

**THE REGULATORY COMMITTEE reports and recommends as follows:-**

**1. Local Government (Miscellaneous Provisions) Act 1982 – Regulation of Sexual Entertainment Venues**

That they have given consideration to the attached report by the Executive Director of City Services on the adoption of a Sexual Entertainment Venue Licensing Policy and agreed to:-

- (i) approve the amendments to the draft sexual entertainment venue policy recommended in paragraph 4.0 of the report;
- (ii) approve the adoption of the draft sexual entertainment venue policy;  
and
- (iii) refer the policy to full Council for final approval.

Accordingly the Committee recommends the Council to approve and adopt the final Sexual Entertainment Venue Licensing Policy attached to this report.

**Sunderland City Council**

**City Services**

**Sexual Entertainment Venue  
Licensing Policy**

## Sexual Entertainment Venue Licensing Policy

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### 1. Introduction

- 1.1 Sunderland City Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act') (as amended by section 27 of the Policing and Crime Act 2009) on 7 March 2011. This allows the Council to license sexual entertainment venues. This policy indicates our approach to the enforcement of this law.
- 1.2 The Council is unable to take a moral stand in adopting this policy as we recognise that Parliament has made it potentially lawful to operate a sexual entertainment venue. It is our role as a licensing authority to administer the licensing regime in accordance with the law.
- 1.3 Both the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009 can be viewed at [www.legislation.gov.uk](http://www.legislation.gov.uk).

### 2. Consultation

- 2.1 We consulted on this policy between 13 June 2011 and 29 July 2011 and it was approved by our Regulatory Committee on 3 October 2011.
- 2.2 Consultation was conducted with the representatives of local residents; the statutory responsible authorities under the Licensing Act 2003; and the representatives of holders of Licensing Act 2003 premises licences and club premises certificates in the City.

### 3. Objectives of Policy

- 3.1 The overarching objectives of the policy are to:
  - promote the Council's visions and values;
  - protect the rights and health and safety of the general public, workers and businesses; and
  - ensure consistent and transparent decision making.
- 3.2 This document outlines the policy which will guide Sunderland City Council when considering applications for sexual entertainment venue licences under the Act.

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### 4. Commenting on licence applications

- 4.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), any persons may raise objections about sexual entertainment venue licences. The Police are a statutory consultee for all applications.
- 4.2 We may only consider representations which are relevant to the statutory grounds for refusal that are set out in the Act. These grounds are shown below in paragraphs 8.1 to 8.3.
- 4.3 We will take the following approach to deciding applications:
- each case will be decided upon its merits. The Council will not apply any rigid rules to its decision making;
  - objectors may include residents' associations, community associations and trade associations. Councillors and MPs may also raise objections. Councillors may represent interested parties, providing that they do not also sit on the Regulatory Committee determining the application in question; and
  - we will give clear reasons for our decisions.
- 4.4 We are not able to consider objections which relate to moral grounds as these are outside the scope of the Act.
- 4.5 Objections must be made in writing and submitted to the Council no later than twenty eight days after the application is submitted to the Council.
- 4.6 Objections will be considered by the Regulatory Committee. We will give both applicants and objectors an equal opportunity to state their case.
- 4.7 We request that objections:
- indicate the name and address of the person or organisation making the representation and whether they consent to their details being released to the applicant;
  - indicate the premises to which the objection relates; and
  - clearly set out the reasons for making the objections.

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### **5. Exchange of Information**

- 5.1 The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners in order to fulfil its statutory duty to reduce crime, disorder, substance misuse and behaviour which adversely affects the environment and reoffending in our area.
- 5.2 The Council is under a duty to protect the public funds we administer, and to this end may use the information provided on application forms for the prevention and detection of fraud. We may also share the information with other bodies responsible for auditing or administering public funds for these purposes.
- 5.3 Details of applications and objections which are referred to the Regulatory 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.
- 5.4 The names and addresses of objectors will not be disclosed to applicants or published in public reports without the consent of the person making the objection. However, such details will be made available to Councillors of the Regulatory Committee on the day of the hearing.

### **6. Compliance and Enforcement**

- 6.1 Our approach to enforcement is set out in our Enforcement Policy which is available on request.

### **7. Relevant entertainment**

- 7.1 A sexual entertainment venue licence is required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.
- 7.2 ‘Relevant entertainment’ 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).” An audience may consist of just one person, e.g. in a private booth.
- 7.3 In deciding whether any entertainment is ‘relevant entertainment’ we will judge each case on its merits, but the term ‘relevant entertainment’ will generally be taken to include:

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- lap dancing;
- pole dancing;
- table dancing;
- strip shows;
- peep shows; and
- live sexual shows.

