

Committee(s)	Dated:
Port Health and Environmental Services	24 January 2023
Subject: Massage & Special Treatment Fees 2023/24	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?	n/a
Report of: Executive Director of Environment	For Decision
Report author: Aggie Minas - Licensing	

Summary

The City of London Corporation may set annual fees for those premises requiring a licence for Massage and Special Treatments (MSTs) and for those premises seeking to register for acupuncture, tattooing, ear / cosmetic piercing, or electrolysis. The report outlines relevant 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 must be charged separate to the non-administration or compliance 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 reduction in income compared with previous, non-COVID affected, years. This is largely due to some businesses having permanently closed because of the pandemic.

Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2023/24 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 2023/24

8. 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, or any unlicensed enforcement activity.
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 2023/24 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, some premises let their MST licence lapse. Others subsequently surrendered their licence possibly as a result of reduced footfall in the City post pandemic and the rising cost of energy. In total, 23 premises have closed since March 2020. Whilst there have been 8 new applications made in 2022/23, it is unsure how many more premises will reopen, therefore any forecast figures for 2023/24 can only be approximate.
 12. The forecast number of applications for each type of licence/registration have been estimated for 2023/24 and can be seen in the table below along with the number of licences/registrations that were issued in 2022/23.

	2022/23	2022/23	2023/24
	Forecast	Actual	Forecast
New MSTs with lasers	2	3	5
Renewal of MSTs with lasers	10	11	11
New MSTs	7	5	8
Renewal of MSTs	65	55	55
Premises Registration (without MST licence)	2	6	2

Premises Registration (with an MST licence)	4	1	2
Additional registration(s)	0	0	0
Individual Registration	15	15	12

Proposals/Options

13. If fees are set lower than those recommended the result will be a deficit for 2023/24 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. Proposed fees for 2023/24 would normally have included any under/over recovery from 2021/22.
16. However, due to the exceptional circumstances during 2021/22, with some restrictions still in place for MST premises, or delayed opening due to lack of customers, and additional resources required to carry out inspections on businesses following the COVID restrictions, it has not been possible to calculate the exact amount of any surplus or deficit from 2021/22. This will be rectified when setting future fees once we are able to accurately calculate the surplus or deficit.
17. Any under or over recovery of costs from 2022/23 will be calculated after the end of that financial year and will be carried forward to be taken into consideration in setting fees for 2024/25.
18. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge

Corporate & Strategic Implications

19. 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 2023/24 of £45,000 in line with the budgeted income.

Setting fees above or below those recommended will have the implications as set out in paragraph 13-18 above.

Appendices

- Appendix 1 – Examples of Massage and Special Treatments
- Appendix 2 – Proposed Fees for 2023/24

Background Papers

None

Aggie Minas

Licensing Manager

T: 020 7332 1269

E: aggie.minas@cityoflondon.gov.uk