

## LICENSING COMMITTEE

Date: Tuesday 2 June 2015  
Time: 5.30 pm  
Venue: Rennes Room, Civic Centre, Paris Street, Exeter

Members are invited to attend the above meeting to consider the items of business.

If you have an enquiry regarding any items on this agenda, please contact Howard Bassett, Democratic Services Officer (Committees) on 01392 265107 or email [howard.bassett@exeter.gov.uk](mailto:howard.bassett@exeter.gov.uk)

Entry to the Civic Centre can be gained through the Customer Services Centre, Paris Street.

### *Membership -*

Councillors Sheldon (Chair), Laws (Deputy Chair), Branston, Brimble, Choules, Crew, George, Hannan, Harvey, Henson, Holland, Pearson, Shiel and Spackman

## Agenda

### **Part I: Items suggested for discussion with the press and public present**

#### **1 Apologies**

To receive apologies from Committee members.

#### **2 Minutes**

To sign the minutes of the meetings held on 3 February and 16 March 2015.

#### **3 Declarations of Interest**

Councillors are reminded of the need to declare any disclosable pecuniary interests that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any further discussion of the item.

Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

4 **Local Government (Access to Information) Act 1985 - Exclusion of Press and Public**

It is not considered that the Committee would be likely to exclude the press and public during the consideration of any of the items on this agenda but, if it should wish to do so, then the following resolution should be passed: -

**RECOMMENDED** that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for particular item(s) on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in the relevant paragraphs of Part I of Schedule 12A of the Act.

5 **Street Trading Policy - New Psychoactive Substances**

To consider the report of the Assistant Director Environment.

(Pages 3 -  
16)

6 **Sex Establishment Licensing Policy - New Psychoactive Substances**

To consider the report of the Assistant Director Environment.

(Pages 17  
- 66)

7 **Hackney Carriage Vehicle Licences - Change in Policy**

To consider the report of the Assistant Director Environment.

(Pages 67  
- 70)

**Individual reports on this agenda can be produced in large print on request to Democratic Services (Committees) on 01392 265107.**

**REPORT TO:** LICENSING COMMITTEE

**Date of Hearing:** 2 June 2015

**Report of:** Environmental Health and Licensing Manager

**Type of Application:** To seek the introduction of an additional condition to Street Trading Policy to prevent the sale of New Psychoactive Substances by those issued with a street trading consent or licence and to amend the condition relating to food safety standards.

**Legislation:** Local Government (Miscellaneous Provisions) Act 1982

**Is this a Key Decision?**

No

**Is this an Executive or Council Function?**

Licensing is a Council function delegated to the Licensing Committee

**1. What is the report about?**

- 1.1 The report seeks to introduce an additional condition to prevent the sale of New Psychoactive Substances (commonly referred to as 'legal highs') by those issued with street trading consents and Licences and to amend an existing condition relating to food safety compliance.

**2. Recommendations:**

- 2.1 The Licensing Committee are recommended to adopt the proposal below which is to be added to Appendix A of the Street Trading Policy and to all street trading licences and consents:

*The consent holder or any assistant shall not sell New Psychoactive Substances.*

- 2.2 The Licensing Committee are recommended to adopt an addendum to condition 8 Appendix A of the Street Trading Policy and to all street trading licences and consents:

*Compliance with food safety legislation will be indicated by a food hygiene rating of 3, 4 or 5 under the national Food Hygiene Rating System, as issued by Environmental Health, Exeter City Council.*

**3. Reasons for the recommendation:**

- 3.1 Officers consider that the pragmatic proposal contained in this report will enhance public safety and ensure that the Council is not incorrectly seen as condoning the sale of New Psychoactive Substances.

**4. What are the resource implications including non financial resources.**

- 4.1 There will be no resource implications in implementing the recommendation.

**5. Section 151 Officer comments:**

There are no financial implications contained in this report.

**6. What are the legal aspects?**

6.1 The power to prescribe standard conditions is contained schedule 4 (7) of the Local Government (Miscellaneous Provisions) Act 1982, which state:

- When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.
- Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent—
  - obstruction of the street or danger to persons using it; or
  - nuisance or annoyance (whether to persons using the street or otherwise).
- The Council may at any time vary the conditions of a street trading consent.

**7. Monitoring Officer's comments:**

**8. Report details:**

8.1 New Psychoactive Substances (NPS) which are also referred to as 'legal highs,' are substances that are not currently controlled by the Misuse of Drugs Act 1971. Under the Medicines Act 1968, most of these substances are illegal to sell, supply or advertise for human consumptions. They have usually not undergone any testing, so cannot be sold as 'fit for human consumption.'

8.2 The Home Office's expert review panel defined New Psychoactive Substances as:

*'Psychoactive drugs which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.'*

8.3 As NPS have not been tested, the effects and risks are largely unknown. Users of such substances often mix NPS drugs with alcohol and other illegal substances. The effects if consumed can be very unpredictable, with behaviours such as aggression and vulnerability being commonly observed, with significant intoxication leading to collapse or even death.

8.4 New Psychoactive Substances (NPS) have become a major concern to local agencies over the last two years. As an alternative to illegal drugs, the sale of NPS's can be lucrative to any retailer. Two shops within the City have attracted significant attention, leading to numerous Police and multi-agency actions, but since these shops have ceased trading these substances, the sale of NPS's has moved to other premises, on-line sales and street sales. Exeter has suffered increases in anti-social behaviour directly related to the prevalence of the sales of these substances.

8.5 Since the last revision of the policy, Environmental Health have adopted the national Food Hygiene Rating Scheme. It is therefore beneficial for clarification to be given to the existing condition 8 which states that 'the consent holder shall ensure full compliance with relevant food safety and health and safety legislation.' The Food Standards Agency recognised that food establishments are broadly compliant with food hygiene law when they are rated 3, 4 or 5, and therefore the condition for compliance with food safety should be revised accordingly.

**9. How does the decision contribute to the Council's Corporate Plan?**

9.1 Adopting a new condition to the street trading policy will contribute to a healthy and safe city and contribute to the primary aim of licensing which is to protect public safety.

**10. What risks are there and how can they be reduced?**

10.1 Formulating a condition that prevents the sale of New Psychoactive Substances (NPS) and that that protects public safety should make a positive impact on creating a vibrant city to live, work and visit.

10.2 Amending the condition with regard to food safety, seeks to align the policy with nationally recognised food safety standards.

**11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

11.1 The proposal has no particular equality or diversity impacts and should produce a positive impact with respect to health and wellbeing, safeguarding children, young people and vulnerable adults. The proposal aims to improve community safety and the detrimental impacts to neighbourhoods that can be caused through the use of these substances.

**12. Are there any other options?**

12.1 There is the option to retain the status quo, but this is not considered a good option as it would hinder any future action to deal with problematical sales of NPS's through street vendors using stalls or vehicles.

**Assistant Director Environment**

**Local Government (Access to Information) Act 1972 (as amended)**

**Background papers used in compiling this report:-**

- Home Office (October 2014) New Psychoactive Substances Review: Report of the Expert Panel
- Lincoln City Council (January 2015) Executive Report Proposals for the Implementation of a Public Space Protection Order
- Local Government (Miscellaneous Provisions) Act 1982
- Food Standards Agency Brand Standard for the Food Hygiene Rating Scheme

Contact for enquires:  
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**Exeter**  
City Council

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT  
1982**

**Street Trading Policy and Conditions**

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**Issue Date: June 2015**

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## **Section 1 – Purpose**

- 1.1. Exeter City Council (the Council) street trading policy's aim is to create a street trading environment which complements premises based trading, is sensitive to the needs and amenities of residents, provides diversity of consumer choice, and seeks to enhance the character, and ambience of local environments.
- 1.2. The policy recognises the importance of street trading to the city and that it can add to the vibrancy and vitality whilst not necessarily adding to nuisance and crime and disorder.

## **Section 2 – What is Street Trading?**

- 2.1. Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway, beach or other area to which the public have access without payment. In this regard, 'other area' will include a retail car park to which the public have access to without payment.
- 2.2. The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area and has designated all streets in the area as 'consent streets' for street trading purposes, with the exception of a number of streets in the City Centre, which are designated 'licence streets or prohibited streets'.
- 2.3. The effect of this designation is that street trading in any street is forbidden, subject to legal exemptions, without first obtaining a street trading consent or licence from the Council.
- 2.4. This includes all streets, car parks, parks and all adjacent paved, grassed and ornamental areas to which the public have access without payment.

## **Section 3 – Exemptions from the need to obtain a Consent or Licence**

- 3.1. Some types of trade are legally exempt from the need to obtain a street trading consent or licence. These include:
  - a person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871, and which the trading activity is one of peddling;
  - a trade carried out by roundsmen eg a milkmen serving registered customers;
  - a trade carried on at a petrol filling station;
  - a market created by statute or grant;
  - trading as a news vendor (selling newspapers or periodicals);
  - trading in premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
  - authorised charity collections.

## **Section 4 – Street Trading Consents for which fees are not payable**

- 4.1 The Council may remit the payment or part of the payment of fees for the following street trading activities:
- fetes, carnivals or similar community-based and run events;
  - non-commercial or charitable events;
  - farmers markets (producer-managed marketplace for local producers to sell their own produce direct to local people) as these are subject to Street Licence authorisation;
  - sales of articles by householders on land contiguous with their homes (eg a garage sale).

## **Section 5 – Site Assessment for Consents**

- 5.1 The Council will not identify suitable 'pitches' for street trading but will maintain a map showing the location of existing sites that have permission to street trade.
- 5.2 In determining whether to permit street trading at a selected site the Council will have regard to:
- any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving;
  - any loss of amenity caused by noise, traffic, smell or other nuisance;
  - existing Traffic Orders e.g. waiting restrictions, parking, etc.;
  - any potential obstruction of pedestrian or vehicular access;
  - any obstruction to the safe passage of pedestrians;
  - the safe access and egress of customers and staff from the pitch and immediate vicinity; and
  - the impact on the character of the area.
- 5.3 With regard to itinerant street trading (e.g. an ice-cream van or fish & chip van), where due to the nature of the business there is a genuine need to ply trade in many locations, a general consent will be issued.

