



Elmbridge
Borough Council

... bridging the communities ...

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Policy for the Licensing of Sex Establishments

Adopted on 20 July 2011

Index

| | | |
|-------|--|----|
| 1 | Introduction | 4 |
| 2 | General Policy Matters | 4 |
| 2.1 | Overarching Objectives | 4 |
| 2.2 | Adoption Process | 4 |
| 2.3 | Policy reviews | 5 |
| 2.4 | Sharing of Information | 5 |
| 2.5 | Policy Application | 5 |
| 2.6 | Enforcement | 5 |
| 2.7 | Legal Interpretation | 5 |
| 2.8 | Other Legislation | 5 |
| 2.9 | Crime and Disorder Act 1998 | 6 |
| 2.10 | Equality Act 2010 | 6 |
| 3 | Appropriate Number | 6 |
| 4 | Video Sales | 6 |
| 5 | Sex establishment definition | 7 |
| 5.1 | Sex shop | 7 |
| 5.2 | Sex cinemas | 7 |
| 5.3 | Sexual Entertainment Venue | 8 |
| 6 | Exemptions | 8 |
| 7 | Waivers | 8 |
| 8 | Applications | 9 |
| 8.1 | Submission of an Application | 9 |
| 8.2 | Application fees | 9 |
| 8.3 | Advertising Applications | 9 |
| 8.3.1 | Newspaper advertisement | 9 |
| 8.3.2 | Local advertising | 9 |
| 8.3.3 | Council website | 10 |
| 8.4 | Consultations | 10 |
| 8.4.1 | Copies to the Police | 10 |
| 8.4.2 | Police observations | 10 |
| 8.5 | Objections | 10 |
| 8.6 | Sub-Committee Hearings | 10 |
| 8.7 | Adjournments of hearings | 11 |
| 8.8 | Criteria for determining an application | 11 |
| 8.8.1 | Fitness of the Applicant | 12 |
| 8.8.2 | Licence Holder | 12 |
| 8.8.3 | Number of sex establishments | 12 |
| 8.8.4 | Locality and Premises Policy | 12 |
| 8.9 | Standard Conditions | 13 |
| 8.10 | Duration of licences | 14 |
| 8.11 | Grounds for Refusal | 14 |
| 8.12 | Statements of Reasons for decisions | 14 |
| 9 | Appeals | 14 |
| 10 | Variation of Licences | 14 |
| 11 | Renewals and Transfers | 14 |
| 12 | Cancellation of Licences | 15 |
| 13 | Revocation of Licences | 15 |
| 14 | Offences | 15 |
| 15 | Amendments to the Policy | 15 |
| 16 | Appendix One - Application Form for New, renewal, transfer or variation of a Licence | 16 |

| | | |
|------|--|----|
| 17 | Appendix Two – Newspaper advertisement | 19 |
| 18 | Appendix Three – Public Notice of Application | 20 |
| 19 | Appendix Four – Scheme of Delegation of Powers | 21 |
| 20 | Appendix Five – Standard Conditions | 23 |
| 20.1 | Sex shops | 23 |
| 20.2 | Sex cinemas | 25 |
| 20.3 | Sexual entertainment venues..... | 27 |
| 21 | Appendix Six - Grounds for Granting or Refusing an Application | 30 |

1 Introduction

Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 enables a local authority to adopt the provisions of Schedule 3 of the Act. These provisions relate to the control, by way of licensing, of sex establishments.

This legislation was amended, with effect from 1st April 2010, by the provisions of Section 25 of the Policing and Crime Act 2009 to include sex encounter establishments.

Sex establishment now means a

- sex shop
- sex cinema or
- sex encounter establishment

This document sets out both guidance on the legislation and the Council's policies which will be taken into account when dealing with matters under this legislation.

2 General Policy Matters

2.1 Overarching Objectives

Whilst there is no legal requirement for the Council to adopt a policy in relation to the application of this legislation it is considered beneficial for the Council to do so.

In adopting the legislation the Council has taken into account the following points, although it should be pointed out that these are not exclusively the only points considered:

- the desire to consider the character of town centres and whether changes to that character are appropriate;
- the need to protect customers of establishments that will be required to be licensed public;
- that adoption will provide protection to staff employed in licensed premises;
- that adoption of the legislation and hence licensing will promote and maintain management standards.

How our aims cohere with other corporate aims e.g. regeneration, leisure economy tourism, crime reduction.

2.2 Adoption Process

This legislation was placed before the Licensing Committee on 17th January 2011 when it was resolved that the re-adoption of the legislation be recommended to full Council, that the recommended fees for licences be agreed, that the recommended order of delegation be agreed, and that the draft policy be publicly consulted on.

The re-adoption was resolved by the Council at their meeting on 23rd February 2011 and was subsequently advertised in the Surrey Advertiser on 25th February and 4th March 2011 as required under the legislation. The resolution was that the legislation

was to apply to the area of Elmbridge Borough Council with effect from 31st March 2011.

2.3 Policy reviews

This policy will usually be reviewed every five years or at such shorter periods as is felt necessary.

2.4 Sharing of Information

The Council will share with other enforcement bodies, information supplied by applicants, or acquired in the course of exercising licensing functions, where it is lawful to do so. In particular, personal information will only be disclosed in accordance with the Data Protection Act 1998. This may include requests from the Audit Commission or other regulatory agencies where this is necessary for the detection or prevention of crime or required by law or in connection with legal proceedings. Where applicable, it will be under the relevant Information Sharing Protocol.

2.5 Policy Application

This document contains the policies adopted by Elmbridge Borough Council for the grant of permits and licences. These policies will normally be applied in every case but where there are exceptional or unusual circumstances then these policies and conditions may be departed from. Any departure from these policies will only be as approved by the Head of Environmental Health & Licensing.

