



CITY OF GLOUCESTER

LICENSING AND ENFORCEMENT COMMITTEE

**Meeting: Tuesday, 18th January 2011 at 18:30
North Warehouse, The Docks, Gloucester**

Membership: Cllrs. Durrant (Chair), C. Witts (Vice-Chair), Gillespie, Tracey, Noakes (Spokesperson), Gill, Field, Brown, Dee, Porter, Taylor, Beeley and Dallimore

AGENDA

1. APOLOGIES

To receive any apologies for absence.

2. DECLARATIONS OF INTEREST

To receive from Members, declarations as to personal and/or prejudicial interests and the nature of those interests in relation to any agenda item. Please see Notes 1 and 2 overleaf.

3. MINUTES (Pages 1 - 2)

To approve as a correct record the minutes of the meeting held on 16th November 2010.

4. MINUTES OF LICENSING SUB-COMMITTEES (Pages 3 - 12)

To approve the Minutes of Licensing Sub-Committee held on:-

11th November 2010
30th November 2010
14th December 2010

5. PUBLIC QUESTION TIME (15 MINUTES)

To receive any questions from members of the public.

6. PETITIONS AND DEPUTATIONS (15 MINUTES, MAXIMUM 3 MINUTES PER PERSON)

To receive any petitions and deputations.

7. ADOPTION OF THE AMENDED SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 FOR REGULATION OF LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES (Pages 13 - 54)

Report by Group Manager of Environmental Health and Regulatory Services

8. DATE OF NEXT MEETING

Tuesday 15th February at 18:30.



.....
Amanda Wadsley
Corporate Director of Strategy and Development

Notes

1. A personal interest exists where a decision on a matter would affect to a greater extent than other people in the District:-
 - (a) the well being, financial position, employment or business of the Councillor, their family or any person with whom they had a close association;
 - (b) a body employing those persons, any firm in which they are a partner and any company of which they are directors;
 - (c) any corporate body in which those persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) the Councillor's registrable financial and other interests.
2. A personal interest becomes a prejudicial interest where a member of the public (who has knowledge of the circumstances) would reasonably regard the Member's personal interest as being so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Please contact Adam Chalmers, Democratic and Electoral Services Manager, Tel. No. 01452 396125/e-mail: committeesection@gloucester.gov.uk if you have a general query on any agenda item, wish to tender your apologies for absence from the meeting, or would like information on any decision taken by the Council.

Agenda and enclosures can be viewed on the District Council's Website - www.gloucester.gov.uk

If you would like a translation of agenda/minutes/reports or would like a large text version or an audio version please contact the Democratic and Electoral Services Manager and we will try to accommodate your needs.

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LICENSING AND ENFORCEMENT COMMITTEE

MEETING : Tuesday, 16th November 2010

PRESENT : Cllrs. Durrant (Chair), C. Witts (Vice-Chair), Gillespie, Tracey, Noakes (Spokesperson), Gill, Brown, Dee, Porter, Taylor, Beeley and Dallimore

Officers in Attendance

Gill Ragon, Group Manager, Environmental Health and Regulatory Services

Lisa Wilkes, Food Safety and Licensing Service Manager

Steve Isaac, Solicitor

Amanda Tarren, Democratic Services Officer

APOLOGIES : Cllr. Field

24. DECLARATIONS OF INTEREST

There were no declarations of interest.

25. MINUTES

The minutes of the meeting on 12 October 2010 were approved as a correct record.

26. MINUTES OF LICENSING SUB-COMMITTEES

The minutes of the Sub-Committees held on 13 September 2010, 26 October 2010 and 1 November 2010 were approved as a correct record.

27. PUBLIC QUESTION TIME

There were no public questions.

28. PETITIONS AND DEPUTATIONS

Chas Rogers spoke on behalf of the Hackney Carriage Association, in connection with the Taxi and Private Hire Scrutiny Study. He stressed the importance of clarifying the differences between private hire vehicles and Hackney Carriage vehicles.

29. TAXI AND PRIVATE HIRE SCRUTINY STUDY

The Committee considered a report regarding the current levels of demand for Hackney Carriage and private hire vehicles and the current policy of Gloucester City Council regarding the licensing of these services. Officers clarified the following:

- There was no legal limit on the number of private hire licences.
- The number of Hackney Carriages could be limited.

**LICENSING AND ENFORCEMENT COMMITTEE
16.11.10**

- Local Authorities will be required to ensure a percentage of vehicles with wheelchair access with effect from April 2011.
- The consultation with disabled forums and different areas of the city had proved difficult due to the costs involved and time constraints.

RESOLVED

1. To accept the report and the recommendations made in the Taxi Scrutiny Study Action Plan in full in line with 2.1(b), but with the additional recommendations as follows:
2. To clarify the details of the proposed new rank on Southgate Street outside Café Rene noted in the action plan.
3. To clarify the moving of the rank on Eastgate Street in the report.
4. The next tender for a taxi/private hire scrutiny study be discussed at the Licensing and Enforcement Committee to agree terms and recommendations before a further study is carried out.

30. USE OF POWER IN CONSTITUTION TO SET UP A SUB-COMMITTEE OR SUB-COMMITTEES TO DISCHARGE FUNCTIONS

The Committee considered a report outlining options to hear private hire disciplinaries following several prosecutions at the Magistrates Court. The following options were discussed:

1. To call 1 or 2 Special Licensing and Enforcement Committees
2. To use delegated powers as set out in the Constitution Part 3 Responsibility for Functions paragraph 5 (a) (v), page 25 and set up 1 or more sub-committees consisting of 5 members (or any other number deemed to be appropriate) of the Licensing and Enforcement Committee to determine disciplinary hearings for the recent Private Hire prosecution cases
3. To programme all cases with other work over the next 2 or 3 Licensing and Enforcement Committees.

RESOLVED

Members opted to call 2 special meetings of the Licensing and Enforcement Committee of the full committee.

31. DATE OF NEXT MEETING

Tuesday 14 December 2010 at 18.30 hours

Time of commencement: 18:30 hours

Time of conclusion: 20:08 hours

Chair

-LICENSING SUB-COMMITTEE

MEETING : Thursday, 11th November 2010

PRESENT : Cllrs. Dee, Tracey and Field

Officers

Tony Moseley, Licensing Enforcement Officer

Gill Ragon, Group Manager, Environmental Health and Regulatory Services

Steve Isaac, Solicitor

Amanda Tarren, Democratic Services Officer

Also in Attendance

PS Elizabeth Lovell, Police

Debbie Clemmings, Applicant

APOLOGIES : Cllrs.

18. ELECTION OF CHAIR

Councillor Dee was elected as Chair.

19. INTRODUCTIONS AND PROCEDURES

The City Solicitor requested that the Declarations of Interest be brought forward on the agenda.

20. DECLARATIONS OF INTEREST

Councillor Field declared a personal interest having knowledge of several residents who objected the application, and a prejudicial interest as an employee of two of the objectors to the application, and he stood down from the meeting. Councillor Tracey declared a personal interest as a City and County Councillor for the Westgate Ward.

RESOLVED

That the meeting be adjourned until further notice due to the non-quorate membership of the meeting.

21. APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 IN RESPECT OF THE OLD PELICAN INN, 4 ST MARY'S STREET, GLOUCESTER

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The City Solicitor advised that it would be necessary to adjourn the meeting as the quorum of the Sub-Committee was 3 elected Members.

RESOLVED

1. That the hearing would be adjourned until further notice due to the non-quorate membership of the meeting.
2. A revised membership and date for the hearing would be sought and notification be made on the Council website in due course.

Time of commencement: 17:15 hours

Time of conclusion: 17:24 hours

Chair

LICENSING SUB-COMMITTEE

MEETING : Tuesday, 30th November 2010

PRESENT : Cllrs. C. Witts, Dee and Beeley

Officers

Gill Ragon, Group Manager, Environmental Health and Regulatory Services

Tony Moseley, Licensing Enforcement Officer

Steve Isaac, Solicitor

Amanda Tarren, Democratic Services Officer

Also in Attendance

PS Elizabeth Lovell, Police

APOLOGIES : Cllrs.

1. ELECTION OF CHAIR

Councillor Chris Witts was elected as Chair.

2. INTRODUCTIONS AND PROCEDURES

The Chair introduced the Panel and the officers in attendance. The Chair outlined the procedure to be followed.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 IN RESPECT OF THE OLD PELICAN INN, 4 ST MARY'S STREET, GLOUCESTER

The Sub Committee and all parties considered a report for a variation to a premises certificate under Section 34 of the Licensing Act 2003 for The Old Pelican Inn.

On the invitation of the Chair, the Licensing and Enforcement Officer, presented the report. He highlighted the conditions proposed by the Police.

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The applicant asked questions of the Licensing and Enforcement Officer, and answers were provided.

Residents asked questions of the Licensing and Enforcement Officer, and answers were provided.

Members asked questions of the Licensing and Enforcement Officer, and answers were provided.

On the invitation of the Chair, the applicant presented the case in support of the variation of the premises certificate.

Residents asked questions of the applicant, and answers were provided.

Members asked questions of the applicant and answers were provided.

On the invitation of the Chair, the residents presented their objections to the variation of the premises certificate.

The applicant confirmed that he had no questions to ask the residents.

Members asked questions of the residents and answers were provided.

The Licensing and Enforcement Officer, the residents and the applicant were given the opportunity to summarise their positions.

The Sub committee retired from the meeting to consider their decision.

DECISION

The Chair advised that the decision of the Sub committee was to grant the variation of the club premises certificate subject to the following conditions:

Opening hours

Sunday to Wednesday	10:00 - 00:30
Thursday to Saturday	10:00 - 02.30

Hours for licensable activity

Sunday to Wednesday	10:00 – 00.00
Thursday to Saturday	10:00 - 02.00

1. Where a programme includes a film which has been classified by the British board of film classification as 12 a, 15 or 18 category no person appearing to be under 12 (and accompanied in that case), 15 or 18 as appropriate shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms -

Persons under the age of (insert appropriate age) cannot watch any part of the programme

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1. Within one month of issue (of the licence) to appoint a suitably qualified and competent noise consultant to carry out a noise assessment in respect of the premises, paying particular attention to the assessment and control of low frequency noise, and submit a report detailing the methodology and results to the Environmental Protection Service for approval. The report must also include a detailed scheme of works designed to reduce noise to a level where it is inaudible at the nearest noise sensitive premises.
2. Within 2 months of written approval being provided in respect of the scheme of works by the Environmental Protection Service, carry out all works as detailed to the approval of this authority.
3. Music and amplified voices shall be inaudible at the nearest noise sensitive premises
4. All windows and doors to be kept closed when live/recorded music is being played, except to allow persons to enter and leave the building.
5. No persons be allowed to take containers of alcohol into the beer garden after 23.00 hours.
6. No rubbish, including bottles shall be moved, removed or placed in outside areas between the hours of 23.00 and 08.00.

Time of commencement: 18:00 hours
Time of conclusion: 21:35 hours

Chair

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LICENSING SUB-COMMITTEE

MEETING : Tuesday, 14th December 2010

PRESENT : Cllrs. Brown, Taylor and Dallimore

Officers

Gill Ragon, Group Manager, Environmental Health and Regulatory Services

Lisa Wilkes, Food Safety and Licensing Service Manager

Steve Isaac, Solicitor

Also in Attendance

APOLOGIES : Cllrs.

1. ELECTION OF CHAIR

RESOLVED

That Councillor Gordon Taylor be elected Chair for the meeting.

2. DECLARATIONS OF INTEREST

Councillor Gordon Taylor declared a personal interest in agenda item 4 as the applicant was indirectly known to him.

Councillor David Brown declared a personal interest in agenda item 4 as he had attended an open evening at the Lodge as part of a general invite issued to all Councillors.

3. INTRODUCTIONS AND PROCEDURES

The Chair introduced the Sub Committee and officers in attendance and asked the applicants and interested parties to introduce themselves. The Chair then explained the procedure to all those in attendance.

In addition to the members of the Sub-Committee and officers in attendance, the following persons were present:

Stuart Wilson

Applicant

Deborah Harrison

Applicant

Geraldine Gregory Davies

Interested Party

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Leslie Branchett
Martyn White

Interested Party
Interested Party

4. APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR THE LODGE, 19 BRUNSWICK SQUARE, GLOUCESTER

The Sub-Committee and all parties considered a report outlining an application made under section 17 of the Licensing Act 2003 in respect of premises situated at 19 Brunswick Square, Gloucester, GL1 1UG. The application was for the retail sale of alcohol, the provision of regulated entertainment, entertainment facilities and late night refreshment provision. The application had received representations from local residents.

On the invitation of the Chair, Ms Lisa Wilkes, Food Safety and Licensing Service Manager, presented the report.

The applicant asked one question and a response was provided. The interested parties confirmed that they had no questions.

On the invitation of the Chair, the applicants presented the case in support of their application.

The Chair invited the interested parties to ask questions of the applicants and answers were provided.

Members of the Sub-Committee asked questions of the applicants and answers were provided.

On the invitation of the Chair, the interested parties presented the case against the application.

The Chair invited the applicants to ask questions of the interested parties and answer were provided.

Members of the Sub-Committee asked questions of the interested parties and answers were provided.

Ms Lisa Wilkes, the applicants and the interested parties were given the opportunity to summarise their positions.

The Sub-Committee retired from the meeting to consider their decision.

DECISION

RESOLVED that in order to promote the four licensing objectives, the licence be granted in accordance with the conditions set out in paragraphs 5.1 and 5.2 of the report, subject to the following amendments to those conditions:

1. The provision of boxing or wrestling be removed from the provision of regulated entertainment.

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2. Encourage Taxi and Private Hire collection would be from the premises.
3. The removal of the word 'amplified' from the condition concerning inaudible sound at the external boundary of the nearest noise sensitive premises.
4. No bottles shall be moved, removed or placed in outside areas between the hours of 22:00 and 08:00.
5. No rubbish shall be moved, removed or placed in outside areas between the hours of 23:00 and 08:00.
6. The operating hours for all licensable activities would be as those outlined in 5.1 of the report (as agreed between the applicant and the Police) and would override those times applied for in the application. Premises opening and closing times would also reflect these hours.

