

Committee: Cabinet	Date: 30 July 2008	Classification: Unrestricted	Report No.	Agenda Item No.
Report of: Corporate Director – Communities, Localities & Culture – Steven Halsey			Title: Review of Public Footway Trading Fees and Charges 2008/2009	
Originating Officer(s): Head of Markets – David Saunders			Wards Affected: All	

1 SUMMARY

- 1.1 This report proposes some changes to the fees and charges relating licensing of the public footway.
- 1.2 Market Services have always been responsible for issuing street trading licences with regards to street trading on the footway (for example, shop front projections). The only exemption being the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980 (essentially tables and chairs where refreshments were offered) as this was previously defined as not amounting to street trading although the activities would have amounted to such. This exemption has now been removed and persons who wish to have tables and chairs must now apply for a street trading licence.
- 1.3 Following this Cabinet decision reviewing Fees and Charges, public notice of the approved fees and charges for Footway Licensing will be made in the East End Life for a period of 28 days, after which all the representations received will be duly considered. It is only after this further procedure that the new charges come into effect from September 2008.

2 RECOMMENDATIONS

Cabinet is recommended to: -

- 2.1 Approve the levels of fees and charges for Footway Licensing in Tower Hamlets as set out in Appendix 1, to be effective from 1st September 2008, subject to a 28 day period of consultation with footway licensees following publication of a Notice of Variation of Charges to be issued by the Corporate Director, Communities, Localities & Culture.
- 2.2 Agree that the Corporate Director, Communities, Localities & Culture undertake further consultation with the Footway Licensees on the fees and charges as set out in Appendix 1.

- 2.3 Authorise the Corporate Director Communities, Localities & Culture to set the final level of fees and charges for footway licensing following the outcome of consultation.

3 INTRODUCTION

- 3.1 The use of the public footway (that is the pavement not the road) by a person or business to display, offer or provide a service is illegal unless licensed by the Local Authority. No right exists to a footway licence, and the use will only be permitted under licence when the objectives as set out at 4.1 below are met. The footway licence will not alter, modify or conflict with any permission that is imposed or withheld by the Council in relation to planning and licensing of the associated business or premise. A person requesting a licence will not be liable for any fee or charge until such time, and if, the Council agrees to permit an application on mutually agreed conditions with that person.

4 BACKGROUND

- 4.1 The primary purpose in activating this regulation is not to raise revenue. With an increasing number of pedestrians and visitors in the Borough, including many with physical disabilities or of limited mobility, there is a duty of care to provide a process of control and regulation in respect of the public footway that safeguards public safety and allows adequate pedestrian movement. At the same time it is intended to support enterprise, particularly small businesses, where there is sufficient space to safely permit an increase in the display of goods or provision of service. However no licence will be granted that does not leave 1.8m of footway free for pedestrians.
- 4.2 Tables and chairs outside premises are increasingly common in the street scene. There has been a significant increase in demand arising from the influence of a more Continental Street Culture and the ban on smoking in premises. Whilst the Council previously adopted a policy note for managing tables and chairs over 5 years ago, with respect to tables and chairs, A Boards and other items on the footway, there are very few, if any licenses in place and no regulation.
- 4.3 The Market Service already license shop front projections for the display of goods on the footway, in our designated street markets. This licensing activity has been subject to restriction and currently just 20 licenses exist. However, apart from responding to complaints from the public there has not been regulation of the footway outside market areas. This inconsistent application of regulation is unfair, and it does not address a potential risk to public safety.
- 4.4 At present a licensed shop front projection is limited to a single standard size and a fixed sum for a full week is charged regardless of the number of days that a display is put out. Where tables and chairs are concerned currently it is their number and not their size or the space taken up that forms the basis of the charge. It is proposed to draw on the best practice of other London

Boroughs to enable there to be a logical relationship between the size of the existing footway, the space licensed, and frequency of use. It is therefore intended in all circumstances to licence in multiples of square metre ground space used. The charge will be the product of the charge per square metre and the number of days that it is used.

