

# LICENSING AND REGISTRATION COMMITTEE

2 OCTOBER 2024

## REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE

### A2. SEX ESTABLISHMENT POLICY

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

This report is submitted to the Committee to enable it to consider recommending to Cabinet a revised Sex Establishment Policy following a 5-week period of consultation on a draft revised policy. This report sets out the revised proposed policy to be adopted and the outcome of the consultation.

##### **EXECUTIVE SUMMARY**

It is best practice that the Authority keeps its Policy on Sex Establishments under review enabling the Council to consider the most current information and guidance, legislation and resources available. The revised policy will then be available to applicants, licensees, those seeking to address issues with regards to sex establishments, the Authority's partner agencies and the public.

The Licensing and Registration Committee, at its meeting on 24 July 2024 agreed to undertake public consultation on a draft revised policy.

##### **RECOMMENDATION(S)**

- (1) It is recommended that the Committee receive and considers the outcome of the public consultation on a revised draft Sex Establishment Policy and then determine whether to recommend the policy attached to this report to Cabinet for adoption; and**
- (2) That, on the basis (1) above is approved, Officers be authorised to make minor amendments to the policy to ensure that it reflects operational positions of the Council and legislative / case law relevant to the policy.**

##### **REASON(S) FOR THE RECOMMENDATION(S)**

The recommendations seek to provide a process through which a sex establishment policy can be adopted having taken an account of the views expressed in the consultation on a draft revised policy.

## ALTERNATIVE OPTIONS CONSIDERED

There is no legal requirement to adopt the legislation or have a policy in place. However, having adopted the legislation, a Policy sets out how the Council will regulate the types of establishments in its area and the manner in which such premises are run. The revised policy seeks to ensure the approach to such matters is kept up to date.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The draft policy set out at Appendix A is intended to support the following theme from the Council's Corporate Plan 2024-28:

- Pride in our area and services to residents
- Working with Partners to improve quality of life

### LEGAL REQUIREMENTS (including legislation & constitutional powers)

The legislative provisions in relation to sex establishment licensing are set out in:  
Local Government (Miscellaneous Provisions) Act 1982  
Policing and Crime Act 2009

Having a policy which is clearly detailed and compliant with the legislation, fit for purpose and clear to applicants could assist in implementing rules while also being a key document in the event of a legal challenge by way of appeal or judicial review.

### FINANCE AND OTHER RESOURCE IMPLICATIONS

There were minor cost associated with carrying out the consultation and publish statutory notices which are being accommodated from existing budgets.

### USE OF RESOURCES AND VALUE FOR MONEY

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The policy does not, in itself, directly impact on financial sustainability.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistency in good decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective delivery of services.

### MILESTONES AND DELIVERY

The adoption of the Sex Establishment Policy this financial year is itself a key milestone in ensuring licensing policies remain up to date. Subject to the decision of the Committee, Cabinet will then consider adoption of the proposed revised policy.

## **ASSOCIATED RISKS AND MITIGATION**

The principal risks this policy seeks to address are those around supporting good decision making.

## **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The draft revised Sex Establishment Policy submitted to the Committee at its meeting of 24 July 2024 was subject to public consultation and scrutiny for a period of 5 weeks from 30 July 2024 to 3 September 2024.

A page was created for the consultation on the Council's website and a public notice was displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea.

The below were written to inviting them to comment on the draft policy:

- Licensed Sex Establishment Premises
- All Tendring District Councillors
- All Parish Councils
- Responsible Authorities (including Essex Police)
- Institute of Licensing
- A number of licensing solicitors
- A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)

In addition to the consultation letters the licensing team also visited a number of licence holders within the District handing out consultation postcards to bring the consultation to the attention of the trader and invite them to voice their opinions.

One member of the public sent in responses to the consultation. Their comments are as below:

- "Although, there are only one such premises within the locality it is essential that the policy framework exists to ensure should there be an increase in such venues wishing to establish themselves that the local authority has the tools available to ensure adherence to their rules and to maintain the King's peace without causing intentional outrages of public decency. On the other hand, there must also be provision made to ensure the welfare of those employed in these premises to protect them from any abuses from employers due to the taboo nature of sex establishments".

## **EQUALITIES**

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);

- advance equality of opportunity between people who share a relevant characteristic and people who do not;
- foster good relations between people who share a protected characteristic and people who do not.

### **SOCIAL VALUE CONSIDERATIONS**

There are no direct social value considerations arising in respect of this policy.

### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030**

There are no environmental implications arising directly from the content of this report.

### **OTHER RELEVANT 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.**

<b>Crime and Disorder</b>	The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area.
<b>Health Inequalities</b>	There are no direct implications arising from the proposals set out in this report.
<b>Area or Ward affected</b>	All

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

The current policy on licensing Sex Establishments was published in 2018.

This Council currently has one licensed sex shop and this is located within Clacton-on-Sea. There are no Sexual Cinemas or Sexual Entertainment Venues currently operating within the District.

Since November 2005, the Licensing Act 2003 (the 2003 Act) has required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority.

Members will be familiar with the restrictions in the 2003 Act which means that any representation against a premises licence can only be based on the four licensing objectives. Whilst licences can be subject to review procedure they otherwise continue in force for the life of the business.

Sex Shops and Sex Cinemas are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives licensing authority a wider discretion in determining whether to grant or refuse licence than is provided for in the 2003 Act, a power to set a limit on the number of premises that may be suitable for a particular location, greater flexibility of applying licence conditions and the ability to accept representations from a wider scope of the community. Sex shop and sex cinema licences are only valid for one year at a time.

Schedule 3 of the 1982 Act through Section 27 of the Policing and Crime Act 2009 extended the definition of Sex Establishments from sex shops and sex cinemas to include sexual entertainment venues. Consequently, from that point on, lap dancing venues and similar premises required licensing under the 1982 Act provisions and the Licensing Act 2003 for alcohol sales etc.

The policy has been developed taking full account of the requirements of the legislation and guidance.

The policy provides that each application will be judged on its own merits but taking into account the various criteria laid out within the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.

The Licensing and Registration Committee at its meeting on 24 July 2024 agreed to undertake public consultation on the draft revised policy.

#### **PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**

Licensing and Registration Committee of 24 July 2024 (minute 9 refers)

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None

#### **APPENDICES**

Appendix A – Proposed Sex Establishment Policy

#### **REPORT CONTACT OFFICER(S)**

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