

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

Agenda Item 15

Brighton & Hove City Council

Subject:	Licence fees 2012/2013		
Date of Meeting:	17 November 2011		
Report of:	Head of Planning and Public Protection		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report sets out the proposed licence fees and charges for 2012/13 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: Hackney Carriage Vehicles reduced by 1%, Hackney Carriage Drivers increased by 4%, Private Hire Vehicles reduced by 3%, Private Hire Drivers increased by 2%
 - Street trading: 1% increase
 - Sex shops and sex cinemas: 3% increase
 - Other discretionary licence fees: 4% increase
 - Gambling licensing: no increase
 - Sex Entertainment Venues: no increase

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 within constraints of regulation. 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.

Hackney Carriage & Private Hire

3.2 In 2010, the Audit Commission reported that the Council must be able to show that it calculates hackney carriage and private hire licensing fees in accordance with the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. This requires that such fees have to be reasonable to recover the cost of issue and administration. They cannot be used to raise revenue. The Act allows the following costs to be recovered in the fees:

- The reasonable cost of carrying out vehicle inspection to decide if a licence should be granted
- The reasonable costs of providing hackney carriage stands
- Any reasonable administrative or other costs in connection with vehicle inspection and providing hackney carriage stands and
- Any reasonable administrative or other costs in the control and supervision of hackney carriage and private hire vehicles.

The Audit Commission reported that the Council had not been transparent enough in recording or presenting its method for calculating licence fees. This report aims to do that.

3.3 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 are set out in the table below.

3.4

Financial Year	Balance on Taxi License Fees £000*
2009/10 Actual	(9)
2010/11 Actual	(39)
2011/12 Forecast	(3)
Total Deficit	(51)

- A positive figure represents a surplus

3.5 The initial cost projections for 2012/13 show that if none of the license fee levels are increased for 2012/13 a slight deficit will occur overall in Taxi Licensing. Forecasts show that the income due from driver licences for both Hackney Carriages and Private Hire Vehicles will not be sufficient to cover the costs of the service. However, a surplus is predicted from current Vehicle Licences for both Hackney Carriages and Private Hire Vehicles. It is therefore proposed to reduce the license fee for Hackney Carriage Vehicles by 1% and to reduce the fee for Private Hire Vehicles by 3%. In order to address the balance, it is proposed to increase the Hackney Carriage Driver Licence by 4% and to increase the Private Hire Driver Licence by 2%. The costs of administering the service will continue to be reviewed, as the council is committed to keeping the costs as low as possible, thereby allowing fees to be set at the minimum level. Detailed Trading Accounts are attached in Appendix 2.

Sex establishments and Street trading

3.6 R v. Manchester ex parte King - fees should be set at a level reasonably expected to cover costs. Surplus should be reinvested in service.

The Provision of Services Regulations 2009 is likely to have the effect that fees may need to accommodate "charges provided for by a competent authority which

applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.” This may be interpreted as just administration of the licence application.

- 3.7 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 are set out in the table below.

Financial Year	Balance on Sex Shops and Sex Cinemas Fees £000*
2009/10 Actual	(7)
2010/11 Actual	(6)
2011/12 Forecast	(5)
Total Deficit	(18)

- A positive figure represents a surplus

The initial cost projections for 2012/13 show that if license fee levels are not increased for 2012/13 a deficit of £5,000 will occur. In order to achieve a breakeven budgeted position on the account, the fees would need to be increased by around 9%. However, as the council is committed to keeping the cost of administering the service as low as possible, an increase of 3% is proposed for 2012-13, with a review of the expenditure to be undertaken over the coming months to find efficiencies, in order to reduce the remaining deficit. Detailed Trading Accounts are attached in Appendix 2.

- 3.8 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 are set out in the table below.

Financial Year	Balance on Street Trading Fees £000*
2009/10 Actual	(20)
2010/11 Actual	(1)
2011/12 Forecast	0
Total Deficit	(21)

- A positive figure represents a surplus

Fees should be set each year to recover the expected cost of administering the service. The initial cost projections for 2012/13 show that if licence fee levels are increased by 1% there will be a breakeven budgeted position next year. Detailed Trading Accounts are attached in Appendix 2.

Sex Entertainment Venues

- 3.9 Following the principle of setting a fee to recover the expected costs of providing the service, cost projections for 2012/13 show that the licence fee should be maintained at £4,600. Detailed Trading Accounts are attached in Appendix 2.

4. COMMUNITY ENGAGEMENT AND 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. This is necessary in order to ensure that council tax payers are not subsidising work concerning licensing administration and enforcement.

Finance Officer Consulted: Karen Brookshaw

Date 17/10/11

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. With regard to taxi licensing fees, Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 are very prescriptive about what fees may be used for and this is explained in the body of the report.

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: 04/11/11

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.

Public Health Implications:

- 5.7 None.

Corporate / Citywide Implications:

- 5.8 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 3.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Cash freeze would create budget deficit.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 Measure to recoup some costs.

SUPPORTING DOCUMENTATION

Appendices:

1. List of fees and charges.
2. Trading Account.
3. Flowchart.

Documents in Members' Rooms

None.

Background Documents

None.