## **Section 6 – Consultation for Consents**

- 6.1 Before a new pitch is authorised by the Council for the purposes of street trading (non market) we will, where reasonably practicable, seek representations from:
- the relevant ward councillors
  - Police
  - Highways (Devon County Council)
  - Estates Dept of Exeter City Council
  - Existing holders of street trading consents in the immediate vicinity
- 6.2 Where practicable, fourteen days will be given for representations to be received. If no representations are received, the application will be referred to the next available Licensing Committee of the Council and may be granted in the terms applied for, and standard conditions will be considered and may be attached to the consent.
- 6.3 All relevant representations relating to the grant of a consent will be referred to the Licensing Committee for consideration as part of the determination.
- 6.4 Subsequent renewal of consents to street trade submitted on the same terms as previously granted and for the same site, where there have been no relevant objections to the trading, will be dealt with by the Assistant Director Environment.
- 6.5 There is no right of appeal to the Magistrates' Court against refusal to issue a consent, however, where an application is refused, payment of the application fee shall be refunded.

## **Section 7 - Nature of Good and Trading Hours**

- 7.1 The nature of goods which may be sold from any pitch will be specified in the consultation process. No substantial change to the products sold will be permitted without referral back to the Assistant Director Environment.
- 7.2 The Council would not normally grant a new consent for the sale of goods or services which conflict with those provided by nearby traders.
- 7.3 The Council does not permit the sale of New Psychoactive Substances
- 7.4 General street trading hours are not set, therefore in the case of hot food takeaways and fresh produce sellers trading hours will be determined on a pitch-by-pitch basis.
- 7.5 The design and appearance of the stall, barrow, van or cart etc. to be used must be agreed by the Council.

## **Section 8 – Issue of Street Trading Consents / Licences**

- 8.1 Street trading consents will normally be issued for a period of one year, but new consents may be issued for a three month trial period to determine if necessary the viability and impact of trading. Consents for shorter periods may be issued on request but subject to the payment of the appropriate fee determined by the Council.

- 8.2 Consents will be issued for seven days per week, unless there are limiting factors on the use of a pitch on particular days. The permissions granted will identify the permitted days and times of trade.
- 8.3 Fees for consents must be paid in full in advance. In the case of renewals, payments must be at the time of renewal.
- 8.4 Failure to provide payments as above will result in the permission not being renewed or being revoked. This does not apply when a direct debit arrangement has been agreed between the Council and the consent holder.
- 8.5 Where a consent has expired or has been revoked the pitch will awarded to the first applicant that applies to trade on that pitch, no waiting lists will be maintained
- 8.6 A consent cannot be issued to a person under the age of 17 years. An application may be refused if the applicant is unsuitable to hold the consent/licence by reason of having been convicted of an offence or for any other reason.

## **Section 9 – Planning Permission**

- 9.1 If a consent is applied for, the onus is on the applicant to obtain both planning permission and permission to trade from the landowner when necessary, prior to making an application for street trading consent. It is not the responsibility of the Council to investigate and obtain this information.

## **Section 10 - Licensing Act 2003**

- 10.1 In addition to the requirement of having a street trading permission, applicants who sell hot food or hot drinks between 23.00 pm and 05.00 will need a premises licence under the Licensing Act 2003. The Licensing Section is able to provide advice as to the application process.
- 10.2 For premises that seek to trade only between the hours of 23.00 and 05.00 consent will still be required in addition to the Licensing Act licence.

## **Section 11 – Fee Structure**

- 11.1 The Assistant Director Environment will arrange for the setting of street trading fees through the Council and will annually review the fee structure.

## **Section 12 – Applicants and Assistants**

- 12.1 The Council will issue an identity badge to the person applying for the consent and will require the applicant to identify any person that is to work under his permission.
- 12.2 The applicant will provide passport size and quality photographs of himself following the grant of the consent.

- 12.3 He will ensure that the full names addresses and dates of birth plus photographs of any and every person that will or may be used under the authority of the consent is submitted following the grant of the consent.
- 12.4 No person will be permitted to work under the permission of the consent without holding an identity badge issued by this Council at all times they are working.
- 12.5 When submitting an application, the applicant will need to pay the appropriate sum in full. These are set out in the list of fees and charges and can be found on the Council website. The fees will be reviewed annually and updated accordingly as of the first week in April each year.

## **Section 13 – Conditions and Enforcement**

- 13.1 Standard conditions may be attached to each street trading consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 13.2 The Assistant Director Environment may review the conditions set out in Appendix A and may add to, delete or amend the conditions as necessary.
- 13.3 Specific conditions may also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size of the pitch.
- 13.4 Failure to comply with conditions, non-payment of fees or non-attendance at the site without good reason may lead to revocation or non-renewal of a consent.
- 13.5 Persons trading without a street trading permission and who are not exempt (see 3.1 above for examples) will be the subject of enforcement action. This will include any person who holds a certificate granted under the Pedlar's Act 1871, but who fails to operate in accordance with the Act.
- 13.6 The issue of absent traders will be addressed by conditions upon the licence or the consent, for example conditions which:
- require personal attendance of the holder without the option for someone else to run the business on his behalf;
  - require the holder to provide notification of his nominated assistant;
  - require the holder to provide notice of non-attendance to the Assistant Director Environment (not required for periods of less than 20 working days for Annual leave);
  - allow the Assistant Director Environment to revoke the consent after 20 working days non attendance where no notification of absence has been submitted.

## **Section 14 - General**

- 14.1 This policy will be the subject of periodic monitoring and review and will be applied in a manner which is consistent with the Council's equalities and diversity policies.

## Appendix A – Pool of Conditions that may be imposed on a consent to street trade

In these conditions:

"The Council" means Exeter City Council.

"You" means the holder of the consent to trade.

"Your Assistant" means any person or persons who assist the holder of a consent to trade whilst trading under that consent and who has been notified to and has been issued with an identity badge by the Council.

"New Psychoactive Substances" means *Psychoactive drugs which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.*

1. The consent relates to the trader named and is not transferable.
2. Unless a "city wide" consent is applied for and granted, the consent holder may only site the permitted structure at the approved location.
3. A copy of the consent, shall be displayed in a conspicuous place, whilst trading.
4. The consent holder may only trade between the approved times as indicated on the street trading consent.
5. The consent holder may only sell articles or foodstuffs approved by the Council as indicated on the street trading consent.
6. The consent holder or an assistant shall write to the Council giving details of a new home address or new address of the registered office within seven days of moving.
7. No person under the age of 17 years shall engage or be employed in street trading.
8. The consent holder shall ensure full compliance with relevant food safety and health and safety legislation. Compliance with food safety legislation will be indicated by a food hygiene rating of 3, 4 or 5 as issued by Environmental Health.
9. Where a consent holder is operating under both consent and provisions of the Licensing Act 2003 he will ensure both Authorisations are displayed.
10. The consent holder must ensure that staff who prepare open high risk foods, or handle food and have a supervisory role, have training to the level equivalent to the Chartered Institute of Environmental Health (CIEH) Level 2 Award in Food Safety in Catering within three months of the consent being issued.
11. The consent holder shall take all reasonable precautions for the safety of all other persons using the street(s) and to prevent danger to persons using the street(s).
12. The consent holder shall not cause any obstruction of the highway.
13. The consent holder shall ensure that trading is conducted in a manner which avoids any nuisance or annoyance to the occupiers of neighbouring premises. In particular the holder shall ensure that any power driven equipment (including generators) are sited to minimise noise and attenuated where necessary.

14. The consent holder shall comply with the reasonable requests of a duly authorised officer of the Council or a police officer to take such action as is considered necessary to abate any nuisance or obstruction.
15. Public highways shall be maintained in a clean condition during each day's trading and all rubbish and waste paper accumulated throughout the daily operation of this consent shall be removed at the end of each day's trading.
16. Suitable refuse facilities shall be provided to encourage customers to dispose of rubbish and waste paper so as to avoid causing a nuisance by the littering of the highway and private land bordering the approved location. All litter generated by the trading and discarded by customers of the trading up to 100 metres of the stall, shall be cleared by you at regular intervals throughout the day.
17. The consent holder shall, where applicable, at all times when trading comply with all "Codes of Practice" relating to noise in particular the "Codes of Practice on Noise from Ice Cream Vans Chimes etc 1982".
18. No animal shall be present on any stall or vehicle.
20. The consent holder or an assistant shall not sell New Psychoactive Substances.
21. In addition to these conditions, the Council may also impose conditions which are specific to individual consents to trade.

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**REPORT TO:** LICENSING COMMITTEE

**Date of Hearing:** 2 June 2015

**Report of:** Environmental Health and Licensing Manager

**Type of Application:** To seek the introduction of an additional condition to the Sex Establishment Licensing Policy to prevent the sale of New Psychoactive Substances

**Legislation:** Local Government (Miscellaneous Provisions) Act 1982

**Is this a Key Decision?**

No

**Is this an Executive or Council Function?**

Licensing is a Council function delegated to the Licensing Committee

**1. What is the report about?**

1.1 The report seeks to introduce an additional condition to Appendix C of the policy to prevent the sale of New Psychoactive Substances at premises holding Sex Establishment Licences.

**2. Recommendations:**

2.1 The Licensing Committee are recommended to adopt the proposal below which is to be added to the standard conditions contained within Appendix 3 (13) of the Sex Establishment Licensing Policy:

1. The premises shall not sell New Psychoactive Substances.
2. The new policy will come into effect from 1 August 2015.

**3. Reasons for the recommendation:**

3.1 Officers consider that the pragmatic proposal contained in this report will enhance public safety and ensure that the Council is not incorrectly seen as condoning the sale of New Psychoactive Substances.

**4. What are the resource implications including non financial resources.**

4.1 There will be no resource implications in implementing the recommendation.

**5. Section 151 Officer comments:**

There are no financial implications contained in this report.

