

<b>Committee(s)</b>	<b>Dated:</b>
Port Health and Environmental Services	<b>3 March 2020</b>
<b>Subject:</b> Massage & Special Treatment Licence Fees 2020/21	<b>Public</b>
<b>Report of:</b> Director of Markets and Consumer Protection	<b>For Decision</b>
<b>Report author:</b> 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 small reduction in income compared with previous years. This is due primarily to the adjustments for over/under recovery of income from 2018/19.

### Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2020/21 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 2020/21**

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 2020/21 have been calculated on the above basis for each of a number of different types of licence/registration. Two of the proposed fees have been reduced with the remainder increasing. Changes in fees are due primarily to the under or over recovery of fees (see paragraph 14). 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. The forecast number of applications for each type of licence/registration for 2020/21 can be seen in the table below along with the number of licences/registrations that were actually granted during 2019/20.

	2019/20	2019/20	2020/21
	Forecast	Actual	Forecast
New MSTs with lasers	4	4	4
Renewal of MSTs with lasers	18	13	13
New MSTs	8	7	7
Renewal of MSTs	56	67	65
Premises Registration (without MST licence)	2	5	2
Premises Registration (with an MST licence)	2	2	2
Additional registration(s)	0	0	0
Individual Registration	12	19	15

### **Proposals/Options**

12. If fees are set lower than those recommended the result will be a deficit for 2020/21 as costs of administering the licence will not be fully met from income received.
13. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
14. Any such under or over recovery of costs from 2020/21 will be calculated after the end of that financial year and will be carried forward to be taken into consideration in setting fees for 2022/23. The surplus or deficit on each fee type

from 2018/19 has been taken into account when setting the fees for 2020/21. Where the proposed fee is a reduction from the current fee, this is because we have over-recovered costs in previous years and our forecast cost remains lower than the existing fee, so a reduction is required to avoid continued over-recovery. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge.

## **Corporate & Strategic Implications**

15. 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**

16. Setting the recommended fees will result in MST licence estimated income for 2020/21 of £50,000, a deficit of £9,000 against the budgeted income of £59,000. However, the budgeted income assumed a higher cost for inspection of premises than that included in the calculation of the proposed fees.
17. Setting fees above or below those recommended will have the implications as set out in paragraph 12-14 above.

## **Appendices**

- Appendix 1 – Examples of Massage and Special Treatments
- Appendix 2 – Proposed Fees for 2020/21

## **Background Papers**

None

## **Peter Davenport**

Licensing Manager

T: 020 7332 3227

E: [peter.davenport@cityoflondon.gov.uk](mailto:peter.davenport@cityoflondon.gov.uk)