

Committee(s):	Date(s):
Port Health and Environmental Services Committee	September 9 2013
Subject: Sex Establishments; Annual Review of Fees and governance	Public
Report of: Director of Markets and Consumer Protection	For Decision
Summary	
<p>The City of London Corporation has to set annual fees for those premises requiring a licence under the Local Government (Miscellaneous Provisions) Act 1982 as a sex establishment. An earlier report to the Licensing Committee (Appendix 1) outlines recent case law which has indicated that the process for setting the fees must be robust and that income received through the licensing process cannot exceed the cost of administering that process.</p> <p>Although a previous report to your Committee agreed to transfer responsibility for 'Sexual Entertainment Venues' (SEV's) to the Licensing Committee it did not make clear that the three other types of sex establishments; sex shops, sex cinemas and hostess bars should also be transferred and this report seeks to remedy that matter</p>	
Recommendations	
<p>It is recommended that your Committee:-</p> <ul style="list-style-type: none"> • Agrees the proposed fees for 2013/14 as set out in Appendix 1. • The governance of all types of sex establishments are dealt with by the Licensing Committee, which includes sex shops, sex cinemas, hostess bars and SEV's. 	

Main Report

Background

1. The Licensing Committee agreed the recommendations in the attached report (Appendix 1) on 15 July 2013 regarding necessary changes to fees following a case (*R (Hemming and Others) v Westminster City Council*) which went to court of appeal on 24 May 2013.
2. The case concluded that charges which a council imposes on applicants/licensees must be proportionate and reasonable in the circumstances to the fees or costs payable i.e. the fees must not exceed the costs of administering the process.
3. The governance of this issue appears to fall between your Committee and the Licensing Committee so this report asks for a decision to clarify this position and confirm fees for sex establishments agreed by the Licensing Committee.

Current Position

4. Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 (as amended by The Greater London Council (General Powers) Act 1986, The London Local Authorities Act 2007 and The Policing and Crime Act 2009) establishes controls for sex establishments which are defined as a sex cinema, sex shop, hostess bar or a sexual entertainment venue (SEV).
5. The Policing and Crime Act 2009 (s.27) amended the 1982 Act to expand the definition of a sex establishment, as well as bringing in a range of greater controls

and the City Corporation re-adopted those provisions at its Licensing Committee on the 14 June 2010 to come into effect of 1 September 2010.

6. The report to your Committee of 9 March 2010; 'Licensing of Sexual Entertainment Venues – change of Committee responsibilities' proposed that responsibility for the administration of the 1982 Act for "Sexual Entertainment Venues" should be passed from the Port Health and Environmental Services Committee to the Licensing Committee in preparation for when the new legislative arrangements were introduced, and their Terms of Reference be amended accordingly.
7. The definition of an SEV given in the 2009 Act is specific, being 'any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer'. Audience can be an audience of one person. 'Relevant Entertainment' means any live performance or any live display of nudity which, is of such a nature that it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
8. It is apparent from the text of the 2010 report to your Committee that the transfer of responsibility to the Licensing Committee was intended to be wider than just SEVs encompassing the other three types of sex establishments; sex cinema, sex shop and hostess bar for reasons of efficiency and synergy. At present there are no such establishments trading within the City.
9. The Licensing Committee agreed the recommendations in the report of 15 July 2013 (Appendix 1) but as the matter of governance of sex establishments, other than SEVs, was unclear it was agreed this matter should be referred to your Committee.

Options

10. That the governance of SEVs remain with Licensing Committee but other types of sex establishments; sex cinema, sex shop and hostess bar are dealt with by your Committee.
11. The governance of all types of sex establishments are dealt with by the Licensing Committee.

Proposals

12. For the same reasons as given in the 9 March 2010 report to your Committee I recommend that the option in paragraph 11 above is adopted by your Committee.
13. Specifically, the two main reasons for this proposal are:
 - a. A similar hearing to those currently held for applications under the Licensing Act is available for evaluating applications where there are objections/representations. The Licensing Committee holds hearings on a regular basis, so is well equipped to consider and process such applications.
 - b. The Licensing Committee would deal with any other licences under the Licensing Act that would cover the same premises. There is therefore some synergy in the applications being dealt with by one Committee.
14. This will ensure that all licensing issues regarding these premises are coordinated through one Committee, which is a more efficient practice, and will enhance the

speed with which the City can respond to applications for the (different) types of sex establishment licences.

15. In addition, I recommend that the fees agreed by Licensing Committee (as set out in Appendix 1) are also agreed by your Committee to ensure continuity.

Corporate & Strategic Implications

16. The adoption of the fees and governance proposals fits with one of the City Corporation's three aims of the Corporate Plan 2013 – 2017 in that it seeks to evolve a service 'to provide modern, efficient and high quality local services and policing within the Square Mile for workers, residents and visitors with a view to delivering sustainable outcomes'. It also meets one of the five key policy priorities KPP2 in that it seeks to 'maintain the quality of our services whilst (reducing our expenditure and) improving our efficiency'.

Implications

17. The work undertaken in dealing with any application for sex establishments is expected to remain within the existing budgets of Markets and Consumer Protection Department. The decision of your Committee will clarify the position on governance of these matters.

Conclusion

18. The fees set out in Appendix 1 should be agreed to ensure continuity of governance between Committees although these fees are at present academic as there are no such establishments within the City. The governance issue between your Committee and Licensing Committee should be clarified by adoption of one of the two options presented at paragraphs 10 and 11.

Appendices

- Appendix 1 – Sex Establishments – Annual Review of Fees; Report to Licensing Committee, 15 July 2013

Background Papers:

Licensing of "Sexual Entertainment Venues" – change of Committee responsibilities; 9 March 2010, Port Health and Environmental Services Committee

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