

## **Annex 2 – Draft Street Trading Policy for consultation**

### **City of York Council Street Trading Policy**

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## 1. Introduction

- 1.1 On the 13 November 1996 City of York Council (The Council) adopted the provisions of Schedule 4, Paragraph 2(1) of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act). Under this adoption it was agreed that all streets within the authority area are to be designated 'consent streets' for the purposes of street trading. This came into effect on 1 January 1997.
- 1.2 This document sets out the policy that the Council will apply when making decision regarding new applications for consents, as well as the consents currently in force.
- 1.3 Under the 1982 Act a street includes any road, footway, beach any part of a street or other area to which the public have access without payment (including private land).
- 1.4 Under the 1982 Act, street trading means the 'selling or exposing or offering for sale of any article in a street'.
- 1.5 As all streets within the authority area are designated as consent streets, a street trading consent, issued by the Council, is required where articles are sold or offered for sale in the street or on land to which the public have access without payment.

## 2. Trading activities that are not street trading

- 2.1 Trading activities that have been designated as a 'market' by the Council under the provisions of the Market Charter. Trading activities that take place on Shambles Market and an area of Parliament Street are designated as a 'market' under the Market Charter. The Council has also designated, under the Market Charter, that markets can take place in Acomb and Haxby.
- 2.2 Trading activities taking place under the authorisation of a pedlar's certificate issued in accordance with the Pedlars Act 1871. Further information relating to pedlars can be found at Annex 1.
- 2.3 Trading activities at a designated fair (fun fair).
- 2.4 Trading activities at a trunk road picnic area provided by the Secretary of State under section 122 of the Highways Act 1980.
- 2.5 Trading as a news vendor.

- 2.6 Trading which is carried on at premises used as a petrol filling station.
- 2.7 Trading which is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop.
- 2.8 Trading activities of a roundsman (milk or newspaper delivery, doorstep sellers).
- 2.9 Trading activities that are approved by the Council in accordance with Part VIIA of the Highways Act 1980.
- 2.10 Trading activities authorised under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916 – trading activities in connections with an authorised charitable street collection.

### 3. Offences

- 3.1 A person commits an offence under Schedule 4 of the 1982 Act if they engage in street trading in:
  - a) a prohibited street; or
  - b) a consent street without being authorised to do so; or
  - c) contravenes any of the principal terms/conditions of a street trading consent.
- 3.2 It is an offence for an applicant to make any false statement in the grant application.
- 3.3 A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding £1,000.00.

### 4. Prohibited streets within the authority area

- 4.1 The following streets are prohibited for street trading activities within the authority area:
  - a) A64 – for safety reasons, as there are no designated laybys suitable.
  - b) A1237 – for safety reasons, as there are no designated laybys suitable.
  - c) Parts of Parliament Street – when markets/events are taking place that are covered by the Market Charter.
  - d) St Helen's Square – due to the existing use of the Square, including civic use and the right to gather (protests), and the effect on access due to the loss of pavement space.

e) In any lay-by without a grass verge which effectively separates the lay-by from the highway.

## 5. Restrictions on trading locations

5.1 The consent system is designed to control street trading within the area by ensuring that:

- Traders are bona fide.
- An area is not saturated with street traders to the detriment of permanent businesses and the local authority.
- Food businesses are registered with the local authority.
- The highway is not obstructed.
- The presence of the trading unit does not present a danger to pedestrians and other road users.
- Annoyance is not caused to residents.

## 6. How to obtain a street trading consent

6.1 The applicant must be over 17 years of age.

6.2 The applicant will need to complete and submit the relevant application form providing the following details:

- Full details of the applicant;
- Details of any persons who will be working as an assistant;
- The exact proposed trading location, including a site plan (if stationary);
- The exact routes (if mobile);
- The proposed trading days and hours;
- The type of business proposed to operate and the goods to be sold;
- Details of the trading unit, including dimensions, photographs and diagrams.

6.3 Applicants who wish to trade on private land must firstly receive permission from the landowner. Written confirmation of this permission will be required.

