


## Report for Decision - Regulatory Committee 24<sup>th</sup> April 2017

Item number: n/a

Title: Adoption of Street Trading Fees and Charges Under London Local Authorities Act 1990.

### Report

authorised by : Stephen McDonnell -AD Commercial and Operations.

Signed..  ....Date...20<sup>th</sup> April 2017...

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Ward(s) affected: All

Report for Key/

Non Key Decision: Key

## 1. Describe the issue under consideration

- 1.1 The Council's income policy requires an annual review of the level of the Fees and Charges levied upon service users with a view to ensuring that, income is maximised commensurate with the full recovery of costs in street trading administration.
- 1.2 The Regulatory Committee has the ability to set fees for licences under the London Local Authorities Act 1990 'The Act' lays out functions that the Council can charge for.
- 1.3 This report seeks agreement from the Committee to adopt the fees. Following a 28 days consultation with stakeholders (existing licene holders were written to and public notice placed in local newspaper) that resulted in no responses being received.
- 1.4 The Council has received request throughout the year for charges to be considered for various markets to be assisted to operate in many locations across the borough. In response to this the Council recognise the economic benefits that these events bring to the community and have assigned a charge that will enable small operators of first time/one off traders wishing to trial their ideas at such markets to do so for 6 days at a time for a reduced fee.

## 2 Cabinet Member Introduction

- 2.1 It is widely recognised that street trading can benefit areas not only in terms of regeneration, economic development ,culture and tourism, but also in relation to food and health, community cohesion and the environment as a whole. Haringey has a wide variety of producers based in the borough and it is important that we are able to offer them the means in which to get recognition

and promote their business.

### **3 Recommendations**

- 3.1 That members approve the street trading fees for adoption as shown in Appendix 1. Once agreed the fees will be subject to a further public notice for the adoption for a further 28 days.

### **4 Reasons for decision**

- 4.1 It is a requirement of the London Local Authorities Act 1990 that fees are reviewed to ensure that fees are set to cover the full cost recovery to the Local Authority. A review of the current costs undertaken in December 2016-January 2017 identified some of the costs were not being fully recovered for street trading licensing activities. The Supreme Court case of *(R (Hemming and Others) v Westminster City Council)* concluded that the amount of the fee is required to be determined every year and further to 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.

### **5. Alternative Options Considered**

- 5.1 Should the fees remain at the current levels, the authority would not be observing full cost recovery. If this were the case then rather than being cost neutral, the administration of this function would create a cost to the Council. Therefore this option was not considered appropriate.

### **6 Background information**

- 6.1 Section 32 of the London Local Authorities Act 1990 allows fees to be set for the grant, renewal and variation of a licence. The Council may only recover from licence holders the reasonable costs incurred to administer the regime. Administration of street trading is carried out by the Licensing team, together with support from Legal Services and from Governance Services, when arranging and co-ordinating arrangements for hearings in relation to permanent/traditional pitches.

#### **6.2 Calculation of Fees for 2016/17**

- 6.3 In order to ensure compliance with the legislation, the licensing service has carried out an examination of the processes that are undertaken in order to:
- Administer licence applications/renewals.
  - The costs of investigating compliance with the legislation.

- 6.4 It should also be noted that the Hemmings case has been referred to the European Court of Justice to decide whether on making the application, the costs of the authorisation procedures and formalities is one charge, and on the application being successful, whether a further fee should be levied to

cover the costs of the running and enforcement of the licensing scheme.

6.5 The application process is in two stages :

- An initial application fee in order to process and determine the application.
- On going costs for successful applicants which include enforcement costs for monitoring compliance, this allows the Authority to be compliant with the requirements with respect to the Hemming's judgement.

There is no requirement to refund the fee if the application is not successful as the only costs here, are the costs of determining the application.

6.6 Income on street trading for 2015/16 was £179k, the cost of the service was £198k, resulting in an approximately 10% deficit. Therefore we are proposing a general increase of 10% in order to ensure that the street trading licensing service recovers its full costs.

## 7. Analysis of expenditure

7.1 In arriving at these proposed fees, the Authority has carried out a costing expenditure exercise. Expenditure takes into account the time spent advising applicants, determining applications, hearings and appeals.

The administrative and compliance costs include officer salaries, on-costs, support costs that also include inspection, legal, finance, IT software and the proportionate costs of street cleansing and policy considerations. The total expenditure cost in administering street trading is £198,320. This is made up of the following costs:

Expenditure Type	Costs
Staff costs (direct and indirect) -	£104554
Supplies and Services -	£33206
Corporate overheads -	£50560
Debt recovery	£10000
Total	198320

## 8 Consultation

8.1 Once the Committee agree to adopt the new fees the legislation requires a further public notice to be published in a local newspaper.

## 9 Contribution to strategic outcomes

9.1 Priority 4 - Drive growth and employment from which everyone can benefit.

Street trading can contribute to the economic, cultural, environmental and social well being of the borough. It is also a positive tool for enterprise to be promoted in the borough.

## 10. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

10.1 Finance has reviewed the financial information in the report and its methodology on gathering the expenditure data and the Service has not included any costs which are irrelevant to the street trading licensing activities. Additionally, the recommended fee increase of 10% on the current licensing activities and number of licences and the current cost and staffing structure should not generate any surplus.

## 11. Legal Comments

11.1 The Assistant Director of Corporate Governance has been consulted in the preparation of this report and comments as follows.

