

Notice of meeting and agenda

Regulatory Committee

9.00 am, Friday, 21 October 2016

Dean of Guild Court Room, City Chambers, High Street, Edinburgh

This is a public meeting and members of the public are welcome to attend

Contact

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1. Order of business

- 1.1 Including any notices of motion and any other items of business submitted as urgent for consideration at the meeting.

2. Declaration of interests

- 2.1 Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

3. Deputations

- 3.1 If any

4. Executive Decisions

- 4.1 High Street Trading Licence Application Process - report by the Head of Housing and Regulatory Services (circulated)

Kirsty-Louise Campbell

Interim Head of Strategy and Insight

Committee Members

Councillors Bridgman (Convener), Blacklock (Vice-Convener), Aitken, Burgess, Cairns, Doran, Heslop, Lunn and Redpath.

Information about the Regulatory Committee

The Regulatory Committee consists of 9 Councillors and is appointed by the City of Edinburgh Council. The Regulatory Committee usually meets every eight weeks. The Regulatory Committee usually meets in the Dean of Guild Room in the City Chambers on the High Street in Edinburgh. There is a seated public gallery and the meeting is open to all members of the public.

Further information

If you have any questions about the agenda or meeting arrangements, please contact Stephen Broughton, Committee Services, City of Edinburgh Council, Waverley Court, Business Centre 2.1, 4 East Market Street Edinburgh EH8 8BG, Tel 0131 529 4261, e-mail stephen.broughton@edinburgh.gov.uk

A copy of the agenda and papers for this meeting will be available for inspection prior to the meeting at the main reception office, City Chambers, High Street, Edinburgh. The agenda, minutes and public reports for this meeting and all the main Council committees can be viewed online by going to www.edinburgh.gov.uk/cpol.

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Regulatory Committee

9:00am, Friday, 21 October 2016

High Street Trading Licence Application Process

Item number	4.1
Report number	
Executive/routine	
Wards	City Centre (11)

Executive Summary

The Council adopted a policy on street trading in 2004. The Regulatory Committee reviewed this policy on 24 June 2016 and agreed some changes. A final report containing operating principals for street trading in the High Street will be reported to committee in 2017.

The Committee has previously received reports about street trading and in particular information that the demand for stances in the High Street is significantly higher than the number of stances available.

The Council has received a growing number of complaints regarding the practice of businesses and individuals making multiple applications in the name of employees, associates and family members in order to unfairly increase their chances in the ballot for licenses. As a result of the complaints and enforcement activity by council officers a number of applicants were called to the Licensing Sub-Committee meeting on 7 October 2016.

Following consideration of these applications council officers were instructed to prepare a report with proposals to address concerns regarding street trading in the High Street and address the issue of multiple applications.

High Street Trading Licence Application Process

1. Recommendations

It is recommended that the Committee:

- 1.1 agrees that the existing policy be amended in respect of proposed conditions and changes to the application process for temporary Street Traders in the High Street as detailed in paragraph 3.9 and 3.10.
- 1.2 reaffirms that street trading on the high street is intended to be temporary in nature and given demand for space makes clear in the amended policy that traders should not expect to be trading on the High Street consistently.
- 1.3 notes the concern that the current arrangements may be unsustainable and agrees to receive a further report in Feb 2017 on the impact of the proposed changes to the application process and the ongoing feasibility of street trading on the High Street

2. Background

- 2.1 Street Trading is an optional licensing activity within the Civic Government (Scotland) Act 1982. The City of Edinburgh Council by way of resolution exercised their powers to license these activities in 1983 and adopted a street trading policy in 2004.
- 2.2 A Street Trader's Licence is required for street trading by any person. Consequently, where an employee is street trading on behalf of an employer, both individuals require to be licensed.
- 2.3 The existing policy was introduced in 2004 and has, in the main, served the Council well, however the environment of Edinburgh and the landscape setting of the capital city is an important factor in relation to investment decisions made by businesses. While it is recognised that street trading can provide an important service, this must be balanced against the impact on existing business, amenity and public safety
- 2.4 A review of the 2004 policy was undertaken and draft policy and conditions for street trading and market operators licensing were developed and these were presented to Regulatory Committee on 2 February 2015, when it was agreed to carry out a full consultation.
- 2.5 The outcome of this consultation was reported to the Regulatory Committee on 1 February 2016 when they agreed to adopted new standard conditions (see Appendix 1) in respect of Street Trading and agreed to carry out further consultation

on the current policy including the devolvement of an operating plan for a number of areas in the city centre including the High Street and Hunter Square.