4.5 As this Report facilitates a step change in footway licensing and across the Borough the level of regulation of items or goods on the footway will rise, a public and business information and advice brochure is being produced. It will also be placed on the Council website. It will have the following content

- Why the Council would want or not want to grant you a licence
- How to start a licence request
- How to work out what a licence will cost you
- What general conditions apply to all footway licences
- What specific conditions might apply in your individual case
- How to make an application and what a site visit involves
- How to appeal a decision

4.6 The table at Appendix 2 shows a comparative table of Public Footway Fees and Charges with some other London Boroughs. The proposed fees and charges compare favourably with our bench mark Authorities and it is intended on their introduction that they be among the lowest in London.

5 PROPOSED CHANGES

5.1 The proposed changes for 2008 are recommended as they will:

- Improve safe pedestrian access to places of high footfall in particular and in the Borough in general
- Support small business enterprise
- Generate necessary revenue for regulation and enforcement activity.

5.2 **A charge for the use of 1 square metre of footway a day to be set at £1.**
In common with many other London Boroughs, it is planned to issue only temporary footway licenses of six months duration, which are renewable. Temporary licenses issued by the Council on being withdrawn have no right of appeal. This encourages adherence to licence conditions and enables the Council to act decisively and effectively if the need arises. To meet the differing dimensions of space and the uses therein that a licensee might propose, it is intended to licence by square metre of public footway. It is recommended that the charge for the use of the public footway is the same for all forms of use and introduced at a rate comparable to other London Boroughs, at £1 per square metre each day. The charge is to be paid in advance for a period of at least 4 weeks. The temporary licence will automatically lapse when the period paid for is completed.

5.3 **A fee for the licensing of footway space for the display of goods that covers a period of 3 years be £60 (recovered proportionately monthly) and for uses other than the display of goods that covers a period of six months be at £120 (on application).**

A fee for licensing the footway for the display of goods is already in place under

the Street Markets Fees and Charges and therefore it is proposed the new licence for the display of goods will be £60 for 3 years until the expiry of the current 3 year period on 31 March 2009. It should be noted that it is intended to increase this charge thereafter as at 5.7 below. The larger fee for the use of the footway to increase a business's floor space and customer capacity reflects the greater service costs associated with the administrative processes, site visits and the analysis of applications of this nature. For uses other than the display of goods therefore a fee of £120 for six months is proposed.

5.4 A fee for licensing trading on a private forecourt that covers a period of 3 years be at £60 and a charge for trading on a forecourt will be £25 per week.

A private forecourt may involve car lots, public house car parks and private gardens. Where the use of forecourt relates to the main business there is no fee or charge. However, if the use differs it is proposed that a fee for a licence or £60 valid for 3 years and a weekly charge of £25 will be made. The trader will be allowed to place on the forecourt at no extra charge such equipment and furniture as is associated with the trade to the extent acceptable to the forecourt owner.

5.5 The charge for removing items from the public footway to be £200 and every 24 hours in subsequent storage from midnight will be subject to an additional charge of £110.

To enforce the regulation of the public footway, the Council will sometimes need to remove items left out overnight or outside the period of licensed hours. It is proposed that each lift will result in a charge of £200 and every 24 hours in subsequent storage from the midnight following the lift there will be an additional charge of £110. This last charge arrangement is to encourage the prompt recovery of the items by the owner.

5.6 The fee for a permanent three year licence to be £75 with effect from 1 April 2009.

For the convenience of Cabinet and to economise in time and associated costs of process, from 2009 it is intended to combine the separate Fees and Charge Reports for Footways and Street Trading into a single report to Cabinet.

Before this happens as the governing legislation requires the Council to issue a permanent licence that is valid during a period of three years the permanent footway (shop front projection) licenses now in place will expire on 31 March 2009 as will those for street trading. Anticipating this and to remove the need for a further report to Cabinet in this year this report contains a proposal to change the fees for permanent licences that relate to both footway and carriageway.

The fee is intended to cover the administration of licence provision, costs that are subject to inflation. The current fee of £60 was last increased in 2006 and to meet the current costs of licensing it is therefore proposed to increase the charge to £75 with effect 1 March 2009 and for it to stand unchanged for all those licenses issued in the three years following until 31 March 2012. It should be noted that this level of fee is considerably less than all but one of those levelled in the comparator boroughs at Appendix 2.

