

South Somerset District Council

Notice of Meeting



Licensing Committee

Making a difference where it counts

Tuesday 8 February 2011

10.00 am

**Council Chamber B
Council Offices
Brympton Way
Yeovil
Somerset**

The public and press are welcome to attend.

If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Anne Herridge** on Yeovil (01935) 462570
email: anne.herridge@southsomerset.gov.uk

This Agenda was issued on Monday 31 January 2011

Ian Clarke, Assistant Director (Legal & Corporate Services)



**This information is also available on our
website: www.southsomerset.gov.uk**



Licensing Committee Membership

Chairman Nigel Mermagen
Vice-Chairman Martin Wale

Simon Bending	Roy Mills	Linda Vijeh
Dave Bulmer	David Recardo	Lucy Wallace
John Vincent Chainey	Peter Roake	William Wallace
Tony Fife	Keith Ronaldson	
John Hann	Alan Smith	

South Somerset District Council – Corporate Aims

Our key aims are: (all equal)

- To deliver well managed cost effective services valued by our customers
- To increase economic vitality and prosperity
- To improve the housing, health and well-being of our citizens
- To ensure safe, sustainable and cohesive communities
- To enhance the environment, address and adapt to climate change

Members' Questions on Reports prior to the Meeting

Members of the Committee are requested to contact report authors on points of clarification prior to the Committee meeting.

Information for the Public

The Licensing Committee shall be responsible for those licensing functions listed in part 3 of the Constitution as being the responsibility of the Committee. This will include licensing matters referred to it by officers, in accordance with the Officer Scheme of Delegation, such as contested public entertainment licences, and applications for taxi driver licences where the officer considers the application should be determined by members. The Committee shall also be responsible for all the functions assigned to it under the Licensing Act 2003.

Meetings of the Licensing Committee are held bi-monthly at 10.00am normally on the second Tuesday of the month in the Council Offices, Brympton Way.

Licensing Committee agendas and minutes are published on the Council's website www.southsomerset.gov.uk

The Council's Constitution is also on the web site and available for inspection in council offices.

Further information can be obtained by contacting the agenda co-ordinator named on the front page.

Ordnance Survey mapping/map data included within this publication is provided by South Somerset District Council under licence from the Ordnance Survey in order to fulfil its public function to undertake its statutory functions on behalf of the district. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey mapping/map data for their own use.

Licensing Committee

Monday 8 February 2011 at 10.00 am

Agenda

Preliminary Items

1. **To approve as a correct record the Minutes of the Licensing Committee meeting held on 8 November 2010**
2. **Apologies for Absence**
3. **Declarations of Interest**

In accordance with the Council's Code of Conduct, which includes all the provisions of the statutory Model Code of Conduct, Members are asked to declare any personal interests (and whether or not such an interest is "prejudicial") in any matter on the Agenda for this meeting. A personal interest is defined in paragraph 8 of the Code and a prejudicial interest is defined in paragraph 10.

4. **Public Participation at Committees**

a) Questions/comments from members of the public

This is a chance for members of the public and representatives of Parish/Town Councils to participate in the meeting by asking questions, making comments and raising matters of concern.

5. **Items for Discussion**

6. **Sexual Encounters Venues 4**
7. **Gambling Act 2005 – Fees..... 9**
8. **Update on the Licensing Service..... 11**
9. **Forward Plan..... 12**
10. **Next Meeting 14**

6. Sexual Encounters Venues

Executive Portfolio Holder: Ric Pallister (Health, Housing and Spatial Planning)
Assistant Director: Laurence Willis, Environment
Lead Officer: Nigel Marston, Licensing Manager, Licensing Service
Contact Details: nigel.marston@southsomerset.gov.uk or (01935) 462137

Purpose of the Report

The Policing and Crime Act 2009 reclassifies lap dancing and pole dancing clubs as Sexual Encounter Venues and gives local authorities in England and Wales the power to regulate them as Sex Establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

These new measures became available on the 6th April 2010 in England and if adopted by the Council, will give local people a greater say over where, and how many, sex encounter venues open and operate in their neighbourhood.

