



CAMBRIDGE CITY COUNCIL

CONSULTATION DRAFT

SEX ESTABLISHMENT LICENSING POLICY

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1. The City of Cambridge

- 1.1 Cambridge is a unique blend of market town, sub-regional centre, national and international tourist attraction and centre of excellence for education and research. It is a city of great beauty and is renowned for the qualities of its streets, spaces and buildings.
- 1.2 Cambridge City Council, in association with local partnerships wants Cambridge to be vibrant, socially mixed, safe, convenient and enjoyable, where all residents feel integrated into the life of the City and a part of its success.
- 1.3 Cambridge City Council has a clear vision for the future of the City, a vision shared with Cambridge citizens and partner organisations. Our vision includes:
 - A city that is diverse and tolerant, values activities which bring people together and where everyone feels they have a stake in the community
 - A city where people behave with consideration for others and where harm and nuisance are confronted wherever possible without constraining the lives of all
- 1.4 The overarching objectives of Cambridge City Council in licensing Sex Establishments are to:
 - Promote the Authority's visions and values
 - Protect the rights and health and safety of the general public, workers, residents, businesses, minority and vulnerable groups and
 - Ensure the principles of consistency, transparency, accountability and the promotion of good standards in licensing
 - Demonstrate compliance with statutory responsibilities in relation to procedures and enforcement
 - Ensure consistent and transparent decision making

2. Introduction

- 2.1 The Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) does not require the publication of a sex establishment licensing policy, however we recognise the benefits of having such a policy. A sex establishment licensing policy can play a pivotal role in the achievement of the pattern, number and standards of sex establishments within the City.
- 2.2 This document sets out the policy which will guide the Licensing Authority when considering applications and will generally be applied when making decisions on applications.
- 2.3 We will determine each application on its individual merits and this policy should not be regarded or interpreted as an indication that any requirement of the relevant law may be overridden.
- 2.4 We may depart from this policy if, in the interests of the promotion of the objectives, the individual circumstances of any case merit such a decision. We will give full reasons for departing from the policy.

- 2.5 The 1982 Act introduced a licensing regime to control Sex Establishments. On 19th October 1989, Cambridge City Council resolved to bring into force from 27th November 1989 Schedule 3 of the Act, which provided for the control of sex establishments (i.e. sex shops and sex cinemas).
- 2.6 Section 27 of the Policing and Crime Act 2009 (the 2009 Act), which came into force on 6th April 2010, amends Schedule 3 to the 1982 Act, providing for the control of a new category of sex establishment called a Sexual Entertainment Venue. The amendment allows councils to regulate lap dancing clubs and similar venues as sex establishments. On 21st October 2010, Cambridge City Council resolved that Schedule 3 to the 1982 Act as amended by section 27 of the 2009 Act should apply to the Cambridge City Council area commencing from 1st December 2010.
- 2.7 In carrying out our licensing functions, we will have regard to the following:
- 2.7.1 The Local Government (Miscellaneous Provisions) Act 1982
 - 2.7.2 Any supporting regulations
 - 2.7.3 Guidance issued by Central Government
 - 2.7.4 This statement of licensing policy

We must also fulfil our obligations under s17 of the Crime and Disorder Act 1998, to do all that we reasonably can to prevent crime and disorder in Cambridge.

- 2.8 The Policy should be read in conjunction with, and without prejudice to, other existing national and European Union legislation, including the Human Rights Act 1998, the Equality Act 2010, the Disability Discrimination Act 1995, the Provision of Services Regulations and the Regulators' Compliance Code (as set out under the Regulatory Reform Act 2006).
- 2.9 The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination and victimisation; and to promote equality of opportunity and good relations between persons of different racial groups.
- 2.10 In carrying out our licensing functions we will have regard to equality and will expect an applicant to meet their statutory obligations in this area and not unlawfully discriminate against anyone on the grounds of age, gender, race, sexual orientation, disability, gender reassignment, religion or belief.
- 2.11 We do not take a moral stand in adopting this policy. We recognise that Parliament has made it lawful to operate a sex establishment and that such businesses are a legitimate part of the retail and leisure industries. It is our role as the licensing authority to administer the licensing regime in accordance with the law.
- 2.12 The 1982 Act and the 2009 Act can be viewed at www.opsi.gov.uk

3. Consultation

- 3.1 In preparing this policy statement we have consulted with the following:

- the Chief Officer of Police for Cambridgeshire
 - the Chief Officer of the Cambridgeshire Fire and Rescue Service
 - persons/bodies representative of local holders of premises licences
 - persons/bodies representative of local holders of club premises certificates
 - persons/bodies representative of businesses and residents in the City of Cambridge
 - the child protection agency
 - other organisations as appear to the Licensing Authority to be affected, including councillors, local community, cultural, educational and entertainment organisations.
- 3.2 We consulted on this policy between 31st January 2011 and 26th April 2011 and was (*will be considered*) approved by Licensing Committee on (6th June 2011 - *to be confirmed*)
- 3.3 We have considered the views of all those consulted prior to determining this policy.

