

Regulatory Committee

9.30am, Thursday, 2 December 2021

Response to Motion on Street Occupation, Trading, Licensing and Permits

Executive/routine	
Wards	All
Council Commitments	

1. Recommendations

- 1.1 It is recommended that the Regulatory Committee:
 - 1.1.1 Notes the contents of this report; and
 - 1.1.2 Discharges the outstanding remit from Committee on 17 May 2021 on Street Occupation, Trading, Licensing and Permits.

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2. Executive Summary

- 2.1 This report provides an update on the measures taken to help the hospitality sector and explains the practical difficulties of introducing further short-term measures for other types of licence holders.

3. Background

- 3.1 The Council has been working closely with the business community to support hospitality business recovery as restrictions relating to the COVID-19 pandemic are relaxed. The restrictions implemented by the Scottish Government to reduce the transmission of COVID-19 have disproportionately affected the hospitality sector, with a requirement to remain closed for an extended period, and thereafter restrictions on the number of customers that venues are permitted to accommodate.
- 3.2 On [6 August 2020](#) the Policy and Sustainability Committee agreed to waive fees for road occupation permits for tables and chairs from 1 July 2020 – 31 October 2020.
- 3.3 In March 2021, as the city emerged from the second period of lockdown, the Council Incident Management Team (CIMT) approved the suspension of parking/kerbside restrictions to accommodate outdoor hospitality space where this was possible (with the associated costs not passed on to the applicants) and the suspension of charges for tables and chairs permits until 30 September 2021 at the earliest. These suspensions applied across the city.
- 3.4 The Council budget includes provision for charges to be levied for permits for Tables and Chairs. The cost is calculated per square metre (with a slightly higher charge in the World Heritage Site (WHS) than elsewhere in the city). The Council would normally seek to recover income from parking charges (and generally seeks to recover these costs when parking suspensions are applied for events).
- 3.5 In addition, certain businesses require licences for the sale of alcohol and some outdoor construction requires planning consent.
- 3.6 The application process for using outdoor spaces for tables and chairs was streamlined in 2020 as part of a drive to support Edinburgh's economic recovery. The aim was to help businesses to safely make use of outside space and, even

though there have been no associated charges, businesses were required to follow this process so that the Council is fully aware of what is being placed on the city's roads and pavements.

- 3.7 The decision to suspend parking/kerbside restrictions charges and charging for tables and chairs permits, as well as the relaxation of planning enforcement, has been welcomed by hospitality businesses across the city and has led to an increased number of businesses utilising space outside for hospitality purposes.

4. Main report

Outdoor Hospitality Permits

- 4.1 The suspension of parking/kerbside restrictions and charges for tables and chairs permits was due to end on 30 September 2021.
- 4.2 On 6 September 2021, CIMT agreed the following recommendations - following discussion/feedback with business community representatives:
- 4.2.1 Extend the suspension of parking/kerbside restrictions to 31 October 2021;
 - 4.2.2 Continue to take a relaxed approach to planning enforcement until 31 October 2021. Thereafter planning consent would be required for any structures;
 - 4.2.3 Extend the suspension of charges for outdoor hospitality permits (tables and chairs) to 31 December 2021; and
 - 4.2.4 Review the process for outdoor hospitality permits and to improve/streamline the process by 31 March 2022. Any new approach would come into effect from 1 April 2022.
- 4.3 Council officers have worked closely with local businesses to support the recovery of businesses.
- 4.3 This decision was retrospectively reported to the Policy and Sustainability Committee on [5 October 2021](#) as part of the Adaptation and Renewal report.

Street Occupation, Trading, Licensing and Permits

- 4.4 The motion agreed by Committee asked for information on further measures that could be taken to help street traders and other licence holders. The flexibility that the Council has is limited by financial and legal restrictions on what a licensing authority can do.
- 4.5 As previously reported to Committee, the financial impact of COVID-19 on licensing income has been significant. For the financial year 2020/21 the income from Civic licences dropped by £0.780m. The Council was given one off monies by the Scottish Government to cover some of this loss (£0.450m).

Financial Measures

- 4.6 In 2021/22, the current income forecast is down by approximately £0.380m. It remains unknown how income from Civic licences will recover over the remainder of the financial year. Any further fee reductions or waivers cannot be met from existing budgets and would need to be approved by the appropriate committee. There is also an issue of fairness, in that offering any targeted fee reductions to licence applicants would inevitably create pressure from holders of other types of licences who would seek similar reductions.

