

# LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 20

Brighton & Hove City Council

**Subject:** Licence fees 2011/2012  
**Date of Meeting:** 18 November 2010  
**Report of:** Strategic Director of Place  
**Contact Officer:** Name: Tim Nichols Tel: 29-2163  
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**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report sets out the proposed licence fees and charges for 2011/12 relating to Street Trading, Sex Establishments and Sex Entertainment Licences, Gambling premises, taxi licensing and other licensing functions.

#### 2. RECOMMENDATIONS:

- 2.1 That the committee approves the following variation to licence fees:
- Taxi licence fees: no increase
  - Street trading: increase by the corporate rate of inflation 2%
  - Sex shops and sex cinemas: increase by corporate rate of inflation 2%
  - Other discretionary licence fees: increase by corporate rate of inflation
  - Gambling licensing: no increase
  - Sex Entertainment Venues: New fee: £4,600.
- 2.2 That the funding of taxi marshals will be phased out over a 6 month period.

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 In order to ensure that council tax payers are not subsidising work concerning licensing administration and enforcement, income is raised by licence fees which aim to cover the cost of administration and enforcement of each regime. Licence fees should not be used to raise revenue, however, income is required in order to process applications and minimise risk from unlicensed and unauthorised activities. Unlicensed taxis and taxi drivers present a risk to public safety; unlicensed sex establishments operate without scrutiny and activities present a risk to community and child safety. Unauthorised street trading can cause obstruction of streets, a nuisance to shoppers and cannot be traced for consumer protection purposes. Unlicensed gambling establishments would operate without regulation, giving rise to potential criminal incursion, risk to the vulnerable and lack of consumer protection. Intelligent commissioning will require meeting demand in an informed way, reducing unnecessary financial

pressures and reducing subsidy from council tax payers consistent with corporate charging policy.

### **Hackney Carriage & Private Hire**

- 3.2 At the 24<sup>th</sup> June meeting of this committee, the Chairman stated that a wholesale review of taxi licence fees and budgets had been initiated and the outcome would be reported back to Committee in November. The review was intended to verify the position in relation to the true income and expenditure of operating the function, this information would then be used to inform future fee setting levels.
- 3.3 Earlier this year, following the receipt of a Freedom of Information Request into the costs of administering the licensing function and the associated fee income, it became clear that the recording of financial information should be amended so as to allow greater transparency.
- 3.4 The Council had always accounted for the activity by matching the income from license fees against the direct costs of running the service; this showed that the income exceeded the direct expenditure. The review identified all expenditure that the Council was incurring in administering the service; this included both direct and indirect costs. Indirect costs for example would include an element of management time to oversee the activity but which had not been previously shown as a cost to the service, but is a legitimate expense in administering the licensing function. The results of this review are set out in the table below.

Financial Year	Balance on Taxi License Fees £000*
2007/08 Actual	6
2008/09 Actual	16
2009/10 Actual	(9)
2010/11 Forecast	(17)
<b>Total Deficit</b>	<b>(4)</b>

- A positive figure represents a surplus

- 3.5 Fees should be set each year to recover the expected cost of administering the service. The figures show that over the last four years, despite some fluctuations the income raised from fees has just about been enough to recover the costs incurred. Therefore, the fees that have been set in previous years have been at the appropriate level.
- 3.6 The initial cost projections for 2011/12 show that if license fee levels increase by the corporately agreed level of inflation of 2% for 2011/12 a slight deficit will occur, this would mean fees would need to increase by a greater sum to achieve a break even budgeted position on the account. The council is committed to keeping the cost of administering the service as low as possible, thereby allowing fees to be set at the minimum level. Therefore, over the coming months a full review will be undertaken of all expenditure within the service to find efficiencies. A realistic target will be to find efficiencies totalling £20,000, if this can be achieved the licence fees for next year can be frozen at the 2010/11 rate, which will be a reduction in real terms of 2%.

- 3.7 The council must have regard to the fact that fees received are intended only to defray expenditure properly incurred. It is considered that the cost of a taxi marshalling service would not fall within the ambit of the taxi license fee setting powers, therefore taxi licence fees cannot be increased to cover the cost of this service. The council will be working with all interested parties to look at alternative courses of action.

