

Report to Licensing
13 June 2013
Report of Head of citywide services
Subject Norwich provisions market and rival market policies

Item

7

Purpose

To consider the proposed policies for the Norwich provisions market and rival markets within Norwich.

Recommendation

That Members resolve to adopt the Norwich provisions market and rival markets policies detailed in appendices A and B of the report.

Corporate and service priorities

The report helps to meet the corporate priority A safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

None.

Ward/s: All wards

Cabinet member: Councillor Driver – Environment and neighbourhoods

Contact officers

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Background

1. The management of the Provisions Market was transferred from asset and city management to public protection in 2011
2. A full internal audit of the market's operational and managerial procedures was carried out, which highlighted that there was no current authorised council policy for the management or operation of the provisions market.

Market policies

3. Following consultation, two draft policies for managing the provisions market and rival markets were considered by the Corporate Leadership Team. The updated policies are attached as appendices A and B to the report are submitted for member's consideration.

APPENDIX A

Markets policy

1.0 General Information

1.1. This is the council's policy by which it will apply governance to the role and activities of the Norwich City Provisions Market "the market". The proposed policy management will recognise and be supportive of the importance that the market plays in the local economy and the character of the city whilst ensuring that the activities that take place there do not cause nuisance or annoyance to the people in the area.

1.2. The policy is the guidance that will be followed when the council considers applications for the lease of a markets stall.

2.0 Policy Objectives

- Establish the market, as an integral part of the shopping experience within the city centre.
- Make the market a vibrant centre of activity and social community interaction.
- Establish new reasons for shoppers to visit the market
- Identify the role the market has in facilitating the start-up of small businesses.
- Promote the market as a place for affordable, quality products.
- Establish the market as a centre of environmental sustainability demonstrating examples of best practice.
- Recognise the integral role that other street trading options add to the economic and vitality of the market.
- Encourage casual traders to become licensed traders. Casual traders will not be allowed on markets unless they provide evidence of public liability insurance.
- Review market rules and regulations, traders handbook, health & safety and equal opportunities guidelines on an annual basis.
- Promote an opportunity for market traders, as sole traders to operate their businesses in the city centre.
- Liaise with external bodies such as National Association of British Markets Authorities, Retail Market Association and National Market Traders Association.

- New traders will be encouraged to trade on the market providing that they do not, in the view of the Market Manager overlap products with an existing trader, however applications will be assessed individually and the council may take the view that their commodities will enhance the market.

3.0 Consultation

3.1. In determining this policy the council has consulted the following people and bodies:

- Chief Constable of Norfolk Police
- Federation of Small Businesses
- National Market Traders Federation
- Existing stall holders
- Norfolk Fire and Rescue Service

3.2. We have also consulted various other professional people within the council. These include:

- Licensing
- Economic development team
- Tourism team
- Legal services
- Highways
- Corporate health and safety advice team
- Environmental protection team
- Leader of the council
- Cabinet portfolio holder

4.0 Review of the Policy

4.1. This policy will be fully reviewed and updated as necessary every three years or sooner if circumstances dictate. At the review the above organisations and professionals will be consulted.

5.0 Contacts

5.1. The markets function is part of the citywide services portfolio and the markets team contact details are:

Market Services
Norwich City Council
City Hall
St Peters Street
Norwich
NR2 1NH

5.2. To ask about any markets issue call the Markets team on 01603 213538/7 or email marketservices@norwich.gov.uk

5.3. Details and application forms can also be found on the council's website (insert links to website)

6.0 Market Applications

6.1. This part of the policy sets out how the council will deal with applications to lease and operate a market stall from the council.

6.2. The council aims to provide clear, consistent advice and decisions in relation to the application process and provide operating guidance aimed to protect the safety of the public, other highway users and to prevent nuisance or annoyance

7.0. Insurance & liability

7.1. The lease holder must hold the appropriate level of public liability insurance and will be required to produce the original certificate of insurance for public liability before a lease will be granted and annually thereafter.. The minimum level of indemnity is £5 million..

7.2. The lease signed by the lease holder will stipulate their responsibilities and that the council is indemnified against by third parties in relation to negligence/omissions.

8.0 The process & delegation of functions

8.1. Applications for a lease to operate a market stall are delegated to the council officers in the citywide services.

8.2. Delegation will be as follows:.

Delegation to approve the lease is with the licensing manager

8.3. All matters of policy will be dealt with by authorised officers, including updates and amendments to this policy. Delegated officers are licensing manager and public protection manager

9.0 The Application Process

9.1. Any person who wishes to apply to operate a market stall or assign an existing stall should do so using the appropriate form.

