

# Annex C- Existing Street Trading Policy

## 1 Purpose

- 1.1 Bath & North East Somerset Council's (the Council) street trading policy is to create a street trading environment which complements premises based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.

## 2 What is Street Trading?

- 2.1 Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway *or other area to which the public have access without payment*.
- 2.2 The Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area and has designated all streets in the area as 'consent streets' for street trading purposes.
- 2.3 The effect of this designation is that street trading in any street is prohibited, subject to legal exemptions, without first obtaining a Street Trading Consent from the Council.
- 2.4 The Council may also require Street Trading Consents for traders who operate in Council car parks, riverside walks and other similar areas where the public have access without payment.
- 2.5 The Council requires the organiser of any car boot sale or similar event on private land where the public have access without payment, to obtain a Street Trading Consent. The Council must be satisfied that the approval of the land owner has been obtained, and that the local police have no objections.
- 2.6 The Environmental Monitoring and Licensing Manager may consider issuing Street Trading Consents to organisers of events such as the Christmas Market, Farmers Markets, Street Markets, car boot sales etc. The organiser will thereby become a Principal Consent Holder which will allow them to be responsible for numerous traders operating in certain areas and/or for a limited time. However, both the Principal Consent Holder and individual traders will still be subject to the Council's Street Trading Policy and Standard Conditions in relation to street trading.

## 3 Exemptions from the need to obtain a Street Trading Consent

- 3.1 Some types of trade are legally exempt from the need to obtain a Street Trading Consent. These include:
- a person trading under the authority of a Pedlars Certificate granted under the Pedlars Act 1871;

- trading as a news vendor within a maximum area of 0.25 square metres;
- trade carried on at a petrol filling station or at premises used as a shop or in a street adjoining premises and used as part of the business of the shop;
- trade carried out by roundsmen e.g. milkmen.

## **4 Pitches**

- 4.1 The Council has identified suitable pitches for street trading. Details of these pitches can be obtained via the Council's website or by contacting the Council's Licensing team.
- 4.2 From time to time the Council may establish new pitches based on the criteria in paragraph 4.3 below.
- 4.3 In determining whether to create a street trading pitch the Council will have regard to:
- any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving;
  - any loss of amenity caused by noise, traffic or smell;
  - existing Traffic Orders e.g. waiting restrictions;
  - any potential obstruction of pedestrian or vehicular access;
  - any obstruction to the safe passage of pedestrians;
  - the safe access and egress of customers and staff from the pitch and immediate vicinity;
  - any land owners permission. This may be required from a private land owner or the relevant Council Service e.g. Environmental Services (Open Spaces), Commercial Estates, or Tourism Leisure & Culture.
  - the sale of goods or services which conflict with those provided by nearby shops or existing trading pitches.

## **5 Applications**

- 5.1 When an existing or new pitch becomes available, the Council may publish details inviting applications for the said pitch. The details will be published on the Council's website.
- 5.2 Applications will be determined by the Environmental Monitoring and Licensing Manager. If no suitable application is received the pitch will be re-advertised.
- 5.3 In situations where there are competing applications then the Environmental Monitoring and Licensing Manager will decide the most appropriate applicant in consultation with the Divisional Director Environmental Services and/or the Cabinet Member for Customer Services. The pitch will be offered to the applicant whose proposal is considered most suitable for the particular location.

- 5.4 A Street Trading Consent cannot be issued to a person under the age of 17 years.
- 5.5 Before a new pitch is created the Council will consult with and seek written observations from:
- occupiers of premises immediately adjacent and opposite where appropriate;
  - existing holders of Street Trading Consents in the immediate area;
  - relevant ward councillors;
  - relevant parish and/or town councils;
  - Avon & Somerset Constabulary;
  - relevant Council Services including Development Control; Highways; Property Services; Environmental Services (Open Spaces); Commercial Estates; Trading Standards; Tourism, Leisure & Culture; Asset Review Group; Parks and Open Spaces;
  - relevant land owner;
  - others as the Council's Licensing team considers relevant to the application (e.g. food safety team for food related pitches).

The Council may also consider any responses received in relation to public notices on the highway.

