



<b>Report to:</b>	Licensing Committee	<b>Date:</b>	18 December 2017
<b>Report title:</b>	Review of Special Treatment Licensing		
<b>Report from:</b>	Mary Morrissey - Strategic Director of Environment, Housing and Regeneration		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Mary Burstow		
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<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> <li>• A Smart Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	7 December 2017

## 1. Summary

- 1.1. Premises where special treatments are provided must be licensed under the London Local Authorities Act 1991 (the 'Act').
- 1.2. The Act allows the Council to prescribe the terms, conditions and restrictions it deems appropriate with regard to the licensing process.
- 1.3. The Act provides for applications for the grant of a licence, together with those seeking to renew, transfer or vary an existing licence, to be made. The Council has the ability to refuse any application and, in specific circumstances, can revoke a licence.
- 1.4. This report outlines a proposal to review the current process and procedure in implementing the provisions of the London Local Authorities Act 1991 with the aim of providing a consistent approach across the Shared Environment Service.

## 2. Recommendations



The Licensing Committee is recommended to:

- 2.1 Agree the proposed revised process and procedure;
- 2.2 To adopt the revised standard conditions for Special Treatment Premises Licenses; and
- 2.3 Agree that the above changes will take effect on the 01 April 2018

### **3. Background**

- 3.1. Persons providing premises where special treatments are offered must hold a licence under the London Local Authorities Act 1991.
- 3.2. The Act provides a mechanism for the Council to prescribe the terms, conditions and restrictions it deems appropriate with regard to the licensing process. This includes the setting of fees at a level to fully recover its costs in administering and enforcing the licensing regime. Applications for the grant, renewal, transfer or variation of a licence to be made. The Council is entitled to refuse any application that meets any of the grounds set out in the Act, and can in specific circumstances revoke a licence.

#### Special Treatments

- 3.3. Under Section 4 of the Act 'Special Treatments' are defined as those therapies and cosmetic treatments where there is a degree of physical contact with a customer, such as massage, acupuncture, manicure, piercing and tattooing. A licence is required where the treatment is offered for gain or reward. The Act does provide for a number of exemptions, including where treatments are provided by medical practitioners, dentists and in certain cases bona fide members of a body of health practitioners.
- 3.4. Since the introduction of the Act many new types of treatments have come onto the market and a judgement must always be made as to whether they fall within the definition of a special treatment. A London wide group of licensing professionals fully assesses new treatments and therapies and periodically produces a list of those deemed to fall within the remit of the Act.

#### Fee Structure

- 3.5. Under Section 7(6) of the Act an applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the Council. This also includes applications for variation of a licence which are covered in a later section. Following recent case law, any fee charged by a local authority for a licence or authorisation must be split into two parts so that the applicant pays a fee:



- 3.6. On making the application, the cost of the authorisation procedure and formalities; and
- 3.7. On the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.

#### Conditions

- 3.8. Under Section 10 of the Act a local authority may make regulations prescribing standard conditions applicable to all, or any class, of licences. The Act lays out a number of areas that such conditions should relate (although these are not to be taken as exclusive) and includes:-
  - The qualifications of the persons giving special treatments;
  - The safety of any equipment used in connection with the special treatment and the way in which the treatment is given;
  - The cleanliness and hygiene of the premises and equipment;
  - The maintenance of public order and safety.
- 3.9. A copy of the proposed standard conditions are given at Appendix A.

#### **4. Issues**

- 4.1. When issuing a licence we currently list the individual treatments on the licence alphabetically. This process is time consuming and it can lead to confusion, treatments can be known by more than one name for example. Other treatments, for example massage, can have a number of variants yet when it comes to inspection we use the same standard. With new treatments continuously coming onto the market we are always one step behind taking this approach.
- 4.2. The current fees do not offer full cost recovery for the work carried out by the shared service in licensing premises and carrying out enforcement.
- 4.3. The standard conditions that attach to a licence were last reviewed in 2012. At that time it was agreed that there should be a set of standard conditions that attach to all licenses, with additional subject specific conditions being added in respect of particular areas of practice.
- 4.4. These conditions no longer reflect the current view on required controls on special treatments therapies, are felt, in places, to be unnecessarily long and do not reflect current Government thinking on regulatory control.

#### **5. Options Considered**

- 5.1. A review of the licensing processes carried out in Kingston and Sutton has been undertaken and it is proposed that a single system of licensing will be implemented



in both Boroughs. The review has produced the following options for the regime moving forward:

- 5.2. Special Treatments to be grouped into 8 categories. These will be inspected against and specified on the premises licence when issued, and a premises will be able to provide any treatment falling within the general category (i.e. massage);
- 5.3. The current fee structure to be revised so as to provide a single set of fees across the Service that are clear, current and reflect the proposed revised regime. Premises will be split into 3 bands based on the risk of the treatment being offered and the time taken to inspect and carry out enforcement action.
- 5.4. The current standard conditions have been revised to provide a single set of conditions that are clear, current, and enforceable. As well as removing the conditions that duplicate other legislation amendments include:
- 5.5. Addition of new conditions placing the responsibility on the licence holder to ensure that the practitioners under their control are qualified and competent and that records of training are held at the premises.
- 5.6. Existing conditions requiring proof of age have been tightened to require proof of age to be provided by any person who appears to be under the age of 25.
- 5.7. The conditions for all types of premises have been brought together in one document to reduce duplication and to assist the businesses.
- 5.8. The removal of some prescriptive conditions, transferring responsibility to the licence holder to ensure that they are adhering to best practice.
- 5.9. Finally we will take the opportunity to update the application forms used by the council and to revise the information given on our webpages.

## **6. Impacts and Implications**

### Financial

- 6.1. In calculating the proposed fees officers have taken into account the requirements of the EU Service Directive and the Supreme Court rulings in the Hemming case relating to apportionment and fairness of fees.
- 6.2. Fees have been calculated by assessing the time it takes for each step in the process from receipt of application to determination and issue of a licence. The perceived cost for the compliance and enforcement function carried out by Officers in relation to the Special Treatment regime has also been assessed, based on current working practices.



- 6.3. It has been identified that the Council has not been recovering its own costs relating to the special treatment regime for a number of years, with the result that the proposed fees for certain Special Treatment licence types will be increasing. Some premises, those offering low risk treatments, will find their fees reducing slightly.
- 6.4. The responsibility for fee setting lies with Environment and Neighbourhoods Committee, and the new fees are due to be presented for approval in February 2018.

#### Legal

- 6.5. The 'split' fee structure proposed is in line with the Supreme Court decision in R (on the application of Hemmings t/a Simply Pleasure Ltd and others v Westminster City Council [2015] UKSC 25 and the subsequent ECJ ruling of November 2016
- 6.6. Any person aggrieved by the imposition of a condition on their licence has the legal right to appeal to the Magistrates Court.

#### **Appendices and Background Documents**

<b>Appendix letter</b>	<b>Title</b>
A	Standard Conditions for Special Treatment Premises

<b>Background documents</b>
None

<b>Audit Trail</b>		
Version	Final	Date: 6 December 2017
<b>Consultation with other officers</b>		
Finance	No	N/A
Legal	Yes	Saima Khan
Equality Impact Assessment required?	No	N/A

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