

Licensing Committee Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ**

Wednesday, 21 March 2018 at 18:00

The Licensing Committee deals with policy issues relating to licensing matters and applications and appeals concerning hackney carriage and private hire vehicles and drivers and other appeals.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is usually published five working days before the meeting, and minutes once they are published. Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Most meetings take place in public. This only changes when certain issues, for instance, commercially sensitive information or details concerning an individual are considered. At this point you will be told whether there are any issues to be discussed in private, if so, you will be asked to leave the meeting.

Have Your Say!

The Council welcomes contributions and representations from members of the public at most public meetings. If you would like to speak at a meeting and need to find out more, please refer to the Have Your Say! arrangements here: <http://www.colchester.gov.uk/haveyoursay>.

Audio Recording, Mobile phones and other devices

The Council audio records public meetings for live broadcast over the internet and the recordings are available to listen to afterwards on the Council's website. Audio recording, photography and filming of meetings by members of the public is also welcomed. Phones, tablets, laptops, cameras and other devices can be used at all meetings of the Council so long as this doesn't cause a disturbance. It is not permitted to use voice or camera flash functions and devices must be set to silent. Councillors can use devices to receive messages, to access meeting papers and information via the internet. Looking at or posting on social media by Committee members is at the discretion of the Chairman / Mayor who may choose to require all devices to be switched off at any time.

Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to the Library and Community Hub, Colchester Central Library, using the contact details below and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are on each floor of the Town Hall. A water dispenser is available on the first floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Library and Community Hub, Colchester Central Library, 21 Trinity Square,
Colchester, CO1 1JB

telephone (01206) 282222 or textphone 18001 followed by the full number you wish to call

e-mail: democratic.services@colchester.gov.uk

www.colchester.gov.uk

COLCHESTER BOROUGH COUNCIL

Licensing Committee

Wednesday, 21 March 2018 at 18:00

Member:

Councillor Julie Young
Councillor Nick Cope
Councillor Roger Buston
Councillor John Elliott
Councillor Dave Harris
Councillor Pauline Hazell
Councillor Mike Hogg
Councillor Darius Laws
Councillor Patricia Moore
Councillor Philip Oxford

Chairman
Deputy Chairman

Substitutes:

All members of the Council who are not Cabinet members or members of this Panel.

AGENDA - Part A

(open to the public including the press)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

2 Substitutions

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

3 Urgent Items

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

4 Declarations of Interest

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other pecuniary interest or non-pecuniary interest.

5 Minutes of Previous Meeting

The Councillors will be invited to confirm that the minutes are a correct record of the meeting held on 17 January 2018

17 January 2018 minutes

7 - 8

6 Have Your Say!

The Chairman will invite members of the public to indicate if they wish to speak or present a petition on any item included on the agenda or any other matter relating to the terms of reference of the meeting. Please indicate your wish to speak at this point if your name has not been noted by Council staff.

7 Hackney Carriage and Private Hire Licensing Policy

9 - 18

The Licensing Committee have been asked to consider and approve the proposed amendments to the Hackney Carriage and Private Hire Licensing Policy.

8 Colchester Charter Market Regulations

19 - 36

The Licensing Committee have been invited to agree the revised Colchester Charter Market Regulations.

Part B

(not open to the public including the press)

9 Exclusion of the Public (not Scrutiny or Executive)

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE

17 January 2018

Present: - Councillors Julie Young (Chairman), Roger Buston, Nick Cope, John Elliott, Dave Harris, Pauline Hazell, Mike Hogg, Darius Laws and Patricia Moore

39. Minutes

RESOLVED that the minutes of the meetings held on 19 July and 29 November 2017 be approved as a correct record.

40. Hackney Carriage and Private Hire Licensing Policy

The Committee considered a report by the Assistant Director of Environment on further changes and a further period of the consultation on the draft Hackney Carriage and Private Hire Licensing Policy. The key changes in the Policy were noted. The Committee were informed that, in general, the response from Hackney Carriage/Private Hire drivers and operators was good and the feedback positive. There was some discussion concerning the operation of the Convictions Policy in relation to convictions 10 years and older. Mr Ruder informed the Committee that DBS checks were made on all applications and convictions would be considered as part of the 'fit and proper' test regardless of their age. Mr Ruder also confirmed that all applicants have a right to appeal to the Committee and then to the Magistrates Court.

RESOLVED that the proposed amendments be approved and the outcome of the consultation be reported back to the Committee, with the matter being reported to Full Council in July.

41. HMRC Report

The Committee considered a report by the Assistant Director of Environment on HMRC's proposals to introduce 'conditionality' measures to certain licence applications. Mr Ruder explained to the Committee that this was likely to result in the Council having to check a new applicant's tax status before a licence could be granted. The Council already carried out a number of checks including those to determine a person's right to work and in principal checks on behalf of HMRC would not be a problem as long as the required checks were straightforward. The Committee were mindful with regard to the possibility of extra work for officers and the implications on staff costs. Mr Ruder informed the Committee that until the nature of the checks were known it was impossible to assess the actual impact but they would be designed into the application process.

RESOLVED that a formal response to the consultation document be sent as set out in the report.

42. Licensing Policy Changes January 2018

The Committee considered a report on an amendment to be made to the Statement of Licensing Policy in relation to off sales.

RESOLVED that the amendments be approved and to be included into the policy.

43. Royal Wedding Consultation

The Committee were asked to consider a report by the Assistant Director of Environment on a consultation document received from the Home Office concerning the relaxation of licensing hours for the Royal Wedding. The Government proposed to make an order under Section 172 of the Licensing Act 2003 to mark the wedding of Prince Henry and Ms Meghan Markle on 19 May 2018. The effect of the order would be to extend opening hours of licensed premises to 01:00 on Saturday 19 May and Sunday 20 May 2018 for the sale of alcohol for consumption on the premises and the provision of late night refreshment in on-trade licensed premises. In discussions on the likely increase in the number of people into the town on this date, the Committee also discussed the cleanliness of the town and the provision of toilet facilities for members of the public late at night.

RESOLVED that the relaxation of hours on the 19 and 20 May 2018 be supported and agreed.

21 March 2018

Report of	Assistant Director (Environment)	Author	Jon Ruder ☎ 282840
Title	Hackney Carriage and Private Hire Licensing Policy		
Wards affected	All		

1. Executive Summary

- 1.1 The Committee is asked to consider further changes to the Hackney Carriage and Private Hire Licensing Policy following a further period of consultation.

2. Recommended Decision

- 2.1 To consider and approve the proposed amendments to the Policy.

3. Reason for Recommended Decision

- 3.1 Further changes have been made to the Policy as a result of the public consultation.

4. Alternative Options

- 4.1 To leave the policy unchanged but this would leave it unfit for purpose.

5. Background Information

- 5.1 On 17 January 2018 the Committee considered the outcome of a consultation exercise, in the form of a table of responses and proposed amendments to the draft Hackney Carriage and Private Hire Licensing Policy. Amendments were made to the Policy and a further shorter period of consultation has been carried out.
- 5.2 Attached at Appendix 1 is the table of responses that have been received in this second period of consultation. The Taxi Policy is at Appendix 2 which can be viewed [here](#) or by following the pathway www.colchester.gov.uk. Your Council/Committees, Agenda, Minutes/Licensing Committee/21 March 2018. The recent changes are shown in bold type. A timetable for the staggered introduction of the various elements of the Policy will be available at the meeting.

6. Equality, Diversity and Human Rights implications

- 6.1 The draft Policy has been developed in accordance with and taken account of, all relevant legislation and national and local strategies.

7. Strategic Plan References

- 7.1 The Policy aims to contribute to the Council's priorities for the Borough and in particular to support the Growth, Wellbeing and Opportunity priorities by working with the licensed trade to promote the town and make it a safer place.

