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15 September 2010

LICENSING COMMITTEE

Thursday 23 September 2010 immediately following the meeting of the Commissioning Board which commences at 6.30 pm
Council Chamber, Ryedale House, Malton

Agenda

1 Emergency Evacuation Procedure

The Chairman to inform Members of the Public of the emergency evacuation procedure.

2 Apologies for absence

3 Minutes of the Meeting held on 3 June 2010

(Pages 1 - 2)

4 Urgent Business

To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

5 Declarations of Interest

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

PART 'B' ITEMS - MATTERS REFERRED TO COUNCIL

- 6 **Licensing Act 2003 - Results of Consultation on Review of Licensing Policy**
(Pages 3 - 12)
- 7 **Regulation of Lap Dancing and Other Sexual Entertainment Venues**
(Pages 13 - 18)
- 8 **Any other business that the Chairman decides is urgent.**

Licensing Committee

Held at Council Chamber, Ryedale House, Malton
on Thursday 3 June 2010

Present

Councillors Mrs Arnold, Mrs Cowan, Mrs Cowling, Mrs De Wend Fenton, Mrs Frank, Hemesley OBE, Hope and Ms Warriner MBE

In Attendance

Fiona Brown and Nicki Lishman

Minutes

1 **Emergency Evacuation Procedure**

2 **Apologies for absence**

Apologies for absence were received from Councillor Mrs Keal, Mrs Cowling and Spencer.

3 **Minutes of the Meeting held on 25 March 2010**

The minutes of a meeting held on 25 March 2010 were presented.

Resolved

That the minutes of a meeting held on 25 March 2010 be approved and signed by the Chairman as a correct record.

4 **Urgent Business**

The Chairman reported that there were no items of urgent business to be considered.

5 **Declarations of Interest**

No declarations of interest were received.

6 **Licensing Act 2003 - Review of Licensing Policy**

The Head of Environment submitted a report, which sought Members approval for a review of the Council's Licensing Policy.

The Council's current Licensing Policy was adopted by Council on 8 November 2007 and is now due for review. The report advised Members of the requirements to review the existing Licensing Policy.

The proposed consultation period for the review was 7 June to 30 August 2010 and the list of consultees included: -

- The chief officer of police for the licensing authority's area,
- The fire authority for that area,
- Such persons as the licensing authority consider being representative of holders of premises licences issued by that authority,
- Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
- Such persons as the licensing authority considers to be representative of the holders of person licences issued by that authority,
- Such other persons as the licensing authority consider being representative of businesses and residents in its area.

Section 5 of the Licensing Act 2003 requires a licensing authority to prepare and publish a statement of its licensing policy every three years. During the three-year period, the policy must be kept under review and the licensing authority may make such revisions to it, as it considers appropriate. Where revisions are made, the licensing authority must publish a statement of revisions or the revised licensing statement. Before determining its policy for any three-year period, the local authority must consult the stakeholders listed above. In determining its policy the licensing authority shall have regard to any guidance issued by the Secretary of State.

The determination of the Councils Licensing Policy must be made by Council and cannot be delegated to the Licensing Committee. The Council approved the existing Licensing Policy on 8 November 2007. The consultation draft has been amended so as to include a limited number of changes as a result of either new or amended regulations and guidance issued by the Secretary of State. The consultation period will allow for 12 weeks, with a view to reporting results of the consultation back to this Committee on the 23 September 2010 and approval of the Policy by Council on the 4 November 2010.

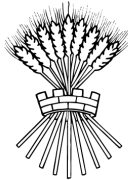
Resolved

That Members support the draft revision of the Council's Licensing Policy for consultation.

7 Any other business that the Chairman decides is urgent.

There were no items of urgent business.

The meeting closed at 9.30 p.m.



