

Committee(s) Planning & Transportation Committee	Dated: 23 July 2024
Subject Business and Planning Act 2020 as amended by Levelling Up and Regeneration Act 2023: Permanent pavement licence regime.	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	Vibrant Thriving Destination Flourishing Public Spaces
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Gavin Stedman, Port Health and Public Protection Director	Planning & Transportation: For Decision
Report authors: Aggie Minas, Licensing Manager Rachel Pye, Assistant Director Public Protection	

Summary

The City Corporation recognises the positive contribution and vibrancy that outdoor hospitality brings to its streets, creating attractive and successful places for people to socialise in.

On 31 March 2024, the government commenced the pavement licensing provisions laid out in the Levelling Up and Regeneration Act 2023 (LURA). The provisions introduced a permanent pavement licensing regime in England to replace the temporary provisions (the 2020 regime) introduced by the Business and Planning Act 2020 (the Act). This permanent regime (the 2024 regime) retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes, outlined in this report, to ensure the long-term sustainability of the model.

The LURA introduces several new provisions including the ability to set fees on a cost recovery basis subject to a maximum cap, the ability to determine the duration of licences up to a maximum of two years, changes to the consultation timelines, and new enforcement powers. Government guidance on pavement licensing (the Guidance) has also been amended and the City Corporation must have regard to the Guidance in exercising its pavement licence functions.

This report sets out the matters considered by the Licensing Service in setting the proposed fees; the rationale for the proposed licence duration; and a review of the City Corporation's standard conditions and AI-Fresco dining policy (the Policy), incorporating the LURA amendments, and having regard to the Guidance. The policy sets out the City Corporation's strategy aimed at supporting businesses in optimising the use of external space by facilitating the pavement licence process whilst maintaining public safety, accessibility, and pedestrian comfort levels when granting licences.

Recommendation(s)

Members are asked to:

1. Note the amendments to the Act as set out in paragraph 2.
2. Approve the fees set out in sub-paragraph 4.5.
3. Approve the licence duration period set out in sub-paragraph 5.4.
4. Approve the City Corporation standard conditions set out in Appendix 1.
5. Approve the revised draft policy attached as Appendix 2, as an interim policy with immediate effect, with the proviso that the Licensing Service carries out a public consultation for a period of 4 weeks and brings the results of that consultation back to this Committee at its next meeting.
6. Note the proposal in subparagraph 9.4 for the Licensing Service to explore the option of establishing a new sub-committee consisting of members drawn from this Committee and Licensing Committee, with the purpose of hearing any appeals made by applicants against officer decisions to partly grant or reject pavement licence applications. The proposal will be brought back to this Committee at its next meeting.

Main Report

1. Business and Planning Act 2020

- 1.1. The Business and Planning Act 2020 (the Act) was given Royal Assent on 22 July 2020, and introduced a number of measures with the purpose of supporting the hospitality sector to operate whilst managing the risks of the COVID-19 pandemic.
- 1.2. This included temporary fast-track provisions and reducing regulatory barriers for businesses serving food and drink to apply for permission in the form of a pavement licence, to place furniture on the highway for the purposes of seating and serving customers outdoors, in connection with the use of their premises.
- 1.3. Prior to this, businesses had to apply for a ‘tables and chairs’ permission under the provisions of the Highways Act 1980, which had a more complex and lengthier consultation period.

2. Levelling-up and Regeneration Act 2023 amendments to pavement licensing

- 2.1. On 31 March 2024, the government commenced the pavement licensing provisions laid out in Schedule 22 of LURA, amending the Act as follows:
 - a) Increase in the fee local authorities can charge applicants, from £100 to a maximum of £350 for premises which already hold a pavement licence, and a maximum of £500 for new applicants. The fee, intended to allow local authorities to recover the costs of processing, monitoring, and enforcing licences, is to be set by the local authority.

