

CAMBRIDGE CITY COUNCIL

REPORT OF:

Jas Lally, Head of Refuse & Environment
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TO: Licensing Committee

7/10/2013

WARDS: All

SETTING FEES FOR LICENSING ACTIVITIES

1 INTRODUCTION

- 1.1 The City Council is responsible for processing and issuing licences for a wide range of activities, including taxi and private hire vehicle and driver licences, street trading, animal businesses, alcohol and entertainment premises, sex shops, skin piercing and tattooing. It also ensures compliance with conditions or restrictions attached to licences. From time to time, the Council reviews the level of charges for such licences and this report reviews how licence fees shall be determined.

2. RECOMMENDATIONS

- 2.1 Members are asked to approve the basis for determining licence fees annually, in accordance with the option set out at 5.1 of the report.

- 5.1 *To calculate the licence fees on the basis of the full costs to the Council of processing applications for licences for renewal and transfers of licences including:*

5.1.1. the costs of convening a sub-committee to consider applications where the decisions are not delegated to officers or where officers consider that members should decide on the suitability of and applicant for a licence or renewal

5.1.2 compliance monitoring during the course of a licence to ensure that the license holder is adhering to its licensing conditions

- 2.2 Members are asked:
- a. to authorise the officers to continue work on the calculation of fees, in accordance with the principles adopted under 2.1
 - b. to undertake the necessary consultation with the taxi trade, as identified in 4.2,
 - c. to undertake the necessary consultation with the street traders, as identified in 4.3 and
 - d. to instruct officers to report back to Licensing Committee in January 2014, as proposed in 3.12.

3. **BACKGROUND**

- 3.1 The Council is entitled to recover the cost of processing and issuing licences to businesses and others and, generally, to ensure that those issued with licences are complying with the conditions which may have been attached to the licence.
- 3.2 The Provision of Services Regulations 2009, which transpose the European Services Directive 2006 into UK law, require that licence fees must be reasonable and proportionate to the cost of the procedures and formalities under a licensing scheme and must not exceed the cost of those procedures and formalities.
- 3.3 Licence fees should not make a surplus nor subsidise businesses by incurring a deficit. However where there are previous deficits and surpluses these must be brought into account in calculating the fees.
- 3.4 Whilst the level of fees which the Council charges is considered to be broadly comparable with those set by similar authorities, it is some time since a comprehensive review of the makeup of fees has been undertaken.
- 3.5 Included in the allowable costs are the staff time involved in implementing the procedures and formalities under the various licensing schemes, the supporting infrastructure, office accommodation and ICT associated with implementing those procedures and formalities ; and the cost of arranging hearings by the Licensing Sub-Committee to determine applications, when necessary, and compliance visits to licensed premises.
- 3.6 The Council is not permitted to charge fees which create a surplus or which are set at a high level in order to create a deterrent for potential applicants, nor is it entitled to include the costs associated

with enforcement of the licensing regime against unlicensed operators or, generally, against those who are licensed.

- 3.7 A recent decision of the Court of Appeal in the case of *Hemming v Westminster City Council* in which the provisions of the European Services Directive and Provision of Services Regulations were considered and applied has resulted in annual charges applied by Westminster for Sex Establishment licences being reduced from approx. £29,000 per year to approx. £1,000 and the return of fees considered to have been overpaid in a number of previous years. Westminster had included in their licence fee calculation the costs of enforcement against illegal, unlicensed operators.
- 3.8 The *Hemming* case confirmed that the authorisation procedures for which the Council can charge are those steps which an applicant has to take if he or she wishes to be granted a licence or have that licence renewed. These costs are the administrative costs involved, and the costs of vetting applicants (in the case of applications for a licence), and the costs of investigating applicants' compliance with the terms of their licence (in the case of applications for the renewal of their licence).
- 3.8 Whether the costs of enforcement procedures against licensees can properly be included in licence fees has yet to be tested in the courts. A briefing issued by the Local Government Association takes the view that the costs of enforcement against an applicant who has been given a licence can fall within the costs of the authorisation procedures. However, another interpretation of the judgment in *Hemming*, taken together with the European Services Directive and the Public Services Regulations, is that these costs should not be included in the fees calculation. Because of this uncertainty officers recommend that these costs are not included in the calculation.
- 3.9 The list of licences which the Council is responsible for administering, and which need to be reviewed, on an annual basis, is set out in Appendix A to this report.
- 3.10 So far as fees for licences granted under the Licensing Act 2003 are concerned - premises and personal licences, club premises certificates and temporary event notices – these are currently set by Central Government and are not, therefore, included here, though these do include the costs of enforcement, which is provided by that legislation. It is likely that local authorities will be required to set fees locally in the near future, however, and work will need to be undertaken to facilitate this when it is introduced. Local fee setting

would be implemented by Regulations. Any provisions as to fee calculation would need to be consistent with the Directive and the Provision of Services Regulations.

