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**TITLE: REVIEW OF LICENSING FEES**

**COMMITTEE: LICENSING COMMITTEE**

**DATE: 9 OCTOBER 2019**

**AUTHOR: SENIOR LICENSING OFFICER**

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1.0 ISSUE

1.1 This report sets out the statutory fees that East Cambridgeshire District Council is required to charge for specific licences under the Licensing Act 2003 and the Gambling Act 2005.

1.2 The report also sets out the fees for the period 1 April 2020 to 31 March 2021 in respect of those licences and licensing related activities where the authority has the discretion to determine the relevant fees; this includes, but is not limited to hackney carriage and private hire licences, and animal licences.

2.0 RECOMMENDATION(S)

2.1 That Members:

- i) note the statutory fees that East Cambridgeshire District Council is required to charge in respect of the specified licences under the Licensing Act 2003 and the Gambling Act 2005 as set out in Appendix 1 and Appendix 2, and agree to implement these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2020.
- ii) instruct Officers to implement, as appropriate, any other statutory fees that may be brought into force during the 2019/20 financial year.
- iii) instruct Officers to include the agreed fees in the 2020/21 annual fees and charges report that is presented to full Council.

2.2 That Members:

- i) agree to implement, with any necessary modification, the proposed fees relevant to those licences and licensing related activities where the authority has the discretion to determine the fees, as set out in Appendix 3 and Appendix 4, on the 1 April 2020.
- ii) agree to implement immediately, with any necessary modification, the proposed fees relevant to scrap metal licences, as set out in Appendix 4, with an understanding that if Council do not approve the measure, refunds will be given.

- iii) agree to implement, with any necessary modification, the proposed fees relevant to Animal Welfare licensing, as set out in Appendix 5 on the 1 April 2020.
- iv) instruct Officers to include the fees in the 2020/21 annual fees and charges report that is presented to full Council.

2.3 That Members:

- i) agree to implement immediately, with any necessary modification, the proposed fees relevant to driver licences, as set out in Appendix 6.
- ii) Agree to implement the proposed fees relevant to hackney carriage vehicle, private hire vehicle and operator licences, as set out in Appendix 6 on the 1 April 2020.
- iii) instruct Officers to include the proposed fees, as set out in Appendix 6, in the 2020/21 annual fees and charges report that is presented to full Council.

3.0 BACKGROUND

- 3.1 With the exception of statutory fees set by central government the Council is responsible for setting fees and charges for the licensing regulations it is responsible for administering and enforcing.
- 3.2 There is no statutory duty on the Council to consult when setting or revising licensing fees with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3.3 The Committee's legal authority to agree the recommendations is based within a range of specific licensing legislation together with the delegated functions set out in the Council's constitution. Extracts from the relevant legislation are provided in Appendix 7. Due consideration must also be given to the provisions of the EU Services Directive and the judgement in the Hemming case. Members are advised that Officers have considered these requirements when compiling this report.
- 3.4 The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman or via a judicial review.
- 3.5 The consequences of such a challenge are clearly demonstrated in the Court of Appeal judgement given in respect of R Hemming and others v Westminster City Council case, which involved the licensing of sex shops in Soho and Covent Garden.

- 3.6 The judgement has made it clear that local authorities may become liable for substantial costs if it is found that procedures for setting fees have not been correctly followed, and if the fees are not reasonable and proportionate to the costs of the licensing procedures.
- 3.7 When considering whether the licensing fees are reasonable and proportionate, it is also necessary to look at each regulatory power separately. In simple terms this means taxi and private hire licence holders should not be charged a fee for their licence that creates an excess which is then used to subsidise the fees paid by applicants wishing to obtain another type of licence such as an animal welfare licence for boarding dogs.
- 3.8 To reduce the risk of challenge to the Council, in 2015 officers created a financial modelling tool to help calculate the fees from 2016/2017 onwards.
- 3.9 This tool collated detailed information regarding the costs associated with undertaking the administrative procedures and formalities of each specific licensing procedure, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences.
- 3.10 In November 2015 Members were presented with a report which illustrated that the use of this tool had shown there to be a significant deficit in the Licensing Authority's budget, and that this was due in part to not recovering the true costs where the Licensing Authority had a discretion to set the fees. Having considered the report Members took the decision to follow the Officer's recommendation that the Authority look to recover the financial deficit over the extended 2016 to 2021 period rather than look to increase the fees to full cost recovery in one go.

#### 4.0 SUMMARY

- 4.1 The licensing procedures are considered from receipt of application to the issue of the final licence or permit with both variable and fixed costs being considered. These costs include officer, management and member time spent on licensing administration and monitoring but excludes time spent on enforcing unlicensed operators/businesses, in the case of joint hackney/private hire drivers' and operators' licences. In addition, a proportion of all indirect costs that can reasonably be attributed to licensing procedures have been included; for example, office accommodation, ICT, travelling, legal costs, advertising, equipment, postage & printing, subscriptions, telephone costs, training and other corporate recharges.
- 4.2 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees from licensing fees and so consequently these costs have been incorporated into the overall figures.