2.6 Enforcement

Failure to comply with legislative requirements is an offence. In determining what enforcement action to pursue in respect of offences, regard will be had to the individual circumstances, the Council's policies with regard to enforcement and other national guidance, such as the Crown Prosecutor's Code of Practice.

2.7 Legal Interpretation

This document contains advice regarding the legal interpretation as to what constitutes a sex establishment and other matters such as when a licence may be required, and how applications may be made. However, this document should not be considered to be an authoritative statement of the law. The statute law is more authoritative but ultimately, interpretation of the law is a matter for the Courts.

2.8 Other Legislation

Planning, Building Control and alcohol licensing regimes are separate licensing processes. An application for a sex establishment licence cannot be a re-run of a planning application or of an application under the Licensing Act 2003 as different considerations will apply. However, the granting of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control consent, a premises licence or any other licence or consent.

The Licensing Act makes requirements for a Premises Licence, in general terms, where alcohol is sold or supplied, where films are shown or where entertainment, including live entertainment, is provided and a licensed sex establishment does not exempt an organiser from also having any necessary licences under the Licensing Act 2003 (as amended).

There are circumstances when another licence or consent, such as a planning consent, will impose conditions different to those imposed by a licence for a sex establishment. Where this happens whichever regime has the more restrictive conditions on a particular aspect is the requirement that must be complied with. For example where a planning consent and a sex establishment impose different opening times then whichever are the more restrictive opening time are those which must be followed.

2.9 Crime and Disorder Act 1998

Section 17 of the Crime and Disorder Act imposes a duty on the Council to exercise its functions with due regard to the prevention of crime and disorder, including antisocial behaviour, the misuse of drugs, alcohol and other substances. In considering applications regard will be had as to whether the premises may contribute to any of these aspects.

2.10 Equality Act 2010

Section 149 of the Equality Act obliges Councils to have due regard to the need to eliminate discrimination, harassment, and victimisation; to advance equality of opportunity between sexes and to foster good relations between the sexes. In applying this policy this authority will seek to:

- protect performers from harassment and any threat to their dignity by requiring proper supervision and facilities,
- ensure that women are as welcome in licensed premises as men are,
- ensure that the fears of women using the vicinity of the premises are considered in decisions as to the location of licensed premises.

3 Appropriate Number

The legislation allows for a local authority to determine the number of sex establishments which it considers appropriate for that locality. Elmbridge Borough Council has not determined any localities nor have they adopted an appropriate number for any such localities.

4 Video Sales

18R videos may only be sold from a licensed sex shop. The fact that the sales of such videos may constitute a very small part of the shop sales and that the shop would otherwise not constitute a sex shop is not relevant. Such videos may not be supplied by way of mail or telephone order.

5 Sex establishment definition

The definition of a sex establishment includes a sex shop, a sex cinema, or a sexual entertainment venue.

5.1 Sex shop

A sex shop is defined as meaning any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- sex articles,
- other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity, or
- acts of force or restraint which are associated with sexual activity.

No single factor is decisive when considering whether a shop sells sex articles to a significant degree. In deciding what constitutes a sex shop, each case will be judged on the individual facts but the following criteria may be taken into account when determining the question of “significant degree”.

- The absolute number of items offered for sale i.e. numbers of different sex articles offered for sale compared to the number of different non sex articles offered for sale. In this context where the number of sex articles exceeds 20% of total number of items for sale this would be considered to be significant. Where sex articles are sold in multiple packs then the multipack will be considered as one item.
- The absolute number of items sold i.e. numbers of different sex articles sold compared to the number of different non sex articles sold. In this context where the number of sex articles exceeds 20% of total number of items sold this would be considered to be significant. Where sex articles are sold in multiple packs then the multipack will be considered as one item.
- The character of the remainder of the business.
- The floor area occupied by displays of sex articles as opposed to the floor area occupied by non sex articles. In this context floor area means the display and adjacent walkways. Where a floor area occupied by displays of sex articles exceeds 20% of the area occupied by displays of non sex articles then this would be considered significant.
- Whether sex articles can be seen by members of the public without them having to enter the shop either because the articles are in a window display or can be seen through the shop doors.
- Gross sales, in financial terms, of sex articles as compared with non sex articles. In this context where the sales of sex articles exceeds 20% of the total sales then this would be considered to be significant.

Where a large premises is used by a number of stallholders, some of whom sell sex articles, then the use of the large premises as a whole will be considered.

5.2 Sex cinemas

This means, principally and in summary, any premises vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures which portray, deal with

or relate to, or are intended to stimulate sexual activity or acts of force or restraint associated with sexual activity. This does not include a dwelling to which the public are not admitted thus excluding videos etc played by a person in their own home.

5.3 Sexual Entertainment Venue

In summary, this means any premises where relevant entertainment is provided before a live audience for the financial gain of the organiser or the performer and which is a live performance, or live display of nudity, which can be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating the audience.

Display of nudity means;

- In the case of a woman, exposure of her nipples, pubic area, genitals, or anus
- In the case of a man exposure of his pubic area genitals or anus.

“Audience” includes an audience of one.

“Premises” includes any vessel vehicle or stall.

Sexual entertainment venues are likely to include any premises, vehicle, vessel or stall which provides lap dancing, pole dancing, table dancing, strip shows, peep shows, or live sex show.

6 Exemptions

The sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control, or which primarily relate to birth control, do not fall within the definition of a sex article. In this context where an article has been designed to act both for the purposes of birth control and to act as a stimulant then the article will be taken to fall within this exemption.