8. Publicity Considerations

- 8.1 The original draft revised policy was the subject of an extensive consultation process. The recent consultation was sent to all licence holders.

9. Financial Implications

- 9.1 There may be costs incurred in defending any action brought against the Council which seeks to judicially review the policy. However, having consulted extensively it is hoped that such a challenge is unlikely.

10. Community Safety Implications

- 10.1 The policy deals with the protection of children and vulnerable adults.

11. Health and Safety Implications

- 11.1 There is no known direct public health and safety issues which might arise from the adoption of the revised Policy.

12. Risk Management Implications

- 12.1 A flexible yet robust revised Policy will continue to provide both the Council with a sound basis for decision making.

Good morning,

I refer to your undated letter received today about amendments to the above policy. I have only 1 further comment to make for your consideration:

Page 21 - 4 Driver medicals - I believe the requirement for an annual medical over the age of 65 is a bit harsh and very expensive. I think a bi-annual medical would be more appropriate.

Thanks

David Daniel

Point 3.13

As the retirement age is rising to 67, this age discrimination seems inappropriate. Medicals are difficult to arrange and very expensive.

The Ambrose surgery are reluctant to use the their busy GP's for medicals, and it took several phone calls in order to arrange the last one.

Yours sincerely

Richard Robinson

I have read the proposed Policy and have a few questions I would like answered if possible, before 28.02.2018

2.6 The council expects drivers and operators to report their concerns to the appropriate authority and has drawn up a referral guide to assist - Please could I have a copy of this guide?

4.16 Hackney Carriage and Private Hire Driver Assessment test - Please could you advise me how you have sourced the approved driving assessor or are you putting this out to tender?

Also under pre-licensing standards is states in order to be licensed as a HC/PH driver you must be over 21 years of age. Under The Equality Act 2010 this would be classed as Age discrimination?

Regarding CCTV, please could advise on some of the Council Approved CCTV systems, costs and cost of insulation?

Kind regards,

Donna Lawson

Accounts Manager , Accounts Department
Hawaii Five-O

Dear Sirs

I refer to your recent undated letter which would appear to be formally advising us that you are to implement the proposed new policy previously issued to us in its entirety with the minor amendments marked in bold text.

My first point is that the draft document was issued for consultation which means dialogue and discussion of any matters raised by us. I am not aware of any dialogue taking place and many of my colleagues that requested a meeting with you to discuss various proposals to which they raised objections have not heard from you either.

Therefore consultation has not taken place you have merely invited comments.

I feel that in particular the proposal to impose penalty points on our drivers badges e.g. 6 points for speeding offences goes far beyond the civil law of the UK and exceeds the authority empowered upon you by Government.

In effect anyone with 2 speeding offences i.e. 12 points could have their licence revoked and furthermore those points remain for a period of 5 years.

There is however an ambiguity you need to clarify since elsewhere you state two offences within a 12 month period???

Our collective view is that this could impact upon driver's livelihoods and seriously affect their ability to support their families. By comparison the Courts of England would only revoke a driving licence when a driver accumulates 12 points eg by comparison of up to 4 speeding offences for example.

We certainly believe that you are not legally entitled to impose this condition and if you proceed we intend to challenge this in court.

One associated question I have is whether you also intend to impose these conditions upon the companies that you employ to transport people in the borough and whose drivers hold public service POV licenses?

On another matter ie the installation of CCTV cameras in 2019 I raised a point which you have not answered.

I have a discretionary exemption as I do not carry members of the public but only carry out corporate work as a sub-contractor representing my Clients.

I have CONSULTED with them and 70% have stated that they have strong objections to the recording of confidential business discussions that may take place in the car.

They are prepared to put this in writing but the likely effect would be that my business would be adversely affected as they could withdraw contacts and directly employ their own Chauffeurs to replace me. This would be a restraint of trade on your part

and may put me out of business.

These are only 2 of my own personal issues but I anticipate that you will receive many comments from other drivers and operators in the Borough who also are extremely concerned at this autocratic and author active imposition of unacceptable conditions.

I therefore request a definitive response or a meeting between all parties to establish and confirm your intentions going forward.

Yours Faithfully

Thomas Sayer

Thank you for your correspondence regarding the above policy. I have read the new policy and would like to make the following comments.

My business, NORTH ESSEX AIRPORT TRANSFERS, is an executive airport transfer only business. All my transfers are carried out in my Mercedes Viano 7 seater luxury mini bus. A lot of my clients are corporate business people.

I have spoken with a few of them regarding the new policy, especially regarding the CCTV policy. I have received a lot of negative comments in relation to the fact that CCTV will be installed in my vehicle. Quite a few of the clients see it as an infringement of their privacy.

Having worked as a private hire driver in the town previously, I fully understand the reasons and need for the CCTV policy in the normal "town cars". However I do not see the value of installing in the executive use vehicles where the passengers are known in advance and in most cases regular clients.

I note that there is a exemption for door signs and other identification for executive vehicles. Perhaps there is a case for this to be extended to the CCTV policy.

I look forward to hearing from you.

Regards

Pete Taylor
NORTH ESSEX AIRPORT TRANSFERS

Dear sir/madam

My name is Mr Spraggett , I am writing with concern after reading the new regulations coming in 2019

For a driver like myself I have been doing this job 22 years and think that these are a step too far .

We are drivers not carers for sick etc

Driver assesment test

Pas test

Safegaurd training

Is this really necessary for existing drivers we should by now no how todo our jobs .

I find these test humiliating and an insult .

Drivers like myself have dealt with so many things over the years im sure you could only imagine .

Like I say this is my gripe and am offended

By almeans new drivers need teaching I get that before things develop

Yours sincerely

A Spraggett

Good Morning My names is Andrew Perry and my badge number is 773. Having read the updated policy does this now mean that as a taxi driver I will undertake Safeguarding training, which is no problem, in fact I believe it is required.

regards

Andy Perry (773)

The Colchester Hackney Carriage Association would like to make a representation with regard to the section of the new conditions concerning Hackney Carriage numbers 101-131.

We have already had a meeting with Mr Ruder where we presented evidence to show that not all of these plates were issued for wheelchair accessible vehicles. Plate numbers 105 and 111 were issued for and have always been on conventional vehicles.

However the new conditions do not recognise these anomalies, causing great concern and anxiety for the relevant plate holders.

Yours sincerely

David Green

Secretary CHCA

Further to the invitation to comment on the reviewed Licensing Policy made to Operators and Drivers, I would like to make the following observations regarding parts of the policy that are either confusing or possible causes of concern.

While fully supporting the role of the Council in maintaining Public Safety, Health and Safety policy and other statutory requirements, I am concerned that certain parts of the policy appear to place Colchester Borough Council in a position where it is taking

the rights and privileges of an employer, such as setting dress codes and customer relations policy and overlooking the fact that each driver is a self-employed person running their own small business. Is this a role that CBC takes when dealing with other small businesses within the borough? Additionally, CBC is attempting to regulate who drivers can form 'associations' with (section 2.12), which again seems to be outside the role of a statutory regulator.

There is also the problem that CBC has positioned itself to be able to sanction operators and drivers, in a way that exceeds the punishments laid down in national law, that it is not able to do with other sectors of the workforce.

For example, annex 5 lists penalties that could be applied to the council badge for minor traffic violations and it appears that 2 fixed penalty tickets could lead to the suspension of a drivers badge, which would effectively make that person unemployed, whereas any other person in different work receiving the same penalty's would just continue driving.

Do these same regulations apply to all Council employees and sub contractors who are carrying members of the public in vehicles, for example coach drivers or social workers?