PART B:	RECOMMENDATION TO COUNCIL
REPORT TO:	LICENSING COMMITTEE
DATE:	23 SEPTEMBER 2010
REPORT OF THE:	HEAD OF ENVIRONMENT PHIL LONG
TITLE OF REPORT:	LICENSING ACT 2003 – RESULTS OF CONSULTATION ON REVIEW OF LICENSING POLICY
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To advise members of the consultation undertaken in relation to the Council's draft Licensing Policy in relation to the Licensing Act 2003 and to seek Members' views prior to adoption by Council.

2.0 RECOMMENDATION

- 2.1 It is recommended that:
- (i) the Licensing Policy is amended as outlined in Annex C;
 - (ii) the Licensing Policy, as amended, is referred to Council in November for final adoption.

3.0 REASON FOR RECOMMENDATION

- 3.1 The Council must review its Licensing Policy every three years. The Policy is due for review and must be consulted on and ratified by full Council prior to it coming into force by 7 January 2011. Following any proposed amendments by this Committee a final draft version of the Licensing Policy will be submitted to full Council on the 4 November 2010. The consideration of licensing applications cannot proceed without a reviewed Licensing Policy being in place.

4.0 SIGNIFICANT RISKS

- 4.1 Failure to formally review or consult on a Licensing Policy within the timetable required by the Act, Regulations and Guidance would mean the Council was not complying with its statutory duty and would also leave the Council open to legal challenge and any subsequent costs.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 Section 5 of the Licensing Act 2003 requires that all Licensing Authorities prepare and publish a statement of Licensing Policy that they propose to apply in exercising their functions under the Act during the three year period to which the policy applies. The Licensing Policy will last a maximum of three years, but can be reviewed and revised by an authority at any time. The existing Licensing Policy has been kept under review since coming into force on the 7 January 2008 and no revision has been deemed necessary to date. However, the Licensing Policy requires reviewing during 2010 in order for it to take effect from the 7 January 2011 (when the new three year cycle will commence).
- 5.2 A report of 3 June 2010, sought Members support of the draft Licensing Policy for consultation. Section 7 of the Act provides that functions in relation to the three year Licensing Policy cannot be delegated but must be approved by full Council.
- 5.3 The report advises Members of the consultation that has taken place on the Council's draft Licensing Policy. The Policy is required to be consulted on prior to its adoption by Council.

6.0 POLICY CONTEXT

- 6.1 The following Policies have informed this report:
- Community Plan
 - Corporate Plan
 - Environment Service Delivery Plan
 - Corporate Risk Assessment
 - Budget Policies

7.0 CONSULTATION

- 7.1 Consultation period:-7th June – 30th August 2010.
- 7.2 For full list of consultees, see Annex B.

8.0 REPORT DETAILS

- 8.1 The draft Licensing Policy was formally published for consultation following the recommendation of this Committee on the 3 June 2010. This allowed the Cabinet Office recommended consultation period of twelve weeks to take place. All statutory undertakers have received a full copy of the draft Licensing Policy, and notification of the draft Policy was given to all Council Members, parish and town councils, all relevant service unit managers and all libraries. A copy of the draft Licensing Policy was also available on Ryedale District Council Website (www.ryedale.gov.uk). All relevant premises, personal licence holders and specific bodies requesting information have been advised of the draft Licensing Policy and its availability. A full list of consultees is available in Annex B. Suggested amendments to the original draft Licensing Policy are available in Annex C.
- 8.2 The Licensing Policy is a draft document suggesting the Council's proposals for

ensuring a balanced approach towards the licensing of premises which sell/supply alcohol or provide regulated forms of entertainment. The draft Policy has been based on the requirements of the Act and includes changes as a result of either new or amended regulations and guidance issued by the Secretary of State. It is intended as a basis for discussion. Nothing in this draft is to be taken as given and all matters within it are for debate and could be subject to change that reflects comments made through the consultation process. Members' views on any aspect of the draft Licensing Policy are welcomed.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

