

Licensing Committee

**Grand Jury Room, Town Hall
24 November 2010 at 6.00pm**

The Licensing Committee deals with licensing applications for public entertainment, hackney carriages and private hire vehicles, sex establishments, gaming and lotteries, door registration scheme and other appeals.

Information for Members of the Public

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You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
24 November 2010 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Nick Cope.
Councillors Mary Blandon, John Bouckley, Mark Cory,
Wyn Foster, Christopher Garnett, Dave Harris, Mike Hogg,
Margaret Kimberley, Michael Lilley and Ann Quarrie.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item

on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 3

To confirm as a correct record the minutes of the meetings held on 6 October 2010.

7. Draft Licensing Policy 2011-2014

4 - 7

See report by the Head of Environmental and Protective Services.
(Policy to follow)

8. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE

6 October 2010

Present:- Councillor Cook (Chairman)
Councillors Cope, Foster, Garnett and Kimberley

7. Minutes

The minutes of the meeting held on 25 August 2010 were confirmed as a correct record.

The Committee resolved under Section 100A of the Local Government Act 1972 and the Local Government (Access to Information) (Variation) Order 2006 to exclude the public from the meeting for the following items as it involved the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A to the Local Government Act 1972

8. Hackney Carriage Licensing // Appeal A

The Committee considered a report by the Head of Environmental and Protective Services on an appeal against the Licensing Committee's condition not to allow a holder of a hackney carriage/private hire vehicle licence for a wheelchair accessible vehicle to sell their business for a period of 5 years from the date of first issue. The Licensing Manager and the appellant attended, presented their cases and then withdrew for the Committee to consider the matter and make their determination.

RESOLVED that in view of the exceptional circumstances presented to the Committee and without prejudice to future applications, the appellant be granted permission to sell their hackney carriage/private hire vehicle licence for a wheelchair accessible vehicle subject to all the conditions set out in Appendix 1 minus conditions b, d and e.

Councillor Garnett joined the meeting at this point.

9. Hackney Carriage Licensing // Appeal B

The Committee considered a report by the Head of Environmental and Protective Services on the appropriate penalty to be awarded under the Council's Penalty Point Scheme to one of the Council's hackney carriage/private hire drivers following a serious breach of the Council's driver conditions. The Licensing Manager, the licence holder and their representative attended, presented their cases and then the Committee withdrew to consider the matter and make their determination.

RESOLVED that six penalty points be issued in accordance with the Council's Penalty Point Scheme for hackney carriage/private hire drivers and operators.

LICENSING COMMITTEE

6 October 2010

Present:- Councillor Cook (Chairman)
Councillors Blandon, Bouckley, Cope, Cory, Foster,
Garnett, Harris, Kimberley, Lilley and Quarrie

10. Licensing of Sexual Entertainment Venues

The Committee considered a report by the Head of Environmental and Protective Services on proposed changes to the licensing of sexual entertainment venues which would give the local authority and local people a greater influence on the granting of these licences. The aim of the new legislation was to bring the licensing of sexual entertainment venues in line with other sex establishments such as sex shops and sex cinemas and to recognise that local people had concerns about where such premises were located and may wish to play an active part in any debate and decision made about their location. The proposed changes would not have any effect however on the licensing of sex shops and sex cinemas which would continue to be licensed separately in their own right.

Adult entertainment such as lap dancing was currently licensed under the provisions of the Licensing Act 2003 and representations concerning such applications had to demonstrate how the proposed activities would either undermine or promote the four licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. Refusal of applications also had to relate to the licensing objectives.

The adoption of the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009 would enable the Council to grant a sex entertainment licence to a sexual entertainment venue where relevant entertainment was being provided before a live audience for the financial gain of the organiser or the entertainer. The amended legislation would permit representations to be made on a much wider basis by local people than was currently possible under the Licensing Act 2003. It would also enable the local authority to consider other factors such as whether the applicant was a 'fit and proper' person to hold such a licence and the Committee would be able to consider the character of the relevant locality in determining whether to grant a licence. Premises holding a sex entertainment licence would still need to be licensed under the Licensing Act 2003 if they wished to sell alcohol or carry out other regulated entertainment such as the provision of hot food after 23.00.

The report outlined the work that would be required in the adoption of the legislation and further consideration would need to be given to the design and issue of applications forms and setting of fees which were not prescribed. The Licensing Manager sought the Committee's views on the establishment of a policy in respect of such applications and in particular the grounds on which the Committee might wish to refuse an application. The Committee discussed the matter at length having particular regard to the issue of limiting the number permitted and examined that inherent contradiction that in setting a limit on the overall number permitted in a locality it may encourage such businesses to come into the area. There was

currently one venue in the Council's locality that would require a licence under the amended legislation. The Committee concluded that further work should be done to create a draft policy for consideration by the Committee at a later date.