Time of commencement: 18:30 hours

Time of conclusion: 22:00 hours

Chair

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FOR DECISION BY COUNCIL**Gloucester City Council**

COMMITTEE	: LICENSING & ENFORCEMENT FULL COUNCIL (TO ADOPT SCHEDULE) LICENSING AND ENFORCEMENT FULL COUNCIL (TO APPROVE POLICY)
DATE	: 18 JANUARY 2011 24 FEBRUARY 2011 14 JUNE 2011 21 JULY 2011
SUBJECT	: ADOPTION OF THE AMENDED SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 FOR REGULATION OF LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES
DECISION TYPE	: BUDGET AND POLICY FRAMEWORK
WARD	: ALL
REPORT BY	: GILL RAGON - GROUP MANAGER OF ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: 1: PROPOSED SEX ESTABLISHMENT POLICY STATEMENT
REFERENCE NO.	: ES21006

1.0 PURPOSE OF REPORT

- 1.1 To advise members of the legislative changes affecting the licensing of lap dancing clubs and similar venues.
- 1.2 To consider adopting the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 that has been amended by Section 27 of the Policing and Crime Act 2009. This introduces a licensing regime for 'sexual entertainment venues'.
- 1.3 To present the draft Sex Establishments Policy Statement for approval by the Licensing and Enforcement Committee for consultation.

2.0 RECOMMENDATIONS

- 2.1 The Licensing and Enforcement Committee recommend to full Council they adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009. With an implementation date of 1st April 2011 to be recommended, for the provisions of Section 27 to come into effect in Gloucester City.
- 2.2 The draft Sex Establishments Policy Statement is approved by the Licensing and Enforcement Committee for 12 weeks consultation period. Results of the

consultation will then be presented back to the Licensing and Enforcement Committee to approve as a final version for adoption by Full Council.

3.0 BACKGROUND

- 3.1 On 1st November 1982 this Council resolved to adopt the provisions of Part II Section 2 (1) of Schedule 3 of the Local Government Miscellaneous Provisions Act 1982. This came into force on 11th January 1983.
- 3.2 The Government has responded to calls for further controls to be introduced specific to lap dancing clubs and similar premises by introducing legislation through the Policing and Crime Act 2009 to reclassify such venues as “sex establishments” under the Local Government (Miscellaneous Provisions) Act 1982.
- 3.3 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow the licensing of “sexual entertainment venues”, where ‘relevant entertainment’ is provided before a live audience for the financial gain of the entertainer or organiser. For these purposes ‘relevant entertainment’ means ‘any live performance or any live display of nudity’ i.e. striptease, lap dancing etc. which is of such nature, 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). There are also a number of activities, which are specifically referred to as not being “relevant entertainment”.
- 3.4 Venues such as lap dancing premises currently require a Premises Licence under Section 1 of the Licensing Act 2003. If an application is submitted for a Premises Licence, and there are no relevant representations, the Licensing Authority must grant it subject to Mandatory Conditions.
- 3.5 If Relevant Representations are made by an Interested Party (e.g. those from residents and/or local businesses) or a Responsible Authority (e.g. Police, Fire Service etc.) then the Licensing Authority can following a hearing, impose other conditions or reject the application providing the rejection is in line with at least one of the 4 Licensing Objectives, which are as follows:
 - The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 3.6 The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a lap dancing premises is appropriate in the locality.
- 3.7 The aim is to bring the licensing of lap-dancing premises in line with other sex establishments such as sex shops and sex cinemas and to recognise the legitimate concerns of local people where such premises are located. Current legislation regulating sex shops and sex cinemas will remain unchanged and will continue to be regulated by the Local Government (Miscellaneous Provisions) Act 1982.

3.8 If the amendment to the 1982 Act is adopted, the Licensing Authority can apply prescribed conditions on the grounds not covered by the Licensing Act 2003 e.g. location, hours, display of adverts, visibility of the interior.

3.9 In summary, the amended Schedule 3 to the 1982 Act:

3.9.1 Allows Local Authorities to adopt the legislation.

3.9.2 Allows local people to oppose an application for a “sex establishment” licence if they have legitimate concerns that, for example, a lap dancing club would be inappropriate given the character of an area because, for example, the area was primarily a residential area.

3.9.3 Requires “sex establishment” licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the Local Authority.

3.9.4 Allows a Local Authority to reject a “sex establishment” licence application if they believe that to grant a licence for a “sexual entertainment venue” such as a lap dancing club would be inappropriate given the character of a particular area.

3.9.5 Allows a Local Authority to set a limit on the number of “sex entertainment venues” that they think appropriate for a particular area.

3.9.6 Allows a Local Authority to impose a wider range of conditions on the “relevant entertainment” licences that includes lap dancing clubs, than they are currently able to do under the Licensing Act 2003.

3.9.7 The new legislation allows the Local Authority to decide what, in its opinion, should be included as “relevant entertainment” but it is suggested that the following should come under its control:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

4.0 PROGRESS

4.1 If the Local Authority has not resolved to adopt the provision introduced by section 27 within one year of it coming into force it must as soon as reasonably practicable, consult local people about whether they should make such a resolution.

4.2 These new legislative provisions came into force on 6th April 2010.

4.3 If the Council does adopt an amended Schedule 3, then there would be a need for a policy, and in order to formulate such a policy there would be a need for consultation. A draft Sex Establishments Policy Statement has been prepared and can be found in Appendix 1.

- 4.4 In either case consultation will need to take place.
- 4.5 The draft Sex Establishment Policy Statement has a few paragraphs highlighted in yellow, these can be found on page 3 (para. 3.1.4 & 3.1.5) and page 11 (para. 7.4) of Appendix 1. These matters are put to Members for decision should they resolve to approve this Policy Statement for consultation.
- 4.6 Further paragraphs are highlighted in grey on pages 21-26 of Appendix 1; these indicate amendments and additions to the current sex shop licensing policy guidelines and standard regulations for sex establishment licenses which were approved by Council on 10th July 2002, and the guidelines relating to Pole/Lap/Striptease Dancing which were approved by the Licensing and Enforcement Committee on 26th July 2005.

5.0 FUTURE WORK

- 5.1 There is currently no Council Policy covering 'relevant entertainment' at 'sexual entertainment venues' as defined in the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. If the legislative amendment is to be adopted a policy will be required.
- 5.2 The intended adoption would be advertised in the press in two consecutive weeks and consultation will take place over 12 weeks before adopting any policy. The draft Sex Establishment Policy Statement in Appendix 1 incorporates the existing sex establishment/sex shop policy and includes "sexual entertainment venues". In accordance with the current policy, it will be possible to restrict such premises by number and by location.
- 5.4 Further reports will be submitted to the Licensing and Enforcement Committee in relation to the adoption of the provisions under the 1982 Act, fees, standard terms and conditions, application forms and procedures and amendments to the policy.

6.0 CONCLUSIONS

- 6.1 Not adopting the amended legislation and maintaining the status quo would allow prospective "sexual entertainment venues" to take advantage of a perceived loophole in the Licensing Act 2003. Therefore, avoiding standard conditions specific for the control of sexual entertainment activities and avoiding objections relating to matters outside the four Licensing Objectives e.g. in relation to locality and appropriate number.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The current fee for sex establishments/shops is allocated as £10,700 and Gloucester City Council currently has one unit that would be deemed a sexual entertainment venue.
- 7.2 The revised Act will cause fees charged to be reviewed - however the specific amount for our authority has not been decided. The fee would need to be set in line with the European Services Directive: Guidance for Local Authorities and LACORS

Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector.

