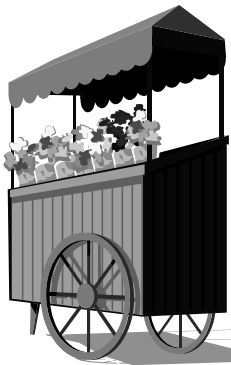




# Street Trading Policy 2016-2021



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# Street Trading Policy

## 1.0 INTRODUCTION

### 1.1 Introduction

Street Trading covers a wide range of outdoor retail and catering activities undertaken in public streets. It includes familiar sights such as flower sellers, ice-cream vendors, fancy goods, souvenir stalls and a variety of hot and cold catering activities.

The City Council has adopted a scheme under the Local Government (Miscellaneous Provisions) Act 1982 to regulate most forms of street trading - that is, selling from a van, stall, barrow, suitcase etc, in a street.

The consent only applies to areas within the City boundary. District Councils in other areas have adopted similar schemes for controlling street trading. If you need information about street trading in other Districts you should enquire at the Council Offices for that District.

### 1.2 Purpose of the Policy

1.2.1 Gloucester City Council understands that street trading activities are an essential part of a vibrant and lively city and is important to both the local environment and local economy.

1.2.2 Street Trading can provide vibrancy and interest to the local environment for both residents and visitors to the City and an opportunity for small businesses to establish themselves and grow with a relatively modest outlay.

1.2.3 This Policy works alongside the City Council's City Vision 2012-2022 which key aims are to create:

- A flourishing economy and city centre which meets the needs of residents, businesses and visitors
- A vibrant evening economy
- A city which improves through regeneration and development
- A healthy city with opportunities for all

1.2.4 This document will guide the City Council when it considers applications for street trading consents, and will inform applicants of the criteria against which applications will be considered.

1.2.5 It is the intention that this Policy will be reviewed every five years or more frequently should legislative changes deem necessary.

### 1.3 The Objectives of the Policy

1.3.1 The objective of the Policy is to create a trading environment in which street trading compliments existing premises based retailing activities, is sensitive to the needs of residents and provides diversity in terms of consumer choice.

1.3.2 This Policy aims to ensure that street trading does not undermine safe and efficient passage along public highways.

1.3.3 This Policy aims to balance the needs of the wider community, local community and street traders against the needs of those who may be adversely affected by street trading activities.

1.3.4 This Policy aims to provide a consistent and transparent approach in the way in which the Council deals with street trading to ensure that it is appropriately and proportionately controlled in line with the Council's Corporate Enforcement Policy.

1.3.5 In developing this policy, considerations were given to the legal requirements of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) and our duties under:

- (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder were considered.
- (b) The Regulators' Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations set out and to particularly consider the impact of regulations on small businesses.

(c) The Provision of Services Regulations 2009 to ensure requirements are non-discriminatory justified by an overriding reason relating to the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance, transparent and accessible.

## 1.4 Consultation

1.4.1 There is no statutory requirement to consult before determining the Street Trading Policy, however, to ensure openness and transparency the Council has chosen to consult with the following people and bodies:-

- All existing Street Traders
- Development Control (Gloucester City Council)
- Highways (Gloucestershire County Council)
- Gloucestershire Constabulary
- Gloucestershire Fire & Rescue
- Environmental Protection Team (Gloucester City Council)
- Chamber of Commerce
- Heritage (Gloucester City Council)
- City Centre management (Gloucester City Council)
- Local Elected Members

## 1.5 Legislation & Current Provision

1.5.1 The Local Government (Miscellaneous Provisions) Act 1982 (Section 3 and Schedule 4) provides the legal framework for the control of street trading in England and Wales. This activity is defined as 'the sale and exposing or offering for sale any article, including a living thing, in a street'. Streets are further defined as to include any road, footway, beach or other area to which the public have access without payment.

1.5.2 The main purpose of this legislation is to establish an appropriate regulatory regime which prevents undue nuisance, interference or inconvenience to the public brought about by street trading. This legislation provides local authorities with the power to designate specific areas within their administrative boundaries as either:-

- Prohibited Streets: those which are not open to street traders
- Consent Streets: where trading is prohibited without Local Authority Consent
- Licence Streets: where trading is prohibited without a local authority Licence

1.5.3 Local Authorities can place conditions on any consent or licence granted. The Act creates offences associated with trading in consent or licence streets without the necessary authority; a person guilty of such an offence may be liable, on conviction, to a fine of up to £1000.

