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|  | ITEM NO. |

**REPORT OF**

 **rON Pennington – Head of Regulatory Services**

**TO**

**The Lead Member for Environment**

**ON**

**30th April 2012**

**TITLE: DRAFT STREET TRADING POLICY**

**RECOMMENDATIONS:**

That the draft Street Trading Policy and associated Consent conditions be approved by Lead Member as Council policy and the previous designation of certain streets within the City as ‘Prohibited Streets’ for the purposes of street trading, be removed.

**EXECUTIVE SUMMARY:**

In 1984, Salford City Council resolved to adopt Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1983 in order to regulate street trading activity in the City. The effect of this resolution was that :

1. street trading was prohibited in specified locations across the City e.g. the shopping precincts in Salford, Eccles and Walkden,
2. a Street Trading Consent was required for persons wishing to engage in street trading activity in other parts of the City.

The City Council did not however produce a policy which detailed how street trading

would be regulated from an operational perspective and the conditions attached to the grant of a Consent have been minimal.

The purpose of the draft policy and related conditions/procedures, which are submitted for approval by Lead Member, is to guide the City Council in the manner in which it regulates street trading and considers applications for Street Trading Consents.

It will also provide greater control over the specific locations where street trading takes place so as to avoid complaints from the community of nuisance or annoyance.

BACKGROUND DOCUMENTS:

(Available for public inspection)

Local Government (Miscellaneous Provisions) Act, 1982.

KEY DECISION: YES

**DETAILS:**

At the present there are very few controls over the grant of Street Trading Consents and the manner in which street traders operate once Consent has been issued. Traders are free to set up their business and operate anywhere across the City provided it is not in a prohibited street, they do not cause a nuisance and do not cause an obstruction.

The Directorate does receive complaints from time to time from members of the public and elected members concerning the locations where street traders are operating. These complaints have related to allegations of nuisance where occupiers of residential properties have been dissatisfied with burger sellers setting up business outside their homes and elected members and others complaining of such vehicles parking in the vicinity of schools and colleges and selling ‘unhealthy’ food to pupils/students.

The Directorate has in recent years extended the number of prohibited streets to prevent such sales taking place in the vicinity of educational establishments but this process is time consuming and cumbersome.

The draft policy incorporates measures which are designed to regulate street trading more effectively and the key features are set out below :-

* Where the proposed street trading activity is from a fixed location, Consents will be granted for a specific location or locations rather than permitting businesses to set up where they wish.
* There will be a prohibition on static trading within the vicinity of schools and colleges during term time.
* There will be a process of consultation with Gtr Manchester Police, Gtr Manchester Fire and Rescue Services, Urban Vision as Highway Authority, local residents/businesses and ward Councillors before a Consent is granted.
* There will be an assessment of the proposed location to assess its suitability for street trading.

In carrying out its street trading regulatory functions, the Directorate will have regard to promoting the following objectives:

* Public Safety
* Public Order
* Avoidance of nuisance
* Needs of the area
* Compliance with Legal requirements
* Permitted trading hours

A public consultation exercise took place during the autumn 2011, in which traders, and other interested parties were asked their views on the draft policy and associated conditions.

A total of 5 responses were received from a variety of stakeholders including members of the trade, local authority and a school, details of which are appended to this report. The Principal Officer for Licensing and Environmental Crime spoke personally to each of the respondents to provide clarification on the issues raised and minor amendments were made to the draft proposals.

In granting/ renewing Street Trading Consents, priority would be given to persons who had previously operated from that particular site.

KEY COUNCIL POLICIES: Crime and Disorder

EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS:-

The draft policy requires street traders to make provision for serving customers with disabilities. An initial assessment of the policy has been carried out which indicates

there are no equality implications.

ASSESSMENT OF RISK:

A policy and associated conditions in relation to street trading activity is required in order for the City Council to regulate this activity more effectively and reduce complaints associated with street trading.

SOURCE OF FUNDING:

The administration and enforcement of street trading functions will be carried out within existing budget.

