

REPORT TO: Licensing Sub-Committee

MEETING DATE: 12 May 2016

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Street Traders licensing- Review of Licence Conditions

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1 PURPOSE

- 1.1 To advise the Sub-Committee of the work carried out by the Licensing team to review and update the conditions which apply to Street Trader's licences, and the communications with affected licence-holders.

2 RECOMMENDATIONS

- 2.1 That the Sub-Committee
- (i) Consider any representations received from licence holders in respect of the proposed updated licence conditions, and
 - (ii) Approve and adopt the proposed revised conditions of licence in respect of all present and future Street Trading licences.

3 BACKGROUND

- 3.1 The conditions which apply to Street Trader's licences have not been reviewed for a number of years. As a result, they have become somewhat out of date in some respects and do not now fully reflect current practice and requirements.
- 3.2 The Licensing team have, over the last several months, undertaken a review of these conditions, with the aim of making them more reflective of the current position and also more logical and user-friendly to read.
- 3.3 The present conditions are attached as Appendix 1, and the proposed updated conditions are attached as Appendix 2. While the updated version looks somewhat different at first glance, it is not intended that these represent a major alteration in terms of actual content. The aim has been to update the conditions, rather than entirely re-write them.

- 3.4 In terms of the Civic Government (Scotland) Act 1982, Schedule 1, paragraph 10, where the Council proposes to vary the terms of any licence issued by them, they require to notify all affected licence holders, and also Police Scotland, of the proposals, and offer these parties an opportunity to be heard on the proposals.
- 3.5 I can confirm that all current licence-holders, and Police Scotland, were contacted in writing on 2 May 2016, advising them that the proposed conditions would be considered for approval at the Sub-Committee meeting on 12 May.
- 3.6 Given the dates, no comments have been received at the date of this report. Any written submissions which are received will be tabled at the meeting.
- 3.7 Where a variation is approved, the legislation states that it will take effect when the time within which any appeal against the proposed conditions may be made has elapsed, or, where any such appeal has been lodged, on the date on which any such appeal is abandoned or determined in favour of their adoption.

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Civic Government (Sc) Act 1982, Sch 1 para 10
- 7.2 Proposed updated Licence Conditions, attached as Appendix 2

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| DATE | 2/5/16 |

EAST LoTHIAN COUNCIL

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

STREET TRADER'S LICENCE - CONDITIONS

1. The licenceholder shall not be permitted to carry on business between the hours of midnight & 5 a.m.
2. This licence shall be displayed or be readily available for inspection on any vehicle or kiosk moveable stall used by the Licenceholder.
3. The Licenceholder shall at all times when carrying on business wear or otherwise display the Identity Card, which is issued with this Licence.
4. The Licenceholder shall carry on his business subject to any directions, which he may receive from the Police.
5. This Licence is not transferable & any material change of circumstances affecting the holder of the Licence (or the activity to which the Licence relates) shall be notified to the Council, as soon as reasonably practicable after it has taken place.
6. The Licenceholder shall not trade from any vehicle or kiosk or moveable stall unless it has first been approved by the Council.
7. Where the Licenceholder's vehicle(s) utilises LPG (liquid petroleum gas) a gas safety certificate for the vehicle must be obtained from a suitable Gas Safe registered gas engineer and submitted to the Council prior to approval by the Council. Thereafter a gas safety certificate must be obtained for the vehicle at least once per annum and the said certificate thereafter submitted to the licensing authority.
8. The Licenceholder shall not make, or cause to be made, or permit there to be made, any material change to the approved vehicle or kiosk or moveable stall without the prior consent of the Council.
9. In addition to the requirements of Section 39(4) of the Civic Government (Scotland) Act 1982, any vehicle or kiosk or moveable stall used by the Licenceholder for a food business must be made available on request at any time & as required by their Food Hygiene Risk Assessment Score (Risk Rating) to the Director of Environment of the Council for examination.
10. The Licenceholder shall not at any time carry on business within a distance of 150 metres measured from the nearest point of any shop or business premises, whether such premises are open or not at the time in which are sold goods or articles or services are offered of the same description as those sold or offered by the Licenceholder.
11. The Licenceholder shall not carry on business in any public place so as to cause obstruction.

