

Committee(s)	Dated:
Planning and Transportation	23 06 2020
Subject: Tables and Chairs – Assessment criteria, financial implications and processes in response to COVID-19 lockdown and easing thereof.	Public
Report of: Jon Avern, Director of Markets and Consumer Protection	For Decision
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Summary

During the Covid-19 lockdown, all of the City's 138 tables and chairs licenses have been suspended. With relaxations on lockdown underway, and further easements expected shortly leading to an increased conflicting demand for outside space to place tables and chairs and to enable social distancing for pedestrians. A decision was taken at your 2 June committee that while social distancing requirements are in place table and chairs licences should be reviewed subject to five additional principles, on a case by case basis by officers before being reinstated.

The purpose of this report is to set out clearly the criteria officers will apply in line with the five principles when re-instating/issuing tables and chairs licences to the City over the coming phases of lockdown easing.

The report also sets out the required procedural changes required to respond to each phase of the pandemic and the associated estimated financial implications.

Recommendation(s)

Members are asked to:

1. Agree the criteria officers will apply in line with the five principles when re-instating tables and chairs licences to the City over the coming phases of lockdown easing as outlined in Appendix 2 of this report.
2. Agree the proposed way forward as outlined in paragraphs 16 and 17 of this report.
3. Note the financial implications as outlined in paragraph 19 of this report.

Main Report

Background

1. An individual or corporate body wishing to place tables and chairs on the public highway, including a City Walkway, must first seek the necessary licence (permission) under the Highways Act 1980. The Licensing Team in the Department of Port Health & Public Protection has responsibility for the operational administration of this function. Planning and Transportation Committee is responsible for setting the City's policy on tables and chairs and the current policy was agreed in May 2014, see appendix 1.
2. The existing Policy sets out the criteria applied (pre COVID-19) when deciding whether to grant permission to place tables and chairs on the highway and the procedure that is followed, how an application is dealt with and the conditions that are likely to be imposed.
3. Planning permission is not normally required to place tables and chairs on the highway so long as none of the furniture is affixed or left in place outside the hours of use, and the primary use of the area remains as highway. Tables and Chairs applications are made separately from any planning process and are also usually, separate from the premises licence process although there is no reason, except for the wishes of the businesses concerned, why these should not be applied for concurrently. (However, the determination procedures for each are distinct, and the outcome of one cannot predetermine the outcome of the other).
4. The process of dealing with an application to place tables and chairs on the highway involves a 28-day consultation period with other City of London Corporation departments as well as external individuals and organisations. This is primarily in respect of highway matters such as the provision of and access to services, traffic and pedestrian management and street scene issues as well as potential public safety and nuisance matters such as obstruction and noise.
5. A typical small, uncontentious tables and chairs application currently takes approximately two to three months to process. However, this timescale can be considerably extended if there is any unresolved concern with any consultee, whether internal or external to the City of London Corporation.
6. A Tables & Chairs licence cannot be granted where frontagers with an interest withhold their consent. (A frontager has an interest where the tables and chairs are to be put wholly or partly between their premises and the centre of the highway). If the Licensing Team consider that consent has been withheld unreasonably, that is, where an objection is maintained (irrespective of all negotiated agreements and mitigating conditions that appear to address such concerns) the issue must be referred to arbitration.
7. There are 138 premises that have a current licence to place tables and chairs on the highway. All licences are currently valid for 12 months from date of issue and therefore expire at various times throughout the year.

8. A decision was taken at your 2nd June Committee that while social distancing requirements are in place, tables and chairs licences should be reviewed on a case by case basis by officers before being reinstated subject to five additional principles:
 1. To recognise the need to nurture a thriving economy in our City
 2. To put safety first
 3. No privatisation of public space
 4. Having regard to space required to queue outside premises
 5. Having regard to new or existing public seating nearby
9. Further detail relating to the criteria that will be applied in making these decisions is contained in appendix 2.

Current Position and Action to Date

10. To date there have been no legislative changes to the Highways Act 1980 since lockdown commenced. The only legislative changes to have been made which affect the use of tables and chairs on the highway are contained in The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the 'Regulations'). The Regulations require the closure of businesses selling food or drink for consumption on the premises; and treat an area adjacent to the business premises where seating is made available for customers of the business (whether or not by the business) as part of the premises of that business. There has been some lobbying to Government to provide a blanket relaxation of the legislation as it relates to tables and chairs to encourage the recovery of the hospitality sector.
11. Since lockdown commenced on 21 March 2020 until the present time 31 tables and chairs licences have expired. 107 premises therefore still have current licences and have been unable to trade during this three-month period.
12. There is a general desire to try and manage the placing of tables and chairs on the highway as soon as Government legislation permits. This comes from the Government themselves as part of their plans to ease lockdown (latest estimates are partial opening of hospitality businesses in July 2020), licence holders and those representing the welfare of businesses.
13. The Licensing Team have made the decision to suspend all tables and chairs licences until legislation permits their legal use.
14. Businesses with licences that have expired during the lockdown period have not been pursued to renew their licence as they were, in effect, suspended from 21 March 2020.

