



Port Health & Environmental Services Committee

Date: TUESDAY, 13 JULY 2021
Time: 11.00 am
Venue: INFORMAL HYBRID PUBLIC MEETING (ACCESSIBLE REMOTELY)

SUPPLEMENTARY AGENDA

7. **MST FEES 2021/22**
Report of the Director of Markets & Consumer Protection.

For Decision
(Pages 3 - 12)

Item received too late for circulation in conjunction with the Agenda.

John Barradell
Town Clerk and Chief Executive

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Agenda Item 7

Committee(s)	Dated:
Port Health and Environmental Services	13 July 2021
Subject: Massage & Special Treatment Fees 2021/22	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1,4,5
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	
What is the source of Funding?	
Has this Funding Source been agreed with the Chamberlain's Department?	
Report of: Director of Markets & Consumer Protection	For Decision
Report author: Peter Davenport - Licensing	

Summary

The City of London Corporation may set annual fees for those premises requiring a licence for Massage and Special Treatments and for those premises seeking to register for acupuncture, tattooing, ear / cosmetic piercing or electrolysis. The report outlines recent case law which has indicated that the process for setting the fees must be robust, that income received through the licensing process cannot exceed the cost of obtaining that income and the administration part of the fee has to be charged separate to the non-administration part of the fee.

The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects of the licensing process.

The proposed fees will result in a probable reduction in income compared with previous, non COVID affected, years. This is due primarily to businesses still being wary of fully opening with adjustments for over/under recovery of income to be made in later years.

Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2021/22 as set out in Appendix 2 (column two).

Main Report

Background

1. Part IV of the London County Council (General Powers) Act 1920 permits the City Corporation to set a fee for the administration and inspection costs associated with granting or renewing a licence to permit an establishment to carry on massage or special treatments (MSTs). Examples of the different types of massage and special treatments which require a licence can be seen as Appendix 1.
2. Part V of the Greater London Council (General Powers) Act 1981 permits the City Corporation to set a fee for the administration and inspection costs associated with registering an individual or premises for the practice of acupuncture or the business of tattooing or cosmetic piercing.
3. Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 permits the City Corporation to set a reasonable fee for registering a premises under this Act associated with the practice of electrolysis.
4. Licences are valid for twelve months from the date of grant unless revoked. The licence fee is due for payment at the time of application or prior to renewal.
5. Registrations are valid indefinitely unless suspended or cancelled by an order of court for a contravention of an applicable byelaw.
6. 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. A full account of the fee income and expenditure would therefore need to be considered to ensure a surplus is not being made.
7. Successive appeals/decisions in the Court of Appeal, The Supreme Court and the European Court of Justice decided that the fee can include administrative costs involved, the costs of vetting the applicants (in the case of applications for a licence) and the costs of investigating/enforcing the licensing scheme including costs involved in enforcement against those premises that are not licensed.

Calculation of Fees for 2021/22

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 licence application/renewal and the costs of investigating compliance with any licence conditions.
9. In determining the proposed fee structure for MST premises the following factors have been taken into account:

- Officer time spent on processing applications including site inspections 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 proportion of the service costs such as accommodation, equipment and central recharges
 - Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence
 - Administration cost and inspections to ascertain compliance with byelaws in relation to the registration of premises and individuals.
10. MST fees for 2021/22 have been calculated on the above basis for each of a number of different types of licence/registration. Proposed fees can be seen as Appendix 2. All proposed fees are the total fees and include an element for the administrative element of issuing a licence and an element for inspection and compliance with legislation.
11. Due to the restrictions placed on businesses during the COVID pandemic, many premises have let their MST licence lapse. It is unsure how many of these will renew and therefore any forecast figures for 2021/22 can only be approximate.
12. The forecast number of applications for each type of licence/registration have been estimated for 2021/22 and can be seen in the table below along with the number of licences/registrations that were forecast in 2020/21. The actual number of licences granted during 2020/21 have not, and may never be, accurately calculated due to a number of reasons:
- many premises remaining closed during the pandemic
 - some opening and closing almost immediately due to lack of footfall
 - Reductions off annual fee based on number of weeks open
 - Lack of officers during beginning of pandemic to carry out compliance checks

	2020/21	2020/21	2021/22
	Forecast	Actual	Forecast
New MSTs with lasers	4	n/a	2
Renewal of MSTs with lasers	13	n/a	10
New MSTs	7	n/a	7

Renewal of MSTs	65	n/a	65
Premises Registration (without MST licence)	2	n/a	2
Premises Registration (with an MST licence)	2	n/a	2
Additional registration(s)	0	n/a	0
Individual Registration	15	n/a	10

Proposals/Options

13. If fees are set lower than those recommended the result will be a deficit for 2021/22 as costs of administering the licence will not be fully met from income received.
14. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
15. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge
16. Any such under or over recovery of costs from 2021/22 will be calculated after the end of that financial year and will be carried forward to be taken into consideration in setting fees for 2023/24. The surplus or deficit on each fee type from 2019/20 would normally have been taken into account when setting the fees for 2021/22. However, many of the premises were not permitted to open during 2020/21 due to COVID restrictions and fee income was not as expected.
17. It has therefore been decided to set the fees for 2021/22 without any under or over recovery taken into consideration and calculate under or over recovery for the combined years of 2019/20 and 2020/21 for consideration when setting fees for 2022/23.

