

LICENSING COMMITTEE (NON-LICENSING ACT 2003 FUNCTIONS)

Agenda Item 31

Brighton & Hove City Council

Subject:	Sex Establishment and Sex Entertainment Venue Licence fees 2011/2012		
Date of Meeting:	10 February 2011		
Report of:	Head of Planning & Public Protection		
Contact Officer:	Name:	Tim Nichols	Tel: 29-2163
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Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report provides further information relating to licence fees and charges for 2011/12 relating to Sex Establishments and Sex Entertainment Venues as requested by committee on 18 November 2010.

2. RECOMMENDATIONS:

- 2.1 That the committee note the contents of this report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 In order to ensure that council tax payers are not subsidising work concerning licensing administration and enforcement, income is raised by licence fees which aim to cover the cost of administration and enforcement of each regime. Licence fees should not be used to raise revenue, however, income is required in order to process applications and minimise risk from unlicensed and unauthorised activities. Unlicensed sex establishments operate without scrutiny and activities present a risk to community and child safety.

Sex shops and sex cinemas

- 3.2 A trading position has been established, taking into account all expenditure that the Council has incurred in administering the service, including both direct and indirect costs. (Indirect costs for example would include an element of management time to oversee the activity, a legitimate expense in administering the licensing function). The results of this review are set out in the table below.

Financial Year	Balance on Sex Shops and Sex Cinemas Fees £000*
2007/08 Actual	(2)
2008/09 Actual	1
2009/10 Actual	(7)
2010/11 Forecast	(12)
Total Deficit	(20)

- A positive figure represents a surplus

Cost projections for 2011/12 show that there is likely to be a deficit. As the council is committed to keeping the cost of administering the service as low as possible, a review of the expenditure will be undertaken over the coming months to find efficiencies, in order to reduce the deficit.

Sex Entertainment Venues

- 3.3 The Policing and Crime Act introduced a new type of venue “Sex Entertainment Venues” (lap dancing clubs). Following the principle of setting a fee to recover the expected cost of providing the service, cost projections show that a licence fee of £4,600 would be appropriate. This will of course continue to be reviewed each year.

4. CONSULTATION

- 4.1 Council’s finance officer and legal services.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 License fees are set annually at a level that it is reasonably believed will cover the costs of providing the service, including enforcement and administration.

Finance Officer Consulted: Karen Brookshaw

Date: 18/01/11

Legal Implications:

- 5.2 Legal constraints on setting fees
Fees must be charged in accordance with the requirements of the legislation under which they are charged. Thus for instance the Licensing Act 2003 gives the Council no discretion as they are set centrally by the relevant government department. Other legislation such as the Local Government (Miscellaneous Provisions) Act 1982 which covers a whole raft of activities and includes street trading and sex establishments simply states that we may charge such fees as we consider reasonable.

The term ‘Reasonable’ however does not imply wide discretion but incorporates important legal principles and constraints. These were highlighted in the case of *R v Manchester City Council ex parte King* concerning street trading. This case held that the fees charged must be

related to the costs incurred in providing the street trading service. They must not be used to raise revenue generally. This principle is key and applies to other licensing regimes such as sex establishments. This means the fees must be set at a level reasonably expected to cover the cost of providing the service.

This principle has been reinforced by the introduction of the European Services Directive which took effect from the end of 2009. It aims to ensure that licence applications and procedures are transparent and burdens on business kept to a minimum. The processes must be non-discriminatory, justified, proportionate, clear, objective, made in advance, transparent and accessible. The domestic legislation will require “any charges provided for by a competent authority which the applicant may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed those procedures and formalities”. Any fee charged for establishing a service can only be based on cost recovery and cannot be set at an artificial high level to deter service sectors from an area. Application costs can include administration, initial visits, third party costs (e.g. expert advice like a vet), management costs and local democracy costs. The directive also requires that ongoing enforcement costs should be refundable in the event of an application refusal. Council should schedule regular fee reviews.

Therefore the trading accounts must be carefully looked at in accordance with these principles. There is a risk of challenge by way of Judicial Review in cases where fees are set at an unreasonable level which does not relate to the cost of providing the service.

Lawyer Consulted: Rebecca Sidell

Date:

Equalities Implications:

5.3 There are no direct equalities implications.

Sustainability Implications:

5.4 There are no direct sustainability implications

Crime & Disorder Implications:

5.5 There are no direct crime and disorder implications.

Risk and Opportunity Management Implications:

5.6 None

Corporate / Citywide Implications:

5.7 The city council's ability to raise income impacts on the level of Council Tax and service levels and therefore has citywide implications. A process for a clear, accountable, transparent process for setting fees has been set.

SUPPORTING DOCUMENTATION

Appendices:

Appendix A – list of fees and charges.