12. The Licenceholder shall at all times conduct his business & position any vehicle or kiosk or moveable stall used by him in connection with his business in such a manner that no danger is likely to arise to any person.
13. The Licenceholder shall so conduct his business as not to permit any accumulation of paper or other refuse in the course of his business.
14. The Licenceholder shall not sell or offer or expose for sale, goods or articles of any objectionable or indecent character.
15. The Licenceholder shall on all occasions, when carrying on business, conduct himself in a proper & civil manner & he shall not carry on his business in such a way as to cause annoyance to any person.
16. The Licenceholder shall comply with & have regard to all statutory provisions relating to the sounding of musical chimes & loudspeakers & in particular the provisions of Section 62 of the Control of Pollution Act 1974 & the Control of Noise (Code of Practice on Noise from Ice Cream Van Chimes Etc) Order 1981 & any amendment thereof.

The said Code of Practice on Noise from Ice Cream Van Chimes Etc issued under the Control of Pollution Act 1974 prescribes that chimes & loudspeakers shall not be played: -

- (a) before noon or after 7p.m.
 - (b) so as to give reasonable cause for annoyance;
 - (c) for longer than 4 seconds at a time;
 - (d) more often than once every 3 minutes;
 - (e) when the vehicle is stationary;
 - (f) except on approach to a selling point;
 - (g) when in sight of another vehicle which is trading;
 - (h) when within 50 metres of schools (during school hours), hospitals & places of worship (on Sundays & other recognised days of worship);
 - (i) more often than once every two hours in the same length of street;
 - (j) louder than 80dB(A) at 7.5 metres;
 - (k) as loudly in quiet areas or narrow streets as elsewhere.
17. The Licenceholder shall not use whistles or any other sound producing devices including chimes & loudspeakers to attract business at any time in a way, which gives reasonable cause for annoyance.

18. In these conditions "carrying on business" means engaging in street trading as specified in this licence within the Area of East Lothian & "the Council" means East Lothian Council, Council Buildings, Haddington, EH41 3HA.

NOTE:

It should be understood that this Licence is issued under Part II of the Civic Government (Scotland) Act 1982, & does not carry with it any consent or approval, which may be required under any other statute or regulations. It is the responsibility of the Licenceholder to ensure that any necessary consents are obtained where required e.g. the permission of a landowner to trade from his ground, planning consent, etc., prior to the commencement of trading.

EAST LOTHIAN COUNCIL

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

Appendix 2

STREET TRADER LICENCE – CONDITIONS

Licences are granted by East Lothian Council and are conditional on the Trader complying with all relevant legislation and the following conditions

General Trading Conditions

1. The licence holder is not allowed to carry on business between the hours of 23:00 & 06:00 hours.
2. The licence and badge must be kept clean and readable at all times and be displayed or be readily available for inspection on any vehicle or kiosk or mobile stall used by the licence holder. The licence must be produced, on demand, to any officer of the Council or any Police Officer.
3. If the licence or badge is lost or becomes unreadable, the licence holder must notify the Council within 7 days to obtain a replacement. The licence may be suspended if the licence holder fails to comply with these notification procedures.
4. The licence holder must wear the street traders badge at all times when carrying on their business. The badge must be worn so that it is distinctly visible and readable by any person.
5. When trading, every licence holder must keep their clothing clean and tidy.
6. The licence holder must carry on their business subject to any directions, which they are given by the Police or compliance notice issued by any Officer of the Council.
7. The licence holder must not employ or appoint any person to do street trading on their behalf in East Lothian unless that person holds a current street trader's licence.
8. This Licence is not transferable. A street trader must not lend or allow any other person to use their licence or badge.
9. If the licence holder stops street trading, they must immediately give notice in writing to the Council and return their licence and badge.
10. The licence holder must let the Council know about any change of circumstances, including any change of name or address or change in the activity to which the Licence relates, within 7 days after the change has taken place.
11. Where a holder of a licence is charged with any offence relating to misuse of drugs, violence or sexual impropriety, or has been convicted of any crime or offence by any court, or been made the subject of any penalty or fixed penalty offer issued by the Procurator Fiscal or Police Scotland, the licence holder must notify the Council within 7 days.
12. If the licence is revoked or suspended the licence holder must return their badge and licence to the Council within 7 days.

