

Regulatory Committee

9:30am, Monday, 7 May 2018

Street Trading: High Street and Hunter Square Update

Item number	11
Report number	
Executive/routine	Executive
Wards	City Centre (Ward 11)
Council Commitments	

Executive Summary

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 Committee previously agreed to suspend stances 4 – 7 to allow essential maintenance work to be carried out within the City Chambers.

The council continues to receive complaints regarding the practice of businesses and individuals trading in the High Street and Hunter Square. This requires ongoing enforcement activity by council officers.

Street Trading: High Street and Hunter Square Update

1. Recommendations

- 1.1 It is recommended that the Regulatory Committee:
 - 1.1.1 notes the content of this report;
 - 1.1.2 agrees not to reinstate stances 4 – 7 for street trading; and
 - 1.1.3 agrees to receive a further report in due course on wider issues of street trading and proposed policies in line with the Public Spaces Protocol.

2. Background

- 2.1 Street Trading is an optional licensing activity under the Civic Government (Scotland) Act 1982. The City of Edinburgh Council exercised its powers by way of resolution to license these activities in 1983, and adopted a street trading policy in 2004.
- 2.2 The Street Trading Policy creates the ability to control and manage activity, and also ensures that traders operate within the same general constraints that apply to any other business. This includes a requirement to comply with relevant legislation and to meet the same minimum standards that any responsible business should observe.
- 2.3 A Street Trader's Licence is required for street trading by any person who is hawking, selling, or offering or exposing for sale any article, or offering to carry out for money or money's worth any service to any person in a public place. Consequently, where an employee is street trading on behalf of an employer, both individuals must be licensed.
- 2.4 A review of the Street Trading Policy introduced in 2004 was carried out by council officers in 2015/2016. The outcome was reported to the Regulatory Committee on 1 February 2016, when the Committee agreed to adopt new standard conditions for Street Trading and to further consult on the current policy. This consultation included the development of an operating plan for a number of areas in the city centre, including the High Street and Hunter Square.
- 2.5 On 24 June 2016 Council officers reported to the committee 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.

- 2.6 Prior to amending the policy in 2006 the Council had received a number of complaints regarding 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 licences. 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 to address the issue of multiple applications.
- 2.7 A further report was considered by the Regulatory Committee on 21 October 2016 when the committee:
- 2.7.1 reaffirmed 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, as detailed in appendix 1;
 - 2.7.2 agreed that the existing policy should be amended in respect of proposed conditions and changes to the application process for temporary Street Traders in the High Street as detailed in appendix 2; and
 - 2.7.3 noted the concern that the current arrangements may be unsustainable and agreed to receive a further report in 2017 on the impact of the proposed changes to the application process and the ongoing feasibility of street trading on the High Street.
- 2.8 In addition, the Committee was asked to suspend stances 4 – 7 to allow essential maintenance work is to be carried out within the City Chambers at 249 High Street, Edinburgh.
- 2.9 A final report containing operating principles for the High Street street trading in general was delayed as a result of the Public Space Protocol consultation. The report was reported to the Transport and Environment Committee in March 2018.

Stances

- 2.10 There are currently eight approved street trading stances in the High Street (see Appendix 3) and five in Hunter Square (see Appendix 4). The stances vary considerably in style and size, ranging from an artist's chair and easel to market type stalls approximately seven metres in length.
- 2.11 Whilst the demand for High Street stances is significant, it is less so for Hunter Square. The stances regularly remain unallocated for this area and are only fully utilised during the busier trading periods.

3. Main report

- 3.1 The Licensing Service was notified by the Property and Facilities Management - Buildings Programme Team that essential maintenance work was to be carried out

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

- 3.2 Council Officers were unable to identify alternative sites to relocate stances, and at the Regulatory Committee on 21 October 2016 agreed to suspend the stances.
- 3.3 The work on the boiler room was then postponed due to other planned work within the City Chambers, including the customer hub works and associated council property (i.e. the separation/sale of 329 High Street and Lothian Chambers).
- 3.4 In May 2017 the Licensing Service was notified by the Customer Hub Project Manager in the Strategic Asset Management team that the Council planned to carry out a business-critical operation in the redevelopment of the Customer Hub at 249 High Street. These were considered essential alterations in the form of a capital project which required the use of the pavement/road area directly outside 249 High St from Anchor Close up to the Quadrangle. This area was required for use as a contractors' compound, and therefore would not be available to traders from 23 June 2017 to 10 November 2017.
- 3.5 The City of Edinburgh Council has an embargo on the use of public realm space for construction work (other than essential repairs) city-wide during the Festival (August). As a result of this, a temporary compound was built in the High Street and then removed in August 2017 and then reinstated.
- 3.6 In addition to the work carried out at the Customer hub other essential cabling work has been carried out in the High Street necessitating the closure of the footway directly outside 249, the most recent closure was in March 2018.