**6. What are the legal aspects?**

6.1 The power to prescribe standard conditions is contained in Schedule 3 (13) of the Local Government (Miscellaneous Provisions) Act 1982 - *the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to*

*which licences under this Schedule are in general to be granted, renewed or transferred by them.*

**7. Monitoring Officer's comments:**

**8. Report details:**

8.1 New Psychoactive Substances (NPS) which are also referred to as 'legal highs,' are substances that are not currently controlled by the Misuse of Drugs Act 1971. Under the Medicines Act 1968, most of these substances are illegal to sell, supply or advertise for human consumptions. They have usually not undergone any testing, so cannot be sold as 'fit for human consumption.'

8.2 The Home Office's expert review panel defined New Psychoactive Substances as:

*'Psychoactive drugs which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.'*

8.3 As NPS have not been tested, the effects and risks are largely unknown. Users of such substances often mix NPS drugs with alcohol and other illegal substances. The effects if consumed can be very unpredictable, with behaviours such as aggression and vulnerability being commonly observed, with significant intoxication leading to collapse or even death.

8.4 New Psychoactive Substances (NPS) have become a major concern to local agencies over the last two years. As an alternative to illegal drugs, the sale of NPS's can be lucrative to any retailer. Two specialised shops within the City have attracted significant attention, leading to numerous Police and multi-agency actions, but since these shops have ceased from trading these substances, the sale of NPS's has moved to other non-specialised premises, on-line sales and street sales. Of concern is intelligence that has been recently received about sales of NPS's from one of the three licensed sex establishments. Exeter has suffered increases in anti-social behaviour directly related to the prevalence of the sales of these substances, and so it is appropriate to deter other retail premises from branching out into this market.

**9. How does the decision contribute to the Council's Corporate Plan?**

9.1 Adopting a new condition to the street trading policy will contribute to a healthy and safe city and contribute to the primary aim of licensing which is to protect public safety

**10. What risks are there and how can they be reduced?**

10.1 Formulating a condition that prevents the sale of New Psychoactive Substances (NPS) and that that protects public safety should make a positive impact on creating a vibrant city to live, work and visit.

**11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

11.1 The proposal has no equality or diversity impacts and should produce a positive impact with respect to health and wellbeing, safeguarding children, young people and vulnerable adults. The proposal aims to improve community safety and the detrimental impacts to neighbourhoods that is caused through the use of these substances.

**12. Are there any other options?**

12.1 There is the option to retain the status quo, but this is not considered a good option as it would hinder any future action to deal with problematical sales of NPS's through sex establishments.

**Assistant Director Environment**

**Local Government (Access to Information) Act 1972 (as amended)**

**Background papers used in compiling this report:-**

- Home Office (October 2014) New Psychoactive Substances Review: Report of the Expert Panel
- Lincoln City Council (January 2015) Executive Report Proposals for the Implementation of a Public Space Protection Order
- Local Government (Miscellaneous Provisions) Act 1982

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**Exeter**  
City Council

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

**Sex Establishment Licensing Policy**

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**Adopted: 23 July 2013**  
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## Section 1 – Introduction

- 1.1. On 13 June 1983 Exeter City Council (“the Council”) adopted legislation which enables it to licence sex establishments, categorised as either sex shops or sex cinemas, within the city of Exeter, with effect from 1 September 1983. Those parts of the Act continue to have effect.
- 1.2. On 24 July 2012 the Council adopted amended legislation which further enables it to license sexual entertainment venues (SEVs) as an additional category of sex establishments, with effect from 3 September 2012.
- 1.3. The Council recognises that Parliament has made it a lawful activity to operate a licensed sex establishment and such businesses are a legitimate part of the retail and leisure industries. When undertaking its statutory function as the Licensing Authority, the role of the Council is to administer the licensing regime in accordance with the law. The Council will not exercise its duties in accordance with any moral standing and will not take in to account any unrelated considerations that would call in to question the validity of any subsequent decision made.
- 1.4. In this document, the Council sets out the policy it will adopt when making decisions under the legislation (the Policy).
- 1.5. The Policy gives guidance to prospective applicants, persons who may wish to object to or support an application and members of the Council’s Licensing Committee when making a decision in respect of an application.
- 1.6. Each application will be considered on its individual merits and the Policy is intended to give prospective applicants an early indication of whether their specific application is likely to be successful and the material facts that will be taken in to consideration when determining an application.
- 1.7. No policy will ever be considered absolute and there may be occasions where the Council may depart from the Policy having regard to the unique characteristics of any one particular application.
- 1.8. Exeter is an historic city located at the northern tip of the Exe Estuary, some 15km from the coast. It has a significant residential population, including families with children, numbering 118,500, a travel-to-work area with a population of over 280,000, a shopping catchment of over 550,000 and over two million day visitors a year. The city is one of three large urban centres within the predominantly rural county of Devon and is served by major transport infrastructure including the M5 motorway, main railway lines and Exeter International Airport.
- 1.9. Exeter has a deserved reputation as both the regional and cultural capital of the South West peninsula. The maintenance of the character of the area as a tourist and residential district of the highest quality is of regional importance. There are a number of important aspects of city life. For example, there are a large number of historic buildings which contribute both to the historic character and tourist appeal of Exeter. There are places of worship which merit respect and protection in their own right as well as a cultural heritage with the city’s Royal Albert Memorial Museum being

recognised nationally. There is an array of public houses and restaurants, educational establishments including the University of Exeter, with over 14,000 students. There is the business, legal and commercial aspect of the city as well as the retail districts including not only the prestigious city centre and Princesshay but a number of streets and markets attracting high quality independent retailers.

- 1.10. The Council has taken account of these aspects of city life in determining its policies in relation to the number, location and operating standards of sex establishments.
- 1.11. On 12 February 2013 the Council resolved to conduct a widespread public consultation, commencing on 4 March 2013 and concluding on June 6 2013, on the question of whether there are any, and if so which, localities in Exeter it would be appropriate to license a sex establishment.
- 1.12. In consulting widely, the Council acknowledges the important role that the regulatory authorities, licensed trade and local communities undertake and the necessity for them to contribute their views in formulating this policy.
- 1.13. The Council has had due regard to the views of those consulted on the policy proposals and in determining the Policy has given appropriate weight to comments received. The Policy has been considered and approved by the Council on 23 July 2013.
- 1.14. These considerations, among others set out below, have led the Council to the clear opinion that there is no locality within Exeter within which it would be appropriate to licence an SEV or a Sex Cinema and only two localities identified where it is appropriate to licence a Sex Shop. The Policy is intended to be strictly applied and while the merits of each individual case will be considered it is most unlikely that exceptional circumstances will be found. For the Policy to be overridden, an applicant would need to demonstrate why the objectives of the Policy would be furthered or at least not undermined by allowing the exception. Where the Council has been unable to identify an appropriate locality, for the Policy to be overridden would require the applicant to identify a previously unidentified appropriate locality.
- 1.15. If, however, a sex establishment licence were to be permitted as an exception to this policy, the Council would expect operators to observe the highest management and operational standards consistent with the location in an area of the quality and importance of Exeter. Those standards are reflected in the Regulations set out in Appendix 3 of this Policy.
- 1.16. The Policy will be subject to regular review and amendments may be made from time to time based upon any relevant government guidance, changes to legislation or local circumstances.



## Section 2 – Legal Background

### The Local Government (Miscellaneous Provisions) Act 1982

- 2.1. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) established a licensing regime for two categories of sex establishment, namely sex cinemas and sex shops.
- 2.2. The Policing and Crime Act 2009 amended the Act to create a new category of sex establishment known as the sexual entertainment venue. In brief, these are venues offering live performance or displays of nudity for the purposes of sexually stimulating any member of the audience. The Council adopted these provisions with effect from 3 September 2012 with the consequence that SEVs are now licensable in Exeter. The legislation does not confer “grandfather rights” on existing licensed premises. This enables the Council to take a fresh look at sex establishment licensing in Exeter, having regard to the principles in the legislation and all other material considerations.

### Definitions

- 2.3. For the purpose of the Policy, the following definitions will apply, provided that any subsequent amendments to the Act will also be taken into account:
- 2.4. **Sex Shop**  
Any premises, vessel, vehicle or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:
  - a) Sex articles; or
  - b) Other things intended for use in connection with, or for the purpose of stimulating or encouraging:
    - i. Sexual activity; or
    - ii. Acts of force or restraint which are associated with sexual activity

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

- 2.5. **Sex Article**  
Anything made for use in connection with, or for the purpose of stimulating or encouraging:
  - i. Sexual activity; or
  - ii. Acts of force or restraint which are associated with sexual activity; and anything to which the sub-paragraph below applies.

This applies to:

- a) any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- b) any recording of vision or sound, which

- i. is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
- ii. is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

**2.6. Sex Cinema**

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which –

- a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
  - i. sexual activity; or
  - ii. acts of force or restraint which are associated with sexual activity; or
- b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions,

but does not include a dwelling-house to which the public is not admitted.

No premises shall be treated as a sex cinema by reason only –

- a) if they may be used for an exhibition of a film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act), of their use in accordance with that authorisation; or
- b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985

**2.7. Sex Entertainment Venue**

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer which is 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 the audience (whether by verbal or other means),

- a) “audience” includes an audience of one
- b) “relevant entertainment” means any live performance or any live display of nudity;
- c) “display of nudity” means—
  - i. in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
  - ii. in the case of a man, exposure of his pubic area, genitals or anus;
- d) “premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted

That the following are not sexual entertainment venues for the purposes of the legislation—

- a) sex cinemas and sex shops;
- b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (9i) is such that, at the time in question and including any relevant entertainment which is being so provided at that time—

- i. there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
      - ii. no such occasion has lasted for more than 24 hours; and
      - iii. no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));
    - c) premises specified or described in an order made by the relevant national authority.
- 2.8. The legislation provides both mandatory and discretionary grounds for refusal. The Council's approach in relation to these grounds is set out in Sections 6 and 7 of this Policy respectively. The legislation also provides discretion to the Council to waive the need for a licence. The Council's policy in relation to waiver is set out in Section 9 below.
- 2.9. In addition, there are a number of other legal requirements which are relevant to the licensing of sex establishments and which the Council must take into account.

