

Regulatory Committee

2pm, Monday, 3 February 2014

Review of Public Entertainment Licensing

Item number	7.3
Report number	
Wards	Citywide

Links

Coalition pledges	P31
Council outcomes	CO8, C20
Single Outcome Agreement	SO1

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Executive summary

Review of Public Entertainment Licensing

Summary

Committee at its meeting of 15 November 2013 considered a report on licensing of 'premises of Public Entertainment'. The Committee agreed to consult on proposals to amend the current Public Entertainment Resolution, removing 'Health and Fitness premises, including premises used as saunas or massage parlours', from the requirement to obtain a public entertainment licence.

This report advises Committee on the outcome of the statutory consultation.

The report recommends that the licensing of 'Health and Fitness premises including premises used as saunas or massage parlours' should cease, as it is no longer appropriate for the Council to license these premises.

Recommendations

- 1 It is recommended that Committee:
 - a) notes the outcome of the statutory consultation.
 - b) notes the decision of the Corporate Policy and Strategy Committee on 21 January 2014 on 'A Harm Reduction Framework'.
 - c) agrees to vary the City of Edinburgh Council's Public Entertainment Resolution (Number 1 of 2013) as set out in [Appendix 2](#), to remove massage parlours and sauna premises from the list of premises required to be licensed, effective from 7 March 2014.
 - d) agrees therefore the City of Edinburgh Council's Public Entertainment Resolution (Number 1 of 2014) as set out in [Appendix 3](#).
 - e) instructs the Director of Service for Communities to take all steps necessary to implement this decision, including dealing with outstanding legal cases.

Measures of success

That the Public Entertainment Resolution is fit for purpose and that the Council discharges its statutory duties.

Financial impact

The Council's scale of fees for licensing applications was approved with effect from 1 April 2013. This change will have no long term impact, as the reduction in fee income will be offset by a reduction in the costs of administering and regulating these licences.

Equalities impact

There is no adverse impact on the public sector equalities duty. There would accordingly be no direct equalities impact arising from the contents of this report.

Sustainability impact

There is no environmental impact arising from the contents of this report.

Consultation and engagement

- 1 The Public Entertainment Licensing Consultation Survey was available for interested parties to complete during the period 18 November 2013 to 15 December 2013, with the Council website used to promote completion. Late submissions were accepted until 31 December 2013.
- 2 An advertisement promoting the consultation was published in the Edinburgh Evening News on 19 November 2013.
- 3 The consultation was circulated by letter to all relevant licence holders and statutory consultees e.g. NHS Lothian, Scottish Fire and Rescue and Police Scotland.
- 4 A number of third sector agencies were offered face to face meetings, and a small number took advantage of that offer.
- 5 365 responses were received in total.

Background reading / external references

[Item 7.1 - Proposed Changes to the Public Entertainment Resolution, Regulatory Committee 15 November 2013.](#)

Review of Public Entertainment Licensing

1. Background

- 1.1 The Civic Government (Scotland) Act 1982 ('the Act') requires the Council to have a Public Entertainment Licensing system. The Council is required to identify which places or classes of premises are considered to be places of public entertainment, and therefore require a public entertainment licence.
- 1.2 On 15 November 2013 the Regulatory Committee agreed to statutory consultation on proposed amendments to the Public Entertainment Resolution ('PER') to remove 'Health and Fitness premises, including premises used as saunas or massage parlours' from the requirement to obtain a public entertainment licence. This consultation took place from 18 November to 15 December 2013.
- 1.3 This report outlines the results of the statutory consultation process.

2. Main report

- 2.1 The consultation on proposed amendments to the PER was advertised locally in the Edinburgh Evening News and on the Council website. Additionally, interested parties, including all current licence holders, were written to and asked to comment. Respondents could either reply by letter or fill in the Council's online survey. 365 responses were received, of which 11 came from organisations.
- 2.2 The proposed amendments to the PER arose from concerns that the Council's practice of licensing premises 'used for Health and Fitness, including Saunas and Massage Parlours' was not achieving its aim of harm reduction and was no longer sustainable. In the last 18 months detailed and serious objections have been made to the licensing of the majority of the premises which are either 'Saunas or Massage Parlours'.
- 2.3 Any amendment to the PER requires statutory consultation. The proposals were therefore advertised publicly and a period of consultation held between 18 November and 15 December 2013. Any late responses up to 31 December were accepted and included in the consultation exercise. Detail on the consultation response is attached at Appendix 1.
- 2.4 A number of key themes emerged consistently from the consultation responses. The single biggest issue related to the potential impact on harm reduction particularly to workers within saunas and massage premises. Other key issues

were concern that closing these premises would result in displacement of activity into other areas or premises and thirdly, support for licensing of these premises on the basis that they have no adverse impact on their locality.

