

Street Trading Consents Policy

Safer Communities	Date Produced: <u>April 2014</u>
Public Health and Protection Services	Last Reviewed: January 2018
Commercial Services: Licensing	Ref & Issue No: 2
Policy in respect of Street Trading	Next Review Due: April 2021
	Originating Officer: Matthew Evans
	Authorised By: Paul Brookes Public Health and Protection Services Manager

1.0. Aim of Policy

The purpose of this street trading policy is twofold: (i) to provide a fair and transparent decision making framework and process for the determination of applications for street trading consents; and (ii) to facilitate the creation of a street trading environment which is sensitive to the needs of the public (including local residents) provides diversity and consumer choice, and enhances the character ambience and safety of local environments. The Council's ability to regulate street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982("the 1982 Act").

2.0. Background

All streets within the district of the Chelmsford City Council, except for those within the Council's Parks and the High Chelmer Shopping Centre, have been designated as "**consent streets**", pursuant to paragraph 2 of Schedule 4 of the 1982 Act, with effect from 13th June 2014. The effect of this district wide designation is to make it a criminal offence, punishable with a fine of up to £1,000 on summary conviction, to engage in street trading without the prior written consent of Chelmsford City Council.

Schedule 4 to the 1982 Act defines a "street" as including any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980

"Street trading" is defined as ***the selling or exposing or offering for sale of any article (including a living thing) in a street*** – *subject to a number of exceptions set out in Schedule 4.* (These exceptions are summarised in 3.0 below.

When determining applications for street trading consents the Council has a very wide discretion with regard to the granting or refusal of such consents. The Council may, for example, refuse an application if it considers that the trading in question could cause an obstruction of the street or danger to persons using it or a nuisance or annoyance (whether to persons using the street or otherwise). The Council is not, however, limited to these grounds for refusing an application.

A street trading consent cannot be granted for a period of time exceeding twelve months and can be revoked at any time. When granting or renewing a Consent the Council may attach any conditions which it considers reasonably necessary. Furthermore the Council has the statutory right to at any time vary the conditions attached to a Consent. Any such variations will be notified in writing to the

named person on the application form for the Consent and will take effect immediately or on the date of the notification letter.

There is no statutory right of appeal to the courts or otherwise against the refusal of a Consent. The lawfulness of the Council's policy/decisions in relation to street trading control can be challenged by way of an application to the High Court (i.e. "Judicial Review") – but only on very narrow "administrative law" grounds.

Notwithstanding the lack of a statutory right of appeal, Chelmsford City Council will, if requested in writing by an aggrieved applicant, undertake to review its decision to refuse Consent (or to grant a Consent which is subject to one or more conditions which the applicant considers to be unacceptable). Such review will be undertaken by the Director of Safer Communities. On a review, the Director of Safer Communities may reaffirm the decision, ask officers to reconsider the application, vary/delete conditions, grant Consent or refer the application to the Licensing and Regulatory Committee.

3.0. Scope of Policy

This policy is applicable to any person, society, committee or other body of persons who wishes to apply for a street trading Consent or who is currently trading under the authority of Consent, except in relation to street trading within the actual City Centre (see below).

Applications for Consents will be processed and determined in line with this policy and issued for a specific time period (not exceeding 12 months). Operating outside any conditions of the consent will constitute unauthorised street trading and may result in criminal prosecution.

Non-application of policy to consent streets within Chelmsford City Centre

Chelmsford High Street and other streets (principally pedestrianized areas) within the City Centre have been designated as consent streets for many years. The new district wide designation replaces these individual designations and it will, therefore, still be necessary for individual to obtain a street trading consent in order to lawfully engage in street trading within the City Centre. Historically, street trading has always been closely controlled within the City Centre and separate policies govern the issue of Consents. The Public Places directorate is responsible for issuing consents in respect of market stalls located in the High Street and the Town centre Management in respect of other cases. This policy does not change these arrangements.

It should be noted that there are a number of exemptions to the requirement to obtain a Consent. These exemptions are set out in paragraph 1 (2) – (3) of Schedule 4 to the 1982 Act and can be summarised as follows:

Pedlars - Pedlars operate under the Pedlars Act 1871 and must obtain a pedlar's certificate from the Police. Pedlars are people who sell from place to place and cannot sell from a fixed pitch; they must move around and not wait for customers to come to them, they cannot stand in any one place for a considerable time nor can they exhort those passing, to buy their goods. Pedlars can carry their goods and can use a wheeled trolley to transport them.

