

Committee(s)	Dated:
Port Health and Environmental Services Committee	23 May 2016
Subject: Massage & Special Treatment Licence Fees 2016/17	Public
Report of: Director of Markets and Consumer Protection	For Decision
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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(s)

Members are asked to:

- Agree the proposed fees for 2016/17 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. The decision was subsequently upheld by the Court of Appeal.
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, particularly against unlicensed operators, cannot be recouped.
8. The Supreme Court heard an appeal on 29 April 2015 and decided that licensing schemes which required the applicant to pay a fee covering the administrative costs of the application at the time the application is made and, in the event that the application is granted, a further fee to cover the costs of enforcing the licensing scheme did not fall foul of the Provision of Services Regulations 2009. Furthermore, the Supreme Court rejected Mr Justice Keith’s view that enforcement costs cannot be recouped. In delivering the judgement of the Supreme Court, Lord Mance stated ... “ there is no reason why it (*the fee*) should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating ... establishments without licences.”
9. However, a decision regarding licensing schemes which required a fee that covered both the administrative costs and the costs of enforcing the scheme to be paid at the time the application was made, with the enforcement element being refunded should the application be rejected, was referred to the European Court of Justice for determination.

Calculation of Fees for 2016/17

10. 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.

11. 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.
12. MST fees for 2016/17 have been calculated on the above basis for each of a number of different types of licence. The majority of proposed fees have stayed the same. The decrease in a registration, for premises that do not have a current MST Licence, is due primary to a recalculation of work involved following a change in procedure. Proposed fees can be seen as Appendix 2.
13. The forecast number of applications for each type for 2016/17 can be seen in the table below along with the number of licences/registrations that were actually granted during 2014/15 and 2015/16.

	2014/15	2015/16	2016/17
	Actual	Actual	Forecast
New MSTs	5	4	4
New MSTs with lasers	3	5	5
Renewal of MSTs	58	60	60
Renewal of MSTs with lasers	17	21	21
Registration (premises without MST licence)	2	3	3
Registration (premises with an MST)	1	2	2
Additional registration(s)	-	0	0
Individual Registration	-	14	14

Proposals/Options

14. If fees are set lower than those recommended the result will be a deficit for 2016/17 as costs of administering the licence will not be fully met from income received.
15. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
16. Any such under or over recovery of costs from 2016/17 will be calculated after the end of that financial year and will be carried forward to be taken into consideration in setting fees for 2018/19. The surplus or deficit on each fee type from 2014/15 has been taken into account when setting the fees for 2016/17. Where this sum is relatively small, i.e. less than £20 per licence, in order to prevent the fees going up one year and down the next, the under or over recovery will be carried over to the next year(s). Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge.

Corporate & Strategic Implications

17. 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

18. Setting the recommended fees will result in MST licence estimated income for 2016/17 of £52,245, against a budgeted income of £46,000.
19. Setting fees above or below those recommended will have the implications as set out in paragraph 16 above.

Appendices

- Appendix 1 – Examples of Massage and Special Treatments
- Appendix 2 – Proposed Fees for 2016/17

Background Papers

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

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