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| Committee(s) | Dated: |
| Planning and Transportation Committee – For decision Port Health and Environmental Services – For information | 31 March 2020 19 May 2020 |
| Subject: Advertising ‘A’ Boards Policy | Public |
| Report of: Director of the Built Environment | For Decision |
| Report author: Thomas Parker – Department of the Built Environment | |

Summary

The City of London Transport Strategy commits to keeping streets clear of obstructions including by not permitting A-Boards to improve accessibility and inclusivity for all users of City streets. This report takes forward detailed implementation.

The report outlines our background strategic and policy position for taking forward Proposal 17 in respect of A-Boards. The report reviews our existing approach to managing A boards and other potential opportunities, including a review of Transport for London’s Operation Clearway.

These approaches are considered unsuitable for improving accessibility City streets as they do not provide a solid or clear enforcement base or mandate. Non-permittance of A-Boards provides a clear and consistent approach to supporting the ambitions of both the Corporate Plan and Transport Strategy.

The report concludes that A-Boards should not be permitted on any public highway in the City. Due to the COVID-19 pandemic, education and enforcement of this policy will not take place until business’ trade has returned to normal, likely a few months after reopening. This date is to be delegated to the Chair and Deputy Chairman of the Committee with the Director of the Built Environment.

Recommendation(s)

Members are asked to:

- Agree to option C that A-Boards should not be permitted on public highway in the City.
- Agree to delegate the decision to begin implementing the education and enforcement plan to the Director of the Built Environment in discussion with the Chair and Deputy Chairman of the Planning and Transportation Committee.

Main Report

Introduction

1. The City of London's 25-year Transport Strategy aims to ensure that the Square Mile is a healthy, attractive and easy place to live, work learn and visit.
2. It is imperative that this vision for City streets is achieved inclusively, ensuring that everybody can travel easily, comfortably and confidently to and around the Square Mile.
3. Proposal 17 commits the City Corporation to keep pavements and streets free of obstructions. This addresses various highway obstructions, from managing outdoor drinking to avoid blocking footways, considered provision of outdoor seating and effective management of dockless cycles. It also includes not permitting A-Boards on the public highway. This report considers the strategy for taking forward the A Board element of Proposal 17. Other elements are also being actively considered and addressed.
4. The Transport Strategy was widely consulted on prior to adoption through an extensive programme of stakeholder engagement. Proposal 17 received 1960 responses with an average support level of 4/5, indicating strong support. Only 26 comments opposed not permitting A boards.
5. Many groups representing people with mobility impairments have called for A-Boards to be banned, including the Royal National Institute of Blind People (RNIB) and Transport for All, who have stated that;

"A-Boards pose significant issues for both wheelchair users, those with mobility impairments and visually impaired people. They physically block the walkways, forcing disabled people either into the road or funnelled into the path of others. We need clear, accessible walkways that don't force conflict with overcrowding."

Duty as a highway authority

6. The City is the Local Highway Authority for most City streets and as such also has an obligation to ensure compliance with the Highways Act 1980. The relevant sections of this Act are:
 - a) Section 137 - if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway it is an offence and liable to a fine on Level 3 of the Standard Scale (currently up to £1,000.00).

- b) Section 148(c) - if, without lawful authority or excuse a person deposits anything whatsoever on a highway to the interruption of any user of the highway he is guilty of an offence and liable to a fine (again, Level 3 on the Standard Scale).
- c) Section 149 – if anything is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith. In the event of non-compliance, a court order may be obtained authorising the removal and disposal of the offending item. In the event that the highway authority considers the item to constitute a danger to users of the highway it can remove the item forthwith and, ultimately, seek a court order for its disposal.
- d) Section 149 (3) of the Act allows a Local Authority to recover its 'expenses' incurred in removal, but not for storage. A charge of £40 for removal of item if owners come forward to claim it may be levied. This charge is to be treated as a measure of deterrence rather than securing an income from this service.
- e) Section 130 – the highway authority has a duty to assert and protect the rights of the public to use and enjoyment of the highway.

2014 policy

- 7. In July 2014, a paper was brought forward to the Planning and Transportation Committee to formalise the City Corporation's position on A-Boards. Before this policy position was adopted, the City Corporation did not have a rigid position on A-Boards and took a neutral view, taking each case on its merits.
- 8. The recommendation agreed by members was that A-Boards on footpaths less than 2m wide will normally be regarded as giving rise to a highway obstruction and removal should be secured, with persistent offenders risking prosecution. On footpaths over 2m wide, an assessment would be made on a case by case basis as to whether A-Boards caused an obstruction.
- 9. Since this policy was adopted in 2014 the City has continued to grow, with over a half a million people working in the City and over 90% of journeys involving walking. New high-density developments have become occupied, with more being built.
- 10. In the context of both this and the Transport Strategy's objective of ensuring the Square Mile is accessible to all, it is considered that the 2014 policy should be reviewed to take account of changed circumstances and increased pedestrian footfall.