### Sex shops and sex cinemas

- 3.8 Following the same principles as set out above on Hackney Carriage & Private Hire, a trading position has been established, taking into account all expenditure that the Council has incurred in administering the service, including both direct and indirect costs. (Indirect costs for example would include an element of management time to oversee the activity, a legitimate expense in administering the licensing function). The results of this review are set out in the table below.

Financial Year	Balance on Sex Shops and Sex Cinemas Fees £000*
2007/08 Actual	(2)
2008/09 Actual	1
2009/10 Actual	( 7)
2010/11 Forecast	(12)
Total Deficit	(20)

- A positive figure represents a surplus

The initial cost projections for 2011/12 show that if license fee levels increase by the corporately agreed level of inflation of 2% for 2011/12 a deficit will occur. This would mean fees would need to increase by a greater sum to achieve a break even budgeted position on the account. As the council is committed to keeping the cost of administering the service as low as possible, a review of the expenditure will be undertaken over the coming months to find efficiencies, in order to reduce the deficit.

### Street Trading

- 3.9 Following the same principles as stated previously, a trading position has been established for Street Trading, taking into account all the council expenditure incurred in administering the service. This would also include an element of management time to oversee the activity. The results of this review are set out in the table below.

Financial Year	Balance on Street Trading Fees £000*
2007/08 Actual	(29)
2008/09 Actual	(33)
2009/10 Actual	(20)
2010/11 Forecast	(17)
Total Deficit	(99)

- A positive figure represents a surplus

Fees should be set each year to recover the expected cost of administering the service. The figures show that over the last four years, the income raised from Street Trading fees has not been sufficient to recover the costs incurred. The initial cost projections for 2011/12 show that if license fee levels increase by the corporately agreed level of inflation of 2% for 2011/12 a deficit will still occur. This would mean fees would need to increase by a greater sum to achieve a break even budgeted position on the account. As the council is committed to keeping the cost of administering the service as low as possible, a review of the expenditure, both direct and indirect, will be undertaken over the coming months to try and find efficiencies, in order to reduce this deficit.

### **Sex Entertainment Venues**

- 3.10 The Policing and Crime Act introduced a new type of venue “Sex Entertainment Venues” (lap dancing clubs). Following the principle of setting a fee to recover the expected cost of providing the service, the initial cost projections show that a licence fee of £4,600 would be appropriate. This will of course continue to be reviewed each year.
- 3.11 Licensing fees are set at a level that officers reasonably expect will cover the cost of service provision.
- 3.12 Proposed fees are set out in Appendix A.

## **4. CONSULTATION**

- 4.1 Council's finance officer and legal services.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 License fees are set annually at a level that it is reasonably believed will cover the costs of providing the service, including enforcement and administration.

Finance Officer Consulted: Karen Brookshaw

Date: 15.10.2010

### Legal Implications:

- 5.2 **Legal constraints on setting fees**  
Fees must be charged in accordance with the requirements of the legislation under which they are charged. Thus for instance the Licensing Act 2003 gives the Council no discretion as they are set centrally by the relevant government department. Other legislation such as the Local Government (Miscellaneous Provisions) Act 1982 which covers a whole raft of activities and includes street trading and sex establishments simply states that we may charge such fees as we consider reasonable.

The term ‘Reasonable’ however does not imply wide discretion but incorporates important legal principles and constraints. These were highlighted in the case of *R v Manchester City Council ex parte King*

concerning street trading. This case held that the fees charged must be related to the costs incurred in providing the street trading service. They must not be used to raise revenue generally. This principle is key and applies to other licensing regimes such as sex establishments. This means the fees must be set at a level reasonably expected to cover the cost of providing the service.

This principle has been reinforced by the introduction of the European Services Directive which took effect from the end of 2009. It aims to ensure that licence applications and procedures are transparent and burdens on business kept to a minimum. The processes must be non-discriminatory, justified, proportionate, clear, objective, made in advance, transparent and accessible. The domestic legislation will require “any charges provided for by a competent authority which the applicant may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed those procedures and formalities”. Any fee charged for establishing a service can only be based on cost recovery and cannot be set at an artificial high level to deter service sectors from an area. Application costs can include administration, initial visits, third party costs (e.g. expert advice like a vet), management costs and local democracy costs. The directive also requires that ongoing enforcement costs should be refundable in the event of an application refusal. Council should schedule regular fee reviews.

