

Report No: Public Agenda Item: **Yes**

Title: **Pavement Café Policy**

Wards Affected: **All**

To: **Licensing Committee** On: **8th August 2018**

Key Decision: **Yes**

Change to **No** Change to **No**
Budget: Policy Framework:

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1. What we are trying to achieve

1.1 Members are requested to agree, following consultation, a revised Pavement Café Policy.

2. Recommendation(s) for decision

2.1 That the Licensing Committee agrees the Pavement Café Policy 2019-24 as attached at appendix 1, is adopted with immediate effect.

3. Key points and reasons for recommendations

3.1 Under the provisions of the Highways Act 1980 as amended by the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Pavement Café Licences.

3.2 The licensing of Pavement Cafés has been administered by the Licensing Team since the 18th February 2016. The proposed review of the Policy is attached at **Appendix 1** and is brought about in order to improve efficiencies and to enable the Licensing Authority to improve compliance across the board. The Highways Team will remain a consultee to this process.

- 3.3 The draft document has undergone a six week consultation with partner agencies, i.e. Highways, The Police, Public Nuisance Officer as well as the current Pavement Café Licence holders. It has also been published on the Council website so as the general public may have opportunity to respond.
- 3.4 The revised Pavement Café Policy 2019-24 will have limited impact on current Pavement Café Licence holders, other than where they have failed to pay their annual fee, in which case it is proposed that after suitable warning a permit may be revoked in the event that a fee remains unpaid.
- 3.6 There is a risk of a challenge to this policy, which would be by way of judicial review. This however is considered unlikely.

For more detailed information on this proposal please refer to Annex A.

**Steve Cox
Environmental Health Manager (Commercial)**

Annex A – Supporting information to Report

A1. Introduction and history

- A1.1 Under the provisions of the Highways Act 1980 as amended by the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Pavement Café Licences.
- A1.2 The licensing of Pavement Cafés has been administered by the Licensing Team since the 18th February 2016. The proposed review of the Policy is attached at **Appendix 1** and is brought about in order to improve efficiencies and to enable the Licensing Authority to improve compliance across the board. The Highways team will remain a consultee to this process.
- A 1.3 There are relatively few changes to the revised Policy, however, some amendments have been considered necessary. These are outlined below.

Section 6

An increase in busy areas (whether traffic or high footfall) of the minimum unobstructed pavement space that should be left available once tables and chairs are in place, from 1.8 metres to 2.0 metres. This change comes about following the publication of government guidance relating to mobility, where it states:

*“A clear width of **2000mm** allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints **1500mm** could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be **1000mm** clear space. The maximum length of restricted width should be **6 metres** (see also Section 8.3). If there are local restrictions or obstacles causing this sort of reduction in width they should be grouped in a logical and regular pattern to assist visually impaired people”.*

Section 7

A clarification of the position relating to the suspension of a Pavement Café Permit on a temporary basis due to a ‘one off’ event or situation’, whilst not exhaustive, this may potentially include a national celebration or a requirement to access the area for emergency or essential repairs. This is not intended to open the possibility that regular suspension of a permit would be imposed and is unlikely, in most cases, to occur at all.

Section 9

This represents the main reason for update to the Policy. Permits are issued in perpetuity, with a requirement that an annual fee is paid. Non-payment of the annual fee is a civil debt. Currently there are a significant minority of premises where the annual fee remains unpaid, this is not only a drain on Council resources but is also grossly unfair on those businesses that fulfil their obligations.

This section is therefore introduced in order to permit the revocation of a permit where the annual fee remains unpaid for a period in excess of 14 days after it falls due and to introduce a process for dealing with Pavement Cafes where there has been no application at all for a permit to be granted.

A1.4 The times of opening Pavement Café designated areas, will remain the same, being from 1000 to 2300, though these can be extended by the applicant with the agreement of the consultees, notably Highways, the Police and Public Nuisance officer. No Pavement Café Licence will be issued after midnight however.

A1.5 In addition to the alterations highlighted in A1.3 (above), there has been a general updating of the Pavement café conditions.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

The revised Pavement Café Policy does not alter the operation of a Pavement Café Licensed area. The key risk is a judicial review, though this is not considered likely given that consultation has taken place as identified below.

A3. Options

A3.1 There are two alternative options other than that recommended:

- (i) Members alter the policy then agree the amended policy.
- (ii) Members refuse the recommendation.

A4. Summary of resource implications

A4.1 The only resources will come from existing budgets and will mainly involve seeking to ensure that unlicensed operators are brought within the licensing regime and in pursuing debts from unpaid annual fees. However in both cases they are likely to result in either additional income or in collecting income that otherwise may not have been paid through the annual fee.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equality, sustainability or crime and disorder issues regarding this report.

A6. Consultation and Customer Focus

A6.1 There has been consultation with all current Pavement Café Licence holders and the key partners.

A6.2 Following the consultation there were no comments from any key partners, although in all cases these remain consultees with regard to applications received. There were three responses from existing licence holders which were broadly in agreement with the changes and are summarised at **Appendix 2**.

There are no proposed changes to the draft Policy stemming from the consultation responses.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units, if the recommendations are supported.

Annexes

Appendix 1 Draft Pavement Café Policy 2016-21

Appendix 2 Consultation Response Summary

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

None