Hair braiding, face painting, henna tattoos etc. - The Act which governs street trading relates to the selling of articles and as such people who provide a service e.g. hair braiders, are not considered by the council to be trading for the purposes of the legislation. However, if quantities of accessories used in hair braiding are also offered for sale then this would be street trading and may require a street trading consent.

News vendors/selling periodicals e.g. Big Issue - Selling or offering for sale newspapers or periodicals either with or without a stall does not require any consent, however if the stall stands on the carriageway of a street, it must be less than 1 metre in length and width, less than 2 metres high and occupy less than 0.25 square metres of ground. Stalls larger than this may require consent or a licence.

Roundsman - Selling, offering or exposing for sale things as a roundsman does not require a consent to trade.

Charity stalls - Street trading consent is not required but they will require a street collection permit authorised by Regulations made under the Police, Factories etc. (Miscellaneous Provisions) Act 1916.

Markets/fairs – Street trading consent is not required for trading at market or fairs which are established by virtue of a grant, enactment or order.

Streets adjoining premises – Street trading consent is not required for premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.

Any person who is unsure whether or not a proposed trading activity is covered by one of the above-mentioned statutory exemptions is advised to contact the Council's Licensing Section for a view. Ultimately, however, it remains the responsibility of the individual concerned to satisfy themselves that the trading activity which they are proposing to undertake is covered by an exemption and should s/he should refer to the precise wording of the exemptions (as set out in Schedule 4) and obtain independent legal advice in cases of doubt.

The grant of a Consent does not absolve the applicant from his or her responsibilities to the public. All applicants for a Consent should be aware of their need to ensure that they have in place adequate insurance and public liability cover. If applying for a Consent in the City centre, it is advisable to contact the City Centre Management to ensure that there is no conflict with any other activity occurring in the area. The grant of a permit does not allow the placing of any vehicle, stand, tables, chairs, items of equipment or independent display material and the applicant should be aware that such items on the highway may constitute an obstruction. The applicant should seek permission for the placing of any such items from the landowner or City Centre Manager as appropriate.

Chelmsford City Council is concerned to ensure that activity which is detrimental to the public amenity does not take place, while continuing to support, so far as possible, charitable and community events.

It is important to note that the issue of a Consent does not override the requirement to obtain any other necessary permission, or comply with any other relevant legislation in respect of the proposed trading activity (e.g. Food Hygiene regulations).

4. Current policy of the Council relating to the determination of applications for street trading consents

4.1 Chelmsford City Council (acting through its Public Health and Protection Services Manager) will (unless there are exceptional circumstances):

1. Require all applications for a consent to be made in writing on the Council's agreed form (copy attached at appendix A), or online via an approved online application process. The Public Health and Protection Services Manager is responsible for determining the process applicable to the making and determination of applications. The process may, in certain cases, involve

consultation with other relevant statutory authorities (e.g. Police or Highway Authority) before determination and/or the applicant giving public notice of the application.

2. Deal with all applications within 10 working days unless the application is to be determined by the Licensing and Regulatory Committee (see 5.0 below) and/ or consultation with another relevant statutory authority or public notice of the application is required. In such cases the application will be processed and determined as soon as reasonably possible.
3. Only process applications that are fully complete and return to sender any that are deemed incomplete. (The Public Health and Protection Services Manager may, if he thinks fit, require the applicant to provide in writing such additional information or clarification as he considers necessary.)
4. Investigate any complaints and if necessary impose additional conditions or revoke any granted Consent if the authorised activity causes any nuisance.
5. Issue a Consent, free of charge, to events which are to be held for the benefit of the community for no commercial gain e.g. village or church fetes, or for events organised by local authorities including Parish Councils.
6. Issue a Consent, on payment of the published fee, for any activity that is not mentioned under paragraph 4.2 of this policy and will comply with the standard conditions listed under paragraph 5 of this policy.
7. Offer the right to the review of a decision not to grant a Consent. Such review will be carried out by the Director of Safer Communities.