Recommendation(s)

That Committee is asked to RECOMMEND that Council:

- (1) Pass a resolution to adopt section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009.
- (2) To set a Licensing fee for a Sexual Encounter Venue, i.e.
 - Grant £10,926
 - Renewal £2,864
 - Transfer £2,864
- (3) To delegate to the Licensing Manager all powers under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009, subject to the Council Scheme of Delegation.

Background

The Council has adopted Local Government (Miscellaneous Provisions) Act 1982 and, under Schedule 3 of the Act, already licenses one sex shop in Sherborne Road, Yeovil.

The Policing and Crime Act 2009 came into force on the 6th April 2010 and introduced a new category of sex establishment called a 'Sexual Encounter Venue', which will allow local authorities to regulate lap dancing clubs and similar venues as an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1882.

The new category covers venues that provide "Relevant Entertainment", which is defined as: "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)."

Examples of this type of venue include premises offering entertainment commonly described as:

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

The definition of sexual encounter venues excludes:

- Sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act).
- Premises, which provide 'Relevant Entertainment' on an infrequent basis.

Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003, insofar as they are providing regulated entertainment by virtue of a premises licence, club premises certificate or a temporary event notice issued under that Act. Any premises that provide relevant entertainment on more occasions than the exemption allows, will be operating as a sexual entertainment venue and will require a sexual entertainment venue licence

For example:

- on no more than 11 occasions within a 12 month period);
- more frequently or for a longer period of time than is permitted (over 24 hours)

The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a sex establishment venue is appropriate for a particular locality. The provisions bring the licensing of lap dancing premises and similar venues in line with other "sex establishments" and allow the Licensing Authority to prescribe standard conditions on grounds not covered by the Licensing Act 2003; for example, location, hours, display of adverts and the visibility of the interior of the premises.

Should the Authority adopt the provisions, there will be a further 12 month transitional period where existing operators (of which there are none in the District) can apply for licences under the new laws. There are no automatic "grandfather rights" as there were under the Licensing Act 2003 and the Gambling Act 2005. New applicants can also within the first 12 months period apply to the Licensing Authority for a Sexual Entertainment Venue Licence; however, applications may not be determined before a period of six months after the date the provisions are adopted.

While local authorities are not required to publish a policy relating to sex establishments, they can do so if they wish as long as it does not prevent any individual application from being considered in its merits at the time the application is made.

If Council are minded to adopt this legislation it is intended that a policy will be brought forward for approval following a period of public consultation and before the first day on which applications can be determined.

Schedule 3 to the 1982 Act states that an application for the grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable. If this legislation is adopted the fee structure set out in recommendation 2 to this report is recommended for approval to ensure full cost recovery. Research has been carried out

into the fees set or proposed by other Council's in the surrounding area and these are contained in Appendix A. It will be seen that these fees vary considerably.

In determining the proposed fee levels in recommendation 2, I have had regard to 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. In effect fees set must be proportionate to the effective cost of the procedure dealt with and must not be used as an economic deterrent or to raise additional funds for the Council. It is anticipated that any initial application for the grant of a licence under this legislation would face considerable opposition, which would be costly to the Council in respect to hearings and possible appeals. It is at this initial application stage where objections are most likely. The recommended fee for the initial application of £10,926 is based on the estimated costs of an appealed application for a licence in the Magistrates Court and is in line with the current fee for a licensed sex shop application.

Once a licence is granted experience elsewhere has shown that sex establishments generally cause few problems although there is always the possibility of objections being made to the renewal of a licence and perhaps a greater possibility of objections relating to a variation application although that would depend on the type of variation. The proposed fees mirror those fees currently charged by this Council for the same applications in respect to sex shops.

Interaction with Licensing Act 2003

Schedule 7 to the 2009 Act amends the 2003 Act to ensure that premises for which a sexual entertainment venue licence is held, do not also require a premises licence, club premises certificate or temporary events notice in order to provide 'relevant entertainment'.

However, if the premises also carry on other licensable activities they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the 2003 Act for those other activities.

In practice, this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of 'relevant entertainment', and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment.

