

<b>Committee(s)</b>	<b>Dated:</b>
Planning and Transportation	14 07 2020
Licensing	15 07 2020
<b>Subject:</b> Business and Planning Bill 2020	<b>Public</b>
<b>Report of:</b> Jon Avern, Director of Markets and Consumer Protection	<b>For Decision</b> (Planning and Transportation)
<b>Report author:</b> Peter Davenport – Licensing Manager	<b>For Information</b> (Licensing)

### Summary

On 25 June 2020, the Government announced urgent relaxations to licensing and planning laws to support the hospitality sector. The new Business and Planning Bill 2020 (the Bill) introduces significant changes designed to help food and alcohol licensed premises begin trading and start to bounce back from the pandemic lockdown now that the Government has introduced proposals to ease restrictions placed on premises, by removing short term obstacles that could get in their way.

Falling within the remit of the Planning and Transportation Committee, the Bill introduces a fast track procedure for the introduction of a Pavement Licence with a decision made within 14 days of receipt of an application. The Pavement Licence permits certain businesses to place furniture, such as tables and chairs, on the highway for their customers to buy, or consume, their food and drink.

The Bill also amends the Licensing Act 2003 to allow eligible holders of an on-sales licence an automatic grant of the off-sales permission. This aspect falls within the remit of the Licensing Committee, who will receive this report for information-

This report outlines a new 'Al Fresco' Policy aimed at facilitating the introduction of these changes setting the new Pavement Licence fee at £100 and for a duration of 3 months at a time.

### Recommendation(s)

Members are asked to:

1. Agree the Al Fresco Eating and Drinking (Business and Planning Act 2020) Policy produced as Appendix 1 to this report.
2. Agree the 3-month Pavement Licence period as outlined in paragraphs 15 and 16 of this report.
3. Agree the fee of £100 for a Pavement Licence application as outlined in paragraphs 17 to 18 of this report.
4. Note the need for an urgency report once the Bill receives Royal Assent to grant delegated authority to the Director of Markets and Consumer Protection.

## Main Report

### Background

1. The Business and Planning Bill was introduced into the House of Commons on 25 June 2020. It introduces a range of measures to help businesses adjust to new ways of working and getting the UK economy moving again, following Government restrictions aimed at reducing the spread of coronavirus (COVID-19).
2. The main purposes of the Bill, of relevance to the Licensing service, are to make it easier for premises serving food and drink to:
  - Seat and serve customers by introducing a new Pavement Licence (the 'Licence') and,
  - To serve customers outdoors through temporary changes to alcohol licensing relaxing the current law on the supply of take away food and drink.
3. It should be noted that the Bill has not yet received Royal Assent, which is predicted to be later this month. Due to the short timescales for the preparation of the Policy and to develop processes, whilst giving appropriate Member oversight, there may be the need for minor amendments to take account any changes prior to Royal Assent. Although not anticipated, any significant changes will be addressed through an urgency report. In addition, there will be the need for an urgency report once the Bill receives Royal Assent to grant delegated authority to the Director of Markets and Consumer Protection.
4. Now cafes, pubs and restaurants are permitted to open, current social distancing guidelines will have considerable impact on their capacity to accommodate customers.
5. In order to support businesses, the Bill introduces a fast-track process for businesses to obtain permission from the local authority for the placement of furniture such as tables and chairs on the pavement adjacent to their premises. This permission is known as a pavement licence.
6. This differs from the present system for placing tables and chairs on the highway, which is to obtain a tables and chairs licence as set out in Part 7A of the Highways Act 1980.
7. The Bill also amends the Licensing Act 2003 to allow eligible holders of an on-sales licence an automatic grant of the off-sales permission until the end of September 2021.
8. Currently any premises with permission to sell alcohol for consumption on the premises only, would need to apply to the licensing authority for a variation of their licence in order to accommodate selling alcohol off the premises.

## **Alfresco Eating and Drinking Policy**

9. In order to facilitate the introduction of the Bill the Licensing Service have drafted a proposed new 'Alfresco Eating and Drinking (Business and Planning Act 2020)' Policy (the 'Policy'), shown at Appendix 1.
10. With regard to Pavement Licences, the Policy looks at the application and determination process, licence conditions and possible enforcement action where necessary.
11. With regard to the temporary changes to alcohol licensing, the Policy looks at the scope of the Bill, eligibility of premises and the new review procedure.
12. The Policy may be subject to minor changes prior to publication following the second reading in the House of Lords before the Bill is enacted.

