appendix 11) showing the location of every church-place of worship in the City with buffer zones of 50 metres and

100 metres around each one. Another map showing other specific uses of premises in the City is attached as Appendix 12. The buffer zones are for purely illustrative purposes for the reasons outlined below.

37. As with 'locality' 'vicinity' is also difficult to define, but it is certainly smaller than 'locality'. This may indicate that a smaller radius should be used to determine 'vicinity', particularly if licence conditions diminish the visual and functional impact the premises have on their surroundings.
38. The overlap of the radii, if this approach were followed, indicates that few locations in the City would be appropriate for a SEV. However, others take the view that vicinity cannot be regarded in such a way. The City is a cramped community, where businesses co-exist with public houses, churches, shops and with residences, within a network of often narrow streets and alley ways. For example, the City had a sex shop in Middlesex Street for many years, within 100 metres of an orthodox synagogue.
39. As when determining a 'locality', the precise extent of 'vicinity' can be determined in the light of the precise location of any application and any representations made in response to it.
40. Members will note that elsewhere in the Policy it will be possible to ensure that SEVs are unobtrusive, with little external evidence of what they are. SEVs do not give rise to the same potential risk of disturbance as other late night establishments in that there is unlikely to be any queuing outside.
41. Members will need to decide if there is any locality in the City where a SEV might be located, given its character and the existence in the vicinity of other certain types of establishments.

Options regarding numbers

42. In terms of numbers there are therefore three broad options, all of which could be supported by the evidence ~~arisen~~arising from the consultation:-

Option (i) – to state that as a matter of policy there is no place within the City of London which, it could be said, is situated in a locality where it would be appropriate to license SEVs – i.e. the 'zero' option;

For example, if the Committee is minded to set limit of 'zero', the rationale for doing so would be because there is no locality in the City suitable for such establishments, taking into account factors such as those listed in ~~under~~ paragraph 26 above.

~~or~~

Option (ii) –

a) to define specific localities within the City and set limits for each one – which could be one or two – and state that there is no other general locality within the City of London in which it would be appropriate to license a SEV; or

b) conversely, set a nil limit for particular localities and set criteria for consideration of applications in other localities.

Any application made within such localities will be determined on the merits in the light of this and the remainder of the policies; ~~or~~

Likewise, the rationale for having a limit of, say one or two SEVs, would be because there may be locations where SEVs could be established where the factors set out in paragraph 26 above may not apply. Nil limits could be set for certain localities where the criteria in paragraph 26 are considered to apply.

Option (iii) –

consider each application on its merits in line with the criteria in the policy, and have no pre-determined number for any locality.

43. If it is decided that there *are* localities which are appropriate for SEVs, and so option (ii) (a) is accepted, then subject to compliance with all other policy statements, the most likely areas for a SEV given the data gathered during the consultation are:-

- a. Bishopsgate/Liverpool Street;
- b. Smithfield;
- c. Minories/Cross Wall (where there is an existing SEV).

44. The precise extent of such localities will be determined in the light of the precise location of any application and any representations made in response to it.

Policies relating to Character of Locality and Vicinity

45. For ease of reference, the ~~The-proposed~~ policies relating to Character of Locality and Vicinity are reproduced below, and all other policies, which are not thought to be controversial, but are in line with the consultation,

good practice or advice from Leading Counsel are contained in the draft policy document (Appendix 1).

POLICY 8: CHARACTER OF LOCALITY

- (1) Subject to compliance with the policies set out below and all other Policies herein, the Common Council's policy is that SEVs are potentially suitable uses in localities whose character is late night entertainment (other than major cultural institutions) and late night shopping.*
- (2) The Common Council's policy is that SEVs are unsuitable uses in localities whose character is or is significantly one or more of the following:*
 - i. educational;*
 - ii. residential;*
 - iii. religious;*
 - iv. family leisure.*
- (3) In other cases, the question of the appropriateness of the SEV having regard to the character of the locality will be considered on the merits of the individual case.*
- (4) In considering the character of the locality, the Common Council will have regard to the impact of the proposed SEV on that character, taking account of size, presentation, location, lighting, trading name and all other material factors.*
- (5) In considering such impact, the Common Council:*
 - i. will not grant a licence where the exterior façade of the premises includes images (whether photographic or graphic) or text indicating or referring to the nature of the proposed licensed activity, save as specifically required or permitted by licence conditions;*
 - ii. will not normally grant premises operating at or whose façade is at ground floor level;*
 - iii. will favour proposals with little or minimal impact on the street scene.*

The Common Council may refuse a licence on the ground that it would be inappropriate having regard to the use to which any premises in the vicinity are put. In deciding upon its policy as to this ground of refusal, the Common Council recognises the various conflicting pressures for development and land use within the City and has attempted to strike a balance between them. The Common Council's policy has been formulated in particular by a consideration of the material set out in sections 2-4 above.

