

## CITY OF PLYMOUTH

**Subject:** Sex Establishment Licensing Policy  
**Committee:** Cabinet  
**Date:** 17 January 2012  
**Cabinet Member:** Councillor Mike Leaves  
**CMT Member:** Director of Place  
**Author:** Andy Netherton, Manager Safety, Health and Licensing  
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**Ref:**

**Key Decision:** Yes

**Part:** I

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### **Executive Summary:**

Recent legislative changes provide the Council with the ability to have a greater level of control on the position and operation of sex establishments. Businesses that operate lap dancing and similar operations will now come under the same licensing system as sex shops and sex cinemas. This will require the adoption of the new legal provisions and an associated licensing policy. A draft policy has been open to public consultation, the results of which are contained in this report.

The Customers and Communities Overview and Scrutiny Panel have reviewed the consultation findings and the subsequent draft policy. Recommendations from the panel are contained in this report.

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### **Corporate Plan 2011-2014:**

This report links to the delivery of the corporate improvement priorities, in particular:

- Reducing inequalities between communities – through the appropriate licensing and control of sex establishments to reduce their impact on safety, wellbeing and local amenity.
  - Delivering sustainable growth – through the balance of regulation against the need to protect residents and creating a consistent regulatory environment in which legitimate businesses can operate
  - Keeping children safe – through the restriction of access, operation, location and appearance of premises
  - Providing more and better culture and leisure activities – Promoting a wide range of cultural and leisure opportunities in Plymouth and through the maintenance of operating standards by businesses
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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

Fees are to be set locally and will be based on full cost recovery. Recommended fee levels are contained in this report and are a reasonable reflection of costs.

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## **Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

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.

The Policy has a key role in protecting workers in sex establishments and reducing the risk of sexual offences linked to the operation of sex establishments.

An Equalities Impact Assessment has been completed with no significant findings

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### **Recommendations & Reasons for recommended action:**

It is recommended that Cabinet members consider the report and

- A. Consider recommendation (1) from the Customer and Communities Overview and Scrutiny Panel regarding the condition on opening hours which was recommended to be included within the policy. To decide whether the wording of Option 1 or Option 2 as set out in Paragraph 5.1 of this report should be included within the Sex Establishments Licensing Policy that is to be recommended to City Council.
- B. Do not support the recommendation (2) from the Customer and Communities Overview and Scrutiny Panel regarding notification of applications as outlined in Paragraph 5.2. To decide whether the policy should be amended to include this recommendation within the Sex Establishments Licensing Policy that is to be recommended to City Council.
- C) Recommend to City Council to resolve the following:
  1. To adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by s.27 Policing and Crime Act 2009, which shall come into force on the 5 March 2012.
  2. To adopt the Sex Establishments Licensing Policy contained in Appendix A of this report subject to recommendations A and B
  3. To approve the Scheme of delegation contained in Appendix B of this report
  4. To approve the following fees and charges
    - Application Fee £3900
    - Variation Fee £ 800
    - Annual Renewal Fees £3200
    - Transfer £750

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

1) Not to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 – This would leave sex establishment licensing split between two different pieces of legislation. Sex shops and sex cinemas would remain regulated by the 1982 Act, with lap dancing and similar venues remaining under the Licensing Act 2003. The Licensing Act provides less freedom for matters which the Council can consider when deciding on a licence application. No controls on the number, location and appearance of lap dancing clubs would be possible. A further public consultation would be required if a decision not to adopt Schedule 3 is taken.

2) Recommend changes to the policy, individual elements of the policy could be altered. The main debating areas are discussed in this report. The recommended policy has been drafted to reflect the consultation feedback and officers considered opinions on good practice and government guidance.

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**Background papers:**

[Local Government \(Miscellaneous Provisions\) Act 1982](#)

[Home Office Guidance – Sexual Entertainment Venues](#)

[Customers and Communities Overview and Scrutiny Panel \(18<sup>th</sup> July 2011\) Item 17](#)

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**Sign off:**

Fin	CoS F ECI 112 001 TO CS	Leg	AG/12969/ 05.01.2012	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member: Jayne Donovan											

## 1.0 Background

The Council has previously adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA), which allows local authorities to regulate premises to be used as “Sex Establishments” e.g. shops or cinemas. The Policing and Crime Act 2009, amends Schedule 3 of LGMPA to include “Sexual Entertainment Venues” in the meaning of sex establishments.

A sexual entertainment venue is defined as *“any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”*

“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).”*

- 1.1 Premises which provide relevant entertainment on an infrequent basis are not sexual entertainment venues under Schedule 3 LGMPA and will continue to be regulated under the Licensing Act 2003. These are premises that provide relevant entertainment on no more than 11 occasions within a 12 month period, with one month between events and each event must not be longer than 24 hours. Any premises that provide relevant entertainment on more occasions, more frequently, or for a longer period of time than is permitted under this exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 LGMPA unless they hold a sexual entertainment licence or the authority has waived the requirement for such a licence.
- 1.2 The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a sex establishment venue is appropriate for a particular locality. The provisions bring the licensing of lap dancing premises and similar venues in line with other “sex establishments” and allow the Licensing Authority to prescribe standard conditions on grounds not covered by the Licensing Act 2003 e.g. location, hours, display of adverts and the visibility of the interior of the premises.
- 1.3 Should the Authority adopt the provisions, there will be a further transitional period where existing operators can apply for licences under the new laws. New applicants can also within this period apply to the Licensing Authority for a licence; however, applications may not be determined before a period of six months after the date the provisions are adopted.
- 1.4 While local authorities are not required to publish a licensing policy relating to sex establishments, they can do so if they wish as long as it does not prevent any individual application from being considered on its merits at the time the application is made.
- 1.5 In determining suggested fee levels, Officers have had regard to the European Services Directive: Guidance for Local Authorities and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees. The fees have been based on a full cost recovery basis

1.6 The Council currently licences:

Two sex shops (no sex cinemas)

3 premises with the facility for lap dancing controlled by the Licensing Act 2003 (2 active).

Other premises may undertake activities which may require licensing

## **2.0 Consultation Process**

In order to provide clear guidelines for the administration and decision making process for any applications a draft sex establishment policy was produced. This draft policy was subject to a public consultation which was made as wide as possible. The consultation process included direct mailing to:

- 675 individuals and groups, including community groups, faith groups, licensees holding a licence under the Licensing Act 2003, licensees currently holding a sex shop licence.
- All ward Councillors
- Members of Team Plymouth
- Public press release and articles in the Evening Herald
- Local community groups.

2.1 A total of 46 responses were received and the responses have been collated and attached at Appendix C. The full responses are available for members to view during the meeting.

2.2 The Customer and Communities Overview and Scrutiny Panel met on the 18<sup>th</sup> July 2011 to review the draft policy. Having considered the matter the panel agreed to recommend to the Overview and Scrutiny Management Board that the following matters are recommended to Cabinet –

- (1) the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982;
- (2) the content of the draft Sex Establishment Licensing Policy with the inclusion of the following -
  - (hours of opening) to include 'Good Friday' on a similar basis to Sundays;
  - (notification) that residents, chairs of school governors, religious establishments within a specific distance from the proposed sex establishment, as well as the relevant Ward Councillors, are notified of any application by individual letters.

## **3.0 Regulators Compliance Code**

The Legislative and Regulatory Reform Act 2006 and Statutory Code of Practice requires regulators to have regard to the principles contained in the Statutory Code of Practice when undertaking regulatory activities, including the establishment of policies. The specific obligations of the code relevant to this policy are;

### 3.1 Economic Progress

Regulators should consider the impact that their regulatory interventions may have on economic progress, including a consideration of the costs, effectiveness and perceptions of fairness of regulation. Regulators should consider the impact that their regulatory interventions may have on small businesses, ensuring that the regulatory interventions fall fairly and proportionately considering the size of the business and the nature of their activities.

### 3.2 Risk Assessment

Regulators should ensure that the allocation of their regulatory efforts is targeted where they would be most effective by maximising their target outcomes. In general policies and activities must target those businesses where greater controls will lead to the increased public protection.

3.3 No evidence has been submitted that identifies a disproportionate detrimental economic effect of the policy. It is important that each application must be taken on its own merits. The policy will provide clear guidance on the expectations and wishes of the Council when determining applications of this kind. Although the draft policy is clear that certain parts of the City are considered unsuitable, there may be scope for some applications to be approved if they meet the highly detailed requirements for the location and operation of premises. Careful consideration will be necessary should an existing premise not have a licence application renewed.

## **4.0 Provision of Services Regulations**

This impacted on the policy in respect of fees, which must be set at reasonable levels and not be used as a deterrent and quantity limits, artificial limits must only be set where it is in the over-riding public interest to do so.

### **4.1 Fees**

Fee levels are based on officer time and Council resources involved in the following activities:

- Processing of documents for applications, renewals and transfers
- Determination of applications by the Licensing Committee
- Enforcement of conditions on licence holders
- Dealing with complaints
- Introduction and regular review of a policy
- Maintenance of staff training and back office support such as IT support

Fee levels are based on full cost recovery which includes officer time, staff on costs and central support recharges. Suggested fee levels are:

Application Fee £3900

Variation Fee £ 800

Annual Renewal Fees £3200

Transfer £750

The European Services Directive requires that any fees are reasonable. The fee levels are relatively high due to the low numbers of licensed premises involved over which to spread the costs of the administration of the licensing system. The current fee for a sex shop is £2875 pa.

## 4.2 Quantity Limits

The draft policy has proposed that quantity limits be specified for Union Street and certain parts of the City Centre, in order to prevent an excessive number of premises within these areas. The proposed numbers are based both on the number of existing licences and how many premises could be present without compromising the nature, amenity and character of a neighbourhood. It is felt that it is in the overriding public interest to limit the over provision of this type of establishment in any one area.

## 5.0 The Policy

Following the consultation, the draft policy has included minor amendments and is in Appendix I.