The Secretary of States guidance advised that beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation. When undertaking consultation exercises, licensing authorities should have regards to cost and time. The Department of Culture, Media and Sport (DCMS) have indicated that there is no legal obligation for authorities to always embark on a full and lengthy consultation and authorities should use proportionate methods to reflect the nature of the change to the policy. E.g. authorities may wish to host their consultation on their websites only, or for a shorter period of time than normally allowed. Public copies were placed in each Council office and each public library. Copies have also been available to download from the Council's website and all licensed premises and parish councillors have been notified of the consultation document. Other than the costs of consultation no other costs will be incurred.

b) Legal

The Licensing Policy must be reviewed before the end of its second three year term and is classed as high priority. Failure to review the Licensing Policy, seek approval by full Council and publish it before 7 January 2011 could leave the Council subject to judicial review and have serious financial implications.

c) Other

Ryedale's Licensing Policy is fundamental to the successful operation of the Licensing system and is a core document members of a Licensing Sub Committee have regard to when arriving at licensing decisions. The draft Policy has been subject to a wide consultation and it is hoped that the final Policy will reflect a balance between the commercial interests of the licensed trade and the communities they serve and impact on.

PHIL LONG HEAD OF ENVIRONMENT SERVICE

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Background Papers:

Policing and Crime Act 2009

Licensing Act 2003

National Guidance issued under Section 182 of the Licensing Act 2003

Ryedale District Councils Statement of Licensing Policy January 2008

Council-Licensing Act 2003-Adoption of Licensing Policy 08.11.2007

The Licensing Act 2003 (Licensing statement period) Order 2004

LICENSING ACT 2003- RESULTS OF CONSULTATION ON REVIEW OF LICENSING POLICY - RISK MATRIX - ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
The Council must by law review and consult on its Licensing Policy every three years.	Failure to review its Policy may lead to a Judicial Review	3	C	Revised draft Policy in line with revised or amended guidance issued by the Secretary of State. Timetable for consultation, review and adoption within the required 3 year period as outlined in the report	1	A

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

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List of consultees

Inspector Tim Hutchinson, North Yorkshire Police
Sergeant Andrew Stubbings, North Yorkshire Police
Sergeant Roy Brown, North Yorkshire Police

Richard Hanley, North Yorkshire Fire & Rescue Services

All Ryedale District Councillors

Gary Housden, Ryedale District Council (Head of Planning)
Julian Rudd, Ryedale District Council (Head of Economy and Housing)
Fiona Brown, Ryedale District Council (Council solicitor)
Gail Snowden, Ryedale District Council (safer Ryedale)

All public houses, restaurants, hotels, clubs and village halls in Ryedale (353 in total)

Personal licence holders(286 in total)

All town and parish councillors (97 in total)

Hard copies made available at the five libraries and the four area offices in Ryedale.

The draft Policy was also available to download from the Councils website.

Schedule of Responses to Draft Licensing Policy 2007**General Comments on Policy**

Reference	Respondent	Comment	Appraisal	Response
All of draft policy	Flaxton Parish Council	The Parish Council has decided not to make any comment.	None required	Leave Policy unchanged.

Part 1 of Policy

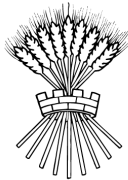
Reference	Respondent	Comment	Appraisal	Response
Part 1 para 1.6	Councillor Hemesley	Asked if procedure could be clarified about how a special saturation policy is adopted.	Agreed	Amend the beginning of the last paragraph of para 1.6 to the following "In the event of the adoption of a special saturation policy the onus would be on the applicant to provide evidence to back up any assertion that the addition of the premises in question would not produce the cumulative impact claimed, taking into account that the impact will be different from premises with different styles and characteristics".

Part 3 of Policy

Reference	Respondent	Comment	Appraisal	Response
Part 3 para 3.7.2	Councillor Cowan	Asked that this paragraph be amended by referral to the new mandatory condition introduced on the 6 th April 2010.	Agreed	Amend policy at 3.7.2 as follows:- 1.Insert "irresponsible" in front of drinks promotions and 2.Insert in front of the existing statement- "Since 6 th April 2010, a new mandatory condition has to be placed on any licence which authorises the sale/supply of alcohol to restrict these types of promotions. See Appendix B for full mandatory licensing condition".
Part 3 para 3.9.13	Steven Richmond, Health and Environment Manager	Asked that this paragraph be amended by referral to the new mandatory condition introduced on the 6 th April 2010.	Agreed	Amend policy at 3.9.13 to read as follows:- Since 6 th April 2010, it is a mandatory condition that "the responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available". This is particularly relevant to premises where dancing takes place.

