

**Subject:** Enforcement Activity Report - 2010

**Committee:** Licensing Committee (Miscellaneous)

**Date:** 22 February 2011

**Cabinet Member:** Councillor Michael Leaves, Community Services

**CMT Member:** Carole Burgoyne – Director for Community Services

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**Ref:** ERS/LIC/PREM

**Key Decision:** No

**Part:** I

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**Executive Summary:**

This is the third report of its kind and has been compiled to give the Licensing Committee (Miscellaneous) an overview of the various aspects of the work undertaken by agencies involved in regulating the Evening & Night Time Economy during 2010.

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**Corporate Plan 2010-2013 as amended by the four new priorities for the City and Council:**

This report links to the delivery of the corporate improvement priorities.

1. Delivering Growth
  2. Raising Aspiration
  3. Reducing inequalities
  4. Value for Communities
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**Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

There are no financial implications associated with this report.

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**Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, etc.**

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

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**Recommendations and Reason for recommended action:**

That Committee note the attached report.

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**Alternative options considered and reasons for recommended action:**

None

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**Background papers:**

None

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**Sign off:**

Fin		Leg	<b>AG/10814/ 2.2.11</b>	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member : Carol Burgoyne											

## **Enforcement Activity Report – 2010**

### **1.0 Introduction**

1.1 This report has been compiled to give Members of the Licensing Committee (Miscellaneous) an update of the work undertaken by agencies involved in regulating the Evening and Night Time Economy (ENTE) and the licensing team during 2010. The main initiatives conducted during 2010 were as follows:-

- A three-year review of the Council's Licensing Policy
- An annual review of fees payable by Gambling establishments
- The formulation of a draft Sex Establishments Policy in preparation for public consultation
- Coordinate a public consultation for a Designated Public Places Order (DPPO) to cover Freedom Fields and Tothill Parks
- Implementation of new mandatory conditions for licensed premises
- Consideration of proposed changes to the licensing legislation
- Ongoing joint enforcement operations

### **2.0 Licensing (Miscellaneous)**

2.1 Licensing Officers with administrative support, undertake all aspects of the licensing function covered by the Licensing Act 2003 associated legislation. These responsibilities cover the regulatory process for premises and club premises certificates; personal licences; Temporary Events Notices (TEN's).

2.2 During 2010 Officers processed 348 new licensing applications, transfers, DPS and variations; 282 personal licences; 283 TEN's; This numbers are consistent with 2009.

2.3 Responsible authorities, in particular the Police and Environmental Health continue to submit formal representations in respect of licensing applications having regard to the licensing objectives. In the majority of cases the applicant will agree with the submitted representations thereby allowing them to be mediated out. Members receive regular updates of all the decisions by way of report.

Where applications cannot be mediated out or when relevant representations are submitted by local residents, these applications are presented before Members for consideration.

2.4 The Licensing Sub-Committee (Miscellaneous) has held 18 meetings to consider 23 reports which included 13 applications (new, variations, transfers and TENs) where representations could not be mediated. Of the decisions taken one has been the subject of an appeal to the Magistrates Courts which has yet to be heard. Committee has also considered 5 applications for review of premises licences submitted by the Police, Environmental Health and/or local residents.

- 2.5 The three year review of the Council's Licensing policy was completed in 2010. Officers substantially re-drafted the policy, in consultation with legal officers, having regard to changes in government guidance. Following an extensive public consultation Council formally ratified the new policy on the 6 December 2010. The consultation also included a review of its Cumulative Impact Policy and this special policy remains unchanged.
- 2.6 The implications of the EC Services Directive were that systems had to be put in place to allow applicants to make licensing applications online. This proved to be a very complicated and involved process that took an extensive amount of time to coordinate. The system went live on the 19 August 2010.
- 2.7 In order to assist applicants Officers have compiled a comprehensive Pool of Licensing Conditions to assist applicants when drafting an operating schedule that will be suitable and sufficient for their licensed premises.