LEGAL IMPLICATIONS Supplied by Tracy Barr

It will be necessary to remove the existing provisions which designate certain streets within the City as prohibited streets as the new proposals contain provisions which authorise street trading to take place only at specified locations.

FINANCIAL IMPLICATIONS

The administration and enforcement of street trading functions will be carried out within existing budget.

OTHER DIRECTORATES CONSULTED:

The views of other relevant Directorates and stakeholders have been taken into account as part of the consultation process.

CONTACT OFFICER: Ron Pennington TEL. NO. 925 1051

WARD(S) TO WHICH REPORT RELATE(S): All

 **DRAFT STREET TRADING POLICY**

Salford City Council has adopted Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 whereby streets have been determined as being either 'consent' or 'prohibited' streets. This means that anyone who wishes to trade on a Consent Street (which includes a street, highway, or other area to which the public have access without payment) must hold a Street Trading Consent.

The purpose of this policy and related conditions / procedures is to guide the City Council in the manner in which it regulates street trading and considers applications for Street Trading Consents. The policy explains how regulation is achieved and decisions taken.

In developing this policy, Salford City Council has consulted:-

* Greater Manchester Police
* Greater Manchester Fire and Rescue Service
* Elected Members
* Urban Vision who act as Highways Authority for the City Council
* Existing holders of Street Trading Consents

This policy sets out the normal requirements and standards that must be met. In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document. However each application or enforcement action will be considered on its own merits.

The City Council will formally review the policy statement every three years and informally re-evaluate it from time to time. Where revisions are made, the authority will publish a statement of such revisions or a policy statement.

***DEFINITIONS***

Under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982:-

**''Street''** includes:

(a) any road, footway or other area to which the public have access without payment.

(b) a service area as defined in Section 329 of the Highways Act 1980.

**''Street Trading''** means the selling or offering or exposing for sale of any article (including a living thing) in any street.

**‘‘Consent’’** A consent to trade on a street granted by the City Council, pursuant to Paragraph 7 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

**''Consent Street’’** means a street in which street trading is prohibited without the consent of the City Council.

**''Consent Holder’’** The person or company to whom the consent to trade has been granted by the City Council.

**''Prohibited Street’’** means a street in which street trading is prohibited.

The following activities are **not** regarded as street trading for the purposes of this schedule:-

(a) Trading by a person acting as a pedlar under the authority of pedlar's certificate granted under the Pedlars Act 1871.

(b) Anything done in a market or fair.

(c) Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980.

(d) Trading as a news vendor (newspapers and periodicals), trading which is carried on at premises used as petrol filling station or is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.

(e) Selling things as a roundsman (e.g. milk roundsmen).

***PROCEDURE FOR DETERMINING STREET TRADING CONSENT APPLICATIONS***

The application and approval procedures are set out in the flow diagram at Appendix 1.

***SUBMISSION OF APPLICATIONS***

An application for a Street Trading Consent must be made to the City Council in writing using the appropriate application form. The following items must be submitted with the completed application form:-

(a) Payment of the full fee as appropriate for the periods of trading applied for.

(b) Where the proposed street trading activity is from a fixed position, a copy of a map of at least 1:1250 scale. The map should clearly identify the proposed site position by marking the site boundary with a red line.

(c) Three coloured photographs of the vehicle, stall, barrow, cart etc that will be used for the street trading activity.

(d) A copy of a current certificate of insurance that covers the street trading activity for third party and public liability risks.

An applicant for a new Street Trading Consent should give a minimum of 14 days notice of the application.

***TRADING ON PRIVATE LAND***

In order to trade on private land (including car parks) within the City of Salford, you will also be required to produce written permission from the landowner before the Council can consider the site suitable for trading.

***CONSULTATION ON APPLICATIONS MADE***

Before a Street Trading Consent is granted, the City Council will carry out a process of consultation with various persons and groups. In particular the following organisations and groups will be consulted:-

* Gtr Manchester Police
* Gtr Manchester Fire and Rescue Services
* Urban Vision who act as the City Council's Highway Authority
* Local Councillors
* Residents and businesses in the vicinity of the proposed street trading location.

