

Report to Licensing committee
9 March 2017
Report of Head of citywide services
Subject Licence and registration fees

Item

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Purpose

This report invites members to consider the level of fees payable for those licences administered by the council's licensing section.

Recommendation

- 1) To approve the fees detailed in the column headed 'total recommended licence fee 2017/18' of Appendix A attached to the report; and
- 2) To agree the charging policy detailed in paragraphs 10 and 11 of the report.

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

Advertising costs to be met from existing budget.

Ward/s: All wards

Cabinet member: Councillor Kendrick – Neighbourhoods and community safety

Contact officers

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Background documents

None

Report

1. This report invites members to consider increasing the fees payable for those licences currently administered by the head of citywide services and detailed in appendix A to the report. The fees in respect of the licences shown in appendix A were last reviewed at the meeting of Licensing Committee on 10 March 2016.
2. Members will note that the charges fall under three headings: discretionary fees (the level of fee is at the discretion of the licensing authority subject to the principles outlined in paragraph 3 below), discretionary fees with statutory maxima (as discretionary fees but with an upper limit) and fixed fees (set by statute and cannot be increased).

European Court of Justice ruling – Hemming v Westminster case

3. A recent European Court of Justice (ECJ) ruling in the Hemming v. Westminster case in respect of licensing fees for sex establishments, relates to the correct interpretation of the 2006 EU Services Directive, which is applied in the UK by the Provision of Services Regulations 2009. The Directive does not apply to taxis or gambling activities.
4. In April 2015, the Supreme Court ruled in favour of Westminster City Council in a long running dispute relating to the licence fees charged to a group of sex establishments in Westminster. The Supreme Court overturned an earlier Court of Appeal ruling by concluding that the Services Directive 2006 does not prevent licensing authorities from charging fees that are proportionate to the cost of administering and enforcing the relevant licensing framework, to those who receive licences.
5. However, the Supreme Court sought an opinion from the ECJ regarding how such fees should be levied. It identified two different approaches to charging fees:
 - Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
 - Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.
6. The Supreme Court found the type A approach of charging two fees is permissible under the Services Directive but considered that the type B approach of charging a single fee was more problematic.
7. The ECJ ruled that the type B approach of fee setting is not compatible with the Services Directive, arguing that the Directive '*precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of a authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.*'

8. It is important to note that the ruling of the ECJ applies solely to the issue that was referred to it, that is whether a type B approach to fee setting is compatible with the Services Directive. Licensing Authority application fees should relate solely to the cost of authorisation procedures, i.e. the costs associated with reviewing and application and granting or refusing a licence. Under the type A approach, on which the Supreme Court ruling still holds, successful licence applicants should subsequently be charged an additional fee relating to the costs of administering and enforcing the relevant licensing framework. It is worth noting on this point that the Supreme Court view – which again still holds – was that there is nothing to stop licensing authorities making the payment of such a fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received.

Levels of fees / charging policy

9. In the light of the Supreme Court and ECJ rulings detailed above, the process for each licence type under the 'Discretionary Fees' heading of appendix A was analysed and broken down into individual tasks. Timings were allocated to the tasks and the relevant officer costs applied. The tasks were then grouped into either the application/authorisation or administration/enforcement part of the licensing process and the total charge for each part of the process is shown in the fourth and fifth columns of appendix A.
10. It is proposed that the 'type A' approach to charging (which the Supreme Council found permissible) be applied to those types of licence detailed in sections (ii) - environmental services licences and (iii) - other non-fixed licences under the 'Discretionary Fees' heading of appendix A.
11. In effect this will mean that applicants for these types of licences will need to submit the fee detailed in column four of appendix A with their application and when the council are in a position to issue the licence, the applicant will then need to pay the fee detailed in column five. If the applicant failed to pay the second part of the fee then the licence would be withheld.
12. This charging policy would not apply to section (i) – hackney carriage and private hire or to the licence types under the Gambling Act 2005 heading of appendix A, as the Services Directive does not apply in respect of taxi licensing or gambling. The Licensing Act 2003 fees would also be unaffected as these are statutorily set and cannot be amended.
13. When determining the levels of fees charged for the licensing function there are three main areas for consideration:
 - licensing authorities are entitled, where legislation allows, to recover the cost of administering a licensing scheme, provided that allowance is made for exemptions or reductions;
 - where certain licences are exempt from a fee, the cost of administering these licences cannot be 'transferred' to other licence fee payers; and
 - licensing authorities are not empowered to raise revenue through their licensing function but they may include costs within licence fees relating to enforcement action against un-licensed activities.

14. The points outlined in paragraph 13 above are taken into account when determining the base estimates for the current financial year. In calculating the projected income for each type of licence it is necessary to estimate the number of licences that may be issued over the course of the year.