CBC also takes a position that appears to place it above national law in stating that it would use 'balance of probability' rather than 'beyond reasonable doubt' when determining the guilt or innocence of a driver or operator to any allegations made against them. This could appear somewhat heavy handed and seems discriminatory.

With regard to CCTV, I am confused as to the exact requirements regarding Activation. Is the system to be wired to the ignition, which would leave it inoperative when the vehicle is switched off (though may have customers in the vehicle), or should it be powered through a permanent live connection, which could play havoc with the battery if the vehicle is not used for a few days. Alternatively should it be operated through a switch operated by the driver and rely on the driver to remember to switch it on at the relevant times?

My other (and greater) concern regarding CCTV is how it will be managed when the Data Protection Act is replaced by the European Data Protection Regulation, which must be in force by May this year. This regulation removes the ability to gather data through 'implied consent' and now requires express consent that may be withdrawn at any time. Am I right in assuming that every customer must now be asked if they give consent to the use of CCTV in our vehicles, and that if they refuse consent we must be able to deactivate the system?

Also, I have discussed this with all of my regular clients, most of whom are either middle to high ranking business traveller, with a smattering of show business and media persons and found that they are all either dubious or downright hostile to the suggestion of CCTV intruding on their right to privacy in a privately hired vehicle. (These same concerns were expressed in Parliament when a private members bill attempting to legislate for CCTV in cabs failed to gain support largely because of concerns regarding privacy of both the hirer and the driver).

This could lead to significant disruption to my business and to the businesses of a large number of other operators who do not work on the 'town circuit', and instead service what might be called the executive user, focusing on long distance runs that either start or finish outside the borough.

I trust these observations are received in the spirit in which they are intended and not seen as either nit picking or disruptive. It may be that I have mis read the policy and misinterpreted what is meant. I would be very happy to meet with a member of the enforcement team to discuss any of the points I have raised.

On a final note, there are a large number of operators and drivers within the borough who are, like myself, one or two man bands, who are possibly overlooked when council policy is being discussed. Could I suggest that a meeting of interested parties could be held, where concerns about policy and suggestions for change or improvement could be aired. This would add total transparency to the processes and clarify matters to all concerned.

Best regards

John Grice
Reliance Executive Cars

]

Suggested changes to Licencing conditions:

Ref: Transfer of Hackney Carriage License plates between individuals

It is now a public secret that Hackney Carriage Licence plates in Colchester are sold and re-sold at extortionate prices (the price has ranged from £15000 - £65000 over the past ten years). Shockingly Colchester Borough Council Licensing authorities continue to turn a blind eye to such irregular (black market transfer of Hackney Carriage License plates) by the individuals involved and in some cases the authorities have either been complicity or have aided the unlawful sale of council licences and breach of regulations through exploiting of loopholes.

In this policy review the Council needs to be very clear and transparent in setting out the policy for Reassigning a Hackney Carriage Licence.

The suggestion is that: Hackney Carriage Licences must not be transferred from one person to another, except in the limited circumstance, such as transfer of licence on death of licence holder. In all other circumstances the licence should be returned to the council and reallocated using a random system to drivers (subject to satisfying all the conditions that apply to a person applying for a new Hackney Carriage Licence) from an approved waiting list. If the application is successful, the driver becomes the holder of the licence, and may renew and operate it as normal. This will help stop the loophole whereby taxi plates are being sold for up to £65000 (there is a case awaiting trial at the courts with respect to this situation).

In addition, pursuant to Town Police Clauses Act 1847 section 37 to 40, and the R v Weymouth Corporation, Ex parte Teletax (Weymouth) Ltd (1947) which states that: "The licence in respect of a hackney carriage granted under the Town Police Clauses Act 1847, s 37, is granted to the carriage and not to the owner of the carriage, and, therefore, if a change of ownership takes place during the time for

which the licence is valid, the new owner is entitled to have his name entered on the licence and the register of licences in place of that of the former owner."

Having said that, the council must be clearer on what the law specifically states with regards the renting or sale of taxi businesses. The above law clearly states that the licence plate is attached to the car and not the person and anyone else involved on that business can be part Property of that taxi Business.

This matter should be made clear without any ambiguity in the licensing conditions as stated in the 1847 act section 37 to 40 and 1947 R v Weymouth Corporation case law.

As a reminder, I have been in this law situation in 2009 to 2010 law case at Colchester Magistrates court (see attached letters).

Lastly, no person without a taxi driver badge should be a proprietor or part proprietor of a hackney carriage in respect of which such licence is granted or entitled to have his/her name entered on the licence and the register of licences. To be an insurance policy holder for a taxi, one must have a taxi driver badge.

Taxi Services

Hackney Carriage and Private Hire Licensing Policy 2017

Schedule of Responses – Consultation February 2018

Policy reference	Respondent	Comment	Response
------------------	------------	---------	----------

Main Policy

Annex 1 - Driver Licensing Standards and Conditions Pre-Licensing Standard 4 medical examination	Mr Daniel	Wishes to see bi-annual medical rather than annual medical.	The annual medical for individuals over the age of 65 years is required as part of the Group 2 medical. Group 2 medicals are considered appropriate because of the length of time they spend at the wheel as an occupational driver and because they are carrying the public.
General Policy Safety and Health of Drivers Para 3.13 Age Limits	Mr Robinson	Retirement age is now 67 so requirement for annual medical at aged 65 and over is discriminatory. Medicals are expensive and difficult to obtain.	The age of 65 is in line with the requirements of the Group 2 medical which is required annually from the age of 65; this has not been adjusted to reflect the change in retirement age. It is recommended that the requirement that drivers use their own GPs to carry out the medicals be lifted and the use of one or more other approved organisations be agreed. It is hoped that this will help to speed up the time it

			takes to get a medical and also reduce the cost.
General Policy Safeguarding Children and Vulnerable Persons Para 2.16	Donna Lawson	Copy of the referral guide	The referral guide has been rethought and it has been decided instead to give drivers a single number and email address to report concerns. In situations of emergency or where there are immediate safeguarding concerns 999 should be called.
General Policy Driver Proficiency Para 4.16	Donna Lawson	Driver Proficiency	The Council is recommending the use of an external agency to provide these assessments. The applicant/driver will book direct and pay with the company concerned.
Annex 1 - Driver Licensing Standards and Conditions Pre-Licensing Standard 1 Age of Driver	Donna Lawson	The requirement for drivers to be aged 21 is age discrimination	The Council considers that it is justified in asking drivers to be aged 21 and to have held a full DVLA licence for at least three years as this is a proportionate means of achieving a legitimate aim, namely the safety of the travelling public.
Appendix 1 – CCTV Policy	Donna Lawson	CCTV	To be considered as part of the ongoing work on the CCTV Policy.
Annex 6- Penalty Points	Mr Sayer	Proposal to introduce penalty points on drivers badgers	<p>The Penalty Points scheme has been in place since 2006. The points are imposed on the Council issued licence and not on the DVLA licence and last for 12 months.</p> <p>The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 provide the broad framework for the licensing of drivers, vehicles and operators but the detail relating to how this is done and the standards to be applied are matters for the Council to determine.</p>

Appendix 1 – CCTV Policy	Mr Sayer	CCTV – request for exemption in executive transport	To be considered as part of the ongoing work on the CCTV Policy.
Appendix 1 – CCTV Policy	Mr Taylor	CCTV – request for exemption in executive transport	To be considered as part of the ongoing work on the CCTV Policy.
General Policy Establishment of Professional Trades Para 4.7 Training 4.16 Driver Proficiency	Mr Spraggett	The proposed tests should not apply to existing drivers	<p>The Council does take the matter of safeguarding extremely seriously and therefore all drivers will be required to attend a safeguarding session. There have been a number of high profile cases in the press in recent years concerning drivers and the training is considered necessary for the protection of drivers as well as passengers.</p> <p>The Passenger Assisted Transport course will not be retrospective and will only apply to new drivers. The driving assessments are also only designed to apply to new drivers unless the Council receives complaints in relation to an existing driver and then, if it is considered appropriate, they may be required to undertake a driver assessment.</p>
General Policy Establishment of Professional Trades Para 4.7 Training	Mr Perry	Safeguarding Training supported	
General Policy Establishment of Professional Trades	Hackney Carriage Association	Plates numbers 105 to 111 were issued for and	The Policy currently states that plate numbers 101 to 131 are for vehicles that must be fully wheelchair adapted; this means having the