- 2.6 Council officers reported to committee on 24 June 2016 that the proposed Street Trading consultation in respect of the development of operating plans for the use of public realm space would now be linked to the development of the Council's Public Space Protocol.
- 2.7 Existing street trading in the High Street has, as a matter of current policy, been of a temporary nature and stances are allocated to individuals on that basis to ensure that the High Street also remains available for other events and uses. During August the stances in the High Street and Hunter Square are considered to be part of an event space and no street trading licences are granted.
- 2.8 As part of the ongoing review of street trading policy the Committee confirmed the current policy that trading on the High Street and Hunter Square is intended to be of a temporary nature. Following representations from traders in the High Street the Council amended policy in February 2015 to introduce temporary employee licenses for street traders. The Committee amended the fee structure to include a fee for employees for temporary street trader licences. These temporary street traders' licences are issued on the understanding that the employees will provide assistance to the licensed traders but not to run a stall on behalf of someone else.
- 2.9 There are currently eight street trading stances in the High Street and five street trading stances in Hunter Square (see Appendices 2 and 3)

3. Main report

- 3.2 The demand for stances in the High Street and Hunter Square is significantly higher than the actual number of stances that are available. Due to the high demand for these stances allocation has been problematic. A number of different application processes have been tried over the years. A previous system required application being made on the first working day of the New Year and operated on a first come first served basis, this led on occasion to traders camping out overnight.
- 3.1 The most recent system invites traders to apply for the dates they wish to trade over a 2 – 3 month period and they are then allocated weekly licences through a ballot system.
- 3.2 Due to the limited number of trading stances available on the High Street and Hunter Square, only one licence is granted to a business or individual for any given weekly time period. Once an applicant's name has been drawn from the ballot and they have a stance from which to trade for a particular week, their name does not go back into the ballot for that week. Traders were previously not required to make payment in advance of their allocated dates which then led to numerous multiple applications.
- 3.3 Payment is currently required in advance however, 90% of fees in respect of unsuccessful applications can be refunded. It appears that a number of applicants apply for more dates that they want or intend to operate. Multiple licence

applications made on behalf of the same business, where identified, are not accepted.

- 3.4 It is recognised that the current system is open to abuse and traders have consistently complained about the system. A number of businesses and individuals would appear to try to circumvent the system to their advantage and make multiple applications in the name of employees, family members etc. in an attempt to maximise their opportunities for street trading, thus making it difficult for other independent traders, crafts people and small businesses to obtain licences. By adopting this type of approach some traders are attempting to create a permanent presence on the High Street despite the policy intention that it should be of a temporary nature.
- 3.5 There has been engagement with the traders since 2013 to explore ways to resolve these issues including correspondence and consultation with individual traders and representative groups. During May to July 2015, following an invitation to all street traders, Council Officers met with a number of traders in an attempt to resolve the issue of traders making multiple applications. The issues surrounding multiple applications were discussed and it was agreed with the traders that the practice would cease.
- 3.6 Over this same period following complaints about traders flouting the licensing requirements, including trading without a licence, significant enforcement activity was carried out on the High Street. Where such activity was detected, initially corrective advice was given to the relevant trader and licence holder. Traders who continued to flout the licensing requirements were subsequently reported to the Licensing Sub Committee. These actions resulted in a significant drop in the number of applications made for the September to December period in 2015. This however has not been sustained, and for the latest ballot sixty seven applications were received for the period September to November 2016.
- 3.7 A number of applicants were called to the Licensing Sub Committee meeting on 7 October 2016 as it had been alleged that they have submitted multiple applications and/or operate the business on behalf of and/or for the benefit of the business owner.
- 3.8 Following consideration of the applications council officers were instructed to prepare a report with proposal to address concerns regarding street trading in the High Street and the issue of multiple applications.
- 3.9 High Street traders have in the past offered limited solutions to the multiple application process. Council officers have considered all previous proposals made by traders and it is recommended that Committee amend the current policy and application process and adopt the following proposals on an interim basis as set out below:
 - stances will be allocated on a weekly basis (Monday – Sunday);
 - trading hours will not exceed 10:00 – 20:00hrs daily;

- Multiple applications by individuals linked to one business will not be accepted and will be returned;
- traders will require to indicate whether or not they are the sole trader and if they intend to applying for employee licences;
- traders will display in a prominent position, so that it may easily be read by such customers or suppliers, a notice containing the name of the trader and / or business and details if their trading address.
- a separate licence application will be required for each date applied for; the practice of adding multiple dates to one application will no longer be accepted;
- a separate licence application will be required for each location i.e. Hunter Square / High Street applied for; the practice of naming specific stances will no longer be accepted;
- the relevant application fee is submitted at time of application;

3.10 The application form currently requires traders to provide the following information /documentation.

- name of business and or trader;
- details of the stall to be used, including dimensions (not to exceed 8ft in length);
- wind management plan;
- type of goods sold;
- public liability insurance.

