SUMMARY AND RECOMMENDATION

1. The Policing and Crime Act 2009 introduced a new category of premises called ‘sexual entertainment venue’ (SEV) to the Local Government (Miscellaneous Provisions) Act 1982, which allows licensing authorities to regulate such venues provided it adopts Section 2 and Schedule 3 of the 1982 Act as amended by the 2009 Act. Examples of venues defined as SEVs would be lap dancing and pole dancing clubs.

2. Adopting the new legislation would give the City Corporation additional powers when considering applications for this type of venue, including more extensive reasons for refusing applications than we have under the Licensing Act 2003 and a wider range of conditions that might be applied to licences, which would have to be renewed at least annually. For these reasons, your Committee recommends that the Court of Common Council should adopt the legislation.

3. The legislation, if adopted, would also permit local authorities to consider restricting the number of sex establishments of a particular kind to a figure that the authority considered appropriate for the locality. In choosing to set a maximum number of such venues, an authority must be able to demonstrate and justify how it arrived at a particular figure. The courts have ruled that objections should not be based on moral grounds or values and that local authorities should not consider objections that are not relevant to the grounds for refusal set out in the new legislation. Any limit on the number of SEVs would be open to challenge by way of judicial review.
4. Your Committee has considered the arguments for setting such a limit and has concluded that setting an arbitrary figure would be at odds with the principle of exercising fairness when discharging our responsibilities as a licensing authority. Doing so could also prove to be fruitless, as a limit on the number of SEVs would not eliminate the need to hold a hearing for each SEV application. Your Committee therefore believes that it is neither necessary nor justifiable to set a limit on these types of venues for us to continue to discharge our function and to make effective use of the new controls available for dealing with these types of venues.

5. It should be stressed that not setting a figure does not imply, in any way, that we are promoting the establishment of sexual encounter venues in the Square Mile. It simply means that we as a licensing authority will choose to consider each case on its own merits. We would be able, for instance, to refuse the grant of a licence if we felt it was inappropriate given the character of the locality, and we would be minded to believe that sexual entertainment venues should not be near large groups of residential units. If we were to consider an application that we felt met the necessary criteria and was appropriate for the proposed area, we would ensure it was run responsibly and to high standards and would, as always, bear in mind what is in the best interest of our residents, workers and visitors.

RECOMMENDATION

6. We therefore recommend that:

(a) the provisions of Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 be adopted in relations to ‘sex entertainment venues’;
(b) the date specified for the provisions to come into effect be 1 September 2010;
(c) it be confirmed that the City of London should be viewed as a single locality for the purposes of this legislation; and
(d) there should be no maximum number of sexual entertainment venues permitted in the City of London, and each application should instead be considered on its own merits.

All of which we submit to the judgement of this Honourable Court.

DATED this 14th day of JUNE 2010.

SIGNED on behalf of the Committee.

EDWARD LORD JP
Chairman
MAIN REPORT

BACKGROUND

1. The Policing and Crime Act 2009 (‘the 2009 Act’) came into force in April and introduced changes to the licensing regime for sex establishments. It reclassifies venues such as lap dancing clubs as ‘sexual entertainment venues’, which will require a special licence to operate. The licensing authority can now regulate these venues providing it adopts Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (‘the 1982 Act’) as amended by the 2009 Act.

2. Previously, lap dancing clubs and similar venues could operate provided they had licences permitting public entertainment under the Licensing Act 2003, so control of such premises was possible only when a problem arose that related to the four licensing objectives, such as protecting children from harm or preventing public nuisance. The licensing authority and local people would otherwise have little say in whether it was appropriate for a premises to offer that sort of entertainment.

3. Home Office guidance defines a ‘sexual entertainment venue’ (SEV) as any premises at which ‘relevant entertainment’ is provided before a live audience for the financial gain of the organiser or the entertainer. ‘Relevant entertainment’ is any live performance or live display of nudity of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person, such as when the entertainment takes place in a venue’s private rooms.

4. Local authorities are expected to judge each case on its merits when interpreting ‘relevant entertainment,’ but the guidance states that it would be expected to apply to the following forms of entertainment as they are commonly understood:-
   - Lap Dancing
   - Pole Dancing
   - Peep Shows
   - Table Dancing
   - Strip Shows
   - Live Sex Shows.

5. Premises that are not considered to be SEVs are:-
   - Sex Shops and Sex Cinemas (which are separately defined in the 1982 Act);
   - Premises that provide relevant entertainment on an infrequent basis, where:-
     o no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
     o no such occasion has begun within a period of one month beginning with the end of the previous occasions;
     o no such occasion has lasted longer than 24 hours.
   - Other premises or types of performances or displays exempted by an order of the Secretary of State.
6. Where activities that would otherwise be considered to involve the provision of relevant entertainment take place but are not provided for the financial gain of the organiser or the entertainer, such as a spontaneous display of nudity or lap dance by a customer, the premises would not be considered to be an SEV by virtue of those circumstances alone.