- 7.3 Any consultation work required would be met through the current licensing budgets. The cost of issuing any licenses would be met through the allocated fees.

8.0 LEGAL IMPLICATIONS

- 8.1 Section 27 of the Policing and Crime Act 2009 makes amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

- 8.2 The Council has not delegated to the Licensing and Enforcement Committee the responsibility or function in relation to the adoption of the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

- 8.3 For the amendments to apply in Gloucester, the Council must resolve to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and follow the procedure set out in section 27 of the Act.

- 8.4 Local Authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention of Human Rights, (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

9.0 RISK MANAGEMENT IMPLICATIONS

- 9.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

10.0 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

- 10.1 At this stage there is insufficient evidence to judge whether there is an adverse impact or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion. A full impact assessment will be carried out through consultation over a 12 week period.

11.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

None

2. Environmental

None

3. Staffing

None

4. Trade Union

None

Background Papers : Standard regulations – Sex Establishment licences
Sex Shop Licensing Policy

Published Papers : Local Government (Miscellaneous Provisions) Act 1982
Policing and Crime Act 2009
Licensing Act 2003

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SEX ESTABLISHMENTS POLICY STATEMENT

**Schedule 3 Local Government (Miscellaneous Provisions) Act 1982,
as amended by Section 27 Policing and Crime Act 2009**

APRIL 2011

DRAFT FOR CONSULTATION

JANUARY 2011

ENVIRONMENTAL HEALTH & REGULATORY SERVICES

Gloucester City Council Tel 01452 396396 Fax 01452 396340
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PREFACE

This Sex Establishment Policy Statement sets out the Council's requirements for premises to be licensed as Sex Establishments within the meaning of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.

The Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) can be viewed at www.opsi.gov.uk.

Gloucester City Council resolved to adopt the original provisions of Part II Section 2(2) of Schedule 3 of the 1982 Act for Sex Cinemas and Sex Shops on 1st November 1982. This came into force on 11th January 1983. The new provisions for Sexual Entertainment Venues under the amendments of Section 27 of the Policing and Crime Act 2009 were adopted on

Adoption of Schedule 3 allows the Council to set terms and conditions and fees for the grant, variation, renewal and transfer of such licenses and the number of premises to be licensed in a given area, which may be Nil.

The previous sex shop licensing policy guidelines and standard regulations for sex establishment licenses were approved by Council on 10th July 2002. Following this further guidelines relating to Pole/Lap/Striptease Dancing were approved by the Licensing and Enforcement Committee on 26th July 2005.

In this policy statement we refer to all sex cinemas, sex shops and sexual entertainment venues as 'Sex Establishments'. This document is the first version of a Sex Establishment Policy Statement which controls all three types of Sex Establishments.

This new Sex Establishment Policy Statement was consulted on between and and was approved by the Licensing and Enforcement Committee on

Gloucester City Council will review its Sex Establishment Policy at least once every three years and if necessary it will be revised.

Consultation was conducted with local residents, existing and potential holders of Sex Establishment Licences in the City, the statutory Responsible Authorities under the Licensing Act 2003, and holders of Premises Licenses and Club Premises Certificates under the Licensing Act 2003 in the City.

Comments and queries should be directed to:

Lisa Wilkes
Food Safety and Licensing Service Manager
Environmental Health
Gloucester City Council
Herbert Warehouse
The Docks
GL1 2EQ
Fax: 01452 396340
Email: heretohelp@gloucester.gov.uk

Further copies may be obtained from the above address or from the Council's website www.gloucester.gov.uk

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1. Profile of the City of Gloucester

Gloucester City Council comprises principally the City of Gloucester, which is the County City and one of the six district councils within Gloucestershire. The City is located on the River Severn and is close to both the M5 and the M4. The City has a population of 114,500 of which 9.9% are from ethnic groupings. The total area of the authority is 15.64 square miles. The historic city of Gloucester is heavily urbanised with commercial and residential areas covering the City with the associated tourism, hospitality and food and drink activities.

Gloucester has a very strong cultural identity and socialising here has traditionally been based around pubs and social clubs, reflecting the rich ethnic, political and manufacturing mix of the city. At weekends the streets around the Cross are full of groups of young people moving between pubs and nightclubs. But it also has one of the best arts centres in the region, a growing community of artists and four museums full of two million years of history.

At the time of adopting this Policy Statement the Council licenses two Sex Shops under the 1982 Act. One premise is authorised under the Licensing Act 2003 to provide entertainment which would require licensing as a Sexual Entertainment Venue.

2. Purpose and Aim of Policy

- 2.1 This Policy Statement sets out Gloucester City Council's guidance, application procedure, terms and conditions and fees regarding the regulation of Sex Establishments.
- 2.2 This document supersedes all previous policies adopted by Gloucester City Council and will guide current licence holders, potential licence holders and the Council when considering applications for Sex Establishments.
- 2.3 The Council does not take any moral stand in adopting this policy. The Council recognises that Parliament has made it lawful to operate Sex Establishments, and that such businesses are a legitimate part of the retail and leisure industries. It is this Council's role as the Licensing Authority to administer the licensing regime in accordance with the law.
- 2.4 In developing this Policy Statement, we took into account the legal requirements of the 1982 Act and our duties under:
- a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the City;
 - b) The Regulators Compliance Code (set out under the legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out to particularly consider the impact of regulations on smaller businesses; and
 - c) The Provisions of Services Regulations 2009 to ensure requirements are:
 - i) Non-discriminatory
 - ii) Justified by an overriding reason relating to the public interest
 - iii) Proportionate to that public interest objective
 - iv) Clear and unambiguous
 - v) Objective
 - vi) Made public in advance, and
 - vii) Transparent and accessible
- 2.5 This document relates to applications for Sex Establishment Licences covering:
- Sex Cinemas
 - Sex Shops
 - Sexual Entertainment Venues
- 2.6 Each application will be determined on its own merits.

3. Sex Establishment Licensing Applications

Any person wishing to operate a Sex Establishment as defined by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended requires a Sex Establishment Licence.

3.1 Right to Waiver

- 3.1.1 Applications can be made to waive the requirement for a sex establishment licence. This can be made either as part of the licence application or made separately.
- 3.1.2 Gloucester City Council can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Each application for waiver will be considered on its own merits and will only be granted in exceptional circumstances. Where a waiver is granted, the Council will inform the applicant that they have granted the waiver application.
- 3.1.3 The waiver may last for such a period that the City Council think fit, however the Council may at any time terminate the waiver on such date not less than 28 days from the date the applicant is given notice.
- 3.1.4 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of Sex Shops and Sex Cinemas, except in exceptional circumstances considered by the Licensing Committee (for example, to allow a temporary re-location of a business following damage to licensed premises).

