

## **Committee: Joint Regulatory Committee**

**Date: 30 January 2017**

Wards: All Wards

## **Subject: Charging for Discretionary Regulatory Services**

Lead officer: John Hill, Assistant Director – Public Protection

Lead member: Cllr Ross Garrod, Cabinet Member for Street Cleanliness and Parking (LB Merton); Cllr Nick Draper, Cabinet Member for Community and Culture (LB Merton - Chair) , Cllr Pamela Fleming, Strategic Cabinet Member for Environment, Business and Community (LB Richmond); Cllr Rita Palmer (LB Richmond)

Contact officer: Paul Foster, Head of the Regulatory Services Partnership

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### **Recommendations:**

A. Members to note and comment on the report.

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. In 2003, the Government introduced the Local Government Act 2003. Section 93 of the Act enables local authorities to charge for discretionary services subject to having regard to the statutory guidance issued by the Secretary of State.
- 1.2. At the 4<sup>th</sup> October 2016 Joint Regulatory Committee, members asked officers to develop a business case for charging for each of the following discretionary services:
  - Licensing Pre-Application Advice
  - Business Advice (Trading Standards & Food Safety)
  - Environmental Consultancy

## **2 DETAILS**

- 2.1. **Licensing Pre-Application Advice**

Westminster City Council was the first council to adopt a charging structure for providing pre-application advice in 2012 and since then a number of other local authorities, including the Royal Borough of Kensington & Chelsea, have followed suit.
- 2.2. It is proposed that the licensing pre-application service will consist of:
  - Advice and assistance with completing application forms;
  - Advice on appropriate conditions taking into account the type and style of the operation intended at the premises, its location and in consultation with Environmental Health Officers;
  - Advice on drawing up plans to accompany the application in accordance

- with the relevant regulations;
  - Advice on nominating an appropriate designated premises supervisor;
  - Assistance with completing the statutory notices and advertisements;
  - On-site visit(s) to ensure plans are compliant with Regulations and the appropriate statutory notices are correctly on display; and
  - Matters they may need to consider regarding possible noise transmission to neighbouring properties.
- 2.3. The proposal is for the Licensing Team to recover all of their reasonable costs in providing pre-application advice and use the income received to offset salary costs and make the service as far as possible self-financing.
- 2.4. Using the successful models adopted by both Westminster and Kensington & Chelsea, it is proposed to charge applicants on the basis of how complex the application is and therefore how much officer time will be taken up in providing the correct level of advice. Three categories of chargeable advice are proposed namely small, medium and large applications:
- Small applications which would have a minimal environmental impact on neighbouring properties
  - Medium applications including site visit/meeting and written reports
  - Large applications e.g. Wimbledon tennis championships, Twickenham stadium, Hampton Court flower show
- 2.5. Any written advice will contain the important caveat that pre-application advice does not guarantee that their application will be successful. Neither will it exempt them from any subsequent enforcement action taken by the council. Representations submitted by Responsible Authorities including the police and noise pollution teams would still need to be considered by members of the Licensing Sub Committee.
- 2.6. It is proposed that the Licensing Manager has discretion to grant exemptions to charitable organisations, educational institutes and buildings used for religious purposes. The team will also continue to provide basic advice on simple matters free of charge.
- 2.7. The proposed charging mechanism is outlined in Appendix 1, Table 1s.
- 2.8. The charges include the cost of administrative and technical officers processing the application and providing advice together with the cost of a supervising manager. Medium and larger premises may require a site visit.
- 2.9. We estimate that in the first year of operation approximately 50 new premises licence applications would take up the offer of pre-application advice and the majority of these applications would fall into the small to medium category. It is assumed that around 65% would fall into the small category, 30% into the medium category and 5% into the large category. Appendix 1, Table 2 contains a provisional estimate of the income that could be generated.
- 2.10. The proposed fees compare favourably to those charged by Merton for its planning pre-application advice service (Appendix 1, Table 3).