### 5.1 Customer and Communities Overview and Scrutiny Panel (CCOS Panel)

#### Recommendation I

The content of the draft Sex Establishment Licensing Policy be amended with the inclusion of the following –

(hours of opening) to include ‘Good Friday’ on a similar basis to Sundays;

The current draft policy (Appendix I) states;

*“The Council will apply hours of operation that are commensurate to the existing use area and its effect on residential property. There shall normally be no operation of licensable activities on Sundays (06.00 am to midnight), Christmas Day or Easter Sunday. Alternative opening restrictions may be put in place dependant on the character of each locality”.*

Officers recommend consideration of the adoption of this inclusion and also consider additional wording on the last sentence to allow the Licensing Committee to consider alternative opening restrictions upon receipt of representations. This wording would give the Licensing Committee a definite starting point on opening hours but also the ability to set alternative times to allow trading to take place on Sundays or Bank Holidays when making decisions on applications or reviews of licences. This would allow the Licensing Committee to take into consideration factors such as previous history of the premises and their hours of operation; trading restrictions placed on a Sunday or any other religious and/or belief days and allow departure from the policy where appropriate.

The protection of Sundays still has residual legal protection, predominantly in the form of the Sunday Trading Act 1994. This limits the hours of Sunday opening dependant on the size and nature of the retail premises. The current Council policy prevents Sunday opening for the licensed sex shops. 71% of all respondents to the consultation were against Sunday opening.

If a less prescriptive and more flexible option is desired this could be achieved through the following wording.

*"...The Council will apply conditions on hours of operation that are appropriate to the locality and have regard to any representations received..."*

The adoption of this wording will allow the Licensing Committee to set opening hours but there will be no default position regarding the closure of premises on a Sunday, Good Friday, Easter Sunday or Christmas Day. The applicant would be able to request any hours and Licensing Committee would be able to make decisions on suitable trading hours. These restrictions will be dependant on considerations such as; location, activity, business operation and local community views including religious and/or belief matters. This flexible approach will allow restrictions to be tailored more appropriately to each application to take account of the variety of views likely to be received by the Licensing Committee.

**In summary Cabinet members are requested to make recommendation to City Council on the wording of the policy regarding opening hours from the following two options;**

**Option 1**

*'The Council will apply hours of operation that are commensurate to the existing use of the area and its effect on the locality. There shall normally be no operation of licensable activities on Sundays and Good Friday (06.00 am to Midnight), Christmas day or Easter Sunday. Alternative opening restrictions may be put into place dependant on the character of each locality and representations received'*

**Option 2**

*'The Council will apply conditions on hours of operation that are appropriate to the locality and have regard to any representations received'*

**5.2 Customer and Communities Overview and Scrutiny Panel (CCOS Panel)**

**Recommendation 2**

The content of the draft Sex Establishment Licensing Policy be amended with the inclusion of the following -

(notification) that residents, chairs of school governors, religious establishments within a specific distance from the proposed sex establishment, as well as the relevant Ward Councillors, are notified of any application by individual letters.

Officers' comments are that there is no statutory requirement on the Council to notify residents and businesses of applications. To do so would place additional requirements on the Council. It is proposed that ward Councillors are notified of applications within their ward or adjacent wards where appropriate. Applicants have statutory duties to publish a notice in a local paper and post a prescribed sign in the premises window. Consultation views on this subject were equally divided.

The Customers and Communities Overview and Scrutiny Panels recommended that residents, chairs of school governors, religious establishments within a specific distance from the proposed sex establishment, as well as the relevant Ward Councillors, are notified of any application by individual letters.

The addition of a voluntary commitment to notify local residents and businesses places an additional burden on the Council which is not supported by the legislation. Applicants are legally required to place a public notice in a local newspaper and also to display in a prominent location on the property a Council prescribed notice.

The proposed policy expands upon the legal requirement to specify that this notice must be separate to any other licence application, such as under the Licensing Act 2003. The proposed policy also expects the applicant to have undertaken reasonable steps to consult local residents, business and community groups in relation to applications for grant, or variation of the terms or conditions of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received. The proposed policy also states that local ward Councillors will be notified of each application.

It is considered that these proposed additional requirements sufficiently expand upon the legal requirements of the advertising provisions and to do more would open the Council to a risk of challenge and liability.



This recommendation is made in light of the recent appeal cases *Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association 2011* (Court of Appeal) which overturned the ruling in the Administrative Court case of *Albert Court Residents' Association versus Westminster City Council 2010* (Administrative Court).

Although the legal provisions for the licensing of sex entertainment establishment are contained in the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and not the Licensing Act 2003, it is officers' opinion that these cases could equally be applied to the proposals now being considered.

An additional consideration concerning the proposal to adopt the proposed procedure of notification relates to the application fees that can be set. Under the legislation the application fee must be reasonable and cover the administrative process. Including additional administrative procedures which are not specified under the Act, and including the costs of these in the fees calculation could lead to challenge and in turn could result in the costs of this work being unrecoverable.

Officers consider that the legal and proposed policy requirements placed on applicants taken together with the notification of ward Councillors should provide an acceptable level of notification to local businesses and residents.

The Police Reform and Social Responsibility Act 2011 will, however, result in Licensing Authorities having a statutory duty to publicise applications received under the Licensing Act 2003. The precise details of the notification and publicity system are not yet known.

This aspect of the policy will, therefore, be reviewed in light of any changes.

## **Other policy considerations**

### **5.3 Locality criteria**

There was general support for the locality statements and the areas considered to be sensitive.

### **5.4 Minimum distance**

An arbitrary measurement of distance from sensitive areas does not allow flexibility to allow for local circumstances and geography. It is therefore proposed that no distances are prescribed in the policy. 72% of respondents felt that a distance should not be specified.

### **5.5 Existing Premises**

Premises that are currently licensed or undertake activities covered by the policy will be invited to apply for a new licence. Additional detail has been added to the policy to clarify the Council's position regarding an existing business' right to continue trading even though it may not completely comply with the new policy requirements. A balance must be obtained between the achievement of the licensing objectives and human rights; these being Article 1, Protocol 1 of the European Convention on Human Rights (peaceful enjoyment of possessions) and Article 10 (Freedom of expression). *Belfast City Council v Miss Behavin' Ltd* is the leading case and it is clear that any decision to refuse an existing licence must be rational, necessary and proportionate for the promotion of the licensing objectives.

## **6.0 Scheme of Delegation**

The current constitution identifies the Licensing Committee as having responsibility for sex establishment licensing. Appendix B identifies a scheme of delegation appropriate for the Committee and officers

## **7.0 Conclusion**

The policy was generally considered favourably by those responding to the consultation and should provide a basis for rational and reasonable determination of licence applications.

**Appendix A**

**Draft**

**Sex Establishment**

**Licensing Policy**

**Effective date:**

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## INTRODUCTION

The City Of Plymouth is the second largest City on the south coast of England and, after, Bristol, the largest in the South West with a residential population in the region of 256,700. Looked upon as the regional capital of Devon and Cornwall, Plymouth has a rich combination of heritage and natural beauty in what is a thriving maritime city that attracts millions of visitors.

The City is located in an area of outstanding beauty, with the Dartmoor National Park to the north, the natural harbour of Plymouth Sound to the south and the rivers Plym and Tamar on either side. Plymouth's rich history and maritime heritage, combines the advantages of city living with the benefits of having the diverse countryside and coastline of Devon and Cornwall on its doorstep.

Plymouth City Council employed the world-renowned architect David Mackay and the 'Mackay Vision' are embedded in the on-going re-development of Plymouth. It is likely that over the next twenty years it is reasonable to expect that the population of Plymouth could rise to between 300,000 - 350,000 due to urban expansion.

This Licensing Authority recognises that the provision of entertainment is a major contributor to the economy of the City, attracting tourists and visitors, making for a vibrant City, which in turn continues to be a major employer. Commercial occupiers of premises have a legitimate expectation of an environment that is attractive and sustainable for their businesses balanced by the needs of residents and views of the Council.



## **SCOPE AND PURPOSE**

The Council recognises and values the communities' views and opinions. The government has amended controls on the legitimate operation of sex establishments and that such businesses are a legitimate part of the retail and leisure industry. The Council is not able to take a moral view on sex establishments.

This policy statement has amongst other things, four main purposes;

- To inform applicants of the parameters within which the Council will make licensing decisions.
- To provide guidance to local residents and businesses of the boundaries within which the Licensing Authority will make licensing decisions.
- To provide Members of the Licensing Committee with a decision making framework.
- To support the Licensing Authority if it has to demonstrate in a court of law how it arrived at its licensing decisions

Plymouth City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous) Provisions Act 1982 (as amended) to come into effect on the 5<sup>th</sup> March 2012, providing that anyone wishing to operate a "sex establishment" within the City must first obtain a licence from the Council. This policy sets out the principles that the Council will apply when making decisions relating to the operation of sex establishments. It outlines the control measures that the Council will consider prior to licensing a sex establishment including guidance on the quantity limits to be applied in defined areas. It is the Council's intention to facilitate well run and managed businesses with licence holders displaying sensitivity to the impact of their premises on local residents.

All applications for new, variation or transfer of sex establishment licences outlined in this policy will be considered by the Licensing Committee or Licensing Sub-Committee as the committee responsible for determining applications at a public hearing, or officers where appropriate delegated powers have been granted.

A 'sex establishment' means a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.

The definitions of each type of sex establishment can be found in Appendix I

Appendix 3 contains transitional provisions and is contained only for guidance and to make this document as comprehensive as possible

## LICENSING OBJECTIVES

The Council will expect applicants to submit applications and where a licence is granted operate their businesses, to prevent or minimise its impact on;

- The prevention of crime and disorder
- The protection of safety, health or public decency
- The prevention of nuisance
- The protection from children from harm
- Protecting the nature, amenity and character of a neighbourhood

These licensing objectives will be taken into account when determining an application and any conditions attached will be necessary and designed to achieve the licensing objectives. Applicants must satisfy the Council of how they will promote the licensing objectives. A copy of the conditions may be required to be prominently displayed on the premises for the use of employees, workers and patrons.

Guidance on the issues to be considered is below.

### **Prevention of Crime and Disorder:**

In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications. In giving due regard to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and other relevant authorities.