A licence for a sexual entertainment venue is not required where:

- relevant entertainment has not been provided on more than eleven occasions in any twelve month period and
- on no occasion did the entertainment last more than 24 hours and
- on no occasion was relevant entertainment provided within one month of the of any previous such entertainment

By virtue of Section 11A of the Licensing Act 2003 the provision of relevant entertainment at a premises where a licence as a sexual entertainment venue is required, regardless of whether the requirement has been waived, is not regarded as the provision of regulated entertainment under the provisions of the Licensing Act 2003.

7 Waivers

Under the provisions of Paragraph 7 of Schedule 3 of the Act, the Council may waive the requirement to hold a licence in any case where it is considered that to require a licence would be unreasonable or inappropriate. Waivers may be for such period as the Council think fit but may be terminated at any time 28 days after notice of

termination is given. The power to grant such waivers has been delegated to the Strategic Director – Services and to the Head of Environmental Health & Licensing (see Appendix 3).

A waiver might be appropriate where the premises are to be in place for a limited period, e.g. an exhibition where sales are made, and where controls are in place which would be similar to those imposed by a licence.

8 Applications

8.1 Submission of an Application

An application for a sex establishment licence must be made in writing on the application form included at Appendix One, must be accompanied by the relevant fee and by a plan of the premises proposed to be licensed at a scale of not greater than 1:100 with the area to be licensed outlined in red, together with a location plan drawn at a scale of not less than 1:1250. If the payment is invalid the application will be considered invalid. Applications may be lodged electronically but the application will not be considered as being validly lodged until such time as the fee has also been paid.

8.2 Application fees

An application for the grant, renewal, variation, transfer or change of licence details of a licence shall be accompanied by the appropriate fee.

Where an application is refused, or is withdrawn before being determined, the application fee will be retained although a refund of that element relating to enforcement of a licence may be made.

8.3 Advertising Applications

8.3.1 Newspaper advertisement

The application must be advertised by the applicant using the form contained at Appendix 2. Such advertisements must be made by publishing the advertisement in a local newspaper circulating in the Elmbridge area. The advertisement shall be published not later than seven days after the date of the application to the Council.

8.3.2 Local advertising

The applicant shall also place notices on or near the premises to which the application relates and where they can conveniently be read by the public using the form of notice contained at Appendix 3. Such notices shall be a minimum of A4 in size with the text printed as a minimum of 14 point. The notice shall be printed in black on yellow paper. These notices shall be displayed for a minimum of 21 days beginning with the date that the application is made to the Council. Where a notice is removed or vandalised it shall be replaced by the applicant, forthwith. If a notice is posted, then removed and not replaced by the applicant and is absent for a substantial part of the 21 days then the application may be deemed to be invalid and the applicant may be required to start the advertising period again.

8.3.3 Council website

Applicants should be aware that the Council will advertise the receipt of an application on their website. Similarly details of licences issued by the Council will also be placed on the Council's website.

8.4 Consultations

8.4.1 Copies to the Police

A copy of any application for the grant, renewal or transfer of a licence shall be sent to the Police within 7 days of the application being made to the Council. Where the application is made electronically this will be done by the Council, where the application is submitted by any other means the responsibility for giving copies of the application to the Police is that of the applicant.

8.4.2 Police observations.

In considering any application for the grant, renewal or transfer of any licence the Council will take into account any observations made to it by the Police.

8.5 Objections

Any person objecting to an application for the grant, renewal, or transfer of a licence shall give notice in writing of their objection to the Environmental Health & Licensing Division of the Council stating in general terms the grounds of their objection not later than 28 days after the date of the application. Where the Council receive such an objection they shall inform the applicant of the general terms of the objection before considering the application. The Council will not, without the consent of the objector, reveal the name or address of the objector when they notify the applicant. In considering any application for the grant, renewal or transfer of any licence the Council will take into account any objections received by the Council.

8.6 Sub-Committee Hearings

All applications will be placed before a Sub Committee of three Councillors chosen from members of the Licensing Committee, regardless of whether any objections or observations have been received. Councillors, in whose ward the premises are, or will be, located, shall not sit on any Sub Committee hearing the application.

The Council shall afford an applicant for the grant, renewal, transfer or variation of a licence an opportunity to be heard by the Licensing Sub Committee before refusing such an application.

Any valid objector, or the Police, shall be permitted to be heard at any hearing and they may be represented at the hearing so long as they shall have either notified the Council in writing as to who their nominated representative is or else nominates them in person at the hearing. Only objectors who have lodged an objection in writing with the Council within 28 days of the application having been made to the Council shall be considered to be a valid objector. If objectors do not wish to speak before the Sub Committee then their written objections shall be taken into consideration.

The hearing shall consist of a conversation between the applicant and the Sub Committee, and the objectors and the Sub Committee and no examination or cross examination between the applicant, or their representatives, and the objector, or their representatives, shall be permitted.

An agenda for the meeting of the Sub Committee will be prepared which will include the salient points of the application, objections to the application and any observations received from the Police.

The order of hearing for such a Sub-committee hearing will be:

- Introduction of the parties present;
- Outline by the Licensing Officer of the application under consideration;
- Sub-committee Members to ask questions of the Licensing Officer;
- Applicant to address the Sub-committee regarding the application;
- Licensing Officer to ask questions of the applicant;
- Sub-committee Members to ask questions of the applicant;
- Objectors, if any, to the application to make representations regarding the application;
- Licensing Officer to ask questions of the objectors, if any;
- Sub Committee to ask questions of the objectors, if any;
- Objectors to make closing statement
- Licensing Officer to make closing statement;
- Applicant to make closing statement;
- Sub-committee will withdraw to consider their decision; and
- Sub-committee will announce their decision together with reasons for their decision

Where there are a number of objectors then the Chairman of the Sub Committee may, at his discretion, limit the amount of time that each objector wishing to be heard will have in which to make his representation. Similarly the Chairman of the Sub Committee may also limit the amount of time which the applicant will have in which to present their application.