Adult entertainment not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003.

### 8. Grounds for Refusal

8.1 There are some specific grounds for refusing sexual entertainment venues which are set out in paragraph 12 of Schedule 3 to the Act. These include the situation where an applicant is unsuitable, due to his/her age, domiciliary status or previous criminal convictions.

8.2 We can also refuse applications for new or renewed licences where:

- the number of sexual entertainment venues in the relevant locality at the time the application is determined to be equal to or exceeds the number which we consider appropriate for that locality;
- 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
  - (ii) to the layout, character or condition of the premises.

8.3 In considering the characteristics of a locality within which a licence is sought we shall particularly take account of the density and proximity of:

- residential accommodation;
- parks and children’s play areas;
- retail units (and their uses);

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- schools;
- religious and communal buildings; and
- alcohol or entertainment licensed premises.

### 9. Application form

- 9.1 We have a standard application form and a model public notice, which are available upon request. The application must be accompanied by a plan of the premises which is clear and legible in all material respects and which identifies the area(s) within which relevant entertainment is to be provided.

### 10. Licence conditions

- 10.1 We have adopted a set of standard conditions for the operation of sexual entertainment venues. These will be added to any licence issued unless modified by the Council's Regulatory Committee. These conditions are attached as Appendix 1
- 10.2 Other conditions may be imposed upon licences by the Council where considered appropriate.

### 11. Fees

- 11.1 Our fees will be set each year. Details are available from our Licensing Section and on our website at [www.sunderland.gov.uk](http://www.sunderland.gov.uk). We will charge separate fees for applications for the grant, variation, renewal or transfer of licences.

### 12. Examples of Good Practice

- 12.1 Listed below, as examples of good practice, are methods by which the holders of sexual entertainment venue licences could comply with the requirements of various pieces of legislation. Although compliance with this good practice is not required by the 1982 Act the Council believes that the matters covered are so important that they should be brought to the attention of any person applying for a sexual entertainment venue licence.
- Adequate arrangements must exist to enable the safe evacuation of disabled people in the event of an emergency. Staff must be aware of disabilities and react according to a pre-determined plan.

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- All escape routes and exits must be kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified.
- All doors leading from exits into passages or to the outside of the premises shall be without locks, bolts or other fastenings, except that those doors used only for exit which shall be fitted with panic bolts and the method of opening shall be clearly indicated on the door to which it is fitted. Panic bolts shall not be secured with chains, padlocks or other locking devices when the premises are being used for the purposes of the licence.
- No person should be employed at the Licensed Premises to carry out a security activity as defined by Schedule 2 of the Private Security Industry Act 2001 unless he/she is authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or is entitled to carry out that activity by virtue of section 4 of that Act.

## **APPENDIX 1**

# **STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES**

**Sexual Entertainment Venue Licensing Policy**

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## **Sexual Entertainment Venue Licensing Policy**

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### **Protection of Customers**

1. Entry prices and prices for compulsory purchases (such as beverages) must be clearly displayed on the exterior of the premises or at a location inside the premises where they may be seen by a potential customer prior to entering any area of the premises in respect of which any payment is required.
2. All charges for products and services must be prominently displayed within the premises.
3. The Licensee shall produce and maintain Rules of Conduct for Customers. These Rules of Conduct must contain the following:
  - a) Customers viewing a lap dance must remain seated during the entire performance of the dance;
  - b) Customers may not dance at any time in areas identified for the provision of relevant entertainment in the submitted plan of the premises;
  - c) Customers must remain clothed at all times;
  - d) No photography is permitted, during performances, including the use of mobile phones or other electronic devices for such; and
  - e) Customers may not touch any performer.
4. The Rules of Conduct shall be prominently displayed at the entrance to the premises, at each customer table and in the bar area.

### **Children/non-users**

5. No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 25 must be asked to provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must provide prominent notices at each entrance to the Premises to this effect.
6. Performers shall be aged not less than 18 years. The Licensee must ensure that all performers, before commencing employment at the premises, provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must maintain records of the names, addresses and dates of birth of performers.

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7. The Licensee shall not permit the display outside of the Premises of photographs or other images which may be offensive.
8. The Licensee shall ensure that the interior of the Premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. Performers must not be visible from outside of the Premises.
9. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) display or distribute any advertisement which is offensive to public sentiment.

