OFFICER / CABINET MEMBER DECISION REPORT FORM

(NB. all decisions should comply with Article 13.2 of the constitution)

1. Decision made

To approve a licensing fee for 2013/2014 in respect of new Sex Establishments of £1,947.

2. Identity of the Decision Maker

Executive Director, Grahame Lewis

3. Date of Decision

Tuesday, 10 September 2013

4. Reasons for Decision

The authority has not received any applications for sex establishments in the last four years. The authority is aware of one possible application and in light of this and the recent judgement a review has been undertaken in respect of the licence fee for new applications for sex establishments.

5. Alternative options considered and rejected

Not to adopt the fee but the Council won't be compliant with the Court's direction which could result in possible legal challenge.

6. Background documents

1. Cheltenham Borough Council Constitution
2. Judgement in the case of Hemming (t/a Simply Pleasure Ltd) & Ors, R (on the application of) v Westminster City Council (Rev 1) [2013] EWCA Civ 591
3. Judgement in the case of Manchester City Council [R] v King [QBD] 1991
4. Schedule for Licensing Fees 13/14
5. Provision of Service Regulations 2009

7. Any Consultation undertaken

Consultation was undertaken with One Legal, HR, finance and the lead Cabinet Member for Housing and Safety.

8. Results of consultation (where undertaken)

Proposed fee should be adopted and is based on cost recovery as outlined in the covering report.

9. Any Conflict of Interest declared by an Executive Member who is consulted on the decision

None

10. Dispensation

Was a dispensation given by the Head of Paid Service (Chief Executive) to Cabinet Members to participate in consultation on officer (or Cabinet Member) executive decisions where they have a conflict of interest in respect of any declaration of interest listed at 9 ?

	Yes	N/A
Date of dispensation		x

11. Supporting Report

Final report attached ?

Yes	No
x	

12. Confidential or Exempt Information

Confidential or Exempt information ?

Yes	No
	x

Name of document(s) which are confidential or exempt...

Signature.....

Date.....10 Sept 2013.....

Cheltenham Borough Council

Executive Director – 10 September 2013

Sex Establishment Licence

Accountable member	**Councillor Peter Jeffries – Cabinet Member for Housing and Safety**
Accountable officer	**Grahame Lewis – Executive Director**
Ward(s) affected	**All**
Key Decision	**Yes**
Executive summary	Following a review of the formula used for calculating the licence fee in respect of Sex Establishments a revised amount has been calculated. In light of this review this report seeks the approval of the Executive Director for the implementation of the new fee in respect of new applications.
Recommendations	**The Executive Director is recommended to;** **Note the contents of this report, and** **Approve a licensing fee for 2013/2014 in respect of new Sex Establishments of £1,947.**

Financial implications	There is currently no budgetary provision for income from new applications for sex establishment licenses, due to the minimal number of applications expected in a year. Any income received will therefore be surplus against the 2013/14 licence fee income budgets. **Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125**
Legal implications	The legal implications are contained in the report. **Contact officer: Sarah Farooqi, sarah.farooqi@tewkesbury.gov.uk, 01684 272693**
HR implications (including learning and organisational development)	There are no direct HR implications in this report. **Contact officer: Donna Sheffield, donna.sheffield@cheltenham.gov.uk, 01242 77 4972**
Key risks	**As identified in Appendix 1**

1. Background

1.1 Under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ("1982 Act") local authorities can decide to adopt the 1982 Act and licence sex establishments. This authority has adopted the 1982 Act and therefore if someone wants to operate a sex establishment in Cheltenham they must be licensed.

1.2 Schedule 3(19) states that "An applicant for the grant, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority."

1.3 The Provision of Service Regulations 2009 ("2009 Regulations") provided that any charges which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed those procedures and formalities.

1.4 The 2009 Regulations were considered in the recent case of Hemming v. Westminster City Council (2013). The Court held that a local authority can only recover from an applicant, via the licence fee, the administrative cost incurred as a result of the authorisation process. The local authority cannot, for example, recover from an applicant, via the licence fee, the cost of undertaking enforcement activities against unlicensed operators. .

2. Cheltenham

2.1 The authority has issued any applications for sex establishments in the last four years. The authority is aware of one possible application and in light of this and the recent judgement a review has been undertaken in respect of the licence fee for new applications for sex establishments.

2.2 A new fee has been calculated for applications for new sex establishments, outlined below, of £1,947.

- Administration: £1,154
- Determination: £250
- Inspection/regulation: £173
- Policy: £370

2.3 For the avoidance of doubt, this report only relates to the licence fee applicable to new Sex Establishments. Renewal, variation and transfer fees will be revisited separately and may be the subject of a further report.

3. Reasons for recommendations

3.1 To review and set a fee in respect of new applications for sex establishments

Report author	**Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk,** **01242 77 5004**
Appendices	1. Risk Assessment

Background information	1. Cheltenham Borough Council Constitution 2. Judgement in the case of Hemming (t/a Simply Pleasure Ltd) & Ors, R (on the application of) v Westminster City Council (Rev 1) [2013] EWCA Civ 591 3. Judgement in the case of Manchester City Council [R] v King [QBD] 1991 4. Schedule for Licensing Fees 13/14 5. Provision of Service Regulations 2009

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likeli-hood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	The Council will be unable to justify its licence fees resulting in a possible legal challenge and possible claims for refunds/compensation.	Licensing & Business Support Team Leader		4	4	16	Close	Adjust the current licence fee.	n/a	Licensing & Business Support Team Leader	
	The Council won't be compliant with the Court's direction which could result in possible legal challenge.	Licensing & Business Support Team Leader		4	4	16	Close	Adjust the current licence fee.	n/a	Licensing & Business Support Team Leader	

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close