8.7 Adjournments of hearings

Where an application is made to the Council for an adjournment of a hearing then an adjournment will generally be granted where not granting the adjournment would deny the applicant or objectors a fair hearing. Where the reason for the adjournment was reasonably foreseeable or alternative arrangements could be made to allow the hearing to proceed an adjournment is unlikely. Each application for an adjournment will be judged on its individual merits.

8.8 Criteria for determining an application

The Council will not take into account whether the granting of a licence may cause offence. To do so is not legal.

The Council will take into account those conditions which would require it to refuse a licence, as set out in Appendix Six.

The Council will take into account the following criteria since they are the only grounds specified in the Act for refusal of a licence application.

8.8.1 Fitness of the Applicant

The grounds of refusal detailed under Paragraph 12 (3)(a) include that the applicant is unsuitable by reason of having been convicted of an offence or for any other reason.

An applicant must, therefore, be a fit and proper person to hold a licence. In determining an applicant's suitability for a new licence, or a transfer of an existing licence, the Sub-Committee will take into account:

- The relevant knowledge and experience of the applicant
- Information resulting from the operation of any existing or previous licence(s) held by the applicant in this or any other Council area
- Any report about the applicant or the conduct of licensed premises received from statutory objectors.

Whilst every application will be considered on its merits, the Council is unlikely to grant an application from any person, or for the benefit of any person, with criminal convictions, cautions, etc.

The Rehabilitation of Offenders Act 1974. In considering applications convictions which are relevant to the licensing of the premises and which are serious in nature may be taken into account.

8.8.2 Licence Holder

If the licence were to be granted, renewed or transferred whether the business would be managed or carried on for the benefit of a person other than the applicant. If this is the case the Council will consider whether that person would themselves be refused the grant, renewal or transfer of the licence if they had made the application themselves.

8.8.3 Number of sex establishments

The Council may determine that for a particular locality that there is an "appropriate number" for the number of sex establishments and may refuse an application if this were to mean that the appropriate number was equalled or exceeded. The Council has not set an appropriate number of sex establishments either for the whole Borough or for any part of the Borough.

8.8.4 Locality and Premises Policy

The Council will consider whether the grant or renewal of a licence would be inappropriate having regard to the following topics.

8.8.4.1 Character of the locality

The Council will consider the premises use and its impact on the character of the locality.

The Council will, in particular, take the following matters into account:

- a) type of activity i.e. sex shop, sex cinema or sex encounter venue,
- b) duration of proposed licence,
- c) proposed hours of operation,
- d) layout and condition of the premises.

8.8.4.2 Premises in the vicinity

The Council will consider the use to which any premises in the vicinity are put. Where the licensed premises are within a larger complex e.g. shopping centre or

multi-use building, this will include the nature of other activities carried on within the complex or building.

Whilst every application is considered on its merits the Council will not normally grant an application where the premises, vehicle, vessel, or stall is located within:

- areas that are exclusively, or predominantly, residential in character; or
- the vicinity of residential properties or
- 200m of a school or any other premises used by children or vulnerable adults or
- a publicly accessible open space that is regularly frequented by children or vulnerable adults or
- 200m of a place of worship or
- areas with a level of recorded crime that give the police cause for concern; or
- areas that are likely to be adversely affected due to the cumulative impact of sex establishments or
- 200m of an existing sex establishment.

8.8.4.3 Premises Layout

The Council will consider the layout, character or condition of the premises, vehicle, vessel, or stall in respect of which the application is made. This may include:

- condition of the premises
- proposed external appearance including signs, advertising, window layout and design
- visibility of the internal areas from outside, including window and door blinds, and lobbied areas for access and egress to any public area or street
- seating and stage layout
- booths or cubicles within the premises
- provision of sanitary accommodation
- provision for facilities for performers including dressing rooms, sanitary accommodation, and separate staff entrances
- access from or to other unlicensed parts of the building where the premises do not form a detached building
- ease of access for the disabled.

8.8.4.4 Relevant locality

In this context locality does not mean the Borough as a whole. Locality will start with the proposed location in the context of its surrounding area. The Council will not define the locality using strict boundaries on a map nor by placing the premises at the centre of an imaginary circle.

8.9 Standard Conditions

If a licence application is granted then the licence will be subject to standard terms and conditions as set out in Appendix 5 unless either:

- the applicant has applied for these to be varied or omitted and such an application has been granted by the Sub-Committee determining the application or
- the Sub-Committee have themselves decided to vary or omit any of the standard conditions.

8.10 Duration of licences

All licences granted shall remain in force for a period of one year or such shorter period as the Sub Committee think fit.

8.11 Grounds for Refusal

Details of the grounds under which the Council may refuse a licence are set out in Appendix 6.

8.12 Statements of Reasons for decisions

Where an application for the grant, renewal, transfer or variation of a licence is refused or granted with conditions or varied conditions, the Council will provide a statement in writing of the reasons for their decision within 7 days of the completion of the Sub Committee hearing.

9 Appeals

Subject to the detailed provisions contained within the Act, the following persons may usually make an appeal against the decision of a Licensing Sub Committee

- an applicant for the grant, renewal or transfer of a licence whose application is refused,
- an applicant for the variation of a licence whose application is refused,
- the holder of a licence who is aggrieved by any condition of the licence,
- the holder of a licence whose licence is revoked.

Appeals must be lodged within 21 days of the date on which the holder of the licence or the applicant is notified of the decision of the Licensing Sub Committee. Appeals must be lodged with the Magistrates Court covering the area of the Council which at the time of writing is Staines Magistrates Court.

10 Variation of Licences

A licence holder may apply to the council for a variation of their licence. Such applications will be heard by a Licensing Sub Committee of the Council following the same hearing procedure as if it were a new application. An application for a variation to a licence is not required to be advertised by the applicant but applicants should be aware that such applications will be placed upon the Council's website. Whilst the Sub Committee will receive a report from Council officers concerning the application it is not legally possible for the Police or members of the public to object to such applications.

