

London Borough of Richmond Upon Thames draft Street Trading Policy

Main Changes Document

Improving Air Quality (See page 6, paragraph 7.6 of the draft policy)

The Council will be asking new applicants to use street trading vehicles that meet the Euro 6 emissions standards where the engine is required to be kept running for the purpose of providing power in connection with the licensed Street Trading activities. Existing traders will be required to conform to this requirement by 1st January 2024. Applications for a zero-emission-capable street trading vehicle will be favourably considered.

As part of the Council's Climate Change action plan, electricity bollards have been installed in some of the street trading locations within the borough for licence holders to use when carrying out street trading activities. For example, ice cream vendors located in an area supplied with an electricity bollard are now required to plug their equipment into an electrical source and run off electricity whilst parked, to avoid idling their engines. This requirement will form part of the conditions of the licence when renewed

Markets Operator (See page 8, paragraph 9.10 of the draft policy)

A Market Operator providing a market can co-ordinate the applications for market stall holders and documents required for each proposed market trader. Under the London Local Authorities Act 1990, the Council must consider a street trading licence for each proposed market trader. Each trader will be issued an individual market stall street trading licence and not the Market operator. Each market stall holder will be required to adhere to the conditions of their market stall street trading licence.

Special Provisions for Community/Charity Trading Licences **(See page 10, paragraph 12.0 to 12.3 of the draft policy)**

Community/Charity trading licences will be issued to organisations that are carrying out trading activity for the purpose of making a profit on an occasional or temporary basis.

The Council will consider individual applications for Community/Charity trading licences on a case by case basis and acceptance will be assessed in the following circumstances:

- fundraising activities,
- promotion of charity or other local cause,
- promotion of community services.

The licences will be applied for in the same way as Temporary Street Trading Licences.

Fees & Waivers (See pages 11 – 12, paragraph 16.0 to 16.5 of the draft Policy)

Street Trading licence fees will be set and reviewed from time to time by the Council and any changes to those fees will be advertised in accordance with the provisions of the Act.

The licence fee is split between a non-refundable application fee and an enforcement/compliance charge. The Council requires payment to be made at the time of application. Where a licence is refused for any reason, a refund will be given for the enforcement and compliance section of this charge. Traders renewing their licences will have the option of paying by Direct Debit during the licence year.

Where a licence is revoked for reasons beyond the Licence holders control, for example, where the highway has been redeveloped and there is no longer sufficient space for the trading activity to take place or where the Council has introduced a ban on certain commodities that were previously licensed, the Council will offer a partial refund of the licence fee. This will be calculated on pro-rata basis in whole months from the final trading day until the end of the licence year.

Where a licence has been revoked for reasons within the control of the licence holder, the Council will not issue a refund of the street trading licence fee.

Fee Waivers

- (a) Fee Waivers for absences as a result of long term sickness/ill-health, or matters relating to maternity/paternity/adoption, or care giving, will be considered on application to the Council in writing by the Licence Holder and may require official documentation as proof.
- (b) In the event that any conditions in (a) prevent a Licence Holder from trading, the Council may, upon application in writing from the Licence Holder, permit a named assistant to run the business during their absence.
- (c) Where a Licence Holder has been prevented from trading for any of the reasons set out below, the licensing authority may, at its absolute discretion, award a pro-rata waiver for the relevant period.
 - (i) Damage to the designated trading pitch, not caused by any act or omission or recklessness, of the trader to the extent where the Licence Holder is prevented from trading; or
 - (ii) Repairs that must be carried out to the surface of the street trading pitch or to utilities and services underneath it which prevent the Licence Holder from trading; or
 - (iii) Public realm or infrastructure improvement works affecting the location of the street trading pitch or its immediate vicinity to the extent where the Licence Holder is prevented from trading;
 - (iv) Obstruction of the pitch which cannot be removed to the extent where the Licence Holder is prevented from trading.

- (d) In many circumstances minor adjustments to the trading pitch, its location, the placement of stalls, the style of trading, etc. can allow the Licence Holder to trade without the need for fee waivers. The Licence Holder must take all reasonable steps to facilitate trading, including contacting the licensing authority for advice, before applying for a waiver of fees and charges. If minor adjustments are feasible and will result in a situation where trading can continue (whether partially restricted or not), the Licence Holder will not be entitled to a waiver
- (e) Licence charges will be payable for the first month of a period of certified absence.

Decision Making (See page 13, paragraph's 19.0 to 19.7 of the draft policy)

The Council has powers to consider a wide range of matters on which to grant/refuse street trading licences. Any decisions made upon these grounds will be evidenced and justified after careful investigation into any responses received during the consultation process.

Certain grounds for refusal may present themselves through the application process. Where these grounds are identified, the applicant will be offered the opportunity to amend the application before it is determined.

The licence will be granted by officers authorised to do so provided that the necessary preconditions / requirements are met.