Para 4.23 Number of Vehicles		have always been on conventional vehicles	facility to load and unload wheelchairs directly into the vehicle. All new vehicles on these plates must be adapted; this includes vehicles on renewal. The Committee are asked to take a view on the representation made by the Hackney Carriage Association.
	Mr Grice	Dress Code, Customer relation policy	The Town Police Clauses Act and the Local Government (Misc. Provisions) Act provide the framework for the licensing of drivers, vehicle and operators but the detail of how this is done and the standards to be applied are matters for the Council to determine and these are set out in the Policy.
		Contact between licence holders and passengers	This has been included in the Policy specifically in response to a small but significant number of complaints concerning this type of behaviour. The Council takes its safeguarding role very seriously and is also keen to protect its drivers from allegations of misconduct.
		Imposition of penalty points	The Council must not grant a licence unless the applicant is considered to be a fit and proper person to hold a licence. Fit and proper is not defined in law and therefore the Council uses the tests set out in 2.3 of the policy to assist in determining this. The fit and proper requirement remains with the Council for the duration of the licence. The penalty

			point scheme and convictions policy work to assess the risk to the Public.
		Balance of probability vs beyond reasonable doubt	Beyond reasonable doubt is the criminal standard of proof. The balance of probabilities is the standard of proof applied in civil matters.
		CCTV	To be considered as part of the ongoing work on the CCTV Policy.
Transfer of plates	Taxi Services	Transfer of plates	Transfer of a business is not a matter for the Council. The plate remains the Council's and as such permission must be sought from the Council to transfer the plate.

21 March 2018

Report of	Lucie Breadman – Assistant Director - Communities	Author	Cassandra Clements ☎ 282918
Title	Colchester Charter Market Regulations		
Wards affected	Castle		

1. Executive Summary

- 1.1 Colchester Charter Market moved to the High Street in April 2015. New working practices were introduced at that time to support the new market. It was agreed to give these changes time to bed in, review progress and then finalise and amend Charter Market Regulations to reflect these and any further changes for Licensing Committee to endorse.
- 1.2 Suggested amendments are detailed in section 5 of this report.

2. Recommended Decision

- 2.1 To agree the revised Colchester Charter Market Regulations.

3. Reason for Recommended Decision

- 3.1 The Market and Street Trading Manager has been working closely with traders, to make sure the regulations are fit for purpose. This means that both traders and the Council are clear about their responsibilities but are also protected. Using best practice from other Councils, feedback from traders and our existing operational guidance the Licencing Committee are now asked to ratify the revised Charter Market regulations.
- 3.2 The regulations that have been in place have worked very well. As such there are very few amendments suggested.

4. Alternative Options

- 4.1 Alternative options include:
 - To keep the regulations as they are now – this is not recommended as the suggestions are based on the experience of the Market and Street Trading Manager
 - Additional amendments: Licensing Committee may suggest additional amendments for Officers to look at.

5. Summary of Changes

5.1 Below is a table showing the proposed changes:

Ref	Change	Reason
<ul style="list-style-type: none"> P.2 Definitions (g) Interim Trader 	Maximum number of Markets deleted (was 17)	If enforced this would have a negative impact on income
<ul style="list-style-type: none"> 5.4 Casual traders cannot trade more than two consecutive weeks in a contract period 	Casual traders who attend for more than 6 weeks in a contract period may be excluded from future trading on this basis at the discretion of the Markets & Street Trading Manager.	Limiting Casual traders to just two consecutive weeks would have a negative impact on income. However, at the same time we still want to encourage traders to take up a permanent contract.
<ul style="list-style-type: none"> 6.3 The fee for the collection of unpaid stall fees. 	We need to add: 'or charges added to cover late payment of electric fees'.	Enables a penalty for non-payment of new electric charge (this would also cover special event charges)
<ul style="list-style-type: none"> 6.7 Charges for electric 	New rule added	From April 2018 Traders using electric will pay an additional charge on top of pitch fees
<ul style="list-style-type: none"> 12.6 No real-fur products 	New rule added	This follows a national campaign which has been supported by portfolio holder and mayor. Only one Street Trader had historically sold legally produced real fur products and accepts change
<ul style="list-style-type: none"> 15.2 Proof of Right to Work 	Legislation updated with link to HMRC and immigration office guide	Changes to acceptable forms of I.D.
<ul style="list-style-type: none"> 16.1 No animal shall be brought onto the market 	Market manager's discretion changed to 'exceptional circumstances (for example a guide dog)	Makes previous rule more clear – generally pets or animals are not permitted with exception of guide dogs or similar

6. Equality, Diversity and Human Rights implications

6.1 The EQIA for the Colchester Charter Market regulations can be found here:

<http://www.colchester.gov.uk/article/12744/Communities>

7. Strategic Plan References

7.1 The links to the [Strategic Plan 2018-21](#) are:

1. GROWTH: Help make sure Colchester is a welcoming place for all residents and visitors
2. GROWTH: Work with partners to create a shared vision for a vibrant town centre.
3. OPPORTUNITY: Promote and enhance Colchester borough's heritage and visitor attractions to increase visitor numbers and to support job creation
4. OPPORTUNITY: Help business to flourish by supporting infrastructure for start-up businesses and facilitating a Business Improvement District

8. Consultation

8.1 The Market and Street Trading Manager has been working with all Market Traders to consolidate their ideas to the suggested amendments.

9. Publicity Considerations

9.1 We will make the Market and Street Trades aware of the revised regulations in writing and with a face to face discussion / hand delivered letter, where feasible. We will also upload an electronic copy to the Colchester website.

9.2 Market Traders are aware of the suggested amendments put forward.

10. Financial implications

10.1 Regulation 5.4 currently limits Casual traders to just two consecutive weeks, and has had a negative impact on income. We are therefore asking to increase this. With the understanding that at the same time we still want to encourage traders to take up a permanent contract.

11. Community Safety Implications

11.1 There are no specific Community Safety implications to note.

12. Health and Safety Implications

12.1 There are no specific Health and Safety implications to note.

13. Risk Management Implications

13.1 There are no specific Risk Management implications to note.

Appendices

Appendix One – Colchester Charter Market Regulations

Background Papers

None.

Management Regulations for Market Trading in Colchester



Issue date / reference: V1: March 2015.

Introduction

The need for Market Regulations

The markets operated in Colchester provide an essential community facility to residents and visitors and are intended to offer affordable business opportunities for Traders. They are an important part of our local communities and ensuring that they continue to thrive and develop is part of Colchester Borough Council's better town centre improvement programme. The Council intends to ensure that visitors and local people alike receive an excellent standard of customer service, enjoy a positive experience and want to visit again.

With these goals in mind these regulations set out the terms and conditions which must be adhered to by a Trader granted a contract to trade in the Council's markets. These regulations define the Council's rights as the market operator, and the standards and obligations the Council is placing on the Market Trader.

Any Trader who is granted a contract to trade in the Council's markets must accept and agree unreservedly to abide by these regulations.