9.2 These are available to download from the council website or by calling 01603 213537/8 and requesting a form by post, email or collection from Norwich City Council, City Hall, St Peter's Street, Norwich, NR2 1NH

9.3. On receipt of a complete application the process will take approximately 30 working days.

9.4. Where an incomplete application has been received this will not be processed and the application form and any fee will be returned to the applicant.

10.0 Transferring a Stall

10.1 A stallholder may wish at some point to transfer a stall (with or without the benefit of the existing business) to someone else. If this is the case, each lease allows the scope to 'assign' the lease to a new party. The terms of any sale of the lease and associated business are a private matter between the lease holder and the purchaser, but you must obtain the Council's prior written consent before an assignment can take place.

10.2 The Council will require details of the new party (the assignee) in order to take up references plus notification of any proposed change of use. The Council reserves the right to refuse an assignment on certain grounds including the following:

- The assignee is unable to provide satisfactory references, particularly financial, or is an existing trader with an unsatisfactory market trade history
- The assignee has been convicted of a criminal offence which makes it inappropriate for them to hold a council lease
- The proposed assignment involves a change of use which is either unacceptable, or exceeds the upper limit for stalls selling that commodity

10.3 Assuming the Council is satisfied with the proposed transfer, it will issue its formal written permission – there will be a charge for the Council's legal and administrative costs in concluding the matter.

10.4 A transfer should never take place without first obtaining the Council's formal written permission. Failure to do so means that the original leaseholder will remain liable under the lease for rent and other payments, for any breaches committed by the illegal occupier, and subject to legal proceedings for termination of the lease.

11.0 Charitable stalls

11.1 The charge for any charitable stall will be set by the Council and reviewed yearly. The charge will be set as appropriate for charitable purposes and the length of time the stall is held.

11.2 Charities must provide proof of public liability insurance to the Council when applying for a charitable stall.

11.3 Any additional cleaning operations that have to be carried out by the Council following a charity stall will result in the charity being recharged for the costs incurred.

11.4 The charitable organisation must display a sign on the stall visible to the public at all times the stall is in occupation, informing the public of the nature of the organisation and the fund raising activity.

11.5 No sale of new or second hand electrical equipment or second hand clothing is permitted.

11.6 The use of collection boxes, tombola's or raffles on the charity stall is not permitted unless separate authorisation from the council. The application can be made by contacting the council on 0344 980 3333.

11.7 Cakes, pastries etc. offered for sale must be pre-wrapped prior to being brought to the stall.

11.8 Preserves, pickles etc. must be packed in accordance with current guidelines. Please contact the Environmental Health office at Norwich City Council for advice.

11.9 All goods offered for sale must be confined within the area of the stall.

11.10 Traffic restrictions governing Gentleman's Walk and Brigg Street only permit vehicular delivery access to the stall before 10 a.m. and after 5 p.m.

12.0 Market Management

12.1 This part of the policy sets out how the market operates, is managed and the obligations of market stall holders.

12.2 Trading Hours

12.3 The market is open to the public for a minimum of six days per week. All stalls should be open for business for a minimum of five days per week of which one day must be Saturday, except in exceptional circumstances and with prior approval of the council.

12.3 The Market in general will not be open on Sundays. However, provision may be made for with the approval of the council. The Markets Team will assess any need for additional cleansing or refuse management.

12.4 Similarly, the Market will not ordinarily be open on bank holidays but provision may be made if enough stalls wish to open & sufficient notice is given and approved by the council.

12.5 Stalls should be open and trading for eight hours per day between the hours of 8.00 am and 5.00 pm as a core time although opening outside of these times may be permitted.

13.0 Late Night Shopping

13.1 The Market will not remain open for late night shopping as a rule. These arrangements may be liable to change in the future in response to customer demand.

14.0 Cleansing and Refuse

14.1 Any successful market will, by its very nature, produce a large amount of refuse, the larger part of which will be trade waste. In the ideal world, the general public would never see any of this refuse nor be exposed to the potential risks including cluttered aisles and rubbish being moved along walkways during opening hours.

14.2 It is in the interests of market operators and traders to give customers an increasingly better environment to shop in by constantly striving to improve standards of cleanliness.

14.3 Changes in legislation have caused the Council to re-think its approach to waste management on the Market and to be able to deal with these changes Market traders must be aware of the "Duty of Care" required of all producers of trade waste.

14.4 All market traders are responsible for the movement and disposal of refuse produced on their stall. Changes in legislation mean market traders must be aware of the duty of care required of all producers of trade waste.