1.5.4 There are however, a number of exemptions provided in the Act, which are not considered to be street trading. These are detailed at paragraph 6 of this Policy. However, it is important to note that exempted traders are still controlled by other regulatory legislation.

1.5.5 On 1<sup>st</sup> April 2009, Gloucester City Council adopted a new street trading management regime which designated all streets in Gloucester City as **Consent Streets**. Consents provide a more flexible means of controlling street trade and are not limited by statute in their refusal or revocation. Applicants can apply for a consent for any street and applications are assessed on their individual merits.

1.5.6 It should be noted that should a street trader wish to sell alcohol or provide late night refreshment additional authorisation is needed under the terms of the Licensing Act 2003.

1.5.7 Late Night Refreshment is the supply of hot food or drink between the hours of 11pm and 5am on any day of the week.

1.5.8 Licensing Officers will be able to provide further information on the requirements of the Licensing Act 2003.

1.5.9 The Children and Young Persons Act 1933, as amended by the Children and Young Persons Act 1963, controls the employment of children in street trading. The Act prohibits the employment of children under 17 years of age for the purposes of street trading.

## 1.6 Exemptions

1.6.1 For the purpose of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the following are not street trading:-

- a. Pedlars acting under the Pedlars Act 1871
- b. Anything done within a Market or Fair
- c. Trading on a trunk road picnic area under Section 112 of the Highways Act 1980
- d. News vendors selling only newspapers or periodicals
- e. Petrol filling stations
- f. Shop forecourts
- g. Roundsman (as they have defined customers, defined routes, this is the traditional milk round delivering to order, recently sandwich roundsmen have appeared, if the sandwiches are pre-ordered then an exemption would apply, however, most turn up and act as mobile sandwich vendors, this type of trading will not be exempt and requires a street trading consent)
- h. Objects or structures placed on, in or over a highway under Part VIIIA of the Highways Act 1980
- i. Operation of facilities for recreation or refreshment under Part VIIIA of the Highways Act 1980
- j. Street Collections

With regard to point (g) above it has been established in law that mobile ice cream sales are not normally deemed to be roundsmen and, therefore, are not exempt from street trading.

## 1.7 Special Events/Markets

1.7.1 Some special events such as Christmas or continental street markets, Farmers Markets, car boot sales and Markets governed under the Market Charter will not require street trading consent but will need to meet any requirements of the City Council.

1.7.2 In order to remove the requirement for each individual trader to obtain their own consent, the Council will issue a special events consent that facilitate multi-user street trading for community events.

1.7.3 The consent will be issued for the duration of the specified event only and will be to a named individual. Where the application is made by an organisation they must nominate a named individual who will be responsible for managing the use of the consent.

1.7.4 The consent holder will be responsible for ensuring compliance with the conditions attached to the consent at all times whilst the consent is being used to facilitate street trading.

1.7.5 The consent holder will be required to keep records of all traders that use the special event consent including the date, trading location, name and company name, address, vehicle registration, contact telephone numbers and items being offered for sale.

1.7.6 Special Events Consents do not provide exclusive control over trading in the designated area. Individuals are still able to apply direct to the Council for consent.

## 1.8 Mobile Street Trading (including ice cream traders)

1.8.1 Mobile consents are issued to those who want to trade from numerous locations for a short period of time around the city.

1.8.2 Mobile traders will move from site to site and will only remain stationary for no longer than 20 minutes for sales to be made and must not return to that site within the same day (site refers to a 400 metre radius)

1.8.3 Mobile traders are only permitted to trade within the hours of 9am to 7pm inclusive unless prior written consent of the Council.

1.8.4 Mobile traders cannot stop within 800 metres of any school from an hour before the start of the school day until an hour after the end of the school day unless you have applied for a school street trading consent as referred to below in paragraph 1.9.

1.8.5 Applicants must follow the application procedure as detailed in paragraph 2.3 of this Policy.

1.8.6 Once an application has been received the Licensing Team will consult as stated in paragraph 2.4 for a period of 28 days.

1.8.7 Applications will be determined as stated in paragraph 2.5 of this Policy.

## **1.9 School Street Trading**

1.9.1 School street trading is where a trader parks outside or near a school from Monday to Friday during school term times from 12.00 Noon until 2pm and 3pm until 4.30pm.

1.9.2 To be eligible to apply for a school street trading consent, you must hold a mobile street trading consent as listed in paragraph 1.8 above.

1.9.3 Applicants are required to obtain written confirmation from the head teacher of the school they wish to trade outside from. This written confirmation must be on school headed paper and will not be accepted in any other form.