POLICY 9: VICINITY

(1) The Common Council will not normally grant a licence where any premises within the vicinity are used for the following:

- (a) school;*
- (b) place of worship;*
- (c) family leisure;*
- (d) domestic residential buildings;*
- (e) important historic buildings;*
- (f) youth facilities;*
- (g) important cultural facilities.*

(2) In other instances, the Common Council will consider this ground of refusal on the merits of the individual case.

(3) The precise extent of vicinity will be determined in the light of the precise location of any application and any representations made in response thereto.

(4) In deciding whether such premises are in the vicinity of the application site, the Common Council will not use a pre-determined distance, but will consider each case on its individual merits, and will take account of its local knowledge where appropriate. In determining the issue, it will take account of:

- (a) distance,*
- (b) intervisibility,*

(c) linkages between them, including whether the premises and application site are connected by well-used walking routes;

(d) any visual or physical barriers between them.

(e) In considering the application of this policy to domestic residential buildings, the Common Council will take into account the number of such buildings, their density, their primary use, the number of dwelling units they comprise and their distance from the application site.

Other grounds for refusal

46. The Common Council may also refuse a licence on the ground that it would be inappropriate having regard to the layout, character and condition of the premises. The draft policy provides that, in applying this ground, the Common Council will take into account a wide range of considerations, including the accessibility of the premises, protection of the public, prevention of crime and disorder, and maintenance of the quality, fabric, and tourist and business reputation of the City of London. The policy, together with the standard conditions to which any licences granted will be made subject, will provide a high degree of control over the trading style and appearance of premises.

SEV Licence fees

47. Regulation 18(4) of the Provision of Services Regulations 2009 states that: 'Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.' The City of London is a competent authority and the issuing of a SEV Licence is an authorisation scheme.
48. The Department of Business, Innovation and Skills released guidance notes in 2009 for business and local authorities on the interpretation of the above Regulations. They both refer to the setting of fees as follows:
- a. 'Fees must be proportionate - Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process e.g. to cover the actual cost of the application

process. Fees should not be used as an economic deterrent to certain activities or to raise funds.'

- b. 'Fees charged to service providers - Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.'

- 49. Further guidance issued by former Local Authority Coordination of Regulatory Services (LACORS) makes it clear that the fee can only be based on cost recovery and must be transparent.
- 50. Leading Counsel has advised that, in addition to the direct costs of processing applications, ~~that~~ all costs in preparation for the policy, consultation etc. can also be taken into account when setting the fee. These costs have been substantial, resulting from a high level of senior officer involvement, together with the cost of Leading Counsel's advice, expert reports and associated consultation. The total cost to date is estimated to be in excess of £60,000. The City is seeking to recover these costs through its application fee (which would subsequently be reduced once the preparation costs have been recovered).
- 51. It is anticipated that any premises that is granted a SEV Licence would need to be monitored closely, certainly during its first year of operation, to ensure compliance with the City's policy and conditions. As enforcement costs cannot be passed on to unsuccessful applicants I propose that the application fee is reduced accordingly when applications are not granted.
- 52. Determining appropriate and reasonable fee levels at this stage can only be on the basis of assumed numbers of applications and provisionally estimated administration and enforcement costs, whilst also seeking to recover total preparation costs incurred to date. Clearly the actual numbers of applications received may depend on the particular policy option approved by the City Corporation. However, using a working assumption of 2two applications per year and basing recovery of total preparation costs over, say, 3three years, the following fees are suggested:

	£	Comment
<u>Allowance for recovery of preparation costs</u>	<u>10,000</u>	<u>Assumes six applications over three years and allows for total preparation costs of some £60,000</u>
<u>Estimated cost of processing / administering each application</u>	<u>10,000</u>	<u>Based on provisional cost analysis</u>
<u>Proposed initial application fee</u>	<u>20,000</u>	
<u>Allowance for enforcement costs</u>	<u>3,200</u>	<u>Based on provisional cost analysis</u>
<u>Total fee for successful application</u>	<u>23,200</u>	