14.5 The cleaning of the common areas on the provisions market will be carried out by the council.

15.0 Refuse Disposal

15.1 Market traders have a responsibility to ensure that the aisles and public spaces within the market are free from obstruction during trading hours.

15.2 Therefore traders must sort their refuse and dispose of it at the refuse collection points before 10.00am and after 3.30pm, Monday to Saturday. Between these hours refuse must not be moved through the market.

16.0 Litter Disposal

16.1 Litter bins will be provided throughout the market for the general public to use. These will be emptied regularly. Traders must not use these bins to dispose of trade refuse.

17.0 Fire Regulations and Evacuation Procedures

17.1 There are no formal evacuation procedures in place for the market as a whole.

17.2 However if a trader discovers a fire on his stall he should either:-

Extinguish it, using a fire extinguisher or fire blanket if this can be done safely and without undue risk to themselves or others; or

Evacuate the stall, adjoining stalls and the surrounding area. Ensure all staff and members of the public are removed to a safe distance. Immediately raise the alarm by calling 999 (112 on a mobile network). Inform the Markets Team as soon as possible.

17.3 Do not return to the site of the fire until it is safe to do so.

17.4 Traders are requested to read the Fire Risk Assessment.

18.0 Smoking Legislation

18.1 Legislation to prohibit smoking within the covered areas of the market came into effect on 26 March 2006. Traders should advise customers not to smoke at their stalls or in the market area as failure to adhere to this can lead to a fine of £2,500.

18.2 The council has designated the non-covered areas of the provisions market as no smoking areas.

19.0 Parking/Loading

19.1 Loading bays are situated on Gentleman's Walk, Gaol Hill and St. Peter's Street. Access restrictions are in place on Gentleman's Walk and no loading/vehicular access is permitted between 10.00 a.m. and 5.00 p.m. Outside these times a 20 minute loading slot is available for commercial vehicles and private vehicles displaying a special permit which is available from the markets team.

19.2 Traders who do not return to their vehicles on a regular basis whilst unloading run the risk of incurring an excess charge penalty notice.

19.3 Parking of vehicles on loading bays for purposes other than market business is not permitted. An excess charge penalty notice may be issued to any trader or delivery operative ignoring this requirement.

20.0 Trading Mix & Lettings

20.1 In common with many other markets, the Council operates a "balance of trades" consideration allowing the diversity, quantity and location of individual commodities to be managed proportionally.

20.2 The purpose of this is to create and maintain an interesting market environment where the customer is presented with a stimulating and vibrant mix of trades and goods which constantly changes as they move from stall to stall. The policy is operated in the broad interest of the vitality of the market as a whole, rather than any particular trader, or group of traders.

20.3 This will be applied by the council in the following ways:

- Managing the location of trades/uses
- Encouraging new traders and commodities onto vacant stalls
- These conditions will also be applied when an existing trader seeks to assign his stall.

20.4 The consideration of the type of stall is at the sole discretion of Norwich City Council and may be subject to change to reflect changing circumstances and retail trends.

21.0 Rent Zones

21.1 Like any retail area, it is recognised that certain trading positions on the market represent prime pitches relative to others. Consequently, rents will vary from stall to stall depending upon location.

Zone 1 – the ‘front row’, and represents the prime pitches fronting Gentleman’s Walk. Consequently, these stalls are set at the highest rent level.

Zone 2 – stalls around the two sides of the market and immediately behind the front row. Refreshment stalls are also included within Zone 2.

Zone 3 – comprises the remainder of the stalls on the market including the back row.

21.2 Rents across the entire market will be reviewed in accordance with the retail price index (RPI) at the end of the financial year. Each trader will be given written notice of the percentage change in the rent and the date on which the reviewed rent becomes operative.

22.0 Council Services and the Service Charge

22.1 The Council provides a number of services in its capacity as landlord for Norwich Market. The cost of these services is recovered from the traders in the form of a service charge.

22.2 The nature of the services provided may change over time, but they will typically feature some or all of the following recoverable items which are fully detailed in each lease agreement:

- Repairs (recoverable)
- Management Services
- Electricity (common areas)
- Water (common areas)
- Waste management
- Contract cleaning (common areas)
- Insurance (fire associated risks)
- Security
- Pest control (common areas)
- Marketing & Promotion

22.3 The Council will an estimate cost of the service charge each trader showing the anticipated cost of services for each new financial year (the Council’s financial year runs from April – March). Traders will be required to make monthly service charge payments by based on this estimate by direct debit. An adjustment will then be made at the end of the financial year to account for any difference between the original estimate actual expenditure once these have been finalised & audited.