Applicants should consider the following control measures as examples of good practice that may be considered as part of their application.

- Use of appropriate numbers of security personal and stewards ensuring effective controls at all times
- Training staff in crime prevention measures
- Membership requirements where appropriate
- Use of CCTV inside of all areas to which the public have access and the outside areas of the premises, ensuring digital systems comply with Home Office and Information Commissioners Office (ICO) minimum requirements.
- Quality of supervision and surveillance in premises
- Regular checks by management and door supervisors of all public areas including toilets
- Assessment of customer profile ensuring effective management of customers both inside premises and in outside smoking / external seating areas
- Anti-discriminatory policies and practice covering e.g. homophobia, racism and hate crime
- Awareness of drink spiking
- Zero tolerance drug policies including the appropriate use of searching and drug safes to combat drug crime
- Active participation in club/pub watch schemes
- Maintenance of comprehensive staff records and training records
- Clear published policies regarding the standards of behaviour expected from staff and customers

## **Protection of Safety, Health and Public Decency**

The operation of any sex establishment should not prejudice the safety or health of anyone, including any performers. In addition the presence and operation of a sex establishment must not adversely affect the public decency and behaviour of residents or patrons. Applicants should consider control measures that will address the following factors;

- The health, safety and wellbeing of any performers, e.g. secure access and egress, adequate changing facilities, internal CCTV.
- Provision of information to performers regarding support groups for those working in the sex industry.
- Clear policies relating to the prevention of exploitation of vulnerable adults, drug, alcohol and substance misuse
- Employees to receive training approved by Plymouth Safeguarding Children Board on the identification of potential exploitation or trafficking of vulnerable adults and to notify the Police of concerns
- The health, safety and wellbeing of any patrons
- Maintenance of acceptable behaviour of patrons
- Positive messages regarding sexual health
- Active participation in schemes to reduce and prevent sexual violence and maintenance of policies in respect of same
- The external appearance and advertising of the business will not overtly alert passersby to the presence and nature of the business

## **Prevention of Nuisance**

Any commercial activity has the potential to create nuisance whether by noise, litter or anti-social behaviour from the operation of the business or the activities of patrons. Applicants should have regard to the following factors;

- The nature and hours of operation
- The location of premises and character of the surrounding area in relation to the proximity to residential and other noise sensitive premises
- Latest admission times
- Measures for the limitation of noise emissions from the premises. These may include noise limitation devices, sound insulation, the installation of acoustic lobbies and double glazing and the installation of air quality management systems.
- Measures to deal with queuing outside the premises
- Effective management and control of outside areas i.e. smoking areas
- Measures to deal with dispersal of customers from the premises including the employment of door supervisors, use of dedicated taxi firms, notices in the premises requesting customers to respect neighbours



## **Protection of Children from Harm:**

The operation of any sex establishment should not prejudice the safety of children and applicants should have regard to following factors that may be used to protect children from harm;

- Premises to have a policy relating to the protection of children from harm
- No unsuitable external promotion or advertising of the premises whilst the premises is closed e.g. flashing neon signs or similar
- Premises to operate a Challenge 21/25 proof of age scheme before patrons access the premises. Employees must receive training on the operation of the proof of age policy and keep records of such training.
- Records to be kept of refusals and incidents
- Employees to receive training on the identification of potential exploitation or trafficking of children and to notify the Police of concerns
- Prominently displayed signs barring under 18 year olds
- Screening or obscuring of windows, doors and other openings so that the interior of the licensed premises and the displays of articles sold at the premises shall not be visible at any time to persons outside the building
- Goods to be discreetly wrapped before leaving the premises and when being delivered
- Use of CCTV inside of all areas to which the public have access and the outside areas of the premises, ensuring digital systems comply with Home Office and Information Commissioners Office (ICO) minimum requirements.
- The external appearance and advertising of the business will not overtly alert children to the presence and nature of the business

## **Protecting the Nature, Amenity and Character of a Neighbourhood**

The Council does not wish for an establishment to be inappropriately located or for any neighbourhood or locality to become dominated by the presence of sex establishments. Equally the Council recognises the need to encourage the promotion and development of a broad range of entertainment and leisure opportunities. When considering applications decisions will balance the needs of the community with the needs of the applicant.

The Council will consider the following factors and expect applicants to develop management strategies that have regard to the locality including nearby sensitive buildings or activities.

- The external appearance of premises
- Sightlines and surveillance
- Lighting and ability to monitor in relation to crime and disorder
- External advertising on buildings
- Hours of operation
- Nature of activities
- The concentration of premises licensed as Sex Establishments in a particular neighbourhood or locality

## RELEVANT LOCALITY STATEMENT

Schedule 3 of the Act allows the Council to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the Council considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use of any premises in the vicinity or the layout, character or condition of the premises. Nil may be the appropriate number.

The Council does not consider it appropriate to define the entire city as having the benefit of a quantity limit. A ‘locality’ is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents. Material decisions that might be relevant to a local community could include a licensed premises that is ‘on the way to the’ local shops, school or places of worship.

In relation to a vehicle, vessel or stall the locality under consideration will be where it is desired to use it as a sex establishment.

The Council will consider it unsuitable to have a sex establishment located within an inappropriate distance from;

- A residential area
- Premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as; schools, play areas, parks, children’s centres, youth clubs, nurseries or leisure facilities and other similar sensitive premises
- Places of public religious worship
- A shopping area aimed at attracting residents and visitors to the City
- Community facilities or public buildings
- Historic buildings, cultural attractions, educational establishments or areas and tourist attractions
- A locality with a history of specific social difficulties
- A gateway to an identifiable locality
- Where there is already a sex establishment

An inappropriate distance will be dependant on the type, size, appearance, position and operation of the premises when considered against the specific nature of the locality in question.

Given the above criteria it is considered that currently the only areas considered as suitable for the provision of certain defined licensed sex establishment premises are the areas known as;

- Union Street
- City Centre

Any applications in these areas are still subject to the requirements identified in this policy.

All other parts of the City are generally considered unacceptable, although each case would be considered on its own merits having regard to the specific detail of the application. For example; it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.

## QUANTITY LIMIT STATEMENT

The Act allows the Council to determine a number of sex establishments in a specific locality. This can include determining that the appropriate number is **nil**. The Council considers that there is an overriding public interest to justify quantity limits for the areas known as Union St and the City Centre to avoid an excessive build up of sex establishments, thereby undermining the character and nature of the designated areas.

Whilst applications will be determined based on their individual merits there will be a presumption against granting additional licenses in areas where the number considered appropriate for that locality have already been granted.

The Council will not take account of commercial need. This is a matter for market forces and may be a relevant consideration for planning applications. The existence or absence of suitable planning approval is not a relevant consideration for the Council, but is a matter for the applicant.

For each of the following areas the number of sex establishments considered as appropriate is;

Location	No of Sex Shops / Cinema	No of Sexual Entertainment venues
Union Street	1	2
City Centre	1	Nil

For all other localities the appropriate number will be **nil**.

## DETERMINATION OF APPLICATIONS

### Existing Businesses

Those businesses either licensed or undertaking licensable activities prior to the adoption of this policy (see transitional arrangements) may apply under the new licensing regime. Existing businesses have limited rights to continue trading even though it may not completely accord with the new policy aspirations and expectations. A balance must be obtained between the achievement of the licensing objectives and human rights; these being Article 1, Protocol 1 of the European Convention on Human Rights (peaceful enjoyment of possessions) and Article 10 (Freedom of expression). Any decision to refuse an existing licence must be rational, necessary and proportionate for the promotion of the licensing objectives. Anyone wishing to object to the grant of a licence for existing businesses must provide supporting evidence to demonstrate the impact on the locality with reference to the licensing objectives.

## **Applications for the grant, variation, renewal or transfer**

The application process is set out in Appendix 2.

The transitional arrangements for the introduction and implementation of this policy for the inclusion of sexual entertainment venues within Schedule 3 of the Act and for guidance are set out in Appendix 3 Please refer to the Act for final interpretation.

The Council will expect applicants to submit applications and where granted, operate their businesses to prevent or minimise an impact on the licensing objectives;

- Crime and disorder
- The protection of safety, health or public decency
- The prevention of nuisance
- The protection from children from harm
- Protecting the nature, amenity and character of a neighbourhood

When considering an application for grant, renewal or variation, the Council will in particular consider the;

- (a) Type of activity
- (b) Duration of proposed licence
- (c) Proposed hours of operation
- (d) Layout, appearance and condition of the premises
- (e) The use to which premises in the vicinity are put
- (f) The character of the locality in which the premises are situated or relevant development or strategic plans adopted by the Council
- (g) Levels of recorded crime and disorder in the area

The Council will expect the applicant to have undertaken reasonable steps to consult local residents, business and community groups in relation to applications for grant, or variation of the terms or conditions of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received.

Where an application is to renew an existing sex shop, sex cinema or sexual entertainment venue the Council will have regard to the previous history of the premises, and material changes to the operation of the premises, any non-compliance, any planning policies and regeneration factors and any other matters considered material to the application.

When considering all applications the Council will take into account:

- (a) Past demonstrable adverse impact from the activity
- (b) Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

- (c) Premises that were previously granted a licence cannot automatically expect re-issue where, for example, the medium and long term aspirations for the locality have changed and the continuation of that licensed premises would undermine the revised aspirations of that locality and as a consequence re-issue would not be justified.

### **Fitness of Applicant**

An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will have regard to;

- (a) Previous knowledge and experience of the applicant and
- (b) Any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other Licensing Authority and
- (c) Any report about the applicant and management of the premises received from statutory objectors/responsible authorities
- (d) Any criminal convictions, cautions, warnings or information supplied by the Police or other agencies.

### **Length of Licence**

Licences will generally be granted for a duration of 1 year.

### **Waivers**

The Council does not consider it appropriate for waivers to be issued except in extreme circumstances.

### **Notices**

Applicants for sex establishments must offer proof of giving public notice of the application in a local newspaper. The advertisement must be no later than 7 days after the date the application is made.