1.9.4 Applicants must follow the application procedure as detailed in paragraph 2.3 of this Policy.

1.9.5 Once an application has been received the Licensing Team will consult as stated in paragraph 2.4 for a period of 28 days.

1.9.6 Applications will be determined as stated in paragraph 2.5 of this Policy

1.9.7 Applicants should note the additional conditions applicable to mobile food vendors at Annex 2 of this Policy.

## **1.10 Buskers**

1.10.1 The Council will issue Street trading consents for buskers who wish to sell items associated with their performance. Buskers are expected to comply with the City Council's code of practice for busking.

## **1.11 Charitable Street Trading and Promotional Stalls**

1.11.1 The Council issues permits to enable charitable street trading. The council has a designated pitch for this purpose in Eastgate Street and Kings Square. This pitch is available to registered charities or organisations demonstrating that they are 'not-for-profit' organisation. Use of this pitch will be subject to the Council's standard street trading conditions.

1.11.2 Organisations that wish to hold a promotional stall without the sale of articles or goods, will not require street trading but will need to apply for permission from the Licensing Team to display a stall on the highway.

1.11.3 Street Collection permits will also be required if cash is collected in a public place for charitable purposes. Please contact the Market Team for a street collection permit.

## **1.12 Fees**

1.12.1 The Council may charge such fees as it considers reasonable having regard to pitch location, duration of consent, trading days, hours and the description of goods offered for sale.

1.12.2 Fees will be reviewed annually on a cost recovery basis and any variation will be advertised by public notice in a local newspaper and on the Council's website. Details of the current fees can be found on the Council's website.

1.12.3 Application fees must be paid in full, in advance. Application fees are non-refundable. If the application is unsuccessful the fee will be retained to cover the cost of processing the application.

1.12.4 Consent fees are payable once the application is successful. Consent fees must be paid in advance in equal installments on a quarterly or monthly basis. Failure to maintain payments may result in the consent not being renewed.

1.12.5 Where trading ceases during the term of Consent, refunds will not be given for any outstanding period of less than 3 months.

## **1.13 Delegation of Functions**

The following table illustrates the delegated functions for street trading in Gloucester City Council:

**Gloucester City Council**  
**Herbert Warehouse**  
**Gloucester Docks**  
**GL1 2EQ**

**01452 396 396**  
**heretohelp@gloucester.gov.uk**  
**www.gloucester.gov.uk**

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Activity	Delegation
To assess applications for Street Trading.	Licensing and Enforcement Officers
To determine the applications and issue consents and determine the fees.	Food, Licensing & Markets Service Manager
To consider representations against refusals and variations to conditions for street trading consent.	Licensing and Enforcement Sub-Committee
Authorised to discharge any function of Full Council/Committee or Executive for Street Trading	Corporate Director for Services and Neighbourhoods
Approve Polices for Street Trading Consent	Licensing and Enforcement Committee
Sub-delegates functions in relation to Street Trading Consents	Full Council

## 2.0 APPLICATIONS

### 2.1 Advice for New Applicants

- 2.1.1 New applicants are advised to contact the Council at their earliest opportunity, preferably before an application is made. This allows Officers to provide advice as well as clarifying any areas of uncertainty.
- 2.1.2 It is the responsibility of the applicant, in the first instance, to identify the location(s) they wish to trade as there is no designated list of street trading 'pitches' that can be traded from.
- 2.1.3 The Council can also provide advice in relation to other legal requirements of a new Consent Holder, for example, planning permission or food safety requirements.

### 2.2 Disclosure & Barring Service (DBS)

- 2.2.1 Applicants applying for a new street trading consent will be expected to obtain a basic DBS certificate (formerly known as CRB) from Disclosure Scotland which must be no more than one calendar month old when submitted to the Council.
- 2.2.2 The DBS certificate must be in the name and address of the applicant as detailed on the application form.
- 2.2.3 The original certificate must accompany the application form.
- 2.2.4 The Council will ask for a new DBS certificate from an applicant every third year beginning with the year after the issue of a new consent.
- 2.2.5 The DBS certificate will be expected to accompany a renewal application every three years and the Council will make it clear to applicants when this is required.