4. Sexual Entertainment Venues

Sex establishment licences are required for

- 4.1 *'any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.'*
- 4.2 'Relevant entertainment' is *"any live performance or 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 an audience (whether by verbal or other means)".* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 4.3 In deciding whether entertainment is "relevant entertainment" We will judge each case on its' individual merits, however we would expect that the following forms of entertainment as they are commonly understood will be "relevant entertainment":
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
 - Topless Bars
 - Premises where private entertainment booths are present

This list is not exhaustive and as the understanding of the exact nature of these descriptions may vary, should be treated as indicative only. Ultimately, decisions as to whether entertainment is "relevant entertainment" will depend on the content of the entertainment and not the name it is given.

- 4.4 The following premises are not sexual entertainment venues:
- Sex shops and sex cinemas

- Premises which provide relevant entertainment on an infrequent basis. These are premises where-
 - a) relevant entertainment has been provided on no more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

4.5 Premises providing relevant entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003 (the Licensing Act).

4.6 Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser may be considered to have provided the entertainment where he has permitted the activity to take place, whether express or implied.

5. Sex shops and sex cinemas

5.1 Sex Establishment Licences are required for “sex cinemas” and “sex shops”. “Sex shop” means any premises, vehicle, vessel or stall that is used for a business which consists to a “significant degree” of selling, hiring, exchanging, lending, displaying or demonstrating with “sex articles”.

5.2 The phrase “sex articles” is defined in the 1982 Act, but the phrase “a significant degree” is not. When considering whether or not a business is selling a significant degree of sex articles and needs a licence, we will consider:

- the ratio of sex articles to other aspects of the business
- the absolute quantity of sales
- the character of the remainder of the business
- the nature of the displays in the business
- turnover
- other factors which appear to be materially relevant

6. Requirement for a Licence

6.1. Any person wishing to operate a sex establishment as defined by Schedule 3 to the 1982 Act requires a sex establishment licence, unless we have waived the requirement for a licence.

6.2 We will normally grant a licence for a period of one year, but we may exercise our discretion to issue a licence for a shorter period if we consider this to be appropriate.

7. Waiver

7.1 We may, upon application, waive the requirement for a licence in any case where we consider that to require a licence would be unreasonable or inappropriate.

7.2 Waivers may be granted to;

- Book shops, including shops where sale of DVD's and CD's are present
- Sexual Health Clinics
- Cases where we consider that the requirement for a licence is borderline, where events are minor or temporary, or where clarity or regularisation is required.
- Educational Establishments as part of a recognised educational curriculum

7.3 We will consider each application for a waiver on its individual merits, however, any establishment that would normally require a licence under the provisions of the 1982 Act is unlikely to be granted a waiver other than in exceptional circumstances.

7.4 In order for a waiver to be considered, an applicant must provide the basic information included in the application form, and any other information that we may reasonably require in order to make our decision.

7.5 A waiver may be for such period as the Licensing Authority thinks fit. Where we grant an application for a waiver, we will give notice to the applicant stating the application has been granted. We may at any time give a person who would require a licence but for a waiver, notice that the waiver is to terminate, on a date not less than 28 days from the date on which we give the notice, or as may be specified in the notice.

8. The Licensing Act 2003

8.1 Premises holding a sexual entertainment venue licence will not require a premises licence under the Licensing Act 2003 unless the premises is carrying on other licensable activities e.g. the sale of alcohol or the provision of regulated entertainment that is not relevant entertainment.

8.2 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act.

8.3 Premises which fall under the exemption created for infrequent entertainment do not require a sexual entertainment licence, but will instead need an appropriate authorisation under the Licensing Act, for example to cover the performance of dance. An exemption for live music or the playing of recorded music, which is integral to the entertainment, does not apply to such venues.