Section 32(1) of the London Local Authorities Act 1990 (the Act) enables the Council to charge such fees for the grant and renewal of street trading licenses or for variation, as the Council may determine. The fee may cover in whole or in part the reasonable administrative and other costs in connection with street trading not otherwise recovered.

11.2 The Council may also recover such charges as may be sufficient, taking one year with another, to cover the reasonable costs not otherwise recovered of the collection, removal and disposal of refuse or other services to license holders, the cleansing of street in which street trading occurs that are attributable to such trading, any reasonable administrative costs and some enforcement costs.

11.3 The Provision of Services Regulations 2009 give effect to EC Directive 2006/123/EC on services in the domestic market.

11.4 Article 13(2) of Directive 2006/123/EC requires any charges which the applicants may incur from their application to be reasonable and proportionate to the cost of the authorisation procedures in question and they shall not exceed the cost of the procedures. In the case of *R (on the application of Hemming and others) v Westminster City Council* the Advocate General (AG) has recently concluded that it is unlawful for authorities to include in the initial charge, the costs of managing and enforcing the regime, such as investigating and prosecuting parties operating without a license. The Court of Justice of the European Union is considering the matter and if they agree with the AG, the Council will only be able to recover that part of the charge relating to enforcement costs once the license has been granted. The 2 stage charging regime will comply with the AG's decision and any subsequent decision by the European Court of Justice that may agree with his conclusion.

11.5 Section 32(7) of the Act requires that before varying its charges the council must give notice of the proposed charges to license holders or their representative bodies and publish a notice of the proposed charges in a local newspaper. The notice must state how the charges have been computed and give a reasonable period of not less than 28 days for written representations.

11.6 In reviewing fees and charges the service needs to demonstrate that they have had due regard to the overarching Public Sector Equality Duty as set out in the Equality Act 2010 and undertaken an equalities impact assessment if found to be necessary.

## 12 Equalities Implications

12.1 An initial Equalities Impact Assessment screening has been undertaken, whilst we are recommending an increase in fees in this instance we are satisfied that an EQIA is not required after screening, as the impact will be on business, not on individuals with protected characteristics.

## 13 Use of Appendices

Appendix 1- Proposed Street Trading charges:

## Appendix 1

Proposed Street Trading charges:

Regulatory Services	Current Charge 16/17	Proposed Charge 17/18	% Increase
	£	£	
<b>1. STREET TRADING</b>			
<b>a) APPLICATION FEES FOR LICENCES</b>			
New apps- Traditional stalls Wood Green High Road (inc electricity)	118.00	130.00	10%
New apps-Traditional Stalls, Tottenham Hotspur Match day	118.00	130.00	10.0%
New apps- Trading and Displays Outside Shop Premises	118.00	130.00	10.0%
Renewal for 3 Years	118.00	130.00	10.0%
Renewal for 2 years or less	80.00	88.00	10.0%
Application for temporary licence for six months or less-	48.00	53.00	10.0%
Application for temporary licence for six month or less on private land -Spurs Match days.	225.00	248.00	10.0%
<b>Street Festivals/approved events</b>			
Temporary licence for 1 day	22.55	25.00	10.0%
<b>Tables and chairs outside catering establishments</b> Application/renewal for 1 year	63.00	70.00	10.0%
Temporary Licence for six months or less	39.00	43.00	10.0%
<b>Variations of Licences</b>			
Application for variation made at time of renewal	no charge	no charge	
Application for variation made during term of Licence	78.00	86.00	10.0%
<b>b) WEEKLY CHARGES PAYABLE IN ADDITION TO ABOVE FEES</b>			
Tottenham Hotspur Match day stalls selling refreshments	47.00	52.00	10.0%
Tottenham Hotspur match day non-food stalls	19.00	21.00	10.0%
Traditional stalls (small) Wood Green High Road (inc electricity)			

Small stalls trading 6 days or more	32.00	36.00	10.0%
Temporary small stalls trading two fixed days	22.52	25.00	10.0%
Refreshment and all other large stalls	62.00	69.00	10.0%
Approved extensions to large stalls (per sq. metre)	15.35	17.00	10.0%
Displays of good outside shops (per Sq. metre)	15.00	17.00	10.0%
Tables and chairs outside catering establishments (per sq. metre)	13.00	15.00	10.0%
Temporary Stall at Street Festival	24.80	25.00	10.0%
community events/promotional events			
Temporary licence for 6 months or less on private land	20.00	22.00	10.0%
<b>Other Additional Charges</b>			
Removal by council of goods, stalls, tables, chairs left in street outside trading hours	228.00	251.00	10.0%
Daily storage of same by Council	130.00	143.00	10.0%
Removal and disposal of refuse by council in default of licence holder			
	Actual cost incurred + 30% Establishment Charge	Actual cost incurred + 30% Establishment Charge	
<b>Refunds by Council Refusal to renew licence (other than temporary licence)</b>	Whole Fee	Whole Fee	
<b>Enforcement</b>			
Release fee for the removal and one day storage of a vehicle seized In lieu of legal proceedings	259.00	285.00	10.0%
Additional daily charge (excluding Saturdays, Sundays and Public Holidays)	29.00	32.00	10.0%

### Markets in Haringey (New charge)

A charge is applied per stall for each licence and the stall holder has to fill out a street trading licence application form. The legislation states that local councils can only charge what it costs to administrate the street trading licenses markets are charged in the following way:

<p><b>Temporary licence (for 6 days trading)</b> £25 - provided they are within the same financial year as the first booked day, and are booked at the same time.</p>
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