53. ~~I therefore propose that a fee of £20,000 is charged by way of an initial application fee, plus an additional £3,200 for enforcement costs that will not be charged if the application is unsuccessful, making a total fee of £23,200.~~ For comparison, the highest known fee currently being charged in London is by Westminster at over £29,000 and the lowest in Ealing at £2,500. The average for the nine boroughs that have set fees is £12,000, but many have not yet set policies. This is for general guidance only, since the overriding principle is cost-neutrality.
54. As no applications have been processed under the new policy, a review of the fee in twelve months' time would enable the costs involved to be more accurately established in the light of experience, ~~and . Furthermore, as profits or losses from fees must be carried forward,~~ to ensure that the authorisation scheme is cost neutral to the authority over ~~a period of~~ time. It is not anticipated that there will be any significant variation in the numbers of applications received from year to year, so further reviews of the fee should be carried out every two years thereafter.
55. It may be possible to offer a discount on renewal, but I propose that this is not set until March 2012 to see what applications have been received and granted or refused.

Recommendations

56. It is recommended that:-
- (a) the Committee recommends to the Court of Common Council the adoption of the Sexual Entertainment Venue Licensing

Policy of the City of London Corporation, as attached at Appendix 81;

(b) subject to (a) above, the Committee recommends the Court of Common Council:-

i. to state that as a matter of policy there is no place within the City of London which, it could be said, is situated in a locality where it would be appropriate to license SEVs – i.e. the ‘zero’ option; OR

ii. (a) to define specific localities within the City and set limits for each one – which could be one or two – and state that there is no other general locality within the City of London in which it would be appropriate to license a SEV; or

(b) conversely, set a nil limit for particular localities and set criteria for consideration of applications in other localities.

Any application made within such localities will be determined on the merits in the light of this and the remainder of the policies; OR

iii. to have no pre-determined number for any locality with each application being considered on its merits in line with the criteria in the policy.

(c) that SEV applications attract a fee of £23,200 (to be reduced to £20,000 if the application is unsuccessful); and

(d) the level of fees be reviewed in March 2012, and every two years thereafter.

It is recommended that:-

~~the Sexual Entertainment Venue Licensing Policy of the City of London Corporation, as attached at Appendix 8, be submitted to the Common Council for approval, including in particular:-~~

~~a recommendation for which one of the options set out in Policy 7 (concerning numbers of SEVs in City localities) it should adopt, and~~

~~if option (ii) is recommended, a definition of the proposed localities and limits which will apply;~~

~~that SEV applications attract a fee of £23,200 (to be reduced to £20,000 if the application is unsuccessful); and~~

~~the level of fees be reviewed in March 2012, and every two years thereafter.~~

Financial and risk implications

~~To ensure that the City is seen to be acting reasonably and to protect it from any legal challenges when applications for a SEV licence is received, aThe City of London Corporation has followed best practice in conducting the consultation on the matter and in preparing the detailed SEV policy for Members' consideration. – that has been properly considered by your Committee is required.~~

The evidence obtained from the consultation exercise coupled with the existing data is sufficient to justify any of the 3three recommended options that have been placed before your Committee. Provided that the decision of your Committee is taken in accordance with the Wednesbury principles (reasonable and rational) then the likelihood of a successful challenge by way of a judicial review is remote

58. ~~A hearing will be covered for all new applications and transfer applications, whether or not there have been objections. Members should note that the draft policy states that applications for renewal will be decided by officers unless there have been objections or there is some other reason why the matter ought to be considered by the Committee. Reasons could include complaints or non-compliance with conditions, but only a well established premises that was not causing any problems would follow this procedure.~~
58. ~~All three options concerning numbers of SEVs in the City can be supported by the evidence arisen from the consultation. Consequently, this should minimise the potential for any judicial review.~~
58. ~~As indicated above, although localities can be specified and defined, e.g. as a ward, for the reasons stated this is not recommended. If a number exceeding zero is stipulated this could also provoke unnecessarily residents or businesses in a locality who would not be affected by a SEV located within it if they were some distance away.~~
58. Many other London local authorities have not yet determined their policy in relation to SEVs. However, The position in the following authorities is as follows:-
- **Westminster** – intend to grant 18 licences,
 - **Hackney** – nil;
 - **Islington** – nil, however, all existing premises will be allowed to renew if they meet enhanced conditions;
 - **Tower Hamlets** – nil no known conditions and
 - **Camden** – no maximum number set, each application to be considered on its merits in accordance with policy.