- 5.7 A public notice detailing the proposed charges will be placed in East End Life in May 2008, providing an opportunity for objections to be made before the final fees and charges are endorsed. In order to promptly implement the proposals effectively at the end of the consultation process and after all representations have been considered, Cabinet is asked to authorise the Corporate Director of Communities, Localities & Culture to apply the increases once she/he is satisfied that due legal process has been followed.

6 COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 This report sets out proposals for licensing the use of the public footway and an amended set of proposed fees and charges, which differ from those currently adopted by the Council. The proposed fees and charges will be subject to consultation with footway licensees, and the report seeks authorisation for the Corporate Director, Communities, Localities and Culture to set the first level of fees and charges for footway licensing following the outcome of the consultation.
- 6.2 In determining the charges, comparisons have been made with a number of other London Boroughs and the proposals put forward are amongst the lowest in the comparator group. Income arising from the proposal would accrue to the Street Trading Account.

7 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 7.1 Section 32(1) of the London Local Authorities Act 1990 (as amended) permits a Borough Council to charge such fees for the grant or renewal of a street trading licence under this Part of this Act, the grant of a temporary licence or for the variation at the request of the licence holder of the conditions of a street trading licence as they may determine and as may be sufficient in the aggregate to cover in whole or in part the reasonable administrative or other costs in connection with their functions under Part II of the 1990 Act (that is functions relating to Street Trading), not otherwise recovered.
- 7.2 Further, section 32(2) of the 1990 Act permits a Borough Council to recover from licence holders such charges as may be sufficient in the aggregate taking one year with another to cover the reasonable costs, not otherwise recovered, of the collection, removal and disposal of refuse or other services rendered by them to such holders; the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading; any reasonable administrative or other costs incurred in connection with the administration of this Part of this Act; and the cost of enforcing the provisions of Part III of this Act.
- 7.3 Section 32(6) of the 1990 Act also permits a Borough Council to determine the fees to be charged on the grant of a temporary licence and in doing so the Council shall have regard to the matters specified in section 32(2) above.

- 7.4 These fees and charges are collected in two (2) ways. Firstly, a fee is charged on the application for, renewal of or variation of a street trading licence. This covers the administration costs in respect of the consideration of such application and the issue of any subsequent licence. A person who wishes to trade by way of a temporary licence will also pay a fee in respect of his/her application to be registered as a casual trader. Secondly, licensed traders will then pay a four-weekly charge for their licence and such charge dependent upon the numbers of days, days of week etc. that the trader trades. Traders who trade on a temporary licence pay a fee dependent upon the day etc. that they trade.
- 7.5 Prior to making such charges, the 1990 Act provides that the Council shall give notice of the proposed charges to licence holders or to a body or bodies representative of them; and shall also publish notice of the proposed charges in a newspaper circulating in the area in which the licence street or streets in respect of which the charges will be applied is situated. The notice of the proposed charges to licence holders or to a body or bodies representative of them shall be accompanied by a statement showing how the proposed charges have been computed; and any body representative of licence holders may request the Borough Council to supply such further information or explanation with regard to the proposed charges as the body may reasonably require in order to ascertain whether the proposed charges are reasonable and have been computed in accordance with the provisions of this section. The Council are under a duty to comply with any such request.
- 7.6 The notice shall specify a reasonable period being not less than twenty-eight (28) days from the date of publication of the newspaper in which the notice is also published within which written representations concerning the proposed charges may be made to the Borough Council and it shall be the duty of a borough council to consider any such representations which are made to them within the period specified in the notice; and to comply with any request for further information from the body representative of licence holders. Where any such request is made the period for representations is extended by the number of days beginning with the day on which the request is made and ending with that on which it is complied with. So, for example, if a request is made on day twenty (20) of the period for representation and takes seven (7) days to comply with it then that will extend the twenty-eight (28) consultation by seven (7) days to thirty-five (35) days.
- 7.7 As to charges for the removal of items left on the public footway, Part III of the 1990 Act permits the removal of receptacles that are left out on the public highway and the Council may fix the cost of removal and storage. This power does not extend to other items that may be left outside on the footway and these will be required to be dealt with by Council officers using other statutory powers.