Future Proposals

15. It is proposed to manage tables and chairs consistent with the following three stages.
 - i. Stage 1 - Lockdown. Current situation as from 21 March 2020 where it is an offence under the regulations to trade from tables and chairs placed on the highway.

- ii. Stage 2 - Partial Lockdown. A partial easing in lockdown restrictions likely to permit outside trading from tables and chairs albeit within social distancing guidelines (currently 2m, although a reduced distance of 1m is being discussed).
 - iii. Stage 3 – Post Lockdown. The Regulations cease to have any effect and premises are permitted to trade as they were prior to stage 1.
16. In order to facilitate premises being able to trade from tables and chairs placed on the highway as quickly as possible once legally entitled to do so, the following actions are proposed:
- i. Stage 1. As mentioned in paragraph 13 all licences have been suspended until Stage 2 or Stage 3 is reached. Once the suspension is lifted, which for the majority is likely to be at stage 3, licences will be extended by however many weeks they have not been permitted to trade due to the regulations (see Appendix 4 for a worked example). However, where premises have either ceased trading or no longer wish to continue with their licence, a pro-rata refund will be granted for every complete week they have been unable to trade due to the Regulations.
 - ii. Stage 2. It is likely that some premises will be permitted to trade from tables and chairs placed on the highway albeit in compliance with social distancing guidelines and the criteria detailed in paragraph 8. Although not illegal to breach these guidelines, it is deemed unsafe to do so and therefore in breach of existing tables and chairs licence conditions. In order to reiterate this point, the Licensing Team would add a temporary condition to all licences making compliance with any current COVID-19 guidance mandatory. Failure to adhere to a condition may result in the revocation of the licence or the taking of steps to remedy the breach should the licensee fail to comply with a notice to do so.
 - iii. Prior to any Stage 2 commencement, every holder of a tables and chairs licence will be contacted concerning their intentions to open and when. Whether they are able to meet all licence criteria (appendix 2) will depend on a number of factors including the width of the highway, footfall of pedestrians, any queues likely to be forming from nearby recently opened businesses and policy changes brought in during the pandemic that particularly affect pedestrian and traffic movement. In order to trade from tables and chairs placed on the highway public safety must be the number one priority and it is likely that very few premises will meet the criteria to trade safely.

The latest estimate from the Licensing Team is that only 20 premises will be permitted to trade from tables and chairs during Stage 2 assuming 2m social distancing is required. If the distancing guidelines are reduced to 1m, the estimated number of premises permitted to trade may increase to 40. Officers will explore the potential to expand this number by reallocating carriageway space for tables and chairs, where it is safe and practical to do so. In such locations, tables and chairs will be privately managed but available for public use.

- iv. Where licences have expired prior to the commencement of Stage 2 but were still in force at the beginning of January 2020, the premises will be able to resume use of the tables and chairs when the suspension is lifted for the number of weeks it was unable to trade prior to the licence expiring without having to wait for a new application to be approved. The premises will however still be required to submit an application and, once granted, the annual fee will be backdated until the date they commenced trading. The renewed licence will be for 12 months excluding the number of weeks lost during Stage 1 (see Appendix 4 for a worked example).
 - v. Stage 3. It is likely that some premises who wish to commence trading at the commencement of stage 3 will have had their licences expire during stage 1 or Stage 2. In these circumstances the same process as outlined in paragraph 16(iv) will be followed..
 - vi. Officers will review the approach in this report at least weekly and as Government guidance and legislation changes.
 - vii. The method outlined in the appendices of the Tables and Chairs Policy for granting refunds (See Appendix 1 below), may be changed slightly. This will be decided on a case by case basis according to which stage the business re-commenced trading and if/when their current licence expired.
 - viii. A decision board will be convened constituting of M&CP Licensing Officers and DBE Transportation Officers to review the evidence and decide upon the re-instatement of licences.
17. A fully refreshed and updated Tables and Chairs Policy will be brought back to this committee for decision once Stage 3 is reached, this will be fully aligned with the City Transport Strategy and take into account any permanent changes to the City's streets that may be agreed.