These regulations are intended to be fair and reasonable whilst providing the flexibility of the Council's market operation to meet the potential future needs of the market's customers. These regulations also set out penalties for breach and include a fair and clearly defined process to appeal certain decisions taken by the Council's markets management team.

These regulations have been devised in the best interests of the estate management of the market as a whole and all traders, shoppers and the Landlords. They will be enforced as such and must be read in conjunction with your contract.

These regulations replace any regulations previously issued by the Council.

In the event of any conflict of interpretation the contract terms shall take precedence. In the event of any dispute concerning application of these regulations, the decision of the Markets & Street Trading Manager as Landlord's representative, will be final.

Details of the stall layout, pitch sizes and fees payable are available from the Colchester Borough Council website: www.colchester.gov.uk/markets

In addition all Traders are required to comply with the provisions of the Colchester Market Shoppers' Charter. This is a separate document to be read in conjunction with these Management Regulations and available as a link from www.colchester.gov.uk/markets

The Council's commitment to market traders

The Council commits that it will administer the market operation in such a way as to ensure:

- a safe and welcoming environment in which to trade;
- the continuous development and promotion of the markets and market events to attract new shoppers and traders;
- a balanced market offering with limited duplication of both core and competing secondary product lines;
- a fair and thorough application process for Traders wishing to apply to trade or introduce a new product line;
- a right of appeal against suspension, termination or refusal to transfer a trading contract with a defined process and time table; and
- open and two-way communication with all Traders, either directly or through their nominated representatives.

Future changes

These regulations may be revoked, amended or supplemented in such manner and to such extent as the Landlords may, in their absolute discretion from time to time, direct. Traders are required to familiarise themselves and their employees, agents and contractors with same.

Colchester Borough Council may change these regulations at any time in the future. Prior to changing these regulations the Council will consult with Traders for not less than four weeks and will then give four weeks' written notice before any change takes effect.

The operation of the market is the responsibility of the Markets & Street Trading Manager (and his/her delegated colleagues) who is entrusted and authorised to apply discretion and judgement in the interpretation of the regulations.

Definitions

- a) **Appeal process** means the process applied by the Council for dealing with appeals submitted by market Traders against decisions taken by the Council's markets management team.
- b) **Casual trader** means any trader granted a contract to trade and to pitch a stall in the market for a single day.
- c) **Council** means Colchester Borough Council.
- d) **Equipment** means portable rails and stands, generators, bins and other receptacles.
- e) **Exceptional circumstances** means circumstances that could not be reasonably foreseen and for which there was insufficient time to take the necessary action to resolve the situation arising from those circumstances.
- f) **Goods and services** include provisions, commodities, articles and services permitted by the Council to be brought into the market for the purpose of sale.

- g) **Interim Trader** means any casual trader granted a special long term contract (maximum 17 markets a year) based on the permanent trader fee structure. An interim trader is not guaranteed a fixed pitch location.
- h) **Contract** means the contract issued to a trader in the form prescribed by the Council which permits casual Traders, interim Traders and permanent Traders to trade in the market in accordance with these regulations.
- i) **Landlords** means Colchester Borough Council and its duly-authorized representatives i.e. the Markets & Street Trading Manager and other Colchester Borough Council staff.
- j) **Market** means markets held in Colchester.
- k) **Market day** means a day on which markets are authorised by the Council to open for trading.
- l) **Market hours** means the hours of operation of the market.
- m) **Markets & Street Trading Manager** means the officer responsible for the operation of the markets.
- n) **Market Shoppers' Charter** means the Market Shoppers' Charter approved by the Council and which all traders agree to recognise and abide by.
- o) **Permanent Trader** means any Trader granted a contract to trade and pitch a stall in the market for a period of 12 consecutive calendar months.
- p) **Serious misconduct** means conduct on the part of the Trader or of their staff which the Council considers so unreasonable that it destroys the trust necessarily required for the continuance of the Trader's contract.
- q) **Site** means the place allocated by the markets management team to the Trader upon which the Trader is permitted to pitch a stall.
- r) **Stall** includes a frame, canopy, link, gutter and awning, pitch or space in the market used or intended to be used for the sale of goods or services.
- s) **Trader / Stallholder** means a person or legal entity offering goods or services for sale granted a contract to trade from a stall on the market and are interchangeable and includes casual Traders, interim Traders and permanent Traders.
- t) **Byelaws** are rules made by a local authority for the regulation of its affairs or management of the area it governs.

1. Compliance Requirements

- (1.1) Traders are required to comply with the directions of the Markets & Street Trading Manager at all times.
- (1.2) Traders on the Market are required to comply with, and ensure compliance by their employees and other persons acting upon their behalf, the provisions of their contract, these Management Regulations, the Shoppers' Charter and Food Stall Guidance, any and all Acts of Parliament, statutory regulations, byelaws or rules and regulations made by a competent authority or notified by the Landlords.
- (1.3) Traders are required to conduct themselves in a manner which does not cause a danger, annoyance, nuisance or impediment to any other persons, traders, neighbouring businesses, members of the public or Landlords' representatives. This includes the use of threatening or abusive behaviour, foul language, substance abuse or drunkenness whilst attending the market.
- (1.4) Goods that are counterfeit, offensive or dangerous may not be sold on the market.
- (1.5) Traders are required to comply with any supplementary rules or regulations as may be notified by the Landlords by way of general notice or declaration from time to time.

2. Trading Days

- (2.1) Trading days are: Friday and Saturday of each week and such additional days as the Landlords may direct.
- (2.2) The market will be closed on Christmas Day.
- (2.3) Where a trading day falls on a Public Holiday and market day and the Landlord does not hold a market, Traders will be given a day in lieu.

3. Hours of Access and Trading

- (3.1) Access for setting-up stalls shall be no earlier than 0600 hrs. on the day of trading.
- (3.2) All stalls shall be occupied by 0830 hrs unless otherwise directed by the Markets & Street Trading Manager.
- (3.3) If an unoccupied stall is the subject of a monthly contract then the Trader will remain liable for payment of the fee for that day notwithstanding his/her non-attendance.
- (3.4) All vehicles and rollcages, pallet-lifters or other equipment must be removed from the market by 0830 hrs.
- (3.5) Permitted trading hours are 0830 – 1800 hrs on each Charter Market trading day unless otherwise directed by the Landlords for other markets.
- (3.6) Vehicles shall not return onto the market before 1630 hrs unless otherwise directed by the Markets & Street Trading Manager.
- (3.7) Stalls shall be kept clean, tidy, stocked and attended in accordance with your contract during trading hours.
- (3.8) In the event of temporary absence of the Trader a responsible adult person shall be left in control of the stall.
- (3.9) Works affecting the market. Whenever possible, Traders will be given prior notice of maintenance and other work on and around the market which could affect their trading activities. The Council will not be liable for any direct or consequential loss arising from work affecting the market.

4. Access by Vehicles

- (4.1) Traders shall comply with the permitted access hours and any traffic management directions made by the Markets & Street Trading Manager e.g. an allocated time to enter the market, a position for unloading and a direction of movement and point of exit from the market.
- (4.2) Traders are required to comply with all Traffic Regulation Orders affecting the public highway. Details are available from the Colchester Borough Council website: www.colchester.gov.uk/markets
- (4.3) Whilst on the market all vehicles must be positioned so as to avoid obstructing other vehicles in the loading bay and deliveries to adjacent stalls or shops. Vehicles must be unloaded and loaded without delay and not left unattended with their engine running. Once unloaded or loaded they must be removed from the market without delay.
- (4.4) Access for deliveries and collections is via High Street loading bays within the permitted hours.
- (4.5) Only vehicle types and trailers authorised by the Markets & Street Trading Manager shall be brought onto the market. All vehicles and trailers shall be roadworthy, insured and in possession of an MOT certificate and current road fund licence. All drivers must possess a full UK driving licence and be insured to drive same.
- (4.6) Parking on pedestrian crossings, public or private access roads, passageways, pavements or property in the vicinity of the market is prohibited. Traders and their employees should park in town centre car parks.
- (4.7) Any spillages of oil, fuel or any liquid must be immediately cleaned-up and reported to the Markets & Street Trading Manager. Vehicles that leak oil or fluids will not be allowed onto the market and the filling or emptying of fuel tanks whilst attending the market is expressly prohibited.