Part 4 of Policy

Reference	Respondent	Comment	Appraisal	Response
Part 4 para 4.22	Kirkbymoorside Town Council	Request that this paragraph be amended to include Town and Parish Councillors.	Revised Guidance 8.9-8.15 states that this form of information may be provided to elected councillors of the licensing authority(i.e. elected Ryedale District Councillors).It does not include Town or Parish Councillors in this part of the Guidance	Leave policy
Part 4 para 4.21	Councillor Hemesley	Asks to clarify the requirements that elected members should take prior to making representations either on their own right or on behalf of others.	Agreed	Amend the first sentence of para 4.21 to read as follows :-“ Any elected district councillor may act as an interested party in their own right as long as a written representation has been submitted to the licensing authority within the statutory time constraint. If specifically requested to make a representation on behalf of an interested party either in writing or at a hearing, elected district councillors must ensure that the appropriate written authorisation to do so is given to the licensing authority.



PART B:	RECOMMENDATION TO COUNCIL
REPORT TO:	LICENSING COMMITTEE
DATE:	23 SEPTEMBER 2010
REPORT OF THE:	HEAD OF ENVIRONMENT PHIL LONG
TITLE OF REPORT:	REGULATION OF LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider adopting the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 by Section 27 of the Policing and Crime Act 2009. This introduces a Licensing regime for "sexual entertainment venues".

2.0 RECOMMENDATION

- 2.1 That Council is recommended to pass a resolution as authorised under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982, to adopt Schedule 3 (as amended by Section 27 of the Police and Crime Act 2009) of the Local Government (Miscellaneous Provisions) Act 1982.

3.0 REASON FOR RECOMMENDATION

- 3.1 If the Authority adopts the amendment to Schedule 3 introduced by Section 27 of the Policing and Crime Act 2009, the Authority will have the same powers to consider the licensing of "sexual entertainment venues" e.g. lap dancing clubs as the Authority currently has for the licensing of "sex establishments" e.g. sex shops.

4.0 SIGNIFICANT RISKS

- 4.1 If the Authority does not adopt the amendment, it may allow prospective sexual entertainment venues to take advantage of a perceived loophole in the Licensing Act 2003.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 Currently lap dancing premises require a Premises Licence under Section 1 of the Licensing Act 2003. No special provisions are made in the 2003 Act for lap dancing type venues. Unless relevant representations are made to the Authority the licence must be granted subject only to certain mandatory conditions.
- 5.2 Sex establishments (sex cinemas and sex shops) are currently licensed under Section 2 and Schedule 3 of the Local Government (Miscellaneous provisions) Act 1983. The Council adopted powers for licensing such premises on 1 April 1983. The Act allows Councils to set fees, attach conditions and restrictions relating to Sex Establishments, which were adopted by the Community Services and Licensing Committee on 5 April 2007.
- 5.3 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government Act (Miscellaneous Provisions) Act 1982 to allow the Licensing Authority to licence “sexual entertainment venues” e.g. lap dancing under the 1982 Act.
- 5.4 The aim of this new legislative control is to bring the licensing of lap dancing type premises in line with other sex establishments and to recognise that local people have legitimate concerns about where such premises are located.
- 5.5 Currently, Ryedale has no licensed sex establishments or lap dancing type venues.

6.0 POLICY CONTEXT

- 6.1 The following Policies have informed this report:

Council Plan 2009–13 - Aim 4: to have active communities where everyone feels welcome and safe.