- 2.5 There are a number of premises currently licensed which would be impacted by these proposals spread across a range of geographical areas in the city. Response to the consultation from communities or the general public was very low with submissions coming mainly from people who have an active interest in this issue.
- 2.6 The issue of harm reduction is a serious concern and has been a significant driver in considering this change of policy. The key objective of risk management and risk reduction from these premises is clearly no longer being achieved. Recent checks on these licensed premises have identified that activity beyond the scope of the license was taking place in a large proportion of premises; in addition serious charges have been brought against a number of owners including links to serious and organised crime. Effective harm reduction around activity within these premises needs a different approach.
- 2.7 The Council takes the safety and well being of workers within these premises extremely seriously and has been working closely with partner agencies including NHS Lothian, Police Scotland and the third sector developing a Harm Reduction Framework which would include workers within saunas and massage premises. A report on this framework, as requested by this Committee, was approved by the Policy and Strategy Committee on 21 January 2013 as a basis for ongoing work providing support and assistance. This work will be reported back to the Health, Social Care and Housing Committee on a regular basis. It is suggested that this stream of work will address the concerns raised in the consultation.
- 2.8 It is clear from the responses received on the consultation that a large proportion of the respondents appear to accept that activity beyond the scope of the licensed activity is being carried out in these premises and their comments relate to management of this activity. A number of responses have proposed that a system of openly licensing brothels be adopted.
- 2.9 It is important to note that the Council has never condoned the sale of sex on these premises, and has accepted that if there is illegal activity taking place then it cannot license any such premises. The feedback from the consultation exercise would seem to add further support to the suggestion that sex is being sold from these premises. From a licensing perspective managing an activity which would otherwise be illegal is not a legitimate aim or purpose of the licensing system.
- 2.10 The Council has been provided with detailed legal advice on the implications of licensing premises in which it is believed illegal activity is being engaged in. The advice is clear that the Council cannot use the licensing system as a means of regulating activity which would otherwise be illegal, or about which there is undisputed or overwhelming evidence to that effect. It remains open to the Council to decide if legitimate sauna and massage operations are to be licensed,

but if it is known that there are other activities taking place under cover of a Public Entertainment Licence then the Council leaves itself open to challenge. Given recent developments before the Licensing Sub-Committee it seems likely that such legal challenges will continue – whether by individual appeals against licence application decisions, or by judicial review of a decision to adopt or amend a policy. Such challenge has significant reputational and cost implications for the Council

Other key points raised through the consultation related to displacement of activity and potential impact on surrounding neighbourhoods if licensing ceased. It is important to note that removing premises from the Public Entertainment Resolution does not mean that they are required to close; they simply no longer require a license to operate. As stated above, premises will remain subject to general enforcement activity through Public Health and Trading Standards powers and any illegal activity will be a matter for Police Scotland to action.

3. Recommendations

3.1 It is recommended that Committee:

- a) notes the outcome of the statutory consultation.
- b) notes the decision of the Corporate Policy and Strategy Committee on 21 January 2014 on 'A Harm Reduction Framework'.
- c) agrees to vary the City of Edinburgh Council's Public Entertainment Resolution (Number 1 of 2013) as set out in [Appendix 2](#), to remove massage parlours and sauna premises from the list of premises required to be licensed, effective from 7 March 2014.
- d) agrees therefore the City of Edinburgh Council's Public Entertainment Resolution (Number 1 of 2014) as set out in [Appendix 3](#).
- e) instructs the Director of Service for Communities to take all steps necessary to implement this decision, including dealing with outstanding legal cases.

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Director of Services for Communities

Links

Coalition pledges	P31 - Maintain our City's reputation as the cultural capital of the world by continuing to support and invest in our cultural infrastructure
Council outcomes	CO8 - Edinburgh's economy creates and sustains job opportunities CO20 - Culture, sport and major events – Edinburgh continues to be a leading cultural city where culture and sport play a central part in the lives and futures of citizens
Single Outcome Agreement	SO4 - Edinburgh's Economy Delivers increased investment, jobs and opportunities for all
Appendices	Appendix 1: Consultation responses. Appendix 2: Public Entertainment Resolution no. 1 of 2013 Appendix 3 Public Entertainment Resolution no.1 of 2014