And/or

- 3.1.5 The Licensing Authority does not consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of Sexual Entertainment Venues, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than eleven occasions within a 12 month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

3.2 Application for grant of a Licence

- 3.2.1 To apply for the grant of a new sex establishment licence an applicant must submit to the Council:-
 - a) A completed application form;
 - b) A plan to scale of 1:100 of the premises to which the application relates showing (amongst other things) all means of ingress and egress to and from the premises, parts used in common with any other building, and details of how the premises lie in relation to the street;
 - c) A site plan scale 1:1250;
 - d) Drawings showing the front elevation as existing and as proposed to a scale of 1:50, and
 - e) The appropriate fee
- 3.2.2 In addition to the list above, the applicant must:
 - a) Display a notice on or near the premises in a conspicuous location, for 21 days beginning with the date of the application;
 - b) Advertise the application in a local newspaper within 7 days after the date of application;
 - c) Send a copy of the application and plan to the Chief Officer of Police for the area within 7 days of making the application to the Council.

3.2.3 The Council will also notify all applications for grant, renewal, transfer or variation of a licence to the following bodies who may comment on or object to the application within 28 days of the date of the application:-

- Chief Officer of Police
- Local Safeguarding Children Board
- Fire Safety Officer
- Trading Standards
- Planning Authority
- Relevant Town / Parish Council

3.3 Public Notices

3.3.1 A Notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the Council, in a position where it can be conveniently read from the exterior of the premises.

3.3.2 Where the premises cover an area of more than 50 metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting the highway.

3.3.3 The Notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in a font size equal to or larger than 16.

3.3.4 The Notice must state:

- a) Details of the application and activities that it is proposed will be carried on or from the premises;
- b) The full name of the applicant;
- c) The postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified;
- d) The date, being 28 days after that on which the application is given to the Council, by which objections should be made to the Council and that the objections should be made in writing.
- e) That there is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£20,000) for which a person is liable on summary conviction of the offence.
- f) A similar notice must be published in a local newspaper or similar document within 7 days of giving the application to the Council.

3.4 Variation of a Licence

3.4.1 The holder of a Sex Establishment Licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.

3.4.2 The process of applying for a variation is the same as that for applying for an initial grant except that a plan of a premises is not required unless the application involves structural alterations to the premises

3.5 Renewal of a Licence

3.5.1 The holder of a Sex Establishment Licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application form together with the appropriate fee must be submitted before the current licence expires.

3.5.2 The process of applying for the renewal of the licence is the same as that for applying for an initial grant except that the plan of the premises is not required.

3.6 Transfer of a Licence

3.6.1 A person may apply for the transfer of a licence at any time.

3.6.2 The process of applying for the transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

4. Determination of Applications

In determining an application for the grant, renewal, transfer or variation of a licence, the Council will have regard to any representations received that are relevant to the grounds set out in 4.1 and 4.2.

4.1 Mandatory grounds for refusal (Paragraph 12 of Schedule 3)

4.1.1 Specific Mandatory grounds for refusal of a licence are set out in the Act.

A licence cannot be granted:

- a) To any person under the age of 18 years;
- b) To any person who is for the time being disqualified due to the persons having had a previous licence revoked in the Gloucester City area within the last 12 months;
- c) To any person, other than a body corporate, who is not resident in an European Economic Area State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- d) To a body corporate which is not incorporated in an European Economic Area State; or
- e) To any person who has, within a period of 12 months immediately preceding that 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.

4.1.2 **Please note there is no right of appeal against refusal on these mandatory grounds.**

4.1.3 If none of the above applies to the applicant and no objections have been received and there are no other statutory grounds for refusal, including that the application does not exceed any permitted numbers, the application will be granted by way of delegated authority.

4.1.4 However, if any objections have been received, or if there are concerns regarding the characteristics of the locality, the application will be referred to the Council's Licensing and Enforcement Committee for a hearing of the application.

4.2 Discretionary grounds for refusal

4.2.1 The Council may refuse an application for grant or renewal of a licence on one or more of the grounds specified below:-

- a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) That 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 they made the application themselves;
- c) That 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 Council consider is appropriate for that locality (nil may be an appropriate number).
- d) That the grant or renewal of the licence would be inappropriate, having regard:
 - i) To the character of the relevant locality; or
 - ii) To the use to which any premises in the vicinity are put; or
 - iii) To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

4.2.2 Any decision to refuse a licence **MUST** be relevant to one or more of the grounds stated in 4.1 and/or 4.2.

4.3 Suitability of Applicant

4.3.1 In determining applicant suitability for the grant of a new licence, renewal of a licence, or the transfer of an existing licence, the Council will take the following into account:

- Previous relevant knowledge and experience of the applicant;
- Any evidence of the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other District or Borough;
- Any report about the applicant and management of the Premises received from objectors.

4.3.2 In particular the Council will liaise closely with the Police and any other relevant appropriate agencies in determining the fitness of the applicant.

4.3.3 Whilst every application will be considered on its merits, the Council will be unlikely to grant an application from any person, or for the benefit of any person, with unspent relevant criminal convictions.

4.4 Location of Premises (Paragraph 12 of Schedule 3)

4.4.1 The Council shall decide on the suitability of a particular locality for a sex establishment as a matter of fact to determine the particular circumstances of each case and not by the prescription of boundaries as stated on a map.

4.4.2 The Council is mindful of its power to determine that no sex establishment should be located in a particular locality. In deciding the appropriate number of premises to be licensed, the Committee must consider the character of the relevant locality and what is the appropriate number of sex establishments for the relevant locality. The number can be nil.

4.4.3 In considering if the grant, renewal or variation of the licence would be inappropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put. The Committee shall consider the following circumstances in deciding whether the grant of the application would be inappropriate for that proposed location:

- The general character of the relevant locality
- The proximity of residential premises
- The proximity of places of public religious worship
- The proximity of any schools or other educational establishments
- The proximity of any playing fields and play areas
- The proximity of any leisure centres or swimming pools
- The proximity of any libraries or other public buildings
- The proximity of any youth clubs
- The proximity of any other licensed sex establishments
- The proximity of shops or markets directed for use by families or children

4.4.4 When hearing an application for the grant of a sex establishment licence, the Committee shall have regard to this Policy Statement's provisions as set out above but subject to the overriding principle that each application will be determined on its merits.

4.4.5 Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must state where it is to be used as a sex establishment.

4.4.6 The council would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.

4.5 Objections

- 4.5.1 When considering an application for the grant, renewal, variation or transfer of a Sex Establishment Licence the Council will have regard to any observations submitted to it by the Chief Officer of Police and any objections that have been received from anyone else within the statutory 28 day period from the date of the application being given to the Council.
- 4.5.2 Any person can object to an application but the objection should be relevant either to the **mandatory grounds** for refusal set in **Section 4.1** or to the **discretionary grounds for refusal** set out in **section 4.2** below.
- 4.5.3 Objections should not be made on moral grounds or values. Any decision to refuse a licence will be relevant to one or more of the grounds in **4.1 and 4.2** below.
- 4.5.4 Objectors must give notice of their objection in writing, stating the general terms of the objections.
- 4.5.5 Where the Council receives notices of any objections it will, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the Council shall not without the consent of the person making the objection reveal their name or address to the applicant.