5. Terms for Contracted Traders

- (5.1) Traders are granted a contract to occupy a specific stall or a “pitch” (space for a stall) on specified days of the week in return for a monthly fee (“charge” or “fee”) payable in advance.
- (5.2) Contracts are for a term of between 1 day for non-Charter/themed markets by arrangement with the Landlords to 13 weeks for the Charter Market and do not create entitlement to attend the market for any longer period. The Markets & Street Trading Manager will contact Traders prior to the end of the contract to establish if the Trader wishes to continue stall hire for a further contract period.
- (5.3) Contracts to occupy a pitch may be revoked at any time at the discretion of the Markets & Street Trading Manager. In this event compensation will be at the discretion of the Markets & Street Trading Manager.
- (5.4) Traders without a contract are deemed to be “casual” traders and may apply for a stall a week in advance when payment, insurance and vehicle documents will need to be shown. No more than two weeks’ casual trading will be permitted in any contract period.
- (5.5) Casual traders do not benefit from the allocation of a particular stall or pitch. The Landlords’ intention is to ensure occupancy of all pitches and stalls on the market. The Markets & Street Trading Manager may allocate casuals to unoccupied stalls and pitches after 08.00hrs with payment by debit/credit card to be paid on the day. Allocations are at the discretion of the Markets & Street Trading Manager and will take into consideration past attendance and the goods being offered.

- (5.6) Traders are expected to attend in person on all the trading days specified in their contract. Non-attendance by a contracted Trader without good reason may result in non-renewal of your contract. In the event of non-attendance the Markets & Street Trading Manager has the discretion to waive the fee payable for that day in exceptional circumstances.
- (5.7) It is the responsibility of traders to notify the Markets & Street Trading Manager or his/her designated colleague of any delay in attending the market (for example, because of illness, vehicle breakdown or other reasonable cause beyond the trader's control). In the absence of doing so, Traders who fail to attend their stall by 08.00 may not be permitted to trade on that market day. No refund of stall fees will be paid in these circumstances. The Council may reallocate the stall to another Trader in such circumstances.
- (5.8) For all other absences Traders must advise the Markets & Street Trading Manager as soon as is reasonably possible in advance of the trading day and by no later than 07.30am on the trading day in question. The Council reserves the right to reallocate the pitch for that day. No 'like for like' product line will be allocated in place of the absent Trader. Failure to attend without formally notifying the Markets & Street Trading Manager, other than in exceptional circumstances, and after two un-notified absences per contract period, will be considered a disciplinary offence.
- (5.9) It may be necessary to relocate pitches from time to time. The Landlords will give Traders as much notice as possible in this event. However, this may be on the market day itself in exceptional circumstances.
- (5.10) The Trader must not assign, transfer, sub-contract or licence the benefit of this contract to any other person or company.
- (5.11) Annual Leave Entitlement: A two week annual leave entitlement from April to March will be provided to Market Traders who are subject of a standard 13 week contract.
- (5.12) Traders will be expected to give the Markets & Street Trading Manager two weeks' notice in writing of any intended annual leave. This is required to allow the Council sufficient time to plan for filling the space vacated by the permanent contracted Trader. During the time the Trader is absent the Council may reallocate their pitch/es to another Trader.
- (5.13) The number of Traders given annual leave on any one trading day will be limited to a maximum of 5 individual traders.
- (5.14) The Council reserves the right to refuse holiday requests for any reason whatsoever if it feels that there would be a detrimental effect to the financial viability of the Market.
- (5.15) The Council reserves the right to charge any Trader the full cost of repair or renewal to any Council property related to the markets where, in the reasonable opinion of the Council, the Trader or anyone working with the Trader caused the damage.
- (5.16) Any temporary structure erected as part of the market must be suitable for the purpose intended, of good condition and erected by competent persons.
- (5.17) Traders must not leave any goods, articles or equipment on the market outside market hours without the prior written consent of the Markets & Street Trading Manager.
- (5.18) Where access to the interior of market stalls is restricted by a kerb Traders must offer mobility impaired customers an assisted shopping service.

6. Payment of Fees

- (6.1) Traders' fees are payable by Standing Order in advance of trading days and must be set up as soon as practically possible after entering into the contract.
- (6.2) Failure to maintain a Standing Order may result in termination of contract.
- (6.3) Where there is non-attendance by a Trader not agreed with the Markets & Street Trading Manager in advance no refunds of fees will be given.

- (6.4) If adverse weather conditions or similar prevent trading for part or the whole of the day the Markets & Street Trading Manager has the discretion to close the market.
- (6.5) Non-attendance by a Trader on a regular basis or without good reason may result in termination of their contract.
- (6.6) The fee for the collection of unpaid stall fees on each occasion will be £10.

7. Size of Pitches

- (7.1) Stall pitches are sized as per the stall layout plan and rents are calculated per stall as per the schedule of fees as set out by the Landlords on the Colchester Borough Council website: www.colchester.gov/markets Pitches and stalls are licensed individually or as multiples of same and rents calculated accordingly.
- (7.2) Stall sizes are 2.5m x 2.5m and 2.4m x 2.4m (or multiples thereof) and this area represents the licensed trading area. The space in front of the stall is for the purpose of serving customers and pedestrian access only. 'Standing out' of stock onto the pavement is not permitted.
- (7.3) All storage and stock must be held within the licensed trading area.
- (7.4) Traders shall use only the stall(s) or pitch(es) licensed or allocated to them. They shall restrict their stall and any goods display area to within the extent of the licensed area. Extension bars beyond the boundary of the licensed pitch are not permitted except to dimensions and location(s) expressly authorised by the Markets & Street Trading Manager which can be withdrawn at any time. The standing-out of goods on the ground in circulation aisles outside the pitch is forbidden.
- (7.5) If the stall is supplied-only or supplied and erected by the Landlords then the Trader shall not adapt or alter any fixture or fitting forming part of the stall and shall not remove the roof sheets or attach any extensions to the stall except with the express permission of the Markets & Street Trading Manager. Any goods which are hung from overhangs must not obstruct circulation aisles or present any risk of injury to the public or passing traffic.
- (7.6) Any electrical supply provision made by the landlords shall not be adapted or overloaded and all electrical equipment used by a trader shall be restricted to 230 volts only, earth-bonded and RCD-protected in accordance with current electrical regulations requirements. 230v electric cables shall be SWAC-armoured and all cables shall be enclosed in cable protectors. Generators are not permitted.
- (7.7) Traders are required to provide cable mats (at their own expense), to ensure that trailing cables do not present trip hazards or any other hazard and are suitably protected.
- (7.8) All traders using liquid petroleum gas (LPG) must conform to LPG Code of Practice 24 and have the current annual Gas Safety Inspection certificate **on site**.
- (7.9) All traders using LPG must provide a suitable, serviceable fire extinguisher which must be located near the appliance (also see Fire).
- (7.10) Suitable hazard signage must be displayed so as to comply with the Health and Safety (Safety Signs and Signals) Regulations 1996.
- (7.11) All pallets, trolleys, rollcages, pallet-lifters or other equipment brought onto the market by a Trader must either be removed from the market or stored within a stall during trading hours. They must not be used as an addition to a stall or for displaying goods or storing refuse.
- (7.12) Traders must exercise due care and attention of the stall frame, the canopy, awning and electricity supply at all times.