- 4.3 It is also necessary to reflect that not all costs to the licensing authority are recoverable, such as the processing of “Charity Street Collections” and “Charity House to House Collections” where a fee is not permitted to be charged.
- 4.4 In addition to work where no fee may be charged, when a licence fee is statutory, if the time spent dealing with these licences produces a cost recovery figure above that generated by the fees, it is not possible to recover this deficit from other sources, and it must be covered by the Council’s general fund.
- 4.5 The following table shows the cost of running the Licensing Authority for the three years 2016/2017, 2017/2018 and 2018/2019 and illustrates the impact that raising the fees has had on the deficit compared to the pre-increase figure of 2015.

Year	Income	Expenditure	Balance	% recovered
2015 (pre increase)	£125,514	£206,890	-£81,376	61%
2016/2017 (full year increase)	£163,741	£239,308	-£67,463	69%
2017/2018 (full year increase)	£174,857	£234,281	-£59,424	75%
2018/2019 (full year increase)	£188,442	£231,693	-£43,251	81%

- 4.6 Due to the legislation it will never be possible to recover 100% of the department’s costs, but work undertaken by Officers suggests that approximately 80% to 85% of the expenditure level incurred by the service can be legally recovered.
- 4.7 The proposed cost of running the service for the 2020/2021 period has yet to be set, but a 1.5% increase is possible. This would suggest an expenditure figure of £235,168, and therefore, a cost recovery figure of approximately £188,134 to £199,893 could be expected. Current projections for the 2019/2020 period suggest an income of £190,000 to £195,000 will be achieved.
- 4.8 Members will note that the total expenditure figure in 2018/2019 was lower than the previous two years. This was the result of looking at ways to reduce costs within the service.
- 4.9 The work conducted by officers in the 2018/2019 period implementing the new Animal Welfare legislation, and conducting a large number of Licensing Act 2003 inspections raised the percentage of time spent in these two areas, which in turn reduced the amount of time available to deal with other licensing types. As a result of this, when looked at in isolation, the breakdown suggests that statutory fee income did not cover the cost of the work conducted in this area and produced a deficit of approximately £8,263 that cannot be recovered from the discretionary fees.

- 4.10 The new animal licensing fees were implemented in 2018 and adjusted in May 2019. The breakdown of the 2018/2019 income (Appendix 7) suggests that these fees should be increased further, however, Officers would point out to Members that these figures are based on the large amount of work conducted in 2018/2019, which will not be repeated in 2019/2020, or 2020/2021, as the new regulations have now been fully implemented.
- 4.11 In previous years Members have asked for a neighbouring Council fees comparison table to be included in this report. As a result of this request a comparison chart has been included in Appendix 8, for information purposes only. Members are reminded that discretionary fee levels must be set subject to the Council's own parameters, whilst observing the legal requirements of the controlling legislation.

## 5.0 CONCLUSION

- 5.1 Over the past few years there have been a number of changes within the licensing department. New legislation has been implemented (animal welfare licensing), existing legislation (scrap metal licensing) has been moved from the environmental domestic team into licensing, and street trading has been overhauled. All of these facts have an impact on the work conducted throughout the year, and as detailed in this report, it also has an impact on the discretionary fee setting process.
- 5.2 Having considered all of the information available Officers believe the only discretionary fees that need to be adjusted at this point in time is the fee for scrap metal dealer licences, and the fee for 3 year taxi driver licences. The proposed fees are contained in Appendix 4 and Appendix 5.
- 5.3 Officers recommend that if Members agree to implement any increase to the scrap metal fees they should come into effect immediately (as in previous years), subject to refunds being given if Council do not approve the measure.
- 5.4 There is no need to conduct an Equality Impact Assessment (EIA) as this report does not lead to the creation of a policy, or additional regulation.

## 6.0 APPENDICES

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| 6.1 | Appendix 1 | Licensing Act Statutory Fees           |
| 6.2 | Appendix 2 | Gambling Act 2005 Statutory Fees       |
| 6.3 | Appendix 3 | Gambling Act 2005 – Discretionary fees |
| 6.4 | Appendix 4 | General discretionary fees             |
| 6.5 | Appendix 5 | Animal Welfare Regulation fees         |
| 6.6 | Appendix 6 | Discretionary taxi fees                |

- 6.7 Appendix 7 Extracts from legislation regarding fee setting
- 6.8 Appendix 8 Neighbouring authority fees chart

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<b><u>Background Documents</u></b>	<b><u>Location</u></b>	<b><u>Contact Officer</u></b>
Legislation contained in appendix 6	Room SF208 The Grange, Ely	Stewart Broome Senior Licensing Officer (01353) 616477
LGA guidance on local fee setting 2015		
Hemming v Westminster 2015		
R v Tower Hamlets LBC 1994		