



City of Westminster

Licensing Committee Report

Date:	Wednesday 4 th July 2018
Classification:	For General Release
Title:	Fees and charges for street trading on a pitch at a market in Westminster 2018/19
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	This report sets out the fee strategy to be consulted on for street trading on a market where the Authority can set a fee to recover its costs in relation to a licence application and services provided for administration, cleansing, waste disposal and enforcement.
Report Author and Contact Details:	Ms Rosalind Hick, Licensing Team Manager. Tel: 020 7641 1775

1 Executive Summary

- 1.1 The report seeks approval to undertake statutory consultation on a revised set of fees for the application for a licence for street trading on a pitch in market in Westminster, and the charges applied for each day that the licence is in force. The proposed fees and charges will enable the Council to recover its costs in managing and administering the Street Trading licence regime on markets across the City.
- 1.2 The proposals set out in this report aim to provide a simple fee model that will achieve cost recovery fairly across all traders, encourage local and new enterprise and demonstrate commitment to our local residents through the opportunity for concessions.
- 1.3 To help shape the future of our markets and to make sure they continue to thrive and serve their neighbourhoods, the council will shortly be launching a markets consultation, which will seek the views of residents, shoppers, traders and local businesses on how we can:



- Keep markets at the heart of their communities, providing a fantastic offer to local residents.
 - Encourage more non-street food traders to open market stalls, bringing more diversity to Westminster's markets.
 - Attract more tourists where this would have a positive impact on the revenue of the market traders.
 - Recruit the next generation of traders and boost training on topics such as customer service, display, taking card payments and creating an online presence.
 - Provide a wider selection of goods, regular new products and events.
 - Become more sustainable by increasing recycling, reducing plastic, offering in-season food, and increasing biodegradable packaging and reusable energy
- 1.4 Officers are proposing to undertake consultation on the market strategy at the same time as the statutory consultation on the fee and charges review. This approach enables the consultation to be extended beyond the minimum 28 day notice period set out in section 22 (9) of The Act.
- 1.5 Consultation on fees and charges will allow for a realistic and open dialogue in terms of the need for the council to cost recover on key services provided to our markets. It will seek views on how we can achieve a more sustainable charging system, presenting a number of options for consideration, which recognise the diversity of circumstances faced by traders across the City, with the aim of keeping fees and charges low to ensure that Westminster remains a great place to start and grow a small business.
- 1.5 There are eight regular street markets within the City of Westminster, totalling approximately 400 pitches – Berwick Street, Church Street, Maida Hill Place, Strutton Ground, Tachbrook Street, Rupert Street, Pimlico Road and Marylebone Road.
- 1.6 In a rapidly evolving business environment, the council is committed to supporting each one of its City's markets to continue to hold their own with other markets, on-line retail and other attractions, and provide what local residents want.
- 1.7 Following the consultation on the proposed fees and charges, all consultation responses will be considered and a full report will be presented to the Licensing Committee in November 2018 for a decision on the implementation of the new fees and charges. Any licence holder or representative body who raises a representation through the consultation process will have the opportunity to also make their representation to the Licensing Committee.



- 1.8 The proposed market strategy consultation will scope ideas for other discretionary services that traders may find beneficial. Should the majority of traders on a market wish an additional service to be provided, this could then be covered under section 22 (5) of the Act at a future date. Future consideration will need to be given to whether Westminster charges for these discretionary services or not.

2. Background

- 2.1 The criteria for determining charges for street trading in Westminster is set out in section 22 of the City of Westminster Act 1999 (The Act). This sets out the basis on which the Council may choose to recover certain costs in relation to street trading by way of fees and charges.
- 2.2 The last full fee review in relation to street trading was taken to Licensing Sub Committee on the 15 June 2006. This report covered all aspects of street trading.
- 2.3 Within the Act, the council is permitted to recover certain costs associated with the administration of any street trading application, that is, the Application Fee, and costs for cleansing, waste disposal and enforcement, that is the Daily Charge. Any fee review can only seek to cover these provisions.
- 2.4 The current position is that existing fees do not represent cost recovery and there is an accumulated deficit on the street trading account. In effect, the council is subsidising street trading activity across markets. This is in the context of a challenging financial climate for the Local Authority.
- 2.5 This fee review demonstrates that there will need to be an uplift in some fees to enable cost recovery on an annual basis, although the percentage increases are high as the current weekday daily charge is £10.61. This is without consideration of any previous deficits, which although referenced, have not been included in this review.
- 2.6 The decision of the Supreme Court in April 2015 in Hemming vs Westminster City Council in relation to fee setting and the recovery of costs has been applied in full to this fee review proposal.

3. Recommendations

- The Committee give their approval;
- 3.1 For consultation to be undertaken with relevant stakeholders on:
 - a) The proposed fee for an Application for a licence to trade from a pitch in a street market in Westminster,



- b) The options for the Daily Charge for each day that licence is in force and of the right for representations to be made in accordance with the statutory procedure set out in the City of Westminster Act 1999;
- 3.2 For the statutory consultation on the proposed fees and charges to take place at the same time as the consultation on the development of a market strategy.
- 3.3 For the proposed fees and charges to be brought back to Licensing Committee in November 2018 following full consultation, with recommendations for implementation.

4 Principles for setting fees and charges

- 4.1 The criteria for determining fees and charges for street trading in Westminster is set out in section 22 of the Act. Within this legal framework, we want to make sure the proposed review of fees and charges is based on the following five principles:

Fairness. We will be fair by writing off the current historic deficit, which has accumulated due to the length of time since the last full fee increase. We will not factor this into this fee review.

Cost recovery. We will only set fees and charges that recover the costs incurred by the council in managing markets (including administration, cleansing, waste collection and enforcement).

Transparency. We will keep fees simple so that there is a transparent approach, which is easy to understand.

Supporting local enterprise. We will support local enterprises by making sure fees and charges are tailored to the individual circumstances of street traders.

Listening to everyone's views. By consulting on fees and charges as part of a wider consultation on the overall future of markets, we will make sure that we listen to everyone's views – from residents to traders, shoppers and local businesses.

- 4.2 These principles will underpin our approach to consulting on fees and charges for street trading licences, making sure that our approach achieves cost recovery, is fair to all traders, and encourages local and new enterprise as part of our wider strategy to keep thriving local markets at the heart of our communities.

5 Summary of Proposed Changes

- 5.1 The proposals set out in this report aim to provide a simple fee model that will achieve cost recovery fairly across all traders, encourage local and new enterprise and demonstrate commitment to our local residents through the opportunity for concessions.



- 5.2 Section 22 of The City of Westminster Act provides for the recovery of the reasonable costs associated with dealing with applications – the Application Fee. It also provides for the Council to recover from licence holders the reasonable costs associated with cleansing (including waste collection) and those costs associated with the administration and the enforcement of the provisions of the Act – the Daily Charge.
- 5.3 The current fees, set out in **Appendix A**, have not increased since 2006 and are not in line with the reasonable costs associated with the assessment of the application and the granting of the licence, and any reasonable costs associated with administration, cleaning, waste disposal and enforcement.
- 5.4 There is currently a deficit on the street trading account. This deficit has accumulated due to the length of time since the last full fee increase. It is recognised that were the council to recover this accumulated deficit this could place significant financial pressure on existing traders. Therefore, the current proposed fees do not include the recovery of this deficit. For context, the deficit built over the last four years is in excess of £1million.
- 5.5 The proposed fees and charges, attached to this report as **Appendix B (Application Fee)** and **Appendix C (Daily Charge)** will enable the council to recover its reasonable costs.
- 5.6 The proposed charges standardise the rate across trading days. They represent an uplift on the cheapest trading days (Monday – Thursday). The increase from the existing charges for each of the options is set out in **Appendix D**. To indicate how the uplift in fees may impact on traders, a typical trading pattern, with the change in charges is shown in **Appendix E**
- 5.7 As part of the fee and charges review process, in order to understand how Westminster compares with other Local Authority run markets in London, benchmarking has been carried out. It is important to note that although this provides context, benchmarking does not provide justification for fees and charges set by Westminster; these must be in relation to the costs prescribed in section 22 of the Act. For information, the costs for street trading licences at neighbouring London Local Authority run markets are set out in **Appendix F**

6 Application Fee

- 6.1 The proposed fees for applications, set out in **Appendix B** are established by assessing the work of the officers in the Licensing Service who are involved in processing and determining an application.
- 6.2 The fees are calculated by assessing the time it takes for each step in the application process. The time has been assigned a cost based on hourly rates. There is also a proportion attributed for management time.



- 6.3 For some applications, such as those where the applicant will be selling high risk food, Environmental Health will need to spend more time on the application to ensure that the trader adequately meets food safety requirements. The proposed fees are different for applications to sell non-food, fresh produce or hot take away food.
- 6.4 **Concessions** - In line with Street Trading Policy 2013, a 50% concession is proposed, for applications from **start-up businesses**. The definition used will be a business which has been registered at Companies House, HMRC or registered self-employed for less than 12 months before an application is made. Evidence will be accepted in the form of Companies House or HMRC registration. For sole traders the Unique Taxpayer Reference Number will be sufficient. Applications from those applying for a stall for a charitable or community event will be free of charge.
- 6.5 A 20% concession is also proposed for those applications that are received from **Westminster residents**. Where an applicant is both a start-up business and a Westminster resident, the start-up business concession will apply.