Documents In Members' Rooms:

None

Background Documents:

None

Licence fees

	2010/11	2011/12	% increase
Sex Entertainment Venue (lap dancing)	N/A	4,600.00	New fee
Sex establishments			
Grant	11,837.00	12,073.70	2%
Renewal	10,061.45	10,262.70	2%
Occasional	4,044.00	4,124.90	2%

Brighton & Hove City Council

Environmental Health & Licensing

**Licensing - Other: Trading Account - 2011-12
Sex Establishment
Venues**

	£
Employees	
Salaries	9,130
National Insurance	790
Superannuation	1,550
Training	300
	<u>11,770</u>
Transport	
Staff Travel Allowances	80
	<u>80</u>
Supplies & Services	
Office Consumable Costs	50
Legal Fees	500
	<u>550</u>
Support Services	
Departmental Admin Charge	1,400
	<u>1,400</u>
Income	
Licences	-13,800
	<u>-13,800</u>
(Surplus) / Deficit	<u><u>0</u></u>

SEX ENTERTAINMENT VENUES**Annual Calculations****Employee Costs**

Senior Environmental Health Officer	5 complaints @ 7 hours each 3 investigations @ 4 hours each sub committees 4 @ 5 hours 1 court case @ 4 hours	35 hours 12 hours 20 hours 4 hours	
			71 hours
Technical Officer time	15 complaints @ 7 hours 9 investigations @ 4 hours 6 film accreditations @ 3hours sub committees 6 @ 5 hours 1 court case @ 1 hour	105 hours 36 hours 18 hours 30 hours 1 hour	
			190 hours
Technical Support Officer	10 applications @ 1 hour plus 20 minutes for paying by instalments processing receipts	11 hours 40 minutes 2 hours	13.67 hours
Head of Environmental Health & Licensing		5% of time	
Licensing Manager		5% of time	
Staff training costs	2 per annum @ £150		£300.00
Transport Costs			
Staff transport costs	4 staff @£20		£80.00
Supplies & Services			
Barrister for court case			£500.00
Printing/stationery costs	High quality paper plus printing and other stationery		£50.00
Support service costs	EVH034 support service costs are 11.3% of other expenditure	11.30%	£1,400.00
Income			
Licence Fee	Total costs of the service divided by 3 licences		(£4,600.00)

Licensing administration and enforcement is carried out by a team of people, dealing with Sex Establishments, Street Trading and other minor areas. Each area of expenditure is

evenly apportioned between Sex Establishments and Street Trading at 44% each, with the other minor areas accounting for 12% of costs. The following table shows budgets for licensing of Sex Establishments for 2011-12.

Environmental Health & Licensing
Extract from Licensing - Other: Trading Account -
2011/12 Budget

	Sex Establishments	
	£	
EXPENDITURE		
Staff Salaries	49,562	44% share
Staff National Insurance	4,532	44% share
Staff Superannuation	8,430	44% share
25% Head of Environmental H & L 30% Licensing Manager 1 x Senior Environmental Health Officer 1 x Senior Technical Support Officer 3 x Technical Officers 3.1 FTE Technical Support Officers		
Staff Training	686	44% share
This covers the cost of providing training for all members of this licensing team		
Staff Transport	75	44% share
11 staff in total at approximately £20 per person plus £30 additional allowance		
Office Consumable Costs	515	44% share
This budget covers the cost of printing, (new booklets, deposit slips, permits), and office stationery including paper.		
Reference Books	18	44% share
This covers the cost of legal books (e.g. Butterworth) which are revised annually.		
Hospitality		
This budget covers the cost of teas and coffees for hearings and other licensing meetings		
	22	44% share
Postages	444	44% share
This budget covers the cost of sending out letters to existing licence holders and to statutory consultees, for renewals, reminders, changes in legislation and distributing new booklets.		
Departmental Administration Charges	7,041	44% share
All indirect costs associated with this team, including apportionment of ICT, Property, Finance, and H.R overheads.		

Licence Fees

There is no apportionment for income, as the income for each service area within Licensing Other is separately recorded

-51,313

Deficit	20,012
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The following table shows how those calculations for Sex Entertainment Venues and Sex Establishments fit into the Trading Account for Licensing-Other.

Brighton & Hove City Council

Environmental Health & Licensing

Licensing - Other: Trading Account - 2011/12 Budget

	EVH034	Street Trading	Sex Establishments	Outside the scope	Sex Entertainment Venues
	£	£	£	£	£
Employees					
Salaries	121,770	49,562	49,562	13,517	9,130
National Insurance	11,090	4,532	4,532	1,236	790
Superannuation	20,710	8,430	8,430	2,299	1,550
Training	1,860	686	686	187	300
	<u>155,430</u>	<u>63,210</u>	<u>63,210</u>	<u>17,239</u>	<u>11,770</u>
Transport					
Staff Travel Allowances	250	75	75	20	80
	<u>250</u>	<u>75</u>	<u>75</u>	<u>20</u>	<u>80</u>
Supplies & Services					
Office Consumable Costs	1,170	515	515	140	
Legal Fees	500	0	0	0	500
Reference Books	90	18	18	5	50
Hospitality	50	22	22	6	
Postages	1,010	444	444	121	
	<u>2,820</u>	<u>999</u>	<u>999</u>	<u>272</u>	<u>550</u>
Support Services					
Departmental Admin Charge	17,401	7,041	7,041	1,920	1,400
	<u>17,401</u>	<u>7,041</u>	<u>7,041</u>	<u>1,920</u>	<u>1,400</u>
Income					
Licence Fees	126,421	-46,767	-51,313	-14,540	-13,800
	<u>49,480</u>	<u>24,557</u>	<u>20,012</u>	<u>4,911</u>	<u>0</u>