Festival Fringe

- 3.7 There is a long standing practice that stances in both the High Street and Hunter Square are not allocated during the month of August. This area is used as an event space during this period of time.

Other Events

- 3.8 The diverse use and demand of the High Street is significant, and in addition to the suspension of stances for the Festival Fringe it is/has been necessary to suspend trading to allow other activity to take place. Events of this nature include civic ceremonies, parades and processions and memorial services.

Current Position

- 3.9 As part of the Council's transformation programme the offices at 329 High Street have been sold. The Licensing Service has now been advised that following the disposal of this property and its service separation from the City Chambers, Facilities Management was able to redesign the proposed boiler works which negated the need for the separate boiler house and the extensive replacement works planned.

- 3.10 The sale of 329 High Street may have further implications for street traders resulting in the loss of stances 14-17. This is forecast to be completed in the next six to eight months.
- 3.11 Due to the high demand for High Street stances a number of traders have been trading from the Tron Church within the market there. The lease for the Tron Church has come to an end and these traders are now seeking alternative trading locations.
- 3.12 A number of these and other High Street traders also have stances at Playfair Steps or elsewhere in the city.
- 3.13 Feedback from local businesses based in the High Street highlighted that street trading offers little value to the street in terms of goods sold the quality and style of stalls and detracts from the city's World Heritage Status. As a result Council Officers have been unable to identify alternative sites for stances.

Proposals

- 3.14 Given the current uncertainty in respect of availability within public realm space following the sale of Council property, it is proposed that the status quo is maintained and the suspension of stances 4-7 is not lifted at this time.
- 3.15 A final report containing operating principles for street trading in the High Street and in general was delayed as a result of the Public Space Protocol consultation, which was reported to the Transport and Environment Committee in March 2018.
- 3.16 Council officers will bring forward a report detailing operating principles for street trading in the High Street and city-wide.

4. Measures of success

- 4.1 That the 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 There is no direct financial impact on the Council. All costs are contained within existing budgets.

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 to 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. The consultation was designed to assess the understanding of the effects of the approach on different user groups to allow an informed decision to be made on suitable changes.
- 9.3 The Committee adopted the new licensing conditions, however recognising that further work was required in respect of the creation of operating plans for certain areas within the city centre.
- 9.4 At its 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 should 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.
- 9.5 On 24 June 2016 Council officers reported to committee 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. Joint consultation on the use of public realm space will enable the Committee to consider its policy as part of a wider place-making role within the council.
- 9.6 The Council has engaged widely in respect of the Public Space Protocol and consulted a wide range of stakeholders, including citizens and residents near key public spaces, festivals, heritage bodies, businesses, officers and elected

members, to understand the wide range of perceptions, values and issues around the use and preservation of public space.

10. Background reading/external references

- 10.1 Regulatory Committee – [4 April 2014](#)
- 10.2 Regulatory Committee – [25 September 2015](#)
- 10.3 Regulatory Committee – [24 June 2016](#)
- 10.4 [Public Spaces Protocol](#), reported to 9 March 2018, Transport and Environment Committee

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11. Appendices

- 11.1 Appendix 1 – The current policy and application process for High Street Traders
- 11.2 Appendix 2 – Standard conditions – all street traders
- 11.3 Appendix 3 – High Street Trading Stances
- 11.4 Appendix 4 – Hunter Square Trading Stances

The current policy and application process for High Street Traders

- 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;

The application form 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 (it is no longer appropriate to produce a generic wind management plan the plan must reflect the actual stall);
- type of goods sold;
- public liability insurance.
- tax reference of the business / trader;
- 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.

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.

Hunter Square Trading Stances