8. Charity Stalls

- (8.1) The number of charity stalls will be limited to 5% of the total number of stalls in any one market.
- (8.2) Charity stalls can be booked no more than two weeks in advance subject to availability.
- (8.3) The use of stalls at 50% discount by charities remains subject to these Management Regulations.
- (8.4) The Landlords reserve the right to terminate discounted bookings without notice.

9. Traders' Signage

- (9.1) All Traders of foodstuffs shall display their name and address in a prominent position on the stall. All other traders shall display a prominent sign showing no less than their name and the number of their stall.

10. Sale of Fresh Food

- (10.1) It is the responsibility of Traders to ensure all edible goods sold on the market are handled, displayed, priced and sold in accordance with trading standards' requirements and food safety regulations. Best practice concerning the sale of fresh food is contained in a separate food safety document 'Guidance to Mobile Traders at Markets & Outside Events' and forms part of these regulations.
- (10.2) All fresh foods must be stored and displayed in accordance with the EU food hygiene regulations and all edible goods including greengrocery stored displayed and sold at least 18 inches (0.5 metres) from the ground to protect all foodstuffs from the risk of contamination.
- (10.3) Some types of goods may require refrigeration.
- (10.4) Traders of foodstuffs must possess a Chartered Institute of Environmental Health Level 2 certificate in Food Safety in Catering (more details can be found here: www.colchester.gov.uk and search for Food Hygiene Courses).

11. Refuse Disposal

- (11.1) No waste or refuse shall be brought onto the market. Only waste or refuse generated during the course of that days' trade shall be placed in the designated market waste/refuse wheely bins.
- (11.2) Traders shall keep their stall(s) and the surrounding area free of trade waste/refuse and litter during trading hours and remove it to the designated waste/refuse wheely bins as necessary.
- (11.3) Traders shall not discharge any noxious or foul liquid waste onto the paving except for washings discharged directly to the street gulleys. At close of trading any gulley into which washings have been discharged shall be rinsed with clean water and the surrounding area left clean and tidy.
- (11.4) Traders shall not place any waste into a refuse compactor, cardboard baler or collection vehicle.
- (11.5) At the end of the market day, and at regular intervals throughout it, Traders must ensure their stall and surrounding area is cleaned and clear of all refuse and waste, and the surfaces around their pitch left safe and without hazard to others. All stall(s) and pitch(es) shall be left clean and clear of refuse at the close of trading.
- (11.6) Traders have a legal duty of care to maintain the health and safety of their employees, other Traders and visitors to their stall. It is also the sole responsibility of Traders to

ensure the safe management of waste in and around their stall, which if not handled properly can cause surfaces to become hazardous for slips, trips and falls.

- (11.7) Council employees are not authorised to enter a Trader's stall to collect waste, and it is solely the Trader's responsibility to prepare all waste for collection by the Council using the appropriate wheelie bins allocated by the Council.
- (11.8) Traders are required to comply with the recognised cleansing standards, which have been adopted by the council.
- (11.9) The Council will carry out the regular cleansing of the market area as necessary to maintain their effective operation.
- (11.10) Traders must ensure that their stall and any adjoining passages, whether used by them or in conjunction with other Traders, are properly swept from time to time and shall ensure that litter is not allowed to accumulate.
- (11.11) Traders must remove waste from their stall and the Council will provide and maintain adequate, hygienic and efficient refuse disposal facilities on the market at all times subject to breakdowns and other matters beyond its immediate control.
- (11.12) Traders who produce food waste must dispose of it in the correct food waste receptacle as directed by the Council.
- (11.13) Traders must flatten any cardboard waste they produce and dispose of it in the correct recycling cardboard container.
- (11.14) Traders must not put their trade waste in public litter bins.
- (11.15) Traders must comply with any new initiatives introduced to improve the recycling of trade waste on the markets as advised in writing by the Markets & Street Trading Manager from time to time.
- (11.16) A supplementary charge of £25 will be levied upon Traders who fail to comply with these requirements on any market day.

12. Prohibited Goods

- (12.1) Traders shall not bring onto the market any inflammable liquids, gases, fireworks or similar articles which may cause fire or explosion. The exception being a gas supply for cooking food upon such conditions as the Markets & Street Trading Manager may direct.
- (12.2) No goods may be displayed or sold which in the opinion of the Markets & Street Trading Manager are inappropriate, dangerous or likely to cause offence to other traders or members of the public.
- (12.3) No goods may be displayed or sold that are counterfeit or in breach of copyright or patent.
- (12.4) No mains-powered electrical goods may be sold except for new items still in their original packaging.
- (12.5) Secondhand or used electrical goods may not be sold, even if PAT-tested.

13. Health & Safety Requirements

- (13.1) All Traders are required to undertake a risk assessment for their stall annually or as any change to operation occurs. This is to include set up, break down, supplier deliveries as well as trading and should be provided to the Markets & Street Trading Manager. The form for the risk assessment can be found on www.colchester.gov.uk/markets. The Markets & Street Trading Manager reserves the right to refuse trading if the risk assessment is not submitted or if, in the opinion of the Markets & Street Trading Manager, is not suitable and sufficient for purpose.
- (13.2) The Landlord shall not be liable for damage to any property or for any losses claims demands actions proceedings damages costs or expenses or other liability incurred by the Licensee or any employee of the Licensee or any person or body authorised by the Licensee to be within the Market area. Nor shall the Landlord be liable for any such loss

suffered by a visitor or member of the public except where caused by the proven negligence of the Landlord and shall indemnify the Landlord against all actions proceedings costs claims demands damages charges and expenses whatsoever arising out of the discharge of the Contract to trade on markets.

- (13.3) Electricity supply is to be used to assist trading only. Electric heaters within stalls are expressly forbidden because they will trip the electricity supply to other stall holders.
- (13.4) All traders are required to comply with all health and safety directions issued by the Markets & Street Trading Manager. Such instructions are supplemental to and do not vary these regulations.
- (13.5) There are significant health & safety risks posed to themselves, the public and other traders whilst traders deliver goods and assemble or dismantle stalls. Traders must input to and be aware of the market's risk assessment (available on www.colchester.gov.uk/markets) and devise and implement suitable safeguards to minimise risks in their working methods using the risk assessment form provided.
- (13.6) If adverse weather conditions or similar present a risk to trading for part or the whole of the day the Markets & Street Trading Manager has the discretion to close the market.
- (13.7) All electrical equipment must be PAT (Portable Appliance Tested) and a certificate of proof must be presented on application for a license to trade.
- (13.8) Smoking is not permitted by Traders, their employees and suppliers within or near market stalls in line with 2007 legislation which banned smoking in enclosed/substantially enclosed workplaces and public spaces. Traders should not serve members of the public in any instances whilst smoking. This is to protect traders, their employees, suppliers, neighbouring traders and their stock as well as customers.
- (13.9) All traders are required to:
- *Familiarise themselves with all Health and Safety instructions issued by the Markets & Street Trading Manager.*
 - *Ensure all employees agents and contractors are adequately informed, instructed, supervised and trained in health and safety matters.*
 - *Take reasonable care of their personal health, safety and welfare and that of others who may be affected by their acts or omissions.*
 - *All persons shall wear high visibility vests when setting up/dismantling stalls and loading goods.*
 - *Make available and ensure the use by themselves and all employees or staff of appropriate personal protective clothing and equipment suited to the task.*
 - *Assist the Landlords by reporting any accident or incident that has or may cause injury to a person or damage to plant or property.*
 - *Co-operate and comply with all directions of the Landlords to ensure compliance with all statutory responsibilities and to ensure all instructions regarding health and safety issues are understood and applied by employees, agents and contractors.*
- (13.10) Traders are required to pay particular attention to the hazards of:
- *Vehicle movements – Reversing, towing stall trailers and unattended stall trailers.*
 - *Stall erection – Handling of components and stability of partly-constructed frames.*
 - *Sheeting – Fixing of stall sheets and clips during windy conditions.*
 - *Trip hazards - Stall components, stock and electrical cables that create a trip hazard.*
 - *Electrical safety - Power and lighting distribution from the supply boxes.*
 - *Training – The use of unsupervised or untrained staff to set up and dismantle stalls.*
 - *Working at height – set up and dismantling of stalls when standing on steps or trailers*

14. Accidents

- (14.1) All accidents and “near misses” involving Traders, their staff or members of the public must be reported immediately to the Markets & Street Trading Manager for investigation and entry in Colchester Borough Council’s Incident Report form (IRF07). It is the responsibility of Traders to report all notifiable accidents and “near misses” occurring during stall set up and dismantling to the HSE, as required by legislation.
- (14.2) Traders should ensure their stalls are equipped with a First Aid Kit.