### **3.0 Gambling Establishments**

- 3.1 Licensing Officers with administrative support are also responsible for licensing establishments such as casinos, betting shops, adult gaming centres, bingo halls covered by the Gambling Act 2005. The Statement of Licensing Principles was the subject of a three year review during 2009 and after the completion of a formal public consultation the revised policy was adopted by Council and became effective on the 31<sup>st</sup> January 2010.
- 3.2 Licensing Committee has delegated responsibility for the setting of annual fees payable by gaming establishments and was approved by Members on the 13 April 2010. All establishments are the subject of routine inspection to ensure compliance with regulatory standards.
- 3.3 Officers coordinated a test purchase operation of gambling establishments in October to ascertain whether young persons could access age restricted activities. The operation took place over two days and involved two 16 year olds visiting 13 adult gaming centres and 11 betting shops under supervision, to ascertain whether they were able to play age-restricted gaming machines and/or place bets.

The operation resulted in 7 adult gaming centres and 4 betting shops permit gaming to take place. Each of these premises has subsequently been visited and steps recommended to management, such as the relocation of the gaming machines, to ensure no future recurrence. As this was the first operation of its kind locally, it was decided at the outset not to pursue formal action against any premises but to ensure that all premises could learn from the experience.

The Gambling Commission Compliance Manager for the South West has been highly complementary on this operation in respect to its planning and outcomes. Up to this time it was the second largest operation of its kind undertaken in this country.

A further operation will be undertaken later this year to retest those premises that failed and to test those that were not previously visited.

- 3.4 Officers are also responsible for administering the licensing of notifications and permits for gaming machines located in public houses and social clubs. During 2010 a total of 109 gambling applications were processed.

#### **4.0 Sex Establishments Policy**

- 4.1 Over the last six months Officers have been preparing a draft Sex Establishment Policy in readiness for public consultation. This consultation was recently launched on the 20 January 2011 and following the conclusion of the ten week consultation, a report will be prepared, having regards the representations received for consideration and adoption by Council.

#### **5.0 Application for a DPPO to cover Freedom Fields and Tothill Parks**

- 5.1 An application was submitted 26 September 2010 for a Designated Public Places Order (DPPO) to cover Freedom Fields and Tothill parks. On the 21 December 2010 Members considered that there was sufficient grounds that nuisance or annoyance or disorder is caused to members of the public which is associated with the consumption of alcohol to authorise a public consultation. This consultation has been completed and a further report detailing the results will be considered by Members on the 15 March 2011.

#### **6.0 New Mandatory Conditions**

- 6.1 A report was presented to Members on the 15 June 2010 outlining the new mandatory conditions applicable to licensed premises. These are as follows;

- A ban on irresponsible drinks promotions
- A ban on dispensing drink direct into the mouth
- Access to free tap water
- Age verification policy
- Opportunity for patrons to choose smaller measures of alcohol

Officers sent revised licensing conditions requesting that they are attached to their existing licence and circulated a newsletter that explained the implications of the new conditions. It is fair to say that enforcement agencies have applied a low key approach to enforcement preferring initially to adopt an advisory approach.

5.2 The coalition government have published a consultation document entitled 'Rebalancing the Licensing Act' that sets out their proposals to amend the Licensing Act 2003. The main proposals are as follows;

- Shift the onus onto the applicant to give greater consideration to the local area when setting out the steps they will take to promote the licensing objectives and to provide responsible authorities, other interested parties and the licensing authority with better information on which to make informed representations or determinations.
- Flexible closing times
- Late night levy
- Make local health bodies responsible authorities
- Make licensing authorities responsible authorities under the Licensing Act
- Strengthen penalties for persistent selling of alcohol to children
- Proposals to strengthen the weight that licensing authorities must give to police representations
- Proposals to suspend licences due to non-payment of fees
- Proposals to allow Environmental Health to object to TEN's
- Remove the vicinity test for interested parties
- Lower the evidential hurdle for Cumulative Impact Policies to allow licensing authorities to have more control over outlet density
- Early morning closure orders

## **6.0 Noise and Public Nuisance**

6.1 During 2010, 197 formal noise complaints were registered against licensed premises for activities such as live and recorded music i.e. bands, discos, karaoke and also noise and disturbance from patrons both on and off the premises. This represents a slight increase on 2009. Only one noise abatement notice was served on licensed premises as a result of noise that materially affected the use and enjoyment of near-by residential properties.

6.2 Environmental Health Officers continue to use an escalation process when investigating noise complaints, discussing the circumstances of the complaint with the responsible person at the earliest opportunity in order to allow them to resolve the matter quickly without the need for further formal action.