7 Daily Charge

- 7.1 Section 22 of the Act provides that the council can recover costs associated with:
- the collection, removal and disposal of refuse or other services rendered by them to such licence holders; and
 - the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading; and
 - any reasonable administrative costs or other costs not otherwise recovered under this Act incurred in connection with the administration of the provisions of this Act; and
 - the cost of enforcing the provisions of this Act

These costs are set out in **Appendix G**

- 7.2 In assessing the costs associated with administration and enforcement, the Licensing Service has assessed the proportion of officer time required in each area for administration, check compliance and/ or undertake enforcement.
- 7.3 There are 4 options presented for the daily charge, all of which seek to recover the costs associated with cleansing administration and enforcement. Each option provides a consistent rate across trading days, but shares the responsibility for costs overall differently across individual



traders. These options are set out in **Appendix C**. A short summary is provided in the paragraph below.

- 7.4 **Option 1 – Standard fee across all markets**; this option shares the burden of costs equally across all traders.
- Option 2- Rate for non-food and fresh produce traders and rate for hot food traders** – this option sets the responsibility for the costs with those traders who place the greatest demand on resource. A large number of licences to trade on markets in Westminster are granted to individuals looking to sell hot or take away food. There are additional conditions attached to these licences and there may be operational issues that arise such as long queues that cause obstructions or complaints of nuisance caused by smoke and smells.
- Option 3 – Area based charge** – This option aligns the charges with the current operating model at each market.
- Option 4 – Tapered Increase** – This option is based on a tapered standard charge across all markets over a two year period. In year one the charge is tapered on Monday – Thursday, reducing the increase on these days. Fridays and Saturday remain at the full charge. Year two represents the full charge across all days.

8 Waivers

- 8.1 The Street Trading Policy 2013 sets out a number of waivers that can be applied to individual licence holders who are impacted by circumstances outside their control that affect their ability to trade from their licensed pitch. They include those traders who are a start up business or part of an Enterprise scheme and those licensed traders who have had to change their pitch or location due to circumstances beyond their control and who have found this has had an adverse effect on their revenue.
- 8.2 Any trader may apply to the Licensing Service for a reduction in their daily charge, if they meet the criteria in the street trading policy. Each individual case will be assessed by the Service on its merits.

9. Consultation

- 9.1 Under section 22 (9) of The Act, before any fees and charges are introduced, notice should be given to all existing licence holders and representative bodies. This should set out the proposals and how these have been calculated. A minimum 28 days consultation period should be allowed to enable representations to be made.
- 9.2 It is proposed that given the length of time since the last fee and charges increase and the impact on traders, the Licensing Service consults more widely than this and for a greater length of time.
- 9.3 It is also proposed that the statutory consultation on this fee and charges review takes place at the same time as the consultation on the



development of a market strategy that the Council is currently undertaking. This consultation will include 1-2-1 sessions and a series of workshops to which traders will be invited.

- 9.4 All licence holders and any representative bodies will be written to advising them of the consultation, the details of the proposed fees and charges and how to provide comments.
- 9.5 The proposed fees and charges will be advertised on the Westminster website, with details of how to provide comments during the consultation period.
- 9.6 All responses received during the consultation period will be considered, and where appropriate, the Licensing Service will arrange further meetings or discussions with individual traders.
- 9.7 Following the full consultation period, the proposed fees and charges will be brought to the Licensing Committee for approval. A full report will be provided to the Committee setting out the results of the consultation and officer recommendations for the implementation of fees and charges.
- 9.8 The licensing service will also recommend that the Committee endorse a regular fees and charges review, as set out in the City of Westminster Act 1999, to enable fees and charges to be set on an annual basis, ensuring that future changes to fees and charges are minimised and therefore the impact on licence holders is less significant.
- 9.9 All licence holders who submitted responses during the consultation period will be invited to attend the Licensing Committee and present their views to the hearing.