Where relevant adverse feedback has been received within the consultation period and discretionary grounds for refusal have been identified, the Council's Licensing Sub Committee will be tasked with making determinations.

Where the application is to go before the Licensing Sub Committee, the applicant will be expected to present the case and assist the committee panel with any questions. To facilitate this, the applicant will be advised in writing of the date, time and place when the application will be heard. The applicant can be represented if they wish, whether or not the person is legally qualified. The Licensing Team will prepare a report for the Licensing Committee regarding the application. The report will be made available to the applicant at least five working days before the date of the meeting together with any relevant hearing procedure.

Where no representations are made within the notified timescale the council will proceed to make a decision on the application and will notify the applicant of this in due course.

An application may be refused on statutory grounds and /or criteria as outlined in this policy. A Licence may be revoked on statutory grounds and / or criteria as outlined in this policy.

Richmond Council cannot be held liable for any costs incurred due to a refused application.

Where grounds for refusal do exist, the Council may still grant a modified version of the licence applied for. For example, it may be appropriate to reduce the days/times of trading activity, to reduce the size of the proposed trading area or add conditions.

Conditions attached to licences will be designed to ensure that these factors are controlled for the duration of the licence period.

Reasons for refusal of a licence (Pages 14 -15, paragraphs 20.0 to 20.5 of the draft Policy)

The reasons under which a Street Trading Licence application can be refused are set out in the legislation, however are summarised below. For full details please refer to Section 25 of the Act.

The Council will not grant a Street Trading Licence if any of the following apply:

- a) The applicant is under the age of seventeen.
- b) The proposed trading location is not within a designated licence street.
- c) The applicant is proposing to sell goods or services which the Council has resolved to ban.
- d) There is not enough physical space within the proposed trading location and any trading activity would have an adverse impact on the surrounding area by causing obstructions to persons or vehicles using the street.
- e) The applicant has made an application to trade in a location which does not satisfy the definition of a 'street' for the purposes of the legislation.
- f) The applicant does not have permission of the land owner in the case of trading on private land covered under the definition of 'street'.
- g) The applicant of a shop front licence is proposing to sell goods or offer services which are not sold or offered for sale within that shop.
- h) There is insufficient width to allow a minimum 2m clearance on the highway.
- i) That:
 - (i) the application is for the grant (but not the renewal) of a street trading licence; and
 - (ii) the only available position in the street is within the curtilage of or is contiguous with the frontage of a shop selling similar articles; and
 - (iii) the applicant is not the owner or occupier of the premises comprising the shop.

The Council may also refuse an application for a Street Trading Licence if:-

- (a) There are sufficient traders in the street, or at premises adjoining it, who are trading in the articles the applicant wishes to trade; or
- (b) The nature of the articles, things or services in which the applicant wishes to trade would adversely affect the general amenity of the area;
- (c) The applicant has made a false statement in connection with the application

- (d) The applicant is unsuitable to hold a street trading licence;
- (e) The applicant has failed to avail himself of a previous street trading licence;
- (f) The applicant has had a licence revoked (or could have been revoked) on the grounds that fees or other charges due to the council were not paid
- (g) The applicant has failed to provide information required by the council to deal with the application;
- (k) The applicant has failed to provide suitable arrangements for storing the vehicle, stall or other items from which they propose to trade.

The determination of applications where no relevant adverse feedback has been received during the consultation period, will be determined by Officers delegated for the purpose, and may be changed from time to time as appropriate.

Other Considerations

The Council may also have regard to the other following factors when considering the impact on the local area of the proposed trading activity. This may result in additional conditions being imposed upon any licence granted:

- a) **Public Safety** – whether the street trading activity represents, or is likely to represent, a substantial risk to members of the public from the point of view of obstruction of the highway for emergency vehicles, or otherwise, a fire hazard, unhygienic conditions or other danger that can be reasonably foreseen, that may occur when a trader is using the site.
- b) **Prevention of Crime and Disorder** – whether the street trading activity represents, or is likely to represent, a substantial risk to public order. This is potentially more of an issue for traders wishing to operate as part of the nighttime economy.
- c) **Prevention of public nuisance or environmental damage** – whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance or environmental issues. Examples include; damage to street surfaces; noise; litter; refuse; vermin; fumes/odours etc.
- d) **Appearance of trading area** – Whether the street trading area is properly constructed and presented and enhances the aesthetic street scene of an area.
- e) **Needs of the area** – amongst other things, the Council will consider the demand for the articles for sale, and the geographical location of the proposed site.

Conditions and Standards for Licence Holders (See appendix 3 on pages 27 – 35 of the Policy)

The council expects all licence holders to carry out their trading activities in accordance with the conditions imposed upon it.