8.1 EQUAL OPPORTUNITIES AND ANTI POVERTY

- a) The introduction of more consistent regulations and consideration of all such applications in a process including published criterion will lead to a

more fair and equitable procedure that will in turn lead to increased levels of public safety, especially for those with mobility problems. The control of any potential obstructions on the footway is an important factor for all pedestrians, particularly parents with young children or those with disabilities.

- b) All the changes will be of benefit to some degree to the majority of traders and help regenerate the street markets as a source of employment and as a community asset.

9.1 ANTI POVERTY IMPLICATIONS

None arising

10.1 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

None applicable

11.1 RISK MANAGEMENT IMPLICATIONS

None

Attached: **Appendix 1** – Proposed charges for footway trading in LBTH
 Appendix 2 – Comparative table of fees and charges

APPENDIX 1

PROPOSED FEES AND CHARGES FOR FOOTWAY TRADING IN TOWER HAMLETS 2008/9

Fees for a Licence	Current	Proposed
Licence application and renewal fee – All Street, Display of Goods and Forecourt Licences	£60 (for 3 years)	£60 (for 3 years to 31 March 2009) £75 (for 3 years to 31 March 2012)
Licence application and renewal fee for use of public space or footway for other than display of goods (e.g. Tables and Chairs)	£120 (for 6 months)	£120 (for 6 months)
Admin charge for duplicate documentation	£25	

Charges for Use	Location	Current	Proposed
Display of goods & other use of public footway and space	Anywhere in the Borough	£25 a week	£1 a square metre a day
Forecourt Trading	Anywhere in the Borough	£25 a week	£25 a week

COMPARISON OF FOOTWAY AND PUBLIC SPACE LICENCE FEES AND CHARGES

APPENDIX 2

FEES

BOROUGH	LBTH	ISLINGTON	KENSINGTON & CHELSEA	HACKNEY	HARINGEY	NEWHAM
Shop Display	£60 (for 3 years)					
Footway	£120 (6 months)	£350 a year	£700 a year	£15 a year	£66 a year	£125 (6 months)

CHARGES

BOROUGH	LBTH	ISLINGTON	KENSINGTON & CHELSEA	HACKNEY	HARINGEY	NEWHAM
All Footway Uses	£1 a sq metre a day	£20- £28 a seat a year	£585 table & chairs a year	£390 space not specified for Display and Tables & Chairs	A square metre a day £1.43 Tables & Chairs £1.71 Display	£0.21 a sq metre a day

EXAMPLES OF LBTH PROPOSED FEES AND CHARGES APPLIED and total weekly cost compared with Haringey [] and Newham in ().
 The formula used is (Length x Depth) x square metre charge rate, multiplied by number of days, + annual fee rate divided by 52 = weekly cost.

- A. The Pig and Whistle Public House (Footway used as an extension of premise floor space)**
 Footway measuring 2 metres by 8 metres (to take 4 tables and 16 chairs) seven days a week. = **£116.62** [£161.42] (£28.32)
- B. The Columbia Charity Café (Footway used as an extension of premise floor space)**
 Footway measuring 2 metres by 8 metres (to take 4 tables and 16 chairs) one day a week. = **£20.62** [£12.70] (£8.16)
- C. The Best Buy Fruit and Vegetables (Footway used to display)**
 Footway measuring 2 metres by 5 metres (Fruit and vegetable display) six days a week. = **£60.38** [£103.86] (£17.40)
- D. The Jolly Good Read Bookshop (Footway used to display)**
 Footway measuring .5 metre by 5 metres (to place old books under window) six days a week. = **£15.38** [£52.56] (£11.10)
- E. The Lightly Tanned (Footway used to advertise a service)**
 Footway measuring 1 metre square (for A board) five days a week. = **£5.38** [£9.90] (£5.85)