3.11 In addition it is proposed that traders at the point of application are required to provide the following information /documentation and the application form is amended to reflect this:

- tax reference of the business / trader;
- it will no longer be appropriate to produce a generic wind management plan the plan must reflect the actual stall;
- photograph of proposed stall;
- type of goods sold (which will be then detailed on the licence);
- a copy of public liability insurance including cover for employees where appropriate.

In the event that an application form does not have the relevant information and or documentation it will be considered to be incomplete and will not be entered into the ballot.

Availability of pitches 4 - 7

3.12 The Licensing Service has been notified by Property and Facilities Management - Buildings Programme Team (appendix 4) that essential maintenance work is to be

carried out to the boiler house within the City Chambers at 249 High Street Edinburgh between 9 January and 31st July 2017. To facilitate the work it will be necessary to create a secure compound directly outside the building to allow a contamination unit and skip. To ensure safe passage of pedestrians it will also be necessary to erect segregation barriers.

- 3.13 During the period of the maintenance work stances 4 – 7 will be unavailable. Council Officers have been unable to identify alternative sites to relocate stances and therefore the number of street traders on the high street will reduce by 50% during that period.

Next Steps

- 3.14 It is proposed that a further report is brought to Regulatory committee in February 2017 on the impact the proposed changes to the application process and the ongoing feasibility of trading in the High Street and Hunter Square.

4. Measures of success

- 4.1 The revised policy for trading in the high street is suitable for the needs of the city and addresses concerns raised with the Council.

5. Financial impact

- 5.1 The Council's scale of fees for licensing applications was approved with effect from 1 April 2016. Any costs from implementing policy changes will be contained within the current ring-fenced income generated from licensing fees.

6. Risk, policy, compliance and governance impact

- 6.1 The process outlined takes account of the relevant statutory provisions.
- 6.2 Matters raised in this report could be subject of legal challenge however this can be mitigated as part of the ongoing consultation process. All the proposed changes have been subject to previous consultation considerations. The development of policy in respect of street trading is part of a wider place-making role for the Council. It is essential that all the strategic aims of the Council are considered and that the licensing of street trading is consistent with these.

7. Equalities impact

- 7.1 There is no equalities impact arising from the contents of this report.

8. Sustainability impact

- 8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

- 9.1 Council officers have held a number of one to one meetings with relevant parties including licence holders, retailers, event organisers and interested parties.

- 9.2 An online consultation was carried out between 31 July and 15 November 2015, and the outcome of this process was reported to the Regulatory Committee on 1 February 2016.
- 9.3 The consultation was designed to assess the understanding of the impacts of the approach on different user groups to allow an informed decision on suitable changes to be made
- 9.4 The committee adopted the new licensing conditions however recognise that further work was required in respect of the creation of operating plans for certain areas within the city centre.
- 9.5 At the meeting on 1 February 2016 the Regulatory Committee heard from a deputation of High Street traders who advised the Committee that they were in the process of establishing a Traders Association and asked that a further consultation meeting be held with the new association in respect of the creation of the operating plans. The committee agreed that once fully constituted council officers would meet with the new association to discuss future plans for the High Street.
- 9.6 Council officers reported to committee on 24 June 2016 that the proposed Street Trading consultation in respect of the development of operating plans for the use of public realm space would now be linked to the development of the Council's Public Space Protocol. It was recognised that both the Public Space Protocol and Street Trading policy were intrinsically linked in terms of the use of the space, customer journey and officer engagement. By jointly consulting on the use of public realm space it would enable the Committee to consider its policy as part of a wider place-making role within the council.
- 9.7 It was agreed at Regulatory Committee that officers would meet with the High Street Traders association. This was agreed with that association on the basis that it would first confirm its constitution and membership. This meeting is scheduled to take place on Monday 17 October 2016.
- 9.8 The results of the Public Space Protocol consultation exercise along with proposals for the use of the public realm space is due to be completed by Autumn 2016 and the results of this consultation and proposal will be reported back to the Regulatory Committee.

