

## **REPORT TO LICENSING COMMITTEE AND COUNCIL**

Date of Meeting: 30 January 2024 and 20 February 2024

Report of: Service Lead - Environmental Health & Community Safety

Title: Licensing Fees and Charges for 2024/25

### **Is this a Key Decision?**

No

### **Is this an Executive or Council Function?**

Council

#### **1. What is the report about?**

- 1.1 The purpose of this report is to establish the licensing fees and charges that should apply for 2024/25 for those activities where the Council has discretion to do so.

#### **2. Recommendations:**

- 2.1 That the Licensing Committee recommends and Council approves the following:

For the period from 1 April 2024 to 31 March 2025 it is recommended that the Licensing Committee and Council set the fees as contained in Appendix B attached to the report.

#### **3. Reasons for the recommendation:**

- 3.1 The statutory principle in relation to the setting of fees is that they should be reasonable and should relate to the costs of performing the function, including staffing, administration, testing, inspections, hearings, regulation and appeals.
- 3.2 The recommendation is in order to comply with the provisions of the European Services Directive (2006/123/EC) which was incorporated into UK law by the Provision of Services Regulations 2009. The legal requirements were considered by the Supreme Court in the case of R (on the application of Hemming and others) v Westminster City Council [2015] UKSC 25 and [2017] UKSC 50.

#### **4. What are the resource implications including non financial resources.**

- 4.1 If there is no increase in fees there is a risk that the Council will not recover all of the costs for services or activities for which it is permitted to charge and increase the burden on the Council's general fund.
- 4.2 There will be a cost in adoption of fees, as some will require public notice to be given. However this cost will be met from the existing budgetary provision.

## **5. Section 151 Officer comments:**

- 5.1 The fees and charges proposed in the report have been included in the Council's Fees & Charges, which will be considered at the Extraordinary meeting of Council on 20 February. The impact of the proposals have been included in the Services budget.

## **6. What are the legal aspects?**

- 6.1 The Licensing Committee's responsibilities are set out in the Council's Constitution and include setting and reviewing licensing fees other than those set by statute.
- 6.2 The legal powers to charge a fee are set out in Appendix A of this report.

## **7. Monitoring Officer's comments:**

- 7.1 The Monitoring Officer draws Members' attention to the legal implications as set out in paragraph 6 above but otherwise has nothing further to add.

## **8. Report details:**

- 8.1 Exeter City Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and permits. Many of these schemes allow the Council to charge a fee, payable by an applicant for a licence, in order to cover the costs (or a proportion thereof) of the administration of those licence types. In some cases, costs are also permitted to cover other aspects of providing the regulatory scheme.
- 8.2 The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed annually to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits may be carried forward to future years to be redistributed (within the ring-fenced licensing budget), or recouped, as applicable.
- 8.3 Many licensing schemes fall within the definition of 'services', under the EU Services Directive, as incorporated by the Provision of Services Regulations 2009. For such schemes, fees and charges 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 principle was affirmed by the courts in *R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*. Fees must reflect administrative, policy and compliance costs, but cannot include the costs of enforcement action against unlicensed operators.
- 8.4 Appendix A summarises the Council's powers to set its fees in respect of licensing applications, and any limitations on those powers.
- 8.5 A notice of any variation to vehicles and operator's licence fees will be advertised in a local paper and will be deposited at the council offices for a period of 28 days. Any objections received within 28 days of publication of the notice and not withdrawn will be considered at a meeting of the Licensing Committee on 19 March 2024. If there are no objections to the variation in fees they will come into effect on 1 April 2024.

8.6 One change to this year's fee structure is the change in fee structure relating to Street Trading. In line with case law on fees set under the EU Services Directive, the Street Trading fee will consist of two parts, A and B as follows:

- Part A is to cover the costs of processing the application, namely the costs of the authorisation procedures and formalities. The Part A fee is payable in full on submission of the application and is non-refundable.
- Part B is to cover the costs associated with running and enforcing the licensing scheme. The Part B fee would only become payable if a licence is granted, and would need to be paid by the operator before the licence becomes operational.

## **9. How does the decision contribute to the Council's Corporate Plan?**

9.1 The appropriate setting of Licensing Fees will contribute to a healthy and active city, a prosperous local economy and building great communities.

