

REPORT TO: LICENSING COMMITTEE

DATE: 9 MARCH 2021

TITLE: STREET TRADING POLICY

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RECOMMENDED that:

- A** The Committee approves, with any necessary amendments, the proposed Street Trading Policy 2021 – 2026, as set out in Appendix 5 to the report, and instructs the Environment and Licensing Manager to commence a 12 week public consultation.
- B** Subject to A, authority to approve the details of consultation, including when consultation starts, is delegated to the Environment and Licensing Manager, in consultation with the Chair of the Licensing Committee.
- C** Subject to A and B above, the response from the consultation process to be brought back to committee within the 21/22 Workplan and a final Policy to be agreed.

BACKGROUND

1. Street Trading is a function of the Council. Harlow Council is the Licensing Authority responsible for considering applications for a range of activities that require a street trading licence under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (referred to subsequently in this report as the 'Act').
2. Street trading is defined as the selling or exposing or offering for sale any article (including a living thing) in a street. A Street is defined in the Act as: "street" includes any road, footway, beach or other area to which the public have access without payment.
3. Councils usually control street trading so that they can decide where to allow this and to properly manage the environmental and safety implications that street trading creates. It allows the impact to be managed in terms of the local economy and impact on and benefit to the community. The control of street trading can also have benefit for traders as it provides security over their trading activities and location.

4. On 31 May 2001 by agreement at Committee the schedule for Streets within Harlow as Prohibited and Licensed streets under the Act came into effect. The control of Street Trading is currently based on a regime that exists within various different procedures, advice and published application forms which is supported by a series of Licensing Committee decisions set out below;
 - i) Street Trading Licence Procedure - Amended 23 May 2016 (as set out in Appendix 1 to the report)
 - ii) Street Trading Prohibited and Licence Streets - 8 March 2006 (as set out in Appendix 2 to the report)
 - iii) Street Trading Subsidiary Terms – Amended 22 July 2014 (as set out in Appendix 3 to the report)
 - iv) Street Trading Ice Cream Van Chimes Updated - 1 April 2014 (as set out in Appendix 4 to the report)
5. The current regime has historically worked well with some streets having been determined 'prohibited' streets and the remaining streets designated as 'licence' streets.
6. This means that anyone who wishes to trade on a street (which includes a road, footway or other area to which the public have access without payment) must hold a street trading licence.
7. The administration of Street Trading includes the determination of Prohibited, Licensed and Consent Streets, the setting of fees, the administration of licences and consents, and enforcement in the event of non-compliance. There is no appeal against the refusal to issue consent, but there is an appeal in the event there is a refusal to issue a licence. If the local authority does not apply a designation for street trading the only other legislative controls are minimal and generally only cover pedlars and charity issues.
8. Work has been undertaken to consolidate, update and formalise Street Trading controls across the administrative area of the Council. This has led to a draft Street Trading Policy that members are now being asked to consider and approve for public consultation taking into account relevant case law and best practice.
9. The preparation and publishing of the Policy is not a legal requirement. However, the aim is that a published Policy will provide a useful tool for Officers and Councillors to ensure that the Council can properly regulate those who trade in the street and not from within a business premises. It will create transparency for all stakeholders providing the manner in which the Council intends to regulate Street Trading.

PROPOSALS

10. The main purpose of this report is to seek approval for a formal consultation. It is proposed to undertake the consultation through the Council's website and directly with relevant stakeholders including existing Street Traders, Essex Highways, Trading Standards and Ward Councillors to generate feedback in relation to the wider approach that the Council is considering, particularly around the introduction of Basic Disclosure and Barring Service (DBS) checks for applicants and employees.
11. Should the consultation process identify any changes to the designation of prohibited streets then there is a prescribed process in the Act. This process requires public consultation and a resolution from the Committee.

12. A draft policy which is now being proposed is set out at Appendix 5 to the report. The proposed changes reflect case law and best practice established over the near 40 years since the Act's introduction. It is intended that the new Policy will cover a five year period but could be reviewed earlier if required.