- b) Extend the maximum duration of pavement licences from 1 year to 2 years. The length of a licence is however at the discretion of the local authority.
- c) Extend the public consultation period and local authority determination period from 7 days to 14 days, therefore a total of 28 days from date of valid application to date of determination.
- d) Provides a streamlined renewal process for existing licence holders seeking to renew their pavement licence on the same terms and conditions as before.
- e) Provides that pavement licences can be amended by the local authority with the consent of the licence holder if it is considered that the conditions on the licence are not being met.
- f) Prohibits a local authority from granting a tables and chairs licence under the old regime (Highways Act 1980) if a pavement licence is capable of being granted under this Act.
- g) A new enforcement schedule providing powers to the local authority to give notice to businesses who have placed furniture on the highway without the required licence and to remove the furniture if the notice is not complied with.
- h) Scope for an internal review of officer decisions to a relevant committee.

3. Current Position

3.1. Since the introduction of the Act, there has been an increased demand for outdoor space in the City of London by businesses wanting to place tables, chairs and other associated furniture on the highway, and the trade has made it clear that the pavement licence regime has been a key part of their economic growth, assisting their ongoing trade and enabling them to thrive.

3.2. Applications for pavement licences in the Square Mile have been received and determined as follows:

Year	Year 1 (Aug 2020 - July 2021)	Year 2 (Aug 2021 - July 2022)	Year 2 (Aug 2022 - July 2023)	Year 3 (Aug 2023 - July 2024)
Total received	166	184	198	187
New	166	112	92	97
Renewal	n/a	72	106	90
Refused	6	6	2	4
Withdrawn	1	7	3	10
Surrendered	1	1	5	0
Live licences	158	170	188	173

- 3.3. There are currently 173 pavement licences issued in the Square Mile, which are all due to expire on 30 September 2024.
- 3.4. The government has set out transitional arrangements in the Guidance, which enable existing licence holders to retain their licences granted under the 2020 regime until the expiration date on their licence. Those licence holders will be able to renew their licences on the same terms under the 2024 regime.
- 3.5. If a licence holder wishes to amend their licence, this will be deemed as a new licence application as there are no provisions in the 2024 regime to vary a licence.
- 3.6. A business without an existing licence must apply for a new licence.

4. Fees proposal

- 4.1. Using data currently available to it, the Licensing Service has carried out a cost calculation of the administrative, compliance and enforcement work in respect of pavement licences. Whilst the administrative function has been well established since 2020, the compliance and enforcement costs are not fully realised yet. This is because the Licensing Service did not initially monitor licences during the temporary provisions as the scheme was intended to remove regulatory burdens. However, with each yearly extension, complaints in relation to pavement licences have been received as follows:
- a) Year 1: none
 - b) Year 2: 13
 - c) Year 3: 41
 - d) Year 4: 52
- 4.2. Complaints relate to unauthorised furniture, furniture not laid out in accordance with approved plan causing obstruction to the highway, furniture being left out overnight, and staining of the highway.
- 4.3. Furthermore, the City Corporation's streets are undergoing a period of change in terms of both pedestrian numbers and changes to the highway to deliver the City Corporation's public realm enhancement strategies. To ensure the safety of residents, workers and visitors in the Square Mile, the Licensing Service will ensure compliance with the licence terms and conditions through its proactive inspection regime and will continue to investigate any complaints received.

4.4. A breakdown of the cost calculation is as follows:

	New Licence Grant	Relating to an existing licence (renewal)	Relating to an existing licence (non - renewal)
Pre-application advice & processing application	£106	£59	£91
Site visit, review of consultee responses, draft report with recommendation	£267	£58	£225
Issue licence, update Uniform & GIS systems	£66	£35	£45
Appeals & Policy costs	£55	£28	£26
Compliance and Enforcement costs ¹	£0	£168	£42
Total	£494	£348	£410

¹ Compliance and enforcement costs do not include any cleansing costs. Licence holders are required, by way of condition on their licence, to regularly clean their authorised area to prevent staining of the highway. However, additional sweeps or washes may be required by the City Corporation's Cleaning Service to preserve the clean image of the Square Mile. This will be monitored and factored into future cost calculations where necessary.