Where it relates to a premise a notice must be displayed on or near the premises in a place where it can conveniently be read by members of the public. The notice must be in place for 21 days beginning with the date the application was made.

All notices must be in the form prescribed by the Council at that time. Where a separate application is being made under the Licensing Act 2003 a separate notice will be required.

Applications for any sex establishment must be the subject of separate public notices and advertisements and not linked to any premises licence application. This is to ensure that the local community has every opportunity to be aware of the specific submission of an application within the terms of Schedule 3 of the Act.

### **Fees**

The Act states that applicants shall pay a reasonable fee for the grant, renewal, variation or transfer of a sex establishment licence. The City Council will set fees on the basis of full cost recovery.

## **Hours of Opening**

\* See Cabinet Report The Council will apply hours of operation that are commensurate to the existing use area and its effect on residential property. There shall normally be no operation of licensable activities on Sundays (06.00 am to midnight), Christmas Day or Easter Sunday. Alternative opening restrictions may be put in place dependant on the character of each locality.\* See Cabinet Report

## **Disability Discrimination**

The Disability Discrimination Act 1995 introduced measures to tackle discrimination encountered by disabled people in the areas of employment, access to goods, facilities and services and the management, buying or renting of land or property. Applicants will be expected to:

- Make reasonable adjustments for disabled people, such as providing extra help to make changes to the way they provide their services
- Make reasonable adjustments to the physical features of the premises to overcome physical barriers to access

The Council will have regard to the likely impact of licensing of sex establishments on disability discrimination and the requirements of the Equality Act 2010, particularly when considering the operation and management of the premises.

## **Sex Shop**

Licenses for sex shops are required where R18 films being sold or where a significant degree of sex articles are offered for sale.

The term significant degree is not defined. When considering whether or not a licence is required the following factors will be considered;

1. The ratio of sex articles to other aspects of the business
2. The absolute quantity of sales
3. The character of the remaining business
4. Nature of the displays in the business
5. Turnover

The Council will consider any other relevant material, information or data relevant to the particular premises.

## **MANAGEMENT OF THE PREMISES**

The Council requires all licence holders to ensure that they and their employees comply with all relevant licence conditions.

In terms of management of licensed sex establishment, the Council strongly encourages where possible and appropriate, that licence holders;

- (a) Work with statutory agencies such as the Police, and Council departments in order to create and maintain a safe environment, both within licensed premises and in the environs around them

- (b) Develop crime prevention strategies in consultation with the Police and the Council, in particular where premises are located in areas with high levels of recorded crime.

In terms of the employment of staff in licensed premises, the Council requires that all staff be appropriately trained in areas such as the legislation relating to sex establishments, any licence conditions, and any proof of age policies.

## **ENFORCEMENT**

Once licensed, it is essential that the premises are maintained and operated so as to ensure the compliance with the specific terms of the licence and any condition attached. The Council will make arrangements to monitor premises.

The Council will work closely with all other relevant statutory bodies to ensure an efficient deployment of all personnel engaged in enforcing licensing law and inspecting licensed sex establishments, in order to ensure that resources are targeted at problem and high risk premises, whilst ensuring that all such premises meet the required standards.

Failure to maintain compliance may result in action being taken in accordance with the Council's relevant Enforcement Policies.

## **EXCHANGE OF INFORMATION**

From time to time the Council may exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil the statutory duty of reducing crime

The name and addresses of objectors will not be disclosed to applicants or published in public reports.

## **POLICY REVIEW**

The Council will review this policy as required by the governing legislation or when deemed necessary.

## APPENDIX I

### DEFINITIONS

The meanings assigned in this document have been paraphrased from Schedule 3 of the Act. The definitions are considered correct as at the date of this policy. Please refer to the Act for final interpretation.

**A ‘sex establishment’** means:

A ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control”.

**A “sexual entertainment venue”** means:

“Any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser”

**“Relevant entertainment”** means:

“Any live performance or any 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 the audience (whether by verbal or other means). An audience includes an audience of one”

For the purpose of the definitions for “sexual entertainment venue” and “relevant entertainment definitions”, it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.

**“Audience”** includes an audience of one

**“A display of nudity”** means:

- (a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) In the case of a man, exposure of his pubic area, genitals or anus;

**“The organiser”** means any person who is responsible for the organisation or management of;

- (a) The relevant entertainment; or
- (b) The premises;

**“Premises”** includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.

A **“sex cinema”** means;

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which

- (a) Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage
  - (i) Sexual activity; or
  - (ii) Acts of force or restraint which are associated with sexual activity; or
- (b) Are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.



No premises shall be treated as a sex cinema by reason only

- (a) If they may be used for an exhibition of a film (with the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act) of their use in accordance with that authorisation; or
- (b) Of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985

A **“sex shop”** means:

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.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

A **“sex article”** means;

- (a) 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 below applies.

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

To any recording of vision or sound, which

- (i) Is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
- (ii) Is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

## **APPENDIX 2**

### **APPLICATION, CONSULTATION AND HEARING PROCEDURES**

#### **Application Process**

The Licensing Section, Public Protection Service will have responsibility for processing any application having regard to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”) , relevant statutory guidance, national and local licensing policies.

The application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as determined by the Council’s fees and charges. Application forms can be accessed from the Council’s Licensing website or are available upon request from the Licensing Section.

In keeping with the requirements of the EU Services Directive applications may be made electronically. For further information, please visit the Council’s licensing website or contact the Licensing Section.

It should be noted that as a result of the Provision of Services Regulations 2009 tacit authorisation of an application does not apply as different arrangements are in place with regard to the notifications of determination of an application.

A notice of the application must be advertised both on or near the premises and in a local newspaper circulating within the area of the premises i.e. Evening Herald. The notice must clearly identify the premises to which the application relates. Sample prescribed notices are available on the website. The notice on or near the premises shall be displayed for 21 days beginning with the date of the application and in a place where it can be conveniently read by the public.

The notice in the newspaper shall be published no later than 7 days after the date of the application.

The Council recognises that there will be some ‘cross over’ in the management and control of the premises having regard to the requirements of the Licensing Act 2003. The Council will expect the applicant to have considered the factors and to have drawn comparisons where appropriate in promoting the licensing objectives. This is particularly relevant where the premises already has or is applying for a premises licence.

Applicants are advised to consider the Council’s pool of conditions

The applicant shall use the prescribed form published by the Council for any application and supply the details requested. These details may include:

Site plan (1:1250)

Premises plan (1:50) showing all entrance and exit points, all parts used and the licensed areas suitable marked

Drawings of the elevations including signage and advertising

Personal / company details

Details of previous convictions

#### **Consultation**

A copy of the application form and supporting documentation must be sent to the Chief Officer of Police within 7 days of the date the application was given to the Licensing Authority.

The Council may consult with the following authorities to ensure that all relevant information is available when considering an application;

- Devon & Cornwall Police
- Devon and Somerset Fire & Rescue Service
- Public Protection Service, Plymouth City Council
- Planning Department, Plymouth City Council
- Crime Reduction Safety Partnership
- Child Protection Board

The Council will consult any other organisation it deems relevant to a particular application. Relevant Ward Councillors will be notified of all applications for grant, renewal and transfer of licences and the variation of conditions within their Ward, and also those on or near the Ward boundary.

### **Representations**

Representations may be made to an application by any person, business, community group or representative of any of the above who live in the vicinity and /or have a reasonable expectation to be in a position to comment. The final arbiter of whether any representation is relevant having regard to the specific application will be the Licensing Officer duly authorised by the Council to process the application.

A relevant representation will state the grounds on which the objection/positive representation is made and will need to be made in the following terms:

- Be made in writing
- Indicate the name and address of the person or organisation making the representation
- Indicate the premises to which the objection relates
- Indicate the proximity of the premises to the person making the representation.
- Link the representation as to how the licensing objectives would be compromised

Representations may only be made within the period of 28 days following the date on which the application was given to the Council.

The Council will not normally consider any representation that does not contain the name and address of the person making it. Any personal details received will not be disclosed in the Committee report

Representations received that are frivolous or vexatious or which relate solely to moral grounds is likely to be given lesser weight.

Where representations are made the Licensing Authority will provide copies to the applicant.

Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period during which representations may be made, unless all parties agree that a hearing isn't necessary. At this point all interested parties will have the opportunity to attend.

### **Decision Making**

The Council recognises that the licensing of sex establishments is controversial and stimulates very emotive arguments. However, the Council does not have the right to, and will not, have regard solely to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered. Consequently, objections on the grounds that sex establishments should not be allowed only on moral grounds will not be considered.

## Hearings

All applications for new, variations or transfer of sex establishment licences will be considered at a public hearing by Licensing Committee or Licensing Sub-Committee as the committee responsible for determining applications or officers where appropriate delegated powers have been granted.

With regard to renewals where the appropriate application procedures have been followed and where no relevant representations have been submitted officers will normally have delegated authority to process the application and where appropriate, issue the licence

Representations will be considered by Committee. There are no explicit provisions for objectors to be heard, but the Council has discretion on this matter.

Individuals or responsible authorities will only normally be afforded a hearing if the Chair is satisfied that;

- (a) A relevant written objection was received during the statutory 28 day consultation period
- (b) The objector will be confined to putting forward only those points that are relevant to consideration of the grounds of refusal and which have been notified in writing to the applicant
- (c) Objectors and applicant will be heard on the same occasion as the hearing
- (d) The applicant will be afforded the opportunity to address the committee and respond to any enquiries members may have.

Members may adjourn to private session to discuss the case before making a decision. A verbal decision will normally be given that day with a written decision sent within 5 working days stating the Committee's reasons for that decision.

The Committee after due consideration may decide to grant or refuse the licence under the provisions in Schedule 3 of the Act, or may grant a licence on such terms and conditions and subject to such restrictions as it may specify.

Conditions may be imposed for example to control:

- (a) The external appearance of the premises;
- (b) The operating hours of the business;
- (c) The visibility of the interior of the establishment to passers by;
- (d) Any change of use of any kind of sex establishment to another;
- (e) Displays or advertisements on or in such establishments;
- (f) CCTV provision;
- (g) The employment of suitable management & staff.
- (h) Restrictions on age of customers
- (i) Suitable proof of age schemes or policies

A pool of conditions will be used to provide conditions that are proportionate and necessary for the operation, management and control of the particular premises. Officers will recommend suitable conditions for each application.

