

Meeting Date	20 th February 2020
Report Title	Draft Street Trading Policy
Cabinet Member	Councillor Richard Palmer, Cabinet Member for Community
SMT Lead	Nick Vickers, Chief Financial Officer
Head of Service	Della Fackrell, Resilience and Licensing Manager
Lead Officer	Christina Hills, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	<ol style="list-style-type: none"> 1. That Members note that this report and appendices will also be presented to Policy Development and Review Committee 2. That Members approve the draft Street Trading policy as attached as Appendix II for a formal consultation period of 12 weeks. 3. That Members delegate authority to the Resilience and Licensing Manager to make any amendments to the draft policy if Members require amendments.

1 Purpose of Report and Executive Summary

- 1.1 This report provides Members with information and guidance on a new draft Street Trading Policy which requires Members comments and approval prior to formal public consultation.

2 Background

- 2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23rd July 2010 designated all streets in the area as 'consent streets'
- 2.2 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

- 2.3 On date 1st December 2010 to ensure compliance under the European Services Directive, the Council approved a Street Trading Local Policy and Guidance Document.
- 2.4 A revised Street Trading Policy was approved by the Council on 24th July 2013 and which, although set to be reviewed in 2016, is still in existence to date. This policy is attached as **Appendix I**.
- 2.5 The Street Trading Policy outlines how the Council will execute its decision making functions when dealing with applications for Street Trading Consent.
- 2.6 There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.
- 2.7 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

3 Proposals

- 3.1 The existing policy has now been reviewed by officers. There have been no changes to legislation to take into account. However the current policy has been expanded in some areas to provide clarification of what is defined within the Local Government (Miscellaneous Provisions) Act 1982 and, where appropriate, exemptions contained within the existing policy have been deleted.
- 3.2 The draft Street Trading Policy is attached as **Appendix II**.
- 3.2 The existing policy has been amended as shown below:
 - Exemptions: Proposed list of examples where a street trading consent is required by the Council but where it is proposed that no fee is charged (formally Street Trading Consents for which fees are not payable).
 - Removal of '7 Metre rule', requiring consent to be obtained from anyone trading within 7 metres of the Highway. This was originally imposed to control traders (paying less) on the forecourt of commercial premises competing with established nearby businesses. However, this exemption was taken from the London Local Authorities Act 1990 rather than the Local Government (Miscellaneous Provisions) Act 1982 and is not a legal exemption.
 - Removal of the requirement, for ice-cream vendors to register and use a specific chime. This was originally imposed to assist with enforcement.

However it leads to complaints from ice-cream vendors that another vendor is using their chime and is difficult to enforce.

- Ice Cream Vans and Mobile Food Vans will be required to supply details of their proposed routes, streets and stopping places (which may vary from day to day) again to decrease complaints from other traders.
- Removal of the 'Trial Period'. Permitting individuals, under the control of an existing consent holder, to try their hand at street trading for a limited period of three weeks.
- Surrendering and revocation of a Street Trading Consent is now included in the Policy.
- Amendments to application procedure to make it more comprehensive. This includes the requirement for applicants to obtain a Standard Disclosure and Barring Service criminal records check for new and renewal applications and for one-off consents where considered necessary in order to check the suitability of the applicant.
- Event organisers will no longer apply on behalf of all stall holders, instead each individual stall holder will require a separate Street Trading Consent. The reason for this change is because currently the event organiser is the only person who would be legally accountable and the only person that the Council could take enforcement action against should there be any problem (for example trading in counterfeit goods)
- Enforcement this section has been expanded
- Data Retention information is now included in the Policy.

4 Fees

4.1 There will need to be a comprehensive review of the fees charged for Street Trading Consents particularly bearing in mind the following:

- Fees will need to reflect the increased administrative burden that will fall to the licensing team with this enhanced policy whilst at the same ensuring that fees are 'cost neutral'
- Currently fees are charged to event organisers based on the number of stalls at an event, whereas if the proposal to require individual stall holders to apply for their own consents is approved there will be a need to set a fee that reflects this.

- Consideration needs to be given as to whether assistants of Street Trading Consents are charged a fee – for example to cover the cost of an identity badge.
- 4.2 The Resilience and Licensing Manager together with licensing officers will undertake this review and present a report to a future meeting of the General Licensing Committee for their consideration.
- 4.3 All amendments to fees will be included within the final adopted policy.

5 Alternative Options

- 5.1 The Council could choose not to introduce an updated policy on Street Trading, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of the legislation.
- 5.2.1 The Committee could consider not consulting on the proposed policy; however this would not accord with good governance, giving interested parties an opportunity to consider the proposed policy and make any representations where they consider that changes might be made before adoption.

6 Consultation Undertaken or Proposed

- 6.1 A consultation period of 12 weeks is proposed to run between 2nd March 2020 and 22nd May 2020. Methods of consultation will be by advertising on the Council's website and in local newspapers and where appropriate by email and post. The results of the consultation will then be presented to the General Licensing Committee.
- 6.2. Consultees will be the following:
- All Swale Councillors
 - All Town and Parish Councils
 - Town Markets/Co-Operatives
 - Kent Police
 - Kent Fire and Rescue
 - Kent County Council Highways Department
 - Kent County Council Trading Standards
 - Kent County Council Safeguarding Unit
 - Swale BC Environmental Services (Commercial and Environmental Response teams)
 - Swale BC Planning
 - Swale BC Economy and Community Services team
 - Swale BC Green Spaces team
 - Any relevant trade associations
 - All existing Consent holders

- 6.3 All incoming responses will be entered onto a grid for consideration. The Resilience and Licensing Manager together with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement. The grid and recommendations will be put before a future meeting of the General Licensing Committee for consideration and inclusion of any amendments within the policy prior to formal adoption by full Council later in 2020.

7 Implications

Issue	Implications
Corporate Plan	<p>Having an adopted Street Trading Policy satisfies the corporate objective of:</p> <p>A Council to be proud of</p>
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p> <p>There could be traders who previously were informed that they required no street trading consent because they were trading more than 7 metres from the highway. As this was an illegal exemption these traders will now require a street trading consent and to pay the requisite fee.</p> <p>Members may also wish to consider whether certain types of activities as detailed at paragraph 3.8 whilst requiring a Street Trading Consent will not be charged a fee.</p>
Legal and Statutory	<p>The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).</p>
Crime and Disorder	<p>It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making</p>
Environmental Sustainability	<p>No implications</p>
Health and Wellbeing	<p>No implications</p>
Risk Management and Health and Safety	<p>It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers</p>

<p>Equality and Diversity</p>	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and provided for in the Street Trading policy for Swale BC will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.</p>
<p>Privacy and Data Protection</p>	<p>Normal data protection and privacy rules will apply. Under the 2013 Act the Council is obliged to provide certain information to the Environment Agency who compile and keep a public register.</p>

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix 1: Current Street Trading Local Policy 2013 - 2016
- Appendix 2: Draft Street Trading Policy 2020 - 2023

8 Background Papers

None