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| <b>Committee(s):</b>  | <b>Date(s):</b>     |
| Port Health and Public Protection                                   | 5 May 2015          |
| <b>Subject:</b><br>Massage & Special Treatment Licence Fees 2015/16 | <b>Public</b>       |
| <b>Report of:</b><br>Director of Markets and Consumer Protection    | <b>For Decision</b> |

### 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 and that income received through the licensing process cannot exceed the cost of obtaining that income.

The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects of the licensing process, other than enforcement costs which case law currently excludes.

The proposed fees will result in similar income compared with previous years.

### **Recommendation**

It is recommended that your Committee:-

- Agree the proposed fees for 2015/16 as set out in Appendix 2 (column two) to this report.

## 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 (whose findings were subsequently endorsed by the Court of Appeal) 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. 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 cannot be recouped.
8. Two 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 enforcement costs may not be recharged to licensed operators.

### **Calculation of Fees for 2015/16**

9. 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.

10. In determining the proposed fee structure 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 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
- Administration cost and inspections to ascertain compliance with byelaws in relation to the registration of premises and individuals.

11. MST fees for 2013/14 and 2014/15 were calculated on the above basis for each of a number of different types of licence. The actual number of applications for each type can be seen in the table below:

|                             | Actual<br>for<br>2013/14 | Actual<br>for<br>2014/15 | Forecast<br>for<br>2015/16 |
|-----------------------------|--------------------------|--------------------------|----------------------------|
| New MSTs                    | 5                        | 5                        | 5                          |
| New MSTs with lasers        | 3                        | 3                        | 3                          |
| Renewal of MSTs             | 67                       | 58                       | 60                         |
| Renewal of MSTs with lasers | 17                       | 17                       | 15                         |
| Registrations               | 2                        | 2                        | 2                          |
| Registrations (with an MST) | 4                        | 1                        | 3                          |

12. The forecast for 2015/16 is that a similar number of licenses will be issued. However, income from 2013/14 was £1,340 below the costs for that year. In order to recoup that shortfall, and offset a small increase in costs, fees will need to be increased. The proposed fees can be seen as Appendix 2.

13. The fee is made up of an administration part and an inspection part. This has been apportioned taking into account the criteria listed in paragraph 10. The total cost of both parts has then been rounded to the nearest £10 to

produce the final proposed fee. The costs attributed to each part can be seen in the table below:

|   | Health & Safety Inspection Costs | Admin Costs | Shortfall from 2013/14 | Total Cost | Rounded Fee |
|---|----------------------------------|-------------|------------------------|------------|-------------|
| New Licence                                       | 281.92                           | 238.78      | 20.00                  | 540.71     | 540         |
| New Licence with Lasers                           | 409.31                           | 238.78      | 30.00                  | 678.09     | 680         |
| Renewal of Licence                                | 281.92                           | 213.45      | 19.14                  | 514.51     | 520         |
| Renewal of Licence with lasers                    | 409.31                           | 213.45      | 17.00                  | 639.76     | 635         |
| Registration of Premises                          | 313.77                           | 107.96      | 20.00                  | 441.73     | 440         |
| Registration of Premises (if holding MST Licence) | 154.54                           | 107.96      | 00.00                  | 262.50     | 265         |
| Registration of Individual                        | 0                                | 44.52       | 00.00                  | 44.52      | 45          |

14. Costs associated with the enforcement of unlicensed activity have not been taken into account in setting the proposed fee structure.
15. An additional fee has been added this year pertaining to the registration of an individual for the practice of acupuncture or the business of tattooing or cosmetic piercing. The registration only applies within the City of London and only if the practitioner works in registered premises. Previous years has only seen the premises registered. The change is due to a different interpretation of legislation.

### **Proposals/Options**

16. If fees are set lower than those recommended the result will be a deficit for 2015/16 as costs of administering the licence will not be fully met from income received.

17. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
18. Any such under or over recovery of costs from 2015/16 will be calculated after the end of that financial year and be carried forward to be taken into consideration in setting the fees for 2017/18. The deficit for 2013/14 has been taken into account when setting the fees for 2015/16. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge.

### **Implications**

19. Setting the recommended fees will result in 'Massage & Special Treatment' estimated income for 2015/16 of £47,000 in line with the budgeted income.
20. Setting fees above or below those recommended will have the implications as set out in paragraphs 16 to 18 above.

### **Appendices**

*Appendix I – Examples of Massage and Special Treatments*

*Appendix II – Proposed fees*

### **Background Papers:**

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

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