9. Location of Licensed Premises

9.1 We have not imposed a limit on the number of premises that may be licensed in any area of the City, however, whilst deciding each application upon its

own merits we will not normally licence premises that are in close proximity to:

- 9.1.1 a residential area
 - 9.1.2 a school, nursery or any other premises substantially used by or for children under 16 years of age;
 - 9.1.3 a park or other recreational areas used by or for children under 16 years of age;
 - 9.1.4 a church or other place of religious worship;
- 9.2 In addition, we will consider public safety issues when determining whether an area is appropriate; for example, areas that attract a high percentage of female, elderly or young users may be considered to be inappropriate. Where we receive an application, which we consider to be within close proximity to those areas or premises identified in paragraph 9.1, the application will not be automatically refused. Applications presenting genuinely exceptional circumstances may be granted.
- 9.3 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.
- 9.4 We would normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.

10. Commenting on licence applications

- 10.1 A wide range of people can raise objections about sex establishment licences. The Police are a statutory consultee for all applications.
- 10.2 We can only consider objections that are relevant to the statutory grounds for refusal set out in the 1982 Act and are received within the 28-day period for making objections.
- 10.3 We will notify applicants of any observations made by the Chief Officer of Police and provide details in general terms of objections that we have received within the 28-day period. We will not without the consent of the person making the objection reveal his/her name or address to the applicant.
- 10.4 Where no relevant objections are made, or objections are withdrawn, officers will grant the licence under the scheme of delegated powers.
- 10.5 Licensing Sub-Committee will consider all applications where there are relevant objections. We will give both applicants and objectors an equal opportunity to state their case in accordance with our hearings procedure.
- 10.6 We will not consider objections that are frivolous or vexatious, or which relate to moral grounds (as these are outside the scope of the 1982 Act). Our officers will make decisions on whether objections are frivolous or vexatious. Where objections are rejected the objector will be given a written reason.

11. Determining Applications

- 11.1 In considering any application for the grant, renewal or transfer of a licence we will have regard to any observations submitted by the Chief Officer of Police and any relevant objections that we have received within the 28-day period.
- 11.2 Where we refuse to grant, renew or transfer a licence, we will send notice of the reasons for our decision to the applicant within seven days.
- 11.3 An applicant must be a suitable person to hold a licence. In determining suitability for a new licence, or a transfer of an existing one, we will consider all relevant information including the following:
- Previous relevant knowledge and experience of the applicant;
 - The operation of any existing or previous licence(s) held by the applicant, including any licence held in any other area.
 - Any report about the applicant and management of the premises received from statutory objectors.

12. Terms, conditions and restrictions

- 12.1 We may impose terms, conditions and restrictions on the grant of a licence. Where imposed, these will be necessary, non-discriminatory and proportionate.
- 12.2 We have model conditions relating to sex establishments and sexual entertainment venues. The conditions which may be attached to a licence are set out in Appendices A and B to this policy.
- 12.3 We will consider all applications on an individual basis and may impose additional or alternative conditions tailored to individual premises.

13. Grounds for refusal

The 1982 Act sets out mandatory and discretionary grounds for refusal of a licence.

- 13.1 We will not grant a licence;
- a) to a person under the age of 18; or
 - b) to a person who is for the time being disqualified under paragraph 17 (3) of Schedule 3 to the 1982 Act; or
 - c) to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
 - d) to a body corporate which is not incorporated in an EEA state; or
 - e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- 13.2 We may refuse:

- i) an application for the grant or renewal of a licence on one or more of the grounds listed in a) – d) below:
- ii) an application for the transfer of a licence on either or both of the grounds specified in paragraphs a) and b) below:

The grounds are:

- a) that 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 the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application determined is equal to or exceeds the number which the Licensing Authority consider is appropriate for that locality. Nil may be the appropriate number.
- d) that the grant or renewal of a licence would be inappropriate having regard to the character of the relevant locality, or to the use to which any premises in the vicinity are put, or to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

13.3 The 'relevant locality' means: in relation to premises, the locality where they are situated; and in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

13.4 We have not made a decision to determine the number of sex establishment premises appropriate for the City of Cambridge however this may be subject to review.

13.5 We may refuse applications for a sex establishment licence where we are not satisfied that the application has been advertised in accordance with the requirements of the 1982 Act.

13.6 We may refuse to accept an application where we consider that relevant information has been omitted or an application is incomplete.

14. Hearing

14.1 Where relevant objections have been made we will give applicants the opportunity of appearing before the Licensing Sub-Committee.