Alternative approaches

Transport for London (TfL) – Operation Clearway

11. Since 2016, TfL have had a programme to deal with unauthorised obstructions on the public highway called Operation Clearway. This programme uses engagement, education and enforcement tactics to reduce unauthorised obstructions on the public highway.
12. Operation Clearway uses Revenue Protection Inspectors and Roads and Transport Enforcement Officers. They are dispatched to priority areas on the Transport for London Road Network (TLRN) to engage with businesses to improve compliance with the Highway legislation as well as gathering evidence for enforcement activity, whether that be formal warning, Fixed Penalty Notices (FPNs) or prosecution, where this is required.
13. While not a zero-tolerance policy across all TfL streets, this robust and proactive method more formally resources and targets highway obstructions beyond the existing policy provision of the City Corporation. The approach has achieved over 80% compliance with businesses engaged in the campaign.
14. Operation Clearway fits within the remit of the existing policy but with dedicated, targeted and well-resourced enforcement.

Hybrid Approach

15. Another approach to managing A-Boards could be a hybrid system which slightly modifies the 2014 Policy and considers the nature and use of the street in considering the acceptability of A-Boards.
16. On footways less than 3m wide, A-Boards would be regarded as an obstruction and not permitted.
17. On footways greater than 3m wide, whether A Boards were considered acceptable would depend on the volume of people using the footways.
18. This option is not recommended. Pedestrian comfort levels are an indexed score used to assess footway crowding. The Transport Strategy commits to achieving a B+ pedestrian comfort level across the whole of the Square Mile. It is considered that to permit A-Boards on highways more than 3m wide would compromise the achievement of a B+ comfort level. Many wider footways are on busier routes which routinely have very high footfall. Items placed on the footway would be likely to restrict free flow of pedestrians, increase the incidence of conflicts between pedestrians and risk diversion of pedestrians into the carriageway where the risk of conflict with vehicles (including bicycles) would arise.

London Borough of Hackney

19. The London Borough of Hackney have gone further and in March 2013 resolved that no A-Boards would be allowed on public highway in Hackney (although they would be allowed on private land subject to planning requirements on advertising).
20. This position is supported by an information and enforcement programme. This consists of educating businesses who use A-Boards on the issues they can cause, before progressing to formally writing to the business before resorting to fixed penalty notices and confiscation.
21. We have engaged with Hackney to review the effectiveness of their policy. While unable to provide exact figures, their enforcement director has informed us that almost all businesses remove their A-Boards after discussions with enforcement officers and formal enforcement is rarely required.

New policy options

22. There are three potential options for our A-Board policy
 - a) Do nothing: Retain the 2014 Policy without amendment
 - b) Amend the 2014 Policy: The amendments would adopt the Hybrid Approach set out at paragraphs 15 - 17
 - c) Resolve not to permit A boards on the public highway in the City

Evaluation

23. The Transport Strategy acknowledges the importance of facilitating movement of people by ensuring walking is convenient, safe and inclusive. It also recognises the need for the City's fixed amount of street space to accommodate past (and future) growth. At the same time, businesses sometimes wish to use A Boards, especially if competing premises have A Boards or if the premises are in less conspicuous locations. These competing interests must be weighed in considering the appropriate option.
24. Regard must also be had to the Equalities Impacts outlined below. It is considered that given the particularly intensive use of the City's highways, A Boards are likely to impede free access over footways for pedestrians, with potential adverse impacts as outlined in paragraph 18 above.
25. Options (a) and (b) are not recommended, and Option (c) is proposed. It is considered that any adverse impacts for businesses will be mitigated by providing

a consistent approach so that no one businesses can secure a competitive advantage through the use of A-Boards, and by communicating with businesses about alternatives to A-Boards.

26. The ban will include City Corporation A-Boards but not extend to road signs or other statutory signage related to highways use.

Legal implications

27. The courts have held that some encroachments are so minor as to fall outside the ambit of criminal sanction (the “de minimis” rule). However, this rule is limited to encroachments that are “fractional” or “trifling”¹. Due to the large volumes of people who use the City’s footways at peak times, it is unlikely that an obstruction could be considered as de minimis.

28. All other legal implications are in the body of the report.

Next steps

29. Should members approve the recommendation, officers will agree an education and publicity programme with impacted teams ahead of implementing the new policy. Where A-Boards remain in place after the education and publicity campaign, officers will visit non-compliant premises and request removal. If non-compliance persists, business owners will be written to, after which, where removal powers are available, remaining A-Boards will be removed.
30. This education and enforcement programme will be managed by the Cleansing team and developed with the input of City Transportation.
31. A monitoring strategy will also be put in place to report on the number of A boards removed by occupiers or by enforcement. This is likely to include annual reporting to Members.

Strategic Implications

32. Approval of Option C supports the delivery of Corporate Plan High Level Action 9d – Improve the experience of arriving in and moving through our spaces.
33. The adverse impacts of A-Boards on pedestrian flows, pedestrian comfort and safety particularly affect blind or partially sighted people, including long cane users, and people who may require wider footway widths such as people using wheelchairs or buggies. This supports the deliverables of the Transport Strategy.

¹ Eg Torbay Borough Council v Cross QBD 1995

Conclusion

34. Officers recommend Option C - not permitting A-Boards on the public highway in the City - with the aim of reducing obstructions on the highway and to help provide an attractive, safe and inclusive walking environment.
35. Additionally, officers recommend that, due to the COVID-19 pandemic, Members agree to delegate the decision to begin implementing the education and enforcement plan to the Director of the Built Environment in discussion with the Chair and Deputy Chairman of the Planning and Transportation Committee.
36. The education and enforcement programme will not begin until trade at City businesses have not only reopened but trading has returned to normal. This likely to be a few months after reopening.

Background Papers

Advertising ('A') Boards in the City of London – July 2014

City of London Transport Strategy – May 2019

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