



# Committee Report

Date	<b>23 September 2020</b>
Classification	<b>For General Release</b>
Title of report	<b>Busking and Street Entertainment Policy</b>
Report of	<b>Ezra Wallace, Head of City Policy and Strategy Annette Acik, Director of Public Protection and Licensing</b>
Decision maker	<b>Licensing Committee</b>
Wards involved	<b>All</b>
Report author	<b>Kirsty Munro, Principal Policy Officer</b>

## 1.0 Executive Summary

1.1 On 10<sup>th</sup> January 2020 this Committee heard the Council's proposal to implement a new Busking and Street Entertainment Policy as there is reason to believe that as a result of busking and street entertainment there has been, is being, and will continue to be undue interference with or inconvenience to or risk to safety of persons using a street in that part of their area or other streets within the vicinity of that street; and /or nuisance to the occupiers of property in or in the vicinity of a street in that part of their area (hereon referred to as adverse impacts). The proposal evidenced a targeted and area specific approach to prevent adverse impacts experienced by surrounding residents and workers. The full report for reference is attached as Appendix A. In summary the proposals included:

- promoting responsible busking and street entertainment by developing a voluntary Code of Conduct tailored to our City
- encouraging buskers and street entertainers to integrate into our community by developing a dedicated busker and street entertainment forum
- recognising the established self-regulation of buskers and street entertainers already present in our City (Covent Garden)
- supporting newly created self-regulation schemes with buskers and street entertainers in identified suitable areas (Trafalgar Square)
- balancing the needs and rights of residents and businesses that are near to popular busking and street entertainment locations so they are not adversely impacted by introducing a light touch approach to control and regulation (Oxford Street, Piccadilly, Chinatown and Leicester Square).

1.2 The Council held a 6-week public consultation between 14<sup>th</sup> January and 24<sup>rd</sup> February 2020, and on 1<sup>st</sup> July 2020 this Committee reviewed the analysis of 729 consultation responses and heard a general representative position from both a resident and a street entertainer. The full report for reference is attached as Appendix B, and in summary this Committee discussed:

- that good and responsible busking and street entertainment are an important part of the cultural heritage of the City
- the introduction of control and regulation in Oxford Street, Piccadilly, Chinatown and Leicester Square to manage adverse impacts experienced was strongly supported by most residents and workers
- whilst the proposed self-regulation schemes in Covent Garden and Trafalgar Square were generally supported as an alternative approach to introducing control and regulation, there was strong consensus from those who live and work in the immediate vicinity of these busking hotspot areas that this voluntary approach is not enough to effectively prevent or protect against the current adverse impacts experienced. Nor is it able to effectively prevent or protect against a likely increase in issues should buskers and street entertainers be displaced into these areas
- that the expansion of control and regulation across the West End must be considered to
  - protect against any displacement and/or exasperation of adverse impacts
  - provide Council officers with relevant and effective powers to manage adverse impacts
  - ensure the policy is clear and accessible to understand, implement and enforce

1.3 With busker and street entertainer self-regulation and voluntary measures being an unsupported policy approach for the areas in our City that already evidence and experience adverse impacts, Officers propose the adoption of licensing buskers and street entertainers under Part V of the London Local Authorities Act 2000 in all busking hotspots where adverse impacts are experienced, and including the likely areas of displacement across the West End. The new draft Busking and Street Entertainment Policy (Appendix C) contains:

- the voluntary City-wide Westminster Code of Conduct and Policy
- details of the Busking and Street Entertainment Forum
- detailed maps of where the council is seeking to adopt Part V of the London Local Authorities Act 2000 to either prohibit busking and street entertainment or to licence busking and street entertainment in designated areas and locations namely the areas of
  - Paddington
  - Marylebone
  - Bayswater
  - Oxford Street
  - Mayfair

- Regent Street
  - New Bond Street
  - Piccadilly
  - Chinatown
  - Leicester Square
  - Soho
  - Covent Garden
  - The Strand
  - Charing Cross
  - Embankment
  - Trafalgar Square
  - Whitehall
  - Parliament Square
  - Victoria
  - Knightsbridge
  - Belgravia
- busking and street entertainment licence conditions
  - details of the Licensing Application process
  - details of how the council will manage complaints and enforcement
  - a commitment to monitor and review the approach during and after the first full calendar year of implementation

1.4 The report sets out the rationale for the policy development and design and seeks approval from the Committee to hold a further five week consultation on the new draft Policy from 24<sup>th</sup> September to 1<sup>st</sup> November 2020.

## **2.0 Recommendations**

2.1 The Committee is recommended to approve that the council hold a five-week consultation between 24<sup>th</sup> September to 1<sup>st</sup> November 2020 on the following:

(1) The creation of a Busking and Street Entertainment Policy, Code of Conduct, and a dedicated Buskers and Street Entertainers Forum.