## **Grounds for Refusal**

Mandatory Refusal - under the provisions in Schedule 3 of the Act, the Council must refuse a licence for the following reasons

- (a) To a person under the age of 18; or
- (b) To a person who is disqualified by virtue of the revocation of a previous licence in the area within the preceding 12 months; or
- (c) To a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made, or
- (d) To a body corporate which is not incorporated in an EEA State; or
- (e) To a person who has been refused an application for a licence for the premises within the preceding 12 months, unless the refusal has been reversed on appeal.

**Discretionary refusal** – the Council may refuse to grant a licence on one or more of the following grounds:

- (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) That if the licence were to be granted the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of a licence if he made the application himself;
- (c) That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality (the number may be nil);
- (d) That the grant of the licence would be inappropriate, having regard to:
  - (i) The character of the locality where the premises are situated; or
  - (ii) The use to which any premises in the vicinity are put; or
  - (iii) The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

## **Appeals**

An applicant for the grant of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days. However, if refusal was on the grounds specified in paragraphs above then no right of appeal is available under this legislation. A person whose application is refused due to these reasons may attempt to invoke a judicial review of the Council's use of its discretion in coming to a decision. Those making representation, objecting to or supporting an application, have no right of appeal under this piece of legislation.

## **APPENDIX 3**

### **TRANSITIONAL PROVISIONS**

The legal aspects of the transitional provisions are set out in the Policing and Crime Act 2009 (Commencement No1 and Transitional and Saving Provisions)(England) Order 2010 (The transitional Order) and the legal aspects of the transitional provisions are set out in the Policing and Crime Act 2009 (Consequential Provisions(England) Order 2010 (The Consequential Order)

The 1<sup>st</sup> Appointed day will be 5<sup>th</sup> March 2012

The 2<sup>nd</sup> Appointed day will be 5<sup>th</sup> September 2012

The 3<sup>rd</sup> Appointed day will be 5<sup>th</sup> March 2013

#### **Existing Operators**

Existing operators who immediately before the 1<sup>st</sup> Appointed Day have a 2003 Act licence and lawfully use that premises as a sexual entertainment venue under that licence will be allowed to continue to provide relevant entertainment until the 3<sup>rd</sup> Appointed Day or the determination of any application submitted before that time (including any appeal against the refusal to grant a licence), whichever is the later.

#### **New Applicants**

New applicants who do not meet the criteria for an existing operator will not be able to operate any activities which require a licence under this policy until the appropriate licence has been granted.

#### **Determination of Applications received on or before the 2<sup>nd</sup> Appointed Day**

Applicants can submit applications from the 1<sup>st</sup> Appointed Day onwards. Any applications received after the 1<sup>st</sup> Appointed Day but before the 2<sup>nd</sup> Appointed Day shall be considered together, so that in the case of a locality with a quantity limit applications are considered on their merit and not on a first come first served basis.

No applications will therefore be determined before the 2<sup>nd</sup> Appointed Day.

If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence it will take effect on the 3<sup>rd</sup> Appointed Day.

#### **Determination of Applications received after the 2<sup>nd</sup> Appointed Day**

Applications will be considered when they are made but only once all applications made on or before that date have been determined. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence it will take effect on the 3<sup>rd</sup> Appointed Day or if later the date the application is determined.

## CONTACT POINTS

For advice on any aspect of this policy please contact:

**Licensing Section**, Public Protection Service, Plymouth Council, Floor 6 Civic Centre, Plymouth, PL1 2AA

Tel: 01752 – 304141

Fax: 01752 – 226314

Email: [licensing@plymouth.gov.uk](mailto:licensing@plymouth.gov.uk)

**Police Licensing Team**, Licensing Department (West), Launceston Police Station, Moorland Road, Launceston, Cornwall PL15 7HY

Tel: 01566 771309

Fax: 01566 771388

Email: [licensingwest@devonandcornwall.pnn.police.uk](mailto:licensingwest@devonandcornwall.pnn.police.uk)

**Child Protection, Child Protection Team**, Social Services, Ginkgo House, 156 Mannamead Road, Plymouth, PL3 5QL

Tel: 01752 306340

Fax: 01752 306344

Email: [childprotect@plymouth.gov.uk](mailto:childprotect@plymouth.gov.uk)

**Devon & Somerset Fire & Rescue Service**, West Devon Headquarters, Glen Road, Plympton, Plymouth, PL7 3XT

Tel: 01752 333600

Fax: 01752 333640

Email: [westfiresafety@devfire.gov.uk](mailto:westfiresafety@devfire.gov.uk)

**Environmental Health Service**, Public Protection Service, Plymouth Council, Floor 6, Civic Centre, Plymouth, PL1 2AA.

Tel: 01752 304141

Fax: 01752 226314

E-mail: [public.protection@plymouth.gov.uk](mailto:public.protection@plymouth.gov.uk)

**Planning & Regeneration Service**, Plymouth Council, Floor 9 Civic Centre, PL12AA

Tel: 01752 – 304366

Email: [planningconsents@plymouth.gov.uk](mailto:planningconsents@plymouth.gov.uk)

**Plymouth Community Safety Partnership**, Floor 8, Civic Centre, Plymouth, PL1 2AA

Tel: 01752 315788

E-mail: [plymcomsafety@plymouth.gov.uk](mailto:plymcomsafety@plymouth.gov.uk)

## Appendix B

Matter to be dealt with	City Council	Licensing Committee	Assistant Director Environmental Services
Application for a sex establishment licence		In all cases	
Application to vary a sex establishment licence		In all cases	
Application for transfer of a sex establishment licence		Where objections have been received and not withdrawn	If no relevant objections received, or where objections have been withdrawn
Application for the renewal of a sex establishment licence		Where objections have been received and not withdrawn	If no relevant objections received, or where objections have been withdrawn
Application for the waiver from the requirement of a sex establishment licence Consideration of the revocation of a sex establishment licence Setting of fees Review of Licensing Statement of licensing Policy Amendments to the statement of licensing policy Anything else	City Council City Council City Council	In all cases  In all cases	     Assistant Director Environmental Services



# APPENDIX C

## Sex Establishments Licensing Policy Consultation

No	Respondent	Synopsis of Response	Public Protection Service response
<b>Key – SE – Sex Establishments</b>			
1	Sarsen Housing Assoc	<p>Generally in favour.</p> <p>Requests further clarification on the proposal not to set a minimum distance that a SE should be located from ‘sensitive buildings’.</p> <p>Local residents should be assured of the right to raise objections or offer opinion to any application and raises concern that leaving this up to the applicant is enough.</p>	<p>Noted.</p> <p>Noted</p>
2	St Boniface Catholic College	<p>Generally in favour.</p>	
3	Tourist Information Centre	<p>Generally in favour.</p> <p>Seeks clarification of how responsibility of the applicant to advertise be enforced by the council.</p>	<p>The applicant will be required to advertise in the local newspaper i.e. Herald and by public notice outside the premises. This is similar to that required under the Licensing Act 2003. In addition the application must show how they have consulted with local community including residents, local business and other interested parties. Officers will also take steps to inform local ward councillors as part of the application process.</p>

4	Fr Gregory Carpenter	<p>Generally in favour.</p> <p>In favour of quantity limits, however respondent considers that Union Street needs to be reclaimed with fewer such establishments.</p> <p>The respondent states that a sex establishment should not be permitted to open on a Sunday.</p>	<p>Whether to have a quantity limit for any specific area is a principle part of this consultation and if so the concentration of licences will have to be set. If a quantity limit for any area is considered not appropriate then the principle of 'each case on its own merits' would need to be applied.</p> <p>Noted.</p>
5	Plymouth Heartbeat	<p>The respondent has raised a number of points objecting to the present of any sex establishments being allowed to operate in this City and consequently was against the principle of having a quantity limit for any area.</p> <p>The respondent was of the view that by having a policy this will encourage the proliferation of establishments</p>	<p>Noted.</p> <p>By having a SE policy will provide a robust framework within which all future decisions can be made on the control of such establishments.</p>
6	Sir John Hunt Community Sports College,	<p>Generally in favour.</p> <p>.</p>	

7	Upper Barbican Res Ass	<p>Generally in favour.</p> <p>Residents have a right to know applicants do not advertise in known publications.</p> <p>All establishments should be monitored by CCTV and have doormen any breach should be rigorously punished by immediate closure.</p>	<p>Noted</p> <p>The presence of CCTV and other security measures is a key part of the operating conditions of any proposed establishment and the suitability and adequacy of such systems would be scrutinised by the Police during the application process.</p>
8	UCP St Marks & St John	<p>In favour of having a policy for sex establishments.</p> <p>The respondent does not believe that limits should be set on the number of sex establishments and that all applications should be considered on their merits.</p> <p>The respondent believes residential accommodation and premises where children are present are 'sensitive buildings'. Other buildings such as places of worship, historic buildings and shopping areas should not be considered.</p> <p>The respondent does not consider the aspirations of an area to be relevant.</p>	<p>Noted</p> <p>Noted. Although those other buildings are also likely to have children present.</p> <p>Officers consider the aspirations of a neighbourhood and residents to be highly relevant.</p>
9	Abbey Hall Prysten House.	<p>Generally in favour.</p> <p>The respondent does not agree with the limits for Union Street/City Centre.</p> <p>The respondent states that the Council should notify all relevant local residents.</p>	<p>Noted.</p> <p>Noted</p>

