

A.2 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 - STATEMENT OF SEX ESTABLISHMENT POLICY

(Report prepared by Alan Tolmie)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report the results of the consultation process on the proposed Statement of Sex Establishment Policy authorised at your meeting held on 2 November 2010 (minute 29 refers).

To seek the Committee's authority to recommend the full Council to adopt a Statement of Sex Establishment Policy in accordance with statutory requirements.

EXECUTIVE SUMMARY

Section 27 of The Policing and Crime Act 2009 amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 covering the regulation of lap dancing clubs and similar venues. It also required that the Authority adopt a Policy for dealing with Sex Establishments by 25 October 2011. However, before this can be done the Authority is required to consult and give due regard to any views expressed by statutory consultees along with any other individuals/bodies that the Authority consider appropriate.

A draft revised Statement of Sex Establishment Policy as set out in the appendix to this report, was approved at your last meeting for consultation purposes. This report sets out the results of that consultation and seeks authority for a formal recommendation to be made to the full Council to adopt a Statement of Sex Establishment Policy to take immediate effect.

RECOMMENDATION

That the Council be recommended to formally adopt the Statement of Sex Establishment Policy, as set out in the appendix to item A.2 of the Report of the Head of Legal Services and Monitoring Officer from 1 July 2011.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The development of a Statement of Sex Establishment Policy will contribute to the Council's priority of remaining a low crime area coupled with a reduction in the fear of crime.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The cost of undertaking the consultation process was met from the Committees 2010/11 Revenue Budget.

Risk

Failure to adopt a clear and concise Sex Establishment Policy could lead to difficulties in the future controlling and regulating of the industry in the District.

LEGAL

The Council has passed resolutions formally adopting the powers contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to the regulation of Sex Shops, lap dancing clubs and similar venues.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.
Crime and Disorder/Equality and Diversity/Consultation/Public Engagement.

CRIME AND DISORDER

The Sex Establishment Policy will need to demonstrate the Authority's commitment to reducing crime and disorder within the context of the powers vested in it by the Local Government (Miscellaneous Provisions) Act 1982.

EQUALITY AND DIVERSITY

An equality impact assessment has been undertaken and no issues have been identified that would suggest that the proposed policy statement is discriminatory in any way.

AREAS/AWARDS AFFECTED

The entire district.

PART 3 – SUPPORTING INFORMATION**BACKGROUND**

In accordance with the decision made at your meeting held on 2 November 2010, a total of 93 consultation letters/e-mails were sent to both statutory and non-statutory consultees with a request that any comments should be returned to the Authority by 28 January 2011 and no comments were received. In addition the draft policy statement was posted on the Council's Website to enable other individuals and organisations to comment on the document. A copy of the draft statement is attached as an appendix to this report.

BACKGROUND PAPERS FOR THE DECISION

Letters/e-mails sent to consultees in November

APPENDIX

Appendix – Draft Tendring District Council Statement of Sex Establishment Policy

Tendring District Council



DRAFT

SEX ESTABLISHMENT POLICY

CONTACT FOR FURTHER INFORMATION AND
ALTERNATIVE LANGUAGES AND FORMATS OF THIS POLICY

If you require an alternative language or format of this Policy or if you would like further information or have any comments on anything contained in the Policy, please contact the Legal Services, Licensing Team on

01255 686565

or write to us at:-

**Tendring District Council, Westleigh House,
Carnarvon Road, Clacton-on-Sea,
Essex CO15 6QF**

Or send us an e-mail at: -

licensingsection@tendringdc.gov.uk

This Policy is also available on the Council's Website

www.tendringdc.gov.uk

BENGALI

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CHINESE

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GUJERATI

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URDU

اگر آپ کو اس دستاویز کی ضرورت اردو میں ہے تو www.Tendringdc.gov.uk کے ذریعہ اس کے ترجمہ کی فرمائش کی جا سکتی ہے

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
as amended by the Policing and Crime Act 2009**

SEX ESTABLISHMENTS POLICY

1. Introduction

1.1 The Policy

1.1.1 This document states Tendring District Council's policy on the regulation of Sex Establishments.

1.2 The Law

1.2.1 The Local Government (Miscellaneous Provisions) Act 1982 as amended, (The Act) introduced a licensing regime to control Sex Establishments. Tendring District Council has adopted Schedule 3 of the Act. This means that the Council can control and regulate the operation of certain kinds of Sex Establishment within its District. No Sex Establishment can operate unless it has obtained a licence from the Council. Any such licence will contain conditions that will restrict how that premises may trade.

1.2.2 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent, crime and disorder in their area. This policy has regard to the likely impact of such licences on related crime and disorder in the District.

1.2.3 Where applicable, the Council will involve the Tendring Crime and Disorder Reduction Partnership (CDRP) in decision-making in relation to actual crime and disorder.

1.2.4 The Policy should be read in conjunction with, and without prejudice to, other existing National and European Union legislation, such as the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Equalities Act 2010.