(2) Adoption of a Licensing Regime under Part V of the London Local Authorities Act 2000 for the control and regulation of busking and street entertainment in designated streets and areas:

(2.1) Busking and street entertainment is prohibited in all the areas to which Part V of the 2000 Act will apply apart from those designated pitches where busking and street entertainment will only be permitted under and in accordance with the terms and conditions of the pitch and the conditions of a licence to busk

(2.2) permit busking and street entertainment in identified pitches in accordance with the terms and conditions of the pitch

- (2.3) permit only licensed buskers and street entertainers on the pitches subject to the terms and conditions of the pitch and the conditions of the licence to busk
- (2.4) the designated streets and areas are across the West End and centre of the City namely:
- Paddington
  - Marylebone
  - Bayswater
  - Oxford Street
  - Mayfair
  - Regent Street
  - New Bond Street
  - Piccadilly
  - Chinatown
  - Leicester Square
  - Soho
  - Covent Garden
  - The Strand
  - Charing Cross
  - Embankment
  - Trafalgar Square
  - Whitehall
  - Parliament Square
  - Victoria
  - Knightsbridge
  - Belgravia

(3) Carrying out ongoing and quarterly monitoring, and an annual review after one full calendar year of operation.

### **3.0 Reason for Decision**

- 3.1 This draft policy seeks to balance the interests of buskers and street entertainers with those who live, work and visit our streets and shared public spaces by promoting the best of busking and street entertainment through a voluntary City-Wide Code of Conduct and supporting buskers and street entertainers to integrate into our communities, through membership to the Westminster Busking and Street Entertainment Forum.
- 3.2 The draft policy also recognises that in certain locations within our City, there is good reason to believe that as a result of busking and street entertainment there has been, is being, and will continue to be undue interference with or inconvenience to or risk to safety of persons using a street in that part of their area or other streets within the vicinity of that street; and /or nuisance to the occupiers of property in or in the vicinity of a street in that part of their area. It is therefore proposed to adopt Part V of the London Local Authorities Act 2000 for the areas of:

- Paddington
- Marylebone
- Bayswater
- Oxford Street
- Mayfair
- Regent Street
- New Bond Street
- Piccadilly
- Chinatown
- Leicester Square
- Soho
- Covent Garden
- The Strand
- Charing Cross
- Embankment
- Trafalgar Square
- Whitehall
- Parliament Square
- Victoria
- Knightsbridge
- Belgravia

so as to prohibit busking in those areas apart from busking that is carried on by licensed buskers within the twenty-five designated busking pitches.

- 3.3 The Committee is being asked to approve that a five-week consultation on the draft Busking and Street Entertainment Policy and invite representations. Following consultation, the Committee will review the representations and responses received at a Committee meeting to be held in November 2020 where the Committee will make their decision on the draft Policy.

23 <sup>rd</sup> September 2020	Licensing Committee review of proposed policy
24 <sup>th</sup> September – 1 <sup>st</sup> November 2020	Public Consultation
23 <sup>rd</sup> November	Licensing Committee decision
<i>If the policy and adoption of Part V London Local Authorities Act 2000 is approved, then the Council must hold a 90-day period of notification prior to any implementation. Implementation would therefore be no earlier than March 2021.</i>	

#### 4.0 Background

##### January 2020 Licensing Committee

- 4.1 On 10<sup>th</sup> January 2020, this Committee heard and discussed the Council's report on busking and street entertainment. The full report for reference is attached as Appendix A, and in summary this report outlined:

- The historic and cultural importance and contribution of busking and street entertainment in our City
- The Council's available enforcement powers and the challenges to effective enforcement to tackle the adverse impacts of busking and street entertainment
- The previous interventions since 2015 that the Council have taken to work with buskers and street entertainers to improve adverse impacts
- The evidence and rationale for the Council to create a new busking and street entertainment policy. This evidence included complaint data, a summary of enforcement officer observations, the current use and characteristics of areas, and the views and positions gathered from extensive stakeholder engagement
- The policy proposal which took a targeted and area specific approach including
  - supporting self-regulation of buskers and street entertainers through a voluntary city-wide Code of Conduct; a busker and street entertainment forum; recognising the established SPA in Covent Garden; and supporting a newly created SPA in Trafalgar Square
  - introducing a light touch approach to control and regulation in the areas of Oxford Street, Piccadilly, Chinatown and Leicester Square
  - licensing requirements including conditions, fee's and application process
  - How the council propose to manage complaints, compliance and enforcement
  - a commitment to carry out ongoing monitoring of the policy and an annual review after one full calendar year of operation

4.2 This Committee approved that the Council go out to consultation and a public consultation was held between 14<sup>th</sup> January and 24<sup>rd</sup> February 2020.

#### July 2020 Licensing Committee

4.3 The Council experienced a delay in this Committee hearing the results of the consultation until 1<sup>st</sup> July 2020 due to the prioritisation of the community response to the Covid-19 pandemic from March 2020. At the July meeting this Committee heard and discussed the consultation report and detailed analysis. The full report for reference is attached as Appendix B, and a summary has been provided in Figure 1 below.

4.4 This Committee approved that the Council re-consider the policy design to adopt Part V London Local Authorities Act 2000 across the West End to ensure those who live and work close to busking hotspots and experience adverse impacts are protected.

#### The impact of Covid-19

4.5 Busking and street entertainment has been significantly affected by the Covid-19 pandemic, with the necessary containment measures leading to the suspension of activities for many months. As social distancing rules are adapted based on current risk level, widespread uncertainty remains and footfall from those who work and visit our

City remains lower than typically expected for the summer season. However, positively officers are beginning to see buskers and street entertainers return to our streetscape.