22.4 Unless there have been exceptional circumstances the service charge will be identical for each stall.

22.5 An Out Of Hours service for the reporting of repairs is provided by Norwich Community Alarm Service (NCAS).

In some cases these may be rechargeable against the service charge.

23.0 Managing a Market Stall

23.1 The day to day maintenance of each stall is the responsibility of the leaseholder. Any damage to the stall or council fixtures and fittings, accidental or otherwise, must be made good by the leaseholder. If the landlord has to repair any damage the cost will be recovered from the leaseholder.

24.0 Construction of the Stall

- Outer Shell

Laminated metal, to be maintained by Norwich City Council. Leaseholders are not to attach any aerial or satellite dish to the outside of the stall without written permission from Norwich City Council. Stallholders are not permitted to paint or otherwise decorate the outside of the stall.

- Inner Shell

The inner shell is plywood and may be decorated by the stall holder to good standard. Some stalls have been provided with a catering fit which conforms to health and safety standards for food preparation. It is the stallholder's responsibility to keep the inside of the stall in good repair and condition. Shelves and fitting may be fixed to the internal walls of the stall using the fixing points identified.

- Flooring

Standard flooring is plywood and may be covered with a suitable floor covering by the stall holder. Catering fit stalls have been provided with non slip flooring. It is the stallholder's responsibility to keep the inside of the stall in good repair and condition.

- Roller Shutters

In stalls with a sliding door as the primary access point, they can be operated by a rocker switch situated within the market stall. Those stalls without a sliding door are provided with a remote control unit to operate one of the roller shutters, which will be the primary point of access to the stalls. The other shutters are operated by a rocker switch. Roller shutters must not be painted by the leaseholder

- Sliding Doors

Operated by key. In the first instance this is supplied by the Markets Team. Any replacements can be provided at a cost.

25.0 Services

- Electricity

Any modification to the electricity supply must be undertaken by a registered electrical contractor and the leaseholder must supply the Council with a certificate of compliance to the Electricity at Work Regulations. The leaseholder is the direct customer of the electricity provider.

It is the responsibility of the leaseholder to take meter readings at the start & termination of their occupancy.

- Water

Water is available to all stalls via the council owned main if requested. Leaseholders can arrange to have a sink fitted in the stall, subject to written approval from the markets team. The markets team can provide information concerning the availability of suitable drainage for such changes.

An additional monthly charge is made for water use.

- Gas

Gas has been supplied to those stalls which have been designated for catering use. Any modifications or connections to the gas supply must be approved by the Council and must be carried out by a Gas Safe registered contractor. The leaseholder is the direct customer of the gas provider.

- Telephone

There is a telephone point in every stall. It is the leaseholder's responsibility to arrange for service with a telecommunication provider.

- Drains

The stallholder is responsible for the servicing of grease traps and drains solely serving the individual stall. They must be regularly cleaned as per the manufacturer's instructions.

26.0 Display of Goods and Signs

26.1 Traders are not to:-

display for sale, store, leave, place, or dispose of any goods, matters or things of any kind whatsoever, either in the passageways, near or adjacent to the premises, or any adjacent footpaths, pavements, or areas, and to keep such passageways, footpaths, pavements, and areas clean free and unobstructed.

26.2 Prior written consent must be obtained from the council for any signage or advertising to be displayed on the outside of the stall. In particular trading or the placing of any obstacle in the aisles will not be permitted. This poses a serious threat to public health & safety and the leaseholder will be fully responsible for any compensation claim made as a result of doing this.

27.0 Alterations to a Stall

27.1 Any alterations for example removal of, or changes to, internal walls require prior written permission from Norwich City Council. If approved, the council will undertake the work & recharge the leaseholder. The council also maintains the right to charge the stall holder to return the stall to its original condition at the end of the lease term.

28.0 Awnings and Canopies

- Cross Aisle Canopies

A single cross aisle canopy protects the gable end of four individual stalls. Two remote control units have been issued to be kept by two of the four leaseholders and operated with the agreement of the four leaseholders affected.

The canopies can be extended to provide weather protection during trading hours but must be retracted overnight to discourage rough sleeping and vandalism.

- Lifting Canopies

The lifting canopies over the main aisles will be operated by the markets team. Generally, they will be lowered during the day to provide weather protection and raised at night.

28.1 Individual Stall Awnings

Individual stall awnings are made from PVC and operated manually on a stall by stall basis. Each leaseholder will be issued with a turning handle to operate their awning.