15. Traders’ Insurance and Identity Requirements

- (15.1) All licensed and casual Traders are required to hold and maintain valid insurance cover for third party public and products liability with a limit for claims of not less than £5 million, and employers’ liability insurance cover with a limit for claims of not less than £10 million. By virtue of their contract and these regulations each Trader shall extend a matching indemnity to the Landlords and their agents, employees and authorised representatives. Traders shall provide evidence of insurance cover upon application for a contract to trade.
- (15.2) Prior to the first days’ trading Traders will be required to supply proof of your right to work in the UK. (UK Passport, driving licence or national insurance number will be sufficient). This data will be kept secure and confidential between the parties.

16. General Conditions

- (16.1) No animal shall be brought onto the market except as authorised by the Markets & Street Trading Manager.
- (16.2) No child shall be employed upon the market except in accordance with statutory legislation.
- (16.3) The “pitching” of goods (shouting to advertise their availability) is allowable at the discretion of the Markets & Street Trading Manager.
- (16.4) Any sale by auction, canvassing, market research or personal questionnaire or any stall advertising or promoting a political or religious organisation is expressly forbidden.
- (16.5) Radios or other sound equipment may be played subject to the approval of the Markets & Street Trading Manager approval but not so loudly as to cause nuisance to other Traders, neighbouring businesses or the general public.
- (16.6) Traders shall not display or sell any goods other than those described on their contract, or in the case of a casual Trader those described to the Markets & Street Trading Manager on the day of trading.
- (16.7) Traders may only extend or change product lines with the agreement of the Markets & Street Trading Manager (which shall not be unreasonably withheld).

17. Conduct, Disciplinary, Complaints and Appeals Procedure

- (17.1) Traders are responsible for their own conduct and that of anyone working on or in connection with their stall at all times while they are on the market.
- (17.2) A breach of these regulations/terms and conditions by anyone working on or in connection with a Trader’s stall will be deemed to be a breach by the trader.
- (17.3) Traders will be liable to immediate suspension and/or termination for breaches of the regulations arising out of their conduct by the Markets & Street Trading Manager which is considered by the Council to be gross misconduct. In the event that a contract is terminated, the Trader shall not be entitled to compensation from the Council. The circumstances of the case will be considered by the Head of Service.

Examples of gross misconduct which will normally justify termination of a contract are outlined below:

- Dishonesty.
- Under the influence of alcohol or illegal substances.
- Assaulting a member of the public, Council staff or another Trader.
- Verbal abuse, the use of foul or abusive language, harassment, intimidation, discrimination or bullying towards a member of the public, Council officers or other Trader(s).
- Interfering in any way with the business of another Trader.
- In the reasonable opinion of the Markets & Street Trading Manager, the Trader brings the market into disrepute.
- Failure to comply with the requirements of consumer protection legislation.
- Failure to comply with the requirements of food hygiene regulations.
- The Trader has been convicted of selling counterfeit products or has received a formal caution, formal warning or such other similar measure from the Trading Standards Service or any other enforcement agency.
- The Trader has persistently failed to make payment of the fee, within the time limit set.
- The Trader has failed to comply with the health and safety legislation affecting the market sites or any health and safety requirements notified to the Trader by the Council.
- The Trader consistently fails to honour a direct debit for the payment of stall fees.
- The Trader fails to attend the market they are licensed to attend for 10 weeks or more during the course of a calendar year.
- The Trader persistently infringes the Market Regulations.

In the event that a Trader's contract is suspended rather than terminated and there is no prescribed penalty, the length of suspension will be decided by the Head of Service.

All complaints involving stallholders and staff are dealt with in accordance with Colchester Borough Council's formal complaints procedure (more details here: <http://www.colchester.gov.uk/article/12804/Compliments-Complaints-And-Comments>)

Complaints should be made in the first instance to the Markets & Street Trading Manager who will seek to resolve same and issue a direction. If the complainant is not satisfied with the result he or she may complete the form in the link above which commences Colchester Borough Council's complaints procedure.

- (17.4) Complaints will be treated in confidence and all parties notified of the complaint and given the opportunity to respond. The complainant will be required to substantiate same under normal rules of evidence. If complaints are found to be vexatious then disciplinary action will be taken against the complainant.
- (17.5) Complaints made by a member of the public against any Trader will be notified to him/her in private and the Trader requested to resolve the dispute.
- (17.6) Any substantiated complaints may result in the revocation of a Trader's contract.
- (17.7) Breaches of rules or regulations will normally be discussed with the Traders concerned as soon as the Markets & Street Trading Manager is aware of any breach. Traders will normally be asked to correct any breaches or comply with any rules in the first instance.
- (17.8) If a Trader does not comply with a verbal request, or if a further breach occurs on the same day, then a formal written notice will be issued as soon as possible.

- (17.9) Any written notice issued in (17.8) will remain active for a period of 6 months, if a further written notice is issued during this period the Trader will be automatically suspended for the next trading day.
- (17.10) If any Trader incurs two periods of suspension in any period of 12 months then their contract will be terminated. Traders will be permitted to reapply for a pitch but will be placed at the bottom of any waiting list.
- (17.11) Traders suspended or removed from the Market are still liable to the fees due for any period of absence under their contract.
- (17.11) Disciplinary matters will, in the first instance be dealt with by the Markets & Street Trading Manager and if necessary be referred to the appropriate Council Manager.
- (17.12) The Council will discuss any issue and give reasons for their decision in the first instance.
- (17.13) If a Trader is not satisfied with the explanation or decision they may contact the Council who will review any action and respond in writing stating their decision if required.
- (17.14) A Trader who has been suspended from the market or whose contract has been terminated, or has been refused permission to transfer their contract to another Trader, may appeal in writing to the **Head of Service** within five working days from, but not including, the day the Trader is notified of the decision against which they wish to appeal.
- (17.15) The Trader is entitled to request a hearing to make representations to explain why the decision against which they wish to appeal should be overturned. Such request must be made at the time of submitting the written appeal.
- (17.16) The **Head of Service** will conduct the hearing of the appeal in person within 28 days of receipt of the written appeal.
- (17.17) In considering any appeal the **Head of Service** will have regard to any relevant documentation and may call to give evidence such person, including the Trader in question, as he/she considers appropriate.
- (17.18) Traders attending an appeal will be entitled to bring with them a friend or colleague or, if they are a member of the National Market Traders' Federation, a local representative of the NMTF who are allowed to speak on their behalf.
- (17.19) The written decision of the **Head of Service** will be sent to the Trader within 14 days of the hearing to the registered address of the Trader, and will include an explanation of the reasons for the decision. There shall be no further appeal from the decision of the **Head of Service**.