1.3 Current Premises

1.3.1 At present there are two Sex Shops situated within the District of Tendring.

2. SEX ESTABLISHMENT LICENCE APPLICATIONS

2.1 Right to waiver

2.1.1 Tendring District Council may, upon application, waive the requirement for a licence in any case where it considers that to require a licence would be unreasonable or inappropriate.

2.1.2 Each application for a waiver will be considered on its own merits, however, any establishment that would normally require licensing under the provisions of The Act is unlikely to be granted a waiver other than in exceptional circumstances.

2.2 Application Details

2.2.1 The Applicant will be required to make their application in hard copy form in accordance with Clause 10, Schedule 3, of The Act or by electronic means in accordance with the EU Services Directive.

2.3 Fitness of the Applicant

2.3.1 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence, or a transfer of an existing one, the Council will take the following into account:

- a) Previous relevant knowledge and experience of the applicant;
- b) Any evidence of the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other Licensing Authority area;
- c) Any report about the applicant and management of the premises received from statutory objectors;
- d) Any responses from statutory consultees.

2.3.2 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 criminal convictions.

2.4 Impact of the Sex Establishment

2.4.1 In considering applications for the grant or renewal of licences or variations to conditions, the Council will assess the likelihood of such a grant, renewal or variation causing adverse impact, particularly to local residents. The Council will take the following general matters into account:

- a) Type of activity;
- b) Duration of proposed licence;
- c) Layout and condition of the Premises;
- d) The use to which other premises in the vicinity are put;
- e) The character of the locality in which the Premises are situated. (This will include the likely character of an area as a result of redevelopment of that area);
- f) The cumulative impact of licensed sex establishments in the area, including hours of operation.

2.5 The Location of Premises

2.5.1 In accordance with relevant case law, the Council shall decide on the suitability of a particular locality for a Sex Establishment as a matter of fact to be determined by the particular circumstances of each case and not by the prescription of boundaries as stated on a map.

- 2.5.2 The Council is mindful of its power to determine that no Sex Establishment should be located in a particular locality.
- 2.5.3 Notwithstanding the above, licences will only be granted in predominately commercial areas and the Council is mindful of its power to determine each application on its own merits. Applications will not normally be granted if they are to be within:
- a) areas that are exclusively, or predominantly, residential in character; or
 - b) near to a school or any other Premises used by children or by vulnerable adults; or access routes to such premises, or
 - c) A publicly accessible open space that is regularly frequented by children or vulnerable adults; or
 - d) near to a place of worship; or access routes to such premises; or
 - e) areas that are likely to be adversely effected due to the cumulative impact of existing Sex Establishments.

3. DETERMINATION OF APPLICATIONS

3.1 General

- 3.1.1 In determining an application relating to a Sex Establishment licence the Licensing (General Purposes) Sub-Committee of 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.
- 3.1.2 Where it is felt necessary for the Council to depart substantially from this policy clear and compelling reason for doing so will be given.
- 3.1.3 The Licensing (General Purposes) Sub-Committee may consider granting licences of 12 month duration for a shorter term.

3.2 Grant of new Licence

- 3.2.1 All applications for the grant of a new licence will be determined in accordance with the scheme of delegation determined by the Council.
- 3.2.2 The Council will give the applicant(s) the opportunity of appearing before and being heard by the Licensing (General Purposes) Sub-Committee before determining the application.
- 3.2.3 In determining an application for the grant, renewal, transfer or variation of a licence, the Council must have regard to any representations that it has received.

3.3 Renewal, Transfer or Variation of an Existing Licence

- 3.3.1 The granting of an application for renewal, transfer or variation of an existing licence will be determined in accordance with the scheme of delegation determined by the Council.

4. POWER TO PRESCRIBE CONDITIONS

- 4.1 Schedule 3 section 13 of the Act provides a power for the Council to specify Standard Conditions in relation to Sex Establishment Licences.
- 4.2 The Council's Standard Conditions are detailed in **Appendix A** of this policy.
- 4.3 All licences will be granted, renewed, transferred or varied subject to these Standard Conditions unless expressly excluded or varied by the Licensing (General Purposes) Sub-Committee.

5. HEARING PROCEDURE

- 5.1 Where the Council is required to determine an application by reference to the Licensing (General Purposes) Sub-Committee, the applicant and objectors will be advised of the date, time and venue of the hearing.
- 5.2 In preparation for the hearing, all parties will receive a copy of the Head of Legal Services and Monitoring Officer's report prior to the hearing. The report will contain a summary of the application, representations and any other relevant information.
- 5.3 At the hearing, parties will have the opportunity to address the Sub-Committee and, if permitted by the Chairman of the Sub-Committee, ask questions of parties that they feel are relevant to the determination process.

6. DEFINITIONS

The Act	Local Government (Miscellaneous Provisions) Act 1982 as amended
Authorised Officer	Any Officer of the Council authorised under the Council's Scheme of Delegation as contained within the Constitution
The Council	Tendring District Council
He, his	All references to 'he or his' also include 'she or hers'
Head of Legal Services and Monitoring Officer	The current post-holder (or equivalent following any subsequent restructure), or any nominated Deputy authorised by the Council's Scheme of Delegation
Licence Holder	A person who holds a Sex Establishment Licence under the Act
This Policy	Tendring District Council's Sex Establishment 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 section 2 of Schedule 3 of the Act as amended

Sexual Entertainment Venue As defined in Section 2A of Schedule 3 of the Act as amended.