An oral update will be provided for your Committee at the meeting on 30 March 2011. Regardless of policies adopted by other London boroughs, the City needs to consider the character of its own localities together with other relevant factors and determine its own policy accordingly.

~~59. A verbal update will be provided for your Committee at the meeting on 30 March 2011. Regardless of policies adopted by other London boroughs, the City needs to consider the character of its own localities together with other relevant factors and determine its own policy accordingly.~~

59. In terms of procedures, a hearing will be ~~covered~~convened –for all new applications and transfer applications, whether or not there have been objections. Members should note that the draft policy states that applications for renewal will be decided by officers unless there have been objections or there is some other reason why the matter ought to be considered by the Committee. Reasons could include complaints or non-compliance with conditions, but only a well established premises that was not causing any problems would follow this procedure.

60. The number of applications likely to be received, and thus the income received from fees, may be dependent on the policy approved by your Committee (particularly in respect of any limit on the appropriate number of SEVs). The ~~income realised from the~~ proposed fees are intended, however, towill meet the estimated costs of administering those applications, together with an element for enforcement where applications are successful, and make a contribution towards the costs involved in the preparation of the SEV policy.

61. If it is decided that there are localities where a SEV might be permitted, then this could raised unfounded fears in that locality that a SEV *will* be permitted.

62. The Finance Committee granted £30,000 from its City Fund contingency to assist in meeting the external costs of the preparation of the policy. As the proposed fee includes an element for recovery of these costs, the first £30,000 of income after any external local risk costs have been met will be retained centrally, with the excess accruing to the Director of Environmental Services' local risk budget.

Legal Implications

63. The law, statutory guidance, and the City Corporation's policies were taken into account when the policy was drafted and are outlined in sections 2 and 3 of the document.

Equalities Impact Assessment

64. An equalities impact assessment has been undertaken for the proposed policy (Appendix 13). The policy has been drafted with the specific intention of protecting people who perform in SEVs or their ability to work in them. It also protects women living or working in or visiting the vicinity of SEVs by diminishing the impact which SEVs are permitted to have on their surroundings, e.g. through controlling external appearance, advertising and solicitation.

Strategic Implications

65. 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

66. The Town Clerk, Comptroller & City Solicitor, City Planning Officer, ~~and~~ Chamberlain, and Leading Counsel have been consulted in the preparation of this report and their comments incorporated.
67. The City of London Police (CoLP) were also consulted and the following response was received:

"The CoLP view is that this is a City Corporation matter and not one for us to make a judgement on. Clearly the decision to authorise - or not - licences to premises to be used for the purpose of sexual entertainment, remains with the City Corporation. For our part, the CoLP will continue to promote its obligation under the Licensing Act 2003 to prevent crime and disorder. Therefore should the City Corporation decide to sanction the issue of SEV ~~licenses~~licences, we will continue to scrutinise each application and applicant on a case by case basis to ensure that this objective is upheld and our responsibility under the Licensing Act executed."

Conclusion

68. The City adopted legislation in 2010 that enables it to license SEVs and to regulate them. Following a wide-ranging consultation process, there is now the need to adopt a policy concerning SEVs in the City, particularly having regard to the nature of the City's localities and the uses of any premises in the vicinity of any proposed SEVs. The adoption of a policy will enable the City Corporation to set out its approach with regard to licensing, provide guidance and reassurance to residents, workers and other public authorities as well as providing transparency, consistency, guidance and focus for your Committee in determining applications.

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**
- d. **Report to Licensing Committee of 11 October 2010 and minutes of same**

Appendices:

- 1. **Draft Sexual Entertainment Venue Policy**
- 2. **Consultation report**
- 3. **Summary results of initial consultation**
- 4. **Letter from the Chairman of the Licensing Committee**
- 5. **SEV Questionnaire**
- 6. **Map showing different uses of some premises across the City used for consultation purposes**
- 7. **Email sent to City Businesses regarding the consultation**
- 8. **Timetable for determining policy on SEVs**
- 9. **Map of types of areas**
- 10. **Map showing night time entertainment and shopping areas**
- 11. **Map of Churches**
- 12. **Map showing specific uses of premises**
- 13. **Equality Impact Assessment**

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