- 4.6 Whilst the Council considers not only the financial impact on the buskers and street entertainers who cannot recover loss in earnings, and the wider social impact on the art and culture industry as a whole, it however cannot be ignored that adverse impacts as a result of busking and street entertainment continue to persist. 349 complaints have been received in the 6 months since lockdown and social distancing measures were introduced and continues to drive our need for control and regulation to ensure those who live and work here are protected from adverse impacts particularly as our City and economy begins to recover.
- 4.7 Irrespective of the Council's proposal to introduce a policy, buskers and street entertainers (as well as their crowds) must ensure they comply with the social distancing guidance set by government or risk police enforcement action under the Coronavirus Act 2020.

**729 responses received**

*Figure 1: Summary of busking and street entertainment consultation response*

Policy Proposal	Respondent	Strongly Agree/ Agree	Neither Agree/ Disagree	Strongly Disagree/ Disagree
<b>Policy strikes the right balance</b>	Residents	58%	7%	35%
	Workers	38%	4%	58%
	Buskers and Street Entertainers	21%	4%	75%
	Visitors	37%	9%	54%
<b>Voluntary Code of Conduct Principles</b>	Residents	60%	12%	28%
	Workers	43%	8%	49%
	Buskers and Street Entertainers	29%	29%	42%
	Visitors	43%	19%	38%
<b>Performer Self-Regulation</b>	Residents	58%	17%	25%
	Workers	40%	46%	14%
	Buskers and Street Entertainers	39%	26%	36%
	Visitors	52%	18%	31%
<b>Licensing Regulation (Oxford Street)</b>	Residents	69%	10%	21%
	Workers	72%	14%	14%
	Buskers and Street Entertainers	15%	17%	68%
	Visitors	36%	17%	47%
<b>Licensing Regulation (Piccadilly, Chinatown, Leicester Square)</b>	Residents	64%	18%	18%
	Workers	72%	11%	17%
	Buskers and Street Entertainers	18%	10%	72%
	Visitors	34%	14%	52%

#### Licensing Requirements

- Licensing Conditions: 74% of street entertainers Disagree or Strongly Disagree whereas 65% of residents Agree or Strongly Agree
- Licensing Fees: 74% of street entertainers Disagree or Strongly Disagree, whereas 57% of residents Agree or Strongly Agree

#### Frequent/Generalised Comments

##### Residents and Workers

- *Policy needs to be stricter to combat amplification and noise issues, therefore proposals are unfair to residents and workers*
- *Voluntary measures are problematic and does not protect residents and workers enough*
- *Self-regulation does not go far enough and voluntary measures have already demonstrated they do not work*
- *Amplification is the issue and busking should be prohibited everywhere*
- *Leicester Square should have no amplification*

##### Buskers and Street Entertainers & Visitors

- *Rules are unfair to buskers*
- *SPAs might lead to elitism and create barriers that will exclude some performers*
- *Oxford Street is an adequate location for busking and more pitches need to be added*
- *Licensing should not be introduced*
- *Proposals are unfair and “draconian”, penalises good buskers and is effectively banning busking.*



## 5.0 Proposed Changes to the draft Policy

- 5.1 The Council remain committed to creating a policy that balances the needs of our stakeholders by taking a targeted and area-specific approach, that both promote busker and street entertainer self-regulation, whilst introducing a light touch approach to regulation and control in and around our hotspot areas where adverse impacts are most acutely felt.
- 5.2 The Council therefore want to continue to promote the self-regulation of performers through the City-Wide Code of Conduct as well as the Buskers and Street Entertainment Forum. However, following the consultation it has been considered necessary to expand the area where control and regulation is introduced to ensure the policy achieves its aim of protecting those who live and work near to busking hotspots from adverse impacts.
- 5.3 Following the results of the consultation the following changes to the Policy are proposed:
- Strengthen the principles in the city-wide Code of Conduct by providing clarity around noise levels
  - Busker and Street Entertainer self-regulation in Covent Garden and Trafalgar Square to be underpinned by licensing regulation and control
  - Expansion of regulation and control where the evidence permits us to do so, to include areas where busking and street entertainment already cause adverse impacts and where there is likely to be a displacement of issues (namely the West End and surrounding areas of our City)
  - Introduce new performer spaces (also referred to as pitches) across the expanded area to be regulated, taking into account where it is appropriate and safe to do so, so as not to cause adverse impacts
- 5.4 The draft policy is attached as Appendix C and table 1 below summarises the policy approach we are proposing. Further detail on the design and rationale is provided in paragraphs 6.0 – 9.3.