- 5.6 Current Street Trading Consent holders seeking to change the nature of their existing pitch may be subject to the same consultation as in 5.5 above.
- 5.7 Any objection from consultees will be assessed against the criteria in 4.3 above and may be referred to the appropriate Licensing Sub Committee for determination.
- 5.8 The complete application process may take up to three months, to take into account the consultation period, and in the case of contentious applications, a hearing before the relevant Licensing Sub Committee.

## **6 Nature of Goods and Trading Hours**

- 6.1 The nature of goods which may be sold from any pitch and trading hours will be specified in the consultation process.
- 6.2 The Council would not normally grant a Street Trading Consent for the sale of goods or services which conflict with those provided by nearby shops or existing trading pitches.
- 6.3 Goods will normally consist of craftwork, fresh flowers, ice cream or soft drinks. Other types will be considered on a pitch by pitch basis and have particular regard to local needs shopping.

- 6.4 Street trading hours will normally mirror those of shops in the immediate vicinity. Extended trading hours will be determined on a pitch by pitch basis and may be allowed for special events such as the Christmas Market.
- 6.5 Late night food traders operating after 11 pm will be subject to the Licensing Act 2003 requirements regarding Premises Licences. Greater consideration will be given to the impact on the night time economy and possibility of crime and disorder on the streets as a result of the possible grant of a Street Trading Consent.
- 6.6 The design and appearance of the stall, barrow, van or cart etc. used must be agreed by the Environmental Monitoring and Licensing Manager.
- 6.7 Any subsequent substantial change to the Consent may be subject to the level of consultation in 5.5 above.

## **7 Issue of Street Trading Consents**

- 7.1 Street Trading Consents will normally be issued for a period of three months. At the discretion of the Environmental Monitoring and Licensing Manager, consents for shorter periods may be issued for block bookings e.g. organised street markets, mobile street artists etc. Consents may also be issued annually for regular pitch holders.
- 7.2 Street Trading Consents will normally be issued for a minimum of six days per week, unless the applicant can provide an alternative scheme acceptable to the Environmental Monitoring and Licensing Manager.
- 7.3 Where a trader has been granted a Consent for six days a week then, at the discretion of the Environmental Monitoring and Licensing Manager, the Consent may be extended to seven days a week at no extra cost.
- 7.4 No refunds will be given if traders are unable to trade (subject to paragraph 8.7).
- 7.5 The transfer of Street Trading Consents is not permitted. If a consent holder no longer wishes to trade that persons consent will be terminated and the pitch will be advertised and a new consent issued.

## **8 Fees**

- 8.1 Fees for Street Trading Consents must be paid in full in advance. In the case of quarterly re-issues, payments must be made on a quarterly basis and are due before the following dates:
- 1 January
  - 1 April

- 1 July
- 1 October

At the discretion of the Environmental Monitoring and Licensing Manager, consideration will be given to allowing alternative arrangements, on a case by case basis, to making payments.

- 8.2 Failure to maintain payments as above may result in the Street Trading Consent not being re-issued. If a cheque is dishonoured by a bank this will result in the revocation of the consent unless payment is made in cash within 5 working days. In such cases an administration charge will also be imposed, and any early payment discount previously allowed will be withdrawn, leaving the full fee to be paid.
- 8.3 The Environmental Monitoring and Licensing Manager will determine any written request to increase the authorised pitch size, which may be subject to the level of consultation in 5.5 above and may incur an increased daily fee.
- 8.4 If a Street Trading Consent holder exceeds the authorised pitch size without permission from the Environmental Monitoring and Licensing Manager, an additional fee will be charged at a daily rate per extra square foot above the allowed area.
- 8.5 The fee structure will primarily reflect pitch location, trading days and hours.
- 8.6 The Divisional Director Environmental Services in consultation with the Cabinet Member for Customer Services has delegated authority to set fees and to annually review the fee structure.
- 8.7 The Council cannot guarantee that pitches will be available every day, and accepts no liability for loss of earnings in relation to Street Trading Consent holders or their employees. In the event of roadworks, utility or service repairs and other genuine circumstances that affect the use of any pitch, the Environmental Monitoring and Licensing Manager will consider appropriate refunds on a case by case basis, provided a request has been made in writing from the consent holder.
- 8.8 When a Street Trading Consent is surrendered or revoked the Council may refund the whole or part of any fee paid as they consider appropriate.