6.4 Planning permission may also be required to trade on private land. It is the responsibility of the applicant or consent holder to make sure they have planning permission in place if required. Further information regarding planning can be found on the Council's website: [Planning advice and guidance – City of York Council](#)

- 6.5 On receipt of an application officers will determine if a consultation is necessary. If required officers will consult the Highway Authority and North Yorkshire Police, if the proposed trading location is within an area covered by a Parish Council they will also be consulted. If the proposed trading site is on private land a consultation will only take place if officers believe that the trading activity could impact the public highway. The consultation period is 10 working days.
- 6.6 If a consultation is not necessary a decision will normally be made regarding an application within 10 working days. If a consultation does have to take place a decision will normally be made within 20 working days.
- 6.7 Prior to trading commencing the consent holder will need to provide Public Liability Insurance for the trading activity. The trading activity must always be covered by Public Liability Insurance.
- 6.8 If the trading activity involves the selling of food or drink, prior to trading commencing the consent holder will need to confirm that a food premises registration is in place. Further information regarding registration can be found on the Council's website: [Food premises registration – City of York Council](#)
- 6.9 If a trader wants to undertake activities that are licensable under the Licensing Act 2003, for example sell alcohol, it is the responsibility of the applicant or consent holder to make sure they have the relevant licence in place prior to trading commencing.
- 6.10 Standard conditions are attached to each street trading consent, consent holders must make sure these conditions are complied with. The standard conditions can be found at Annex 2. If required additional conditions may be added to a consent dependant on the trading location.
- 6.11 Consents are issued for a maximum of 12 months and are renewed from the 1 April each year if the trading site (public highway) is still deemed suitable. The current consent holders will be given the first opportunity to renew their consent.
7. Street trading on the public highway
- 7.1 A consent holder cannot sell or transfer the trading site to another trader. If a consent holder no longer wishes to trade from a site, they

must surrender the consent to the Council. This is a condition of the street trading consent.

- 7.2 A consent holder cannot change the design/construction/appearance of the vehicle/stall without firstly getting the permission of the Council.
- 7.3 A consent holder cannot change the range of products sold without firstly getting the permission of the Council.
8. Trading within York city centre (within the Bar Walls)
  - 8.1 The Council has established several fixed trading sites within York City Centre on land that is designated as the public highway. The list of fixed trading sites can be found at Annex 3.
  - 8.2 Make It York (MIY) deliver and oversee several events that take place in York city centre throughout the year, some of which are large scale and attract many visitors, for example the Christmas Market. Street trading consent enables traders to make use of the public highway (public space) at times when it is not been used for MIY delivered events, therefore it is not guaranteed that consent holders will be able to trade during MIY delivered events. Consent holders will be given advance notice of when events are taking place that will prevent them trading, the consent will be suspended for the period of the event. Street trading consent fees are set to reflect the periods that traders are unable to trade. If it is appropriate to the event, MIY will offer the trader the opportunity to be part of the event, an additional fee may be payable to MIY. MIY contact information can be found at Annex 4.
  - 8.3 The Council operates a waiting list for anyone who is interested in trading in York City Centre on the public highway. If an established fixed trading sites becomes available, the Council will write to people on the waiting list giving them the opportunity to apply for a street trading consent for the available site.
  - 8.4 Where the landowners have given permission, trading sites have been established on private land, for example in the Coppergate Centre (St Mary's Square) and Museum Gardens.
9. Undertaking one-off trading and/or trading at events
  - 9.1 Street trading consents are still required if your trading activity is for one day or at an event such as a fete/gala, car boot sale, music festival, etc

(if the public have access without payment). Occasional street trading consents are issued for such trading activities.

9.2 Applications for an occasional street trading consent must be submitted to the Council at least five working days before the trading activity is due to take place.

## 10. Refusals and revocations

10.1 An application for a street trading consent will be refused if the:

- Application relates to a prohibited street;
- Trading location is not considered suitable;
- Trading activity is not considered suitable for the trading location;
- Street trading unit/stall is not considered suitable for the trading location.

10.2 A street trading consent may be revoked at any time, a consent will be revoked if the:

- Consent holder fails to comply with conditions attached to their street trading consent;
- Council determines that the trading location is no longer considered suitable;
- Council determines that the trading activity is no longer considered suitable for the trading location;
- Council determines that the street trading unit/stall is no longer considered suitable for the trading locations;
- Consent holder fails to pay the street trading consent fees each month;
- Council determines that criminal activity has been associated with the consent holder and/or trading activity and/or trading location.

10.3 Grounds for a refusal or revocation will be given in a decision notice.

10.4 There are no rights of appeal if an application for a street trading consent is refused, or a street trading consent is revoked.

10.5 If an applicant or a consent holder is aggrieved by the Council's decision to refuse an application or revoke a consent they can write to the Head of Public Protection.

