

Committee(s):	Date(s):
Licensing	15 July 2013
Subject: Sex Establishments – Annual Review of Fees	Public
Report of: Director of Markets and Consumer Protection	For Decision
<p><u>Summary</u></p> <p>The City of London Corporation has to set annual fees for those premises requiring a licence under the Local Government (Miscellaneous Provisions) Act 1982 as a sex establishment. The report outlines recent case law which has indicated that the process for setting the fees must be robust and that income received through the licensing process cannot exceed the cost of administering that process.</p> <p>The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects, other than enforcement costs of unlicensed activity which case law currently excludes, within the licensing process.</p> <p>The proposed fees are less than have previously been set due to consultation costs, and the process for producing a Sex Establishment Venue (SEV) Policy, no longer being included. The new fees will not affect budget income targets as we currently do not have any premises that have a Sex Establishment Licence.</p> <p>Recommendations</p> <p>It is recommended that your Committee:-</p> <ul style="list-style-type: none"> • Agree the proposed fees for 2013/14 as set out in Appendix 1. 	

Main Report

Background

1. The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3, as amended by s.27 of The Policing and Crime Act 2009 sets out the statutory provisions for setting Sex Establishment fees.
2. A Sex Establishment is defined as a Sex Shop, Sex Cinema or Sexual Entertainment Venue (primarily lap dancing clubs). A premises is not a Sexual Entertainment Venue if any relevant entertainment is only provided on eleven or less occasions during a twelve month period and, each of the occasions are at least one month apart.
3. The City of London Licensing Authority must determine the appropriate fees for the granting, renewal, transfer and variation of a licence. Any fee set must be 'reasonable'.

4. Licences are valid for 12 months from the date of grant unless surrendered or revoked. A process similar to the granting of a new licence is to be followed for each renewal including consultation.
5. A high court case held on 16 May 2012 (*R (Hemming and Others) v Westminster City Council*) concluded that the amount of the fee is required to be determined every year and further that a local authority was precluded from making a profit from the licensing regime. This decision was subsequently upheld by the Court of Appeal on 24 May 2013. A full account of the fee income and expenditure would therefore need to be considered to ensure a surplus is not being made.
6. Mr Justice Keith stated in the case ‘... [*in relation to*] the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed. And when you talk about the cost of those procedures, you are talking about the administrative costs involved, and the costs of vetting the applicants (in the case of applications for a licence) and the costs of investigating their compliance with the terms of their licence (in the case of applications for the renewal of a licence). There is simply no room for the costs of the ‘authorisation procedures’ to include costs which are significantly in excess of those costs.’ Therefore enforcement costs against unlicensed operators cannot be recouped.
7. A number of important principles were established in the Hemming case:
 - That where a local authority profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years;
 - That in authorisation schemes covered by the Provision of Services Regulations 2009, which Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 is, enforcement costs relating to unlicensed premises may not be recharged to licensed operators.

The Court of Appeal reiterated the overriding principle:

- Charges which a council imposes on applicants/licensees must be proportionate and reasonable in the circumstances to the fees or costs payable i.e. The fees must not exceed the costs of administering the process

Current Position

8. In order to avoid possible complications arising from non-compliance with the Hemming decision, the licensing service has carried out an in-depth examination of the processes that are undertaken in order to administer the application, renewal, transfer and variation of a licence and the costs of investigating compliance with any licence conditions.

9. A comparison between the current fees and the proposed fees can be seen as Appendix 1. The proposed fees have been based on full costs recovery without considering the cost of enforcement of unlicensed premises.
10. In determining the proposed fee structure for sex establishment licences the following factors have been taken into account:
 - Officer time spent on processing applications including site inspections, consultations and the issue of any licence
 - Officer time spent on the development and maintenance of processes and guidance notes
 - Training of staff as necessary
 - A percentage of the service costs such as accommodation and equipment
 - Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence
11. Costs associated with the enforcement of unlicensed 'sex establishments' have not been taken into account in setting the proposed fee structure.
12. In 2011 Fees were set for the granting of a SEV licence as £23,200 with a refundable portion of £3,200 if the application was not granted. The large percentage of the retainable portion was to cover the costs of the consultation exercise and the production of a SEV Policy. Much of this can no longer be taken into account and the costs of administering the licensing process have now reduced.
13. In 2011/12 the cost of a sex shop or sex cinema licence was £13,500. The basis of this fee and the precise nature of annual increases are not known although the fee has not changed since that date.
14. There are currently no fees for the renewal, transfer or variation of a sex establishment licence. There are currently no sex establishment licences issued within the City of London.

Proposals/Options

15. Adopting the proposed fees set out in Appendix 1 will avoid any legal challenge similar to that experienced by Westminster City Council. Income received from setting the new fees will meet the requirements of the principles set out in paragraph seven and all other statutory obligations.

Fees set lower than those recommended will not cover the costs of administering the licensing process.

Fees set higher than those recommended will result in the receipt of fees greater than the cost of administering the process. This surplus will have to be carried forward into 2014/15 and taken into consideration when fees are set for that year i.e. the fees for that year will have to be reduced. Ignoring the surplus could result in the City Corporation being taken to court.

Implications

15. Setting the recommended fees may result in a number of applications for sex establishments being received. The new fees will not be a deterrent to those wishing to apply. Any application will be heard by a sub-committee of this Committee who would follow the principles laid down in the SEV Policy.
16. There is currently no policy pertaining to other sex establishments i.e. sex shops, sex cinemas. This would need to be rectified at the next Committee in October 2013.
17. Setting the recommended sex establishment fees will not have a detrimental effect on the licensing budget as there are currently no sex establishments and thus no income.
18. Setting fees above or below those recommended will have the implications as set out in paragraph fifteen above.

Appendices

Appendix I – Proposed fees

Background Papers:

Transcript of *(R (Hemming and Others) v Westminster City Council)*
City of London SEV Policy

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Proposed Sex Establishment Fees for 2013/14

Application Type	Estimated number	Current Fee	Proposed Fee	Income Forecast
New sex shop / sex cinema application	0	£13,500	£4,910	£0.00
Renewal of sex shop / sex cinema licence	0	n/a	£4,560	£0.00
Variation of sex shop / sex cinema licence	0	n/a	£3,860	£0.00
Transfer of sex shop / sex cinema licence	0	n/a	£470	£0.00
New sexual entertainment venue application	0	£23,200	£6,640	£0.00
Renewal of sexual entertainment venue licence	0	n/a	£6,290	£0.00
Variation of sexual entertainment venue licence	0	n/a	£3,860	£0.00
Transfer of sexual entertainment venue licence	0	n/a	£2,700	£0.00
Change of details	0	n/a	£40	£0.00
Copy of licence	0	n/a	£30	£0.00
Total				£0.00