10. Background reading/external references

- 10.1 Regulatory Committee – Friday 4 April 2014 – http://www.edinburgh.gov.uk/meetings/meeting/3268/regulatory_committee
- 10.2 Regulatory Committee – 2 September 2015 - [file:///H:/Item 6.4 Licensing Policy Development Street Trading 2%20\(1\).pdf](file:///H:/Item%206.4%20Licensing%20Policy%20Development%20Street%20Trading%20(1).pdf)
- 10.3 Regulatory Committee – Friday 24 June 2016 – http://www.edinburgh.gov.uk/meetings/meeting/3973/regulatory_committee

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11. Links

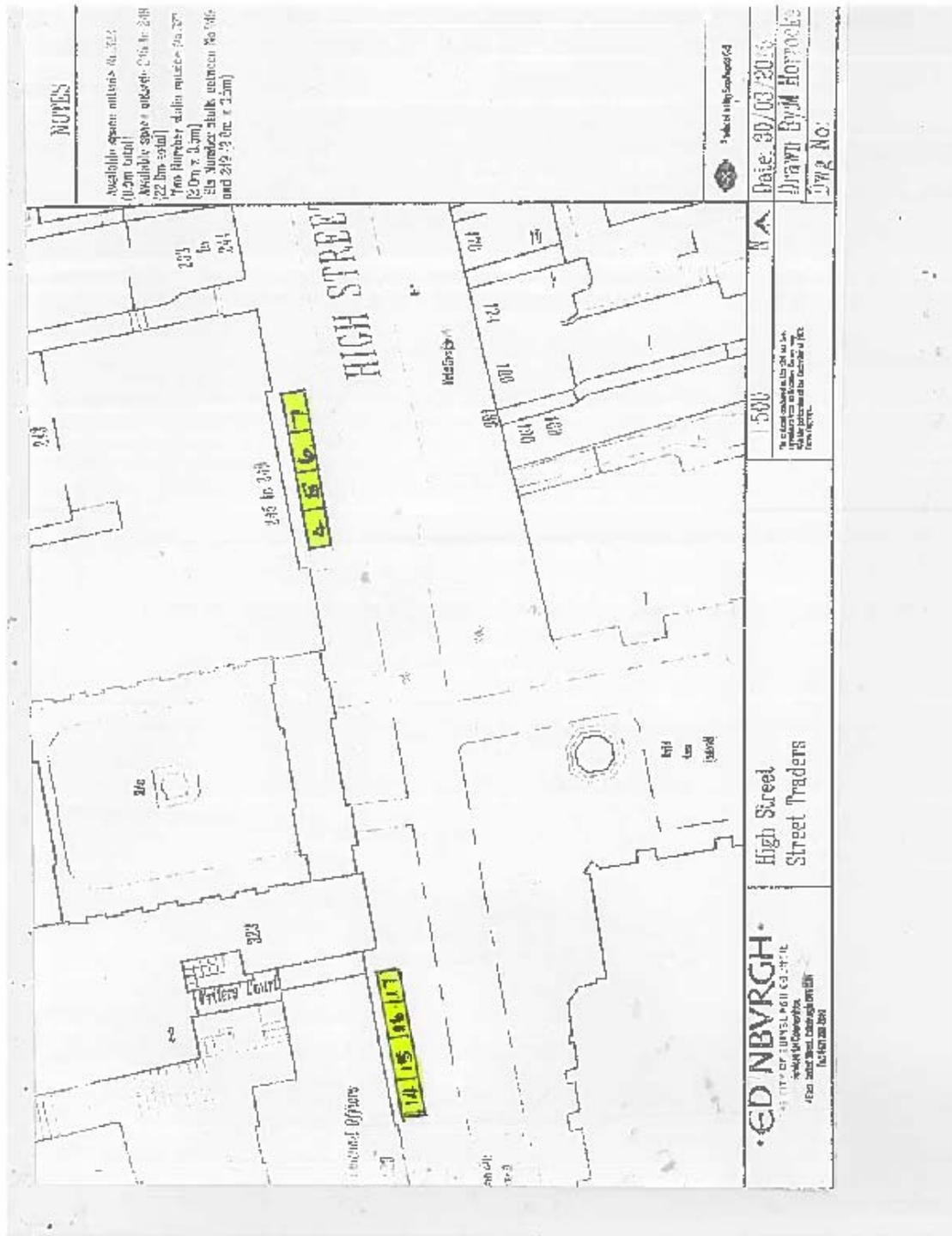
Coalition pledges	P15 - Work with public organisations, the private sector and social enterprises to promote Edinburgh to investors. P28 - Further strengthen our links with the business community by developing and implementing strategies to promote and protect the economic well being of the city.
Council outcomes	CO8 - Edinburgh's economy creates and sustains job opportunities.
Single Outcome Agreement	SO1 - Edinburgh's Economy Delivers increased investment, jobs and opportunities for all.
Appendices	Appendix 1: Standard conditions – All street traders Appendix 2: High Street Trading Stances Appendix 3: Hunter Square Stances