29.0 Health and Safety

29.1 Stall holders are required to comply with Health & Safety Act 1974 & all statutory legislation relating to Health & Safety.

Copies of risk assessments must be made available upon request from an authorised officer of the council.

For further information on health & safety please refer to www.hse.gov.uk.

30.0 Code of Practice

30.1. All market operators must adhere to the Norwich market handbook for traders to ensure best practice in terms of stall management, waste disposal, sanitary provision and other operational issues.

31.0 Enforcement

31.1 Introduction

This section of the markets policy details the council's commitment to enforcing the provisions contained within the appropriate legislation.

It also highlights the council's commitment to work in partnership with all enforcement agencies, to provide consistent enforcement on licensing issues.

31.2 Enforcement

31.3. We will work closely with other enforcement authorities when dealing with issues concerning markets.

31.2. Where unlawful activities are held at established markets we will look to gather evidence and take enforcement action as appropriate.

31.3. If we feel that there is an issue of public order or threat to public safety in any particular instance, we will call for assistance from the Police.

31.4. We may call for assistance from the CCTV control centre when dealing with such issues, where coverage exists.

31.5 Sale of counterfeit/copy goods is prohibited from any stall as per the Trade Marks Act 1994 and the Copyright Design and Patents Act 1998

31.6 Food products sold must conform to relevant food hygiene legislation. Any stall holder selling food must register with Norwich City Council's food and safety team. Periodic inspections of food premises will take place to ensure compliance.

APPENDIX B

Rival Markets Policy

Background

As the owner of a franchise market originally created by charter, and subsequently confirmed by its stature, Norwich City Council is entitled to the peaceable enjoyment of the market and to protection from disturbance.

The definition of a 'disturbance' includes the setting up of a rival market within 6.66 miles of statutory/franchise market. A market is defined as a "*concourse of buyers and sellers*" and therefore includes car boot sales, craft fairs, antique fairs, and other speciality markets.

In order to protect the authority's franchise market Norwich City Council will take all necessary steps, including legal action, against those operators (and site owners) attempting to hold markets without Norwich City Council's approval. Norwich City Council has a policy of licensing approved markets and this is outlined below.

Licensing policy

Any application for a licence to hold a rival market within the common law distance of 6.66 miles from the Council's lawful market would need to be made at least 28 days before the first event and include the following information: -

- The full name and address of the person intending to hold the market.
- The day or days on which it is proposed that the market shall be held and its proposed opening and closing times.
- The site on which it is proposed to be held.

4. The full name and address of the occupier of the site if he is not the person intending to hold the market.

The applicant should observe the following conditions: -

- The applicant should obtain all the necessary permissions, permits, consents and licences required for the operation of the market, the market site and any other activities connected with the event.
- The Council is not responsible for any liability for any damages arising from the rival Market. Therefore the applicant should hold a public liability insurance policy for claims up to at least £5 million and shall produce on demand the policy and premiums paid in respect thereof.

- Permission to operate any rival market may be refused on the grounds that it is likely to adversely affect the Council's markets operation or that it is unnecessary or undesirable for any reason.
- The applicant is required to pay a fee in recognition of the Council's Market Rights to be specified by the Council from time to time.

Licensing Categories

Licensing of rival markets will normally fall into one of the following categories: -

i) Non-Commercial Markets

Occasional temporary markets where 100% of the proceeds of the market raised by the levying of stall charges, tolls or admissions must be applied solely or principally for charitable, social, sporting or political purposes. The applicant must be an Officer of the Benefiting organisation. To reflect the temporary nature of the market the applicant would be limited to a maximum of 6 events per year, the events not to be held within one month of each other. The type of goods sold is limited to second-hand goods, goods bearing the benefiting organisation's logo and catering units, which must be specified.

ii) Temporary Markets

Once again, these events are limited maximum of 6 events per year, per operator, the events not to be held within one month of each other. The type of goods sold may be restricted to include only second-hand goods or speciality goods such as antiques, crafts, collectibles etc., and catering units, which must be specified.

iii) Commercial Markets

Any other rival market that does not fall into the above categories.

Before issuing any licences to operate a rival market, consultation will take place with the relevant enforcement agencies to enable them to make objection or other preparations as necessary.

Scale of licence fees

To meet the cost of approving and policing the licences to operate a rival market the following scale of licence fees are applied.

Non-Commercial Markets:- £10.00 per event

Temporary Markets:- £25.00 per event

(This fee may be waived where the market is owned and operated by the Council).

Commercial Markets:- £250.00 per annum per site