Alternative Measures

- 4.7 The alternative to waiving fees would be to consider whether there is an option to amend policies to allow additional trading space. Committee will be aware that within the City Centre most spaces which are suitable for trading have been occupied by long term licence holders for many years, with several applications for new spaces refused by the Licensing Sub-Committee as not being suitable.
- 4.8 Where possible temporary licences have been issued, assuming that there is sufficient space. However, Committee will be aware that the space in the city centre is often used for events, civic processions and hospitality. There is a danger that granting additional licences or relaxing policies could have the unintended consequence of limiting the ability to stage these events.
- 4.9 As a result, there are practical difficulties in granting permanent licences for these additional pitches, as the licence holder would have protections under the legislation. In those circumstances, bringing the use of this space to an end exposes the council to the risk of legal challenge. At the very least, the process would be protracted if there was an appeal against any decision to refuse or suspend a licence.
- 4.10 Finally, members will be aware that policy changes would normally be subject to public consultation. If changes were implemented without such consultation, there is a risk that the Council would be vulnerable to legal challenges if an objection was received or a licence applicant were to appeal the decision in the courts.

5. Next Steps

- 5.1 Committee agreed to postpone work on reviewing the street trading policy until the city had recovered sufficiently from the disruption caused by COVID-19. It is intended to review this in 2022 and to keep Committee updated on progress.

6. Financial impact

- 6.1 It is anticipated that the further suspension of parking to 31 October 2021 will result in approximately £7,000 of lost revenue for the Council. Waiving the fee for tables and chairs permits to 31 December 2021 is also likely to result in approximately £125,000 in lost revenue.

7. Stakeholder/Community Impact

- 7.1 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.2 The contents and recommendations described in the report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.
- 7.3 There is no environmental impact arising from the contents of this report.

8. Background reading/external references

- 8.1 None.

9. Appendices

- 9.1 Appendix 1 – Motion from Regulatory Committee on 17 May 2021

The following motion by Councillor Barrie was submitted in terms of Interim Standing Order 32.1:

“Committee will be aware of question 18 at Council on 29 April 2021 and the response provided:

‘Question (1) What support is being made available by CEC to walking tours to ‘get businesses back on their feet’ and will their licensing fees be similarly waived or discounted?’

Answer (1) The majority of walking tours do not require a licence under the current provisions of the relevant licensing legislation, as either payment is made on-line or the tour is free of charge and relies on tips. Walking tours are encouraged to engage with and participate in the Forever Edinburgh recovery campaign. They have also had access to similar financial support as other businesses, in particular the discretionary fund in the event that they were ineligible for the Visit Scotland tour guide fund. If walking tours can evidence income drop as an eligible business, they would also have been eligible for discretionary support funding. We are aware some walking tour guide guides qualified for the tour guide support, which was administered by Visit Scotland, businesses which received this funding would have been ineligible for additional payments through the discretionary support.

Question (2) Will Council consider favourably allowing walking tours to apply for Outdoor Area Occupation Permits to allow them on street visibility to aid their business recovery?

Answer (2) While the Council is taking all possible means to support business recovery, Outdoor Area Occupation Permits are specifically for businesses who want to provide tables and chairs on the pavement and therefore could not be used for the purpose of increasing on-street visibility.’

Committee will be aware that the discretionary financial support described in answer (1) was very likely available to the licensed premises that have had their outdoor area occupation permits waived by Council. Answer (2) suggests that ‘Council is taking all possible means to support business recovery.’

In support of ‘all possible means’ Committee calls for an urgent report, within one cycle, to consider what further steps could be taken regarding permits costs, eligibility of businesses not necessarily seeking to use table and chairs as part of business recovery, to apply for and use suitable Outdoor Areas in the city and whether such permits would be chargeable. This report should include consideration of conditions and costs applied to market traders, street traders and outdoor space occupancy with a view to considering what amendments might take place to assist companies and organisations in their post Covid recovery and beyond. Should beneficial measures be identified prior to the next Regulatory Committee that takes place on 23 August 2021, consideration should be given to see if they can be implemented if agreement can be reached with Group Spokespersons.