If Members choose not to adopt the new powers the Council will rely solely on the Licensing Act 2003 to control such premises and the consideration of applications would be restricted to the four Licensing Objectives – Public Safety, Prevention of Public Nuisance, Prevention of Children from Harm and Prevention of Crime and Disorder.

Whilst the controls available under the Licensing Act may appear wide ranging, in practice powers to refuse such applications are quite restrictive.

Increased Controls

The adoption of the new laws would make available wider discretion to Members.

Refusal options would include

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) the number of sex establishments exceeds the number which the authority consider is appropriate for that locality;

- (c) that the grant or renewal of the licence would be inappropriate, having regard to:
- (i) the character of the relevant locality; or
 - (ii) the use to which any premises in the vicinity are put; or
 - (iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Implementation

If Council is minded to adopt Schedule 3 the legislation requires that an advertisement process (public notice) be undertaken before it can come into effect. A notice must be placed in a local paper circulating in the area for two consecutive weeks with the first publication being not later than 28 days before the date specified on which the provisions come into force. If Council resolve to adopt the legislation with it coming into effect on the 1st June 2011 the notices would be placed as required during April and May 2011. These notices are not a consultation but intended as notification that the Council has adopted this power.

Whilst applications could be made for a Sexual Entertainment Venue licence from the 1 June 2011, (the date proposed for the adopted legislation to come into effect), the legislation prevents the Council considering any application for the first six months. This means that the earliest opportunity for an applicant to have their application considered would not be until December 2011.

Financial Implications

Costs to the Council of a public consultation should the resolution to adopt not be passed before 6 April 2011.

Implications for Corporate Priorities

There will be a positive impact on Corporate Theme 4, ensuring safe, sustainable and cohesive communities.

Other Implications

None

Background Papers: Policing and Crime Act 2009
Local Government (Miscellaneous Provisions) Act 1982
Sexual Entertainment Venues – Home Office Guidance
England and Wales (March 2010)

APPENDIX A

Table of Sex Establishment licensing fees for neighbouring authorities

Authority	Grant	Renewal	Transfer	Variation
Torrige D C	£1,000 (+ refundable hearing fee of £3,300) Total - £4,330	£650 (+ refundable hearing fee of £2290) Total - £2,940	£650 (+ refundable hearing fee of £2290) Total - £2,940	
North Devon D C	£2,300.07 (+ refundable hearing fee of £2,032.45) Total - £4,332.52	£650.72 (+refundable hearing fee of £1,591.50) Total - £2242.22	£180.61 (+ refundable hearing fee of £381.27) Total - £531.85	
Teignbridge D C	£2,450	?	?	
Mid Devon D C	£2,000	£2,000	£2,000	
West Devon B C	£5,600	£450	£1,300	
South Hams D C	£5,600	£450	£1,300	
East Devon D C	£2,000 (+ refundable uncontested hearing fee of £4,000) Total £6,000	£1,000	£1,200	£1,000 (+ refundable uncontested hearing fee of £4,000) Total £5,000
Exeter C C	£3,265	?	?	
Plymouth C C	£2,700	?	?	
Torbay C C	£5,697	£5697	£5,697	
Sedgemoor D C	£3,000	£3,000		
South Somerset D C	£10,712	£5,616		
West Somerset D C	£3270	£2,946		
Taunton Deane	£12,000	£6,500		
East Dorset D C	£500	£500		
West Somerset D C	£3,270	£2,946		

Figures in heavy type are current fees

Figures in ordinary type are approved/proposed fees for 2011/12

7. **Gambling Act 2005 – Fees**

Executive Portfolio Holder: Ric Pallister, Licensing
Assistant Director: Laurence Willis
Lead Officer: Anita Legg, Licensing Officer
Contact Details: anita.legg @southsomerset.gov.uk or (01935) 462137

Purpose of the Report

To advise the Licensing Committee that further provision should be made for the collection of two chargeable fees under the Gambling Act 2005.

