



City of Westminster

Licensing Committee Report

Meeting:	<i>Licensing Committee</i>
Date:	<i>18th November 2015</i>
Classification:	<i>For General Release</i>
Title:	<i>Licensing Fees Review 2016/2017</i>
Wards Affected:	<i>All</i>
Financial Summary:	<i>This report sets out the fee strategy for the licensing regimes where the authority can set a fee to attempt to recover its own costs. The proposed fees will enable the authority to recover the majority of its costs for 2016/17.</i>
Report of:	<i>Operational Director for Premises Management</i>

1. Executive Summary

- 1.1 The report sets out the proposed fees for those licensing regimes where the Council has the power to set its own fees for 2016/17. It also proposing two new surcharges for applications submitted with a cheque and for special treatment late renewals.

2. Recommendations

- 2.1 That:
- 2.1.1 the proposed fees attached to this report as Appendix 1 save for the lower risk Massage and Special Treatment premises licence renewal fee, be approved commencing 1st January 2016.
 - 2.1.2 the proposed surcharge for paying the licence fee by cheque, as set out in paragraph 6.2 below and shown on Appendix 1 be approved.

- 2.1.3 the Committee approve one of the proposed options for the increase in the lower risk Special Treatment Premises Licence renewal fee as set out in paragraph 8.5 of this report.
- 2.1.4 the Committee approve the proposed surcharge for late renewals of special treatment premises licences as set out in paragraph 9 of this report.
- 2.1.5 the Committee note the need for further lobbying on amending the relevant regulations under the Licensing Act 2003 and Gambling Act 2005, as set out in paragraph 11.5 to enable the council to recover its reasonable costs in carrying out its functions under the Acts.

3. Reasons for Decision

- 3.1 The proposed fees, attached to this report as Appendix 1 will enable to the council to recover its reasonable costs in processing and determining applications and ensuring compliance with the appropriate legislation and the conditions of the licence.

4. Background

- 4.1 The majority of the licensing fees were reviewed in the early part of 2015, except Sex Establishments, Special Treatment Premises Licences and Marriage approvals. The Committee agreed the proposed fees following that review on the 11th March 2015. At the time Sex Establishments, Massage and Special Treatment premises licences and Marriage Approval fees were not set and it was agreed at that meeting that the current fees would remain in effect until a review was undertaken on the fees for those regimes at a later date.
- 4.2 The Council undertook a major restructure in the first quarter of 2015 which has resulted in a new structure for Public Protection and Licensing. This new structure has meant that officers have had to re-evaluate the process in which we have set our fees over the past few years. This evaluation resulted in a new fee process which takes into account the new Public Protection and Licensing structure and the changes to personnel and costs.

5. Fee Methodology

- 5.1 The fees are calculated by assessing the time it takes for each step in the process from receipt of application to determination. This will include the time taken by internal consultees, such as the Environmental Health Consultation Team. We have also identified the perceived cost for the compliance and enforcement function carried out by the City Inspectors. The time has been assigned to different roles and the costs based on hourly rates. There is also a proportion attributed to these fees for management time which will include the costs associated with running the Department and Services involved with delivering a function associated with one or more licensing regimes. The fees have then been established by calculating the cost associated with each of the licensing functions.
- 5.2 In calculating these fees officers have taken into account the requirements under the EU Service Directive and the Supreme Courts rulings in the Hemming case. Further information relating to this case is detailed within paragraphs 7.3 and 7.4 below.
- 5.3 Although the Council has not received any applications or issued any licences for some regimes it still must set a fee to recover the costs of carrying out that function. In the cases where the Council has not processed any applications or

issued licences the costs have been estimated based on similar types of application process and licences.

6. Cheque Payment Surcharge

- 6.1 Due to the costs in processing cheques it is proposed to charge a supplement for all applications that are made with a cheque payment. The supplement will cover the cost in processing these cheques which is not applicable to fees paid via online payment or over the telephone.
- 6.2 The proposed cheque supplement will be £20.40 per application. However, this will not apply to gambling applications where the fee has already reached the cap. The proposed fee levels with this supplement are provided within Appendix 1 to this report.