11 Renewals and Transfers

Where an application is made for the renewal of a licence which is received by the Council before the date of expiry of the existing licence then the existing licence will remain in effect until either the withdrawal of the application or its determination by the Council.

Where a licence has been granted to any person then the Council may, if they think fit, transfer that licence to any other person on the application of that other person.

Applications for the renewal or transfer of licences for premises must be advertised both in local newspapers and on or near the premises.

12 Cancellation of Licences

The Council must cancel a licence for a sexual entertainment venue if asked to do so by the holder of the licence.

13 Revocation of Licences

The Council may, after giving the holder of a licence an opportunity of appearing before, and being heard by, a Licensing Sub Committee revoke the licence. The grounds for revocation are as set out in Paragraph 17 of Schedule 3 of the Act. Where a licence is revoked the Council will send, within seven days of their notifying the licence holder of the revocation, a statement of the reasons for the revocation.

14 Offences

Offences under Paragraphs 20, 21 and 23 of Schedule 3 of the Act are punishable on conviction by a fine not exceeding £20,000.

These offences include:

- Permitting premises to be used without a licence
- Employment by a licensee of anyone disqualified from holding a licence
- Contravening the conditions of a licence
- Knowingly making a false statement in connection with an application for the grant renewal or transfer of a licence
- Allowing someone under the age of 18 to enter a licensed premises
- Employing someone under the age of 18 in the business of the establishment.

15 Amendments to the Policy

The Head of Environmental Health & Licensing, in consultation with the Chairman of the Licensing Committee, shall have the power to make minor amendments to this policy.

16 Appendix One - Application Form for New, renewal, transfer or variation of a Licence



Elmbridge
Borough Council

... bridging the communities ...

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**Local Government (Miscellaneous Provisions) Act 1982,
Section 2 and Schedule 3**

**Application for a new, or renewal of, or transfer of, or variation of a
Sex Establishment Licence**

You are reminded that if you make a false statement in connection with this application which you know to be false in any material respect or which you do not believe to be true you will be guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

(Please use BLOCK CAPITALS and black ink only)

| | |
|------------------------|--|
| Applicant's Full Name: | |
| Address: | |
| Postcode: | |
| Telephone: | |
| Date of Birth | |

or if the application is by a corporate body or unincorporated body:

| | |
|---|--|
| Company's Full Name: | |
| Address of Registered Office or Principal Office: | |
| Postcode: | |
| Telephone: | |

Names and private addresses of the Directors or other persons responsible for its management:

| Name | Address |
|------|---------|
| | |

| | |
|--|--|
| | |
| | |

Hereby make application for the waiver of a requirement for a licence / the grant / renewal / transfer / variation of conditions of a licence, for the use of the premises situated at and known as (complete (A) or (B)) (delete as appropriate)

(A)

Vehicle / vessel / stall to be situated at:

(B)

As a sex establishment (being a sex shop / sex cinema / sexual entertainment venue) as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. If for variation, indicate proposals on a separate sheet

Please state whether any of the following have been convicted of a criminal offence or received an official caution and if so please supply details on a separate sheet

| | | | | |
|---|-----|--------------------------|----|--------------------------|
| Yourself | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| The Company | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Any of the Company's Directors | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Any other person responsible for the management of the business the subject of this application | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

| | | | | |
|--|-----|--------------------------|----|--------------------------|
| Have you within a period of 12 months immediately preceding the date of this application, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall the subject of this application? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|--|-----|--------------------------|----|--------------------------|

| | | | | |
|--|-----|--------------------------|----|--------------------------|
| Have any goods owned by yourself or by the Company ever been the subject of a forfeiture order made pursuant to the Obscene Publications Act 1959? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|--|-----|--------------------------|----|--------------------------|

I / we hereby undertake:

1. To publish an advertisement in the local newspaper circulating in the area of the premises in the form prescribed by the Council giving public notice of this application not later than 7 days after the date hereof and to supply you with a copy within 14 days.
2. To display a notice in the form prescribed by the Council on or near the premises the subject of this application and in a place where the notice can conveniently be read by the public, for 21 days beginning with the date of this application. A copy of the notice is attached hereto.
3. To send a copy of this application to the Chief Officer of Police, Surrey Constabulary, Esher Police Station, 113 High Street, Esher, Surrey KT10 9QQ not later than 7 days after the day of hereof.

I / we hereby certify that the fee of £ required by the Council is enclosed. We will accept payment by credit/debit card (by phone or in person) or cheque payable to "Elmbridge Borough Council".

I / we hereby agree to the Council making enquiries of the Police concerning this application.

I / we have checked these replies and confirm that they are true and accurate.

In respect of a new application I enclose a plan of the premises at a scale not less than 1:50, with the area to be licensed outlined in red, and a location plan drawn at a scale of not greater than 1:1250.

The Council is under a duty to protect public funds and may use the information you provide in this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.

For further information, see www.elmbridge.gov.uk/nfi or contact the Internal Audit Manager on 01372 474106 or internalaudit@elmbridge.gov.uk

Signed: Date:

Name (please print).....

17 Appendix Two – Newspaper advertisement

The following should be used as the form of advertisement of an application in a newspaper circulating in the Elmbridge area. Please omit text in square brackets and the square brackets, as appropriate.

NOTICE OF APPLICATION FOR A SEX ESTABLISHMENT LICENCE

Take notice that on *[insert date application was made to the Council]* an application was made to Elmbridge Borough Council under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 for a licence to use the premises whose address is: *[insert address of premises]* as a *[sex shop][sex cinema][sexual entertainment venue]*.