### 2.3 Suitability of Applicant

- 2.3.1 When determining an application for the grant or renewal of a street trading consent the Council will consider all relevant information relating to the suitability of the applicant to hold such a consent. Street Traders and their commercial activities are often subject to minimum levels of supervision. They interact closely with members of the public and it is important that the public, especially vulnerable people are protected from harm, and from those who may harm them, wherever possible.
- 2.3.2 The Council will determine whether the applicant is a suitable person to carry on business as a street trader and may not issue a consent unless satisfied that the applicant is suitable. In determining this, the Council may have regard to any information, which it considers relevant including:-
- Whether the applicant has been convicted of a relevant offence;

*Applicants are required to obtain a DBS certificate before making application, see paragraph 2.2 above*

- Refusal or neglect in paying fees due to the Council for a street trading consent, or for any other charges due for services rendered by the Council to the applicant in his capacity as the holder of a street trading consent;
- Previous failures of the applicant, without reasonable excuse, to make use, to a reasonable extent, of a previous street trading consent;
- Any previous enforcement action;
- Any previous refusal of an application for the grant or renewal of a Street Trading Consent;
- Any previous revocation of a Street Trading Consent.

2.3.3 Identification badges will be issued by the Council to demonstrate the suitability of the consent holder and any assistants who may be trading on their behalf. Other employees may not need to apply for DBS check and an identification badge as long as they are supervised at all times by a badge holder.

2.3.4 Identification badges do not reflect the street trading consent. Consent holders are still required to display their consent on their unit. Each applicant or assistant will only require one badge per person; this applies if they trade under more than one street trading consent.

## 2.4 Submitting an Application for the Grant of a Street Trading Consent

2.4.1 All applications for grant of a Street Trading Consent must be made on the Council's prescribed application form.

2.4.2 Each application must be accompanied by the prescribed application fee. An application will not be considered as duly made until the prescribed fee and supporting documentation has been received.

2.4.3 The following documents will also be required to be submitted with the application:-

- Proof of eligibility to work in the UK
- Basic Criminal Record Check (this can be obtained from Disclosure Scotland) [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)
- A location plan for static consents, which clearly shows the proposed location that the unit will be sited;
- A photograph or brochure detailing the unit/vehicle to be used including its dimensions;
- Written permission from the landowner if the street trading activity is to be carried out on land in private ownership.
- A copy of Public Liability Insurance for a minimum of £5 million in respect of any one incident;
- Two passport sized photographs of the applicant and any person who will be assisting with the trading on a regular basis. One of the photographs of each person must be endorsed with a statement verifying the likeness of the photograph to the applicant by a solicitor, notary, a person of standing in the community or an individual with a professional qualification. OR
- Have a photograph taken at the reception of the Council Offices, Herbert Warehouse, the Docks, GL1 2EQ upon submitting the application.

2.4.4 Applications cannot be considered from anyone under the age of 17.

## 2.5 Processing an Application

2.5.1 Applications for the grant of a Street Trading Consent will be notified by the Council to the following people or bodies:-

- Environmental Protection Team
- Chamber of Commerce
- City Centre Management Team
- Development control
- CCTV Control Room
- Gloucestershire Police
- Gloucestershire Fire & Rescue
- Highways (Gloucestershire County Council)
- Leader of the Council
- Cabinet Member
- Asset Management
- Relevant Ward Councillors (static consents only)
- Residents residing within 25 metres of proposed trading site (static consents only)
- Businesses trading within 25 metres of proposed trading site (static consents only)
- Gloucestershire City Centre Community Partnership (Gate Streets only)



- 2.5.2 The application will be advertised on the Council's website, a public notice will also be placed in a clearly visible location at the site of the proposed new pitch.
- 2.5.3 The Council will allow 28 days from the date that the application is received for members of the public and relevant bodies to make representations or objections in relation to the application.
- 2.5.4 Representations or objections will be accepted from any of the bodies listed at 2.5.1 and any other individual or business that can demonstrate that they would be affected by the proposed street trading activities.

## 2.6 Determining an Application

- 2.6.1 The Food Safety, Licensing and Markets Manager has delegated powers to issue or reject an application following the consultation period. To assist determination, any representations will be considered alongside a list of set criteria to determine street trading applications before any decision is made. The criteria can be found in Annex 1 of this document.
- 2.6.2 Where no representations or objections are received within 28 days of the application being received, Officers will grant Consent to the applicant in the terms that it was applied for.
- 2.6.3 Where a representation or objection is received in respect of an application, a Licensing Officer will, in the first instance, attempt to mediate between the relevant parties.
- 2.6.4 For example, it may be possible to find a compromise by:-
- Amending the times during which trading will take place;
  - Amending the days on which trading will take place;
  - Adding conditions to the Consent to address specific concerns;
  - Granting Consent for a trial period to assess the impact;
  - Amending the list of articles to be sold
- 2.6.5 Where all relevant parties agree to a compromise, the Consent will be granted by Officers, subject to the agreed amendments.
- 2.6.6 Each application will be determined on its own merits
- 2.6.7 Where representations or objections are received and it is not possible to reach an agreed compromise, the application can be referred, at the applicant's request, to the Licensing & Enforcement Sub-Committee for determination.