### **Protection for performers/prevention of crime and disorder**

10. The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:
  - a) Performers shall only perform in areas identified for the provision of relevant entertainment in the submitted plan of the premises
  - b) Performers must remain clothed in the presence of customers except while performing in the areas identified for the provision of relevant entertainment in the submitted plan of the premises.
  - c) Performers must never be alone in the company of a customer except in an area either visible to other persons within the Premises. Compliance with this rule may be achieved by the use of continually observed Closed Circuit Television monitors.
  - d) Performers may not perform any act that simulates any sexual act.
  - e) Performers must never touch the genitals or breasts of another person or knowingly permit another person to touch their genitals or breasts.
  - f) Performers may not use any sex article during a performance.
11. All performers are to be provided with a copy of the Code of Conduct for Performers and are to be given training on its contents.
12. Performers must be provided with a secure lockable changing room with separate sanitary facilities from those used by the customers.

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### **The Premises**

13. Where lap dancing is performed, the Licensee shall ensure that an internal and external CCTV system of a type and specification approved by Northumbria Police is installed at the premises. Specifically:
- a) the system shall be maintained in good working order with regular servicing and shall be operational throughout the operating hours of the premises;
  - b) The system must provide coverage of all parts of the premises to which customers have access;
  - c) images recorded by the system shall be retained securely for a minimum of 31 days and must be immediately available on request to a Police officer or authorised officer of the Council; and
  - d) there must be at least one member of staff on duty throughout operating hours who is trained and capable of downloading recorded CCTV images onto discs or other mobile data storage devices.

### **Management Standards**

14. The Licensee must remain in personal control of the Premises at all times or nominate in writing to the Council an individual over the age of 18 who will direct activities within the Premises.

# **REPORT OF THE EXECUTIVE DIRECTOR OF CITY SERVICES**

## **REGULATORY COMMITTEE – 3 OCTOBER 2011**

### **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 – REGULATION OF SEXUAL ENTERTAINMENT VENUES**

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

- 1.1 To request the Committee to consider the outcome of the consultation exercise undertaken on the Council's draft sexual entertainment venues policy and to consider amendments to the draft policy.

#### **2.0 DESCRIPTION OF THE DECISION**

- 2.1 Members are requested to:

- i) approve the amendments to the draft sexual entertainment venue recommended in paragraph 4.0 below;
- ii) approve the adoption of the draft sexual entertainment venue policy; and
- iii) refer the policy to full Council for final approval.

#### **3.0 INTRODUCTION/BACKGROUND**

- 3.1 The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act') in order to enable councils, from 6 April 2010, to commence the process, should they so choose, of regulating premises which operate as 'sexual entertainment venues'.
- 3.2 The Council, at its meeting on 26 January 2011, resolved to adopt the amended Act with effect from 7 March 2011. This became, for the purposes of the Act, the 'first appointed day'. Since that date, potential operators of such premises have been able to apply to the Council for a sexual entertainment venue licence. Any applications received before what is described in the Act as the 'second appointed day', i.e. 7 September 2011, are required to be considered together. In the event, only one application has been received and this will be referred to the Committee for determination after the statutory consultation period is concluded. After the third appointed day, i.e. 7 March 2012, only those persons who have been granted a licence, subject to the statutory appeal process, will be allowed to provide sexual entertainment.
- 3.3 The Committee at its meeting on 28 March 2011 resolved that it wished the Council to adopt a policy with regard to the licensing of Sexual Entertainment Venues and requested that officers prepare a draft policy statement. A copy of this draft policy is attached as Appendix 1.

- 3.4 The Committee at its meeting on 23 May 2011 resolved that approval be given to a consultation exercise being undertaken in respect of the draft Sexual Entertainment Venues Policy; and that the policy be re-submitted to the Regulatory Committee for approval following the expiration of the consultation period and then referred to full Council for final approval.
- 3.5 Licensing Officers have sought views upon the draft policy in respect of sexual entertainment venues from persons who it may affect. The period for such consultation is now concluded.

#### **4.0 CURRENT POSITION**

- 4.1 One response has been received from Northumbria Police, one response has been received from a Council department, one response has been received from a member of the public and a further response has been received from a company which provides the type of entertainment which would require a licence under the amended legislation.
- 4.2 Northumbria Police have advised that they have reviewed the draft policy and do not wish to add to or modify any of the content.
- 4.3 Julie Smith, Associate Policy Lead for Community Safety for the Office of the Chief Executive, has suggested, in order to more fully reflect the Council's responsibility with regard to the Crime and Disorder Act, replacing the original Section 5.1 of the draft policy which reads:

**'The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners in order to fulfil our statutory objective of reducing crime in our area.'**

with:

**'The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners in order to fulfil its statutory duty to reduce crime, disorder, substance misuse, behaviour which adversely affects the environment and reoffending in our area.'**

The Committee is recommended to agree this proposed amendment.