4.5. Based on the above calculations, the Licensing Service recommends the fees for new licences are set at the statutory cap of £500.00, and the fee for applications relating to existing licences is set at the statutory cap of £350.00. This is with the aim of administering the pavement licence regime on a cost-recovery basis, notwithstanding any additional compliance and enforcement costs, or cleansing costs that may arise as the 2024 regime beds in.

4.6. Further cost calculations will be carried out annually and reported back to this Committee to ensure the fees remain set on a cost recovery basis as far as possible considering the statutory cap.

4.7. A benchmarking exercise with neighbouring boroughs has found that the following authorities are charging the maximum permitted fee:

	New Grant	Existing Licence	Duration of Licence
Hackney Council	£500	£350	3 months
Tower Hamlets	£500	£350	6 months
Islington	£500	£350	6 months
Camden	£500	£350	12 months
Westminster	£500	£350	6 months

5. Duration of Licences

- 5.1. LURA extends the maximum duration of licences from 12 months to 2 years but enables the local authority to specify the duration of licences granted within its geographic area. Paragraph 4.7 above indicates the variance in licence duration from one authority to another.
- 5.2. The guidance asks local authorities to support business and be pragmatic when specifying the duration of the licence.
- 5.3. Under the temporary provisions, this Committee determined the duration of pavement licences to be 12 months.
- 5.4. A 12-month licence is the most viable option in terms of administration and managing the City Corporation's streets. A licence for any lesser period of time would create an administrative burden for the Licensing Service with current resources, unless a shorter period is justified due to future changes in the use of road space, or other good reason is identified during the consultation process. A 12-month review would enable officers to monitor pedestrian numbers, changes to the highway, public realm enhancements and demand for external public space.

6. Conditions

- 6.1. The Act sets out two mandatory national conditions which apply to all pavement licences granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition.
- 6.2. In addition to the two mandatory national conditions, the local authority may determine a set of local conditions that apply to all licences granted within its geographical area. Any local conditions must be published by the local authority before they can be applied to licences. The proposed City Corporation local conditions have been revised to have regard to LURA and the Guidance. These are attached as Appendix 1.

7. Financial implications

- 7.1. When the Act was implemented in 2020, the City Corporation waived the application fee in Year 1 (August 2020 – July 2021) to support the hospitality sector in its recovery from the effects of the pandemic. The fee waiver was extended by this committee for Year 2 (August 2021 – July 2022) and Year 3 (August 2022 – July 2023).
- 7.2. The current fee of £100, statutorily capped by the 2020 regime, was approved in August 2023, and has been charged for all applications since then. This fee cap was imposed by government to reduce the financial burden on businesses as they recovered from the pandemic and did not reflect the actual cost of local authorities processing applications, neither did it cover compliance and enforcement costs.

7.3. In 2020, the City Corporation estimated a basic cost of £180 to process a new application and £140 to process a renewal application. These costs were estimated on the basic administration of the process and did not include policy costs, site assessments, pedestrian counts, cleansing, or compliance and enforcement costs. This is because there was no data available to calculate the additional costs in 2020 and it was not anticipated that the scheme would be extended year on year requiring an annual review of policy and procedures, site visits and inspections.

7.4. Using that original estimate, the basic gross cost of administering the pavement licence scheme each year was as follows:

	Cost of new applications	Cost of renewal applications	Total cost of all applications
Year 1 Aug 2020- July 2021	£28,440 (based on 166 new applications)	none	£29,880
Year 2 Aug 2021- July 2022	£20,160 (based on 112 new applications)	£10,080 (based on 72 renewals)	£30,240
Year 3 Aug 2022- July 2023	£16,560 (based on 92 new applications)	£14,840 (based on 106 renewals)	£31,400
Year 4 Aug 2023- July 2024	£17,460 (based on 97 new applications)	£12,600 (based on 90 renewals)	£30,600

7.5. For the reasons set out in paragraph 7.2 and 7.3, the cost of the temporary pavement licence scheme has been under-estimated; the latest estimate of costs suggest it is likely that the true cost was at least double that shown above.