## 2.7 Applications to renew a Street Trading Consent

- 2.7.1 Consents are issued for a maximum of twelve months but may be issued for a shorter period. Renewal reminder notices will be sent to consent holders 6 weeks before expiry of their consent.
- 2.7.2 An application to renew an existing street trading consent should be made at least one calendar month before it is due to expire. Once the renewal application has been received, the Council may consult further to determine if the consent holder is a cause for concern or has been subject to any complaints, or if the application to renew differs from the expiring consent in any way.
- 2.7.3 Where an application is made to renew a Consent to trade on land in private ownership, the application must include written approval from the landowner.
- 2.7.4 If a renewal application is not made before the expiry date of the current consent, a new application will be required. The effect of this will be that no street trading will be permitted until the new application has been determined and consulted upon.
- 2.7.5 If a renewal application has been received prior to the expiry of the current consent, the consent holder will be able to continue to trade whilst the application is being determined. **The Licensing Team will aim to post the consent at least 72 hours before expiry of the current consent.**
- 2.7.6 In relation to the determination of the renewal application, if there have been no justifiable complaints or enforcement issues and the fee has been paid, the consent will be renewed.

## **2.8 Transfer of a Street Trading Consent**

- 2.8.1 A street trading consent cannot be transferred or sold to another person except that the consent may be transferred to a member of the consent holder's immediate family in the event of the consent holder's death or incapacity.
- 2.8.2 The sub-letting of a pitch is prohibited.

## **2.9 Variation of a Street Trading Consent**

- 2.9.1 Any variation to the details of the consent holder must be notified to the Council in writing. The Council will issue an amended consent on payment of the relevant fee. The original consent must be returned to the Council.
- 2.9.2 Any variation to the range of goods for sale, days and/or hours of trading must be notified to the Council in writing. The Council will consider the request taking consideration the request and the number of existing traders already offering the proposed goods for sale. Payment of the relevant fee is required. The original consent must be returned to the Council. **Traders are advised to contact the Council to seek clarification about what can be considered as a variation, in some cases a new application may be required.**

## **2.10 Revocation of a Street Trading Consent**

- 2.10.1 If there are any concerns about the consent holder through justified complaints or evidence of breach of conditions, the Licensing Department may refer the consent holder to the Licensing & Enforcement Sub-Committee for consideration.
- 2.10.1 The consent holder will be provided with the opportunity to present oral and/or written evidence to Members for consideration.
- 2.10.2 There is no right of appeal against the decision to revoke a street trading consent.
- 2.10.3 Where a consent is revoked, there will be no refund of the application fee.

## **2.11 Conditions**

- 2.11.1 On the grant of a consent, the standard conditions will apply to the consent. The standard conditions are not exhaustive and other conditions may be attached to individual consents where appropriate. A copy of the standard conditions can be found at Annex 2 of this Policy. Additional conditions are applicable for mobile food vendors such as ice-cream vans.
- 2.11.2 Street trading can only be carried out from the stall or vehicle authorised on the consent. Any changes to or replacement of the stall or vehicle must be approved by the Council.

## **2.12 Complaints and Enforcement**

### **2.12.1 General Principles**

- 2.12.2 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also responsible members of the trade.
- 2.12.3 All decisions and enforcement actions taken by the Licensing Authority will be in accordance with the Council's Corporate Enforcement Policy and the principles of consistency, transparency and proportionality set out in the Regulator's compliance Code.

### **2.12.4 Offences**

- 2.12.5 The following are offences under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982:-
- engaging in street trading in a prohibited street;
  - engaging in street trading in a consent street without a Consent;
  - contravention of a condition in relation to trading location; and

- contravention of a condition in relation as to the times between which or periods for which a Consent holder can trade.

#### 2.12.6 **Complaints**

2.12.7 Where complaints are received regarding the carrying on of street trading activities, these will be investigated in a prompt and professional manner.

2.12.8 If a complaint is found to be justified then the following actions may be taken by Officers:-

- verbal Warning;
- written Warning;
- simple caution;
- prosecution; or
- referral of the Consent Holder to a Licensing & Enforcement Sub-Committee.