10	Hooe Baptist Church.	<p>Generally in favour.</p> <p>The respondent considers that other premises such as supermarkets and filling stations should also be included as ‘sensitive buildings’.</p> <p>The respondent stated that due to the sensitive nature of such establishments everyone in the vicinity of a proposed application should be deliberately/ specifically notified.</p> <p>The respondent was of the opinion the draft Sex Establishment Licensing Policy appears to be extremely thorough and fair.</p> <p>Comment - I am aware that there is no mention of the word ‘brothel’ - is this deliberate? Could a case be made by a potential proprietor for permission under these policy conditions for a brothel to be established? If so please would the Council ensure that regulations are put in place to prevent such an establishment being established?</p>	<p>Noted.</p> <p>Noted</p> <p>Noted.</p> <p>There is no mention of ‘brothels’ as these establishments fall outside of the law and as such are not covered by this policy.</p>
11	Keyham Methodist Community Centre,	<p>Generally in favour.</p> <p>The respondent raised concerns that sex establishments aren’t going to be limited outside of the proposed Union St and City Centre localities</p> <p>The respondent believes residential accommodation and premises where children are present are ‘sensitive buildings’. Other buildings such as places of worship, historic buildings and shopping areas should not be considered.</p> <p>There is a consensus from residents of Keyham who attend the community centre that they would like to be informed of any such establishments.</p>	<p>The draft policy states that there will be a presumption that the quantity limit for all other areas will be Nil.</p> <p>Noted. Although those other buildings are also likely to have children present.</p> <p>Officers will review whether it is appropriate to notify other ‘interested parties’ or ‘community buildings located within the vicinity.</p>

12	Ashoka Kadampa Buddhist Centre	<p>Generally in favour.</p> <p>The respondent put forward an additional licensing criterion against which an application should be considered. The Prevention of Moral Turpitude.</p> <p>The respondent was not in favour of a quantity limit as specified, stating that the lower limit the better.</p> <p>The respondent considered that people have the right to be notified</p> <p>Comment - We believe these kinds of establishment are harmful to the long term moral health and happiness of both those using them and their families and the well being of our under society.</p>	<p>Officers consider that licensing criteria should be objective and not include any references to behaviour other than that included in the Protection of Safety, Health and Public Decency.</p> <p>Noted</p> <p>Noted.</p>
13	Pelican Children's Centre	<p>Generally in favour.</p> <p>The respondent does not agree with quantity limits being set for Union Street/City Centre.</p> <p>The respondent does not agree with the draft proposal not to set a minimum distance a SE would need to be located away from sensitive buildings. Citing the government guidelines for the Protection of Children and Vulnerable People.</p> <p>The respondents stated that the policy should be bias towards the wishes of residents.</p> <p>The respondent stated that residents should be told.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted</p>

14	The Clittaford Club,	<p>The respondent was not in favour of a quantity limit, expressing the view that each case should be considered on its own merits.</p> <p>The respondent was happy for premises to open on Sundays</p> <p>The respondent was of the view that no policy is needed.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Although Officers are of the view that a policy will provide a robust framework within which all future decisions can be made.</p>
15	<p>Plymouth High School for Girls,</p> <p>(Yr 12 members)</p>	<p>Generally in favour.</p> <p>The respondent did not agree that applications should not be granted in other areas of the city, providing that they were discrete and as long as they follow rules.</p> <p>The respondent believes that hotels and 'transport hub' should also be considered as 'sensitive buildings'.</p> <p>The respondent was happy for SE premises to open on Sundays</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
16	Leigham Primary School	<p>Generally in favour.</p> <p>The respondent does not agree with the draft proposal not to set a minimum distance an establishment would need to be located away from sensitive buildings. Citing that 'it is never right to be neat a school or where young people congregate'</p>	<p>Noted.</p>

17	Economic Development PCC	<p>No reference to protection/prevention/identifying individuals who are victims of Sex Trafficking which is becoming a significant problem.</p> <p>Prevention of Nuisance – no measures to deal with people congregating outside establishments to smoke which could be seen as intimidatory.</p> <p>Quantity Limits – on what quantitative methodology has this been based on?</p> <p>Hours of Opening – if sex establishments are restricted to Union Street and the City Centre, then what is the justification for prohibiting them opening on Sunday's and Bank Holidays being as most other shops and entertainment venues in those areas can / do? – this policy seems arbitrary and illogical</p>	<p>Officers will explore this point.</p> <p>This is a key part of the licensing objective the Prevention of Public Nuisance</p> <p>The draft policy sets out quantity limits for areas based on existing establishments likely to be covered by this policy. There are other premises outside of these areas that will also need to be considered. These factors will be considered prior to the approving the policy.</p>
18	The Art of Dance	<p>Generally against the proposal as it will not have any benefits for the wider community and may lead to a restriction in liberty.</p> <p>The respondent questions the link surrounding crime linked to sexual encounter establishments and crimes linked to such establishments are recorded and that this information is publicly available.</p>	<p>Noted.</p> <p>Noted. In considering any future application all interested parties will have the opportunity to submit evidence linked to criminal behaviour that may be associated to the establishment concerned. It will be the responsibility of the Licensing Committee to consider all relevant information prior to making a decision to grant vary or revoke a licence.</p>

		<p>There are several elements of the new guidelines (draft policy) that I must bring into question as they may have a knock on effect to my business:</p> <p><i>The external appearance and advertising of the business, e.g. no sexually explicit material</i></p> <p><i>Any live performance or any 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 the audience (whether by verbal or other means). An audience includes an audience of one”</i></p> <p><i>I am concerned about this vague definition of what it is to sexually stimulate? As I carry out more than 12 pole dancing performances at my establishment and other venues during the year to a mixed audience of both men and women could my business fall under this restricted category?</i></p> <p><i>Will the legislation extend to clubs/bars who have poles installed for customer use?</i></p> <p><i>How will the rules apply to burlesque performances that include elements of striptease?</i></p> <p><i>I do appreciate that the document does detail what it classes as nudity:</i></p> <p><i>“A display of nudity” means:</i></p> <p><i>(a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus;</i>  <i>and</i>  <i>(b) In the case of a man, exposure of his pubic area, genitals or anus;</i></p> <p><i>However this wording would still allow an exotic dancer to perform wearing a string bikini and thong without the need for any restrictions?</i></p> <p><i>The wording, I assume, may also restrict theatre performances where nudity may be involved such as the recent Theatre Royal performance 'Puppetry of the penis'?</i></p>	<p>Noted – Officers have replied in detail the respondent. The Home Office has issued guidance to local authorities on how to interpret and implement this legislation and officers have been mindful in drafting this draft policy.</p> <p>This public consultation is designed to seek local views on this draft policy prior to the final version being considered by Council for adoption.</p>
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19	Corporate Support, PCC	Reference to statement concerning CCTV and not about the purpose of the policy.	Noted – Officers will review the text to ensure compliance with the Information Commissioners Code of Practice
20	Thornbury Primary School	Generally in favour.  The respondent considers not to set a minimum distance that an establishment would need to be located away from sensitive buildings as ‘too ambiguous’.	Noted.  Noted.
21	Vue Cinema	The respondent does not agree with the quantity limits for Union Street/City Centre.  The respondent does not consider places of worship should be viewed to ‘sensitive buildings’.  The respondent stated that all residents in the area should be notified at the expense of the applicant.	Noted.  Noted.  Noted.
22	Manor Street Children’s Centre	Generally in favour	Noted.
23	Hyde Park Junior School	Generally in favour  The respondent stated that where an application is located in a residential area then the publicity should be wider.  Comment - This is a real move in the right direction.	Noted.  Noted  Noted.
24	Resident	Generally in favour.  The respondent stated that the safety of ‘workers’ should be included in the licensing objectives.	The safety of employers and performers is part of the licensing criteria.

		<p>The respondent was not in favour of a quantity limit, expressing the view that each case should be considered on its own merits.</p> <p>The respondent believes premises where children are present and tourist attractions are 'sensitive buildings'. Other buildings such as residential areas, places of worship and shopping areas should not be considered.</p> <p>The respondent did not agree that an existing SE should expect its licence to be automatically renewed.</p> <p>Comment - You must have as a primary aim the safety of the workers and an aim to support the workers in illegal establishments helping them to leave unlicensed premises.</p> <p>Women in the sex industry need support and help to leave the industry and licences to support the workers is a good idea.</p>	<p>Noted.</p> <p>Noted.</p> <p>The respondent has draw comparisons with illegal activities and protecting workers from the sex trade as these activities are not licensable.</p> <p>Existing online services provide support to individuals involved in the sex industry.</p>
25	Engage SW, St Levan Road	<p>Generally in favour.</p> <p>The respondent agrees with the principle of quantity limits for Union St and the City Centre but not with the numbers proposed for Union St.</p> <p>The respondent stated that SE should be located near industrial areas or in remote locations away from residential areas.</p> <p>The respondent stated that residents should be informed by leaflet or letter</p> <p>Comment - I applaud the Council for trying to protect the public from such unsavoury establishments. The risks to the public and to our cities reputation is of the utmost importance when the authority makes its decision. This is a great City and should not have its good name sullied by such places existing here.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted</p> <p>Noted.</p>

26	Avondale Arms	<p>The Respondent did not support the draft licensing policy. Citing that her premises was not a SE just a bar.</p> <p>The respondent was not in favour of setting quantity limits or that applications should not normally be granted in other areas of the city</p> <p>The respondent supported the principle that an existing SE should not expect its licence to automatically renew if the aspirations of the surrounding neighbourhood change.</p> <p>Comment - My pub is not a sex establishment and is having problems enough paying all. The staff is just bar maids with the bust on show. There is not physical contact with customers and must always put their top on when leaving the bar to collect glasses or go to toilet.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted</p> <p>Any establishments that fall within the parameters of the amended legislation will be invited to apply. Whether not or a licence is necessary will be a matter consideration by officers by reference to legislative requirements</p>
27	St Andrews Church,	<p>Generally in favour.</p> <p>The respondent was in favour of a quantity limit for Union St, but did not agree with a limit being set for City Centre in which case it should be each application on its own merits.</p> <p>The respondents stated that for applications notification should be given to properties within 200 metres of proposed premises.</p>	<p>Noted.</p> <p>Noted</p>
28	Elburton Methodist Church	<p>Generally in favour.</p> <p>The respondent does not agree with any quantity limit for Union Street or the City Centre. Preferring a zero limit for both areas.</p> <p>Comment - We do not agree that such establishments add anything of value to our city and urge the council to move towards NIL values in all parts of the city as soon as possible.</p>	<p>Noted.</p>