Ryedale District Councils Policy for the Licensing of Sex Establishments 2007

7.0 CONSULTATION

- 7.1 Not applicable

8.0 REPORT DETAILS

- 8.1 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow the Licensing Authority to licence “sexual entertainment venues”, where “relevant entertainment” is provided before a live audience for the financial gain of the organiser or the entertainer. “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). The following are not sexual entertainment venues for the purpose of this Schedule
- sex cinemas and sex shops
 - premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so

provided at that time:

- there have not been more than eleven occasions on which relevant entertainment has been so provided which fall(wholly or partly) within the period of 12 months ending with that time;
- no such occasion has lasted more than 24 hours;
- no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided(whether or not that previous occasion falls within the 12 month period mentioned above); and
- premises specified or described in an order made by the relevant national authority.

8.2 Lap dancing premises currently require a Premises Licence under Section 1 of the Licensing Act 2003. No special provisions are made in the 2003 Act for lap dancing type venues. If an application is submitted to the licensing authority for a Premises Licence, the authority must grant the licence subject to certain mandatory conditions.

8.3 If relevant representations are made by an interested party (e.g. residents or local businesses) or a responsible authority (e.g. the police or fire service in the area) then the authority can, following a hearing, impose other conditions or reject the application. Even then, it will only be able to do so where such a step is necessary to promote one of the four licensing objectives set out in the Act:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

8.4 The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a lap dancing type premises is inappropriate for the locality. The Licensing Act 2003 has empowered local residents in general, but it is hard to make an effective objection against an adult entertainment venue unless its operation can be shown to be undermining one of the four licensing objectives.

8.5 The aim is to bring the licensing of lap dancing type premises in line with other “sex establishments” such as “sex shops” and “sex cinemas” and to recognise that local people have legitimate concerns about where such premises are located.

8.6 If the amendment is adopted the Licensing Authority can apply prescribed standard conditions on grounds not covered by the Licensing Act 2003 e.g. location, hours, display of adverts, visibility of interior.

8.7 To not adopt the amendment and maintain the status quo would allow prospective sexual entertainment venues to take advantage of a perceived loophole in the Licensing Act 2003.

8.8 The resolution to adopt Schedule 3 (as amended) requires the authority of the Council. Following a resolution to adopt, the Council will have to publish a number of public notices and follow the procedures laid down in the Local Government (Miscellaneous Provisions) Act 1982. It is anticipated the resolution will take effect

from 1 March 2011.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

a) Financial

The administrative arrangements for processing applications for “sexual entertainment venues” is the responsibility of the Licensing Team. It will be proposed the fees for “sexual entertainment venues” are the same as for “sex establishments”.

b) Legal

On the 25 November 1982, the Health and Works Committee resolved the adoption by the Council on the 1 of April 1983 of the provisions of Section 2 and Schedule 3 (Control of Sex Establishments) of the Local Government (Miscellaneous Provisions) Act 1982.

Section 27 of the Policing and Crime Act 2009 makes amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

The Council must resolve to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

Following adoption of Schedule 3 (as amended) by Council, it is proposed a further report be submitted to the Licensing Committee on 27 January 2011, to adopt a procedure and fees in relation to the licensing of sexual entertainment venues.

PHIL LONG

HEAD OF ENVIRONMENT

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Background Papers:

Local Government (Miscellaneous Provisions) Act 19882
Policing and Crime Act 2009
Licensing Act 2003
Ryedale District Councils Policy for the licensing of Sex Establishments 2007.

REGULATION OF LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES - RISK MATRIX – ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
If the Authority does not adopt the amendment, it may allow prospective sexual entertainment venues to take advantage of a perceived loophole in the Licensing Act 2003	No special provisions are made in the Licensing Act 2003 for such activities, relevant objections would have to be limited to the 4 licensing objectives	2	C	If the Council adopts the amendment, the licensing of lap dancing type premises will be brought into line with other sex establishments and the Licensing Authority can apply prescribed standard conditions on grounds not covered by the Licensing Act 2003.	1	C

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

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