ADOPTION OF THE PROVISIONS

7. In order to benefit from the provisions of the new legislation, the City must adopt Section 2 and Schedule 3 of the 1982 Act as amended by the 2009 Act. The City previously adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas (for which your Port Health and Environmental Services Committee has responsibility), but a further resolution would be necessary before provisions introduced by Section 27 of the 2009 Act relating to SEVs, for which you delegated responsibility to this Committee in April, would take effect in the City.

8. If it chooses to do so, the Court of Common Council must pass a resolution specifying that the amendments made by the 2009 Act shall apply to its area and specifying the day on which it shall come into force in that area. The specified day must be more than one month after the day on which the resolution was passed. We would then be required to publish a notice to that effect in a local newspaper for two consecutive weeks, beginning at least 28 days before the specified day in the resolution.

9. If the City decides not to adopt the revised Schedule 3, then it must, within a year of the legislation coming into force (by 6 April 2011), and as soon as is reasonably practicable, consult local people about whether the City should make such a resolution.

10. We would recommend adopting the new provisions, as doing so would give us much greater control over any existing and potential SEVs. At present, eligible premises do not even have to notify the City Corporation if they intend to provide this sort of entertainment. They could do so under their existing licence for late night refreshment or regulated entertainment under the Licensing Act 2003.

11. Under that Act, licence applications must be granted if no representations have been made against it, even if the City considers that it may be inappropriate for the area. If representations were made against one of those applications, we would consider both cases at a public hearing and our decision would have to be based on whether the proposal would be inconsistent with the four licensing objectives (public safety, the prevention of crime and disorder, the prevention of public nuisance, and the protection of children from harm.) If not, we would have to grant the application.
12. The new provisions would allow additional grounds for refusing an application, such as [according to Section 12(3)(d)]: ‘that the grant or renewal of the licence would be inappropriate, having regard:-
(i) to the character of the relevant locality; or
(ii) to the use to which any premises in the vicinity are put; or
(iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.’

13. Those grounds would give us a great deal more control of this type of activity than we have when considering any applications for premises under the Licensing Act, and there would be a limited ability to appeal against a refusal taken on those grounds. We would also be able to ensure that no venue providing relevant entertainment would be opened in an area where we felt it would be out of character or inappropriate.

14. The new legislation also sets out specific grounds for refusing an application if the licensee would be unsuitable, such as if he or she had had a previous licence revoked, had been convicted of an offence, or was not resident in a European Economic Area (EEA) state.

15. We would also have a wider range of conditions that we could impose on a licence to ensure, if we felt that an application could be granted, that the SEV was operated in an appropriate manner, and to address other issues where required, such as preventing external advertising of the relevant entertainment at the premises or in the vicinity.

16. In addition, these licences would have to be renewed at least annually, at which point local people would again have the opportunity to raise objections. The City could require licences to be renewed more frequently if there were concerns about how a premises might perform. We could also, following a hearing, revoke an SEV licence on specific grounds principally relating to the suitability of the licensee.

17. For these reasons, we believe the new provisions should be adopted, and we would propose that the date specified for them to come into force in the City is 1 September 2010 in order to allow time for the necessary advertising.

EXISTING ESTABLISHMENTS

18. There are currently no premises in the City that regularly offer this form of entertainment. However, there are three establishments open in the City that would be permitted to operate in this way under their existing licence for late night refreshment or regulated entertainment under the Licensing Act.

19. If we adopted the new provisions and these establishments wished to hold ‘relevant entertainment’ in future, they would need to apply for an SEV licence. There is a 12-month transitional period, and they would have to submit an application within six months after the resolution was adopted. If they did not have an SEV licence at the end of the transitional period, they would not be able to operate in this manner.
20. Only one of these establishments so far has indicated that it would be interested in making an application.

21. The current annual fee for grant or variation of a sexual entertainment licence, which is determined by the licensing authority with the proviso that it must be ‘reasonable’, is £13,100. The fee is comparatively high in order to offset the costs involved of any hearing that may be required to determine an application and subsequent appeals, although European Services Directives do not permit the fee to be set so high as to be a deterrent. Should the Common Council agree to adopt the new provisions, we will review the level of the fee to ensure it is sufficient to cover costs.

MAXIMUM NUMBER IN THE LOCALITY

22. The revised Schedule 3 to the 1982 Act also permits local authorities to determine whether, in respect of each ‘relevant locality’ of the local authority’s area, it is appropriate to set a maximum number of SEVs for that locality. The High Court has ruled in a previous judicial review application that it is permissible to treat the City of London as a single locality.