## **Pavement Licences**

13. Businesses within the City of London can apply to the City Corporation for a licence allowing them to place furniture, such as tables and chairs, on the highway for their customers to buy, or consume, their food and drink. The furniture has to be placed adjacent to the premises and would be subject to the conditions as stated in Appendices A-C of the Policy.
14. Details of eligibility and how to apply for a licence can be found in Part A of the Policy. It should be noted that the overriding factor in deciding whether or not to grant a licence is the safety of pedestrians, customers and staff. To that end the Policy has adopted a decision made by the Planning and Transportation Committee on the 23 June 2020 regarding five key principles to be considered when looking at assisting businesses in resurrecting their tables and chairs licences. The five key principles are:
  - To put safety first
  - To recognise the need to nurture a thriving economy in our City
  - No privatisation of public space
  - Having regard for space required to queue outside premises
  - Having regard to new or existing public seating nearby
15. The new statutory provisions for pavement licensing expire on 30 September 2021. Within that timeframe, a Licence can be granted for between 3 months up until the licensing expiry date in 2021. The Policy states that a licence issued by the City Corporation will last for a period of 3 months with the potential to re-apply if safe and appropriate to do so.
16. The decision to set the licence period to the minimum length of 3 months was based on the fact that the City of London's streets are undertaking a period of change in terms of both pedestrian numbers and temporary highway changes. The 3-month Licence period gives businesses the ability to trade whilst retaining maximum flexibility to adapt those changes and to ensure the safety of residents, workers and visitors as people gradually return to the City of London.
17. The Bill permits a Local Authority to charge a fee of up to £100. In order to determine the fee, the approximate cost of all aspects of receiving an application, checking for accuracy, dealing with any representations and making a

deliberation have been calculated in the table below. These costs apply to an initial application. For a re-application the majority of processes would still apply but, in certain circumstances, a site visit may not be required, in which case the total cost would be reduced to £140.

Administrative Process	Time spent (decimal minutes)	Cost
Application queries from applicant	0.17	£13.85
Received application online/download	0.08	£6.00
Check application is valid	0.17	£13.85
Check GIS for highway status	0.08	£6.52
Log application on M3, publish on web	0.58	£40.80
Consult with internal teams/police	0.08	£6.00
Check site notice compliance	0.08	£6.00
Site visit for measurements (averaged out across applications)	0.5	£40.74
Respond to representations (averaged out across applications)	0.17	£13.85
Determine application	0.25	£20.37
Prepare/email licence, update M3	0.17	£12.76
	<b>2.33</b>	<b>£180.74</b>

18. As the costs of administering a licence (whether for an initial application or a re-application) exceeds £100, it is proposed that for the City Corporation this fee shall be the maximum of £100. The fee is to be charged for an initial application and any subsequent re-application where applicable
19. Any person can make a representation against an application for a pavement licence within 7 days commencing the day after the application is made. These representations will be taken into consideration when deciding whether to grant a licence. Any deliberation on the application has to be made within a further 7 days following the period for representations. Failure to make a deliberation within this timeframe will result in the licence automatically being granted.
20. Opportunities to apply for a pavement licence will be promoted proactively by engaging with trade bodies, directly with premises using existing contacts, and the solicitors that represent the trade. The City's media team has issued press releases and social media will be used.
21. Each location will be reviewed on a case by case basis, but it is acknowledged that opportunities may be limited due to access requirements, safety issues with the placing of Tables & Chairs in the carriageway and cost implications of providing suitable protection and separation from motor vehicles. For Tables & Chairs permitted by a Pavement License we would expect these costs to be met by the Licensee, as the Tables & Chairs are for the exclusive use of that business.
22. Where the re-allocation of carriageway space to licenced Tables & Chairs is not possible the City will consider the potential for the alternative provision of seating

for public use including for takeaway from any nearby premises, subject to funding. Any removable seating would be taken in, stored and placed out by the local businesses by agreement. We will prioritise locations where there is a cluster of businesses seeking Pavement Licences

### **Alcohol Licensing**

23. This falls within the remit of the Licensing Committee, who will receive this report for information.
24. Details relating to the scope of the amendments, eligibility criteria and new review procedures can be found in Part B of the Policy. The statutory provisions for alcohol licensing expire on 30 September 2021. The option to provide 'take-aways' is not available to those premises where, within the previous three years of the Bill becoming legislation, the premises were refused this option. This would normally be by way of the premises being reviewed or following a hearing.
25. The Bill introduces a new procedure for a responsible authority to apply for an 'off-sales' review. The review must be based on one of the four licensing objectives and will be similar in timescales to a summary review i.e. any interim steps must be made within 48 hours and a full review held within 28 days of the review application being made.
26. In considering such a review the licensing authority can only take into account the automatic extension of off-sales itself, and whether that should be removed. The licence cannot be revoked under this procedure. A licence holder has the right of appeal to a Magistrates' Court against a decision to remove the automatic off-sales extension. Further details can be found in the Policy.

### **Corporate & Strategic Implications**

27. The proposals within this report will help to meet one of the overriding aims contained within the Corporate Plan 2018-23 namely to 'Contribute to a Flourishing Society' by way of making people safe and feel safe.

### **Financial Implications**

28. With regard to Pavement Licences, it is not possible to calculate the exact financial implications as both the number of applications likely to be received and the effect, if any, on existing tables and chairs licences, are difficult to predict. Initial forecasts are that uptake will be low.
29. The approval of the maximum fee of £100 will result in a net cost to the authority of approximately £80 per application and £40 per re-application.
30. With regards to alcohol licensing there will be no effect on the licensing budget for 2020/21 unless there are a significant number of reviews.

## **Appendices**

### **Appendix 1**

Al Fresco Eating and Drinking (Business and Planning Act 2020) Policy

### **Background Papers**

Planning and Transportation Report 23 June 2020 – ‘Tables and Chairs – Assessment criteria, financial implications and processes in response to COVID-19 lockdown and easing thereof’.

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