10. Legal Implications

- 10.1 Whilst the legal implications are set out throughout the body of this report, for clarity, the relevant sections of the Act are set out below:

22 (1) The council may charge for the grant or variation of street trading licences such fees as are sufficient in the aggregate, taking one year with another, to recover the reasonable costs of dealing with such applications

22 (2) The council may recover from licence holders such charges as may be sufficient on the aggregate, taking one year with another, to cover the reasonable costs of-

- a) the collection, removal and disposal of refuse or other services rendered by them to such licence holders: and
- b) the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading: and



- c) any reasonable administrative costs or other costs not otherwise recovered under the Act incurred in connection with the administration of the provisions of this Act; and
- d) the cost of enforcing the provisions of this Act

22 (8) The council may determine that a fee be charged, on application, for the grant of a temporary licence under section 21 of the City of Westminster Act 1999. It may under the Act take into account the costs of dealing with applications, the cost of administration and enforcement.

22 (9) of the City of Westminster Act 1999

The Council shall not determine or vary charges made under subsection (2) unless they have first given notice in writing to:-

- a) All licence holder affected by the proposal
- b) Any body which appears to the council to represent such licence holders

The notice shall

- a) Give details of proposed charges
- b) State that representations may be made regarding the proposed charges by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given.
- c) Be accompanied by a statement showing how the proposed charges have been computed

- 10.2 Street Trading is covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds. The fees as proposed should enable to Council to recover its reasonable costs.

If you have any queries about this Report please contact:

*Rosalind Hick, Team Manager Street Trading at
rhick@westminster.gov.uk*



APPENDIX A – Current fees

Markets	Charge	With Discount
For each pitch on the highway for which a licence is held:		
A daily charge (Monday to Thursday) of:	10.61	10.08
For Friday a charge of:	20.16	19.15
For Saturday a charge of:	24.40	23.18
For Sunday a charge of:	26.52	25.19
Temporary licences for Casual traders	Charge	With Discount
For each pitch on the highway for which a licence is held:		
A daily charge (Monday to Thursday) of:	19.44	N/A
For Friday a charge of:	28.50	N/A
For Saturday a charge of:	29.72	N/A
For Sunday a charge of:	31.73	N/A

Applications / Licences	£
For a new full licence except that in respect of the Markets and Exhibitions when application is made simultaneously for more than one adjacent pitch, the full fee paid for the first pitch	93.73
And a fee for each additional pitch of:	15.45
Applications for waiver of standard condition 28	169.95
Applications which breach commodity guidelines and where there is a need to report to Committee	169.95
Variations to reduce the number of commodities or reduce the hours or days of trading	17.51
Other Variations / Applications	55.11
Duplicate Licence	15.45
Fee for Licence Plate	2.06
Entry of name on Register of Approved Casual traders	48.93

APPENDIX B – Proposed Application Fee

	Officer time (mins)			Proposed fees				Existing Fees
	Senior Licensing Officer	City Inspector	Env. Health	Fee	Start up business (50%)**	WCC Residents (20%)**	Charity or Community Stall	
New / Variation to sell hot take away food	30	30	120	£260	£130	£208	£0	From 93.73* to 169.95
New / Variation to sell fresh produce	30	30	30	£126	£63	£101	£0	
New / Variation to sell non food items	30	30	10	£96	£48	£77	£0	
Minor variation* to remove or add trading days or commodities within the same category	30	15	0	£60	£30	£48	£0	
Application to be on approved list of casual traders	30	15	0	£60	N/A	£48	N/A	48.93
Registration of Assistant for existing licence holders	15		0	£19	N/A		N/A	
Replacement Licence / Licence plate	15		0	£19	N/A		N/A	15.45 plus 2.06
Application for further temporary licence*	15		0	£19	N/A		N/A	
*one fee representing minimal officer time the other fee for more complex cases								
**Where more than one discount can be applied for, the higher discount will be used								

Appendix C – Proposed Daily Charge Options for Consultation

* a 5% direct debit discount will exist on all fee options		
Option 1	Standard fee	
	fee across all markets and days	£22.00
Option 2	Higher rate for Hot / take away food traders	
	(hot / take away food trader)	£25.00
	(non-food or fresh produce trader)	£20.00
Option 3	Area based fee	
	North (Church Street, Maida Hill)	£21.00
	Berwick Street, Rupert Street	£24.00
	Tachbrook Street, Strutton Ground	£22.00
Option 4	Tapered Increase * This fee is a two year proposal the taper will apply to Monday - Thursday fees only.	
	Year 1 - Monday - Thursday	£16.00
	Year 1 - Friday - Saturday	£22.00
	Year 2 - All days and all markets	£22.00
	Fee if deficit were recovered (not being considered)	£31

APPENDIX D – DAILY CHARGE PROPOSED CHANGES

This table is presented by day as this is the current fee model in place.