RECOMMEND to COUNCIL that –

(i) The amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009 be adopted and that the amendments shall apply within the Borough of Colchester and come into force not more than one month after the day on which the resolution was passed.

RESOLVED that -

(i) The Head of Environmental and Protective Services be requested to formulate a licensing policy in respect of how applications for sex establishment licenses (sexual entertainment venues, sex shops and sex cinemas) will be considered by the licensing authority in accordance with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

(ii) The Head of Environmental and Protective Services be Instructed to prepare a report and draft policy for consideration by the Licensing Committee in order that the draft policy can be discussed and amended as appropriate by the Committee, prior to it being subject to public consultation and scrutiny.

11. 'Rebalancing the Licensing Act' //Council's response to the Home Office Consultation document

The Committee noted a report by the Head of Environmental and Protective Services on the Council's response to the Home Office consultation document 'Rebalancing the Licensing Act'. Appended to the report were the consultation document and a list of proposed amendments to the Licensing Act on which the Licensing Manger had commented on behalf of the Council due to the tight deadline for the submission of responses. The areas covered included such matters as making local authorities responsible authorities, reducing the burden of proof for licensing authorities and repealing mandatory conditions.

The Committee welcomed the comments that had been submitted whilst noting that there was unlikely to be any changes in the immediate future and that the final 'rebalancing' may be different to the proposals outlined in the consultation document. The Chairman and Members of the Committee thanked the Licensing Manger for his excellent response.

RESOLVED that the report be noted.



Licensing Committee

Item
7

24 November 2010

Report of	Head of Environmental & Protective Services	Author	Simon Harvey ☎ 282701
Title	Draft Licensing Policy 2011 to 2014		
Wards affected	All		

This report seeks the Licensing Committees approval for the proposed draft of the Council's Statement of Licensing Policy and to agree to the commencement of the formal consultation process. It also sets out the form of the consultation process and how it will be undertaken.

1. Decision(s) Required

- 1.1 The Licensing Committee is asked to agree the proposed draft of the revision that has been made to the Council's Statement of Licensing Policy in order to enable the formal consultation process on that draft to begin.
- 1.2 Members are also asked to agree to the proposed consultation process.

2. Reasons for Decision(s)

- 2.1 Under the Licensing Act 2003, the Council needs to review and readopt a Statement of Licensing Policy every three years.

3. Alternative Options

- 3.1 There is no alternative option and the Policy must be reviewed and readopted in order to be compliant with the current Licensing Act 2003 legislation.

4. Supporting Information

- 4.1 In drafting this Policy, particular reference has been made to the Section 182 Guidance issued under the Act by the Home Office.
- 4.2 If Members agree to the draft policy as proposed by this report the Council must consult with the following:
 - (a) the Chief Officer of Police for the Licensing Authority's area,
 - (b) the Fire Authority for that area,
 - (c) such persons as the Licensing Authority considers to be representative of holders of premises licences issued by that Authority,
 - (d) such persons as the licensing authority considers to be representative of holders of Club Premises Certificates issued by that Authority,
 - (e) such persons as the licensing authority considers to be representative of holders of Personal Licences issued by that authority, and
 - (f) such other persons as the Licensing Authority considers to be representative of businesses and residents in its area.

- 4.3 There will also be invitations sent out to many other agencies, authorities, businesses, resident's groups, Ward Councillors and Town and Parish Councils to comment on the proposed draft Policy such as for example, Trading Standards, the Children's Safeguarding Service, the Council's Environmental Control and Health and Safety Teams, the Community Safety Partnership, local Licensing Solicitors and the Chamber of Commerce.
- 4.4 However in order to reduce expenditure on the consultation exercise to a bare minimum at this very challenging time for the Council's and Licensing Authority's budget, it is proposed that no hard copies of the draft Policy will be sent out to any interested party but that instead, a copy of the Policy will only be available for viewing and download via the Licensing link of the Council's web site.
- 4.5 It is also proposed that for this three year review, the draft Policy will not be referred to a Counsel's legal scrutiny until the consultation period has ended and all comments and suggestions have been received. After which, Counsel can then consider the Policy and comments or suggestions for amendments in their complete entirety.
- 4.6 Once the draft Policy and any relevant consultation responses have been scrutinised by Counsel and they have given their legal opinion on them, a further report will be brought back to the next scheduled Licensing Committee for their final determination and agreement of the Statement of Licensing Policy and the Committee will be asked to recommend its approval and ratification to the first full Council to be held in the New Year.