4.6 Granting of a Licence

- 4.6.1 In determining an application relating to a sex establishment licence the Council will assess the application on its merits having regard to the content of this policy, the relevant legislation and any relevant guidance that may be issued from time to time.
- 4.6.2 Where it is necessary for the Council to depart substantially from this policy, clear and compelling reasons for doing so will be given. Only a Licensing Committee may authorise a departure from this policy if it feels it is appropriate for a specific application.
- 4.6.3 All applications for the Grant of a new sex establishment Licence will be referred to the Licensing and Enforcement Committee for determination to take into account the criteria set out as in 4.1 and 4.2 with regards to the character, relevant locality and the appropriate number of sex establishments for the relevant locality.

4.7 Duration of a Licence

- 4.7.1 The Council will consider granting licences of 12 months duration or for a shorter term if deemed appropriate.

5. Hearings

- 5.1 Where applications are referred to a Licensing Sub-Committee, the hearing will take place within 20 working days of the end of the period in which objections may be made.
- 5.2 The hearing provides all parties to the application including those making objections, the opportunity to air their views openly and will be considered by the Sub-Committee.

6. Appeals

- 6.1 There is no right of appeal:
 - a) Against the grounds of refusal as detailed in **Section 4.1.1 (a), (b), (c), (d) and (e)** above, unless the applicant can prove that the ground of refusal does not apply to them, and
 - b) Against the grounds as detailed under **Section 4.2.1 (c) and (d)**.
- 6.2 The grounds of refusal under Section 4.2.1 (c) and (d) above can only be challenged by the applicant by way of judicial review.
- 6.3 All relevant grounds for appeal, other than these detailed in 6.1 (a) and (b) above and can be made to the Magistrates Court within 21 days from the date on which the person is notified in writing of the decision.

7. Fees

- 7.1 The appropriate fees for applications can be found on the Council's website. Application fees must be paid in full at the time of submission of the application.
- 7.2 The current fees for all Sex Establishments (Sex Shops and Sex Cinema) is £10,700.
- 7.3 It is intended to review the current fees for sex establishments; this will include consideration of the introduction of a fee for sex entertainment venues (both transitional and standard) and a reduced variation fee in relation to the change of name and premises only.
- 7.4 Members may also wish to consider whether unsuccessful applications would qualify for a partial refund; e.g. refund 25% of the total application fee.
- 7.5 Where permission is granted to carry out a service within the city the amount charged and the process of charging fees must comply with the requirements of the EC Services Directives. Fees must be Non-discriminatory, justified, proportionate, clear, and objective and made in public in advance, transparent and accessible.
- 7.6 Article 13(12) of EC Directive 123/2006 means that any fees charged for establishing a service that falls within a scope of the Directive can only be based on cost recovery and cannot be set at an artificially high level to deter specific service sectors from an area.

8. Standard Conditions

- 8.1 Section 13 of Schedule 3 allows the Council to make regulations prescribing Standard Conditions applicable to Sex Establishments and the Standard Conditions applicable to Sex Shops and Sex Cinemas as approved the Council in July 2002 are attached in Appendix C.
- 8.2 The Standard Conditions for Sexual Entertainment Venues are attached at Appendix D, these conditions incorporate and supersede the guidelines for pole/lap/striptease dancing.

9. Specific Conditions

- 9.1 Under paragraph 8 Schedule 3 the Council may grant to an applicant, and from time to time renew, a licence for Sex Establishment on such terms and conditions and subject to any restrictions as may be specified. These specific terms and conditions will be tailored for each individual premises and each type of Sex Establishment Licence.

10. Enforcement

10.0.1 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also the responsible members of the trade.

10.0.2 In pursuing its objective of encouraging responsible businesses, the Council will operate a proportionate enforcement regime in accordance with the Council's Corporate Enforcement Policy. This has been drafted with reference to the Statutory Regulator's Compliance Code.

10.0.3 The responsibility for the overall supervision of sex establishment licensing lies with the relevant Corporate Director.

10.1 Offences

10.1.1 The offences under Schedule 3 are set out in paragraphs 20 to 23 of that schedule and include:

- Knowingly causing or permitting the use of any premises as Sex Establishment without a licence;
- Being the holder of a licence, knowingly employing a person in a Sex Establishment who is disqualified from holding a licence;
- Being the holder of a licence, knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence
- Being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence
- Being the holder of a licence, without reasonable excuse knowingly permits a person under the age of 18 years to enter the establishment;
- Being the holder of a licence, employs a person known to them to be under 18 years of age in the business of the establishment.

10.1.2 A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding £20,000.

10.1.3 It is also an offence for the holder of a licence, without reasonable excuse to fail to exhibit a copy of the licence and any standard conditions applicable to the licence in a suitable place as specified in the licence. A person guilty of this offence shall be liable on summary conviction to a fine not exceeding level 3 on the Standard Scale.

10.2 Revocation of Licences

10.2.1 The Council may, after giving the holder of a licence an opportunity of appearing before and being heard by them, at any time revoke the licence on any of the following grounds:-

- a) that one of the mandatory grounds for refusing to grant a licence exists and has come to light since the grant of the licence.
- b) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- c) that 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 they made the application themselves.

10.2.2 The Council will consider whether or not to revoke a licence upon a request to do so from the Police or at the recommendation of the relevant Corporate Director following representations from any other person or body.

11. European Convention on Human Rights

- 11.1 As far as existing operators are concerned the Government has decided having listened to views from previous consultations that 'Grandfather Rights' will not apply.
- 11.2 The Transitional Order allows local authorities to refuse applications whether they are from existing operators or new applicants, one or more grounds as under paragraph 12 Schedule 3 as detailed in Sections 4.1 and 4.2 above.
- 11.3 When making such decisions, local authorities must take into account any rights the existing operators have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to peaceful enjoyment of their possessions) and Article 10 (freedom of expression).
- 11.4 The Council will have regard to the fact that it will be prudent to assume that the freedom of expression includes the right to use particular premises as Sexual Entertainment Venues and that a person who is denied the right to use his premises as a Sexual Entertainment Venue where he already has a licence to do so under the Licensing Act 2003 (or in future under the 1982 Act) has been deprived of possessions.

12. Amendments to this Policy

12.1 Any significant amendment to this policy will only be implemented after further consultation with the trade and the public. All such amendments to this Policy will be undertaken in accordance with the Council's Constitution.

12.2 For the purpose of this section, any significant amendment is defined as one that:

- a) is likely to have a significant financial effect on licence holders, or
- b) is likely to have a significant procedural effect on licence holders, or
- c) is likely to have a significant effect on the community.

13. Further Information

The following can be viewed at www.opsi.gov.uk:

- The Local Government (Miscellaneous Provisions) Act 1982
- The Policing and Crime Act 2009
- Crime and Disorder Act 1998
- Provision of Services Regulations 2009
- Legislative and Regulatory Reform Act 2006
- Human Rights Act 1998

APPENDIX A – Glossary of Terms (Legal Definitions)

TERM	DEFINITION
the Act	Local Government (Miscellaneous Provisions) Act 1982
Authorised Officer	any Officer of the Council authorised under the Council's Scheme of Delegation as contained within the Constitution
the Council	Gloucester City Council
he, his	all references to 'he' or 'his' also include 'she' or 'hers'
Relevant Corporate Director	the current post-holder with responsibility for the relevant Service Area (or any nominated Deputy) as set out in the Council's Constitution and Scheme of Delegation
Licence Holder	a person who holds a Sex Establishment Licence under the Act
this Policy	Gloucester City Council's Sex Establishment Licensing Policy
Premises	A building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of a building which is the subject of a Sex Establishment Licence granted under the Act
Sex Establishment	As defined in Schedule 3 of the Act (as amended) A sex establishment means a sex shop, sex cinema or sexual entertainment venue as defined below in extracts from the Act.
Sex Cinema	As defined in Schedule 3 of the Act (as amended) 3. — (1) In this Schedule, "sex cinema" means 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. (2) 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 (which 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.

TERM

DEFINITION

Sex Shop

As defined in Schedule 3 of the Act, as amended

4. —

(1) In this Schedule “sex shop” means any premises, vehicle, vessel 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.

(2) 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.

(3) In this Schedule “sex article” means—

(a) 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

(b) anything to which sub-paragraph (4) below applies.

(4) This sub-paragraph applies—

(a) to 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) to 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.

Sexual Entertainment Venue

As defined in Schedule 3 of the Act (as amended)

2A -

(1) In this Schedule “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

(2) In this paragraph “relevant entertainment” means —

(a) any live performance; or

(b) any live display of nudity;

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).

(3) The following are not sexual entertainment venues for the purposes of this Schedule—

(a) sex cinemas and sex shops;

(b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) 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));

“audience” includes an audience of one;

“display of nudity” means—

(a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and

(b) in the case of a man, exposure of his pubic area, genitals or anus;

“the organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of —

(a) the relevant entertainment; or

(b) the premises;

“premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted;

APPENDIX B – Delegation of Functions

Matter to be dealt with	Licensing Committee	Officers
Application for a new sex establishment licence	In all cases	
Application for variation of a sex establishment licence	In all cases	
Application for transfer of a sex establishment licence	Where objections are received	In all other cases
Application for renewal of a sex establishment licence	Where objections are received	In all other cases
Application for waiver from the requirement for a licence	In all cases	
Setting of all fees in relation to sex establishment licences		All cases (Ratified by Full Council)
Consideration of the revocation of a sex establishment licence	In all cases	

APPENDIX C – Standard Conditions for sex shops and sex cinemas

General

1. In the event of a conflict between these regulations and any special conditions contained in a licence relating to a sex establishment, the special conditions shall prevail.
2. The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment by law, order or regulation other than the third schedule of the Local Government (Miscellaneous Provisions) Act 1982.

Use

3. The premises shall only be open for business during the days and times that are specified in the licence.
4. A Sex Shop shall be conducted primarily for the purposes of the sale of goods by retail.
5. No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
6. No change from a Sex Cinema to a Sex Shop or from a Sex Shop to a Sex Cinema shall be effected without the consent of the Council.
7. Neither Sex Articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sex Cinema.

Conduct and Management

5. A copy of the licence must be displayed within the premises so as to be clearly visible to customers in the premises.
6. The licensee shall retain control over all portions of the premises and shall not let, licence, or part with possession of any part of the premises.
7. The licensee shall maintain good order in the premises.
8. No person under the age of 18 shall be admitted to the premises or employed in the business of the premises, and the persons specified in regulation 6 shall make all necessary enquiries to this end.
9. The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the council.
10. Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation outside the vicinity of the premises.
11. The Licensee shall comply with all statutory provisions and any regulations made there under.
12. The licence shall not be assigned or transferred without the prior written consent of the council.
13. Any application to vary the conditions of the licence shall be advertised by the licensee in the same manner as an application for the issue, renewal or transfer of the licence.

External appearance

14. No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except:-
 - i) A notice fixed to the entrance to the premises clearly stating "WARNING - persons passing beyond this notice will find material on display which they may consider indecent. No admittance under 18 years of age".
 - ii) A notice stating the opening hours of the premises.
 - iii) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing shall have been approved by the local planning authority. The words "INSERT NAME OF BUSINESS" however granted by the council.
 - iv) Any notice of a size and in a form approved by the council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence granted by the council.
15. The entrance(s) to the premises and all windows and openings other than entrances shall be made of a material(s) or covered with a material(s) which will render the interior of the premises invisible to passers by.
16. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order. The external door shall only be opened at such time or times as person(s) require access and egress to the interior of the premises.
17. There shall be provided within the entrance of the premises a partition, screen or design feature so that the interior of the premises cannot be seen by passers by at all times whilst the entrance doors may be opened.
18. All external parts of the premises shall be kept in a well maintained condition and in good decorative order.

Goods

19. All purchases shall be discreetly wrapped in an unmarked bag or plain paper before customers leave the premises.
20. No film or video shall be exhibited sold or supplied unless it has been passed by the British Film Board or Film Classification and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

Interior

21. All parts of the interior of the premises shall be kept in a clean and wholesome condition to the satisfaction of the council.
22. Alterations or additions either external or internal and whether permanent or temporary to the structure, lighting or layout of the Premises shall not be made except with the prior approval of the Council.
23. The licensee shall take all reasonable precautions for the safety of the public and employees and in particular shall comply with any fire precautions and safety measures that may be required by the Chief Fire Officer.

24. The licensee shall seek and comply with crime prevention advice and security measures that are recommended by the Chief Officer of Police.

APPENDIX D – Standard Conditions for sexual entertainment venues

Conditions applicable to entertainments involving nudity, semi-nudity or transparent clothing

1. The premises shall only be open for business during the days and times that are specified in the licence.
2. Only activities which have previously been agreed in writing by the Licensing Authority shall take place.
3. The agreed activities shall take place only in designated areas approved by the Licensing Authority.
4. The entertainment shall be provided by the professional performers only. The audience must at all times remain fully clothed.
5. No handbills (flyers) shall be distributed within the City.
6. No change of use of any portion of the Premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
7. The performance must not be visible from the street and any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals employed in the premises must not exhibit themselves in the entrance or in the vicinity of the premises.
8. Entertainers or performers not performing must not be in a licensed area in a state of undress.
9. When the premises are open for sexual entertainment no person under the age of 18 shall be allowed on the premise and a proof of age scheme will be operated on the premises.
10. A clear notice shall be displayed at each entrance to the premises or to the licensed area in a prominent position stating "No persons under the age of 18 years will be admitted".
11. Performers shall be aged not less than 18 years. An adequate record must be maintained of the names, addresses and dates of birth of all performers including adequate identity checks.
12. There shall not be displayed outside the premises any photographs or images that indicate or suggest that striptease dancing takes place on the premises.
13. During any performance there must be no physical contact between the performer and any member of the viewing public. A safe distance of 30cms (12 inches) should be maintained between performers and customers immediately before, during or immediately after the performance of striptease except:
 - a) The leading of a patron hand in hand to and from a chair or to and from a designated dance area
 - b) The simple handshake greeting
 - c) The placing of monetary notes or dance vouchers into the hand or garter worn by the performer
 - d) The customary kiss on the cheek of the patron by the dancer at the conclusion of the performance