Corporate & Strategic Implications

18. The proposals within this report meet the requirement to set fees for the licensing of activities within the London County Council (General Powers) Act 1920, the Greater London Council (General Powers) Act 1981 and the Local Government (Miscellaneous Provisions) Act 1982, as they apply to the City of London Corporation.

Implications

19. Setting the recommended fees will result in MST licence estimated income for 2021/22 of £46,000, a shortfall of £13,000 against the budgeted income of £59,000.

20. Setting fees above or below those recommended will have the implications as set out in paragraph 13-15 above.

Appendices

- Appendix 1 – Examples of Massage and Special Treatments
- Appendix 2 – Proposed Fees for 2021/22

Background Papers

None

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London County Council (General Powers) Act 1920
Licensing of establishments for massage or special treatment

Examples of Massage and Special Treatment

- a. Massage** including but not limited to acupuncture, aromatherapy, ayurveda, body massage, bowen technique, champissage (Indian head massage), facial massage, Grinberg method, holistic massage, manual lymphatic drainage, marma therapy, metamorphic technique, reflexology, rolfing, shiatsu, sports massage, stone therapy, thai massage or tui-na.
- b. Manicure** including but not limited to all forms of manicures, nail extensions or pedicures.
- c. Chiropody**
- d. Light** including but not limited to colour therapy, infra-red, lasers / intense pulse light (IPL), lumi-lift / lumi-facial or ultra-violet tanning (sunbeds).
- e. Electric** including but not limited to endermologie, faradism, foot detox, galvanism, high frequency, lumi-lift / lumi-facial, micro current therapy, scenar therapy or ultra sound.
- f. Vapour** including but not limited to facial steamers, halo therapy or steam room.
- g. Baths** including but not limited to fish pedicures, floatation tank, foot detox, hydrotherapy, sauna, spa or thalassotherapy.

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Special Treatment Licence Fees 2021/22

This document sets out the fees payable for the licensing and/or the registration of:

- premises providing massage or special treatments
- premises that carry on the business of acupuncture, ear piercing or tattooing
- individuals that carry on the practice of, acupuncture, ear piercing or tattooing
- premises that carry on the business of electrolysis.

The fee is made up of 2 parts:

- The Administration element is the cost of processing the application and must be paid at the point the application is made
- The Compliance element is the cost of managing and enforcing the special treatments licensing regime and needs to be paid at the point the licence is granted

NOTE: Both parts of the fee must be paid before the licence can be granted. (Important – please read note C)

Application Type	Proposed Total Fee 2021/22	Administration element of fee (See note A below)	Compliance element of fee (See note A below)	Current Fees 2020/21*
New massage and special treatment licence <u>to include laser treatment</u>	£760	£610	£150	£760
Renewal of a massage and special treatment licence <u>to include laser treatment</u>	£570	£430	£140	£570
New massage and special treatment licence <u>No laser treatment</u>	£660	£510	£150	£660
Renewal of a massage and special treatment licence <u>(No laser treatment)</u>	£500	£360	£140	£500



Special Treatment Fees 2021/22

Registration to provide acupuncture, tattooing, piercing or electrolysis - premises <u>without</u> an MST licence	£340	£340	N/A (see note B)	£340
Registration to provide acupuncture, tattooing, piercing or electrolysis - premises <u>with</u> an MST licence	£320	£320	N/A (see note B)	£320
Additional Registration(s) (Premises)	£275	£275	N/A (see note B)	£275
Registration of an Individual	£55	£55	N/A (see note B)	£55

Note A:

The Administration element of the fee is not refundable, even for unsuccessful applications as the fee only covers the administration and inspection costs of processing the application.

However, if an application is withdrawn prior to the technical inspection, the cost of the technical inspection will be refunded: **£186** for a new licence with no laser treatment and **£282** for a new licence with laser treatment.

If a licence is surrendered during the period in which it is in force, a refund of the Compliance element of the fee will be given for every full month remaining on the licence.

Note B:

No part of the fee for a registration is refundable, even for unsuccessful applications, as the fee only covers the administration and inspection costs of processing the application.

Note C:

The local authority is not permitted to charge for both elements of the fee up front. However, in order to assist customers, we will accept payment for the total fee upon application. In these circumstances the Compliance element of the fee will of course be refunded if the licence is not renewed/granted.

If you do pay just the Administration element of the fee up front the Compliance element will have to be paid before the licence is granted and issued.