Written observations from the above consultees will be sought and taken into consideration when determining an application.

***SITE ASSESSMENT***

The suitability of location for the proposed street trading activity will be assessed having regard to the licensing objectives set out below.

***INSPECTION OF THE TRADING UNIT***

The vehicle, van trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the City Council prior to the grant of any Street Trading Consent to ensure compliance with relevant legislation.

***DETERMINATION OF THE APPLICATION***

The Council will adopt and carry out its street trading regulatory functions with a view to promoting the following objectives-

1. ***Public Safety*** - The location of the proposed street trading activity should not present a significant risk to the public in terms of road safety, obstruction and fire hazard. The term 'public' refers to customers of the street trading activity and other members of the public using the street.

2. ***Public Order*** - The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations from Gtr Manchester Police will be taken into consideration.

3. ***Avoidance of Nuisance*** - The street trading activity should not present a significant risk of nuisance from noise, smells, fumes, rubbish, litter or the harbourage of vermin to households or businesses in the vicinity of the proposed street trading site. Observations from Officers of the City Council will be taken into consideration.

4. ***Needs of the Area*** - The sufficiency of other trading outlets will be taken into consideration in relation to:-

(a) the presence of like outlets already existing in the immediate locality of the proposed street trading site.

(b) The general needs of a locality, should no comparable outlets exist. Applicants will have to demonstrate to the City Council the need for the proposed street trading activity in relation to points (a) or (b).

5. ***Compliance with Legal Requirements*** - The proposed street trading activity should be carried out in full compliance with relevant legislation. Persons wishing to obtain a Street Trading Consent should be fit and proper in terms of the nature of the proposed business and their previous criminal convictions.

6. ***Permitted Trading Hours*** - The City Council will generally only permit street trading between 6am and midnight. Any trading outside these hours will have to be approved by the Council. Street trading outside the guideline hours will be assessed in terms of the criteria detailed above. The City Council retains the right to specify permitted hours of trading that are less than those specified above if local circumstances dictate.

There will be a general presumption against static street trading in the vicinity of schools and colleges. For the purpose of this policy, a location is in the vicinity of a school or college if it is situated such that pupils or students may be encouraged to walk to it during a break from school or college, or immediately before or after school or college.

***MOBILE TRADERS***

Mobile traders, such as ice cream vans and other operators may trade at a particular location only long enough to serve customers at that location, provided they conform to any code of practice issued by the City Council. Codes of practice may include requirements relating to goods to be sold, period of time sales take place at a particular location, times of the day during which sales may take place and the sounding of chimes and calls.

Mobile traders will not be permitted to operate in the vicinity of schools or colleges between 8.30am and 4pm during term time. They will not be permitted to operate within 100 metres of any other street trading outlet.

***DELEGATED AUTHORITY/APPROVAL OF APPLICATIONS***

In accordance with the City Council's constitution, the Lead Member for Environment has authority to determine operational policy in relation to the delivery of services and the enforcement of legislation by officers of the directorate relating to licensing matters. The Director of Environment and Community Safety, or his appointed nominee, has the authority to grant street trading consents which meet the criteria.

Where an application is approved, the Council will issue a Street Trading Consent to which conditions will be attached. A copy of the City Council' standard conditions is attached at Appendix 2. Additional conditions may be attached if special circumstances apply to the consent being granted by the Council. The Consent will be issued within 5 working days of the decision to approve.

The conditions attached to the Consent form part of the approval to carry out street trading in the City of Salford. These conditions must be complied with at all times and failure to do so may result in the Consent being either revoked or not renewed.

***ISSUE OF STREET TRADING CONSENTS***

A Street Trading Consent will be issued for a maximum period of 12 months.

Limited period Consents may be granted on a daily, weekly, monthly, quarterly or half yearly basis in respect of particular types of operations in conjunction with specific events taking place in the City. These particular Consents will expire, unless renewed, on the date specified in the Consent.