## **9 Street Trading Consents for which fees are not payable**

- 9.1 The Environmental Monitoring and Licensing Manager may consider reducing or exempting fees for the following street trading activities:
  - fetes, carnivals or similar community based and run events e.g. Keynsham Victorian Evening, Mardis Gras, Christmas Lights Switch on events etc.;

- non-commercial or charitable events;
- farmers markets (producer-managed market place for local producers to sell their own produce direct to local people);
- sales of articles by householders on land contiguous with their homes.

## 9.2 Charitable Street Trading

Persons may be permitted in any street or public place to collect money or sell articles for the benefit of charitable or other purposes. The Council issues permits for charitable street collections. Collections cannot be held in any street or public place unless the Promoter has obtained a permit.

In relation to charitable street trading, the Council have named a pitch at Kingston Parade, Bath as its official street trading charity pitch. This pitch will be available to any organisation that is a registered charity, or any organisation that can prove it is a 'not-for-profit' organisation. It will be subject to the Council's standard street trading conditions.

The charity using the pitch must be able to prove its non-profit status by providing any of the following proofs:

- A copy of their charity registration document;
- An official letter confirming the organisation is exempt from charity registration;
- A letter from the Inland Revenue if the organisation is recognised as a charity for income tax purposes;
- An official letter confirming that the organisation is a 'not-for-profit' organisation.

The charity must obtain permission from the Principal Consent Holder responsible for the pitch at Kingston Parade.

## 10 Mobile Street Artists

10.1 Mobile Street Artist Consents may be issued to persons who sketch or paint, and sell their own work and move from location to location.

10.2 Applicants for Mobile Street Artist Consents must give a minimum notice period of 48 hours to the Licensing Team in relation to their applications.

## 11 Mobile Traders

11.1 The Council may consider issuing Mobile Street Trading Consents to traders such as ice cream vans who operate within a specified area e.g. Radstock/Midsomer Norton, Keynsham or Twerton/Whiteway.

## 12 Conditions and Enforcement

- 12.1 Standard conditions will be attached to every Street Trading Consent and Mobile Street Artist Consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 12.2 Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size of the pitch.
- 12.3 Failure to comply with conditions may lead to revocation or the Street Trading Consent not being re-issued.
- 12.4 Persons trading without a Street Trading Consent and who are not exempt (see 3.1 above for examples) will be the subject of enforcement action in accordance with the Environmental and Consumer Services Enforcement Policy. This will include any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act.
- 12.5 The Council will follow the principles set out in its Public Protection Enforcement Policy, which proposes that a graduated response is taken where offences against legislation are found or where licence conditions have been contravened. More serious offences may result in a referral to the Licensing Sub-Committee, the issue of a formal caution or a referral for prosecution.

### **13 General**

- 13.1 Through its tourism service and by other means, the Council will seek opportunities to promote street trading activities.
- 13.2 This policy will complement and inform other Council initiatives, policies and visions including those on street markets
- 13.3 This policy will be the subject of periodic monitoring and review.
- 13.4 This policy will inform the detailed conditions attached to every Street Trading and Mobile Artist Consent.
- 13.5 This policy will be applied in a manner which is consistent with the Council's equalities and enforcement policies.

**The conditions below have been reworded and reproduced in red.**

### **Standard Street Trading Conditions**

- 1 The holder(s) of this Consent (the holder), or any person employed to work on the stall, must produce the Consent when required to do so by a Police Officer or a duly authorised officer of Bath & North East Somerset Council (the Council).
- 2 The holder shall return this Consent to the Council's Licensing Services immediately on revocation or surrender.
- 3 The holder shall trade strictly in accordance with this Consent.
- 4 The holder shall notify Licensing Services immediately of any convictions or proceedings arising out of the use of this Consent.
- 5 The holder shall not cause any obstruction of the street or danger to persons using it. The holder shall not permit persons to gather around him or any van, cart, barrow, other vehicle or stall included in this Consent so as to cause a nuisance, annoyance or danger to any persons lawfully using the street.
- 6 The holder shall not use or permit any music playing, music re-producing or sound amplification apparatus or any musical instruments, radio or television receiving sets whilst trading under this Consent, unless varied by a special condition of this Consent.
- 7 The holder shall not place on the street, or affix to any equipment placed on the street, any advertising material, unless varied by a special condition of this Consent.
- 8 The holder shall not fix any equipment, nor make any excavations or indentations in the surface of the street.
- 9 The holder shall not use the street for any trading purpose other than as permitted by this Consent.
- 10 The holder shall not place on the street any furniture or equipment other than that permitted by this Consent. All such furniture or equipment must be maintained in a clean and tidy condition, and must not obstruct the entrance to, or exit from, any premises.
- 11 The holder shall not do anything in the street which may cause danger, nuisance or annoyance, damage or inconvenience to the Council, any adjacent/neighbouring premises, or to members of the public.
- 12 Unless acting as a Principal Consent Holder, the holder shall not transfer, assign or sublet this Consent, but he may surrender it at any time.