## **10. What risks are there and how can they be reduced?**

10.1 The proposed fees have been calculated on a cost recovery basis, and projections show that if the revised fees are adopted the costs of administering licensing schemes should be recovered.

## **11. Equality Act 2010 (The Act)**

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

## **12. Carbon Footprint (Environmental) Implications:**

12.1 No direct carbon/environmental impacts arising from the recommendations.

### **13. Are there any other options?**

13.1 The Licensing Committee could decide to maintain fees and charges at the 2022/23 levels, however the service would not be recovering the full cost incurred to the authority for delivering the individual licence areas.

Report of: Simon Lane - Service Lead Environmental Health and Community Safety

### **Local Government (Access to Information) Act 1972 (as amended)**

Background papers used in compiling this report:-

The Gambling Act 2005.  
Guidance issued under Section 25 of the Gambling Act 2005  
The Police Reform and Social Responsibility Act 2011  
The Licensing Act 2003  
Guidance issued under Section 182 of the Licensing Act 2003  
Local Government (Miscellaneous Provisions) Act 1982  
Local Government (Miscellaneous Provisions) Act 1976  
Scrap Metal Dealers Act 2013

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## Appendix A - Summary of powers to set application fees

Area	Power arises from
General principle	Reg 18(4), Provision of Services Regulations 2009 Any 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.
Alcohol, entertainment, etc	Prescribed in regulations made by the Secretary of State under the Licensing Act 2003. Section 197A of that Act will allow licensing authorities to set fees locally on a cost-recovery basis, but is yet to be commenced.
Animal boarding	s.1(2), Animal Boarding Establishments Act 1963 Fee as may be determined by LA.  s 13 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 A local authority may charge such fees as it considers necessary
Dangerous wild animals	s.1(2)(e), Dangerous Wild Animals Act 1976 Sufficient to meet direct and indirect costs incurred
Dog breeding	s.3A(2), Breeding of Dogs Act 1973 Reasonable costs incurred in administration and enforcement. s 13 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 A local authority may charge such fees as it considers necessary
Pet shops	s.1(2), Pet Animals Act 1951 Fee as may be determined by LA. s 13 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 A local authority may charge such fees as it considers necessary
Riding establishments	s.1(2), Riding Establishments Act 1964 Fee as may be determined by LA. Cost of veterinary inspection. s 13 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 A local authority may charge such fees as it considers necessary
Zoos	s.15(1), Zoo Licensing Act 1981 Sufficient to cover the reasonable expenditure incurred by the authority. Special provisions for inspections, closures, and direction making.
Gambling notices, premises licences	Set on a cost recovery basis by the authority, up to maximum amounts prescribed in regulations made under the Gambling Act 2005. No fee chargeable for OUN's
Gaming permits, lotteries	Prescribed in regulations made by the Secretary of State under the Gambling Act 2005
Charity collections	No fees chargeable
Hackney Carriage / Private Hire drivers	s.53(2), Local Gov't (Misc. Provisions) Act 1976 Recovering the costs of issue and administration. Refundable if licence not granted.

Hackney Carriage / Private Hire vehicles, Private Hire operators	s.70(1), Local Gov't (Misc. Provisions) Act 1976 Sufficient to cover the cost of: inspection of vehicle for licensing purposes, providing hackney carriage stands, or other costs for administration and control/supervision of vehicles. Refundable if licence not granted. <i>Maximum fees must be advertised.</i>
Hypnosis	No fees chargeable (except by London boroughs)
Scrap metal	Sch. 1 para 6, Scrap Metal Dealers Act 2013 Fee set by the authority, with regard to guidance FEE-SETTING IS AN EXECUTIVE FUNCTION
Sex establishments	Sch. 3, para 19, Local Gov't (Misc. Pr'ns) Act 1982 Reasonable fee
Skin piercing, etc	s.14(6), 15(6) , Local Gov't (Misc. Pr'ns) Act 1982 Reasonable fee
Street Trading Consents	Schedule 4 Paragraph 9 (1) of Local Government (Miscellaneous Provisions) Act 1982 Reasonable fee