### **Provision of Services Regulations 2009**

- 2.10. The services of a sex establishment are likely to amount to services within the Provision of Services Regulations 2009. The authorisation scheme provided for by a competent authority must be based on criteria which preclude the Council from exercising its licensing powers in an arbitrary manner. To this end, the criteria must be:
- a) non-discriminatory (with regard to nationality or an EEA state),
  - b) justified by an overriding reason relating to the public interest,
  - c) proportionate to that public interest objective (that is to say, it must not go beyond what is necessary to attain the objective),
  - d) clear and unambiguous,
  - e) objective,
  - f) made public in advance, and
  - g) transparent and accessible.
- 2.11 Further, conditions ought not to be imposed unless they are non-discriminatory, necessary in that the condition is justified for reasons of public interest and proportionate.
- 2.12 The Council is satisfied that the decision to adopt the legislation and this Policy is fully compliant with the provisions of the Regulations.

### **Crime and Disorder Act 1988**

- 2.13 The Council is obliged to exercise its sex establishment licensing functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area, including anti-social and other behaviour adversely affecting the local environment, the misuse of drugs, alcohol and other substances. Where there is evidence that a premises is contributing to anti-social behaviour the Council has a duty to use its licensing powers to do all it reasonably can to prevent it.
- 2.14 The Council has had regard to this duty in formulating this Policy.

## **Human Rights Act 1998**

2.15 This Act requires the Council to refrain from acting incompatibly with rights protected by the European Convention on Human Rights. These include:

- Article 8: protects the right to a private and family life, home and correspondence. The right is qualified in that there may be interference when this is in accordance with the law and necessary in a democratic society in the interests of (among other things) public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.
- Article 10: protects the right to freedom of expression, including artistic expression. This right is also qualified, in that it is subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests (among other things) of public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the reputation or the rights of others.
- Article 1, First Protocol: protects the peaceful enjoyment of possessions. It states that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. The right is qualified in that the Council has the right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

2.16 In adopting this Policy, the Council has taken account of the human rights of operators and of local residents.

## **Equality Act 2010**

2.17 This Act requires the Council to have due regard to the need to:

- (a) eliminate discrimination, harassment, and victimisation;
- (b) advance equality of opportunity between (among other things) persons of different race or sex and persons with and without disabilities; and to
- (c) foster good relations between persons of different race, sex or ability. In this case, those persons might be workers at or visitors to sex establishments, or those living in, working in or visiting the vicinity.

2.18 The Council acknowledges that gender equality may have an influence on decisions in sex establishment licensing. For example, it may be necessary to attach conditions to protect performers from harassment or any threat to their dignity by requiring proper supervision and facilities. By way of further example, there should be no suggestion allowed that one gender would be any more welcome than another in licensed premises.

2.19 There are no parts of Exeter which could currently be described as characterised by sex establishments. This Policy militates against such a situation arising but the Council acknowledges that such a situation might amount to discrimination where the access to the city's infrastructure by one gender might be impaired in comparison to that of another through fear of the characterisation of the location. This consideration will be taken into account in any decision making.

2.20 There are further considerations to be taken in to account in relation to religion, belief and disability which will need to be duly weighed in any decision making.

2.21 The Council has had regard to these duties in formulating this Policy.

## Section 3 – Policy Background

- 3.1. In formulating this Policy, the Council has had regard to Home Office Guidance regarding SEVs and to complementary policies of the Council, in so far as these are relevant.

### Home Office Guidance

- 3.2. The Home Office has published *Guidance in Relation to Sexual Entertainment Venues*. As to local licensing policies, the Guidance advises that these might include statements about where local authorities are likely to consider appropriate or inappropriate locations for SEVs to be. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality. The Guidance also indicates that local authorities could also use a licensing policy to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality.
- 3.3. The Council has followed the Guidance in drawing up this Policy.

### City Centre Strategy

- 3.4. A new City Centre Strategy is currently being developed, with publication expected in Autumn 2013. A core aim will be to deliver a vibrant, welcoming and safe evening and night-time economy. The evening and night-time economies have grown significantly over recent years and a key aim will be to ensure that the City Centre in the evening and at night is a welcoming place for a very broad cross-section of the population. The City Centre cafe culture has grown exponentially over the last decade and an aim is to see further growth for the evening and night-time period over the next five to ten years.

### Cultural Strategy

- 3.5. The Council will shortly produce an interim Cultural Strategy. A key part of the strategy will include the aim to improve the quality of the cultural offering to a wider range of audiences, and to remove barriers in order to encourage more people to be part of the night time economy.

### Local Development Framework: Core Strategy

- 3.6. Where planning permission is required for a proposed sex establishment the City Council will consider the advice in the National Planning Policy Framework, the Exeter Core Strategy adopted February 2012 and the Exeter Local Plan 1st Review adopted March 2005 as well as other material considerations.
- 3.7. One of the aims contained in the Core Strategy is to provide and enhance retail, cultural and tourist facilities in the City Centre that reflect and enhance Exeter's regional and sub-regional status and sphere of influence, that add to economic growth, that build social cohesion, and that promote vitality and viability; and continue to enhance the Quay and Canal area as a centre for tourism and recreation.

- 3.8 Completion of the Princesshay development in 2007/2008 has strengthened Exeter's retail 'offer'. It is, however, in the nature of retailing that the relative attractiveness of a shopping centre will be challenged continually by competitors from elsewhere and from out-of-town development. The Local Development Framework must, together with the City Centre Strategy, ensure that the status of Exeter as a retail destination is maintained and enhanced.
- 3.9 The Council has had regard to these broad strategic aims, so far as relevant, in the development of this Policy, and feels that the presence of SEV's and sex cinemas within the city centre is not compatible with these broad aims.

## Section 4 – Public Consultation

- 4.1. In developing this Policy, the Council conducted an extensive public consultation, involving an on-line survey and a postal survey. In total, there were 169 responses. The results of these surveys have helped to inform the content of the Policy.
- 4.2. The survey questionnaire dealt substantively with the requirement or otherwise for a policy for SEVs. Respondents were asked to indicate whether their answers would have differed in relation to the other categories of sex establishments and most indicated that they would not: sex cinemas (86%) and sex shops (72%). However, in relation to sex shops, there were a sizeable number of respondents who felt that the retail nature of such allowed this type of sex establishment to be viewed in a more acceptable light than those sex establishments providing entertainment.
- 4.3. The survey showed strong support for having an SEV policy, with (92%) of respondents supporting adoption.
- 4.4. There was support for SEV policies dealing with: the suitability of the applicant (76%); character of localities for the location of sex establishments (67%); and compatibility with neighbouring uses (67%). There was also support for a policy dealing with the interior layout of the venue (61%).
- 4.5. Respondents were asked whether there were any localities within the Exeter which were appropriate for SEVs. Few of those responding found that the character of any locality would be highly suitable for an SEV and in the case of each locality the majority found that the character would be highly unsuitable.
- 4.6. The consultation revealed that most respondents considered SEVs to be highly incompatible with certain neighbouring uses: educational (82%); places of worship (84%); family leisure facilities such as cinemas (82%); residential (83%); galleries and museums (73%), and youth facilities (83%). There was a more even split as to financial institutions (60%) saying incompatible; and shops (65%) saying incompatible. Respondents were more evenly split on the compatibility of public houses and bars with SEVs with 55% saying highly incompatible.
- 4.7. 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. Large majorities considered the following issues to be very or fairly important: the ability to properly manage activities off the premises such as customers entering or leaving (72%); the ability to supervise (73%); disabled access (59%), and the quality of the venue (63%).
- 4.8. The Council has taken due account of these community views, particularly where they reveal strong support for (or against) a particular position.



## Section 5 – Applications

5.1. The Council's Policy in respect of applications is as follows:

### **POLICY 1: PROCEDURE FOR APPLICATIONS**

1. Applicants for new licences, renewals and transfers will be required to complete the application form at Appendix 1 to this Policy. If the application form is not duly completed or the fee is not paid, the application will be returned to the applicant.

2. A site notice shall be displayed in the form set out at Appendix 2 to this policy. The site notice shall be on yellow A4-sized paper with black 16 point font. The applicant will be required to enclose a copy of the site notice with the application form. The applicant will be required to file with the Council a statutory declaration confirming display of the site notice for the period required by Schedule 3 paragraph 8(10) of the Local Government (Miscellaneous Provisions) Act 1982.

3. The newspaper advertisement of the application shall be in the form and of the size set out in Appendix 2 to this Policy. A copy of the newspaper shall be filed with the Council as soon as practicable after publication.

5.2. The Council's policy in respect of the procedure for consideration of applications is as follows:

### **POLICY 2: PROCEDURE FOR CONSIDERATION OF APPLICATIONS**

The Council has a responsibility to consider whether the mandatory or discretionary grounds for refusal apply whether or not there have been objections to the application. To this end it will:

1. Require completion of a detailed application form.
2. Consider the application form and require the applicant to supply any necessary further information.
3. Interview the applicant. The interview will normally be conducted by a Licensing Officer.
4. Conduct an inspection of the premises by a Licensing Officer.
5. Make such further checks and inquiries as are considered necessary.
6. Convene a hearing of the Licensing Committee for the purposes of consideration of the application and any objections.
7. Notify the applicant and any objectors of any information or documents they will be required to produce, whether before or at the hearing.

- 8. Require all applicants, partners or directors, together with the proposed manager of the premises and any person for whose benefit the business will be carried on, to attend the hearing, unless notified otherwise.**
- 9. Require a report by Assistant Director Environment to be presented to the Licensing Committee, which may contain recommendations.**

**A hearing will be convened for all new applications and transfer applications, whether or not there have been objections.**

**Applications for renewal will be decided by Assistant Director Environment unless there have been objections or there is some other reason why the matter ought to be considered by the Licensing Committee.**

**The procedure for hearings shall be determined by the Licensing Committee. A copy of the procedure will be published on the Council's website and is included as Appendix 4.**

## Section 6 – Mandatory Grounds for Refusal

6.1. The Act provides mandatory grounds for refusal. These are that:

*(a) the applicant is under the age of 18;*

*(b) the applicant is for the time being disqualified from holding a licence;*

*(c) the applicant is not a body corporate and is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application was made;*

*(d) the applicant is a body corporate which is not incorporated in an EEA state;*

*(e) the applicant has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.*

6.2 The Council's role in relation to the mandatory grounds for refusal is to put itself in a position to judge whether any of the grounds apply. Its policy in this regard is as follows.