13. The revised policy includes the following key changes;

- i) Publication of a new over-arching cohesive policy which has previously been documented in various Council guidance and procedure documents.
- ii) Introduction of clear guidelines on what can be taken into account when considering a street trading licence application.
- iii) Introduction of acceptable standards of behaviour for street traders- supported by conditions.
- iv) An increase in the range of consultees when considering applications.
- v) Basic Disclosure and Barring Service (DBS) required for applicants and employees. A basic DBS check currently costs £23 per check. A new basic DBS will be required for every new and renewal application.
- vi) Inclusions of safeguarding measures to protect children and vulnerable adults- supported by conditions.
- vii) Consultation period extended to 28 days from the current 14 days in respect of an application, by extending this period this will support officers to carefully consider relevant information received and follow up necessary enquires during this period without delay.
- viii) Remove the need for the Council to publish notice of application in local paper, during this current age the requirement of publication can be satisfied by way of publication on the Councils website and where necessary by public notice at the relevant site. The Act does not prescribe that an application must be published in a newspaper.
- ix) Specification of the level of food hygiene requirement for a minimum rating of 3 under the national Food Hygiene Rating Scheme (within the range of 0-5). A rating of 3 is considered to be 'generally satisfactory' in terms of food hygiene- supported by way of condition.
- x) Restriction on mobile traders stopping within 50 metres of any school (from an hour before the start of the school day until an hour after the end of the school), hospitals, and places of worship (on Sundays and other recognised day of worship)- supported by way of condition.
- xi) Proposal to remove existing Town Centre trading day restrictions with the proposal of no restrictions on trading days, each application should be considered on its own merit. Currently no trading is permitted on a Wednesday, Thursday and Sunday.

- xii) Number of licence conditions increasing from current total of 12 licence conditions to 36; including conduct, highway safety, nuisance, environmental impact and trading restrictions.
- xiii) Introduction of no trading within 50m of other traders (with an exemption for street trading in Broad Walk, East Gate and Harvey centre Approach)- supported by way of condition.
- xiv) Introduction of a charge (to be calculated) for licence variations such as changing a vehicle or adding new employees, this is an additional cost to the service not currently covered by the application fee. The Act allows local authorities to:
 - a) Charge fees as they consider 'reasonable' for granting or renewal of a street trading licence or a street trading consent
 - b) Determine different fees for different types of licence/consent according to duration of licence/consent the street in which it authorises trading description of articles in which the holder is authorised to trade.

It is appropriate when setting a fee to consider charging on a full cost recovery basis, incorporating costs for processing applications/renewals and any further costs of enforcement and officer training.

Introduction of acceptable standards of appearance for any street trading vehicle or stall- supported by way of condition.

- xv) Restriction on street trading in the Town Centre for those traders who require their vehicle engines to be running while trading or the use of a petrol or diesel generator in the Town Centre- supported by way of condition.

CONSULTATION

- 14. Subject to recommendation A, the intention is to publish the notice of public consultation to review the existing regime. The example consultation notice is attached as Appendix 6 to the report. Further information regarding the consultation process, including stakeholder details can be found in the proposed policy (please see Appendix 5 - Part 5).
- 15. The Licensing Committee must consider any representations made as soon as possible after the consultation ends. After consideration, if they consider it appropriate, the Licensing Committee would need to agree the Street Trading Policy 2021 for publication. It is proposed that the Policy will be formalised during the 2021/2022 financial year.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As set out in the report.

Author: Michael Pitt, Environment and Licensing Manager on behalf of Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

The proposed fees and charges will seek to recover Council costs in administering the scheme.

Author: Richard Criddle, Senior Services Accountant on behalf of Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

None specific.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

Allowing stakeholders to comment during policy formation is likely to lead to more transparent regulatory processes.

Author: Julie Houston, Strategy and Economic Development Manager on behalf of Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

As set out in the report.

Author: Simon Hill, Head of Governance

Appendices

Appendix 1 - Street Trading Licence Procedure - Amended 23 May 2016

Appendix 2 - Street Trading Prohibited and Licence Streets - 8 March 2006

Appendix 3 - Street Trading Subsidiary Terms – Amended 22 July 2014

Appendix 4 - Street Trading Ice Cream Van Chimes Updated - 1 April 2014

Appendix 5 – Proposed Street Trading Policy 2021 - 2026

Appendix 6 – Notice of Public Consultation

Glossary of terms/abbreviations used

DBS - Disclosure and Barring Service