Recommendations

1. That the Licensing Committee approve the provision of a fee under the Gambling Act 2005 for a 'copy of a premises licence' and for a 'change of circumstances'.
2. That the Licensing Committee approve the proposed fees

Background

District Councils were designated as Licensing Authorities under the Gambling Act 2005¹ (the Act) and as such may determine their own fees for prescribed gambling activities, subject to the maximum charge stated in the Regulations.²

The Full Council delegated authority to approve fees charged under the Act, to the Licensing Committee on 14 December 2006. Approval for the proposed fees was given on 17 May 2007 and was approximately 85% of the maximum amount permitted. These fees are (or were at the time of setting) the same for all Somerset Councils.³

Fee Omission

Two chargeable fees were omitted from the report given to the Licensing Committee on 17 May 2007 and it is proposed that these fees are now included as follows:

- Copy of a premises licence - £22. The maximum fee payable in accordance with the regulations is £25.
- Change of Circumstances (at present this relates to a change of home or business address) £43. The maximum fee payable in accordance with the regulations is £50.

Financial Implications

None

Implications for Corporate Priorities

None

Other Implications

¹ S2 Gambling Act 2005

² SI 2007 No. 479 The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007

³ Except Somerset County Council, which is not a Licensing Authority under this Act.

None

Background Papers: SI 2007 No. 479 The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007

8. Update on the Licensing Service

Strategic Portfolio Holder: Ric Pallister (Health and Housing) Deputy Leader
Assistant Director: Laurence Willis - Environment
Lead Officer: Nigel Marston Licensing Manager
Contact Details: Nigel.marston@southsomerset.gov.uk or (01935) 462 150

The Licensing Manager will update members verbally on recent Licensing Service Activities. This will give members the opportunity to respond and comment.

9. Forward Plan

Head of Service: Nigel Marston, Licensing Manager
Lead Officer: Anne Herridge, Committee Administrator
Contact Details: Anne.herridge@southsomerset.gov.uk or (01935462570)

Purpose of the Report

This report informs Members of the agreed Licensing Forward Plan.

Recommendation

Members are asked to: -

1. Comment upon and note the proposed Licensing Committee Forward Plan as attached at Appendix A and.
2. Identify priorities for further reports to be added to the Licensing Committee Forward Plan.

Licensing Committee Forward Plan

The forward plan sets out items and issues to be discussed over the coming few months. It is reviewed and updated each month, and included within the Licensing Committee agenda, where members of the Licensing Committee (LC) may endorse or request amendments.

Members of the public, councillors, service managers, and partners may also request an item be placed within the forward plan for a future meeting, by contacting the agenda co-ordinator.

Further details on these items, or to suggest / request an agenda item for the Licensing Committee, please contact the Agenda Co-ordinator; Anne Herridge.

Background Papers: None

Licensing Forward Plan

Appendix A

Notes

- (1) Further details on these items, or to suggest / request an agenda item for the Licensing Committee, please contact the Agenda Co-ordinator; Anne Herridge 01935462570 or e mail anne.herridge@southsomerset.gov.uk

Meeting Date	Agenda Item	Background Purpose	Link to SSDC Area & Corporate Priorities; SCC Corporate priorities and National Indicators (NI)	Lead Officer
12 Apr 11	Home Boarding Fees			Nigel Marston Licensing Manager
12 April 11	Animal Welfare report			Nigel Marston Licensing Manager
12 Apr 11	Enforcement update	To inform members of recent enforcement activity		Nigel Marston Licensing Manager
Dec 11	Street Trading Fees - update	A report on Street Trading.		Colin Chown Licensing Officer
Dec 11	Enforcement update	To inform members of recent enforcement activity		Nigel Marston Licensing Manager

*Anne Herridge, Committee Administrator, (01935) 462570
Email: anne.herridge@southsomerset.gov.uk*

Licensing Committee – 8 February 2011

10. Next Meeting

Members note that the next scheduled meeting of the Licensing Committee will take place on Tuesday 12 April 2011 at 10.00 am at the Council Offices, Brympton Way Yeovil.

*Anne Herridge Committee Administrator, Legal and Democratic Services SSDC
Anne.herridge@southsomerset.gov.uk or (01935 462570)*