*Table 1: Summary of draft policy approach*

<b>Policy Approach</b>	<b>Action</b>	<b>Location</b>
<b>Promoting Self-Regulation</b>	<b><i>Voluntary Code of Conduct</i></b> Fostering a positive and co-operative relationship between all users of the shared space by setting clear guidelines on responsible busking.	<b>City-Wide</b>
	<b><i>Busking &amp; Street Entertainment Forum</i></b>	<b>City-Wide</b>

	<p>Giving buskers and street entertainers a platform to raise issues and have questions answered, share ideas and work together on ways of promoting busking and street entertainment in our City.</p>	
<p><b>Introducing Regulation and Control</b></p>	<p><b>Licensing Scheme</b>  Introducing a licensing scheme for certain locations within our City, where there is reason to believe that as a result of busking and street entertainment there has been, is being, and will continue to be undue interference with or inconvenience to or risk to safety of persons using a street and/or nuisance to occupiers of nearby premises. Busking and street entertainment to be prohibited in these areas apart from performers who are licensed to operate from a number of designated pitches This will also give the council dedicated powers to tackle nuisance associated with busking and street entertainment.</p>	<p><b>The West End and surrounding areas</b></p> <ul style="list-style-type: none"> <li>- Paddington</li> <li>- Marylebone</li> <li>- Bayswater</li> <li>- Oxford Street</li> <li>- Mayfair</li> <li>- Regent Street</li> <li>- New Bond Street</li> <li>- Piccadilly</li> <li>- Chinatown</li> <li>- Leicester Square</li> <li>- Soho</li> <li>- Covent Garden</li> <li>- The Strand</li> <li>- Charing Cross</li> <li>- Embankment</li> <li>- Trafalgar Square</li> <li>- Whitehall</li> <li>- Parliament Square</li> <li>- Victoria</li> <li>- Knightsbridge</li> <li>- Belgravia</li> </ul>

5.5 The Council understands that a regulatory approach is one that is generally not supported by the busker and street entertainment community, however remain committed to balancing their interests by embedding this policy within a wider busking and street entertainment strategy that ensures we continue to encourage and support talent that contributes to our City’s lively and diverse street scene including:

- establish a dedicated busker and street entertainment website that provides information and relevant updates to buskers and street entertainers
- promote the community through events
- formalise an ongoing platform of engagement to ensure that buskers and street entertainers have a voice in the decisions we and our wider community take

- work with residents, businesses, and buskers and street entertainers to curate the performer spaces for relevant activities such as busker and street entertainment competitions or seasonal events

## 6.0 Promoting Self-regulation

### City-wide voluntary Code of Conduct

- 6.1 The Council at this time considers it unnecessary to introduce control and regulation for busking and street entertainment across the whole City as there is currently no reason to believe that any displacement of issues will move into dense residential areas, as these areas do not lend themselves to being lucrative for busker and street entertainment performances. However, in the absence of control and regulation and because there may at times be opportunities for this activity anywhere in our City, the Council still considers it necessary to provide clear guidelines that sets out how buskers and street entertainers can perform responsibly and be considerate of other performers, surrounding residents, businesses and other users of the shared public space.
- 6.2 Responses received from the consultation about the Code of Conduct included that the principles were too vague for enforcement and that it will not prevent nuisance from being caused. The nature of the voluntary Code of Conduct is that it is a list of seven guiding principles for buskers and street entertainers to follow to help them understand and be considerate of their surroundings. The principles are not imposed legal controls and as such they cannot be enforced with the Councils existing powers. However, it is of note that should the Council in future become aware of buskers and street entertainers are not abiding by the Code of Conduct and causing adverse impacts, the Council will consider extending the areas of control and regulation.
- 6.3 A small change has however been made to the Code of Conduct following Officers being made aware that the wording around considerate noise levels (Principle 3 below) had the potential to be contradictory and/or confusing:

***“Principle 3 Avoid causing a nuisance: Sound from any performance should not be heard by nearby premises. As an indicator your volume should only be heard just above ambient noise level.”***

For many residents and workers ambient noise is already often at a level that can be heard within a premise and is intrusive to peace and comfort. Whilst this arguably is an accepted consequence of living within a City centre, it is however not reasonable that busking and street entertainment noise should be heard over and above ambient levels but rather should blend into this background noise. The Code of Conduct has therefore been amended to:

***“Principle 3 Avoid causing a nuisance: Sound from any performance shall not be heard by persons in nearby premises”.***

6.4 Our draft Code of Conduct is attached in the draft policy as Appendix C.

*The Busking and Street Entertainment Forum*

6.5 No changes have been made to the draft policy as a result of the consultation. The Council still considers this an integral part of ensuring Buskers and Street Entertainers are a recognised part of our City's community and ensure they have a voice in the decisions we and our wider community take. Our draft Busking and Street Entertainment Forum is attached in the draft policy as Appendix C.

**7.0 Introducing Control and Regulation of Busking and Street Entertainment**

*Adopting Part V of the London Local Authorities Act 2000*

7.1 This legislation has been specifically designed for London boroughs to prohibit busking and street entertainment and/or adopt a licencing scheme when there is or is likely to be undue interference with or inconvenience to or risk to safety of persons using a street in that part of their area or other streets within the vicinity of that street or nuisance to the occupiers of property in or in the vicinity of a street in that part of their area.

7.2 Officers have considered that adopting this legislation in areas of high impact will enable the council to influence, control and create clear enforcement measures around where it is appropriate to busk safely, as well as to control amplification and audible sound levels through licensing conditions.