- 13 The holder shall observe and comply with any directions in relation to the use of the street given by the Council's Environmental Monitoring and Licensing Manager, or Directors of the Council's Property Services or Planning and Transport Development Services.
- 14 The holder shall keep his trading location and the immediate area in a clean and tidy condition during the permitted hours and at the end of each daily period of use, and shall provide a litter bin for their customers where necessary.
- 15 The holder shall not deposit any water or waste product into any street drain or channel, but shall dispose of it in an appropriate place.
- 16 The holder shall indemnify the Council and their agents, servants, workmen etc. from and against all proceedings, damages, claims or expenses in respect of an injury (including personal injury) which may be sustained in connection with the trading pitch and the provision of facilities under this Consent.
- 17 This Consent is issued on the understanding that the relevant and appropriate Public Liability Insurance is in place with a minimum cover of £5,000,000.
- 18 The holder must obtain permission from the Environmental Monitoring and Licensing Manager and the Council's Highways Department if they wish to utilise electrical power taken from the mains or a generator.
- 19 The Council may revoke this Consent at any time and shall not be liable to pay any compensation to the holder in respect of such revocation.
- 20 The holder, or any person employed to work on the stall, shall **at all times** wear the identification badge issued by Bath & North East Somerset Council whilst trading from the pitch. The badge shall be worn in a clearly visible position on the upper body.
- 21 Where a Street Trading Plate is issued it must be displayed in a clearly visible position where it can be read by prospective customers.
- 22 The holder shall return any Council issued identification badges and plates to Licensing Services immediately on revocation or surrender of this Consent.
- 23 The holder shall pay the street trading fees in advance. Quarterly fees shall be paid by 1 January, 1 April, 1 July and 1 October each year.
- 24 This Consent does not relieve the holder, or any person employed to work on the stall, of any obligation to comply with all other general and local legislation, and in particular the Road Traffic Acts; the Food Safety Act 1990; the Town and Country Planning Acts; the Control of

Pollution Act 1974; the Environmental Protection Act 1990; the Licensing Act 2003; any Orders or Regulations made thereunder; and local Byelaws. It shall be the obligation of the holder to familiarise themselves and their employees with any such legislation. The Council may revoke this Consent upon any breach.

**Additional Notes:**

- 1 Street trading in a consent street on foot or from a van, cart, etc.:
  - a) without a Street Trading Consent; or
  - b) not specifically permitted by a Consent; or
  - c) contravening certain conditions attached to a Consent;is an offence for which proceedings may be instituted.
- 2 A Street Trading Consent does not confer immunity from the provisions of any Street Parking Places Order or General Traffic Restriction Order. In case of doubt about the effect of any such Order, enquire at Licensing Services.
- 3 Schedule 4, paragraph 10 of the Local Government (Miscellaneous Provisions) Act 1982 provides as follows:
  - 1 A person who:
    - b) engages in street trading in a consent street without being authorised to do so under this Schedule: or
    - d) being authorised by a street trading consent to trade in a consent street, trades in that street:
      - i) from a stationary van, cart, barrow or other vehicle; or
      - ii) from a portable stall,without first having been granted permission to do so under paragraph 7 (8) (of this Schedule); or
    - e) contravenes a condition imposed under paragraph 7 (9) (of this Schedule),  
shall be guilty of an offence.
  - 2 It shall be a defence for a person charged with an offence under sub-paragraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
  - 3 Any person who, in connection with an application for a street trading consent, makes a false statement which he knows to

be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.

- 4 A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine to level 3 on the standard scale of fines (£1,000).

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