

	<b>Committee Report: General Purposes</b>
<b>Date:</b>	24 <sup>th</sup> February 2009
<b>Subject:</b>	City of Westminster Bill

## 1. Summary

- 1.1 Street trading in the City of Westminster is regulated under the City of Westminster Act 1999. Notwithstanding that the Act has been amended over time, it has become apparent that the Act does not afford the City Council the powers to regulate street trading effectively and flexibly. Following a resolution of the Council on 29<sup>th</sup> October 2008 a private parliamentary Bill was deposited in Parliament on 26<sup>th</sup> November 2008, which aims to repeal the 1999 Act and provide the powers necessary to better regulate street trading within the City.
- 1.2 This report provides Members with an update on the current position, following deposit of the Bill, pending a further report to a special meeting of the Committee on 6 April when the Committee will be asked to consider recommending the full Council to confirm its resolution to promote the Bill..

## 2. Recommendations

- 2.1 That the Committee notes the contents of this report



City of Westminster

# Committee report

Date:	<b>24<sup>th</sup> February 2009</b>
Classification:	<b>For General Release</b>
Title of Report:	<b>City of Westminster Bill</b>
Report of:	<b>The Head of Legal Services and the Director of Community Protection</b>
Wards involved:	<b>All</b>
Wards involved:	<b>All</b>
Policy context:	<b>To increase the effectiveness and flexibility of the regulation of street trading</b>
Financial summary:	<b>The cost of promoting the proposed Parliamentary Bill is estimated to be between £60,000 and £120,000. These costs would be spread over the financial years 2008/9 and 2009/10 and could carry over into 2010/11</b>
Report Author:	<b>Gary Blackwell, Legal Services and Chris Wroe, Licensing</b>
Contact details	<b>Gary Blackwell - telephone 020 7641 2718</b> <b>Fax 020 7641 2251</b> <a href="mailto:gblackwell@westminster.gov.uk">gblackwell@westminster.gov.uk</a>  <b>Chris Wroe – telephone 0207 641 5903</b> <b>Fax 0207 641 7047</b> <a href="mailto:cwroe@westminster.gov.uk">cwroe@westminster.gov.uk</a>

### 3. BACKGROUND TO THIS REPORT

- 3.1 The City of Westminster Bill was deposited in Parliament on 27<sup>th</sup> November 2008 and the House Authorities directed that the Bill should first be considered by the House of Lords, before passing to the Commons. The Bill had its first Reading in the House of Lords on 22<sup>nd</sup> January 2009.
- 3.2 The Bill now awaits its second reading in the House of Lords, which on occasion can be a procedural formality, but Lord Lucas has called for the Bill to be debated on the floor of the House. This will provide Peers with the opportunity to raise any concerns that they have on the contents of the Bill. It is understood that it is not customary to force a Bill to a vote on second Reading and so this action should not give cause for concern. The Bill will, however, require a Peer to Move that the Bill be read a second time on behalf of the City Council and consideration is being given as to which Peer should be approached to seek his/her assistance.
- 3.3 The Bill has attracted 3 petitions in opposition, namely –
1. Associated Newspapers Limited who are concerned about provisions which would enable the City Council to designate certain areas within which newspaper sellers would require a street trading licence (thus removing an existing exemption)
  2. A group of 6 pedlars who are concerned about the fact that the Bill limits the exemption for pedlars to those who peddle by means only of visits from house to house (this aspect of the proposed Bill involves no change from the existing 1999 Act)
  3. The National Market Traders Federation who formally oppose many aspects of the Bill, ranging from the power to make the necessary changes to pitch locations and commodities, in order to implement the recommendations of a street trading review, to the lack of provision for compensation for displaced traders
- 3.4 On 9<sup>th</sup> December 2008 the Cabinet Member for Community Protection and officers met with representative of News International, at their request, to discuss their concerns about the proposed powers to designate areas within which the exemption for sales of periodicals could be removed. News International have not lodged a petition against the Bill at this stage, and it is hoped that the explanation of the reasoning behind the provisions given to them at the meeting and an undertaking to look again at the drafting of the clauses with a view to better explaining the basis upon which such a designation may be made, will satisfy the concerns they originally expressed.
- 3.5 Prior to the Bill being drafted and during the drafting stages, a number of meetings were held with representatives of the National Market Traders Federation and their concerns very much informed the final draft of the Bill. However, it is not a surprise that the Association have lodged a petition against the Bill. Officers intend to offer to meet again with the Association, and indeed, with all those who have petitioned against the Bill, in order to discuss their concerns and in an attempt to seek an amicable way forward.