In all cases when Consent has expired and an application for renewal has not been submitted to the City Council, a new application will have to be made. In such cases the application will be required to go through the full consideration process outlined in this policy. If an application is refused then a refund will be made less the current administration fee.

***DECISION TO REFUSE OR REVOKE***

If the Director of Environment or his appointed nominee decides not to grant a Street Trading Consent, the applicant will be notified within 10 working days of that decision giving reasons for the refusal.

If the applicant is not satisfied with the decision, they may make representations in writing to the City Council's Licensing and Safety Regulatory Panel within 28 days of being notified of the decision to refuse/revoke.

***APPEAL TO THE LICENSING AND SAFETY REGULATORY PANEL***

The City Council's Licensing and Safety Regulatory Panel has been established to hear objections and appeals in relation to licensing matters. The role of the Panel as regards Street Trading Consents is to hear representations from applicants or licence holders where an application has been refused or a licence revoked.

***REFUSAL OF APPLICATIONS***

The Local Government (Miscellaneous Provisions) Act 1982 does not make provision for any legal appeals against the decision of a Council in relation to the refusal or revocation of Street Trading Consents. A person aggrieved by a decision a Council may seek a Judicial Review of the decision, should it be felt necessary.

***GENERAL INFORMATION***

***Persons under 17 years***

The Council will not grant a Street Trading Consent to a person under 17 Years of age.

***Access by Council and Police Officers***

Consent holders will allow Authorised Officers and Police Officers access to the vehicle, trailer, stall or other device at all reasonable times.

***Street Trading Consents***

The conditions attached to all Street Trading Consents stipulate that a Consent Holder may not assign, sub let, or part with interest or possession of a Street Trading Consent.

**Variation of Conditions**

The Council may from time to time vary the conditions of a Street Trading Consent.

***ENFORCEMENT***

The City Council will actively enforce the provisions of Street Trading legislation within its area. All enforcement activities will be carried out in accordance with the Directorate's Enforcement and Prosecution Policy.

***COMPLAINTS AGAINST THE SEVICE***

The City Council has a corporate complaints procedure copies of which are available on the Council's web site

**APPENDIX 1**

**PROCEDURE FOR DETERMINING STREET TRADING CONSENT APPLICATIONS**

The application and approval procedure comprises of the following stages :-

Application is submitted to the Council

**No**

Representation to Licensing Committee

**CONSENT ISSUED**

Application approved

**Yes**

**Approved**

**No**

Application meets guidelines?

**Yes**

Applicant advised of decision to refuse and rights of appeal

**APPLICATION REFUSED**

**Refused**

Site assessment is made

Inspection of the vehicle, trailer, stall etc

Consultations are carried out

Have objections to the application been received?

APPENDIX 2

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT (1982**)

**STREET TRADING CONSENT CONDITIONS**

1. This Consent enables the Holder to trade in Salford from the location and between those times detailed in this Consent only.

2. The Consent Holder shall at all times have a copy of this Consent available for inspection by a duly Authorised Officer of the City Council or any Police Officer.

3. A Street Trading Consent Plate will be issued along with the Consent which must be clearly displayed on the vehicle, trailer, stall or other device. In the case of vehicles or trailers, the Consent Plate will be displayed on the rear of the vehicle/trailer.

4. The Consent Holder shall only trade from the size and type of vehicle, stall, trailer or other device specified in this Consent

5. Mobile Consent Holders are only permitted to remain stationary at a particular location only long enough to serve customers at that location and cannot return to the same location within one hour.

6. Consent Holders trading in food will only employ persons who are suitably trained/qualified in food hygiene.

7. The Consent Holder must not permit any person under the age of 17 years to engage in Street Trading unsupervised.

8. The Consent Holder must not use or permit anyone else to use this Consent to trade from anywhere other than the location detailed in this Consent.

9. The Consent Holder and any other person who is authorised by the Consent holder to be in charge of the vehicle, stall, trailer or other device shall ensure that at all times whilst street trading activity takes place, they wear the relevant identity badge issued to them by the Council.