2.12.9 If an existing Consent Holder is referred to a Licensing & Enforcement Sub-Committee, the Committee may take any one of the following steps as are deemed desirable to meet the objectives of the Policy.

- take no further action
- give a warning to the Consent Holder
- amend the days on which trading can take place
- amend the times during which trading can take place
- amend the location(s) where trading can take place
- amend the articles that can be traded
- amend the conditions attached to the Consent
- amend the duration of the Consent or
- revoke the consent

## Criteria for Determining Street Trading Consent Applications in the City of Gloucester

- Each application will be judged on its own merits
- The number of traders in any one street will be limited so as not to cause undue concentration.
- The siting and operation of any trader shall be such that it does not cause any problems of highway safety, obstruction to users of the highway, obstruction to important sight lines for CCTV cameras, unreasonable obstruction of the visibility of neighbouring businesses, conflict with the requirements of emergency vehicles **or create unacceptable parking issues.**
- Locations for uses with particular needs (such as water or electricity supply) will only be considered where these supplies can be safely and conveniently provided.
- The use shall be compatible with the character of the area in which it is proposed to be situated. **The design of the unit shall not have a significant adverse impact on the visual amenity of the area.**
- The appearance and use of the Street Trading Unit including associated equipment or structures shall be of a good quality and complementary to the ambience and vitality of the locality. The precise appearance of the facility will need to be identified before consent is granted. (For the sake of clarity, it is acknowledged that 'good quality' is a subjective judgement, but it will include reference to quality and condition of the stall, product and staff, both in their attire and demeanour, and will be applied at both the inception of the consent and continue during operation.)
- Uses involving the sale of food and noise emission shall meet the requirements of Environmental Health and these will need to be identified before consent is given.
- Uses that are likely to cause problems of noise, **traffic disturbance**, odour, litter or late night disturbance especially in residential areas will not be given consent.
- **Consideration may be given to any positive health impacts provided by the range of food and drink available to customers, and the proposed location of the facility.**
- Consent/renewals will not be considered for any trader in arrears with fees until such arrears are paid in full.
- Prior to the issue of any consent the trading unit and associated equipment may, be inspected by an officer authorised by the Council to ensure that the unit adheres to all relevant and legal conditions.

### **Compliance of Street Trading activity with Legislation**

The Street Trading activity shall, at all times and in all respects, comply with legal requirements relating to that type of activity, including but not restricted to the following:

- Food Safety Act 1990
- Health & Safety at Work Act 1974 and any regulations made under this act.
- Environmental Protection Act 1990
- Trading Standards Legislation
- Regulation (EC) No. 852/2004 on the Hygiene of Food Stuffs.
- The General Food Law Regulation (EC) 178/2002
- The General Food Regulations 2004 (as amended)
- The Licensing Act 2003
- The Health Act 2006 (Smoke Free premises provisions)
- The Food Hygiene (England) Regulations 2013

## Street Trading Standard Terms and Conditions

Street Trading Consents are issued by the Council subject to the following conditions, in so far as they do not conflict with or are amended by any specific conditions imposed on the grant of the Street Trading Consent:-