- 2.11. **Business Advice and Primary Authority Agreements**  
Business Advice can apply to all of the regulatory services functions but for the purposes of this report, the discussion will be restricted to Trading Standards and Environmental Health (Food Safety) and focus on two distinct aspects of business advice namely, Primary Authority (PA) relationships and general business advice.
- 2.12. Primary Authority relationships provide assured regulatory advice to businesses. In this type of relationship, the host council also becomes a single point of contact for all other local authorities who may be considering taking enforcement action against the business. In practice, it is often the larger companies with national distribution chains that are most interested in participating in primary authority. Surrey/Bucks for example has partnerships with Toyota, Waitrose and British Gas whilst Westminster City Council has partnerships with Marks & Spencer, John Lewis, Mitchells & Butlers, Fortnum & Mason and Pret a Manager. Ideally, the RSP should focus its efforts on establishing partnerships with large, household name, companies but these are finite in number and many of them have already been signed up by other local authorities.
- 2.13. The RSP doesn't currently charge for general business advice but it is proposed that we do so in the future and adopt a similar charging model to that employed by Surrey/Bucks County Council which requires businesses to formally register with the local authority prior to charging<sup>1</sup> them using an on-costed hourly rate.
- 2.14. The Environmental Health (Commercial) Team currently provide a small number of certificated food safety courses to local businesses in Merton. The training is provided face to face in a classroom setting as opposed to being delivered online which is now becoming the preferred method of learning for small businesses as they can do the course in their own time. The market for certificated food safety courses though is very competitive with some commercial providers offering online courses for as little as £10 per candidate (Merton currently charges £65 per candidate). If we are to continue providing face to face training then the charging regime will have to recover our full costs but this could mean that the costs are seen as being too expensive and resulting in a drop in the number of customers. Alternatively, we could investigate running these courses on an online basis.
- 2.15. Aside from food safety courses we believe there is a market for (a) mentoring local food businesses to improve their internet food hygiene rating and (b) providing bespoke consultancy to large food businesses that seek EU approval for food export purposes.
- 2.16. A suggested charging mechanism and fee schedule for business advice and primary authority is outlined in Appendix 1, Table 4 together with an estimated of likely income in Appendix 1, Table 5.
- 2.17. **Environmental Pollution Consultancy**  
The RSP's Environmental Health Pollution Team can offer a wide range of

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<sup>1</sup> The first 30 minutes of advice would be free of charge

chargeable scientific services to businesses, other local authorities and to other council divisions e.g. planning. A list of these together with an estimated income forecast is detailed in Appendix 1, Table 6.

### **3 ALTERNATIVE OPTIONS**

- 3.1. The only alternative would be to maintain the status quo and continue to provide discretionary services free of charge. However, given the current climate of economic austerity and the continuing pressure on local authority finances, this option is not considered viable.

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. Consultation has taken place with staff and will continue to do so as the project progresses. We also intend to consult with key stakeholders.

### **5 TIMETABLE**

- 5.1. The timetable is dependent on the establishment of a dedicated trading arm that is distinct from the regulatory enforcement teams. Provisional estimates are that the trading arm will be operational in April 2018.

### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. The proposed fees outlined in this report are provisional and for illustrative purposes only. Finance will need to review in detail any figures included in the report if they are going to be used as a tool for decision making. Under the terms of the agreement, any 'new' income such as this is to be shared between the boroughs according to a parameter such as total activity levels.

### **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. Business advice and a licensing pre-application service are discretionary services where the local authority has the power but not the duty to provide. Local authorities have the power under Section 93 of the Local Government Act 2003 to set charges for discretionary services. This means a local authority is not entitled to make a profit but is entitled to recover the costs it incurs in providing the service.

### **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. None for the purposes of this report

### **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. None for the purposes of this report

### **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. Each of the discretionary services outlined in this report will enhance regulatory compliance amongst local businesses and improve public protection.

### **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

Appendix 1 (Exempt)

### **12 BACKGROUND PAPERS**

- 12.1. None