23. The City Corporation can therefore decide to set a maximum number of SEVs in the Square Mile, which can be nil. Bearing in mind the need to act reasonably, as well as the strong likelihood of a legal challenge to implementing such a restriction, we have given this important matter a great deal of consideration. When arriving at our recommendation, we took on board the following considerations:-

- Setting a maximum number, even if this is ‘nil’, would not eliminate the need to consider every application received and to hold hearings to consider whether we should depart from our policy.
- It would be difficult to articulate, if legally challenged, how we arrived at any particular number or nil when we have had no direct experience of how such premises might operate in the City or under the newly introduced controls;
- Neither a strong opinion about this type of establishment nor a suggestion that demand would be met by the clubs operating outside the City’s boundaries would be likely to be considered by a court to be sufficient grounds for restricting the number;
- We would have a stronger case for refusing any application that warranted it if it had been carefully considered on its own merits rather than just refused on the basis that it would exceed a limit;
- We could impose robust controls on any licence granted to ensure the premises operated to a high calibre;
- We could decide that SEVs would be inappropriate in certain vicinities, such as near large groups of residential units or schools;
- It is not our role to make morality judgements about lawful entertainment nor to propose a blanket ban against legitimate enterprises from operating in the City provided they can do so safely and reputably, always meeting our high standards.
24. Although Section 12 does state that an application could be refused on the grounds that the number of sex establishments had reached the number the authority considered appropriate for the locality, it would be extremely difficult to articulate a robust legal justification for setting a specific limit of SEVs in the City of London.

25. We therefore accept that the only reasoned recommendation we can make is that no maximum number is set at this time. We would stress that setting a figure should not in any way imply that we are promoting the establishment of SEVs in the Square Mile. We believe, in fact, that there would be no adverse impact arising directly from such a decision.

26. Your Committee would continue to ensure that any such venues, should we decide that any application before us is suitable, would be properly and respectfully run and located in an appropriate area, and we would be able to add strong conditions to the licence to that effect. As always, we would do everything in our capacity to defend the interests of residents, workers and visitors in the Square Mile, and this legislation would give us even more power to do so.

27. We recognise that there are differing views towards sexual encounter venues. However, our licensing responsibilities do not extend to making morality judgements about a legal, licensable activity. Also, the courts have ruled that objections to such premises should not be based on moral grounds or values and that licensing authorities should not consider objections that are not relevant to the grounds for refusal set out in Section 12. We can, however, decide whether any particular application would be appropriate for any area in the City when we consider it along with any objections and all relevant considerations at a hearing.

CONSULTATION

28. Although there is no statutory duty to consult prior to deciding whether to pass a resolution, and the guidance was only issued in April, a limited consultation was carried out with residents’ groups, the London Chamber of Commerce and Industry, Members of the Court, and the existing three establishments that could currently provide this entertainment. We considered all the responses and recognise the concerns some people have about the effect on the City if we allowed badly run, unrestricted venues to operate in inappropriate areas of the City, but that would not be your Committee’s intention. Some people raised concerns about SEVs creating extra noise and loutish behaviour, although there is no reason to believe that they will, whilst others expressed views on the principle of SEVs, and others warned about making any moral judgement.

29. The City of London Police suggested that no more than three SEV licences should be permitted to proven, well-run establishments.
30. An operator and premises who would like to work together to provide such entertainment replied and referred to the guidance requiring authorities, when determining an application, to have regard to any rights of the applicant in relation to his or her right to freedom of expression and protection of property as set out in the European Convention on Human Rights. They also suggested a maximum of one such venue in the locality, but we remain unconvinced that it would be sensible and justifiable to select any particular number.

31. Your Committee may carry out further consultation on the matter, if the Court decides to adopt these provisions, by including a reference to sexual entertainment establishments in our forthcoming consultation on the City’s Statement of Licensing Policy, which must be updated.

32. People have differing views of what is entertaining, what is culture, and what is acceptable, and we cannot make judgements on those grounds. We can, however, consider any application before us on its merits, and if we were to decide to grant one, place conditions on it to minimise any impact it might have on the vicinity. We believe this decision would enable us to strike a balance between the different needs of our community and also support the City’s Community Strategy theme “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”.

CONCLUSION

33. Adopting the new provisions would enable the City of London Corporation to regulate sexual entertainment venues where it had no powers to do so before. It would allow local people to oppose applications for SEV licences if they had legitimate concerns about its effect on the area; require licences to be renewed at least annually, when objections could be raised; allow the City to reject a licence application if the venue would be inappropriate given the character of a particular area; and allow a wider range of conditions to be imposed on any SEV licences.

34. Your Committee therefore believes that it is neither necessary nor justifiable to set a limit on these types of venues for us to continue to discharge our function and make effective use of the new controls available to deal with these types of venues. Instead, your Committee recommends that it considers each application on its own merits, applying the increased powers available to ensure that, if any such venues are approved, they operate to the highest possible standards, always respecting the City’s residents, visitors and workers.