		<p>The section at the bottom of Page 13 and at the top of Page 14 is unclear and needs to be rewritten.</p> <p>The return is made at the request of the church Council of Elburton Methodist Church. The Church has predominantly White British members.</p>	The text will be reviewed.
29	The Hoe Conservation Residents Association	Generally in favour.	
30	Oasis Project	<p>Generally in favour.</p> <p>The respondent stated that the sex industry should not be present in the City Centre.</p> <p>The respondent stated that libraries, doctor's surgeries and dentists should also be classified as 'sensitive buildings'.</p> <p>The respondent considered that by not setting minimum distance criteria then there will be an erosion of unmet limits. Specified limits can be agreed and set.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
31	North Road West Area Residents Association.	<p>The respondent did not consider that the proposed licensing objectives would prevent crime &amp; disorder, only lesson and control to an extent.</p> <p>The respondents did not agree with the proposal to set quantity limits or the proposal to not normally grant application in other areas of the city as this would result in all SE being located in Union St., 'people that live there including children already have enough to cope it'</p>	<p>Noted.</p> <p>Noted.</p>

32	Resident	<p>The respondent stated that Union St is run down and this is not a reason to concentrate SE as this can increase the sense of seediness.</p> <p>Concentrating sex establishments near to the Palace could limit the appetite of investors and certainly for visitors. It compounds the stigma of our neighbourhood, we are working hard to try to change perspectives and this will confirm the current stigma in lots of ways.</p> <p>Given Union St is a main route out of town I think it is important for the rest of Plymouth not to drive through an area that could be defined by the sex shops, cinema's and lap dancing clubs.</p> <p>Union St is also a main route for visitors to Plymouth from the ferry port into Cornwall, what sought of impression would this type of concentration of establishments have on them.</p>	<p>The draft policy sets out quantity limits for areas based on existing establishments likely to be covered by this policy and will seek to prevent the proliferation of sex establishments in that specific area</p> <p>The draft policy outlines the options that are available however a locality policy would also apply to areas that could be the subject of a quantity limit.</p> <p>The draft policy does set out the principle that an existing establishment should not expect its licence to be automatically renewed where it can be established that the aspirations of the surrounding area have changed. This is explored in Qu. 10 on the feedback response form.</p> <p>Noted.</p>
33	Church of the Holy Spirit	Generally in favour.	
34	Church of the Holy Spirit	Generally in favour.	
35	Resident	Generally in favour.	
36	Resident	Generally in favour.	

37	Resident	<p>Generally in favour.</p> <p>The respondents felt that the policy was not fair on the residents of Unions St.</p>	Noted.
38	Resident	<p>The respondent does not agree with any quantity limit for Union Street or the City Centre. Citing that there are already concerns that the existing establishment (in Union St) are near to a children's centre, play area, residential properties and a primary school.</p> <p>The respondent stated that where an application is made for establishments in a non-residential area these should be considered on their own merit i.e. Faraday Mill.</p> <p>The respondent stated that children's centres should also be classified as 'sensitive buildings'.</p> <p>The respondent did not agree with the draft policy not to set a minimum distance that establishments would need to be located away from sensitive buildings, but did not state the reasons why.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made but did not state the reasons why.</p> <p>Comments – Whilst I welcome the contents of the policy in places it contradicts the practices on the ground. The decision to focus the location of establishments within Union St puts these establishments within 100 yards of children's centre play parks and primary schools. Given concerns raised about the sexualisation of children, increasing concerns about the impact of drugs and alcohol on the lives of children and the on-going work to improve Stonehouse and Millay the decision to site establishments within Union St does not support the communities aspirations for the area.</p>	Refer to the comment set out in No.32.

39	<p>Cllr Sue McDonald</p> <p>Ward Councillor</p>	<p>The respondent stated that the draft policy did not contain enough detail and information to understand how the policy and decision making process will work.</p> <p>The respondent stated that Union St (and to some extent the City Centre) has all the features listed within the 'relevant locality statement'. Therefore given these criteria considered that Union St is not suitable for the location of certain defined licensed sex establishments as outlined in the draft policy statement.</p> <p>All other parts of the City are generally considered unacceptable, although each case would be considered on its own merits having regard to the specific detail of the application. For example; it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.</p> <p>The respondent does not agree with any quantity limit for Union Street. Citing that there are already concerns that the regeneration of the Palace Theatre as reason for not permitting any SE in Union St. In addition concern is raised that Union St and the City Centre would be the only available areas as establishments would not be permitted elsewhere.</p> <p>The respondent stated that community facilities, home zones, hostels should also be classified as 'sensitive buildings'.</p> <p>The respondents stated that the policy is not fair to the residents Union St as it contains a high density of flats.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made and that the council should notify local residents, churches and nurseries.</p>	<p>Officers acknowledge that the locality criteria set out in the draft document are equally applicable to Union St. The option of a quantity limit is designed to provide a cap and prevent the proliferation of establishments concentrated in one area. The limits put forward in this draft policy represent the status quo for those particular areas.</p> <p>For all other localities the draft policy has put forward that the appropriate number of establishments will be <b>nil</b>. Although each case would be considered on its own merits having regard to the specific detail of the application it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.</p> <p>As previously stated a quantity would prevent the proliferation of establishments in a particular locality.</p>
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		<p>Comment – Union St neighbourhood contains all of the listed factors on page 8 (relevant locality statement) that the Council considers as unsuitable. A debate needs to take place with the public in the neighbourhoods as aspirations have changed. I have raised the topic of the policing proposals at the City Centre Neighbourhood meetings ‘Stonehouse Action’. Latter community organisation working with Oliver Colvile MP who attended and chaired the last two meetings re. Regeneration of the Palace Theatre.</p>	
40	Waterfront City Church	<p>Generally in favour.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made and that the council should notify local residents, and businesses.</p>	Noted.
41	Revd Dave Rix	<p>Generally in favour.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made as people directly affected would benefit from the opportunity to respond.</p>	Noted.
42	Thompson & Jackson on behalf of Temptations T2 Ltd.	<p>No over-riding objections to the policy as drafted, although they would want to ensure that the policy did not hinder their continued business or restrict it in such a way that it would affect profitability and the employment of a significant number of persons.</p> <p>The respondents raised concerns over some of the attached conditions (which do not form part of the policy) considering them to be confusing, restrictive and not appropriate.</p> <p>The respondents raised concerns that the implementation of a quantity limit may not be entirely lawful under European legislation and that any application has to be consideration its own merits.</p>	<p>Noted.</p> <p>Officers will review the proposed conditions having regard to the respondent’s comments and in tandem with other enforcement agencies to ensure that any published licensing conditions are clear, suitable and relevant.</p> <p>Officers will consider these concerns.</p>



		<p>The respondent agrees that it is not appropriate to have establishments in a suburban area such as the Barbican, Mutley Plain or North Hill.</p> <p>Restrictions on advertising should be considered carefully as it could amount to a restraint of trade.</p> <p>The respondents raised concerns that the proposal that an existing establishment should not expect its licence to be automatically renewed where it is established that the aspirations of the surrounding area have changed, would potentially mean the destruction of a viable and successful business which has not caused problems.</p> <p>The respondent was in favour of quantity limits for Union St and the City Centre subject to their existing premises being within the defined area of Union St.</p> <p>The respondent has strong reservations that for localities other than Union St and the City Centre, the appropriate number the establishments would be Nil as this would effectively be a blanket ban and lawful.</p>	<p>Any licensing decision would be made having regard to the licensing objectives and the evidence presented at the time</p> <p>The draft policy outlines that a 'locality' is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents. Material decisions that might be relevant to a local community could include a establishments premises that is 'on the way to the' local shops, school or places of worship.</p> <p>The draft policy states that for all other localities the appropriate number will be <b>nil</b>. It will be for the Council to decide, having regard to all the available information, government guidance, legal advice and the opinions received from the public consultation as to the appropriateness of such a policy.</p>
43	<p>Martin Worthington Licensing Sergeant</p> <p>Devon and Cornwall Constabulary</p>	<p>The DCC supports the purpose of the policy</p> <p>DCC believes the SE licensing policy contains sufficient detail to make a clear transparent and robust framework for a meaningful policy.</p> <p>DCC support the five proposed licensing objectives and the publication of a list of control measures and have submitted some amendments to the published pool of conditions.</p>	<p>Officer will review the submitted amendments.</p>

		<p>DCC whole heartedly support the creation of a Relevant Locality Statement for Plymouth.</p> <p>DCC note the council's Quantity Limit Statement. The police do not have a view on the number of SE it is acutely aware of concerns raised by some residents in areas where 'lap dancing' clubs have operated. Therefore it may well be of benefit to maintain the current level of SE for the introduction of the policy and review the quantity limit once the policy has had the opportunity to 'bed in'</p> <p>DCC believe the licensing objectives to be proportionate, necessary and appropriate.</p> <p>DCC wish to point out that the demography of Union St varies with commercial and ENTE licensed premises interspersed with large areas of residential housing.</p> <p>DCC agree not to support any arbitrary minimum distance and that in this context each application should be considered on its own merits.</p> <p>DCC consider the draft policy to be proportionate and a mechanism by which the council and other responsible authorities can ensure that the highest standards can be maintained.</p> <p>DCC do not have any concerns with establishments operating on Sundays providing that the appropriate safeguards are in place.</p> <p>DCC have concerns that establishments may be utilised for the purposes of prostitution, organised crime, sexual exploitation, money laundering etc. The police recommend the council ensures appropriate safeguards are in place for an application.</p>	<p>Officers will review the locality known as Union St to ensure that it remains applicable and relevant in the context of this policy.</p> <p>The draft policy outlines that a 'locality' is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents.</p> <p>Noted. Officers will have regard to the proposals put forward to ensure that the appropriate checks and balances are in place.</p>
44	Social Inclusion Unit PCC	The respondent recommends that the policy reference the Equalities Act 2010.	Officers will review the draft policy with regard to the suggestions made.