### **POLICY 3: MANDATORY GROUNDS FOR REFUSAL**

**The Council will proactively investigate whether any mandatory grounds for refusal apply, by following the procedures set out in Policies 1 and 2.**

## Section 7 – Discretionary Grounds for Refusal

7.1. The Act provides discretionary grounds for refusal. These are that:

*(a) the applicant is unsuitable to hold the licence by reason of having been convicted of a criminal offence or for any other reason;*

*(b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;*

*(c) the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority considers is appropriate for that locality. (For this purpose, nil may be an appropriate number.)*

*(d) 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.*

7.2 Applications for transfer may not be refused on the grounds in (c) and (d) above. Other than that, all the policies in relation to the discretionary grounds for refusal apply to new grant, renewal and transfer applications.

7.3 The Council's role in relation to the discretionary grounds for refusal is to put itself in a position to judge whether any of the grounds apply. Its policy in this regard is as follows.

### **POLICY 4: DISCRETIONARY GROUNDS FOR REFUSAL**

- 1. The Council will proactively investigate whether any discretionary grounds for refusal apply, by following the procedures set out in Policies 1 and 2.**
- 2. Each discretionary ground for refusal will be separately and individually considered, having regard to Policies 5-10 below. If any ground applies, the application will be refused.**

7.4. The Council's policy for consideration of the suitability of the applicant is as follows:

### **POLICY 5: SUITABILITY OF APPLICANT**

- 1. In considering whether the applicant is suitable to hold a licence, the Council will take into account such matters as it considers to be relevant, including but not limited to whether the applicant:**
  - a) has convictions which are relevant to his suitability to hold the licence, the age of the conviction and any explanation given regarding the**

circumstances of the conviction or rehabilitation undergone. Spent convictions will be taken into account only where justice cannot be done except by admitting evidence relating to the convictions or the surrounding circumstances;

- b) is honest;
- c) is qualified by experience to run a sex establishment of the size and nature he is proposing to run;
- d) demonstrates an understanding of and willingness and ability to comply with the Council's general sex establishment licence conditions;
- e) can be relied upon to run the premises in accordance with the licence and with the requirements of the Local Government (Miscellaneous Provisions) Act 1982;
- f) can demonstrate a history of compliance in relation to this or other premises and licensing or other regulatory regimes;
- g) is proposing to run the premises himself or to employ others to do so;
- h) is proposing a management structure which will deliver compliance with licence conditions and the Local Government (Miscellaneous Provisions) Act 1982 through:
  - i) managerial competence and experience;
  - ii) presence of managers throughout trading hours;
  - iii) a credible and effective management structure;
  - iv) a system for internal enforcement of rules including through training and monitoring of staff and performers;
  - v) a viable business plan providing sufficient capital and revenue to ensure that licensing and other legal obligations will be observed.
- i) demonstrates an understanding of and willingness and ability to act in the best interests of performers, including in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored;
- j) has developed a thorough written welfare policy for performers and a system of enforcement of such a policy;
- k) has a competent written system for ensuring that the performers are adults and are entitled to live and work in the UK;
- l) demonstrates a willingness and ability to protect members of the public visiting the premises, for example through transparent charging and freedom from solicitation;
- m) demonstrates an understanding of the requirements of good neighbourliness and is willing and able to engage constructively with those living or working in the locality and with relevant statutory authorities.

- 7.5. The Act also permits refusal on the grounds that the person who will actually be managing the business or any person for whose benefit the business would be managed, would be refused a licence, whether under one of the mandatory or discretionary grounds for refusal. The Council's policy is as follows:

**POLICY 6: SUITABILITY OF MANAGER OR BENEFICIARY**

1. **The Council will require the applicant to identify the proposed manager(s) or beneficiary(s) of the business.**
2. **In considering whether those individuals would be refused a licence the Council will apply Policies 1-5 above, treating those individuals as though they were applicants for the licence so far as it is relevant to do so.**

- 7.6. The Council may refuse a licence on the grounds that the number of sex establishment licences is equal to or exceeds the number which the authority consider is appropriate for that locality. The concept of "locality" is elastic, particularly in small but urbanized areas.

Hence, the Council has decided not to pre-define localities with precision for the purposes of this policy. However, in considering its policy, the Council has considered each and every part of the City of Exeter in order to identify whether there are any localities in which the licensing of sex establishments is appropriate.

- 7.7. In deciding whether and if so what policy to adopt in relation to this discretionary ground, the Council has taken into account the matters set out in Sections 2 – 4 above. It has principally been influenced by the following considerations.

- 7.8. First, the public consultation revealed that a large majority of respondents in the City of Exeter consider that sex establishments are inappropriate near to particular sensitive uses, including schools, places of worship, family leisure facilities, residential dwellings, historic buildings, youth facilities and cultural facilities. The Council agrees that these uses are sensitive and that sex establishments are generally not appropriate near to them.

- 7.9. Second, the public consultation indicated that of 115 respondents specifying localities within the City of Exeter boundaries that are appropriate for sex establishments, 107 specified that the number in such localities should be zero. When respondents were asked to identify a locality which they considered suitable and to specify a number, no locality was named by more than 2% of respondents. The Council concludes that there is no locality for a sex establishment which is supported by more than a very small percentage of consultation responses.

- 7.10. Third, the Council has taken account of its own corporate strategies and priorities as represented by its Corporate Plan 2012 – 2014 Building a Stronger and Sustainable City.

The Council believes that sex establishments are:

- a) not consonant with a culturally rich and diverse City, in particular in that they tend not to be inclusive facilities, appeal to only a narrow sector of the community, and are unlikely to enhance the cultural reputation of the City of Exeter;

b) are (while not excluding women) generally unattractive environments for women workers to attend and so tend to discriminate against such workers;

c) inconsistent with goals of community cohesion, particularly having regard to the sensitivities of children, and the fears and sensitivities of women workers, residents and visitors.

7.11. Fourth, in relation to SEVs, the Council has also had due regard to the need to advance equality of opportunity between men and women. It considers that the presence of SEVs in any locality in the City of Exeter will not advance equality of opportunity of women workers or residents. It recognizes that a nil per locality policy may reduce the employment opportunities for performers. However, it also recognises that those working in SEVs are often peripatetic and self-employed, and so will retain the opportunity to find employment as performers at other venues or in other roles in the leisure industry. The Council believes that, on clear balance, in gender equality terms, its policy is both supportable and correct.

7.12. Fifth, in relation to existing sex establishments, since their opening the City Centre offering has been enhanced both in terms of the quality of its retail offering and in terms of its cultural offering

7.13. The Council considers that the Policy is clearly necessary, proportionate and justified within the Provision of Services Regulations 2009 and the Human Rights Act 1998.

7.14 The Council has disregarded any moral consideration in formulating this Policy. It has also taken account of the possibility that some of the consultation responses may have been motivated by moral considerations.

#### **POLICY 7: THE NUMBER OF SEX ESTABLISHMENTS**

1. **The Council's Policy is that there is no locality within Exeter in which it would be appropriate to licence an SEV or a sex cinema. Accordingly, the appropriate number of these categories of sex establishments for each and every locality within Exeter is nil.**

2. **The Council's Policy is that there are currently two localities in which it is appropriate to licence a sex shop and these are the localities surrounding the existing licensed premises in Fore Street and Sidwell Street. Accordingly, the appropriate number of sex shops for each of these localities is one.**

7.15 The Council may refuse a licence on the ground that it would be inappropriate having regard to the character of the relevant locality. The Council's Policy as to this ground of refusal has been formulated in particular by a consideration of the material set out in sections 2-4 above.

#### **POLICY 8: CHARACTER OF LOCALITY**

1. **The Council's Policy is that sex establishments 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.**

#### **v. late night entertainment and shopping**

- 2. In other cases, the question of the appropriateness of the sex establishment having regard to the character of the locality will be considered on the merits of the individual case.**
- 3. In considering the character of the locality, the Council will have regard to the impact of the proposed sex establishment on that character, taking account of size, presentation, location, lighting, trading name and all other material factors.**
- 4. In considering such impact, the Council 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;**

7.16 The Council will not normally grant premises operating at or whose façade is at ground floor level.

7.17 The 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 Council recognises the various conflicting pressures for development and land use within the City of Exeter and has attempted to strike a balance between them. The 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 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 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 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.

- 5. In considering the application of this policy to domestic residential buildings, the 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.

7.18 The 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. In applying this ground, the 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 City of Exeter. It has also taken account of the material set out in sections 2-4 above.

#### **POLICY 10: LAYOUT, CHARACTER AND CONDITION**

- 1. The Council expects premises licensed as sex establishments to achieve a high quality of build, appearance, maintenance and fit out in keeping with the standards and reputation of Exeter.
- 2. The Council expects applicants to give due consideration to the fear of crime, intimidation and harassment particularly among female residents and workers in the vicinity, and so provide a quality and style of built environment which protects against such fear.
- 3. The Council expects all parts of the premises to be fully accessible to disabled people.
- 4. The Council expects the premises to be laid out and lit so as to ensure that there is at all times proper supervision and surveillance throughout.
- 5. The Council expects a digital CCTV system to operate at all times when the public are on the premises; extent and coverage to be agreed by the Office of the Assistant Director Environment. All recordings shall be stored for a minimum of 31 days with date and time stamping. Recordings will be made available upon request to the police or an authorised officer of the Council in accordance with current Home Office Guidance.
- 6. The Council expects dedicated, secure, private, single sex changing rooms, rest rooms and WCs for performers which are inaccessible to members of the public.
- 7. The Council's policy is to refuse private booths.

In this policy "private booth" means a room, cubicle or other area used for private performance to individual paying customers or groups of customers, other than where the booth is fully and completely open on one side so that activities within it may at all times be clearly and readily supervised from a main gangway through the premises and so that at all times activities within it are recorded by fixed and dedicated CCTV cameras.

