

Committee(s)	Dated:
Licensing	06 02 2019
Subject: Sex Establishments – Annual Review of Fees 2019/20	Public
Report of: Director of Markets and Consumer Protection	For Decision
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Summary

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 case law which indicates 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.

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

The proposed fees suggested are a slight increase from the current fees. This is due primarily to a small increase in staffing costs. This will not affect budget income targets as we currently do not have any premises that have a Sex Establishment Licence.

Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2019/20 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 (SEV) (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. A full account of the fee income and expenditure would therefore need to be considered to ensure a surplus is not being made.
6. 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 2019/20

7. 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 would be undertaken in order to administer a licence application/renewal and the costs of investigating compliance with any licence conditions.
8. In determining the proposed fee structure for a Sexual Entertainment Venue the following factors have been taken into account (an example of the factors taken into account if we received a new application for a Sexual Entertainment Venue can be seen as Appendix 2):
 - 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
9. The proposed fees for 2019/20 show a slight increase due primarily to a small increase in staff costs and general overheads since the last SEV increase in 2017/18 (fees did not increase in 2018/19).

Proposals/Options

10. If fees are set lower than those recommended the result will be a deficit for 2019/20 if an application is received, as costs of administering the licence will not be fully met from income received. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
11. Any such under or over recovery of costs from 2019/20 will be calculated after the end of that financial year and be carried forward to be taken into consideration in setting fees for 2021/22. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge. There was no under or over recovery to take into account in calculating the proposed fees for 2019/20, as no applications were received in 2017/18.

Corporate & Strategic Implications

12. The proposals within this report meet the statutory requirement to set fees for the licensing of Sex Establishments.

Implications

15. 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.
16. Setting fees above or below those recommended will have the implications as set out in paragraphs 10 and 11 above.

Conclusion

17. Setting the proposed fees will permit the Corporation to meet its statutory obligations and recover all costs if an application for a Sex Establishment is received during 2019/20.

Appendices

- Appendix 1 – Proposed Fees for 2019/20
- Appendix 2 – Example of factors taken into account when calculating a proposed fee

Background Papers None

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