- 4.4 Mr. J. Byron, a resident of Sunderland, has submitted the following representation:

'I understand the problem that the authority has, but consideration of the local residents relating to any such type of application must be a primary consideration as all applications will differ in many respects.'

The Committee may wish to note that the Act prescribes a statutory application process which requires a prospective operator to advertise an application by placing a public notice in the local press and, also, on or near the proposed licensed premises for a period of twenty one days. The Council may then consider any views expressed by persons resident near the premises but may refuse an application only on the grounds laid out in the Act. These are reiterated in Section 8 of our draft policy. The Committee is not therefore recommended to consider any amendment to the draft policy as a result of the comments made by Mr. Byron.

- 4.5 Mr. Mike Walker, Director of LBB Leisure Sunderland Limited, a current operator of a premises which will, potentially, require a licence, has submitted the representations set out in italics below with regard to the Standard Conditions for Sexual Entertainment Venues contained in the draft policy. Above each of Mr. Walker's comments are set out in bold type the current draft conditions about which he remarks and set out below each of his comments are the responses recommended to the Committee.

4.6 **Condition 1**

**Entry prices and prices for compulsory purchases (such as beverages) must be clearly displayed on the exterior of the premises.**

*'Although I can appreciate why you would want details of any mandatory charges displayed before a customer has committed themselves to having to make the payment, I'm not clear why they need to be displayed outside the building. Providing they are predominantly displayed in the reception area before the customer gets as far as the admission till is that not sufficient? The customer is still able to change their mind at this stage without any obligation to make a payment or proceed further and it has the added benefit of making the building more discreet.'*

The Committee is recommended to agree to amend Condition 1 as set out below (additions in italics) in order to address the concerns of Mr. Walker while offering an equivalent level of protection to the potential users of licensed premises:

**'Entry prices and prices for compulsory purchases (such as beverages) must be clearly displayed on the exterior of the premises or at a location inside the premises where they may be seen by a potential customer prior to entering any area of the premises in respect of which any payment is required.'**

#### 4.7 Condition 3 - Rules a), b) and d)

**The Licensee shall produce and maintain Rules of Conduct for Customers. These Rules of Conduct must contain the following:**

- a) **Customers viewing a lap dance must remain seated during the entire performance of the dance;**
- b) **Customers may not dance at any time in areas identified for the provision of relevant entertainment in the submitted plan of the premises;**
- d) **No photography is permitted including the use of mobile phones or other electronic devices for such.**

*'You do not appear to want customers dancing in performance areas or any photography from taking place. Although I can understand you may have concerns about customers dancing or taking photographs while a performance is taking place, a total ban seems excessive. Although any approved venue would be a Sexual Entertainment Venue it would also still be a bar and the non-Sexual Entertainment Venue regulated activities should be treated in the same way that they would be in any other premises - unless of course you are going to ban dancing and photography from all pubs and clubs. I would suggest some rewording of point 3(d) to prevent photographs been taken of the performance itself and the complete removal of condition 3(b) as dancing during a performance is already prohibited in condition 3(a).'*

Notwithstanding the comments made by Mr. Walker in respect of rules 3 a) and b), the Committee is recommended not to amend these rules because, whereas rule 3 a) pertains to other activities as well as dancing conducted in a particular location, rule 3 b) relates to dancing only but has a wider geographical scope.

The Committee is recommended to amend rule 3 d) as set out below (additions in italics) in order to address the concern expressed by Mr. Walker whilst offering an equivalent level of protection to the potential users of licensed premises:

**'No photography is permitted, *during performances*, including the use of mobile phones or other electronic devices for such.'**

#### 4.8 Condition 3 - Rule e)

**The Licensee shall produce and maintain Rules of Conduct for Customers. These Rules of Conduct must contain the following:**

- e) **Customers may not touch any performer.**

*'The conditions regarding touching a performer are always problematic to word and although we appreciate the need for them, they generally require a degree of interpretation which can vary depending on who is interpreting and/or enforcing the condition. As the condition is currently worded, if taken literally, the customer would not be allowed to touch the dancer in any way at all, in any part of the venue, whether the dancer was performing or not. Which would mean they couldn't even shake hands when the dancer wasn't performing and it even makes paying for the dance difficult which I'm sure is an unintended consequence. To prevent any misunderstanding can this condition be replaced with; "Customers cannot touch a performer while a performance is taking place". Although you could argue that this new wording doesn't restrict contact when the performance isn't taking place, your proposed condition 10(e) covers this eventuality and prevents any inappropriate touching at all.'*

The Committee is recommended not to amend this rule on the ground that it is necessary to ensure that the characters of licensed premises are appropriate and that it is not persuaded that the rule will make paying for a dance difficult. In fact, during a visit to Mr Walker's premises earlier this year, Councillors and an officer observed a customer using a debit/credit card to make a payment. The Committee is recommended to note also that, notwithstanding the comment of Mr Walker that this rule is rendered superfluous by rule 10 e), this latter rule pertains to the conduct of performers whereas rule 3 e) pertains to the conduct of customers and so, therefore, is not redundant.