## Section 8 – Regulations

- 8.1. The Council has made regulations prescribing standard conditions applicable to sex establishments as set out in Appendix 3 to this Policy. In doing so, it has had particular regard to the matters set out in sections 2 and 3 above. Its policy in relation to such conditions is as follows.

### **POLICY 11: STANDARD CONDITIONS**

- 1. The Council will apply the Standard Conditions unless such conditions are expressly excluded or varied.**
- 2. The Council will only vary or exclude the Standard conditions in exceptional circumstances.**
- 3. In deciding whether the circumstances are exceptional, the Council will consider the purpose of the condition and whether that purpose would be advanced in equal manner if it were varied or excluded.**

- 8.2. The Council may also add conditions in individual cases. Its policy in relation to the exercise of that power is as follows:

### **POLICY 12: INDIVIDUAL CONDITIONS**

- 1. The Council will add individual conditions where this is considered necessary and proportionate.**
- 2. Prior to refusal of a licence, the Council will consider whether the proposed reason for refusal may be avoided by the imposition of conditions.**
- 3. The Council will in general avoid adding conditions which are already conditions on a separate consent, such as a premises licence under the Licensing Act 2003 or a planning consent.**
- 4. Before adding conditions, the Council will notify the applicant of the proposal to add conditions and give an opportunity for the applicant and any other party to make submissions as to the proposal.**

## Section 9 – Waiver

- 9.1. The Council has power to waive the requirement for a licence where it considers that to require a licence would be unreasonable or inappropriate. In deciding whether to exercise its discretion to waive the requirement for a licence, the Council will apply the following policy.

### **POLICY 13: WAIVER**

**The Council's policy is to grant waivers only when all of the following conditions are satisfied:**

- 1. The waiver is sought in respect of a temporary event.**
- 2. The event does not consist of striptease, lap-dancing, pole dancing or similar activities.**
- 3. If an application for a licence were to be made, the application would not, in the opinion of the Council, be likely to attract any reasonable objections.**

## **Section 10 – Enforcement**

- 10.1. The Council will conduct enforcement activities in relation to sex establishment licences according to the principles set out in the Exeter City Council Environmental Health Services Enforcement Policy. A copy of the Enforcement Policy may be obtained from the Council upon request, and is also obtainable from the Council's website.

## **Section 11 – Fees**

- 11.1. The Council will set fee levels for grants, variations, renewals and transfers of licences. Details of such fee levels will be published on its website.

## Appendix A – Application Form

### Application Form

Application for grant, renewal or transfer of sex establishment licence pursuant to Schedule 3, Local Government (Miscellaneous Provisions) Act 1982.

#### IMPORTANT NOTES

1. All questions must be answered, save where otherwise stated. If relevant questions are not answered, the application will be deemed incomplete and returned to the Applicant.
2. Any person who, in connection with an application for a grant, renewal or transfer of a sex establishment licence makes a false statement which he knows to be false in any material respect or which he does not believe to be true, is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.
3. Please send the completed application form to The Licensing Team Exeter City Council Civic Centre Paris Street Exeter EX1 1RQ.



**ENVIRONMENTAL HEALTH AND LICENSING**

**APPLICATION FOR A LICENCE FOR A SEX ESTABLISHMENT.**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**  
**PART II SCHEDULE 3.**

All applicants are required to send with this application two plans showing the premises or part of the premises to be licensed.

The fullest possible information must be given in answer to each question.

1. Individuals and others e.g. body corporate Application is hereby made and the necessary fee enclosed (tick where appropriate).					
<b>(a) For a Sex Cinema</b>	Tick	<b>(b) For a Sex Shop</b>	Tick	<b>(c) For a Sex Entertainment Venue</b>	Tick
New Licence	<input type="checkbox"/>	New Licence	<input type="checkbox"/>	New Licence	<input type="checkbox"/>
Transfer of licence	<input type="checkbox"/>	Transfer of Licence	<input type="checkbox"/>	Transfer of Licence	<input type="checkbox"/>
Renewal of Licence	<input type="checkbox"/>	Renewal of Licence	<input type="checkbox"/>	Renewal of Licence	<input type="checkbox"/>

2. Individuals only

Full Names of Applicant: .....

Date of Birth: .....

Occupation: .....  
(During preceding six months)

3. Individuals only

Permanent Address: .....

.....

.....

.....

Telephone No: ..... Post Code:

.....

<p>4. Individuals only Has the applicant been resident in the U.K. throughout the six months preceding the date of this application ?</p>	
<p>5. Individuals and others e.g. body corporate Name, description and location of premises to which this application relates. Telephone No:</p>	
<p>6. Individuals only  Address(es) at which applicant has been residing during the five years preceding the date of this application</p>	
<p>7. Body Corporate/others  Name of applicant body, state whether a corporate or unincorporated body.</p>	
<p>8. Body Corporate/others  Address of registered or principal office.</p>	



<p>9. Body Corporate/others</p> <p>Full names, ages and private addresses of all directors and other persons responsible for the management of the body, including if applicable the names of managers, company secretary and similar officers and the manager of the establishment.</p> <p>Have the persons so named been resident in the U.K. for at least the past six months?</p>	
<p>10. Body Corporate/others</p> <p>Full names, ages and private addresses of all persons for whose benefit the business at the sex establishment is proposed to be conducted, i.e. if the applicant is a body corporate, give names and addresses of members of the body and if the applicant is an unincorporated body or an individual, give names and addresses of persons who will receive the proceeds of the business.</p> <p>Have the persons so named been resident in the U.K. for at least the past six months ?</p>	
<p>11. Individuals and others e.g. body corporate</p> <p>Name, private address and age of any other person(s) who will be engaged in managing the premises ?</p>	
<p>12. Individuals and others e.g. body corporate</p> <p>If the premises are not open between 9.00am and 4.00pm, state name, address and telephone number of persons responsible for keys to the premises.</p>	
<p>13. Individuals and others e.g. body corporate</p> <p>If only part of the building is to be licensed, give details:-</p> <p>(a) Of the use (s) to which the remainder of the premises will be put:</p> <p>(b) The names of those who are responsible for the management of the remainder of the premises:</p>	

<p>14. Individuals and others e.g. body corporate</p> <p>What hours and days do you require the licence to cover?</p>	
<p>15. Individuals and others e.g. body corporate</p> <p>Will any part of the premises be used for the exhibition of moving pictures ?</p>	
<p>16. Individuals and others e.g. body corporate</p> <p>If this application relates to a vehicle, vessel or stall, state where it is to be used as a sex establishment.</p>	
<p>17. Individuals and others e.g. body corporate</p> <p>Are the premises or the vehicle, vessel or stall to be used as a sex shop or a sex cinema or both?</p>	
<p>18. Individuals and others e.g. body corporate</p> <p>Give full details of the ownership of the premises (or the vehicle, vessel or stall) including details of leases, tenancies, mortgages, licences and any other interests.</p>	

<p>19. Individuals and others e.g. body corporate</p> <p>Give full details of the type of business to be conducted at the establishment. If it is to be a sex shop, what types of goods are to be sold ? If it is to be a cinema what types of moving pictures are to be exhibited ?</p>			
<p>20. Individuals and others e.g. body corporate</p> <p>Full name and private address of registered offices of major suppliers of goods to be sold, displayed or exhibited at the sex establishment.</p>			
<p>21. Individuals and others e.g. body corporate</p> <p>Do any persons or companies who supply articles for sale at the premises to which this application refers have any interest in the ownership or management of the business for which a licence is sought ?</p>			
<p>22. Individuals and others e.g. body corporate</p> <p>Give date and name of newspaper in which public notice of this application is to be made.</p>			
<p>23. Individuals and others e.g. body corporate</p> <p>Give the names and addresses of two referees, none of whom shall be related to the applicant, the partners, the directors, or the secretary, neither should they be a fellow director, partner or the secretary. The referees should be either an M.P., J.P., Minister of Religion, City Councillor, Lawyer, Bank Officer, School Teacher, Police Officer or other person of a similar standing.</p>			
<p>24. Individuals and others e.g. body corporate</p> <p>In respect of each of the persons or bodies whose names are given in response to questions 2, 9, 10 and 11, give details of their previous convictions and of any previous convictions of their spouses.</p>			
NAME	COURT	OFFENCE	RESULT


I/We enclose the required fee

(cheques should be made payable to  
EXETER CITY COUNCIL).

I/We confirm that the notice of this application in the form prescribed by the Exeter City Council will be published in a local newspaper circulating in Exeter not later than seven days after the date of this application and that such notice will be displayed for the period of twenty-one days beginning with the date of this application or near the premises and in a place where the notice can be conveniently be read by the public.

I/we confirm that a copy of this application will be sent to the Chief Superintendent of Police at Heavitree Road Police Station, Exeter, after the date of this application.

I/We understand that if any of the information given above is false in any material respect, I/We may be guilty of an offence for which I/We may be liable to a fine of up to £20,000.

Applicant's Signature:

.....  
(or representative of applicant body)

Date: .....

## **Appendix B – Site Notice and Newspaper Advertisement**

### **SITE NOTICE AND NEWSPAPER ADVERTISEMENT**

**For site notices, this notice must be printed on yellow A4 paper in black 16 point font.**

**For newspaper advertisements the advertisement must be at least the size set out below.**

**APPLICATION FOR A SEX ESTABLISHMENT LICENCE**

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

**PART II SCHEDULE 3.**

NOTICE IS HEREBY GIVEN THAT I/WE (full names)

.....

APPLIED ON (date).....

TO THE EXETER CITY COUNCIL IN RESPECT OF THE PREMISES KNOWN AS:

.....

.....

UNDER THE PROVISIONS OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982, PART H, SCHEDULE 3. FOR A LICENCE TO USE THE PREMISES AS A SEX SHOP / SEX CINEMA./SEX ENTERTAINMENT VENUE

ANY OBJECTIONS TO THIS APPLICATION MUST BE SENT IN WRITING TO:

**ASSISTANT DIRECTOR ENVIRONMENT  
EXETER CITY COUNCIL  
CIVIC CENTRE  
EXETER  
EX1 1RQ**

NOT LATER THAN 28 DAYS AFTER THE DATE OF THIS APPLICATION, STATING THE GROUNDS OF OBJECTION. THE IDENTITY OF OBJECTORS WILL NOT BE REVEALED TO APPLICANTS UNLESS THE OBJECTORS SO AGREE IN WRITING.