(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));
- c) premises specified or described in an order made by the relevant national authority.

Sex Cinema As defined in Section 3 of Schedule 3 of the Act as amended

(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

APPENDIX A

Standard Conditions Applicable to Licences for Sex Establishments

1. General

- a) These standard conditions will apply to all licences unless varied by the Licensing (General Purposes) Sub-Committee.
- b) The granting 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 as amended.
- c) In the event of a conflict between these Standard Conditions and any Special Conditions contained in a licence relating to a Sex Establishment, the Special Conditions shall prevail.

2. Times of opening

The opening times of premises shall be considered on the merits of the application received.

3. Conduct and Management of Sex Establishment

- a) Where the licensee is a body corporate or unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within fourteen days of such change. Such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within fourteen days of a request in writing from the Council.
- b) The name of the person responsible for the management of a Sex Establishment shall be prominently displayed within the Premises.
- c) The licensee of a sex entertainment establishment shall maintain a daily register. It must record the name and address of any person who is to be responsible for managing the Sex Establishment in his absence and the names and addresses of those employed in the Sex Establishment. The register is to be completed each day within thirty minutes of the Sex Establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.
- d) 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.
- e) No person under the age of eighteen shall be admitted to the Premises or employed in the business of a Sex Establishment.
- f) 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.
- g) No part of the Premises shall be used by prostitutes (male or female) for the purpose of solicitation or otherwise exercising their calling.

- h) Neither the licensee or any employer or other person shall seek to obtain custom for the Sex Establishment by means of personal solicitation anywhere in the Tendring District Council area.
- i) The copy of the licence and of these Standard Conditions required in accordance with paragraph 14 (1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence shall be displayed, framed and exhibited to the satisfaction of the Council. A clean and legible copy of these Standard Conditions shall be retained on the Premises and be available upon request.
- j) No change of use of any portion of the Premises from that approved by the Council shall be made without the consent of the Council.
- k) All members of staff employed at the premises will be required to undertake a satisfactory Criminal Records Bureau check.

4. Free Literature to be available in Sex Establishments

- a) The licensee shall, without charge, display and make available in the Sex Establishment such free literature on counselling of matters related to sexual problems as may be published by the Family Planning Association and by such other similar organisations as may be specified by the Council. Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash collection points in the Sex Establishment.

5. External Appearance

- a) 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) 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 conditions of a licence granted by the Council.
 - (ii) Such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.
- b) The entrance to the Premises shall be of a material or covered with a material which will render the interior of the Premises invisible to passers by, and shall be so provided with a partition as to ensure that the interior of the Premises remain invisible to such passers by when the entrance is open.
- c) Windows and openings to the Premises other than entrances shall not be obscured otherwise than with the consent of the Council but shall have suspended behind them, in a position and at a position approved by the Council, opaque screens or blinds of a type and size approved by the council.

6. State, Condition and layout of the Premises

- a) Save in the case of an emergency, no access shall be permitted through the Premises to any unlicensed Premises adjoining or adjacent.
- b) Suitable controlled access to the premises shall be maintained. Any mechanical device will be maintained in good working order.
- f) No fastenings of any description shall be fitted upon any booth or cubicle within the Sex Establishment. (This does not apply to toilet cubicles)
- g) Alterations or additions either internal or external 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.

7. Additional Conditions in respect of Sexual Entertainment Venues

- a) Any person engaged or employed for the purpose of public safety either as security or door staff inside and at the entrances or exits to the premises shall be registered with the Security Industry Authority; and
- b) The licensee shall ensure compliance with the requirements of the Security Industry Authority.
- c) There shall be displayed at each entrance to the premises notices, which clearly indicate the type of entertainment taking place herein.
- d) No person under the age of 18 years shall be admitted to the premises during hours that the premises are open, and notices shall be displayed in a conspicuous position at the entrance to any such part stating 'no persons under 18 to be admitted, entertainment within these premises involves a form of nudity. If you are likely to be offended please do not enter'.
- e) There shall be no physical contact between the customer and the performer during the performance or after the performance. Notices outlining this shall be clearly displayed at the entrance of the premises and in each bar area.
- f) Topless entertainment shall be given only by the performer/entertainer(s). There shall be no audience participation.
- g) Closed Circuit Television will be installed and maintained in accordance with the following:
 - 1. CCTV shall be of a type to be approved by the Licensing Authority to monitor events at the premises and shall be installed to the satisfaction of the Licensing Authority. The CCTV system shall be professionally installed and be capable of consistently producing pictures clearly showing the identity of persons frequenting the premises and in the vicinity of the premises. The CCTV shall operate continuously during the permitted hours.
 - 2. Retain all video tapes/DVD discs or other relevant format for a period of 28 days and shall make them available to the Police or an authorised Officer of the Council on demand.
 - 3. Notices shall be clearly displayed inside the premises indicating that a CCTV system is in operation.