#### 4.9 **Condition 6**

**Performers shall be aged not less than 18 years. The Licensee must ensure that all performers, before commencing employment at the premises, provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must maintain records of the names, addresses and dates of birth of performers.**

*'Although the age and eligibility to work for any performer (or any other member of staff for that matter) is a big concern for businesses of this nature, and a subject we take extremely seriously, I would point out that it is possible to be over 18 and able to work in the UK without having the identification documents you describe in this point. In order to comply with this condition I would need to terminate the employment of anyone (even though I know they are over 18) for simply not possessing the documents you mention. Can you confirm that you have taken advice on employment law and that it is acceptable to terminate someone's employment for these reasons alone? I would also suspect that due to data protection requirements we would only be able to disclose employees personal details to the authorities with a*

*statutory responsibility for enforcing employment/taxation law. Please note that we are not just being bloody minded about this point, we are genuinely worried that by complying with your license conditions we risk committing some other offence which clearly we need to guard against.'*

The Committee is recommended not to amend this rule on the grounds that that the documents required are readily available and are necessary to ensure that the characters of licensed premises do not harm young people. The issues of employment law raised by Mr Walker are not within the scope of the policy and he has been advised to seek his own independent legal advice in this regard.

4.10 **Condition 10 Rules a) and b)**

**The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:**

- a) Performers shall only perform in areas identified for the provision of relevant entertainment in the submitted plan of the premises**
- b) Performers must remain clothed in the presence of customers except while performing in the areas identified for the provision of relevant entertainment in the submitted plan of the premises.**

*'This point is confusing our understanding of the Sexual Entertainment Venue licensing regulations. It also highlights that your conditions only relate to lap dancing and stripping at this stage and not any of the other multitude of variations of entertainment that are covered by the legislation. We thought that any Sexual Entertainment Venue license granted allowed nudity in the entire venue, not only part of it as this condition seems to imply. I doubt very much this will make any difference to our application but these are genuine thoughts going round our heads at the moment as we try to ensure our interpretation of the legislation is accurate. If the only parts of the venue that are allowed to have topless/nude performers are those nominated by the applicant as performance areas then is it only those parts of the venue that are required to be licensed? If the performer has to be clothed in all other parts of the bar then where does the requirement for the non-performance areas to have a Sexual Entertainment Venue licence come from? If the non- performance areas of the bar are regarded as being outside the Sexual Entertainment Venue licence then presumably the Sexual Entertainment Venue licence conditions won't apply in these areas? How would this work should a party booking want topless bar staff or a topless waitress which requires movement around the entire bar and which many venues provide? What about if we wanted to provide table dancing rather than lap dancing which is done in the main bar area?'*

Notwithstanding Mr. Walker's comments regarding Condition 10 rules a) and b), the Committee is recommended not to amend these rules on the grounds that it is necessary for the Council to ensure that the layout and character of licensed premises are appropriate by means of controlling the location of various activities within the premises and that it is open to an applicant to indicate the proposed use of the various parts of his premises as desired.

#### 4.11 **Condition 10 Rule c)**

**The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:**

- c) Performers must never be alone in the company of a customer except in an area visible to other persons within the Premises.**

*'I would appreciate clarification of point 10(c) of the annexe to the policy which states, "customers must never be alone in the company of customer except in an area visible to other persons within the premises." I'm assuming all areas covered by a watched CCTV monitor would be regarded as being visible to other persons but I would appreciate confirmation of my interpretation.'*

Licensing Officers have consulted Northumbria Police with regard to Mr. Walker's interpretation of this rule. As the Police have no concerns about CCTV being used to secure compliance with the rule, the Committee is recommended to agree, in order to address the concerns of Mr. Walker while offering an equivalent level of protection to the potential users of licensed premises, that the rule should be amended (additions in italics) to read:

**'Performers must never be alone in the company of a customer except in an area either visible to other persons within the Premises. *Compliance with this rule may be achieved by the use of continually observed Closed Circuit Television monitors.***

#### 4.12 **Condition 10 Rule f)**

**The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:**

- f) Performers may not use inappropriate, suggestive or sexually graphic language at any time.**