Weekday			
	existing	new	diff
Option 1	£10.61	£22.00	£11.39
Option 2 Non food	£10.61	£20.00	£9.39
Option 2 Hot food	£10.61	£25.00	£14.39
Option 3 North	£10.61	£21.00	£10.39
Option 3 Central	£10.61	£24.00	£13.39
Option 3 South	£10.61	£22.00	£11.39
Option 4	£10.61	£16.31	£5.70
Friday			
	existing	new	diff
Option 1	£20.16	£22.00	£1.84
Option 2 Non food	£20.16	£20.00	-£0.16
Option 2 Hot food	£20.16	£25.00	£4.84
Option 3 North	£20.16	£21.00	£0.84
Option 3 Central	£20.16	£24.00	£3.84
Option 3 South	£20.16	£22.00	£1.84
Option 4	£20.16	£22.00	£1.84
Saturday			
	existing	new	diff
Option 1	£24.40	£22.00	-£2.40
Option 2 Non food	£24.40	£20.00	-£4.40
Option 2 Hot food	£24.40	£25.00	£0.60
Option 3 North	£24.40	£21.00	-£3.40
Option 3 Central	£24.40	£24.00	-£0.40
Option 3 South	£24.40	£22.00	-£2.40
Option 4	£24.40	£22.00	-£2.40

Appendix E - Impact on typical trading patterns

Scenario 1 - Strutton Ground, Trading Monday - Friday				Scenario 4 Church Street Trading Saturday Only			
	Fee	Difference	%		Fee	Difference	%
Existing fee	£62.60			Existing fee	£24.40		
Option 1	£110.00	£47.40	76%	Option 1	£22.00	-£2.40	-10%
Option 2 - non food / fresh produce	£100.00	£37.40	60%	Option 2 - non food / fresh produce	£20.00	-£4.40	-18%
Option 2 - Hot food	£125.00	£62.40	100%	Option 2 - Hot food	£25.00	£0.60	2%
Option 3	£110.00	£47.40	76%	Option 3	£21.00	-£3.40	-14%
Option 4	£86.00	£23.40	37%	Option 4	£22.00	-£2.40	-10%
Scenario 2 - Tachbrook Street, Trading Thursday, Friday, Saturday				Scenario 5 - Church Street Trading Monday - Thursday			
	Fee	Difference	%		Fee	Difference	%
Existing fee	£55.17			Existing fee	£42.44		
Option 1	£66.00	£10.83	20%	Option 1	£88.00	£45.56	107%
Option 2 - non food / fresh produce	£60.00	£4.83	9%	Option 2 - non food / fresh produce	£80.00	£37.56	89%
Option 2 - Hot food	£75.00	£19.83	36%	Option 2 - Hot food	£100.00	£57.56	136%
Option 3	£66.00	£10.83	20%	Option 3	£84.00	£41.56	98%
Option 4	£60.00	£4.83	9%	Option 4	£64.00	£21.56	51%
Scenario 3- Berwick Street Trading Tuesday to Friday							
	Fee	Difference	%				
Existing fee	£51.99						
Option 1	£88.00	£36.01	69%				
Option 2 - non food / fresh produce	£80.00	£28.01	54%				
Option 2 - Hot food	£100.00	£48.01	92%				
Option 3	£96.00	£44.01	85%				
Option 4	£64.00	£12.01	23%				

APPENDIX F- Fees charged to Licence holder at other London Local Authority run markets.

	Monday – Thursday	Friday	Saturday
RBKC	£13/£10	£23/£16	£45/£47/£35
Lambeth	£32/£22/£17		
Camden	£13.09 - £25		

<https://www.rbkc.gov.uk/business-and-enterprise/towncentres-neighbourhoods/markets-and-street-trading/street-trading-fees>

[https://www.lambeth.gov.uk/sites/default/files/brl Market Fees and Charges%202015 16.pdf](https://www.lambeth.gov.uk/sites/default/files/brl%20Market%20Fees%20and%20Charges%202015%2016.pdf)

https://camden.gov.uk/ccm/cms-service/stream/asset/?asset_id=3632398&

APPENDIX G - Costs Associated with Cleansing, Administration and Enforcement

COSTS				
Market	Administration	Enforcement	Cleansing	Total
NORTH	45,638.93	158,884.86	465,651.47	670,175.26
CENTRAL	107,045.71	116,108.17	79,919.78	303,073.66
SOUTH	69,171.44	131,385.56	68,227.40	268,784.40
TOTAL	221,856.08	406,378.60	613,798.65	1,242,033.33