7. Sex Establishments

- 7.1 The Council is responsible for licensing premises as sex establishments under the provisions of the Local Government (Miscellaneous Provisions) Act 1982. There are four categories of sex establishments that applicants can apply for. These are:
 - 7.1.1 a sex shop, selling sex articles such as toys or DVD's,
 - 7.1.2 a sex cinema, which shows restricted 18 category films,
 - 7.1.3 a hostess bar, where female company (non-sexual) is provided to customers, or
 - 7.1.4 a sexual entertainment venue, which provides sexual entertainment such as strip tease, table dancing and live sex shows.
- 7.2 Illegal sex shops in and around Soho have been a particular problem for many years and the Council has put a great deal of resources in reducing the illegal premises through enforcement action.
- 7.3 The costs associated with this work were incorporated into the licences fees up until June 2013. It was removed following the outcome of a judicial review that was led by Mr Hemming and supported by the majority of licensed sex shop operators. The removal of the enforcement costs, which represented the vast proportion of the fee level, was because the fee was not deemed to be compliant with the EU Directive relating to the Provision of Services.
- 7.4 The Council appealed that decision to the Supreme Court which ruled in April 2015 that the Council could charge for enforcement against illegal operators but that to do so the fee for that enforcement would need to be charged once the

licence was determined and prior to issue. In effect the fee for sex establishments will be broken down into two parts, the authorisation procedure and enforcement. An applicant for the grant or renewal of the relevant category of sex establishment will pay the authorisation procedure fee upon application. Once the application has been processed and the licence is granted the enforcement costs will be payable before the licence is issued.

Fee	Type	Authorisation Procedure	Enforcement costs	Total charge following grant of the licence
Sex Shops/Cinemas/ Hostess Bars	New	£1,928.53	£2,262	£4,190.53
	Renewal	£1,026.40	£2,262	£3,288.40
	Variation	£1,010.91	£0	£1,010.91
	Transfer	£311.39	£0	£311.39
	Para 7 waiver	£679.61	£0	£679.61
Sexual Entertainment Venues	New	£1,609.96	£2,262	£3,871.96
	Renewal	£608.79	£2,592	£3,200.79
	Variation	£1,036.94	£0	£1,036.94
	Transfer	£281.15	£0	£281.15
	Para 7 waiver	£664.03	£0	£664.03

7.5 The council now only has three unlicensed sex shops within Westminster. This has meant that the enforcement costs have reduced significantly due to the good work in closing down illegal operators in and around Soho. The new fees have also taken into account the new operating model for the City Inspectors and the changes to the licensing team which has created additional efficiencies. As a result there has been a reduction in the overall fee amount payable for sexual entertainment venues. However, there will be an increase for sex shops, cinemas and hostess bars as a result of the addition of the enforcement costs.

7.6 The proposed fee for the variation of a sex shop, cinema or hostess bar licence has been increased by 306% from £249 to £1,010.91. The current £249 did not cover the costs involved in processing and determining these applications that often end up being determined by the licensing Sub-Committee. The proposed new fee will enable the council to recover its costs associated with these applications.

7.7 Applicants for the grant or renewal will not be able to pay both elements upon application. If a payment is made for either the authorisation procedure or the enforcement costs via cheque then the proposed £20.40 cheque payment surcharge will be applicable for both parts.

8. Special Treatment Premises Licences

- 8.1 Operators who provide special treatments are often small to medium business. They will provide a number of different kinds of treatments, ranging from manicures and ear-piercing to laser and sunbed treatments. There are two types of licences defined by the council as higher and lower risk. These relate to the types of treatment that are provided on the premises and the assessment and compliance work that is required associated with that risk. Higher risk treatments are defined as those that break the skin, can cause serious injury or disfigurement, or due to contact with bodily fluids there is an increased risk that the customer or treatment provider can contract an infection or infectious diseases. These licences are renewed yearly through an application process.
- 8.2 It has been identified that the Council has not been recovering its costs relating to the special treatment regime for a number of years. These fees have not been changed since 2012/13. The reasons for this were due to the Hemming case and officers awaiting its outcome before considering amending the current fee amount.
- 8.3 The proposed fees for Special Treatment Premises Licences are increasing. For premises that offer lower risk treatments the increase is significant. The proposed fee for 2016/17 is set out in Appendix 1.
- 8.4 Due to the nature of these businesses and that some of these increases will be considerable in one year officers are proposing that the Committee consider which fee increase option may be more suitable for lower risk special treatment renewals.
- 8.5 The proposals set out in the table below which only relate to lower risk special treatment premises licence renewal set out the options available for the Committee to recover these costs. There are four proposals to consider which will either require the total fee to be recovered in 2016/17 or over a period of years up to 4 years. The current fee for these renewals is £1017.