*'Although we don't tolerate bad language by any member of staff on our premises I'm not sure why this is a Sexual Entertainment Venue license condition. Employees from every walk of life use inappropriate language from time to time and although unpleasant I don't see why*

*this should be regarded more seriously in a Sexual Entertainment Venue licensed establishment than in any pub, shop, office or workplace, especially as in your letter of 13th June you advise that sexually stimulating language in itself generates a need for a Sexual Entertainment Venue license. It would be somewhat ironic for premises with a Sexual Entertainment Venue license which could allow such language, to be banned from using it, whereas other premises that don't hold such a license, and therefore shouldn't be allowing it to happen, can get away with it.'*

Given that the definition of sexual entertainment in the Act encompasses the use of words for the purpose sexual stimulation, Licensing Officers agree with Mr. Walker that this rule is inconsistent with the principal legislation. On that basis, the Committee is recommended to agree that Condition 10 rule f) be removed from the draft policy.

#### 4.13 **Condition 13 Rule d)**

**Where lap dancing is performed, the Licensee shall ensure that an internal and external CCTV system of a type and specification approved by Northumbria Police is installed at the premises. Specifically:**

- d) there must be at least one member of staff on duty throughout operating hours who is trained and capable of downloading recorded CCTV images onto discs.**

*'As technology develops memory sticks are becoming the more common method of storing saved cctv images. Could memory sticks therefore be added to the condition as a means of handing over data to ensure the condition doesn't become obsolete very quickly?'*

The Committee is recommended to agree to amend Condition 13 rule (d) as set out below (additions in italics) in order to address the concerns of Mr. Walker while offering an equivalent level of protection to the potential users of licensed premises:

**'there must be at least one member of staff on duty throughout operating hours who is trained and capable of downloading recorded CCTV images onto discs *or other mobile data storage devices*'.**

#### 4.14 **Conditions 14 to 18**

- 14. Adequate arrangements must exist to enable the safe evacuation of disabled people in the event of an emergency. Staff must be aware of disabilities and react according to a pre-determined plan.**

15. **All escape routes and exits must be kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified.**
16. **All doors leading from exits into passages or to the outside of the premises shall be without locks, bolts or other fastenings, except that those doors used only for exit which shall be fitted with panic bolts and the method of opening shall be clearly indicated on the door to which it is fitted. Panic bolts shall not be secured with chains, padlocks or other locking devices when the premises are being used for the purposes of the licence.**
17. **No person shall be employed at the Licensed Premises to carry out a security activity as defined by Schedule 2 of the Private Security Industry Act 2001 unless he/she is authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or is entitled to carry out that activity by virtue of section 4 of that Act.**
18. **The Licensee must remain in personal control of the Premises at all times or nominate in writing to the Council an individual over the age of 18 who will direct activities within the Premises.**

*'As these points are all covered by other legislation I'm not sure why they are included in the licensing conditions. All premises have to comply with these conditions regardless of whether it's mentioned on the licence or not and each department responsible for ensuring compliance in these areas already has powers to deal with offenders together with suitably trained staff able to accurately enforce the legislation.'*

Licensing Officers have conducted further research on these matters and agree Conditions 14 to 17 duplicate statutory requirements elsewhere. The Committee is recommended therefore to agree to remove these conditions from the draft policy. However, the requirements of Condition 18 are not provided in any other legislation. The Committee is recommended, therefore, to retain this condition on the ground that is necessary to ensure that the characters of licensed premises are appropriate.

## **5.0 REASONS FOR THE DECISION**

- 5.1 To promote effective regulation of sexual entertainment venues.

## **6.0 ALTERNATIVE OPTIONS**

- 6.1 None.

## **7.0 RELEVANT CONSIDERATIONS**

7.1 None.

## **8.0 GLOSSARY**

8.1 No acronyms or abbreviations have been used in this report.

## **9.0 LIST OF APPENDICIES**

9.1 Appendix 1 – Draft copy of Sexual Entertainment Venues Policy.

## **10.0 BACKGROUND PAPERS**

10.1 Policing and Crime Act 2009.

10.2 Home Office Guidance on Sexual Entertainment Venues.

# APPENDIX 1

## **1. Introduction**

- 1.1 Sunderland City Council adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the 'Act') (as amended by section 27 of the Policing and Crime Act 2009) on 7 March 2011. This allows the Council to license sexual entertainment venues. This policy indicates our approach to the enforcement of this law.
- 1.2 The Council is unable to take a moral stand in adopting this policy as we recognise that Parliament has made it potentially lawful to operate a sexual entertainment venue. It is our role as a licensing authority to administer the licensing regime in accordance with the law.
- 1.3 Both the Local Government (Miscellaneous Provisions) Act 1982 and the Policing and Crime Act 2009 can be viewed at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **2. Consultation**

- 2.1 We consulted on this policy between 13 June 2011 and 29 July 2011 and it was approved by our Regulatory Committee on ZZZZ. This policy comes into effect on AAAA.
- 2.2 Consultation was conducted with the representatives of local residents; the statutory responsible authorities under the Licensing Act 2003; and the representatives of holders of Licensing Act 2003 premises licences and club premises certificates in the City.