## 11. Street trading consent fees

- 11.1 Fees are set by the Council and reviewed annually in accordance with Section 9, of Schedule 4 of the 1982 Act.
- 11.2 Fees for trading locations within the city walls are set individually, the trading locations and activity are taken into consideration when the fee is set.
- 11.3 Fees for trading locations outside of the city walls are set with regards to whether the trading activity relates to the sale of food or non-food.
- 11.4 Fees for occasional street trading consents are set with regards to whether the trading activity relates to the sale of food or non-food, or if the trading activity is for charity.
- 11.5 Fees will be reduced if the trading location is on private land and the trader is paying the landowner rent.

## 12. Environmental Considerations

- 12.1 York has a legal duty to improve air quality for health and environmental reasons, therefore it is vital that any emissions from vehicles or ancillary equipment are reduced and minimised as far as practicable.
- 12.2 To aid York in improving air quality applicants and consent holders, especially those that drive around the authority area or use generators, are requested to use:
  - Low or zero emission vehicles, such as fully electric, plug-in electric hybrid (PHEV), or traditional hybrid vehicles. Where this is not possible, petrol or diesel vehicles that conform to the Euro VI emission standards should be used.
  - An alternative power source to a petrol or diesel generator, such as a 'portable power station' or permanent electrical hookup, wherever possible. Several consent holders who have fixed sites have arranged power supplies with the electricity board for their trading activity.
- 12.3 In some street trading locations the use of generators may be prohibited due to the air quality impacts and/or noise generated. The Council are looking to phase out the use of diesel generators to improve air quality, protect people's health and reduce carbon emissions.
- 12.4 Emissions from vehicles can be reduced further by encouraging better maintenance and by switching off engines when stationary or parked.



The Council operators a strict anti-idling policy and undertakes regular enforcement patrols. Unless machinery on a vehicle requires the engine to be running (e.g. where the engine powers refrigeration equipment that must be in constant use) all traders are required to keep engines switched off whilst operating anywhere in the York area.

- 12.5 Noise from generators and other plant and equipment should be minimised as far as is practicable, using the quietest equipment and the use of acoustic screens where necessary.
- 12.6 Chimes on ice cream vans are only permitted to be sounded between the hours of 12 noon and 7pm.

## Annex 1 – Pedlar's

Pedlars Act 1871 defines the term 'pedlar' as any hawker, petty chapman, tinker, caster of metals, or other person who, without a horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered.

Therefore, to be a pedlar a person must:

- Go from town to town – not just frequent York city centre each day.
- Trade on foot.
- Trade as they travel, not travel to trade – not just specifically travel to York to trade.
- Carry their goods with them (case law has suggested that a small means of transporting goods may be acceptable).
- Keeps on the move, pausing only to make a sale (case law has suggested that the pedlar should not remain in the same location for more than 20 minutes).
- Cannot set up a stall and wait for people to approach.

Pedlars' certificates are issued by police authority where the pedlar resides. Certificates cannot be issued to anyone under the age of 17 years. The certificate is valid for one year and is valid anywhere in the UK.

### Relevant Case Law:

Stevenage Council v. Wright 1996 Queen' Bench Division 10th April 1996. W had a valid pedlar's certificate. Whilst acting as a true pedlar he would normally be exempt from the prohibition against street trading under Paragraph 10(1) of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. W stood in one place in a Stevenage street (where street trading was prohibited without a consent) and sold Christmas wrapping paper from a bag at his feet for over one hour before being approached by local authority officials. He claimed to be acting as a pedlar and the magistrate dismissed the case against him. The prosecution appealed and HELD, W was not a pedlar but was acting as a street trader. A pedlar 'travels or trades on foot and goes from town to town or to other men's houses', thus he cannot set up a 'pitch'. Whether or not a pitch has been set up depends on the circumstances-an individual does not have to have a stall. A pedlar, by definition, is a person who sells to a customer and moves along to the next sale.

London Borough of Croydon v. William Burden 2002

Street trading officers observed B, a licensed pedlar, selling in Croydon, usually outside a shopping centre, and moving only a few yards during each visit. The judgement stated: "It seems to me that the crucial point in this case is to look at the periods of time of which B was stationary, the distances that he moved and the nature of his conduct whilst he was stationary for the purposes of selling. Looking at the evidence which was before the magistrates, it is my judgement that someone who is:

- habitually stationary for periods of certainly at least 15 minutes;
- often in excess of half an hour; and on one occasion in excess of an hour;
- who during those stationary periods sells intermittently to members of the public; but has not stopped for the purpose of selling to a specific member of the public, is properly to be described as someone who is engaged in street trading and not being a pedlar.