7.3 Officers have also considered that an additional benefit of introducing licensing is that it will enable quicker and more effective penalties to be issued against irresponsible buskers without a licence, or those in breach of licensing conditions. Penalties include removing permission to perform through revoking a licence and seizing equipment or prosecuting should individuals fail to respond positively to informal requests to comply.

*Control and Regulation across the West End*

7.4 Earlier this year the Council's consulted on adopting Part V of the London Local Authorities Act 2000 in the areas of Oxford Street, Piccadilly, Chinatown and Leicester Square, as these areas are where adverse impacts related to busking and street entertainment were most acutely evidenced. The consultation response demonstrated that the proposals to introduce control and regulation here were supported by the majority (69%<sup>1</sup>) of residents and workers.

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<sup>1</sup> This figure is an average taken from residents and workers that responded to our consultation with strongly agree and agree across all areas

- 7.5 Whilst the Council had evidence to suggested that other busking hotspot areas also experience adverse impacts resulting from busking and street entertainment, it was instead proposed and consulted on an alternative approach to control regulation. Based upon how buskers and street entertainers currently interact with some spaces and their willingness to engage with the Council it was proposed that self-regulation was supported in Covent Garden and Trafalgar Square by:
- embedding the Code of Conduct
  - drafting a Memorandum of Understanding between the SPA and council
  - identifying appropriate zones for performances
  - investing in an enhanced enforcement officer presence
  - monitoring the continued viability of self-regulation through quarterly meetings with the buskers and street entertainers and the local community
- 7.6 However, whilst around half (49%) of resident and worker responses to the consultation were supportive of this approach, the response from those who live and work directly in and around the areas of Covent Garden and Trafalgar Square were less likely to be in favour. In particular, concerns were raised around the significantly increased likelihood of buskers and street entertainers being displaced from the regulated areas of Oxford Street, Piccadilly, Chinatown and Leicester Square, into the adjacent and equally popular areas of Covent Garden and Trafalgar Square. Displacement would not only exacerbate the number of buskers and street entertainers already present and competing for performance space and the adverse impacts already experienced in these areas, but there also remains an apprehension that voluntary measures and performer self-regulatory interventions have never previously demonstrated or been sustainable enough to effectively reduce nuisance. There was a strong view that control and regulation is expanded into these areas to prevent the risk of displacement, ensure proactive measures are introduced to control the number of buskers and performers using the shared public space, reduce nuisance through licensed conditions, and provide enforcement officers with improved powers to manage issues arising.
- 7.7 In light of these responses, Officers consider that the Council continue to support the good work and engagement with the SPAs, however this support should also be underpinned by control and regulation to allow the formal designation of a fixed number of performance spaces for buskers and street entertainers, and introduction of licensed conditions to control safety and audible sound levels to protect those who live and work near to these popular busking locations.
- 7.8 Officers have therefore reviewed the consultation results alongside the evidence available including complaint data (table 2), impact statements, officer and partner agency observations, and our stakeholder engagement – and have identified certain locations in our City where adverse impacts and the potential for displacement to exacerbate issues require regulation under Part V of the London Local Authorities Act 2000 and satisfy the legal test to do so.

Table 2: Number of complaints received by area (April 2018 – August 2020)

Areas	Complaints
Oxford Street, Regent street & Bond Street	1405
Piccadilly, Chinatown & Leicester Square	1254
Covent Garden	382
Trafalgar Square, Strand & Aldwych	566
Mayfair and Piccadilly	262
Soho	143
Whitehall, Parliament Square & Victoria	243
Knightsbridge & Belgravia	132
Embankment	174
Bayswater & Queensway	126
Marylebone	92
Paddington	25
Other	12
<b>Total</b>	<b>4,650</b>

- 7.9 These locations in our City, whilst distinctly named and individually recognised, are collectively known most commonly as the ‘West End’ and is host to an abundance of internationally recognised commercial and entertainment venues, historic and cultural tourist attractions, shops, businesses, theatres, parks, government buildings, multiple busy transport/commuter stations and hubs, as well as being the official residency of the Royal Family - making this area truly the centre of London. Up to one million visitors and workers arrive into the city each day meaning the flow of pedestrian, vehicle and freight traffic never stops. However, perhaps less recognised is that this area is also home to many residents.
- 7.10 The significant levels of footfall we see also means that many buskers and street entertainers are attracted to work here and competition for performance space is high. Officers estimate that there are approximately 50 informal busking and street entertainment ‘pitches’ that have a high number of loud or amplified performances daily, meaning locals get little or no respite for lengthy periods of time. In addition, some of these informal pitches are not appropriate for busking and street entertainment. This is because of the nature, design and use of the area, which can at times cause pedestrians to spill out onto roads to get past buskers and street entertainers and their audience or impede on pedestrian flow in already highly congested areas.
- 7.11 The Council therefore reasonably considers that because of the high number and close concentration and proximity of residents, businesses, roads, pedestrians and vehicles, that there is a risk for buskers and street entertainers to cause undue interference with

or inconvenience to, or risk to safety of persons using a street and/or nuisance to occupiers of nearby premises, in any part of the West End that is not regulated.

7.12 Plans of the areas proposed for regulation under the 2000 Act have been incorporated into the draft policy attached as Appendix C.