Proposal	Fee per year			
	2016/17	2017/18	2018/19	2019/20
Current	£1858.75			
Proposal 1 (Appendix 1)	£1858.75 (83% increase)			
Proposal 2	£1438 (41% increase)	Additional £421 to any fee set for this year		
Proposal 3	£1332.27 (31% increase)	Additional £263.24 to any fee set for this year	Additional £263.24 to any fee set for this year	
Proposal 4	£1230.57	Additional	Additional	Additional

	(21% increase)	£209.49 to any fee set for this year	£209.47 to any fee set for this year	£209.47 to any fee set for this year
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- 8.6 Proposal one will ensure that this regime is cost neutral in 2016/17. If the Committee decide to opt for options 2, 3 or 4 then this regime will not achieve cost neutrality until the year when the costs for 2016/17 is finally recovered. This would mean that the council would have a shortfall in projected income in future years.
- 8.7 Officers have put forward the proposals in 8.5 above to enable the Committee to consider the need for cost neutrality with the potential financial impact on the small and medium businesses that hold a licence. The proposals would reduce the burden on these licensees by spreading the increase in the fee over a number of years. However, there is also a risk by spreading the costs over a number of years this could exacerbate further financial burdens on those businesses if fees also increase in those years.
- 8.8 If the Committee does decide to opt for options 2, 3 or 4 then officers would monitor this and factor in any potential shortfall into future fee reviews.

9. Special Treatment Premises Licence Late Renewal Surcharge

- 9.1 Each year there is a number of Special Treatment Premises Licence holders that fail to renew their licence. This can be as a result of an oversight on the licensee's part or that they did not receive the reminder letters for one reason or another. The London Local Authorities Act 1991, which governs this licensing regime, requires that once a licence has lapsed a new application is required. However, the fee involved for a new licence is significant and includes inspections and assessment that would not be necessary as the premises has already been licensed.
- 9.2 Officers are proposing to provide a new surcharge fee for special treatment premises licence holders who fail to renew their licence within one month of the licence lapsing. This surcharge fee will be added onto the renewal fee amount and will cover the addition 30 minutes of a Senior Licensing Officers time in dealing with the late renewal. The surcharge fee will be £40.79.
- 9.3 The Licensing Service do issue renewal reminder letters prior to expiry of a Special Treatment Premises Licence. However, small operators often fail to renew their licences by the date the licence lapses. Rather than charge the full new premises licence fee this surcharge will enable these operators to apply and continue to trade with minimal disruption. If the operator does not apply within one month after the lapse of their licence they will have to cease offering special treatments and apply for a new licence. Operators will be sent a letter following the lapse of the licence advising them of the process to make a late renewal but

also what will be required if they do not apply to renew their licence within the 1 month grace period.

10. Zoo Licence and Sports Ground Safety Certificate Fees

- 10.1 Due to the fee amounts and the proposed increases specified in Appendix 1 for Zoo Licences and Sports Grounds these fees have been highlighted to the Committee for information as they will relate to two large internationally recognised premises within the City, London Zoo and Lords Cricket Ground.
- 10.2 The council is responsible for licensing zoos under the Zoo Licensing Act 1981. The Act provides the power for the local authority to set a reasonable fee as it may determine in respect of the grant, renewal or transfer of the licence. When considering and granting a new zoo application the council will have to inspect the premises with the Council's contracted Animal Health Inspectors, Veterinary Surgeon and Department of Environment, Food and Rural Affairs (DEFRA) Zoo Inspectors. These inspections can take a number of days and also a considerable amount of time assessing the relevant documentation that the zoo are required to have in place to operate. For new licences they will be in force for a period of 4 years and during that time will require an inspection on a yearly basis with one inspection including DEFRA Zoo Inspectors.
- 10.3 Zoo licences are renewable every 6 years following the first four year period after grant. During that period the Act requires a yearly inspection and two inspections which require DEFRA Zoo Inspectors. The Council is required to pay for the DEFRA Inspectors and cover their expenses which are then incorporated within the licence fee. The council will also pay for the contracted specialist Animal Health Inspectors and Veterinary Surgeons from the City of London. There are also the yearly costs in managing the zoo licence and assessing notifications of stock changes, movements and annual stocklists.
- 10.4 Westminster only has one zoo, London Zoo licensed under this Act. The fees, particularly the renewal fee have been established to cover the costs that the council will incur during the period when the licence is in force. The proposed fee as set out in Appendix 1 is based on previous year's costs and the time and resources required to undertake this process. The proposed licence fee for the renewal of London Zoo's licence has increased by 22% to £30,226.92. This fee covers a period of 6 years and equates to an average of £5,037.82 per year.
- 10.5 The council is responsible for issuing the Safety at Sports Ground Certificate for Lords Cricket Ground under the Safety of Sports Grounds Act 1975. Lords is the only prescribed Sports Ground under this Act which is located within Westminster. The council received £4,114 per year from Lords for the maintenance and change of the Sports Ground Certificate.