## **3. Objectives of Policy**

- 3.1 The overarching objectives of the policy are to:
  - promote the Council's visions and values;
  - protect the rights and health and safety of the general public, workers and businesses; and
  - ensure consistent and transparent decision making.
- 3.2 This document outlines the policy which will guide Sunderland City Council when considering applications for sexual entertainment venue licences under the Act.

#### **4. Commenting on licence applications**

- 4.1 Unlike some other licensing regimes (such as for alcohol, entertainment, or gambling), any persons may raise objections about sexual entertainment venue licences. The Police are a statutory consultee for all applications.
- 4.2 We may only consider representations which are relevant to the statutory grounds for refusal that are set out in the Act. These grounds are shown below in paragraphs 8.1 to 8.3.
- 4.3 We will take the following approach to deciding applications:
- each case will be decided upon its merits. The Council will not apply any rigid rules to its decision making;
  - objectors may include residents' associations, community associations and trade associations. Councillors and MPs may also raise objections. Councillors may represent interested parties, providing that they do not also sit on the Regulatory Committee determining the application in question; and
  - we will give clear reasons for our decisions.
- 4.4 We are not able to consider objections which relate to moral grounds as these are outside the scope of the Act.
- 4.5 Objections must be made in writing and submitted to the Council no later than twenty eight days after the application is submitted to the Council.
- 4.6 Objections will be considered by the Regulatory Committee. We will give both applicants and objectors an equal opportunity to state their case.
- 4.7 We request that objections:
- indicate the name and address of the person or organisation making the representation and whether they consent to their details being released to the applicant;
  - indicate the premises to which the objection relates; and
  - clearly set out the reasons for making the objections.

#### **5. Exchange of Information**

- 5.1 The Council may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and

information with the Police and other partners in order to fulfil our statutory objective of reducing crime in our area.

5.2 The Council is under a duty to protect the public funds we administer, and to this end may use the information provided on application forms for the prevention and detection of fraud. We may also share the information with other bodies responsible for auditing or administering public funds for these purposes.

5.3 Details of applications and objections which are referred to the Regulatory 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.

5.4 The names and addresses of objectors will not be disclosed to applicants or published in public reports without the consent of the person making the objection. However, such details will be made available to Councillors of the Regulatory Committee on the day of the hearing.

## **6. Compliance and Enforcement**

6.1 Our approach to enforcement is set out in our Enforcement Policy which is available on request.

## **7. Relevant entertainment**

7.1 A sexual entertainment venue licence is required for “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

7.2 ‘Relevant entertainment’ 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).” An audience may consist of just one person, e.g. in a private booth.

7.3 In deciding whether any entertainment is ‘relevant entertainment’ we will judge each case on its merits, but the term ‘relevant entertainment’ will generally be taken to include:

- lap dancing;
- pole dancing;
- table dancing;
- strip shows;

- peep shows; and
- live sexual shows.

Adult entertainment not classed as “relevant entertainment” may still require licensing under the Licensing Act 2003.

## **8. Grounds for Refusal**

8.1 There are some specific grounds for refusing sexual entertainment venues which are set out in paragraph 12 of Schedule 3 to the Act. These include the situation where an applicant is unsuitable, due to his/her age, domiciliary status or previous criminal convictions.

8.2 We can also refuse applications for new or renewed licences where:

- the number of sexual entertainment venues in the relevant locality at the time the application is determined to be equal to or exceeds the number which we consider appropriate for that locality;
- 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
  - (ii) to the layout, character or condition of the premises.

8.3 In considering the characteristics of a locality within which a licence is sought we shall particularly take account of the density and proximity of:

- residential accommodation;
- parks and children’s play areas;
- retail units (and their uses);
- schools;
- religious and communal buildings; and
- alcohol or entertainment licensed premises.

## **9. Application form**

- 9.1 We have a standard application form and a model public notice, which are available upon request. The application must be accompanied by a plan of the premises which is clear and legible in all material respects and which identifies the area(s) within which relevant entertainment is to be provided.

## **10. Licence conditions**

- 10.1 We have adopted a set of standard conditions for the operation of sexual entertainment venues. These will be added to any licence issued unless modified by the Council's Regulatory Committee. These conditions are attached as Appendix 1
- 10.2 Other conditions may be imposed upon licences by the Council where considered appropriate.

