

Committee(s):	Date(s):
Port Health and Environmental Services	5 May 2015
Subject: Street Trading Fees 2015/16	Public
Report of: Director of Markets and Consumer Protection	For Decision
<p><u>Summary</u></p> <p>The City of London Corporation may set annual fees for issuing a licence to those persons wishing to participate in Street Trading in Middlesex Street and for issuing temporary street trading licences.</p> <p>This report outlines the criteria considered when setting fees and the changes in legislation which now permits the City Corporation to set fees for trading in Middlesex Street above what was, the statutory maximum in the City of London.</p> <p>The proposed fees will result in a small increase in income compared with previous years but are now set at a level which will cover costs.</p> <p>Recommendation</p> <p>It is recommended that your Committee:-</p> <ul style="list-style-type: none"> • Agree the proposed fees for 2015/16 as set out in Appendix 1 	

Main Report

Background

1. A report was considered by the Port Health and Environmental Services Committee on 11 March 2014 outlining the main changes introduced by the City of London (Various Powers) Act 2013 (the ‘Various Powers Act’). A further report was considered by this Committee on 13 May 2014 setting out the details of the Street Trading Policy.
2. The Various Powers Act permits temporary Street Trading licences to be granted for up to 21 days in the City of London as long as any application complies with the criteria laid down in the Street Trading Policy. Street Trading within the City of London is now permitted on a temporary basis in addition to those trading on a Sunday in Middlesex Street.
3. The Various Powers Act also permits the City Corporation to recover charges from those trading in Middlesex Street for:
 - a. The removal of refuse or other services rendered by the City Corporation to licensees; and

- b. Expenses incurred by the City Corporation in the administration concerned with granting and issuing the licence, compliance with relevant byelaws and in the cleansing of that part of Middlesex Street in the City where street trading takes place.
4. Prior to the legislation coming into force the fees for trading in Middlesex Street were statutorily set at no more than £15 per week plus an annual application fee of £5. (This latter amount has been retained as a statutory amount and is only applicable within the City of London).
5. 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.
6. 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.
7. 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

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 licence applications/renewals, the costs of investigating compliance with

any licence conditions/byelaws and the cost of cleaning the area in Middlesex Street where street trading takes place.

Middlesex Street Traders

9. In determining the proposed fee structure the following factors have been taken into account:
 - Officer time spent on processing applications 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
 - Administration cost and inspections to ascertain compliance with byelaws.
 - Costs connected with cleaning the area in Middlesex Street and associated areas, only in relation to Middlesex Street Traders licensed by the City Corporation.

10. Costs for 2015/16 were calculated on the above basis, and assuming all 57 pitches will be full during the year. Occupancy levels have typically been above 99%.

	Annual Cost £	Annual Cost per trader £	Weekly Equivalent £
Cost of cleaning Middlesex Street	44,838	786.63	15.13
Administration/compliance costs	14,400	252.63	4.86
TOTAL	59,238	1,039.26	19.99

11. In order to meet current costs fees will therefore need to be increased from their current level of £15 per week which, until the Act came into force, was the statutory maximum the City Corporation could charge. The

proposed fees, which match the costs shown above rounded to the nearest £10, can be seen at Appendix 1.

12. The Act introduces a procedure which is required to be followed when fees are increased. The Corporation is required to give notice in writing of the proposed charges to all licensed street traders and how they were calculated. Representations concerning the charges can then be made to the Corporation within a minimum period of 28 days from the date of the notice. Only after these have been considered can a further notice be delivered to all licensed street traders informing them of the new fee and when those charges are to be brought into effect. Due to this procedure it is intended that the new fees will be effective from 1 October 2015.
13. Costs associated with the enforcement of unlicensed activity have not been taken into account in setting the proposed fee structure.

Temporary Licences

14. Since the City Corporation have been permitted to grant temporary licenses only two have been issued, both in 2014. These were for a group of stalls selling refreshments at the Smithfield Nocturne and two traders selling souvenirs at the Tour de France.
15. The fee structure agreed by this Committee on the 13 May 2014 has generally given officers maximum flexibility in setting fees in a number of different circumstances. However, the application fee (£300) has proven to be less flexible as it was made under the assumption that a contribution from other services would be necessary which has not proven to be the case in all circumstances.
16. The new fee has been set at £150 to cover the cost of administration. However, an additional amount, up to a maximum of £150, may be charged where, due to the nature of a particular application, other services are involved. For example, a trader wishing to trade in an area where parking restrictions apply may need to apply for a dispensation.
17. It is not anticipated that the number of applications in 2015/16 will increase significantly from the two received in 2014/15. It is forecast that three applications will be received. The proposed fees can be seen at Appendix 1.

Proposals/Options

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

19. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
20. 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. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge.

Implications

17. Setting the recommended fees will result in estimated income for 2015/16 of £52k. This is a surplus on the budgeted income of £42k although, as the 'Middlesex' fee will not be implemented from 1 April 2015, it does not completely cover our costs. In future years, charging recommended fees from the beginning of a year will cover the associated costs in full.
18. Setting fees above or below those recommended will have the implications as set out in paragraphs 18 to 20 above.

Appendices

Appendix I – Proposed fees

Background Papers:

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

Port Health & Environmental Services Committee Report 11 March 2014: 'City of London (Various Powers) Act 2013 London Local Authorities and Transport for London (No. 2) Act 2013'

Port Health & Environmental Services Committee Report 13 May 2014: 'Street Trading Policy'.

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