

REPORT TO:	LICENSING COMMITTEE 8 September 2016
AGENDA ITEM:	8
SUBJECT:	Sex Establishment Licensing Fee Setting – Schedule 3 Local Government (Miscellaneous Provisions) Act 1982
LEAD OFFICER:	Executive Director, Place Department
CABINET MEMBER:	Councillor Hamida Ali Cabinet Member for Safety & Justice
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT: N/a	
FINANCIAL SUMMARY: This report concerns the setting of fees for sex establishment licensing in the borough of Croydon. The Council is entitled to calculate fees that will generate income to offset the estimated costs to the Council of providing the service. The estimated income from fees will offset the costs of the services, there are no other financial implications	
FORWARD PLAN KEY DECISION REFERENCE NO.:	

For general release

1. RECOMMENDATIONS

- 1.1 The Committee is asked to adopt the fees set out in Appendix 1 to this report for the grant, renewal or transfer of a sex establishment licence.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to ask the committee to determine the fees for the grant, renewal or transfer of a sex establishment licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”).

3. DETAIL

- 3.1 Section 2 of the Act enables a local authority to adopt, by resolution, the provisions in Schedule 3 of the Act for the licensing control of Sex

Establishments. The London Borough of Croydon has previously adopted these provisions.

3.2 'Sex shop' is defined, in paragraph 4 (1) of Schedule 3 as "any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating (a) sex articles; or (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging - (i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity".

3.3 In the same paragraph, 'sex article' is defined at paragraph 4 (3) (a) as "anything made for use in connection with, or for the purpose of stimulating or encouraging – (i) sexual activity; or (ii) acts of force or restraint which are associated with sexual activity; and (b) anything to which the following applies – 4 (4) (a) "to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and (b) to any recording vision or sound".

3.4 There are three types of sex establishment, namely –
a) sex shop
b) sex cinema
c) sexual entertainment venue (SEV)

3.5 Para. 6 of Schedule 3 provides that premises may only be used as a sex establishment under and in accordance with the terms of a licence granted under Schedule 3.

3.6 There are currently three licensed sex establishments in the borough of Croydon. They are:

- Pillow Talk, 48 Lower Addiscombe Road (sex shop)
- Private Shop, 20c Selsdon Road (sex shop)
- Larry Flynt's Hustler Club (sexual entertainment venue)

3.7 The Council is the licensing authority under the Act and is responsible for the grant and renewal of sex establishment licences. Paragraph 19 of Schedule 3 states '*An applicant for the grant, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority*'.

3.8 In determining the fees to be set, Members are referred to the recent High Court case of Hemming v Westminster City Council which established that authorities, in setting/determining sex establishment fees to be charged could not include within the fees set an element for enforcement against unlicensed operators. In addition, one of the effects of the EU Services Directive, which remains in force, is that fees determined may encompass the reasonable costs of reimbursing the Council for the administrative processes of dealing with an application but may not include costs of broader enforcement. However, compliance of the licensed premises can be taken into account when fee setting.

3.9 In the light of the above the Council's fees for various licence applications

under the Act have been reviewed and the fees set out in Appendix 1 attached are recommended for approval by Members.

4. POLICE COMMENTS

4.1 As this report relates to local authority fee setting, comments have not been sought from the Croydon Police licensing officer regarding this matter.

5. APPEALS

5.1 There are no direct appeal provisions within the legislation with regard to fee setting. However, the local authority must only set fees that cover administrative and other reasonable costs and an aggrieved party may seek judicial review if they believe the fees set are excessive. Judicial review proceedings present financial and reputational risk to the Council.

6. CONSULTATION

6.1 There are no statutory consultation or advertisement requirements with regard to fee setting under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

7. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

7.1 The Council is entitled to calculate fees that will generate income to offset the estimated costs to the Council of providing the service. The estimated income from fees will offset the costs of the services, there are no other financial implications.

Approved by: Zulfiqar Darr, Interim Head of Finance, Place and Resources

8. COMMENTS OF THE COUNCIL SOLICITOR

8.1 The Acting Solicitor to the Council comments that there are no additional legal implications arising from the recommendations in the report other than those already set out within the body of the report.

(Approved by: Jacqueline Harris-Baker Acting Council Solicitor and Acting Monitoring Officer)

9. HUMAN RESOURCES IMPACT

9.1 There are no perceived human resources implications associated with this report.

9.2 (Approved by: Adrian Prescod HR Business Partner - Place Department)

10. CUSTOMER IMPACT

10.1 The Local Government (Miscellaneous Provisions) Act 1982 impacts on existing and potential licence holders. Well managed licensed premises attract customers and contribute to a vibrant local economy.

11. EQUALITIES IMPACT ASSESSMENT (EIA)

11.1 This report does not require a separate Equality Impact Assessment.

12. ENVIRONMENTAL AND DESIGN IMPACT

12.1 The licensed sex shops in Croydon are not considered to adversely impact on the local environment.

13. CRIME AND DISORDER REDUCTION IMPACT

13.1 There are not considered to be any local crime and disorder implications associated with this report.

14. HUMAN RIGHTS IMPACT

14.1 Article 1 of the First Protocol provides a right to peaceful enjoyment of possessions. Both a person's business and an existing licence are a possession and cannot be taken away or interfered with unless the law allows it and the action is justified.

Further, when determining applications under the Local Government (Miscellaneous Provisions) Act 1982, it is necessary to ensure that, as far as possible, the Council's procedures are compliant with the principles in Article 6 of the Convention – the right to a fair trial.

15. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

15.1 Information that is provided to or held by the Council in relation to applications must only be processed and disclosed strictly in accordance with the Freedom of Information Act and Data Protection Act 1998 and other appropriate legislation.

CONTACT OFFICER: Michael Goddard, Licensing Manager, X61838.

BACKGROUND DOCUMENTS: None

APPENDIX 1: Sex Establishment Licensing – Fees