Implementation

15. The increases can be brought into effect from April 2017. However, members should be aware that a statutory advertising procedure applies in respect of an increase in the fees payable for hackney carriage vehicle licences, private hire vehicle and private hire operators' licences. If objections are received in respect of these particular fees, then members will have to give further consideration to those increases.

APPENDIX A

NORWICH CITY COUNCIL LICENSING CHARGES 2016/17 TO 2017/18 (APPENDIX A)

	Licence Fee 2016/17 £	Estimated No. of Licences Issued in 2016/17	Estimated Income 2016/17 £	Application / authorisation fee 2017/18 £	Administration / enforcement fee 2017/18 £	Total Recommended licence fee 2017/18 £	Estimated No. of Licences Issued in 2017/18	Estimated Income 2017/18 £
DISCRETIONARY FEES								
(i) Hackney Carriage & Private Hire								
HC Drivers - Grant	420	15	2,680	363	78	441	6	2,646
PH Drivers Grant	342	50	7,796	260	65	325	95	30,875
HC Drivers - Renewal	242	109	38,384	141	98	239	0	0 *
PH Drivers Renewal	210	130	35,136	102	86	188	0	0 *
Hackney Carriage Vehicle	144	230	33,120	84	23	107	242	25,894
Private Hire Vehicle	123	440	54,120	82	23	105	510	53,550
Private Hire Operator Renewal	850	9	3,952	42	699	741	0	0
Private Hire Operator Grant	889	0	0	77	699	776	0	0
Transfer of HC/PH vehicle licence	15	40	600	20	0	20	40	800
Replacement Vehicle Licence Plate	20	15	300	20	0	20	15	303
Sub total			176,088					114,068
(ii) Environmental Services Licences								
Acupuncture - Shop	261	1	261	179	93	272	4	1,088
Acupuncture - Employee	27	5	135	48	19	67	13	871
Ear Piercing - Shop	261	1	261	179	93	272	0	0
Ear Piercing - Employee	27	6	162	48	19	67	4	268
Electrolysis - Shop	261	4	1,044	179	93	272	0	0
Electrolysis - Employee	27	0	0	48	19	67	1	67
Tattooing - Shop	261	5	1,305	179	93	272	6	1,632
Tattooing - Employee	27	20	540	48	19	67	18	1,206
Dangerous Wild Animals	261	1	261	171	193	364	0	0
Dog Breeding	261	0	0	171	193	364	0	0
Animal Boarding Establishments	261	0	0	171	193	364	0	0
Pet Shops	261	6	1,566	171	193	364	6	2,184
Sub Total			5,535					7,316
(iii) Other Non-fixed Licences								
Sex Establishments	2,557	1	2,557	2,450	89	2,539	1	2,539
Scrap Metal Dealers: (site licence)	211	0	0	170	97	267	0	0
Scrap Metal Dealers: (collectors licence)	96	10	2,604	130	0	130	0	0
Scrap Metal Dealers: (renew site licence)	211	0	0	170	97	267	2	534
Scrap Metal Dealers: (renew collectors licence)	211	0	0	130	0	130	14	1,820
Scrap Metal Dealers: (vary - licensee name change)	23	0	0	38	0	38	0	0
Scrap Metal Dealers: (vary - change of site)	171	0	0	135	97	232	0	0
Scrap Metal Dealers: (vary - change of site manager)	104	0	0	136	0	136	0	0
Scrap Metal Dealers: (vary - site to collectors)	24	0	0	38	0	38	0	0
Scrap Metal Dealers: (vary - collectors to site)	24	0	0	38	0	38	0	0
Tables and Chairs (grant)	601	10	6,010	315	86	401	4	1,604
Tables and Chairs (renewal)	123	25	3,075					0 **
Tables and Chairs (renewal 3 yearly)	371	0	0	220	258	478	14	6,692
Sub Total			14,246					13,189
Total			195,869					134,573
								61,296
Gambling Act 2005 Licences (Discretionary fees with statutory maxima)								
Bingo Club								
Transitional (fast track)	300.00	0	0			300.00	0	0
New Application	3,500.00	0	0			3,500.00	0	0
Annual Fee	1,000.00	2	2,000			1,000.00	1	1,000
Transfer	1,200.00	0	0			1,200.00	0	0
Re-Instatement	1,200.00	0	0			1,200.00	0	0
Provisional Statement	3,500.00	0	0			3,500.00	0	0
Provisional Licence Application	1,200.00	0	0			1,200.00	0	0
Betting Premises								
Transitional (fast track)	300.00	0	0			300.00	0	0
New Application	3,000.00	3	9,000			3,000.00	1	3,000
Annual Fee	600.00	29	17,400			600.00	28	16,800
Variation	1,500.00	0	0			1,500.00	0	0
Transfer	1,200.00	0	0			1,200.00	0	0
Re-Instatement	1,200.00	0	0			1,200.00	0	0
Provisional Statement	3,000.00	0	0			3,000.00	0	0
Provisional Licence Application	1,200.00	0	0			1,200.00	0	0
Tracks								
Transitional (fast track)	300.00	0	0			300.00	0	0
New Application	2,500.00	0	0			2,500.00	0	0
Annual Fee	1,000.00	1	1,000			1,000.00	1	1,000
Variation	1,250.00	0	0			1,250.00	0	0
Transfer	950.00	0	0			950.00	0	0
Re-Instatement	950.00	0	0			950.00	0	0
Provisional Statement	2,500.00	0	0			2,500.00	0	0