e) If the contact is accidental

14. At the completion of the dance the performers shall dress themselves immediately and leave the performance area.
15. Performers are not to solicit, exchange addresses or telephone numbers with customers or liaise with customers of the premises.
16. An appropriate room shall be set aside to provide changing and rest area for performers and restricted access to the room be maintained at all times whilst the performers are on the premises
17. Patrolling Security Industry Authority licensed door supervisors shall continually monitor all areas that the public have access to. SIA registered shall be employed at a minimum ratio of 1:50 customers on the premises whilst sexual entertainment activities are taking place.
18. When performers leave the premises they are to be escorted to their cars or taxi by a member of staff.
19. A CCTV system shall cover all areas where dancing will take place including any dancing booths provided. All cameras shall continually record whilst the premises are open to the public and the video/DVD recordings shall be kept for a minimum of 28 days with time and date stamping.
20. Tape recordings shall be made available to an Authorised Officer of the Council or the Police together with facilities for viewing.
21. A code of conduct for dancers shall be produced by the licensee together with a disciplinary procedure for breaches of the code which shall be implemented if approved in writing by the Council. The code of conduct for dancers shall prohibit activities that might be thought to lead to prostitution or other unlawful activities. No amendments shall be made to the code or disciplinary procedure without the prior consent of the Council.
22. Rules shall be produced by the licensee for customers indicating conduct that is deemed acceptable. These rules shall be prominently displayed at all tables and at other appropriate locations within the club.
23. In relation to points 12 and 22 above, these procedures and rules must be produced for inspection by the licensing Authority and the Police within 14 days of issue of the licence.
24. The licensee or nominated manager shall be present on the premises at all times whilst the entertainment is taking place. A nominated person shall be present to oversee the activities of the performers.
25. A register shall be maintained and kept on the premises and be available for inspection at any time by Police or Officer of the Licensing Authority at all times, to clearly record the identity of the licensee(s) on duty, and the record shall be retained for a period of not less than 12 months after the last entry in the register.
26. A copy of the licence conditions must be on display for performers and all members of staff to view at any time.
27. The licensee shall maintain good order in the premises.

APPENDIX E – Specimen Application Form

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

SCHEDULE 3
(as amended by Section 27 Policing and Crime Act 2009)

GLOUCESTER CITY COUNCIL

Licensing Service, Environmental Health, Hebert Warehouse, The Docks, Gloucester, GL1 2EQ

APPLICATION FOR A SEX ESTABLISHMENT LICENCE**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

1. Type of Application

Grant		Renewal		Variation		Transfer	
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2. Applications by Individuals

Full Name							
Permanent Address							
Age		Date of Birth		Place of Birth			

Are you eligible to work in the United Kingdom?

YES / NO**3. Applications by corporate or unincorporated bodies**

Full Name of Body
Address of Registered or Principle Office
Registered Body No. (where applicable)

4. Details of Directors or other persons responsible for the management of the establishment (continue on separate sheet if necessary).

Full Name					
Permanent Address					
Age		Date of Birth		Place of Birth	

Full Name					
Permanent Address					
Age		Date of Birth		Place of Birth	

Full Name					
Permanent Address					
Age		Date of Birth		Place of Birth	

Full Name					
Permanent Address					
Age		Date of Birth		Place of Birth	

5. Offences – (See Notes for Guidance at the end of this form)

Have you any convictions recorded against you? Or if a body corporate or unincorporated body, that body or any of its directors or other persons responsible for its management? If so please state

Date of Conviction	Offence	Sentence Imposed

6. Residency / Incorporation

Have you been resident in the United Kingdom throughout a period of six months immediately preceding the date of this application? **YES / NO**

If the application is made on behalf of a body corporate is that body incorporated in the United Kingdom? **YES / NO**

7. Premises / Vehicle / Vessel / Stall Details

Name & Postal address of Premises or, if none, ordnance survey map reference or description

If this application relates to a vehicle / vessel / stall give description and state where it is to be used as a sex establishment

8. Trading Hours

During which hours do you wish to trade?

Monday		Tuesday	
Wednesday		Thursday	
Friday		Saturday	
Sunday			

9. Type of Premises

Are the premises to be used as a sex cinema, a sex shop or a sexual entertainment venue?
Please state

10. Disqualification / Previous Applications

Are you (or, if a corporate body or unincorporated body, that body) disqualified from holding a licence for a sex establishment? **YES / NO**

Have you ever been refused a licence for a sex establishment? **YES / NO**

If yes give details (continue on a separate sheet if necessary)

11. Declaration (See Notes for Guidance at the end of this form)

I declare that I have checked the information given on this application form and to the best of my knowledge and believe it is correct.

I understand that I must now give public notice of this application in accordance with the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

I understand that I must not later than 7 days after the date of the application, send a copy of the application to the chief officer of police.

I have enclosed the relevant fee.

I understand that if I fail to comply with the above, my application will be rejected.

Signed _____ Date _____

Print Name _____

Notes for guidance**1. Disclosure of Convictions**

- a) All live convictions must be disclosed.
- b) Spent convictions, as defined below should not be included.

Sentence	Becomes spent after
Imprisonment of between 6 months and 30 months	10 years
Imprisonment of up to 6 months	7 years
Borstal training	7 years
A fine or other sentence not otherwise covered in this table	5 years
Absolute discharge	6 months
Probation order, conditional discharge or bind over	1 year (or until order expires, whichever is longer)
Detention Centre Order	3 years
Remand home, attendance centre or approved school order	The period of the order and a further year after the order expires
Cashiering, discharge with ignominy or dismissal with disgrace from the Armed Forces.	10 years.
Dismissal from Armed Forces.	7 years.
Detention.	5 years.

- c) A of sentence of more than 2½ years imprisonment can never become spent.
- d) If you were under 17 years of age on the date of conviction, please halve the period shown in the right hand column.

2. Giving Public Notice of the Application

- a) Notice of this application must be given by the publishing of an advertisement in a newspaper in circulation in this authority's area. This publication shall not be later than 7 days after the date of the application.
- b) Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.
- c) Every notice which relates to premises shall identify the premises and every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment.

3. False Statements in Connection with Applications

- a any Any person who, in connection with an application for the grant, renewal or transfer of licence under this Schedule, makes a false statement which he knows to be false in material respect or which he does not believe to be true, shall be guilty of an offence. This offence carries a maximum penalty of £20,000

APPENDIX F – Specimen Public Notice

**Local Government (Miscellaneous Provisions) Act 1982
Schedule 3**

**NOTICE OF APPLICATION FOR GRANT / RENEWAL/ VARIATION / TRANSFER
OF A SEX ESTABLISHMENT LICENCE**

Name/s of Applicant/s	
Postal address of premises including name of the premises and post code (where possible) or a description to enable the location to be identified.	
Summary of application (hours of trading, type of licence, etc):	
<p>NOTICE IS HEREBY GIVEN that an application has been made to Gloucester City Council for a licence to use the above premises as a sex establishment.</p> <p>Copies of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (which defines the type of activity that may be carried on under a licence) and of the application may be inspected at Gloucester City Council, Herbert Warehouse, The Docks, Gloucester, GL1 2EQ between 9.00am and 5:00pm (Monday to Friday except public holidays).</p> <p>Any objections in respect of the above application must be made in writing to the Council at the above address by</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(28 days after the date of the application)</p> <p>It is an offence knowingly or recklessly to make a false statement in connection with an application punishable on summary conviction by a maximum fine of £5,000.</p>	