10. The Consent Holder must take all reasonable steps to ensure public safety, in particular, that the vehicle, stall, trailer or other device used in connection with the street trading activity is maintained in a safe condition and is tested/services annually. The vehicle, stall, trailer or other device must be kept in a clean condition.

11. The Consent Holder, if selling food from a stationary vehicle/stall, must operate from a purpose made vehicle/stall constructed and managed so as to comply with relevant food hygiene and health and safety legislation.

12. The Consent Holder be responsible for the temporary storage of refuse, liquid and other deleterious material accumulated or created whilst trading and its subsequent removal from the site and shall satisfy the Council regarding its proper disposal.

13. No water from the washing of equipment or hand washing shall be allowed to discharge to ground and the Consent Holder shall satisfy the Council regarding its proper disposal.

14. At least one refuse container must be provided by the Consent Holder and positioned near to the vehicle, stall, trailer or other device and be available for use by customers. A notice must be displayed requesting customers to deposit litter in a waste container.

15. The Consent Holder shall be responsible for collecting and removing all litter resulting from the street trading activity within 100 metres in any direction of the vehicle, stall, trailer or other device and disposing of it in a proper manner.

16. Consent Holders who sell food must observe proper food safety and hygiene standards at all times and make appropriate use of any equipment provided for this purpose.

17. The Consent Holder must ensure that a current price list of articles sold is prominently displayed at all times so that it can easily be read by prospective customers.

18. The Consent Holder must comply with any reasonable request/instruction given to him by a duly Authorised Officer of the Council or a Police Officer.

19. The Consent Holder must not use or permit to be used any electrical or electronic equipment (e.g. televisions, radio receivers etc) in such a manner as to cause a disturbance or nuisance.

20. The Consent Holder must not obstruct the highway/footpath at the location of the street trading activity or cause danger to persons using the highway/footpath.

21. The Consent Holder must not cause nuisance or annoyance to persons using the street or otherwise.

22. The Consent Holder will be responsible for and reimburse the Council in respect of any damage caused to the highway/footpath or any fittings or fixtures on it.

23. The Consent Holder must obey all road traffic regulations in force at the location of the street trading activity.

24. The Consent Holder must ensure that the vehicle, stall, trailer or other device is positioned only in the location of the Consent Street for which he holds a Street Trading Consent. Such a vehicle, stall, trailer or other device must be moved from the location after the close of each trading day unless:

(a) the Consent Holder has written agreement from the landowner that the vehicle, stall, trailer or other device can remain in that location, and

(b) the keeping of the vehicle, stall, trailer or other device in that location would not be in breach of Planning permission requirements and would not cause an obstruction or nuisance/annoyance.

25 There must be no alteration to the design, construction or appearance of the vehicle, stall, trailer or other device used in connection with the street trading activity without the written permission of the Council having been obtained.

26. There must be no change in the type/range of articles sold without the written permission of the Council having been obtained.

27. The Consent Holder must at all times have available for inspection an up to date and valid Certificate of Insurance (vehicle, public and employers liability) - the level of public liability cover must be a minimum of £1, 000,000.

28. The Consent Holder must take adequate precautions to prevent the risk of an outbreak of fire at his vehicle, stall, trailer or other device. Where a power source or heating appliance is present, e.g. generator or bottled gas container, then current safety certificates issued by a competent person must be in force and a suitable fire extinguisher must be provided. In addition, a fire blanket must be provided when selling hot food.

29. Consent Holders must ensure that disabled persons and wheelchair users can be adequately served. This may involve such customers being served from outside the vehicle, stall, trailer or other device.

30. The City Council reserve the right, should the need arise from time to time, to direct that the Consent Holder may not trade:

(a) from a particular location

(b) from a particular location during certain times of the day and the Consent Holder must comply with that instruction.

31. The Consent Holder must present his vehicle, stall, trailer or other device used for street trading for inspection by a duly authorised officer of the City Council at a time and place designated by the officer.

32. The Consent will expire on the date given on the face of the Consent.

33. If the Consent Holder fails to comply with any of the conditions attached to this Consent the Consent may be revoked and the Consent Holder will be liable to prosecution.