## **11. Fees**

- 11.1 Our fees will be set each year. Details are available from our Licensing Section and on our website at [www.sunderland.gov.uk](http://www.sunderland.gov.uk). We will charge separate fees for applications for the grant, variation, renewal or transfer of licences.



## **APPENDIX 1**

# **STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES**



## **Protection of Customers**

1. Entry prices and prices for compulsory purchases (such as beverages) must be clearly displayed on the exterior of the premises.
2. All charges for products and services must be prominently displayed within the premises.
3. The Licensee shall produce and maintain Rules of Conduct for Customers. These Rules of Conduct must contain the following:
  - a) Customers viewing a lap dance must remain seated during the entire performance of the dance;
  - b) Customers may not dance at any time in areas identified for the provision of relevant entertainment in the submitted plan of the premises;
  - c) Customers must remain clothed at all times;
  - d) No photography is permitted including the use of mobile phones or other electronic devices for such; and
  - e) Customers may not touch any performer.
4. The Rules of Conduct shall be prominently displayed at the entrance to the premises, at each customer table and in the bar area.

## **Children/non-users**

5. No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 25 must be asked to provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must provide prominent notices at each entrance to the Premises to this effect.
6. Performers shall be aged not less than 18 years. The Licensee must ensure that all performers, before commencing employment at the premises, provide either a recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS), a photograph Driving Licence, a passport or official HM Forces or EU ID card bearing a photograph and date of birth. The Licensee must maintain records of the names, addresses and dates of birth of performers.
7. The Licensee shall not permit the display outside of the Premises of photographs or other images which may be offensive.

8. The Licensee shall ensure that the interior of the Premises is not visible from the outside of the Premises, and that the exterior is maintained to a satisfactory level of decorum. Performers must not be visible from outside of the Premises.
9. The Licensee shall ensure that neither they nor any person promoting or providing entertainment on the Premises (nor any person acting on behalf of any such person) display or distribute any advertisement which is offensive to public sentiment.

**Protection for performers/prevention of crime and disorder**

10. The Licensee shall produce and maintain a Code of Conduct for Performers. This Code of Conduct must contain the following:
  - a) Performers shall only perform in areas identified for the provision of relevant entertainment in the submitted plan of the premises
  - b) Performers must remain clothed in the presence of customers except while performing in the areas identified for the provision of relevant entertainment in the submitted plan of the premises.
  - c) Performers must never be alone in the company of a customer except in an area visible to other persons within the Premises.
  - d) Performers may not perform any act that simulates any sexual act.
  - e) Performers must never touch the genitals or breasts of another person or knowingly permit another person to touch their genitals or breasts.
  - f) Performers may not use inappropriate, suggestive or sexually graphic language at any time.
  - g) Performers may not use any sex article during a performance.
11. All performers are to be provided with a copy of the Code of Conduct for Performers and are to be given training on its contents.
12. Performers must be provided with a secure lockable changing room with separate sanitary facilities from those used by the customers.

## The Premises

13. Where lap dancing is performed, the Licensee shall ensure that an internal and external CCTV system of a type and specification approved by Northumbria Police is installed at the premises. Specifically:
  - a) the system shall be maintained in good working order with regular servicing and shall be operational throughout the operating hours of the premises;
  - b) The system must provide coverage of all parts of the premises to which customers have access;
  - c) images recorded by the system shall be retained securely for a minimum of 31 days and must be immediately available on request to a Police officer or authorised officer of the Council; and
  - d) there must be at least one member of staff on duty throughout operating hours who is trained and capable of downloading recorded CCTV images onto discs.
14. Adequate arrangements must exist to enable the safe evacuation of disabled people in the event of an emergency. Staff must be aware of disabilities and react according to a pre-determined plan.
15. All escape routes and exits must be kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified.
16. All doors leading from exits into passages or to the outside of the premises shall be without locks, bolts or other fastenings, except that those doors used only for exit which shall be fitted with panic bolts and the method of opening shall be clearly indicated on the door to which it is fitted. Panic bolts shall not be secured with chains, padlocks or other locking devices when the premises are being used for the purposes of the licence.
17. No person shall be employed at the Licensed Premises to carry out a security activity as defined by Schedule 2 of the Private Security Industry Act 2001 unless he/she is authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or is entitled to carry out that activity by virtue of section 4 of that Act.

## **Management Standards**

18. The Licensee must remain in personal control of the Premises at all times or nominate in writing to the Council an individual over the age of 18 who will direct activities within the Premises.