14.2 We will advise the applicant and objectors of the date, time and venue of the hearing.

14.3 A copy of the committee report will be published on our website at least 5 days prior to the hearing. The report will contain a summary of the application, objections and any other relevant information.

14.4 The hearing will be conducted in accordance with our hearings procedure.

14.5 The Licensing Sub-Committee will communicate their decision at the end of the hearing and all parties will receive written confirmation of the decision within seven days.

14.6 Whilst the Act does not stipulate a timescale for hearing applications, where objections have been submitted and accepted, we aim to determine an application within 20 working days from the close of the 28-day period for receiving objections.

14.7 Applicants have a right of appeal to a Magistrates Court.

15. Enforcement

15.1 We will establish protocols with the police and any other relevant enforcement body on enforcement issues. These protocols will target agreed problems and high-risk premises, which require greater attention, while providing a lighter touch approach in respect of low risk premises that are well run.

15.2 In general, action will only be undertaken in accordance with the Council's enforcement policy, as adopted at the time, which reflects the Council's obligations relating to enforcement and is consistent with the Regulators Compliance Code. To this end, the key principles of consistency, openness, proportionality, clear standards and practices, courtesy and helpfulness and training will be maintained.

15.3 Cambridge City Council's enforcement policy is available on our website: <http://www.cambridge.gov.uk/ccm/content/council-and-democracy/how-the-council-works/council-policies-and-plans/enforcement-policy.en>

16. Amendments to Policy

16.1 Any significant future amendment to this policy will only be implemented after further consultation.

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

(a) is likely to have a significant financial effect on the licence holders, or

(b) is likely to have a significant procedural effect on the licence holders, or

(c) is likely to have a significant effect on the community.

16.2 Any minor amendments to this Policy may be authorised by the Licensing Committee.

16.3 We retain the right to review the policy as deemed necessary, or as required due to legislative changes and Government guidance.

17. Integration with Council Strategies and the avoidance of duplication

17.1 By consultation and liaison, we will secure the proper integration of this policy with local crime prevention, planning, transport, tourism, race equality and equal opportunity schemes, cultural strategies and any other plans introduced for the management of the City and the night-time economy.

17.2 So far as is possible, the policy is not intended to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators.

17.3 It is likely that certain aspects of the activities of a sex establishment will be licensed under the Licensing Act 2003 e.g. a bar in a lap-dancing club. We will not normally attach conditions to a sex establishment licence, which can just as well be attached to a premises licence under the 2003 Act.

18. Exchange of information

18.1 We may from time to time exercise our powers under section 115 of the Crime & Disorder Act 1998 to exchange data and information with the police and other partners to fulfil our statutory objective of reducing crime in the area.

18.2 Details of applications and objections which are referred to a Licensing Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.

19. Administration, exercise and delegation of functions

19.1 The functions of the Licensing Authority under the 1982 Act may be carried out by the Licensing Committee, by a Sub-Committee or by one or more officers acting under delegated authority.

19.2 Many of the decisions and functions will be largely administrative in nature. In the interests of speed, efficiency and cost-effectiveness these will, for the most part, be delegated to officers.

20. Fees

20.1 Fees are set each year. Details are available from the licensing team and on our website <http://www.cambridge.gov.uk/ccm/content/ehws/licensing/fees.en> We charge a separate fee for applying/ varying/ transferring a licence and renewing a licence.

21. Effective Date and Review

21.1 This policy statement will take effect on xxxxx 2011.

21.2 The policy statement will be kept under review and will be subject to further review and consultation before xxxxx 2016.

22. Contact details, advice and guidance

22.1 Applicants can obtain further details about sex establishment licensing application processes, including application forms and fees from:

website: www.cambridge.gov.uk

e-mail: licensing@cambridge.gov.uk

telephone: 01223 457879

fax: 01223 457909

post: Licensing, Refuse and Environment Service,
Cambridge City Council, PO Box 700,
Cambridge, CB1 0JH

in person: Customer Service Centre, Mandela House, 4, Regent
Street, Cambridge, CB2 1BY (Monday to Friday 08:00-
18:00)

Electronic applications can also be made on line via the government's
businesslink website www.businesslink.gov

- 22.2 This policy can be made available in large print on request and similarly
translations can be made available in a variety of languages. Please contact
us for further help or assistance.
- 22.3 Informal discussion is encouraged prior to the application process in order to
resolve any potential problems and avoid unnecessary hearings and appeals.