In addition to the above information, the Council will also impose standard conditions on all street trading licences. Additional conditions may be added on a case by case basis. Standard conditions will be reviewed from time to time. The standard conditions can be found at Appendix 3 (Pages 27 to 35 of the draft policy).

The Council expects all licence holders to maintain their trading area in a proper manner and to ensure that any trading/display equipment is of a good quality and tidy appearance. The Council will offer assistance and advice to traders and applicants on how to improve the look and quality of their trading/display equipment

Delineation (See page 18, paragraphs 25.0 to 25.3 of the draft policy)

Where the Council issues a licence, it may be appropriate to define the trading area by delineating with studs or similar.

The Council will consider the following factors when deciding to delineate in certain areas:

- a) Whether there is a need to define the trading area to assist traders in keeping within their licensed trading area
- b) Where licence holders of pitch licences, and the Council's enforcement officers, need to easily identify a specified trading area.
- c) Where there is a high concentration of traders in a particular area and trading boundaries need to be defined

Delineation will be considered in consultation with the Council's Highways Service to ensure the appropriate materials are used. The cost for delineating trading areas will be borne by the trader.

Enforcement (See pages 18 -19, paragraphs 27.0 to 27.12 of the draft policy)

The Council is committed to enforcing the provisions contained within the relevant legislation and to work in partnership with all enforcement agencies, to provide consistent enforcement on licencing issues.

The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with the Regulatory Services Partnership Enforcement Policy which may be applicable. The action taken, which may be immediate, will be proportionate to the seriousness and nature of the non-compliance.

Enforcement commences with the issue of clear terms and conditions at the time an application for a street trading licence is made. Council officers will provide advice with respect to any issues surrounding the interpretation of licence conditions or other matters.

Factors that will be taken into consideration include, but are not limited to:

- a. seriousness of the breach
- b. The risk that the non-compliance poses to the safety, health or welfare of the public at large or to individuals;
- c. Evidence suggests that there was pre-meditation in the commission of an alleged offence;
- d. The alleged offence involved a failure to comply in full or in part with the requirements of this policy and / or the terms of the street trading licence;
- e. There is a history of previous warnings or the commission of similar offences;
- f. Aggravated circumstances such as obstruction of an officer or negative conduct;
- g. If the alleged offence, though not serious itself, is widespread in the area where it is committed;
- h. The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm;
- i. There has been a repetition of a breach that was subject to a formal caution or issue of a Fixed Penalty Notice;
- j. False information has deliberately been supplied and/or intention to deceive.

The Council may take the following types of enforcement action (in no particular order):

- a) Verbal/written warnings – e.g. a contravention and / or where Officer contact has not resolved the contravention;
- b) Simple cautions;
- c) Licence revocation/variation e.g. where fees go unpaid, a breach of a licence condition; conduct of the licence holder etc.
- d) Fixed Penalty Notices;
- e) Prosecution.

Where grounds for revocation and/or variation have been identified, the case will be considered by a Licensing Committee in the form of a licence review hearing.

The Licensing Team aims to work closely with other enforcement authorities when dealing with issues on the street.

If the Council considers that there is an issue of public order or threat to public safety in any particular instance, it will call for assistance from the Metropolitan Police

The Council may call for assistance from the Councils' CCTV control centre when dealing with such issues.

Standard conditions will be attached to every Street Trading Licence including Temporary Licences and these may be varied by the Council at any time.

Specific conditions may 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 location.

Officers will regularly inspect street trading areas to ensure compliance with the licence terms and conditions i.e. the trader is only trading in the licensed pitch area. In addition, all complaints of unlicensed street trading will be investigated

Any decision to prosecute an offence under this Act will be made in accordance with the Crown Prosecution Service Code for crown Prosecutors

Succession (See page 21 of the policy, paragraphs 31.0 to 31.3 of the draft Policy)

Under the London Local Authorities Act 1990 (as amended), traders have the right of Succession, which permits the licensed trader to nominate a relative whom he/she desires the licence be granted to under the following circumstances;

- a) When the licence holder dies;
- b) When the licence holder retires, having reached the normal age for retirement;
- c) When the licence holder advises the Council that owing to ill health, he is unable to continue to operate the licence.

The Council will consider the circumstances of the individual trader when assessing succession rights. It is advised that the trader seeks their own independent legal advice on the matters involved before any assumptions about the entitlement can be made.

Holders of temporary licences are not entitled to succession rights.

Commodities (See page 22, paragraphs 33.0 to 33.2 of the draft Policy)

Applications for street trading licences must be made in accordance with the Council's approved list of commodities and banned commodities (Included as Appendix 6). The Council will consider commodities that are not on the approved list at its own discretion.

The Council may amend this list in order to ensure fair trading opportunities to all traders in the relevant area. The Council may, from time to time, ban certain commodities in certain areas where there is a need to do so. If the Authority amends

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the list of banned commodities, a twenty one day consultation with traders will be held in the affected area prior to a decision being made.