#### Identifying performance space (pitches)

7.13 The Council is committed to provide opportunities for buskers and street entertainers to perform in our City and have identified pitches across the proposed regulated area that are considered appropriate for busking and street entertainment to take place, including identifying where amplification may be appropriate.

7.14 In summary, the methodology for identifying safe and appropriate locations for street entertainment began with a process of eliminating the following locations:

- anywhere in close vicinity of train stations or tube entrances and exits, business entrances or exits,
- anywhere where the width of the pavement is reduced,
- anywhere on a bridge
- anywhere where there are long standing construction works, and
- where other queues or audiences may also gather i.e. near bus stops, taxi ranks, ATMs and next to pedestrian crossings.

7.15 Officers also took into consideration the specific locations which the majority of buskers currently gravitate towards, as these provide a good indication of what would be considered from the buskers' perspective an attractive location to both perform and attract audiences. Where possible, we have sought to retain these areas.

7.16 Once general locations were identified, officers then determined that to ensure pedestrians could also comfortably pass by a busker or street entertainer and their audience, a gap of at least 2 metres must be kept from kerbs and fixed structures at all times (enough to allow a wheelchair or double buggy to pass). This then clearly defined the size of the performance space to include both the busker and street entertainer and their expected audience size. Identified performance spaces are commonly referred to as 'pitches'.

7.17 A total of twenty-five designated pitches are proposed in the regulated area and plans of these designated pitches are also incorporated into the draft policy attached as Appendix C. It is proposed that busking and street entertainment will be prohibited in all the regulated areas apart from the designated pitches and subject to the terms and conditions of the pitch and the standard busking license conditions.

#### Licensing Requirements

- 7.18 No changes following the consultation have been made to the proposed standard conditions applying to the individual busking licences. Standard conditions have been designed to minimise the impact of nuisance and control the performance, the management of the audience, and sound.
- 7.19 It is also remains that to keep the regulation light touch, that buskers and street entertainers will be expected to continue to self-regulate their queuing systems, performance times and respite times, rather than the council at this stage introducing a managed booking system.
- 7.20 The consultation results saw comments from many stating that the proposed £20 fee for a 6 month licence was either too high or too low, however it is the councils position that this fee remains proportionate. The council is choosing to absorb all the set up and ongoing costs of implementing and enforcing a licensing scheme through existing budgets, and only charge a nominal fee for performer licence applications and consider that the cost is still accessible for all new and established buskers and street entertainers to perform in the centre of the City,
- 7.21 The Council is committed to developing and delivering authorisation procedures and formalities that ensure that applications for authorisations are processed as quickly as possible and in any event within a reasonable time frame from when all documentation has been submitted and the relevant fee paid. To assist applicants officers are intending that the application will be made entirely online.
- 7.22 Where the applicant is unable to provide the relevant documentation or makes a request for variation to the standard conditions the application will be determined by a determining officer, where the matter is deemed to be particularly complex the officer may defer the application to a senior manager. Additionally, the application will be determined by a determining officer or senior manager where the automated system is unable to automatically validate or determine the application. This may arise where the applicant indicates, for example, that there are unspent conditions or there has been a previous refusal of an application in these types of circumstances the determining officer will determine the application within ten working days.
- 7.23 Details of the licence conditions, as well as procedures for applying for a busking and street entertainment licence are contained in the draft policy attached as Appendix C.

## **8.0 Complaints, managing compliance and carrying out enforcement**

- 8.1 No changes have been made to the policy with regards to managing complaints or the enforcement approach to take.
- 8.2 The enforcement action taken will be a stepped approach in line with the Council's Corporate Enforcement Policy, and action will vary depending on whether the busker or



street entertainer is in a non-regulated or regulated area. Details are included in the draft policy attached as Appendix C.

## **9.0 Policy Monitoring and Review**

9.1 This policy represents an entirely new approach to busking in our City and has been carefully designed to balance the needs of everyone that shares the public space, by taking a targeted approach. However, the council remains committed to ongoing quarterly reviews, and an annual review after one full calendar year of operation to assess the policy impact and effectiveness.

9.2 This review will consider:

- The effectiveness of the Code of Conduct
- A review of licensing including the areas, conditions of the licence, fees and duration of licences, and whether the scheme should be reduced or expanded beyond the current designated streets.
- Resource and finance implications

9.3 To assist in our review the council will:

- Review the data available and consider the views of our enforcement officers
- Use quarterly forum groups which include buskers and street entertainers, local businesses and residents to gather qualitative evidence on how the policy is operating
- Invite interested stakeholders to feed back to us with their views on how effective the policy has been. We will facilitate this process by using an open survey which will ask for views on aspects such as whether buskers and street entertainers are more compliant as a result of the policy, how well the complaints process is working, and how the policy has affected the look and feel of the City's public spaces.

## **10.0 Equalities Implications**

10.1 The Council must have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

10.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

10.3 An Equalities Impact Assessment has been conducted and the council believes that the busking and street entertainment proposals, including the licensing regime, does not adversely impact or unlawfully discriminate against any protected characteristics.

## **11.0 Financial Implications**

11.1 Set up costs to develop the policy and business systems is estimated to be c.£73,500. With projected ongoing annual operational costs of £43,985.