7.6. However, costs have been partly offset by the government new burdens funding received of £80,000 in year 1 (including set-up) and £35,000 in each of years 2-4. During year 4, pavement licences also generated an income of £18,700.

7.7. Assuming all 173 existing pavement licences are renewed under the 2024 regime, this will generate an income of £60,550, compared to budgeted income of £25,000. The cost of administering these applications will not be known until 25/26 when a full cost calculation will be carried out.

8. Al- Fresco Dining Policy

8.1. The Policy, approved in August 2023, sets out the City Corporation's strategy aimed at supporting businesses in optimising the use of external space by facilitating the pavement licence process whilst maintaining public safety, accessibility, and pedestrian comfort levels when granting licences.

8.2. The Policy has been completely revamped to incorporate the LURA amendments to the Act and has regard to the latest government guidance for pavement licences. A copy of the draft policy is attached as Appendix 2.

8.3. Whilst there is no statutory consultation required on the policy, due to its complete revamp, the Licensing Service seeks approval from this Committee to conduct a public consultation. This will give stakeholders an opportunity to give their views on the new policy. Stakeholders include businesses applying for licences, responsible authorities commenting on applications, organisations representing people with disabilities, residents, and other interested parties. The consultation period will last for 4 weeks.

9. Appeals against officer decisions.

9.1. There is no statutory right of appeal against a decision to partly grant or reject an application. The Guidance suggests an internal review process, for example, local authorities permitting appeals to their Licensing Committee.

9.2. The City Corporation's terms of reference for this Committee states that Planning and Transportation Committee is responsible for '*all functions of the Common Council as local highway, traffic, walkway and parking authority (other than in respect of powers expressly delegated to another committee) and the improvement of other open land under S.4 of the City of London (Various Powers) Act 1952.*' The granting of pavement licences is a function of the highway authority.

9.3. The Business and Planning Act 2020 continues to allow temporary amendments to the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. This is currently in place until 31 March 2025, however a public consultation has been issued by Government to run until 11 July 2024, to consider making this easement permanent by a Legislative Reform Order, and to explore the options of unifying the pavement and alcohol licence permissions.

9.4. Notwithstanding the outcome of this consultation, approximately 65% of pavement licences issued in the Square Mile are in respect of premises that also benefit from a premises licence that permits the sale of alcohol. To ensure that policy standards are met under both regulatory regimes, officers propose to explore the option of establishing a sub-committee consisting of members drawn from both this Committee and Licensing Committee, with the purpose of hearing any 'internal reviews' or appeals against officer decisions on pavement licences.

10. Corporate & Strategic Implications

10.1. The proposals within this report will help to meet two of the outcomes contained within the Corporate Plan 2024-2029, namely:

- Vibrant Thriving Destination
- Flourishing Public Spaces

11. Conclusion

- 11.1. The City's Al Fresco Eating and Drinking Policy has been revised to incorporate legislative changes on duration of licences, to reflect changes to the City's footfall, to define the application and determination process for 2024, and to set an application fee. The revised policy balances the need to support businesses in the City in optimising the use of outdoor space safely whilst encouraging workers and visitors to enjoy the City's vibrant offer, with that of providing a safe, accessible, and comfortable space for pedestrians.

Appendices

Appendix 1

City Corporation Standard Conditions

Appendix 2

Revised Al Fresco Eating and Drinking (Business and Planning Act 2020) Policy – August 2024

Background Papers

[Planning and Transportation Report 14 July 2020](#)

[Planning and Transportation Report 18 July 2021](#)

[Planning and Transportation Report 19 July 2022](#)

Business and Planning Act 2020

Levelling Up and Regeneration Act 2023

Government Guidance on Pavement Licensing.

Aggie Minas, Licensing Manager

T: 020 7332 1269

E: aggie.minas@cityoflondon.gov.uk