1. The Street Trading Consent is valid for the period specified in the Consent and shall not exceed 12 months.
2. The Consent Holder shall pay a fee to the Council in accordance with the approved list of fees.
3. The Consent Holder may surrender the Street Trading Consent at any time, and the Council shall repay to the Consent Holder that part of the fee considered by the Council appropriate for the unexpired period of the Street Trading Consent less the administration charge to cover administrative expenses, the exception being the day rate.
4. The Consent Holder must at all times, whilst trading, clearly display the Street Trading Consent issued by the Council.
5. The Consent Holder and any person assisting them on a regular basis, shall at all times whilst trading, clearly and visibly display a valid identification badge. The badge is to be issued by the Council.
6. The Consent Holder shall not carry on their trade in such a way as to cause obstruction of any part of the Street in which they are trading, or create a danger to persons in the street.
7. The Consent Holder shall not carry on their trade in such a way as to cause a nuisance or annoyance to persons using the street or to occupiers in the vicinity. In addition, the trading shall meet Environmental Health and Trading Standard requirements.
8. The Consent Holder shall not sell any type of food, goods or merchandise other than that specified in the Street Trading Consent.
9. The Consent Holder shall provide and maintain, where appropriate, adequate facilities for the collection of litter resulting from their trade and at the close of each trading day shall remove that litter from the street.
10. The Consent Holder shall be responsible for any damage to the Street or otherwise resulting from the Street Trading activity.
11. The Consent Holder shall make such provision as is necessary to prevent the deposit in any street of solid or liquid refuse occurring from their Street Trading activity and shall not discharge any waste water to the Street surface or to the surface water drains.
12. The Consent Holder shall not use any television, tape recorder or other device for the reproduction of sound while Street Trading without the express permission of the Council.
12. The Consent Holder shall not carry out on Street Trading outside the times and days permitted by the Street Trading Consent.
13. The Consent Holder shall not trade in any location other than the location permitted by the Street Trading Consent.
14. Any Street Trading Unit used by the Consent Holder in the course of Street Trading shall be constructed and maintained to the satisfaction of the Council and shall comply with legislation in force at the time or any relevant British Standard or European equivalent and the Consent Holder shall bear the expense of showing such standard has been complied with.
15. The use and storage of liquid petroleum gas shall comply with any code of practice or requirements of the fire officer.
16. The Street Trading Consent shall not operate for any other purpose than to permit the Consent Holder or a person engaged by the Consent Holder to assist in their trading to trade in a Consent Street in accordance with the conditions imposed. The Consent Holder must ensure that he/she has obtained any other approval or registration required under any other statutory provisions related to their trade.
17. The Consent Holder must be 17 years of age or over and shall be responsible at all times for control of the Street Trading Unit. Any persons assisting on the unit shall be 17 years of age or over.
18. The Street Trading Consent is personal to the Consent Holder named within it and shall not be assigned, sub-let or transferred to any other person, firm or company.
19. The Consent Holder or their employee must move the Street Trading unit or vacate the site immediately upon the instruction of a Police Officer or Authorised Officer of the Council.
20. Nothing herein contained shall prejudice the rights, powers, duties and obligations of the Council or any other enforcing authority under any public or private statutes, orders, regulations or byelaws.
21. The Consent Holder shall at all times maintain a valid Third Party Public Liability Insurance policy to the satisfaction of the Council and shall produce evidence of such insurance any time upon request.

22. Nothing contained in these conditions shall relieve or excuse the **Consent Holder** or their employee or agent from any legal duty or liability and the **Consent Holder** shall indemnify the Council in respect of all claims, actions, demands or costs arising from their Street Trading.

23. **Consent Holders** and/or any person engaged by the **Consent Holder** to assist in trading should wear clean and appropriate clothing.

24. The **Consent Holder** must notify the Council within 7 days if any of the information provided when applying for the consent changes.

25. The Council may vary the conditions attached to the Street Trading Consent at any time.

26. Any breach of the conditions may lead to the Street Trading Consent being suspended or revoked.

27. Please note Planning Permission may be required for the proposed trading location you are therefore advised to contact Development Control on 01452 396774 for advice.

### **Additional Conditions applicable to Mobile Food Vendors e.g. Ice-cream Vans**

1. Mobile consent holders are not permitted to remain static for more than 20 minutes, and cannot return to the same site within the same day (site refers to a 400 metre radius).
2. Mobile consent holders are not permitted to trade within a 50 metre radius of any static traders, other mobile traders, or shops, trading in similar goods / articles.
3. Mobile traders can only trade between the hours of 9am to 7pm inclusive unless prior written consent of the Council.
4. Mobile traders must ensure that any stopping position does not infringe any parking or traffic requirements or cause obstruction of the highway, and does not present any dangers to other road users or pedestrians.
5. Mobile traders must not stop within 800 metres of any school from an hour before the start of the school day until an hour after the end of the school day unless granted a school consent for that site.

### **USE OF LOUDSPEAKERS TO ATTRACT BUSINESS**

Chimes should not be sounded:

1. For longer than 4 seconds at a time.
2. More often than Once every 3 Minutes.
3. When the vehicle is stationary.
4. Except on approach to a selling point.
5. When in sight of another ice-cream van which is trading.
6. When within 50m of schools (during school hours), hospitals and places of worship (on Sundays and any other recognised days of worship).
7. More often than once every 2 hours in the same street.
8. Louder than 80dB(A) at 7.5m (Contact the Council's Environmental Protection Team for advice).
9. As loudly in quiet areas or narrow streets as elsewhere.

### **REMEMBER! – IT IS AN OFFENCE TO SOUND YOUR CHIMES**

1. Before 12 noon and after 7pm.
2. At any time in a way which gives reasonable cause for annoyance.

## Guidelines on the suitability of applicants

### General Principles

The primary aim of this policy is public protection. To help in achieving that aim, the council will consider the suitability of applicants to be authorised as street traders. Street traders and their commercial activities are often subject to minimum levels of supervision. They interact closely with members of the public and it is important that the public, especially vulnerable people are protected from harm and from those who may harm them, where ever possible.