11.2 In our efforts to keep costs as low and improve the efficiency of the application process, officers are seeking to introduce automated processes where possible as described in 7.21 – 7.22.

11.3 The council can recover its costs, however having considered and balanced the needs of our community with wanting to ensure we continue to encourage busking and street entertainment talent here, we believe that the costs to performers to obtain a licence must be kept low. The council is therefore choosing to absorb all the set up and ongoing costs of implementing a licensing scheme through existing budgets, and only charge a nominal fee for performer licence applications.

11.4 The introduction of the fee will result in very minimal income to the council approximately £2,400 based on 120 applications per year. The proposed nominal charges for buskers and street entertainers are summarised below:

Licence application fee	£20
Renewal application fee	£20
Variation application fee	£20

11.5 Complaint and regulation costs will be met through the distribution of existing resources and as such there are no additional costs for resource requirements to the council arising from the recommendations in the report. We are also working closely with BIDs and the Metropolitan Police to ensure that they are also aware of and prepared for resource demands.

11.6 The fee's and costs required to implement the policy will be reviewed following one full calendar year of implementation and may be subject to change.

## **12.0 Resource implications**

12.1 As described above there are no additional resource costs attributed to the implementation of this policy, rather the resources needed to review licence applications

and manage compliance will be met through the phased distribution of existing resources. It is anticipated that to embed the policy 3000 City inspector hours will be required in advance and during the implementation period.

### **13.0 Legal implications**

13.1 Part V of the London Local Authorities Act 2000 (“the 2000 Act”) is enabling legislation that can potentially be implemented in Westminster to regulate busking, either by prohibiting busking or licensing busking.

#### *What busking will be regulated?*

13.2 Busking means the provision of entertainment in a street but does not include the provision of entertainment:

- a. of a class which from time to time is by resolution excluded from the operation of the 2000 Act;
- b. under and in accordance with a premises licence or a temporary event notice having effect under the Licensing Act 2003 and which authorises the performance of music or dancing;
- c. which is authorised specifically to take place in a street under any other enactment;  
or
- d. consisting of music performed as an incident of a religious meeting, procession or service.

13.3 Subject to the above, busking and street entertainment is a form of evolving performance art consisting of entertainment in a street or areas where the public commonly have access. The phrase ‘busking and street entertainment’ should be given its ordinary meaning as commonly applied in everyday language which can include (but is not limited to) performances by musicians, magicians, comedians, artists, dancers, acrobats and mime artists.

#### *What is the meaning of a street for the purposes of the busking scheme?*

13.4 A “street” includes any street or way to which the public commonly have access, whether or not as of right; any place, not being within permanently enclosed premises, within 7 metres of any such street or way, to which the public commonly have access and any area in the open air to which the public commonly have access.

#### *Application of Part V*

13.5 A resolution to implement the legislation can only be passed if there is reason to believe that there has been, is being or is likely to be caused, as a result of the busking:

- a. Undue interference with or inconvenience to or risk to safety of persons using a street in that part of their area or other streets within the vicinity of that street; or
- b. Nuisance to the occupiers of property in or in the vicinity of a street in that part of their area.

13.6 The Council shall cause to be published in a local newspaper circulating in the City notice of the passing of the resolution and the date when Part V will apply to busking in the City and also of the general effect of the provisions of Part V coming into operation as from that day. The date when Part V is to apply must not be earlier than the expiration of three months from the publication of the said notice.

*The designation of licence streets*

13.7 Section 34 of the 2000 Act states that, if the Council considers that busking should be licensed in the area it may pass any of the following resolutions:

- a. A resolution designating any street or part of a street within the City as a licence street (a designating resolution); or
- b. A resolution prescribing in relation to any licence street or any part of a licence street any hours during which busking may take place.

13.8 If the Council passes a resolution under section 34, that resolution shall take effect on the day specified in the resolution which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed.

13.9 The Council must not pass a resolution under section 34 unless it has published notice of its intention to do so in a local newspaper circulating in the area and have served a copy of that notice on the highway authority, the Metropolitan Police Commissioner, and any body which appears to be representative of persons carrying on busking in the area affected by the proposed resolution. The notice must state that representations or a request to hear representations relating to it may be made in writing within such period, not less than 28 days after the publication of the notice, as may be specified in the notice.

13.10 It is advised that the Council should use the process above to seek opinions on both the implementation of Part V of the Act itself and any proposals to license busking pursuant to section 34 of the 2000 Act. This will then give all persons who might be affected by the proposals the opportunity to comment on whether the proposed restrictions are appropriate, proportionate or needed at all.

13.11 The Council must consider any written representations relating to the proposed resolution which they have received in the specified time and must hear oral representations if requested to do so. Having considered the representations, the Council may, if it thinks fit, pass the proposed resolution with any modifications considered to be appropriate.

13.12 The Council must publish notice of the passing of such a resolution in a local newspaper circulating in the area on two consecutive weeks, the first of which shall not be later than 28 days before the day specified in the resolution from the coming into force of the designation.