Corporate & Strategic Implications

18. 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

19. It is extremely difficult to calculate the exact financial implications when following the procedures outlined in this report due to a number of unknowns. However, estimates for each phase have been made and are shown in Appendix 3. It should be noted that all licensing fees are set to ensure the full cost recovery of performing the function and must not be used to generate a profit.
20. If all traders decided to wait for stage 3, and stages 1 and 2 were for a combined length of 3 months, there would be an approximate budget loss of £38k. If stages 1 and 2 were for a combined length of 6 months, there would be an approximate loss of £66k. This would reduce to £60k and £54k respectively if 20 or 40 businesses were permitted to trade at 50% capacity during stage 2.

Conclusion

21. The criteria officers will apply, in line with the five principles when re-instating tables and chairs licences to the City over the coming phases of lockdown easing have been clarified. This enables officers, as lockdown restrictions are eased, to provide additional space on the City's streets for people to walk whilst maintaining social distancing. City residents, workers and visitors are able to use the City's streets safely and reduce road danger. This is balanced with the needs of the hospitality sector to continue to operate within the confines of the social distancing guidance.
22. Officers will keep this approach under review at least weekly and as Government legislation and guidance changes.

Appendices

Appendix 1

City of London Tables and Chairs Policy and Procedure May 2014, available on:
<https://www.cityoflondon.gov.uk/business/licensing/tables-and-chairs/Documents/tables-and-chairs-policy.pdf>

Appendix 2

Detailed criterion for re-instating a tables and chairs licence during COVID-19 pandemic.

Appendix 3

Summary of tables and chairs indicative number of licences and associated income by lockdown phasing.

Appendix 4

Examples of typical questions and answers.

Background Papers

City Streets: Covid-19 recovery 14th May 2020

City streets: transportation response to support covid-19
Recovery - phase 2 2nd June 2020

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City of London Tables and Chairs Policy and Procedure May 2014.

The above policy can be found on:

<https://www.cityoflondon.gov.uk/business/licensing/tables-and-chairs/Documents/tables-and-chairs-policy.pdf>

Detailed criterion for re-instating a tables and chairs licence during COVID-19 pandemic.

In considering whether or not to re-instate a licence, the City Corporation will have in mind environmental and public safety considerations, together with other relevant Council policies including the five key principles agreed at your Committee on 2 June 2020.

1. To recognise the need to nurture a thriving economy in our City
2. To put safety first
3. No privatisation of public space
4. Having regard for space required to queue outside premises
5. Having regard to new or existing public seating nearby

Specific factors to be considered will include the following: (the number in brackets refers to one or more of the agreed key principles above where relevant)

- Easing of the criteria to permit tables and chairs on the highway where this is legally possible (1)
- Extending licences in accordance with the criteria outlined in paragraph 16 (1)
- Issuing refunds in line with paragraph 19 (1)
- The width of the highway (2)
- Current social distancing guidelines (2)
- Pedestrian footfall, especially at peak times. (2)
- Suitable access to all members of the public using the highway. (2)
- The presence of existing street furniture. (2)
- any other factors which might put safety at risk. (2)
- Adherence to condition on current licences allowing public access to tables and chairs licensed to be placed on the highway (3)
- Queues likely to be forming from business or nearby recently opened businesses (4)
- The number of other permissions issued for areas in or near the proposed permitted area (4) & (2)
- Queue management, particularly with regard to social distancing. (4) & (2)

- Policy changes brought in during the pandemic that particularly affect pedestrian and traffic movement. (5)
- Proximity to existing public seating or new public seating areas provided as part of the COVID-19 recovery programme (5)
- The potential to safely reallocate carriageway to provide space for tables and chairs that are privately managed but clearly signed as available for public use (1, 2, 3).
- Impact of the proposed permission on noise and the amenity of neighbours.

Note on footway width:

Many of the streets in the City are narrow with footpaths that only have the minimum permitted 2.2 metres remaining (the T&C Policy requirement) once tables and chairs are in place. In these locations, officers would not recommend that the tables and chairs licence is reinstated while social distancing requirements are in place.

In some streets there may be sufficient width to accommodate pedestrian passing in either direction and sufficient space between a person seated at a table. However, under current social distancing requirements this would need a pavement width of **five metres**. This could be subject to change subject to latest Government advice.

There are very few, if any, streets in the City of London that meet this requirement.

Table 1. Summary of indicative number of tables and chairs licences by lockdown phasing.