4.2 Chelmsford City Council will not (unless there are exceptional circumstances):

1. Issue a Consent to anyone intending to sell motor vehicles on land designated as a Consent Street.
2. Issue a Consent to anyone intending to sell items in or around an event or festival where they do not have the event organiser's permission. For the sake of clarity, no trading will be allowed on paths or roads in the vicinity of the 'V' Festival.
3. Issue a Consent for any activity that conflicts with other Council policies e.g. Animal Welfare Charter.
4. Issue a Consent where the Police and/or Highway Authority have objected in writing to the proposed trading activity on road safety or traffic congestion grounds, unless it is considered that the concerns can be overcome or by the imposition of one or more conditions.

5.0 Referral of applications to the Licensing and Regulatory Committee

The Public Health and Protection Services Manager and the Director of Safer Communities (on a review) have a general discretion to refer to the Licensing and Regulatory Committee for determination any application which, in their view, warrants consideration by the Committee because of special circumstances (e.g. it is a controversial application) or if they are minded to grant or refuse the application and such grant or refusal would be contrary to the policy.

6.0 Standard conditions to be attached to consents

The following conditions will be used as standard conditions on issued consents. Chelmsford City Council reserves the right to amend or add to these conditions where appropriate.

1. No trading to which the attached consent relates shall take place except between the dates of:
2. The operational hours shall be:

Between the hours of and on Mondays
Between the hours of and on Tuesdays
Between the hours of and on Wednesdays
Between the hours of and on Thursdays
Between the hours of and on Fridays
Between the hours of and on Saturdays
Between the hours of and on Sundays

3. Street trading can only be carried out from the stall or vehicle authorised under the conditions of the consent. Any changes to or replacement of the stall or vehicle must be approved by the Public Health and Protection Services Manager.

4. The Consent Holder shall comply with all statutes, statutory instruments and byelaws currently in force. Consent Holders must pay particular attention to the requirements of the Health & Safety at Work Act, 1974, the Food Safety (General Food Hygiene) Regulations 1995. Advice on these requirements is available from the Environmental Health Department. The Consent Holder shall not drive or park a vehicle on any part of a footway. (It is an offence to drive other than on a road)

5. The Consent Holder shall not be the cause of any nuisance or annoyance to any other user of the highway, the occupier of any land or building or the Chelmsford City Council. Consent Holders shall have special regard to and must take positive action to prevent excessive noise.

6. The Environmental Protection Act 1990 places a duty of care on businesses to dispose of waste originating from their trade in a certain manner. The Consent Holder shall ensure refuse originating from their trade is disposed of by a licensed waste carrier and shall leave the site clear of refuse at the completion of trading. No water or waste material shall be discharged on to the highway or any adjacent property. The Consent Holder shall ensure that the area in the vicinity of the stall/vehicle is kept clear of all refuse at all times.

7. The Consent Holder's vehicle/stall shall be kept in a clean, safe and well maintained condition and be of a presentable appearance. The Street Trading Consent bearing the name of the consent holder shall be displayed conspicuously on the stall/vehicle so that members of the public can clearly see it during hours of business.

8. The Consent Holder's vehicle shall be maintained in a roadworthy condition, taxed, insured and with a current MOT Certificate.

9. The Consent Holder shall ensure that the stall/vehicle is positioned only in the allocated space which may be marked on the ground) in the Consent Street for which the Street Trading Consent is issued. All goods shall be displayed on the stall and no freestanding racks or displays are permitted. If a Consent Holder or operator/assistant is requested to move the vehicle/stall by an authorised Council Officer or Police Officer they shall immediately comply with that request.