Therefore the trading accounts must be carefully looked at in accordance with these principles. There is a risk of challenge by way of Judicial Review in cases where fees are set at an unreasonable level which does not relate to the cost of providing the service.

Lawyer Consulted: Rebecca Sidell

Date: 03.11.10

Equalities Implications:

- 5.3 There are no direct equalities implications.

Sustainability Implications:

- 5.4 There are no direct sustainability implications

Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications.

Risk and Opportunity Management Implications:

- 5.6 None

Corporate / Citywide Implications:

- 5.7 The city council's ability to raise income impacts on the level of Council Tax and service levels and therefore has citywide implications. A process for a clear, accountable, transparent process for setting fees is set out in appendix B.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

Appendix A – list of fees and charges.  
Appendix B - Flowchart

### **Documents In Members' Rooms:**

None

### **Background Documents:**

None

## APPENDIX A

Gambling Act 2005      2010/11 CHARGE PER UNIT as table below      2011/12 PROPOSED CHARGE PER UNIT no change      % INCREASE no change

Table of Premises Licence Fees for Brighton &amp; Hove Licensing Authority

Classes of Premises Licence	Reg. 4(2)(a) Conversion - fast track	Reg. 4(2)(b) Conversion - non fast track	Reg. 5(2)(a) Non Conversion - Provisional Statement Premises	Reg. 5(2)(b) Non Conversion - Other Premises	Reg. 6 and Reg. 8 First Annual and Annual Fees	Reg. 10 Change of Circumstance	Reg. 11 Variation	Reg. 12 Transfer	Reg. 13 Copy of Licence	Reg. 14 Reinstatement	Reg. 15 Provisional Statement
Regional Casino	n/a	n/a	n/a [8,000]	n/a [3,000]	n/a [15000]	n/a [50]	n/a [7,500]	n/a [6,500]	n/a [25]	n/a [6,500]	n/a [15,000]
Large Casino	n/a	n/a	n/a [5,000]	n/a [3,000]	N/a [10000]	N/a [50]	n/a [5,000]	n/a [2,150]	n/a [25]	n/a [2,150]	n/a [10,000]
Small Casino	n/a	n/a	n/a [3,000]	n/a [3,000]	N/a [5,000]	n/a [50]	n/a [4,000]	n/a [1,800]	n/a [25]	n/a [1,800]	n/a [8,000]
Existing Casino	£260 [300]	£1,155 [2,000]	n/a	n/a	£1,500 [3,000]	£11.55 [50]	£1,155 [2,000]	£1,155 [1,350]	£11.55 [25]	£1,155 [1,350]	n/a
Bingo Premises	£260 [300]	£1,155 [1,750]	£577.50 [1,200]	£1,155 [3,500]	£500 [1,000]	£11.55 [50]	£1,155 [1,750]	£1,155 [1,200]	£11.55 [25]	£1,155 [1,200]	£1,155 [3,500]
AGCs	£260 [300]	£1,000 [1,000]	£577.50 [1,200]	£1,155 [2,000]	£500 [1,000]	£11.55 [50]	£1,000 [1,000]	£1,155 [1,200]	£11.55 [25]	£1,155 [1,200]	£1,155 [2,000]
Betting – Tracks	£260 [300]	£1,155 [1,250]	£577.50 [950]	£1,155 [2,500]	£500 [1,000]	£11.55 [50]	£1,155 [1,250]	£950 [950]	£11.55 [25]	£950 [950]	£1,155 [2,500]
FECs	£260 [300]	£1,000 [1,000]	£577.50 [950]	£1,155 [2,000]	£375 [750]	£11.55 [50]	£1,000 [1,000]	£950 [950]	£11.55 [25]	£950 [950]	£1,155 [2,000]
Betting - Other	£260 [300]	£1,155 [1,500]	£577.50 [1,200]	£1,155 [3,000]	£300 [600]	£11.55 [50]	£1,155 [1,500]	£1,155 [1,200]	£11.55 [25]	£1,155 [1,200]	£1,155 [3,000]
Lotteries - New								£40.00	*	£40.00	0.00
- Renewal								£20.00	*	£40.00	0.00

Prices shown in pounds (£) are the relevant fees in Brighton & Hove only; prices in square brackets are legal maximum levels for information.