In other words, he **is not** someone:

- carrying and selling goods as he moves around,
- stopping for the limited purpose of conducting a sale and then moving on, rather
- he is someone who is stationary in a succession of different places for longer than is necessary to effect a particular sale or sales
- The fact that the distances covered by B, when he did move, were to be measured in terms of feet or single figure yards, rather than moving up and down a street or around a trading square, in my judgement underscores the impression of him as engaging in street trading from a series of different pitches rather than engaging in peddling; that is to say moving and selling as he moves, stopping for the purpose of conducting a particular sale."

## Annex 2 – Schedule of Standard Conditions

1. **Instalments relating to street trading fees must be paid in full within 14 days from receipt of the invoice for the period to which they relate.**
2. The consent holder shall ensure that this consent or a copy thereof shall be kept available at the stall during trading hours and must be produced to any police officer or duly authorised officer of the City of York Council upon demand.
3. A certificate will be issued along with the consent which must be clearly displayed on the vehicle/stall/unit.
4. The consent holder shall ensure that the City of York Council is informed immediately of any new assistants employed in working the vehicle/stall/unit.
5. The consent holder or any person working the vehicle/stall/unit shall ensure that they carry their issued personalised cards at all times when trading and produce it to any police officer or duly authorised officer of the City of York Council upon demand.
6. The consent holder shall ensure that all trading activities and associated operations carried out in connection with this consent are adequately covered by Public Liability Insurance at all times.
7. The holder of the consent shall observe all regulations and restrictions currently in force concerning the use of the stall and in particular shall observe all traffic regulations and parking restrictions and shall ensure that no obstruction of the street or highway is created by the operation of the trading activity.
8. **The consent holder shall ensure that the correct price of articles sold is always prominently displayed on the stall.**
9. There shall be no alteration in the design/construction/appearance of the vehicle/stall/unit without the written permission of the licensing authority having been obtained.
10. There shall be no change in the range of products sold without the written permission of the licensing authority having been obtained.
11. The consent holder shall not do or permit anything to be done in association with the trading activity, which in the opinion of the City of

York Council may become a danger, nuisance or annoyance or cause damage or inconvenience to any person.

12. On occasion it is necessary for a vehicle/stall/unit on a static site to move location. When this occurs the consent holder shall comply with any directions made by a duly authorised officer of the City of York Council.
13. The consent holder shall observe and comply with any directions given by a duly authorised officer of the City of York Council in connection with the trading activity.
14. The consent holder shall ensure that all litter and refuse generated by the trading activity is removed from site at the end of each trading period.
15. The consent holder shall ensure that no liquids of any description are deposited into rainwater gullies on site. All liquids must be removed from site at the end of each trading period and must be disposed of in a proper manner.
16. The consent holder must ensure that all paving is left clean and grease free at the end of each trading period.
17. The consent holder shall ensure compliance with all relevant statutory provisions affecting their trading operation.

Street trading sites on the public highways:

18. Trading sites on the public highway cannot be sold or transferred by the consent holder. If a consent holder no longer wishes to trade from a site, they must surrender the consent to the Council.
19. If events are taking place on the public highway in York city centre the street trading consent may be suspended for the duration of the events.
20. The consent holder shall ensure that the vehicle/stall/unit is removed from site at the end of each day's trading period. Written permission of the licensing authority must be obtained if a consent holder wishes to leave their vehicle/stall/unit on site.

## Annex 3 – Fixed Trading Sites York City Centre

### Within the Bar Walls

<b>Site</b>	<b>Trading Activity</b>
Davygate	Flower Stall
Kings Square	Ice Cream / Mulled Wine & Hot Chocolate
Kings Square	Lemonade / Crepes
Kings Square	Candles
High Ousegate	Crepes & Soft Drinks
High Ousegate	Hot Food & Soft Drinks (late night only)
High Petergate	Ice Cream & Soft Drinks (7 months trading only)
Parliament Street	Ice Cream & Soft Drinks / Hot Fruit Punch
Parliament Street	Donuts & Hot Drinks / Lemonade
Parliament Street	Hot Food (late night only)
St Sampsons Square	Ice Cream / Soft Drinks
St Sampsons Square	Hot Drinks & Cakes
St Sampsons Square	Hot Food (late night only)
Whip-Ma-Whop-Ma-Gate	Hot Food (late night only)
Consent Street Within York City Centre	2 x Caricature Artists & 1 x Artist

### Outside the Bar Walls

<b>Site</b>	<b>Trading Activity</b>
Exhibition Square	Ice Cream
Station Rise	Ice Cream (7 months trading only)
Station Road	site currently vacant

## Annex 4 – Make It York

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