Appendix 1 - STANDARD CONDITIONS – ALL STREET TRADERS

1. The holder of a Street Trader's Licence shall not be less than 18 years of age.
2. The licence holder shall not carry on business on any street so as to unreasonably obstruct road users or affect their safety.
3. The licence holder shall carry on business subject to any direction which the police or authorised officers of the City of Edinburgh Council may reasonably be required to give.
4. The licence holder shall not, without the consent of the Licensing Authority, sell or offer or expose for sale any goods or carry out or offer to carry out for money or money's worth any service at any place other than as specified in their licence. In particular no goods or articles of an objectionable or indecent character shall be sold or offered or exposed for sale.
5. The licence holder shall on all occasions, when carrying on business, behave in a proper and civil manner, and shall not carry on business in such a way as to cause a nuisance or annoyance to any person.
6. The licence holder shall at all times conduct business and position any vehicle used in connection with the business in such a manner that no danger is likely to arise to any other person.
7. Where vehicles are to be used to site or locate street trading units they must follow the Highway Code at all times. This includes NOT driving over public pavements to access an area or to place the unit on a stance. Vehicles may only drive over a pavement at specific designated locations where the kerb has been lowered for this specific purpose for vehicles. Pedestrian dropped crossings should not be used. This will include any deliveries to or servicing of any unit, stance or stall.
8. The licence holder shall only trade from the location or stance detailed on the licence. Any temporary relocation of stance can only be made with the consent of the appropriate Executive Director.
9. The licence holder shall obtain all necessary and appropriate consents prior to commencing trading from any stance and in particular the consent of the owners of any land on which a stance is to be situated or which is adjacent to any stance.
10. The licence holder shall at all times when trading wear the identity card which is issued with the licence. The licence must be displayed on any vehicle or stance.
11. The licence holder shall not lend to or allow any other person to use any licence or identity card issued by the Council.
12. The licence holder shall not sub-let the use of the site to a third party.
13. Licence Holders shall have a Public Liability insurance policy to the value of £1 million
14. The licence holder shall trade only between the hours of operation stated in the licence.

15. All temporary structures shall be designed, erected and maintained to suit their intended purpose. The design and erection shall be to the satisfaction of the Council's appropriate Executive Director's
16. Traded goods must be kept on and traded from the vehicle, trailer or stall. At no time shall such goods be permitted to lie or stand on the surrounding area or be left against adjacent walls or railings.
17. Where the licence allows the holder to sell from a vehicle, kiosk or moveable stall at an approved stance, the vehicle, kiosk or moveable stall shall be capable of being speedily and easily removed.
18. At the end of trading hours on each working day, the licence holder shall immediately remove the vehicle, kiosk or moveable stall from the approved stance and all other ancillary equipment placed on or in the vicinity.
19. The licence holder shall, during business hours and at the end of each day ensure the collection and removal of any paper, garbage or other refuse which may be produced, or may accumulate in the course of trading on any pavement around the stance within a distance of 25 metres either side. If adjacent stances, to which the street trading licence conditions apply, are within 25 metres, any distance to be cleaned shall be the mid-point between the two stances.
20. Any stall or trading unit should not be connected to any utility service i.e. water, gas or electricity supplies either on a permanent or temporary basis and should not therefore be arranged by a Licence holder.
21. All generators must be used and stored in accordance with manufacturer's guidance.
22. The licence holder shall ensure that all music, amplified music and/or vocals are controlled to the satisfaction of the appropriate Executive Director.
23. The Health and Safety at Work etc Act 1974 and all other relevant health and safety legislation must be complied with at all times by the licence holder.
24. Any Authorised Officer of the City of Edinburgh, Fire Officer or, Police Constable or Council shall be permitted to enter and inspect any vehicle, trailer or stall at any time and all reasonable directions and requirements of such officers or of the City of Edinburgh Council must be complied with.
25. A Licence holder who changes his address shall within 14 days thereafter give notice thereof to the Licensing Authority and shall produce his licence to the Licensing Authority who shall update the particulars of such change of address.
26. If during the currency of the licence, the licence holder is convicted of any offence, they shall, within 28 days, provide full details of such convictions, in writing, to the Licensing Authority.

Appendix 2 - High Street Trading Stances



Appendix 3 – Hunter Square Trading Stances