Any person wishing to make objections against the application should write to Elmbridge Borough Council, stating in general terms the grounds of the objection. This must be received by the Council within 28 days from the date of the application, as given above. Objections received after this date will not be considered.

Objections should be addressed to: Head of Environmental Health & Licensing, Elmbridge Borough Council, Civic Centre, High Street, Esher, Surrey, KT10 9SD

Please see the Elmbridge Borough Council website at www.elmbridge.gov.uk for details of their policies on sex establishment licensing and objections to applications.

NOTICE OF APPLICATION FOR A SEX ESTABLISHMENT LICENCE

Take notice that on

(insert date application was made to the Council)

an application was made to Elmbridge Borough Council under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 for the grant* / renewal* / transfer* of a licence to use the premises, whose address is:

(insert address of premises)

as a sex shop*, sex cinema*, sexual entertainment venue.*

Any person wishing to make objections against the application should write to Elmbridge Borough Council, stating in general terms the grounds of the objection. This must be received by the Council within 28 days from the date of the application, as given above. Objections received after this will not be considered.

Objections should be addressed to:

**Head of Environmental Health & Licensing,
Elmbridge Borough Council, Civic Centre,
High Street, Esher, Surrey KT10 9SD**

Please see the Elmbridge Borough Council website at www.elmbridge.gov.uk for details of their policies on sex establishment licensing and objections to applications.

Signed: _____

Name of applicant (please print)

*** On behalf of**

* Delete where appropriate

19 Appendix Four – Scheme of Delegation of Powers

The delegation of powers to deal with the provisions of the Local Government (Miscellaneous) Provisions Act 1982 were the subject of a report to the Licensing Committee of the Council on 16th November 2009. The recommendations of that Committee were subsequently adopted by the Council at its meeting on 9th December 2009.

As a consequence the Council have delegated powers to deal with the provisions of the Act as follows.

To the Licensing Committee:

1. to undertake the functions relating to the licensing of sex establishments under the provisions of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;
2. to make and amend regulations prescribing standard terms, conditions and restrictions applicable to licences for sex establishments; and
3. to make and amend policies relating to the licensing of sex establishments.

To the Licensing Sub-Committee:

1. to grant or refuse applications for the grant, renewal, or transfer of licences for sex establishments;
2. to grant or refuse applications for variations of licences or to make such variation as they think fit;
3. to attach such terms, conditions, and restrictions to licences as is seen necessary and appropriate;
4. to grant adjournments of hearings;
5. to give to an applicant for, or holders of, licences, statements in writing of their decisions; and
6. to revoke licences.

To the Strategic Director – Services/ Head of Environmental Health & Licensing:

1. to enforce the provisions of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;
2. to appoint Officers of the Council to enforce the provisions of Part II and Schedule 3 of the Act;
3. to exercise the powers of entry, and to authorise Officers to exercise the powers of entry, conferred by paragraph 25 of Schedule 3 of the Act;
4. to apply for and to authorise Officers to apply for warrants to enter premises under paragraph 25 of Schedule 3 of the Act;
5. to determine whether any premises, vessel, vehicle or stall constitutes a sex establishment under the provisions of the legislation;
6. in consultation with the Chairman of the Licensing Committee, to waive the requirement for a licence in any case where it is considered that to require a licence would be unreasonable or inappropriate, to determine what period such a waiver shall apply for, and to terminate such waivers in accordance with paragraph 7(7) of Schedule 3;
7. to determine what particulars may be required in connection with an application;
8. to determine the form which notices given under paragraphs 10 (11) and 10 (12) of Schedule 3 of the Act shall take;
9. to determine whether objections given to the authority are valid or not;

10. to give notice to applicants of objections received;
11. to have regard to observations submitted to the authority by the Police;
12. to transfer licences;
13. to refer to a Licensing Sub-Committee any licence where Officers consider that the licence should be revoked;
14. in consultation with the Chairman of the Licensing Committee, to refuse any application for the grant or renewal of a licence where the requirements of paragraph 12 (a) (b) (c) (d) (e) or 3(c) of Schedule 3 of the Act have not been met;
15. to cancel licences following the written request of the licence holder;
16. to determine the reasonable fee to be charged for supplying copies of standard terms, conditions and restrictions applicable to licences for sex establishments adopted by the Council;
17. to send copies of licences granted to the chief officer of Police for the area;
18. to consider applications for and to extend or further extend the period for which a licence shall remain in force after the death of a licence holder;
19. to determine fees for the grant, renewal, or transfer of licences in consultation with the Chairman of the Licensing Committee;
20. to enforce and prosecute offences under the provisions of Schedule 3 of the Act; and
21. to defend appeals taken against the Council under paragraph 27 of Schedule 3 of the Act.

20 Appendix Five – Standard Conditions

20.1 Sex shops

Standard Conditions which shall apply to sex shops.

GENERAL

1. The premises hereby licensed shall be used only for the purposes of a sex shop as defined by Schedule 3 paragraph 4(1) of the Local Government (Miscellaneous Provisions) Act 1982 and shall not be used either wholly or in part for any other purpose or purposes whatsoever during the period in respect of which this licence is granted.
2. The premises shall be open to members of the public during the hours of Monday to Friday, 10.00 a.m. to 8.00 p.m.; Saturday 9.00 a.m. to 6.00 p.m.; Sunday, 11.00 a.m. to 5.00 p.m.
3. Where the Licensee is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager, are to be furnished within 14 days of a request in writing from the Council.
4. The Licensee or some responsible person nominated by him in writing for the purpose of managing the licensed premises in his absence and whose details have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

Registers shall be kept on the premises showing the name and address of any person who is responsible for managing the sex establishment in the temporary absence of the person nominated pursuant to Licence condition 5.