- 3.6 A significant proposal within the Bill is to extend the City Council's powers in relation to the relocation of existing street trading pitches and the traders trading from them. Technical difficulties arise under the 1999 Act because, although after consultation the City Council may vary the location or remove a pitch, the 1999 Act is unclear about the position of the existing trader at that pitch. There is no specific provision to vary or revoke his licence to trade at that pitch and any attempt to move or cancel the licence is likely to be vigorously resisted by traders at many locations in the City. Any attempt to impose a change to the pitch location or removal of the pitch would inevitably involve expensive and time consuming litigation where the outcome is not certain.
- 3.8 Under the proposed Bill these technical difficulties are addressed so that the City Council will be able to better manage pitch locations in circumstances where this is desirable to implement development or improvement to the public realm. Issues which have arisen during the formulation of the Oxford Regent Bond Street (ORB) Action Plan have been a significant driver in the drafting of the Bill to allow the City Council, in consultation with interested traders, to develop proposals for an alternative street trading regime for the area in keeping with the aspirations of the City Council and other stakeholders. Relevant Cabinet Members have provided a steer to officers to progress with delivering two street trading pilots in the ORB and Heart of London area. Locations, designs and commodities sold have yet to be established. A further Cabinet Member Report will be drafted and submitted to the Cabinet Members for Community Protection, Built Environment, Environment and Transport in April 2009 seeking approval to implement the pilots in December 2009.
- 3.9 The City of Westminster Act 1999 amended the exemption afforded to pedlars by removing the exemption for those peddling on the street in accordance with a pedlar's certificate and provides an exemption for those who pedal by means only of visits from house to house. This amendment was made because many unlicensed street traders discovered that in order to obtain a pedlar's certificate, all they needed to do was complete a form at their local police station and pay a very small fee. Once in possession of a pedlar's certificate, the "pedlars" would effectively trade as street traders, remaining in one position for relatively long periods before moving on a small distance, but not in a "stop me and buy one" manner. This gave rise to enforcement difficulties, in that it was very difficult and costly to prove that pedlars were not acting in accordance with their certificate.
- 3.10 As a direct result of the City of Westminster Act 1999, a number of other local authorities around the country sought similar amendments to their street trading legislation and indeed, there are currently 6 local authority Bills before Parliament seeking this amendment. The authorities concerned are Manchester, Nottingham, Leeds and Canterbury City Councils and Reading and Bournemouth Borough Councils.

- 3.11 These Bills have attracted much opposition from pedlars, who have lodged formal petitions against the proposals. Where petitions are lodged against a private Bill, the provisions are considered by an Opposed Select Committee, which may permit the disputed provisions to proceed without amendment, request the promoters to consider amendments, or decline to permit the provisions to proceed.
- 3.12 It is expected that the pedlars will lodge petitions against the City of Westminster Bill. However, because the Bill does not seek to alter the current position with regard to pedlars within the City, the City Council's parliamentary agents have advised that under parliamentary procedure rules, they might not have the right to be heard on their petition and that their concerns will not be considered by an Opposed Select Committee. In any event, further opposition on behalf of the pedlars might very well materialise from Mr Christopher Chope MP. (Conservative, Christchurch), Mr Chope has taken up the cause of the pedlars and is very likely to do that which he is actively doing in respect of the other Bills dealing with pedlars, namely securing debates at all stages, pushing for a vote and putting down blocking motions. Officers intend to meet their counterparts in the other authorities concerned, with a view to discussing how best Mr Chope's concerns might be allayed.
- 3.13 Parliamentary procedures require the City Council to pass a second resolution confirming its resolution to deposit the City of Westminster Bill and a further report will be submitted to a special General Purposes Committee on Monday 6<sup>th</sup> April 2009 inviting the Committee to consider recommending to Council that such a resolution be made.

#### **4. Legal implications**

- 4.1 If the petitions lodged against the Bill are not withdrawn, the provisions will be considered by a Select Committee, which can permit or refuse provisions to go forward. Opposition on the floor of either House can also lead to a vote on the question of whether the Bill should pass or on amendments to it. Therefore, there is no guarantee that all the provisions contained in the Bill will succeed.

#### **5. Staffing implications**

- 5.1 There are no staffing implications.

#### **6. Human Rights Act 1998**

- 6.1 In accordance with Parliamentary procedures, Counsel's advice confirming that its provisions are compatible with the Human Rights Act 1998 has been deposited in Parliament and a Government Minister will be required to provide parliament with a statement on such in due course.

## **7. Financial Implications**

- 7.1 The costs of promotion are difficult to quantify in advance as much depends on how quickly the legislation passes through Parliament and the extent of any opposition. However, experience of previous promotions indicates that costs are likely to be in the region of £60,000 to £120,000. This cost is likely to be spread over financial years 2008/0 and 2009/10 and could carry over into 2010/11. This sum can be met by the existing legal budgets within the Licensing Service.

## **8. Reasons for decision**

- 8.1 This report updates the Committee on the current position with regard to the City of Westminster Bill and is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Chris Wroe on 0207 641 5903, (Fax 0207 641 7047), e-mail address [cwroe@westminster.gov.uk](mailto:cwroe@westminster.gov.uk), or Gary Blackwell on 0207 641 2718 (Fax 0207 641 2251) e-mail address: [gblackwell@westminster.gov.uk](mailto:gblackwell@westminster.gov.uk), or Peter Large on 0207 641-2717 (Fax 020 7641 3325) e-mail address: [plarge@westminster.gov.uk](mailto:plarge@westminster.gov.uk)

## **Background Papers**

1. The City of Westminster Bill, which may be accessed via Parliaments' website at <http://services.parliament.uk/bills/2008-09/cityofwestminster.html>
2. Petition of Associated Newspapers Limited
3. Petition of Nicholas John McGerr, Simon Casey, Alexander Campbell-Lloyd, Julian McDonnell, Frankie Fernando, David Murphy
4. Petition of the National Market Traders Federation