#### Application process

13.13 An applicant for the grant of a licence shall provide such information as the council may by regulation prescribe. Regulations may, inter alia, prescribe the procedure for determining applications. An applicant for a licence shall pay such a fee determined by the council as may be sufficient to cover in whole or in part the reasonable administrative or other costs incurred in connection with their functions under Part V of the 2000 Act.

13.14 The council may refuse to grant a licence on any of the following grounds -

- a. that the applicant could be reasonably regarded as not being a fit and proper person to hold a licence;
- b. that there is not enough space in the street in respect of which the application is made for busking to take place without causing undue interference with, or inconvenience to, or risk to the safety of persons using the street, or other streets within the vicinity of the street;
- c. that there is a likelihood of nuisance being caused to the occupiers of premises in or in the vicinity of the street in respect of which the application is made.

13.15 The council shall refuse to grant a licence in respect of an application which relates to any street other than a licence street.

13.16 The council may revoke a licence on any of the following grounds -

- a. that there has been a breach of the conditions of the licence;
- b. that undue interference with, or inconvenience to, or risk to the safety of persons using the street, or other streets within the vicinity of the street, has been caused as a result of the busking;
- c. that nuisance has been caused as a result of the busking to occupiers of property in or in the vicinity of the street in respect of which the licence was granted.

13.17 The council may make regulations prescribing standard conditions applicable to all licences. Where the council have made such regulations, every licence granted by the Council shall be deemed to have been so granted subject to the standard conditions except so far as they are expressly excluded or amended in any particular case.

#### Human Rights implications

- 13.18 The powers need to be exercised appropriately so as to provide a proportionate response to the problems caused by busking. In deciding whether to prohibit or licence busking in any part of the City, the Council is advised to have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights. The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. It is unlawful for the Council to carry out its functions in a way which is incompatible with rights set out in the European Convention of Human Rights.
- 13.19 Article 10 states that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. However, the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- 13.20 Article 11 states that everyone has the right to freedom of peaceful assembly and to freedom of association with others. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.
- 13.21 These rights must be balanced against the protection of the rights and freedoms of others, including the right that everyone has under Article 8 to respect for their private and family life and their home. In some circumstances, public authorities must take positive steps to prevent intrusions into a person's private life by other people, including those who engage in anti-social busking and street entertainment.
- 13.22 Article 14 of the convention (prohibition of discrimination) states that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status. The Council has undertaken an Equalities Impact Assessment (EIA) in accordance with its Public-Sector Equalities Duty under Section 149 of the Equality Act 2010 and found that there is not anticipated to be a negative impact on protected groups.

13.23 Concern has been expressed about the potential use of the 2000 Act to interfere with legitimate and reasonable activity such as peaceful protests and busking. The proposals in this report are intended to support responsible busking and to be a proportionate response to the irresponsible and anti-social busking that has been identified from complaints submitted by residents and businesses in the identified areas.

13.24 As indicated above, a balance must be struck between the rights of individuals who wish to engage in busking and street entertainment and the interests of the local residential and business community. Even if significant members of the public are enjoying the busking entertainment, the “right” of the public to enjoy that busking must be balanced against the detrimental effect that it might be causing if it is too loud or intense or too persistent etc. What might be acceptable in one public place might not be acceptable in a public place within a highly residential area or even an area with many commercial operators if the busking unreasonably interferes with their ability to work.

#### Appeals and Challenge

13.25 Any of the following persons, that is to say:

- a. An applicant for the grant of a licence whose application is refused;
- b. A licence holder who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
- c. A licence holder whose licence has been refused

may at any time before the expiration of a period of 21 days appeal to the magistrates’ court acting for the area in which the licence street is situated. An appeal by either party against the decision of the magistrates’ court may be made to the Crown Court.

13.26 There is no means within the legislation to challenge either the implementation of Part V or the designation of licence streets. Any person who is aggrieved by the implementation of the legislation or the licensing scheme itself can potentially seek permission to appeal to the Administrative Court by way of Judicial Review proceedings. The grounds for such a review would typically have to be based on illegality and/or irrationality and/or procedural impropriety.

#### Enforcement

13.27 Any person who:

- a. busks in any street to which Part V of the 2000 Act applies without the authority of a licence; or
- b. is concerned with the organisation or management of busking which is not authorised by a licence; or
- c. contravenes any condition of his or her licence; or

d. in connection with his or her application for a licence makes a statement which he or she knows to be false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000).

13.28 An authorised officer or a constable who has reasonable cause to believe that busking is taking place or is about to take place without a licence or in breach of the terms and conditions of a licence or in a street which is not a licence street to which Part V of the 2000 Act applies may require that busking either cease or not take place. If the busking continues or takes place despite the requirement for the busking to either cease or not take place, the authorised officer or constable may seize and remove any apparatus or equipment used in connection with the busking which may be required to be used in evidence in respect of an offence under section 42 (Enforcement under Part V) of the 2000 Act.

## **14.0 Appendices**

Appendix A January 2020 Licensing Committee Report

Appendix B July 2020 Licensing Committee Report and Consultation Analysis

Appendix C Draft Policy incorporating -

- Draft Code of Conduct
- Plans of the designated areas where busking will be licensed
- Draft regulations prescribing standard conditions
- Draft regulations prescribing application process