The Council will determine whether the applicant is a suitable person to carry on business as a street trader and may not issue a licence unless satisfied that the applicant is suitable, in determining this, the authority may have regard to any information, which it considers to be relevant, in particular:

- Whether the applicant has been convicted of any relevant offence;
- Whether the applicant has been the subject of any relevant enforcement action;
- Any previous refusal of an application for the issue or renewal of a street trading consent (and the reasons for the refusal);
- Any previous revocation of a street trading consent (and the reasons for the revocation)

For the purposes of this policy, relevant offences include unspent convictions and cautions, for offences involving dishonesty, the use and supply of controlled drugs, violence and offences of a sexual nature, which are less than 3 years old from the date of application, will be included in the consideration of whether the applicant is a suitable person to hold a licence.

A person with a conviction for a relevant offence will be expected to have remained free of conviction for a period of time, before an application is granted. Some discretion may be exercised if the offence is isolated, minor in nature and there are mitigating circumstances. However, the overriding consideration will always be the protection of the public.

Notwithstanding the above, the Council is aware of its duty not to restrict its discretion and it shall permit representations from the applicant explaining why it may nevertheless, be appropriate to receive consent.

### Guidelines on the relevance of convictions

Each case will be decided on its own merits.

(1) The Council will assess whether:

- (a) an applicant for the grant or renewal of a street trading consent is a suitable person to hold or to continue to hold a street trading consent,
- (b) a person who wishes to be registered as an assistant to a street trading consent holder or to continue to be registered as an assistant to a street trading consent holder is a suitable person to be registered as an assistant to a street trading consent holder.

In making that assessment, the Council consider the previous convictions of such persons.

(2) In considering the previous convictions of those persons mentioned in paragraph 1 the Council will consider the following:-

- (a) whether the conviction is relevant;
- (b) the seriousness of the offence;
- (c) the length of time since the offence occurred;
- (d) whether there is a pattern of offending behaviour;
- (e) whether that person's circumstances have changed since the offence occurred;
- (f) the circumstances surrounding the offence and the explanation offered by that person.

(3) The following examples provide a general guide on the action to be taken where relevant convictions and cautions are evident:

#### **(a) Offences involving Violence**

Applicant with convictions for offences involving violence will be considered carefully. Depending on the nature and seriousness of the offence, when applicants have convictions for causing grievous bodily harm, wounding, assault, or even more serious offences involving violence. In general, a period of three to ten years free of convictions should elapse before an application will be granted.

#### **(b) Drug related offences**

An isolated conviction for a drug offence, whether for unlawful possession only or involving the supply of controlled drugs, will not necessarily prevent an applicant from obtaining a street trading consent, provided the applicant has at least three years free of convictions.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than 5 years before the date of the application.

#### **(c) Sexual offences**

Applicants with any unspent sexual related offences will not normally be granted a street trading consent.

#### **(d) Dishonesty**

The holders of a street trading consent and their assistants have to be persons who can be trusted. It is easy for a dishonest trader or assistant to take advantage of the public. Members of the public using a street trading outlet expect the holder and his assistant to be honest and trustworthy. For these reasons a serious view will be taken of any conviction involving dishonesty.

Convictions for isolated minor offences will not necessarily prevent an applicant from obtaining a street trading consent but in cases involving serious theft or fraud, at least three years should elapse before an application is granted. When offences of dishonesty have been accompanied by violence, at least five years free of conviction should elapse before an application will be granted.

#### **(e) Motoring Convictions**

In most cases, motoring offences are unlikely to be relevant when deciding if an applicant for a street trading consent or to be registered as an assistant to the holder of a street trading consent is a suitable person. However, there may be instances where the offences are of a very serious nature. In those cases, an applicants would be expected to show a period of at least 3 years free of any such convictions from the date of conviction or the date of release from jail, where a custodial sentence has been imposed.

#### **(f) Formal Cautions and fixed penalty notices.**

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

In all cases, each individual application will be decided on its own merits.

#### **Disclosure and Barring (DBS)**

All application forms must be accompanied by a basic disclosure as the Council must be satisfied that the applicant is a suitable person. Apply for basic disclosure online via <http://www.disclosurescotland.co.uk>

If any unspent convictions or cautions are declared, depending on their nature, then the Council may as part of the application process hold a hearing to determine whether the applicant is a suitable person to hold a street trading consent. The application will not proceed until the suitability of the applicant has been determined.