(SIGNATURE OF APPLICANT).....

ADDRESS).....

.....

NOTE: THIS FORM IS RECOMMENDED FOR THE TEXT OF A NEWSPAPER ADVERTISEMENT FOR THE PURPOSES OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982, PART II, SECTION 3

## Appendix C – Standard Conditions

### Regulations prescribing standard conditions applicable to licences for sexual entertainment venues

**Made on the 23 July 2013**

**Coming in to force on the 3 September 2013**

**Revised 1 August 2015**

The Council makes these regulations pursuant to Schedule 3 paragraph 13 of the Local Government (Miscellaneous Provisions) Act 1982.

#### **Definitions**

1. In these Regulations, unless the context otherwise requires:
  - “the Code” means the Code of Conduct required under condition 23 below.
  - “Council” means Exeter City Council.
  - “Officer” means any person authorised in writing by the Council.
  - “Customer” means any person visiting the premises other than employees or performers, whether or not they have paid for or intend to pay for services provided;
  - “Licensable activities” means the activities permitted by the Sex Establishment licence.
  - “Licensee” means the holder of a Sex Establishment licence under the Local Government (Miscellaneous Provisions) Act 1982.
  - “Other contact of a sexual nature” means contact which can reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating the customer.
  - “Premises” means the premises licensed as a Sex Establishment.
  - “Private booth” means a room, cubicle or other area used for private performance to individual paying customers or groups of customers, other than where the booth is fully and completely open on one side so that activities within it may at all times be clearly and readily supervised from a main gangway through the premises and so that at all times activities within it are recorded by fixed and dedicated CCTV cameras.
  - “the Rules” means the Rules for Customers required under condition 23 below.
  - “Sexual Entertainment Venue” shall have the meaning ascribed to it in the Local Government (Miscellaneous Provisions) Act 1982.



- “Staff” means all those working at the premises whether employed or self-employed, including performers and door supervisors.
- “Unclothed” means when breasts and/or genitals and/or anus are fully or partially uncovered. For this purpose “partially uncovered” includes being covered in a transparent material.
- “New Psychoactive Substances” means ‘Psychoactive drugs which are not prohibited by the United Nations Drug Conventions but which may pose a public health threat comparable to that posed by substances listed in these conventions.’

### **General – Sex Establishments**

2. Every Sex Establishment licence granted, renewed or transferred by the Council shall be subject to the standard conditions set out in these Regulations unless they have been expressly excluded or varied by the Council.
3.
  - a) These conditions or any of them may be excluded or varied by the Council in any special case.
  - c) Any such exclusion or variation may be given unconditionally or on such terms and conditions and subject to such restrictions as the Council thinks fit.
  - c) If the licensee wishes any of these conditions to be excluded or varied, an application must be made to the Council pursuant to Schedule 3 paragraph 13(4) of the Local Government (Miscellaneous Provisions) Act 1982.
4. These conditions may be varied by further Regulation at any time.
5. In the event of any conflict between a condition contained in these Regulations and an individual condition contained in a Sex Establishment licence, the individual condition shall prevail.
6. The licence or a clear copy of the licence shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises.
7. The premises shall be maintained in accordance with the layout plan and front elevation plan approved by the Council and appended to the licence.
8. Private booths shall not be installed or used for sexual entertainment at any time.
9. The premises shall not be used for licensable activities before or after the hour specified in the licence for such activities.
10. The premises shall not afford public access to any other premises.

11. The licensee shall notify the Council as soon as is reasonably practicable, and in any event within ten working days, of any material change in the management structure, where a material change means one which is at variance with the information provided in the most recent application for a licence, or its renewal or variation as the case may be.
12. The premises may not be used as any other category of Sex Establishment other than as provided for in this licence.
13. The premises shall not sell New Psychoactive Substances

### **Management**

14.
  - a) At all times that the premises are open to the public the premises shall be supervised by a manager who is present on the premises and engaged in such supervisory activities.
  - c) A notice showing the name of the manager who is supervising the premises at any particular time shall be conspicuously displayed in a position where it can easily be seen by customers or officers on entering the premises.
  - d) The licensee shall ensure through training and monitoring that the manager understands the licence conditions, including the conditions set out in these Regulations and all Codes and Rules referred herein.
  - e) The licensee shall ensure that all managers are trained pursuant to paragraph c above before they first carry out management duties at the premises.
  - f) Ongoing training shall be provided for managers as appropriate.
  - g) A written record shall be kept in relation to training and monitoring of each officer pursuant to this condition.
  - g) In this condition “manager” means a person over the age of 18 whose identity has been notified to the Council in writing at least 10 working days before engaging in supervisory activities pursuant to this condition.
15. All areas used for licensable activities shall be supervised at all times so as to ensure compliance with the conditions of the licence.

### **Age controls**

16. No person under the age of 18 shall be admitted to any part of the premises at any time or be employed in the business of the Sex Establishment.

### **Exterior of premises**

17. The following matters and no other shall be displayed on the outside of the premises:
  - a) The name, style or title as approved by the Council.

- b) The words “Licensed Sex Establishment” in characters no higher than 10cm.
  - b) The opening hours of the premises.
  - c) The street number, where appropriate.
  - d) A notice stating: “No admittance to persons under 18 years of age”.
  - f) Any notice required to be displayed by law, by these regulations and by any condition of a licence granted by the Council.
18. The entrance and windows of the premises shall be so arranged that no person shall be able to see into the premises from outside.

#### **Welfare of staff**

19. No member of staff shall work at the premises until they have supplied:
- i. proof of age;
  - ii. evidence of a right to work in the UK;
  - iii. an official proof of identity such as passport or driving licence.
20. The licensee shall copy and retain on file the documents and other evidence required by condition 30 which shall be available for inspection by police officers and Licensing Officers at all times.

#### **Marketing of licensable activities**

21. The availability of the licensable activities shall not be marketed or advertised in any of the following ways in the Council’s area:
- personal solicitation, including on foot or from vehicles;
  - leafleting;
  - fly-posting;
  - handouts;
  - externally displayed advertisements, such as on billboards or cars.
22. No commission or gratuity whether in cash or kind shall be paid nor any other incentive offered to taxi or minicab drivers for bringing customers to the premises.

#### **Disabled people**

23. All parts of the premises which are open to the public shall be accessible to disabled people save for WC facilities where there are other WC facilities specially designated for use by disabled people.

## **Sex Entertainment Venues Only**

### **Conduct of Performers and Customers**

24. a) The licensee shall provide to the Council a Code of Conduct for performers and any amended Code operated by the licensee from time to time and Rules for Customers.
- c) The licensee shall ensure that all performers are trained in the Code and the Rules before they first perform at the premises.
- d) Ongoing training shall be provided for performers, as appropriate.
- e) A written record shall be kept in relation to such training.
- e) Copies of the Code and the Rules shall be prominently displayed in the performers' rest room and changing room.
25. a) At no time may any member of a staff other than a performer be unclothed.
- b) At all times during the performance the performer must be at least 1 metre from the customer or, where more than one customer, each of them.
- c) Prior to the performance or at the completion of the performance there may only be hand to hand payment for the performance.
- e) At no time except during the performance may a performer be unclothed. Immediately following the performance, the performer must dress, so that (for example) the performer may not be unclothed when seeking donations for a performance.
- e) No member of staff may at any time (and whether or not performing):  
i. sit or lie on the lap or any other part of any customer;  
ii. kiss, stroke, fondle, caress or embrace any customer;  
iii. straddle any customer;  
iv. engage in any other contact of a sexual nature with any customer;
- f) No performance may include:  
i. the use of sex articles or similar objects;  
ii. the touching by performers of their own sexual organs;  
iii. contact between performers;  
iv. participation by members of the audience;  
v. performance to standing customers except from a segregated, raised stage area.
26. a) No solicitation for sexual purposes shall take place on the premises.
- b) The licensee shall ensure that no telephone number, residential address, email address or other information that may facilitate further contact between performers and customers is conveyed on the premises.

27. The licensee shall devise, implement and maintain a system of monitoring, recording and enforcement to ensure that the Code and the Rules are observed by performers and customers at all times. Records of such monitoring, recording and enforcement shall be maintained and disclosed to Police and Licensing Officers upon request.
28. The licensee shall devise, institute and maintain a policy for prevention of use of the premises for the taking of illegal drugs, whether by staff or customers. The policy shall include regular checks of the premises for evidence of drug use. The effectiveness of the policy shall be monitored and such revisions thereto as are necessary shall be made. The policy and records of checks and monitoring shall be available for inspection at all times by police or Licensing Officers.
29. The licensee shall maintain a record, including dates, of:
  - a) Incidents at the premises.
  - b) Refusals of entry.
  - c) Persons banned from the premises.

The record shall be available for inspection at all times by police officers and Licensing Officers.

30. The licensee shall assess all risks to the welfare of performers, including arising from their gender, and shall devise, institute and maintain a policy for the protection of their welfare while on the premises and when they leave the premises. The effectiveness of the policy shall be monitored and such revisions thereto as are necessary shall be made. The policy and monitoring records shall be available for inspection at all times by Licensing Officers.
31. Suitable changing, rest room, WC and shower facilities shall be provided for performers. The facilities shall comply with the following standards:
  - a) The facilities shall be secure, private, for single sex use only and shall not be accessible by customers or, except with permission, by other members of staff or management.
  - b) The changing and rest rooms shall comprise an area or areas of a minimum of 2 square metres per performer engaged to perform at any one time.
  - c) The changing and rest rooms shall be located in the immediate vicinity of, but not within, WC areas.
  - d) Private and lockable storage units shall be provided for each performer for the safe keeping of valuables and clothing.
  - e) A supply of free drinking water shall be provided for all performers.
  - f) Sufficient sitting out space shall be provided for rest breaks for performers.
  - g) Adequate showers shall be provided for performers adjacent to, and directly accessible from, the changing facilities.