5. Proposals

- 5.1 It is proposed to the Licensing Committee that it should approve the draft Statement of Licensing Policy presented to it and which is included with the background papers that are attached to this report and shown as appendix 1.

6. Strategic Plan References

- 6.1 The proposed draft review of the Statement of Licensing Policy attempts to strike a difficult but reasonable and proportionate balance between the different and often competing aspirations of licensed businesses and residents. This Policy recognises the importance of widening the choice and appeal of licensed premises and the development of cultural, social and community activities while at the same time offering reasonable and proportionate protections to local residents, visitors and other non licensed businesses. The policy is in line with the Council's vision for Colchester to develop as a prestigious regional centre. The Council and Licensing Authority also wish to discourage anti social behaviour, especially alcohol related anti social behaviour and to encourage the effective and responsible management of licensed premises that will proactively promote the four licensing objectives that are outlined in the Act.

7. Consultation

- 7.1 The consultation will be undertaken in line with the methods and consultees that are detailed in paragraphs 4.2 to 4.6 of this report.

8. Publicity Considerations

- 8.1 If Members approve the proposed draft Policy, it is intended that this will be the subject of a wide ranging public consultation and the Policy itself will be available to view and download from the Council's website.

9. Financial Implications

- 9.1 There will be costs associated with sending out what will be many hundreds of letters inviting comment or suggestion on the proposed review of the draft Statement of Licensing Policy from licence holders, interested parties, responsible authorities, local businesses, Ward Councillors and residents groups etc. However the cost of doing so can be met by existing budget provisions. There will also be a cost in referring the consulted draft Policy to Counsel for their legal opinion but again the cost of doing so can be met within existing budgets.
- 9.2 There may also be costs incurred in defending any action brought against the Council which might seek to challenge the Statement of Licensing Policy by way of a judicial review which is why it is essential that the Policy must be scrutinised by Counsel in order to ensure that it is robust and fully compliant with the law and national Section 182 Guidance as issued by the Home Office.

10. Equality, Diversity and Human Rights Implications

- 10.1 The draft revised Statement of Licensing Policy has been developed in accordance with and taken account of, all relevant legislation and national and local strategies such as the Alcohol Harm Reduction Strategy and Community Safety Partnership Annual Plan. It will also be subject to full legal scrutiny by appointed Counsel.
- 10.2 Relevant legislation and strategy may include the Human Rights Act 1998, Disability Discrimination Act 1995, Crime and Disorder Act 1998 Race Relation Act 1976, Violent Crimes Reduction Act 2006, the Anti Social Behaviour Act 2003 and the Policing and Crime Act 2009 where it has been relevant or appropriate to do so.

11. Community Safety Implications

- 11.1 The Licensing Policy is a key component in the Council's Evening and Night time Economy strategy to tackle crime and disorder and anti-social behaviour, particularly alcohol related anti social behaviour and as such it will contribute significantly towards improving overall community safety.
- 11.2 In drafting the proposed revision to the Statement of Licensing Policy, consideration has been given to the Community Safety Partnerships Strategic Assessment of Crime and Annual Plan, STAND (Strategy to Tackle All Night time Disorder) Initiative and the Council's Strategic Plans and Policies and its strategy in regard to the Evening and Night time Economy.
- 11.3 An analysis of crime statistics has also been used to help shape this draft revision of the Statement of Licensing Policy.
- 11.4 Consultation and discussion concerning the direction and content of the draft revised Policy have also taken place with Colchester Police and in particular, the proposal to retain the special stress (cumulative impact) area in the Policy for Queen Street and St Botolphs Street has been the subject of close scrutiny and consultation with the Police.

12. Health and Safety Implications

- 12.1 There is no known direct public health and safety issues which might arise from the adoption of the draft revised Licensing Policy. The adoption of a Statement of Licensing Policy for a further 3 years is also a legal requirement under the Licensing Act 2003.

13. Risk Management Implications

- 13.1 A flexible yet robust revised Statement of Licensing Policy will continue to provide both the Council and the Licensing Authority with a sound basis for decision making in relation to licensed premises and a secure platform from which to promote the four licensing objectives as outlined in the Licensing Act 2003.
- 13.2 To minimise the potential risks and costs associated with any defence of the adopted and published version of the next three year Licensing Policy against legal challenges or actions that may be brought against it, legal opinion/advice will be sought by the Licensing Authority from a Counsel who specialises in licensing matters.

Background Papers

Attached as appendix one to this report is the proposed draft of the revision to the Council's Statement of Licensing Policy along with documents that are an appendices to accompany the Policy.

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk