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**TITLE: REVIEW OF LICENSING FEES**

**COMMITTEE: LICENSING COMMITTEE**

**DATE: 11 OCTOBER 2017**

**AUTHOR: SENIOR LICENSING OFFICER**

[S149]

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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 proposes revised fees for the period 1 April 2018<sup>1</sup> to 31 March 2019 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.

<sup>1</sup> The fees applicable to hackney carriage, private hire vehicle and operator licences may become effective on a date prior to the 1 April 2018. This is because the Council must follow the process prescribed by Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 to vary these fees and the actual date that the fees become legally effective is dependent on whether or not objections are made as part of the prescribed process. Whilst not legally required to do so, the Council has historically applied the same process to hackney carriage and private hire vehicle drivers 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 2018.
- ii) instruct Officers to implement, as appropriate, any other statutory fees that may be brought into force during the 2017/18 financial year.
- iii) instruct Officers to include the agreed fees in the 2018/19 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 2018.

- 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) instruct Officers to include the fees in the 2018/19 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 5, with an understanding that if Council do not approve the measure, refunds will be given.
- ii) agree to implement, with any necessary modification, the proposed fees relevant to hackney carriage vehicle, private hire vehicle and operator licences, as set out in Appendix 5.
- iii) instruct Officers in accordance with the provisions of Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, to publish a notice in a local newspaper setting out those fees that it is proposed will be varied to be advertised for a period not less than 28 days.
- iv) instruct Officers to include the proposed fees, as set out in Appendix 5, in the 2018/19 annual fees and charges report that is presented to full Council, and that in respect of those fees that are to be advertised in accordance with Section 70 mentioned above these are recorded in the said annual report as 'provisional fees under consultation to be confirmed by 31 March 2018'.

### 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. This duty is reflected in the recommendation set out at paragraph 2.3 above. Historically, the Council has also consulted on driver licence fees and consequently officers recommend that this practice continues. With respect to the remaining discretionary fees, it is suggested that publishing the Committee's intentions, prior to the fees coming into force, will be sufficient.

- 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 6. 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 boarding establishment licence.
- 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 FINANCIAL IMPLICATIONS

- 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 The following table shows the total cost of running the Licensing Authority for the three years 2014/2015, 2015/2016 and 2016/2017, and illustrates the impact that raising the fees in 2016 and 2017 has had on the deficit.

Year	Income	Expenditure	Balance	% recovered
2014/2015 (pre increase)	£125,514	£206,890	-£81,376	61%
2015/2016 (part year increase)	£132,387	£209,798	-£77,411	63%
2016/2017 (full year increase)	£157,256	£228,899	-£71,643	69%

- 4.5 The work undertaken by Officers in 2015, 2016 and 2017 suggests that approximately 85% of the expenditure level incurred by the service can be legally recovered. Although, the 2016/2017 figure in the table above shows that the service is heading towards this figure, it is clear that the service is still some way off the 85% cost neutral figure. Any shortfall in discretionary fee income has to be covered by the Council's general fund.
- 4.6 The proposed cost of running the service for the period 2018/2019 has yet to be set, but a 1.5% increase is possible. This would suggest an expenditure figure of £233,569.20, and therefore, a cost recovery figure of £198,533.82.

## 5.0 CONCLUSION

- 5.1 Although the overall income figure for 2016/2017 shows that only 69% of a possible 85% of recoverable expenditure was actually recovered, the breakdown of this income (Appendix 7) shows that some of the licence fees are now recovering the cost of the resources they use, and some are very close. Due to this, if the cost neutral timeline contained in the 2015 report (Appendix 8) was to be followed some of the fees may potentially recover more than the cost of resources that they use.
- 5.2 Due to the information contained in paragraph 5.1, Officers recommend that Members continue to follow the decision made by them in 2015 to increase the fees steadily over the extended 2016 to 2021 period, but Officers also recommend that the cost recovery timeline of proposed increases is amended to reflect the information available. The proposed fees for 2018/2019 contained in Appendix 3, 4 and 5 reflect these recommendations.
- 5.3 Paragraph 3.2 states that Officers recommend consulting on driver fees in the same way that we consult on vehicle and operator fees, it is also recommended by Officers that any proposed increase in driver fees should come into effect immediately (as in previous years), subject to refunds being given if Council approve a lesser figure following the consultation period. The reason for this is that we have a large number of licence holders renewing before the close of the consultation period, and Officers believe it would be unfair on those renewing after the end of this period to have to pay significantly more than those renewing before. It would also mean that any proposed increase would come into effect exactly twelve months after the last increase for consistency purposes.
- 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 | Discretionary taxi fees  |
| 6.6 | Appendix 6 | Extracts from legislation regarding fee setting  |
| 6.7 | Appendix 7 | 2016/17 actual income<br>2017/2018 projected income (based on current approved fee levels) |

2018/2019 projected income (based on Officer fee increase recommendations)

6.8 Appendix 8

Cost neutral timeline table from 2015's report.

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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		