- 3.11 Licence fees under the Gambling Act 2005 are subject to maximum levels, set by the Act.
- 3.12 Work has begun on identifying all of the elements which may be included in the costs used to calculate the level of fees and this will take some time to achieve, due to the volume and complexity of the process. The plan is to complete this task in all areas except Street Trading (ref 3.13 below) with a view to enabling the Licensing Committee to approve the licence fees at its meeting in January 2014, and to recommend their adoption by the Council in February 2014.
- 3.13 This work was begun for the setting of street trading fees in 2012/13 and only costs associated with the administration process of issuing the licences were included. However there has been a significant increase in street trading applications in 2013 following the development of new pitches across the city centre. It will now be important to undertake a comprehensive review of the administrative process to ensure that the fees are set in accordance with option 5.1 of this report. As this is a complex piece of work, particularly as the administration process is relatively new to the department, and taking into account the current lack of resource in the Markets and Street Trading team due to long term sickness absence, it will not be possible to complete this work in time for the setting of fees for 2014. It is therefore proposed that the fees for 2014/15 will remain as set for 2013/14, adjusted for inflation and that the comprehensive review of fees will be undertaken during 2014 in time to inform the setting of fees for 2015/16.
- 3.14 The Council should be in a position to demonstrate, in the event of a legal challenge to its fees, that it has set them in accordance with the law and having considered all relevant matters and that there is a provision for a regular review of that process. This could be achieved by means of a standing annual report in the January cycle.

4. CONSULTATIONS

- 4.1 The Council's Legal Services have been consulted in connection with the preparation of this report.

- 4.2 The legislation governing taxi and private hire fees requires the Council to consult the trade on the level of fees which it proposes to levy for the forthcoming year, once the principles have been agreed by Committee.
- 4.3 Legal advice was sought in the setting of street trading consent fees for 2013/14 and further advice will be sought in the review to be undertaken in 2014. The Council will consult with Street Traders in the autumn on the proposed fees for 2014/15 and any feedback from this consultation will be considered by the Licensing Committee when it approves the Council's fees at its meeting in January 2014, for adoption by the Council in February 2014.

5. **OPTIONS**

Officers recommend the option set out in 5.1 below:

- 5.1 To calculate the licence fees on the basis of the full costs to the Council of processing applications for licences for renewal and transfers of licences including:

5.1.1. the costs of convening a sub-committee to consider applications where the decisions are not delegated to officers or where officers consider that members should decide on the suitability of and applicant for a licence or renewal

5.1.2 compliance monitoring during the course of a licence to ensure that the license holder is adhering to its licensing conditions

Alternative option to 5.1.2, which officers do not recommend for the reasons set out in paragraph 3.8 :

- 5.2 To include in the calculation of licensing fees the cost of enforcement action against a licensee for breach, including prosecutions, disciplinary / regulatory hearings or responding to appeals against suspension, revocation or refusal to renew.

6. **CONCLUSIONS**

- 6.1 The Council needs to demonstrate that the fees it charges for licences have been set in accordance with the law and best practice, so as to recover its allowable costs in administering the various licensing regimes for which it is responsible.

- 6.2 Fees should be set so as avoid either a surplus or a subsidy, where possible, and adjusted, if necessary, in succeeding years to achieve and maintain the correct balance.
- 6.3 Members should determine which of the options, under Section 5 above, they wish to pursue or to determine such other course of action they consider appropriate.

7. **IMPLICATIONS**

(a) **Financial Implications**

The cost of processing licence applications should be broadly cost-neutral, however, the potential for costs being awarded against the Council in the event of a successful legal challenge to its fee setting process could be significant, and potentially substantial.

(b) **Staffing Implications**

None

(c) **Equal Opportunities Implications**

None

(d) **Environmental Implications**

None

(e) **Procurement**

None

(f) **Consultation and communication**

- The Council's Legal Services have been consulted on the technical aspects of the matters under consideration and have contributed to the report

- The taxi trade will be consulted on the levels of fees proposed to be charged during 2014/15, once the principles have been determined and applied to the work currently under way and before the proposed fees are reported back and adopted in January 2014.

- News releases will be used to communicate the content of this report and the Council's website will detail progress and the decisions taken. Cambridge Matters will also be asked to carry relevant information.

- The council will consult with the Street Traders in the autumn on the proposed fees for 2014/15 and any feedback from this consultation will be considered by the Licensing Committee when it confirms the Council's fees at its meeting in January 2014, for adoption by the Council in February 2014

(g) **Community Safety**

None

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:
Cambridge City Council Constitution – Part 3 Discharge of Council Functions

To inspect these documents contact Robert Osbourn on extension 7894

The author and contact officer for queries on the report is Robert Osbourn on extension 7894 .

Report file:

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Appendix A

List of Licences

Legislation	Licence / authorisation
Licensing Act 2003	Personal licence
	Premises licence
	Temporary Event Notice
	Change of Designated Premises Supervisor
	Full Variation
	Minor variation
	Transfer of premises licence
	Notification of Interest
	Provisional Statement
	Licence Review Request
Gambling Act 2005	Gaming machine permit
	Club Gaming Permit
	Club Gaming machine Permit
	Small Society Lottery
Police Town Clauses Act 1847	Hackney Carriage Vehicle Licence
	Hackney Carriage Driver Licence
Local Government (Miscellaneous Provisions) Act 1982	Private Hire Vehicle Licence
	Private Hire Operator Licence
	Private Hire Driver Licence
	Street Trading Pitch Consent
	Sex Establishment Licence
	Acupuncture, tattooing, skin piercing premises licences
Pet Animals Act 1951	Pet Shop Licence
Animal Boarding Establishments Act 1963	Animal Boarding Establishment Licence
Breeding of Dogs Act 1973	Dog Breeding Establishment Licence
Riding Establishments Act 1964	Riding Establishment Licence
Zoo Licensing Act 1981	Zoo Licence
Dangerous Wild Animals Act 1976	Dangerous Wild Animals Licence
Hypnotism Act 1952	Hypnotism Performance Licence