Provisional Licence Application	950.00	0	0	950.00	0	0
Family Entertainment Centre			0			
Transitional (fast track)	300.00	0	0	300.00	0	0
New Application	2,000.00	0	0	2,000.00	0	0
Annual Fee	750.00	1	750	750.00	1	750
Variation	1,000.00	0	0	1,000.00	0	0
Transfer	950.00	0	0	950.00	0	0
Re-Instatement	950.00	0	0	950.00	0	0
Provisional Statement	2,000.00	0	0	2,000.00	0	0
Provisional Licence Application	950.00	0	0	950.00	0	0
Adult Gaming Centre			0			
Transitional (fast track)	300.00	0	0	300.00	0	0
New Application	2,000.00	0	0	2,000.00	0	0
Annual Fee	1,000.00	2	2,000	1,000.00	1	1,000
Variation	1,000.00	0	0	1,000.00	0	0
Transfer	1,200.00	0	0	1,200.00	0	0
Re-Instatement	1,200.00	0	0	1,200.00	0	0
Provisional Statement	2,000.00	0	0	2,000.00	0	0
Provisional Licence Application	1,200.00	0	0	1,200.00	0	0
			0			
Gambling Act 2005 Permits (Fixed fees)			0			
Family Entertainment Centre			0			
Transitional	100.00	0	0	100.00	0	0
New Application	300.00	0	0	300.00	0	0
Renewall Fee	300.00	0	0	300.00	0	0
Prize Gaming			0			
Transitional	100.00	0	0	100.00	0	0
New Application	300.00	0	0	300.00	0	0
Renewall Fee	300.00	0	0	300.00	0	0
Alcohol Licensed Premises - notification of 2 or less machines			0			
Application fee	50.00	11	550	50.00	5	250
Alcohol Licensed Premises - more than 2 machines			0			
Transitional	100.00	0	0	100.00	0	0
New Application	150.00	1	150	150.00	0	0
Annual Fee	50.00	14	700	50.00	16	800
Club Gaming Permit			0			
Transitional	100.00	0	0	100.00	0	0
New Application	200.00	0	0	200.00	0	0
Renewall Fee	200.00	0	0	200.00	0	0
Annual fee	50.00	2	100	50.00	2	100
Club Gaming Machine Permit			0			
Transitional	100.00	0	0	100.00	0	0
New Application	200.00	0	0	200.00	0	0
Renewall Fee	200.00	0	0	200.00	0	0
Annual fee	50.00	4	200	50.00	4	200
Small Society Lottery Registration			0			
Application fee	40.00	15	600	40.00	4	160
Annual fee	20.00	140	2,800	20.00	140	2,800
Sub Total			37,250		27,860	9,390
Licensing Act 2003 (Fixed Fees)						
Premises Licence / Club Premises Certificate - Grant						
Band A	100.00	6	600	100.00	5	500
Band B	190.00	12	2,280	190.00	11	2,090
Band C	315.00	6	1,890	315.00	3	945
Band D	450.00	2	900	450.00	4	1,800
Band E	635.00	5	3,175	635.00	1	635
Other Licensing Act 2003 fees			5,000			5,500
Premises Licence / Club Premises Certificate - Annual Fee						
Band A	70.00	78	5,460	70.00	82	5,740
Band B	180.00	402	72,360	180.00	410	73,800
Band C	295.00	92	27,140	295.00	95	28,025
Band D	320.00	13	4,160	320.00	16	5,120
Band E	350.00	67	23,450	350.00	68	23,800
Premises Licence / Club Premises Certificate - Variation						
Band A	100.00	0	0	100.00	0	0
Band B	190.00	3	570	190.00	3	570
Band C	315.00	1	315	315.00	2	630
Band D	450.00	0	0	450.00	0	0
Band E	635.00	1	635	635.00	0	0
Personal Licence	37.00	130	4,810	37.00	91	3,367
Temporary Event Notice	21.00	250	5,250	21.00	218	4,578
			157,995		157,100	895
Total income			391,114		319,533	71,581

* Hackney carriage & private hire drivers licences now issued 3 yearly - none fall due for renewal in 2017/18.
 ** Tables and chairs licence now issued for three years only - no annual licence