- 10.6 Due to the events that take place at Lords Cricket Ground the council regularly attends meetings and advises on safety matters at the ground associated with this certificate, including replacing the safety certificate. In evaluating the resources involved and the time that they spend at the venue the council has established that the current payment is not sufficient to cover its costs. It is proposed to increase the fee from £4,114 to £7,448.92 to enable cost recovery. This represents an 81% increase from the previous fee amount.

11. Statutory Set Fees

- 11.1 There are other licensing regimes that the council is responsible for which have a statutory set fee. Those regimes are:
- 11.1.1 The Licensing Act 2003 (in respect of premises and personal licences; and temporary event notices;
 - 11.1.2 The Gambling Act 2005 (in respect of gambling permits, notifications and lotteries);
 - 11.1.3 The Explosives Regulations 2014 (in respect of the manufacture and storage of explosives); and
 - 11.1.4 The Firework Regulations 2004 (in respect of the sale of fireworks outside specified periods).
- 11.2 The majority of Licensing Act 2003 regime fees were originally set via the Licensing Act 2003 (Fees) Regulations 2005. These fees do not cover the costs associated with the licensing regime. The Council has been running with a deficit since the introduction of this Act and has lobbied DCMS and the Home Office to allow the authority to set its own fees to enable it to recover its reasonable costs.
- 11.3 The Home Office carried out consultation on the potential for local authorities to set fees locally between the 13th February and 10th April 2014. The council responded to that consultation and also attended a number of workshops that were run by the Home Office at the time on the consultation. On the 25th February 2015 the Home Office published the results of this consultation. Disappointingly the Home Office response was that they had decided not to introduce locally-set fees at the present time. Instead they invited local government to provide evidence of its costs before proceeding. Until such time as the legislation is changed to allow local authorities to set their own fees the Council will continue to run this regime with a deficit year on year. For the 2014/15 financial year the council had a deficit of £1.1 million for the Licensing Act 2003 regime.
- 11.4 The Gambling Act 2005 maximum fees for gambling premises licences and fees for permits, notifications and lotteries were set in 2007 when the Act came into

effect. Over the years the costs associated with processing to determination applications and compliance costs have increased. The council has proposed to set the majority of the gambling premises fees to the capped amount specified within the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007. The costs for this regime are now exceeding the capped fee amount for some of these applications. In addition the fees for permits, notification and lotteries, which are set in the relevant regulations do not cover the council's costs.

- 11.5 It is proposed that on-going lobbying should be continued with the Home Office (Licensing Act 2003) and the Department for Culture Media and Sport (Gambling Act 2005) to push for a change in the law to allow the council to set its own fees and recover its costs or up the prescribed fees to a level that allows for cost recovery.

12. Financial Implications

- 12.1 The proposed fees have been calculated on a full cost basis which considers both the direct and indirect costs associated with processing, monitoring and enforcing the licenses.
- 12.2 When setting fees there is a statutory requirement to consider the income received for a licensing scheme compared to the overall cost of delivering the scheme. The fee level must be set to not generate income in excess of the cost associated with delivery. Previous years surpluses and deficits have not been included as these are currently being reviewed and will be considered either separately in 2016/17 financial year or within the 2017/18 fee review report
- 12.3 A summary of the financial impacts of the revised fee proposals is set out below:

Licence Type	Projected Income 2016/2017
Other General Licensing	£16,000.00
Special Treatment Premises Licensing	£730,000.00
Gambling Act 2005 Licensing	£170,000.00
Marriage Approvals	£33,000.00
Sex Establishment Licensing	£109,000.00
TOTAL	£1,058,000.00

- 12.4 The projected income of £1,058,000 is based upon estimates of activity levels and the assumption that option one of the proposed fees for lower risk Special Treatment Licences is implemented. Options 2, 3 and 4 will result in a reduction to income and as result we will not be able recover our costs fully in 2016/17.

13. Legal Implications

- 13.1 The Council can set its own fees for the regimes listed in Appendix 1 of this report. The fee must be reasonable and cover the Council's costs in the administration of those application types and further costs to ensure compliance.
- 13.2 All of the regimes (excluding Gambling) are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds. The fees as proposed should enable to Council to recover its reasonable costs.
- 13.3 If the proposed fee structure results in a surplus or loss for the financial year there will be an appropriate reduction or increase in fees as the case may be for the following financial year.

Appendices

Appendix 1 – Proposed 2016/17 fees

If you have any queries about this report or wish to inspect any of the Background Papers please contact: Mr Kerry Simpkin on 020 7641 1840 or email ksimpkin@westminster.gov.uk

BACKGROUND PAPERS

- 2014/15 – Income reports.
- 2015/16 – Budgets.
- 2016/17 – Proposed budgets.
- 2016/17 – Officer Hourly rates including on costs.
- All legislation relating to the licensing regimes referred to within this report.