The Licensee shall ensure that during the hours the sex shop is open to the public, every employee wears an identifying badge, of a type approved by the Council, indicating their name and that they are an employee.

5. The following written matter shall be clearly visible from outside the sex establishment:-
 - (i) The trading name of the premises as specified in the licence.
 - (ii) The hours of opening to the public.
 - (iii) The street number.
 - (iv) In each entrance or doorway to the licensed premises in a prominent position so as to be readily visible to any person approaching the premises with a view to entering therein but without their having so to enter a notice headed:

“WARNING” and stating “PERSONS PASSING BEYOND THIS POINT WILL FIND MATERIAL ON DISPLAY WHICH THEY MAY CONSIDER INDECENT. NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE”.

6. There shall be displayed above the entrance or main entrance to the premises hereby licensed a notice in permanent form in letters not less than 2 cm high (approximately $\frac{3}{4}$ ") stating 'LICENSED SEX SHOP - LICENSEE [*insert name of licensee*].
7. The Licensee shall ensure that the public are not admitted to any parts of the premises other than those which have been approved by the Council save in the case of an emergency.
8. Neither the Licensee nor any employee (or any person) shall seek to obtain custom for the sex shop by means of a personal solicitation outside the premises or in the vicinity of the premises.

PREMISES

9. No part of the interior of the premises where sex articles are displayed shall be visible to passers-by at any time. The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.
10. Alterations or additions either internal or external, whether permanent or temporary to the structure, lighting or layout of the premises, shall not be made except with the prior approval of the Council.
11. All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.
12. Lighting in all parts of the premises shall be to a level approved by the Council and shall be in operation continuously during the hours when the sex shop is open to the public.
13.
 - (i) The windows of the licensed premises fronting the pavement shall not be obscured other than with the consent of the Council, but shall have suspended behind them, in a position approved by the Council, such opaque blinds or screens or such other arrangements as approved by the Council.
 - (ii) Any such precautions as may be necessary shall be taken to maintain the screening of the shop windows during any cleaning operations.
 - (iii) Nothing shall be displayed in the windows of the shop other than items of lingerie and dresses.
 - (iv) No display or advertisement visible from the outside of the premises shall include a depiction or description of a sex article.
14. Displays, advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any other matter or thing (whether illuminated or not) shall not be exhibited so as to be visible from the outside of the premises except:-
 - (i) Any notice of a size and in the form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a Licence granted by the Council.

- (ii) Such display, advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.
15. Doors and openings which lead to parts of the premises to which the public are not permitted to have access, shall have notices placed over them marked "Private – no access to the public".

FILMS AND VIDEOS

20. (i) No film or video shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licensee by the Council and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video so certified.
- (ii) The screen of the television should be no more than 12 inches and placed in such a position so as not to be visible to the public outside the premises.
- (iii) The screen shall be placed in such a position to the satisfaction of the Council.
- (iv) Only videos of clips of other videos for advertising purposes shall be shown and no individual clip shall be shown for longer than three minutes.
- (v) No film or video will be shown in its entirety.
- (vi) All trailers shown are to be approved by the British Board of Film Classification.
- (vii) A warning notice will be placed adjacent to the screen stating "For staff use only" or "No customers allowed to operate".

20.2 Sex cinemas

Standard Conditions which shall apply to sex cinemas.

1. The premises hereby licensed shall be used only for the purposes of a sex cinema as defined by Schedule 3 paragraph 3 of the Local Government (Miscellaneous Provisions) Act 1982 and shall not be used either wholly or in part for any other purpose or purposes whatsoever during the period in respect of which this licence is granted.
2. The premises shall be open to members of the public during the hours of Monday to Friday, 10.00 a.m. to 8.00 p.m.; Saturday 9.00 a.m. to 6.00 p.m.; Sunday, 11.00 a.m. to 5.00 p.m.
3. Where the Licensee is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager, are to be furnished within 14 days of a request in writing from the Council.

4. The Licensee or some responsible person nominated by him in writing for the purpose of managing the licensed premises in his absence and whose details have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

Registers shall be kept on the premises showing the name and address of any person who is responsible for managing the sex cinema in the temporary absence of the person nominated pursuant to Licence condition 5.

The Licensee shall ensure that during the hours the sex cinema is open to the public, every employee wears an identifying badge, of a type approved by the Council, indicating their name and that they are an employee.

5. The following written matter shall be clearly visible from outside the sex establishment:-

- (v) The trading name of the premises as specified in the licence.
- (vi) The hours of opening to the public.
- (vii) The street number.
- (viii) In each entrance or doorway to the licensed premises in a prominent position so as to be readily visible to any person approaching the premises with a view to entering therein but without their having so to enter a notice headed:

“WARNING” and stating “PERSONS PASSING BEYOND THIS POINT WILL FIND MATERIAL ON DISPLAY WHICH THEY MAY CONSIDER INDECENT. NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE”.

6. There shall be displayed above the entrance or main entrance to the premises hereby licensed a notice in permanent form in letters not less than 2 cm high (approximately $\frac{3}{4}$ ") stating 'LICENSED SEX CINEMA - LICENSEE [*insert name of licensee*].
7. The Licensee shall ensure that the public are not admitted to any parts of the premises other than those which have been approved by the Council save in the case of an emergency.
8. Neither the Licensee nor any employee (or any person) shall seek to obtain custom for the sex cinema by means of a personal solicitation outside the premises or in the vicinity of the premises.

PREMISES

9. No part of the interior of the premises where advertisements or stills from films are displayed shall be visible to passers-by at any time. The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.
10. Alterations or additions either internal or external, whether permanent or temporary to the structure, lighting or layout of the premises, shall not be made except with the prior approval of the Council.