## **7.0 Enforcement**

7.1 Enforcement agencies meet on a regular basis to discuss enforcement options and consider strategies for dealing with 'problem premises'. Premises operating in the ENTE continue to receive good constructive advice from enforcement agencies such as Licensing, Environmental Health, Fire Service, Trading Standards and the Police to help encourage a responsible ENTE and to create an environment that helps reduce levels of crime and fear of crime

- 7.2 Interventions include unannounced and announced visits to assess the licensed premises against licensing conditions and other workplace regulations. The licensees, managers and staff are encouraged to participate in community schemes for the licensed trade such as CitySafe, Pubwatch and Clubwatch.
- 7.3 Officers from all enforcement agencies do undertake joint inspections where appropriate as this ensures the consistent approach to enforcement and demonstrates to the licensee and designated premises supervisor that agencies work together.
- 7.4 Enforcement agencies also undertake night-time inspections in order to assess how licensed premises comply with their regulatory responsibilities. The last joint operation involving the Police, Environmental Health, licensing and Fire took place in early December 2010. The series of inspections revealed various concerns that included the failure to control maximum occupancy numbers, licensing conditions, work place regulations and fire safety risk assessment that all required resolution. Action has been taken to rectify any failure.
- 7.5 The Police Licensing Team have successfully remedied 26 licensed premises of concern through effective enforcement utilising a variety of strategies including action plans, additional enforcement activity and where necessary instigating review proceedings.

## **8.0 Under Age Sales**

- 8.1 The Police Licensing Team continued to undertake test purchase operations of licensed premises (on sales & off sales). 46 on sales premises were tested of which 16 (35%) resulted in a positive sale, 50 off sales premises were tested of which 8 (16%) were positive. Where positive sales are made the appropriate enforcement action is taken, including the service of fixed penalty notices and the review of operating and training procedures to prevent further recurrence. Each premise would also be advised that further test purchases will be arranged and that repeat offending will result in a review of the premises licence. One premises sold on two occasions resulting in the review of the premises licence and consideration in prosecuting the premises licence for persistently selling alcohol to underage.
- 8.2 The Council are also responsible for the sales of other age-restricted products such as cigarettes, DVD's, fireworks, solvents and knives; various publicity and education campaigns are undertaken supported by covert operations to ensure business are aware of their obligations and their challenge systems tested.

## **9.0 Liaison**

- 9.1 There is a close link between the four licensing objectives and responsible bodies such as Environmental Health (Noise and Disturbance), Police Licensing Team (Crime and Disorder), Fire Service (Public Safety) and Trading Standards (Under Age Sales) work

closely with the Licensing Team to ensure a fair and equitable response. All agencies meet on a bi-monthly basis to discuss working practices, problem premises and coordinate inspection programmes for premises operating in the ENTE.

The work of the responsible authorities in regulating licensed premises was commended during a recent visit by the Department of Health National Support team for Alcohol.

#### **10.0 Work Initiatives for 2011**

- 10.1 The responsible bodies will continue to support licensed premises in the ways outlined above to ensure that they are best placed to contribute towards providing a positive and well managed ENTE.
- 10.2 All agencies will continue to meet bi-monthly to discuss enforcement strategies, best practice and on-going operations to ensure that resources are best targeted at those premises that contribute significantly to undermining the licensing objectives.
- 10.3 A public consultation on the Council's first draft Sex Establishments Policy will be completed and the revised policy presented to Council for formal ratification. The document will set out the licensing objectives, qualifying criteria and the procedure to be followed for determining applications.
- 10.4 Test purchasing operations will continue to test challenge procedures at licensed premises where age-restricted products such as alcohol, gambling, petrol, fireworks and cigarettes are available or on sale.
- 10.5 Coalition Government is currently consulting on proposed changes to 'Rebalancing the Licensing Act' the Licensing Act and these proposals will be monitored with interest although it has already been stated that no changes will be implemented until 2012.

#### **11.0 Conclusion**

- 11.1 This report has sought to provide members with an insight into the range of work initiatives and enforcement operations undertaken by enforcement agencies responsible for regulating the ENTE, throughout 2010. In addition to provide details of the work initiatives planned for the coming year and how partner agencies will continue to interact to ensure that limited resources are targeted effectively.