Safety and Food Conditions

13. The licence holder must not trade from any vehicle or kiosk or mobile stall unless it has first been approved by the appropriate Council Department.
14. The licence holder must comply at all times with relevant food safety, food standards and health and safety legislation.
15. The licence holder conducting a food business from a vehicle, kiosk or mobile stall must at all times hold a current certificate of compliance. The certificate must be produced on demand to any police officer, or authorised Council Officer.
16. Any vehicle or kiosk or mobile stall used by the licence holder for a food business must be made available for inspection at any time at the request of any Council officer.
17. The Licence holder must not make, or cause or allow, any change to the approved vehicle or kiosk or mobile stall without prior consent from the Council.

Location of Trading

18. The licence holder must not at any time trade within 150 metres of any shop, whether it is open or not at the time, or any other Street Trader, that sell goods, articles or services of similar description to those sold or offered by the licence holder unless written permission has been applied for and been granted by the Council with respect to named events and locations. This condition does not apply to traders who have the written permission of the organisers at local galas, shows or events.
19. The licence holder must not carry on business in any public place so as to cause annoyance, nuisance or obstruction or interfere with the free passageway of any footpaths or roads.
20. Any licence holder trading from a vehicle, kiosk or mobile stall must collect and remove any litter which may be produced by them or their customers during the course of their street trading activity.
21. A licence holder who trades at a location for less than 30 minutes must not return to that location, or within 150 metres of it, for a period of 4 hours from the time when they vacated it.
22. The licence holder must not trade at any location considered unsuitable by the Council in the interests of public safety and must comply with any written compliance notice issued to the licence holder by any Council officer.
23. The licence holder must not leave any trailer or kiosk parked on a public road overnight unless prior authorisation has been given the Council.
24. The licence holder must at all times while trading from a permanent location or locations on a public road or footpath, hold the consent of the Council entitling them to do so.
25. The Council considers that licence holders are trading from a fixed location if they trade from a particular location for more than 30 minutes at any one time.

Conduct

26. The licence holder must ensure that the licensed vehicle, kiosk or mobile stall is in a clean, safe and serviceable condition
27. The licence holder must on all occasions, when carrying on business, conduct him/herself in a proper and civil manner, and must not trade in such a way as to cause annoyance or offence to any person.

28. The licence holder must at all times conduct their business and position any vehicle or kiosk or mobile stall used by them in such a way that no danger is likely to arise to any person.

Noise and Nuisance

29. The licence holder must comply with all statutory provisions relating to the sounding of musical chimes, loudspeakers and regulations on noise nuisance. In addition, no whistles or any other sound producing devices may be used to attract business which gives reasonable cause for annoyance.
30. The licence holder will ensure the use of equipment, such as generators and the like, is not the source of any reasonable nuisance complaints.

NOTE:

This Licence is issued under Part II of the Civic Government (Scotland) Act 1982, and does not carry with it any consent or approval, that may be needed under any other legislation.

It is the responsibility of the licence holder to ensure that any necessary consents are obtained where required e.g. the permission of a landowner to trade from his ground, planning consent, etc., before starting to trade.

Operators must register mobile food businesses with the Council where the unit is stored and comply with the current Food Liaison Group Standards and/or equivalent standards.

Definitions:

Mobile Trader: A mobile trader is someone who trades from a self contained mobile unit. Including, but not limited to, any vehicle, carriage, lorry, wagon, truck, van, float, barrow, stall, animal, in a public place.

Shop: a building or part of a building where any retail trade or business takes place, including the sale of any article or service to members of the public and retail sales by auction.

Public Place means any place (whether a public highway or not) to which the public have unrestricted access, and includes doorways or entrances of premises abutting such a place and any common passage, close, court, stair, garden or yard which forms part of any tenement or group of separately owned houses.

Street Trading: means hawking, selling, exposing or offering for sale any article or carrying out or offering to carry out for money or money's worth, any service in a public place.