45	Stonehouse Neighbourhood Management. PCC	<p>In favour of the policy and its licensing objectives.</p> <p>The respondent set out agreement in principle with limiting establishments in the Union St locality. Set out concerns that the existing sex shop is in very close proximity to a children's centre residential accommodation.</p> <p>The respondent was concerned that the existing establishments are located near services targeted at vulnerable client such as street drinkers, homeless and treatment centres.</p> <p>Union St is also a main route for visitors to Plymouth from the Millbay Port and focussing establishments in this area does not support the stated aspiration for the city.</p> <p>As a ENTE area vulnerable persons are more liable to attack/ victim of crime.</p> <p>The respondent stated that Union St is a mixed use area with a high density of residential accommodation and not just a ENTE area. Residents are desperate that Union St should be viewed as not merely a convenient place to site any establishments that other residents would object to having in their streets.</p> <p>The respondent stated establishments should be granted in other areas of the city.</p> <p>The respondent was in favour of not setting a minimum distance to sensitive buildings but with a caveat of protecting sensitive buildings.</p> <p>The respondent felt that due to the sensitive nature of establishments local residents in the immediate area should be notified. Although the neighbourhood team could assist.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted. It is proposed that as part of the application process the applicant will have to show evidence of local consultation. Officers will notify elected councillors of the submission of an application. Officers will review the draft policy to consider way to ensure that the applicant has notified all 'sensitive buildings', community representatives, etc.</p>
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46	Plymouth Safeguarding Children Board	<p style="text-align: center;"><b>PLYMOUTH SAFEGUARDING CHILDREN BOARD (PSCB)</b></p> <p style="text-align: center;"><b>CONSULTATION RESPONSE TO THE PROPOSED PLYMOUTH CITY COUNCIL SEX ESTABLISHMENTS LICENSING POLICY</b></p> <p><b>INTRODUCTION:</b></p> <p>The aim of this report is to provide comments from the Plymouth Safeguarding Children Board on the Plymouth City Council draft proposals for a Sex Establishments Licensing Policy.</p> <p><b>COMMENT:</b></p> <p>The PSCB is the responsible authority for assessing all Licensing and Gambling applications within the city in respect of Licensing Objective (e) – ‘Protection of Children from Harm’. The process of assessment is delegated to the Local Authority Children’s Social Care who complete the assessment on behalf of the PSCB with the outcomes reported to the PSCB Full Board on a quarterly basis.</p> <p>The PSCB welcomes the fact that safeguarding children is identified as a key component within the ‘Draft Sex Establishment Policy’ which in general provides a clear and robust process to be followed in determining the awarding of a licence to run a ‘sex establishment’. However, the PSCB believes that the draft policy could be strengthened to ensure that safeguarding is more firmly embedded at the heart of the licensing process.</p> <p>The safeguarding of children must be at the forefront of any sex establishment’s operation and the said establishments must be aware of the South West Child Protection Procedures (<a href="http://www.swcpp.org.uk">www.swcpp.org.uk</a>), in particular responsibility/methods of reporting/recording concerns in relation to child protection, sexual exploitation or trafficking. A statement that the sex establishment should have due regard to the South West Child Protection Procedures would be welcome at the forefront of the document.</p> <p>It should be noted that there are a number of grammatical errors within the whole document and it is suggested the document is reviewed and amended.</p> <p>Page 6/7 of the document under the section ‘Protection of Safety, Health and Public Decency’ identifies a number of control measures to be addressed in bullet point format. An additional bullet point should be added as follows:</p> <ul style="list-style-type: none"> <li>- Staff receive training on the identification of potential exploitation and/or trafficking of vulnerable adults and be required to notify the Police of concerns.</li> </ul> <p>The bullet points on Page 6/7 should be a mandatory condition on the licence.</p>	Noted and amendments made
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Whilst the proposal outlines a number of control measures that should be in place as examples of good practice in meeting the various licensing objectives, the PSCB would recommend the following bullet point control measures are added to the section 'Protection of Children from Harm' on page 7 of the document:

- Use of CCTV inside and outside the premises, ensuring digital systems comply with Home Office guidance minimum requirements.
- Staff receive training in the operation of a Challenge 21 proof of age scheme and records are kept of the said training.
- Records are kept of refusal of entry and incidents.
- Staff receive training on the identification of potential sexual exploitation and/or trafficking of children and be required to notify the Police of concerns.

The bullet points on Page 7 should be a mandatory condition on the licence.

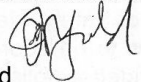
Page 8 of the document provides a 'Relevant Locality Statement' and identifies the criteria the Council will use to determine an area unsuitable for a sex establishment. It makes a statement that the areas known as 'Union Street' and the 'City Centre' are considered the only areas suitable for the provision of certain defined licensed sex establishment premises. It should be made clear in the proposals that the consideration of such establishments in these two identified areas is also subject to the suitability criteria.

Page 10 of the document provides criteria to be considered in determining an applicant's fitness to hold a licence. It is suggested that bullet point (d) should be amended to read 'Any criminal convictions, cautions, warnings or reprimands of the applicant.'

Page 15 of the document identifies the organisations engaged in the consultation process. The final bullet point 'Child Protection Board' should be amended to read 'Plymouth Safeguarding Children Board'.

#### RECOMMENDATION:

It is recommended that the draft policy is amended to include all the comments identified in the above paragraphs.

  
Jim Gould  
Independent Chair of the Plymouth Safeguarding Children Board.  
08/12/11

Consultation Results			
Qu.1	Does the draft Sex Establishment Licensing Policy contain enough detail and information for you to understand how the policy and decision-making process will work?	Yes 34	No 3
Qu.2	<p>Do you agree that the following criteria for considering sex establishment licence applications adequately address all the issues?</p> <ul style="list-style-type: none"> <li>• Prevention of crime and disorder</li> <li>• Protection of safety, health and public decency</li> <li>• Prevention of nuisance</li> <li>• Protection of children from harm</li> <li>• Protecting the nature, amenity and character of a neighbourhood</li> </ul>	Yes 37	No 3
Qu.3	<p>The draft policy proposes that limits are set on the number of sex establishments within two areas of the city – Union Street and the city centre. Do you agree with this proposal?</p> <p>If <b>yes</b>, do you agree with the following limits, which take into account premises already operating in these areas?</p> <p><b>Union Street: One</b> sex shop/cinema and <b>two</b> sex entertainment venues</p> <p><b>City centre: One</b> sex shop/cinemas and <b>no</b> sex entertainment venues</p> <p>If <b>no</b>, (and you are not in favour of limits for specified areas) then are you in agreement that each application should be considered on its own merits?</p>	Yes 25	No 10
		23	10
		22	8
		7	3
Qu.4	Do you agree that applications should not normally be granted in other areas of the city?	Yes 28	No 10

<b>Qu.5</b>	<p><b>The draft policy considers that it is important to highlight ‘sensitive’ buildings, locations and areas. Do you agree that it is not appropriate to issue a licence for a sex establishment near the following?</b></p> <ul style="list-style-type: none"> <li>• Primarily residential accommodation</li> <li>• Schools, play areas, youth clubs</li> <li>• Places of worship</li> <li>• Historic buildings or tourist attractions</li> <li>• Shopping areas aimed at attracting visitors to the city</li> </ul>	<table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left; width: 50%;"><b>Yes</b></th> <th style="text-align: left; width: 50%;"><b>No</b></th> </tr> </thead> <tbody> <tr> <td><b>37</b></td> <td><b>2</b></td> </tr> <tr> <td><b>39</b></td> <td><b>1</b></td> </tr> <tr> <td><b>35</b></td> <td><b>5</b></td> </tr> <tr> <td><b>36</b></td> <td><b>3</b></td> </tr> <tr> <td><b>35</b></td> <td><b>4</b></td> </tr> </tbody> </table>	<b>Yes</b>	<b>No</b>	<b>37</b>	<b>2</b>	<b>39</b>	<b>1</b>	<b>35</b>	<b>5</b>	<b>36</b>	<b>3</b>	<b>35</b>	<b>4</b>
<b>Yes</b>	<b>No</b>													
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<b>35</b>	<b>4</b>													
<b>Qu.6</b>	<p><b>The draft policy does not propose a minimum distance that a sex establishment would need to be located away from sensitive buildings, locations or areas. Instead, it is proposed that an application should be considered against the specific geographical circumstances of the area in question. Do you agree with this proposal?</b></p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;"><b>Yes 28</b></td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td><b>No 11</b></td> </tr> </tbody> </table>	<b>Yes 28</b>			<b>No 11</b>								
<b>Yes 28</b>														
	<b>No 11</b>													
<b>Qu.7</b>	<p><b>Do you think the draft Sex Establishment Policy is fair to both local residents and licensed establishments?</b></p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;"><b>Yes 27</b></td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td><b>No 8</b></td> </tr> </tbody> </table>	<b>Yes 27</b>			<b>No 8</b>								
<b>Yes 27</b>														
	<b>No 8</b>													
<b>Qu.8</b>	<p><b>The Council proposes that it will not notify local residents and businesses when a licence application is made, as there is a statutory responsibility on the applicant to advertise the application. However, elected members in the wards concerned and wards nearby will be notified. Do you agree that this will be acceptable?</b></p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;"><b>Yes 19</b></td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td><b>No 20</b></td> </tr> </tbody> </table>	<b>Yes 19</b>			<b>No 20</b>								
<b>Yes 19</b>														
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<b>Qu.9</b>	<p><b>Should any sex establishment be permitted to open on a Sunday?</b></p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;"><b>Yes 11</b></td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td><b>No 27</b></td> </tr> </tbody> </table>	<b>Yes 11</b>			<b>No 27</b>								
<b>Yes 11</b>														
	<b>No 27</b>													
<b>Qu.10</b>	<p><b>Do you agree that an existing sex establishment should not expect its licence to be automatically renewed where it can be established that the aspirations of the surrounding area have changed?</b></p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;"><b>Yes 32</b></td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td><b>No 8</b></td> </tr> </tbody> </table>	<b>Yes 32</b>			<b>No 8</b>								
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