**Brighton & Hove City Council**  
**Environmental Health & Licensing**  
**Gambling Act 2005 - Rolling Account**

	<b>EVH041 Actual 2009-10</b>	<b>EVH041 Budget 2010-11</b>	<b>EVH041 Budget 2011-12</b>	<b>Rolling 3 year Position</b>
<b>Employees</b>				
Salaries	53,095	32,470	32,790	
National Insurance	4,257	2,790	2,820	
Superannuation	8,798	5,730	5,790	
Advertising				
Training				
Overtime	199			
Agency Staff	(52)	100	100	
Insurance				
	<hr/>	<hr/>	<hr/>	
	66,297	41,090	41,500	
<b>Premises</b>				
Room Hire				
	<hr/>	<hr/>	<hr/>	
	0	0	0	
<b>Transport</b>				
Vehicles				
Staff Travel Allowances	251			
	<hr/>	<hr/>	<hr/>	
	251	0	0	
<b>Supplies &amp; Services</b>				
Office Consumable Costs	946			
Telephone Costs				
ICT Costs		(60)	(60)	
Other Supplies & Services				
Postages				
	<hr/>	<hr/>	<hr/>	
	946	(60)	(60)	
<b>Support Services</b>				
Departmental Admin Charge	2,597	1,190	1,214	
	<hr/>	<hr/>	<hr/>	
	2,597	1,190	1,214	
<b>Income</b>				
Grants				
Licences	(60,125)	(39,280)	(40,070)	

	<u>(60,125)</u>	<u>(39,280)</u>	<u>(40,070)</u>	
<b>(Surplus)/Deficit</b>	<u>9,966</u>	<u>2,940</u>	<u>2,584</u>	<u>15,490</u>

## Proposed licence fees

	2010/11	2011/12	% increase
Cosmetic piercing (acupuncturists, tattooists, cosmetic piercers, per premises, per additional piercer)	116.00	118.30	2.0%
<b>Street trading</b>			
Upper Gardner Street	576.40	588.00	2.0%
Zone B	690.70	704.50	2.0%
Zone A	4,743.20	4,838.00	2.0%
Street artists	33.00	33.70	2.0%
Misc. short term	33.00	33.70	2.0%
Farmers market per stall	247.70	252.60	2.0%
Small street market per occasion	330.00	336.60	2.0%
<b>Sex Entertainment Venue</b> (lap dancing)	N/A	4,600.00	New fee
<b>Sex establishments</b>			
Grant	11,837.00	12,073.70	2%
Renewal	10,061.45	10,262.70	2%
Occasional	4,044.00	4,124.90	2%
<b>Taxi licences</b>			
First Application	66.00	66.00	0%
CRB check	36.00	36.00	0%
Hackney Carriage/Private Hire Drivers Licence	44.00	44.00	0%
Hackney Carriage Vehicle Licence	180.00	180.00	0%
Private Hire Vehicle Licence	157.00	157.00	0%
Hackney Carriage plate deposit	38.00	38.00	0%
Private Hire plate deposit	28.00	28.00	0%
Private Hire operator licence (1 or 2 cars)	56.00	56.00	0%
Private Hire operator licence (3 or more cars)	197.00	197.00	0%
<b>Animal welfare</b>			
Collection of reclaimed dogs: Statutory charge	26.00	26.52	2%
Dog warden charge	21.00	21.42	2%
Kennelling per day	21.00	21.42	2%
Dog fouling (fixed penalty)	31.00	31.62	2%

Process: Setting Licence fees - 06/xxxx/xx

Service: Environmental Health & Licensing

Date: 26/03/10

Version No: 1

Service Manager: Tim Nichols

Author: Jean Cranford