	Pre-COVID	Stage 1 Lockdown	Stage 2 Lockdown Easing 2m	Stage 2 Lockdown Easing 1m	Stage 3 Return to normality
Number of licences	138	0 (all suspended)	<20 (Estimate)	<40 (Estimate)	138

Table 2. Estimated Impact on Income

	With no COVID	If all traders continue after a 3-month lockdown*	If all traders continue after a 6-month lockdown*	If all traders continue after a 6-month lockdown* AND 20 traders at 50% capacity for 3 months**	If all traders continue after a 6-month lockdown* AND 40 traders at 50% capacity for 3 months**
Likely Income 2020/21	115k	77k	49k	55k	61k
Loss during 2020/21	0k	38k	66k	60k	54k

*Based on current renewal profile

**Assuming all licences are of an equal amount, their expiry date is spread evenly throughout the year, and a 50% refund is given for 3 months trading under capacity (stage 2)

Tables and Chairs – Questions and Answers
relating to the reinstatement/renewal of licences
and associated fees

Stage 1

- Q.1 My licence is still current although it has been suspended due to the COVID-19 lockdown. When I eventually recommence trading I would have lost 18 weeks during which I have not been permitted to trade. My current licence is due to expire on 1st November 2020. When will my unsuspended licence now expire?
- A.1 Your current licence will expire on November 1st plus an additional eighteen weeks. Once unsuspended, your licence will then expire on 7th March 2021.
- Q.2 My licence actually expired 3 weeks after lockdown commenced. I am not trading again until lockdown finishes, and I can trade normally again. Will I need a new licence when I begin trading again?
- A.2 Your current licence, although expired, was actually suspended from 21st March. When you commence trading, and your licence is unsuspended, it will still have 3 weeks to run i.e. the number of weeks you were not permitted to trade. You will then need to apply for a new licence to begin once the 3 weeks have passed.

Stage 2

- Q.3 I intend to start trading as soon as I am legally permitted, which I understand will be 12 weeks into lockdown. I know that due to having to follow social distancing guidelines, I will only be able to operate using half of my tables and chairs. My current licence does not expire until 15th October but I would have already lost 12 weeks trading. Will my licence still expire in October?
- A.3. As soon as you commence trading your licence will be unsuspended. As in answer 1, your licence will have 12 weeks added to it (as you were not permitted to trade during this period) and will therefore expire on 7th January 2021.

However, for each week that you will be trading under capacity you will receive a pro rata refund. i.e. If your fee was the equivalent of £50 a week, you will receive a refund of £25 for each week you can only use half of your licensed tables and chairs.

Q.4. My licence actually expired 5 weeks after lockdown commenced. I intend to trade as soon as I am legally permitted although I know I will still have to comply with social distancing guidelines. As my licence has expired will I have to apply for a new licence?

A.4. Your current licence, although expired, was actually suspended from 21st March. When you commence trading, and your licence is unsuspended, it will still have 5 weeks to run i.e. the number of weeks you were not permitted to trade. You will then need to apply for a new licence to begin once the 5 weeks have passed.

Q.5. My licence expired in February this year before lockdown started. I did not renew as I guessed lockdown would happen and I did not want to waste my licence fee. Can I start trading either with a limited number of tables and chairs or after lockdown when things go back to normal?

A.5. If you had a current licence on 1st January 2020 then you can commence trading as soon as you are legally able - either during stage 2 (probably with a reduced number of tables and chairs) or at the commencement of stage 3 using the same number of tables and chairs as your recently expired licence.

You must immediately apply for a new licence which will be backdated to the date you recommence trading (whether that be during stage 2 or stage 3). If you commence trading during stage 2, with a reduced number of tables and chairs due to COVID-19 restrictions, your yearly fee will be reduced according to the actual number of tables and chairs you are permitted to use.

For example, if you obtain a new licence which is the equivalent of £50 per week and during stage 2 you are only permitted to use half of your licensed tables and chairs then your fee will be reduced to £25 for each complete week this continues. If stage 2 lasts in excess of two months, your full fee will be charged but a refund will be made as soon as it is possible to calculate the number of reduced trading weeks you had.

If you continued to trade once your licence expired in January this will be taken into consideration when calculating your annual fee and the expiry date of the renewed licence.

Stage 2 or Stage 3

Q.6. I've never had a tables and chairs licence but wish now to apply in order to kickstart my business. What do I have to do?

A.6. You will have to apply for a licence in the normal, pre-lockdown, manner. If you are not sure how to do this then please look at our web pages or contact licensing on licensing@cityoflondon.gov.uk.

Current legislative requirements require an application to be made and a 28-day consultation period to be carried out. It has been suggested that current legislative requirements may be eased in order to assist businesses however, this has not yet been put into place. For the latest information please contact the Licensing Team on the above email address.

Please note: Restrictions due to COVID-19 are unprecedented and, in order to assist businesses as much as possible, we have taken the above steps in order to enable trading to commence as early as legally possible. It is impossible to cover every trading option above so if you have a question do not hesitate to contact the Licensing Team on licensing@cityoflondon.gov.uk.