- h) Adequate WCs shall be provided for performers in the immediate vicinity of the changing facilities.
  - i) The WC and shower facilities shall provide privacy and security from intrusion by others, and shall not be accessible or accessed by customers at any time.
- 32. Single sex WC facilities shall be provided for staff members other than performers. The facilities shall not be used by customers.
  - 33. Doors and openings which lead to part of the premises to which the public are not permitted access shall have notices placed on them marked "NO ADMITTANCE".
  - 34. Performers and customers shall not be permitted to share any external smoking area.
  - 35. The licensee shall not fine performers for misconduct or any other reason.
  - 36. Performers shall be afforded secure transport from the premises at the end of trading hours.
  - 37. The licensee shall take all reasonable precautions and exercise all due diligence to prevent contact between performers and customers away from the premises.
  - 38. The licensee shall employ a "house parent" to supervise and ensure the welfare of performers.

#### **Protection of customers**

- 39. a) There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices, including charges for the company of a hostess or performer.
- b) The tariff shall be:
  - i. placed in such a position that it can easily and conveniently be read by customers before paying any fee for admission to the premises;
  - ii. at each bar in the premises;
  - iii. on each customer table at the premises.
- c) The tariff shall be drawn to the attention of every customer before they have paid any fees or charges.
- d) No charge shall be made to any customer except for a service and of an amount shown on the tariff.
- e) No charge shall be made to the customer for any drink provided for a hostess or companion unless the customer has specifically ordered it, having first been made aware of the cost.

#### **Conduct of customers**

- 40. a) The licensee shall provide to the City Council the Rules.

- b) The licensee shall ensure that all performers are trained in the Rules before they first perform at the premises.
- c) Refresher training shall be provided for performers at least every six months.
- d) A written register shall be kept in relation to such training.
- e) Copies of the Rules shall be prominently displayed in the performers' rest room and changing room.
- f) The Rules shall be prominently displayed:
  - i. at each bar in the premises;
  - ii. on each customer table at the premises.

### **Management**

- 41. a) All public parts of the premises excluding WCs shall be covered by CCTV cameras at all times.
  - b) All CCTV cameras shall be set to record at all times.
  - c) The CCTV system shall be of sufficiently high quality, and the premises sufficiently lit throughout, to enable clear facial recognition of individuals at all times.
  - d) CCTV footage shall be retained for a minimum of 31 days and be available immediately on request by a police officer or Licensing Officer.
  - e) The licensee shall at all times display clearly visible and legible notices informing members of the public that the premises are covered by CCTV.
  - f) The licensee shall ensure that CCTV images are viewed only by police officers, Licensing Officers or other persons expressly authorised by him.
42. All entrances to the premises shall be supervised by door supervisors licensed by the Security Industry Authority (or any successor body) at all times that the premises are open to the public
43. The licensee shall maintain a register in a form approved by the Council recording which staff who are on duty at any time at which the premises are being used for licensable activities. On their request, the register shall be produced immediately to a police officer or a Licensing Officer.
44. All staff other than performers shall be clearly identified as members of staff.

### **Age Control**

- 45. The licensee shall implement and maintain a Challenge 25 policy, and a Challenge 25 notice to this effect will be posted on the exterior of the premises.

## **Appendix D – Procedure for Hearings for Sex Establishment Licence Applications**

1. This procedure shall apply to all hearings conducted under the provisions of the Local Government (Miscellaneous) Provisions Act 1982 (as amended) in relation to licences for sex establishments.
2. Public hearings conducted under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 shall take the form of a discussion led by the Licensing Committee. Cross-examination will be permitted only when the Committee considers it to be required. The conduct of hearings shall be broadly based, subject to the discretion of the Committee, on the points set out below.
3. At the start of the hearing the Chair of the Committee will introduce himself and other Members of the Committee as well as the Licensing and other officers present. Anyone making representations will then be asked to introduce themselves and anyone accompanying them. The applicant will then do likewise.
4. The Chair will then explain the purpose of the hearing and the procedure to be followed at the hearing. The Committee will then make any rulings necessary in respect of requests for witnesses to be heard in support of any of the parties making representations or the applicant.
5. Those making representations will then be invited to present their case. Repetition will not be permitted. Equal time will be offered to the applicant and those making representations. Where there is more than one party making representations and/or calling witnesses in support, consideration should be given to having one spokesman on behalf of all parties so as to avoid repetition. Although the use of spokesman will be encouraged by the Committee, the decision rests with those parties making representations.
6. In the event of disorder or persistent disregard of the authority of the Chair, the Chair may suspend or adjourn the hearing, or require that the person(s) causing disorder or showing disregard leave the hearing.
7. In the event that the Committee has decided that cross-examination will be permitted, the applicant will be invited to ask questions of the party(s) making representations and their witnesses (if any). The party(s) making representations and any witnesses giving evidence in support will then answer any questions put to them by members of the Committee.
8. The applicant will then be invited to present their case and call any witnesses in support of their application. The applicant will be entitled to the same period of time to present his case as those making representations were afforded.
9. In the event that the Committee has decided that cross-examination will be permitted, those making representations will be invited to ask questions of the applicant and their witnesses (if any). The applicant and any witnesses giving



evidence in support will then answer any questions put to them by members of the Committee.

10. The Chair will ask all parties if there is anything else they would like to add in support of their respective cases.
11. Those making representations will then be invited to make closing submissions followed by the applicant.
12. The Committee will then retire to consider their decision in the presence of the Licensing Solicitor. They may call for assistance by the representatives of the Licensing Authority but those persons will play no part in the decision-making process.
13. In due course, the Committee will return to announce their decision or to inform those present when the decision will be given.

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**REPORT TO:** LICENSING COMMITTEE

**Date of Hearing:** 02 June 2015

**Report of:** Assistant Director Environment

**Type of Application:** To seek the introduction of an amendment to the policy relating to hackney carriage vehicles being issued a plate on the first occasion by the Licensing Authority.

**Legislation:** Local Government (Miscellaneous Provisions) Act 1976

**Is this a Key Decision?**

No

**Is this an Executive or Council Function?**

Licensing is a Council function delegated to the Licensing Committee

**1. What is the report about?**

1.1 The report seeks to introduce an amendment to the current policy relating to hackney carriage wheelchair accessible vehicles being issued a plate on the first occasion by the Licensing Authority.

**2. Recommendations:**

2.1 The Licensing Committee are recommended to adopt the provisional conditions below and require that from June 17 2015:

- Any Euro 5 wheelchair accessible vehicle (WAV) presented for licensing to the Council on the first occasion as either a new application or as a transfer, shall have no more than 3,000 miles recorded upon the vehicle's milometer.
- This requirement does not apply to any ultra low emission vehicle (ULEV).

**3. Reasons for the recommendation:**

3.1 Leading up to and following the resolution passed by the Licensing Committee on 16 March 2015, representations from the trade pointed to the potential for the enhanced standards being undermined by new applications utilising older Euro 5 WAVs up to 4 years old (nationally, it was mandatory for all new passenger cars and light duty vehicles to meet Euro 5 emission standards from January 1st 2011). In effect, such applications could take advantage of the 'window of opportunity' necessarily formed by the unavailability of Euro 6 side access WAVs until Autumn this year.

3.3 Officers consider that the pragmatic proposals contained in this report will help maintain and protect the enhanced standards and quality desired by Licensing Committee and address the concerns of the trade.

3.5 Public safety will be enhanced through the implementation of this recommendation to ensure that any vehicle licensed is suitable, safe and fit for the purpose.

**4. What are the resource implications including non financial resources.**

4.1 There will be no resource implications in implementing the recommendations.

**5. Section 151 Officer comments:**

There are no financial implications contained in this report.

**6. What are the legal aspects?**

6.1 The Licensing Authority has a statutory duty to ensure that public safety is not compromised when considering the issue of licences and to ensure that any vehicle licensed is suitable, safe and fit for the purpose. It is felt that the proposals contained in this report will enhance public safety without significantly increasing the burdens on existing or prospective hackney carriage vehicle proprietors.

**7. Monitoring Officer's comments:**

**8. Report details**

8.1 The Licensing Committee on 16 March 2015 resolved that the Council ends its current policy of restricting the number of hackney carriage vehicles with effect from 17 June 2015, and couple this with the introduction of an enhanced set of quality controls as set out in Appendices A-F of the circulated report in order to prevent any negative impact (if any) which may arise as a result of any potential growth in the number of Hackney carriage licences, and to improve standards of the Hackney taxi fleet further.

8.2 Lower emissions vehicles to benefit improved air quality was one of the key quality objectives, achieved through the condition for attaining either Euro 6 standard or above (i.e. ultra low emission of no more than 75g/km CO<sub>2</sub>). However, due to the absence of any Euro 6 side accessible WAVs until Autumn 2015, it was necessary to accept Euro 5 side accessible WAVs in the interim. In order to discourage any prospective applications taking advantage of this interim period to introduce older Euro 5 side accessible WAVs of up to 4 years old, and which would not be required to be upgraded to Euro 6 until 2020 (by which time they would be 9 years old), it is necessary to close a potential loophole.

**9. How does the decision contribute to the Council's Corporate Plan?**

9.1 Approving this amendment and closing this loophole will contribute to a healthy and safe city and assist the primary aim of taxi licensing which is to protect public safety.

**10. What risks are there and how can they be reduced?**

10.1 Formulating a hackney carriage vehicle policy that protects public safety should lead to a positive impact on creating a vibrant city to live, work and visit. The higher quality standards were coupled with the decision not to maintain the policy of restriction, in order to prevent any negative impact (if any); the amendment to policy in this report will assist in this prevention.

**11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

11.1 There are no specific impacts on equality and diversity groups. In terms of health and wellbeing, closing down the potential entry for older vehicles that would not otherwise be required to be upgraded until 2020, should benefit health in terms of lower emissions, and safety in terms of vehicles that are newer and less worn-out from use.

**12. Are there any other options?**

12.1 Members could maintain the current policy requirement, but this may encourage prospective applicants to seek a cheaper, older vehicle that would neither benefit the existing nor future Hackney fleet and its passengers.

**Assistant Director Environment**

**Local Government (Access to Information) Act 1972 (as amended)**

**Background papers used in compiling this report:-**

None

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