10. The Consent Holder's stall shall not exceed 2.3 metres in height nor occupy an area greater than 2 metres x 1 metre.
11. The Consent Holder must take adequate precautions to prevent the risk of fire at the stall or vehicle. All hot food vans/trailers are required to comply with current legislation on fire safety. Where gas cylinders are used an annual gas safety certificate is required to ensure the safety of all gas cooking and heating equipment. A serviceable fire blanket and a foam fire extinguisher shall be provided in all vehicles selling hot food.
12. All hot food vans/trailers are required to carry a basic first aid kit. The Consent Holder and others operators should know how to give first aid to treat victims of burns and cuts. All hot food vans should have access to a minimum of one mobile phone that must be serviceable at all times.
13. All staff involved in the preparation of food shall hold a current Level 2 food safety certificate, that is accredited by the Chartered Institute of Environmental Health, or the Royal Society of Health, or the Royal Institute of Public Health and Hygiene, and any food business must have a food hygiene rating of at least three stars or above.
14. 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 on payment of a fee. The sub-letting of a consent is prohibited.
15. The Consent Holder must be the principal operator and have day to day control of the stall/vehicle. The Consent Holder may employ any other person to assist in operating the stall/vehicle and shall notify the Head of Public Health and Protection Services of the name and address of that person. An administration fee will be payable.
16. Anyone who operates a stall/vehicle other than the Consent Holder must be authorised by the Head of Public Health and Protection Services.
17. A Consent Holder may terminate a Street Trading Consent by written notice to the Head of Public Health and Protection Services. A refund of the portion of the fee equal to the remaining full months will be payable.
18. Consent holders shall ensure that disabled people and wheelchair users can be adequately served. This may involve serving persons from outside the vehicle.
19. A copy of the Consent shall be carried by the operator when trading and must be produced on demand to a Council Officer or Police Officer.
20. Consent Holders shall have and maintain a proper insurance policy against public liability and third party risks. The minimum insurance cover shall be £5,000,000 and shall cover the operator's vehicle, or stall and any additional equipment under their control. If food is sold the insurance shall specifically include cover against food poisoning to the same amount.
21. These general conditions, which apply to all Street Trading in Chelmsford, may be varied, having regard to a particular location. They are termed Special Conditions and listed on the Consent Certificate. These Special Conditions must also be complied with.
22. If a consent holder wishes to vary the area in which they trade, or modify the times trade is allowed, they may request this change in writing to Chelmsford City Council and paying a fee.

Failure to comply with these conditions

If a Consent Holder fails to comply with any of the conditions attached to a Street Trading Consent, the Consent may be suspended for an indefinite period or revoked. The Consent Holder may also be prosecuted.

Comments and Review

This policy may be reviewed from time to time by the Director of Safer Communities. Any revisions made to the policy shall take effect on publication of the policy (as revised) on the Council's website. This policy will also be submitted to the Licensing and Regulatory Committee for overview at 3 year intervals. Anyone wishing to comment on this policy may do so in writing to the Public Health and Protection Services Manager, Chelmsford City Council, Civic Centre, Duke Street, Chelmsford Essex CM1 1JE or via the Council's Comments, compliments, complaints page on the Council's website at www.chelmsford.gov.uk

Signed _____ date _____
(Public Health and Protection Manager on behalf of Director of Safer Communities)

Appendix A

APPLICATION FOR STREET TRADING CONSENT

APPLICANT DETAILS	
Name	
Address	
Post code	Contact telephone number
Details of any food business you have operated in the last 12 months	
BUSINESS DETAILS	
Name	Type (e.g., hot food, ice cream, etc)
Address for correspondence	
Post code	If mobile, vehicle registration
Location where you wish to trade	
Please describe the location and enclose a plan with the exact location marked on it.	
Hours during which you wish to trade	
Chelmsford City Council's general policy is to NOT grant permission for the sale of motor vehicles.	

Please explain how your business may impact on the matters below
Public nuisance
Crime and disorder
Road safety
Health & safety at schools and for their pupils
Likely demand for goods being sold
Availability of goods being sold in other fixed premises in the vicinity

FEES

The fee payable on application is £123.50.*

*If your consent relates to a community, non-commercial event, an event organised by a local authority, or in relation to a charity, you may not have to pay a fee. Please consult our policy, or contact the licensing team for further details.

DECLARATION

I declare that the information given above is true to the best of my knowledge, and that I will comply with the terms and conditions of any street trading consent granted by Chelmsford City Council as a result of this application. I am over 17 years of age.

Signature of applicant

Print name

Date

Please send this application with the appropriate fee to

**Licensing
Chelmsford City Council
Civic Centre
Chelmsford
Essex
CM1 1JE
01245 606204**