11. All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.
12. Lighting in all parts of the premises shall be to a level approved by the Council and shall be in operation continuously during the hours when the sex cinema is open to the public.
13.
 - (i) The windows of the licensed premises fronting the pavement shall not be obscured other than with the consent of the Council, but shall have suspended behind them, in a position approved by the Council, such opaque blinds or screens or such other arrangements as approved by the Council.
 - (v) Any such precautions as may be necessary shall be taken to maintain the screening of the shop windows during any cleaning operations.
 - (vi) Nothing shall be displayed in the windows of the shop other than items of lingerie and dresses.
 - (vii) No display or advertisement visible from the outside of the premises shall include a depiction or description of a film or any images derived from a film.
14. Displays, advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any other matter or thing (whether illuminated or not) shall not be exhibited so as to be visible from the outside of the premises except:-
 - (iii) Any notice of a size and in the form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a Licence granted by the Council.
 - (iv) Such display, advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.
15. Doors and openings which lead to parts of the premises to which the public are not permitted to have access, shall have notices placed over them marked "Private – no access to the public".

20.3 Sexual entertainment venues

Conditions relating to sexual entertainment venues

1. Total nudity (the exposing of genitals, anus, or pubic area) shall only be permitted on stage and at no other place in the premises.
2. No sex act shall take place as part of the entertainment.
3. The area proposed for striptease (involving complete nudity) shall:-
 - a) be in a position where the performance cannot be seen from the street.
 - b) be in a designated area of the premises with segregation from the audience.

4. The area proposed for lap dancing, table side dancing (involving partial nudity) shall be in a position where the performance cannot be seen from the street.
5. There shall be no physical contact between persons appearing on stage and the audience.
6. The entertainment shall be given only by performers/entertainers and the audience shall not be permitted to participate.
7. Persons appearing on stage shall have direct access to the dressing room without passing through or in close proximity to the audience.
8. Lap dancers/table side dancers shall immediately dress at the conclusion of each performance.
9. The licensee, performer and any person concerned in the organisation or management of the entertainment shall not encourage, or permit encouragement of the audience to throw money at or otherwise give gratuities to the performers (except as permitted by condition 11 below).
10. Entertainment provided by topless dancers to customers seated at tables may only take part in those parts of the premises approved by the Council. No audience participation shall be permitted.
11. There shall be no physical contact between customers and the dancers except for the placing of money or tokens into the hands of the dancer at the beginning or conclusion of the performance. Whilst the dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers. Notices to this effect shall clearly be displayed at each table and at the entrance to the premises.
12. Should a customer attempt to touch a dancer, the dancer must withdraw and report the matter to her / his manager / supervisor.
13. Topless dancers shall at all times wear a G-string or similar piece of clothing that covers the pubic area, genitals and anus.
14. The Licensee shall immediately investigate any report of contact, misconduct or provocation by a customer or dancer.
15. No telephone numbers, addresses or information leading to any further meeting may be passed from customer to dancer or vice versa.
16. No dancer may perform if they are drunk.
17. No member of the public shall be admitted or allowed to remain in the dance area if they appear to be drunk.
18. All members of the public shall remain seated in the dance area other than when they arrive, depart, visit the lavatory or go to the bar.

19. Members of the public shall not be permitted to congregate in the bar area for any purpose except to order or collect drinks from the bar.
20. Signs must be displayed at the entrance to the dance area stating:- “Any customer attempting to make physical contact with a dancer will be asked to leave”. Signs must be sufficient in size, legible and positioned so as to be read by all customers entering the dance area.
21. No dancer shall perform any sexually explicit or lewd act.
22. Whilst dancing takes place not less than [insert agreed number] Door Supervisors licensed by the Security Industry Agency shall be employed in the part of the premises used for dancing unless alternative arrangements are approved by the Council.
23. CCTV shall be installed to cover all areas where dancing will take place. All cameras shall continually record whilst the premises are open to the public and the video recordings shall be kept available for a minimum of 28 days and shall provide a record of the time and date stamping on the recording. Recordings shall be made available to an authorised officer of the Council or a Police Officer together with facilities for viewing. The recordings for the preceding two days shall be made available immediately on request. Recordings outside this period shall be made available on 24 hours notice.

21 Appendix Six - Grounds for Granting or Refusing an Application

1. Case-law has determined that the Licensing Sub Committee may not refuse a sex establishment licence solely on the ground that the establishment may cause offence. (*R v Coventry City Council ex parte Quitelynn Ltd (1985)*).
2. The local authority **must** refuse an application for a licence on any of the grounds listed in paragraph 12 of Schedule 3 to the Act. A licence shall not be granted to:
 - a) To a person under the age of 18;
 - b) To a person who is for the time being disqualified because they are a licence holder whose licence has been revoked within the previous 12 months;
 - c) To a person, other than a body corporate, who is not resident in the United Kingdom or who was not so resident throughout the period of six months immediately preceding the date when the application was made;
 - d) To a body corporate which is not incorporated in the United Kingdom; or
 - e) To a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
3. The local authority **may** refuse to grant an application for a licence where any of the matters mentioned in paragraph 12 (2) and (3) of Schedule 3 of the Act apply. An application for the grant or renewal of a licence may be refused on any of the grounds listed below or on several of those grounds. An application for the transfer of a licence may be refused on either or both of the grounds listed in a) or b) below. An application for a variation may be refused but the Act does not specify on what grounds.
 - a) The applicant is unsuitable to hold a licence by reason of having been convicted of any offence or for any other reason.
 - b) That if the licence were to be granted, renewed or transferred 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, renewal or transfer of such 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 considers is appropriate for that locality.
 - d) That the grant or renewal of the licence would be inappropriate, having regard to the:
 - i. character of the relevant locality; or
 - ii. use to which any premises in the vicinity are put; or
 - iii. layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Relevant locality means:

- a) in relation to the premises, the locality where they are situated; and
- b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.