

LICENSING COMMITTEE – 26 JANUARY 2010

SEX ESTABLISHMENTS – DETERMINATION OF APPLICATIONS AND FEES.

Report of the: Community and Planning Services Director

Status: For Decision

Executive Summary: Paragraph 1.2 (c) of Part 8 of the Council's Constitution delegates authority to the Licensing Committee to determine applications for licensing sex establishments.

This report sets out the procedure and criteria for determining applications and proposed fees for determining an application, the granting of an annual licence for a successful application and the renewal fee for an annual licence using a 2% inflation factor.

No application has been made to this Council to date.

This report supports the Key Aim of safe communities

Portfolio Holder Cllr. Mrs Bracken

Head of Service Head of Environmental and Operational Services – Mr Richard Wilson

Recommendation: It is RESOLVED that, subject to an annual review, the fee for the grant, transfer or annual renewal of a licence for sex establishments be set at £2,340.

Background

- 1 Sex Establishments are required to be licensed under the Local Government (Miscellaneous Provisions) Act 1982.
- 2 A sex establishment can either be a sex shop or a sex cinema.
- 3 A sex shop is any premises used for business which consists to a significant degree of selling sex articles.
- 4 A sex cinema is any premises used to a significant degree for showing of films or videos of a sexual nature.

Introduction

- 5 The law defines the way in which an application is made, which include advertising notice of the application in the local press and displaying a notice

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outside the premises for a specific time period to give passers by the opportunity to comment by a statutory closing date.

When considering an application for a sex establishment licence the Council may only use the following criteria:

- The suitability of the applicant
- Whether the person applying is a "front" person for someone else
- The location and situation of the premises in relation to other premises in the area
- Whether the number of sex establishments in that locality is equal to, or exceeds the number which the Council considers appropriate for the area.
- An applicant will complete an application form and return it to the Council, and advertise in the local newspaper and allow 28 days for objections to be received by the Council. In addition the applicant will advertise a notice in the window or on a door at the premises for 28 days.
- Each application will be considered on its own merits, and would be determined by the Licensing Committee having considered any objections received.

Fees

- 6 Subject to an annual review, the fee for the grant, transfer or annual renewal of a licence for sex establishments be set at £2,340.

Local Councils fees for comparison:

- Tunbridge Wells Borough Council – Determination £7,875, and renewal £1,990 with grant £446 after successful renewal.
- Maidstone Borough Council – Determination £4,265, Renewal £1,602 and Transfer £1,602.

Key Implications

Financial

- 7 There are currently no applications that the Council is aware of; therefore at the time of writing there is no forecasted revenue. The fee covers all the costs associated with processing and granting an application and subsequent enforcement.

Legal, Human Rights etc.

- 8 Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.

Equality

- 9 Equality is not affected by the setting of the Sex Establishment licence fees.

Risk Assessment Statement

- 10 The process of setting the proposed fees for premises used for sex establishments is essential to ensure that operational costs are recovered.

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Case law relating to fee levels in various licensing areas has established a general principle that licensing fees should not be used as a method of creating revenue and so setting a fee level that would result in an excess of revenue would leave the authority open to legal challenge.

Sources of Information: The Local Government (Miscellaneous Provisions) Act 1982.

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**COMMUNITY AND PLANNING SERVICES DIRECTOR
KRISTEN PATERSON**

