



**INTRODUCTION OF THE RULES OF GOVERNANCE DOCUMENT AND UPDATE ON ALL THE POLICY CHANGES AND CONSULTATIONS UNDERTAKEN IN 2019 AND 2020 REGARDING ALL LICENSABLE ACTIVITY WITHIN MARKETS, SHOP FRONTS AND STREET TRADING**

**CORPORATE COMMITTEE  
MEETING DATES 2020/21**

**4<sup>TH</sup> February 2021**

**CLASSIFICATION:**

**Open**

**WARD(S) AFFECTED**

**All**

**GROUP DIRECTOR**

**Ajman Ali, Neighbourhoods and Housing**

## **1. INTRODUCTION AND PURPOSE**

- 1.1 This report sets out the introduction of the Council's first edition of the Rules of Governance document which contains all the applicable Governance pertaining to the management and operational delivery of the Market, Shop Fronts and Street Trading Service. This document will come into effect as of 1 April 2021 and be fully accessible on all of the services licencing pages on the Council website.
- 1.2 The Corporate Committee has requested an update on all of the policy changes and consultations undertaken in the last 12-18 months with regards to how the Council licences, operationally delivers and enforces its Markets, Shop Fronts & Street Trading within Hackney.
- 1.3 All Market, Shop Front, Pavement, Street Trading and now since 1 April 2020 Private Market Operator licences are the specific licence that businesses need to trade goods and services. On Private/public land, in Markets or outside of their premises, this includes everything from fruit and vegetables outside convenience stores to tables and chairs outside local cafes, bars and restaurants.
- 1.4 Temporary and Permanent licence applications are available, however permanent applications are only available for licenced streets. Applicants would have to hold a temporary licence for six months before they can apply for a permanent licence.
- 1.5 All applications that are considered before they can become a permanent licence holder are decided by the Council's Officer Licencing Panel (OLP) which consists of a quorum of managers from across the service who are best placed to make a decision and currently meet on a monthly basis. The applicant must meet a set criterion for the OLP to approve a permanent licence.
- 1.6 This licensing and enforcement process and governance has been reviewed, benchmarked, consulted on and fully updated, as referred to in paragraph 4.2, It is solely managed by the Markets, Shop Fronts and Street Trading team and the Markets, Shop Fronts and Street Trading service is a commercial service on behalf of the Council that supports business growth, stimulate the local economy & employment and attracts customer footfall, investment and expenditure into the borough.
- 1.7 The Markets Strategy 2017-2020 approved by Cabinet in July 2016 contained the following recommendations:

The Service to set Market, Shop Fronts & Street Trading Standards and Guidelines for: -

- Ensuring our Markets and Trading sites are managed Fairly and Transparently,
- Improving the Shopping Experience for our Customers

- Support Enterprise and Growth
- Secure the Financial Sustainability of the Service

1.8 To deliver the above objectives the Service has updated all of its Rules of Governance over the past 18 months and has delivered a one stop shop document that contains all aspects of Governance which also delivers on the objective of operating in a fair and transparent way. Thus providing licence holders and customers the most transparent and accessible document of any Markets Service in the UK. \* Further details of the Rules of Governance document are detailed in section 4.2.

\*As identified by both NABMA (National Association of British Market Authorities) and the NMTF (National Market Traders Federation)

1.9 At the time of the publication of this report the Rules of Governance Document is to be presented and shared with a Q&A on completion of the presentation of this report to the Corporate Committee on 9 March 2021.

1.10 It will then be presented and shared with the Lead Member, Other Council Services and all recognised Traders Associations and Representative groups with a Q&A on completion of presentation on 11 March 2021.

1.11 The Document will go live from 1 April 2021.

## 2. **RECOMMENDATION(S)**

**The Corporate Committee is recommended to:**

2.1 **Note the contents of this Document, the volume of governance across the licensable activities and to operate the service to a high standard.**

2.2 **Note the scope and transparency of work being carried out in relation to Markets, Shop Fronts and Street Trading Licensing, Operational Delivery and Enforcement. Hackney is the first service in both London and the UK to produce a document such as this and operate with this level of transparency.**

## 3. **REASONS FOR DECISION**

3.1 This report which is for noting and is in addition to the requirement previously agreed by Corporate Committee to report annually on the Licensing and Enforcement of Markets, Shop Fronts and Street Trading.

3.2 Officers will be available and accessible to committee members to answer any questions relating to the Rules of Governance documentation and annual performance of the Licensing and Enforcement of Markets, Shop Fronts and Street Trading.

## 4. **BACKGROUND**

4.1 In June 2020, the service presented to the Corporate Committee both the Annual performance report of the Shop Fronts Licensing and Enforcement 2019/20 and an update on the recent consultations and proposed revisions to governance of both Terms and Conditions, Operational Delivery and Fees and Charges for Markets, Shop Fronts and Street Trading. The Corporate Committee requested that the service present the completion of the works to improve and update the governance across the service at the next meeting.

## 4.2 Policy Context

### Rules of Governance

4.2.1 For the range of targets and objectives from the Markets Strategy 2017-2020 to be delivered and sustainable, the service has undertaken work over a 12–18-month period researching, benchmarking, developing, consulting and implementing;

- New Terms and Conditions for Markets/Street Trading, Shop Front Trading, Pavement Licence trading and Private Operator Market Trading.
- New suite of Fees & Charges to secure the financial sustainability of the service, resulting in some of the most competitive fees and charges in London.
- Improved transparency and alignment to the legislation of the Officer Licensing Panel process and procedures including the introduction of an appeal process at Local Authority level in addition to the rights of a magistrate's appeal hearing under the LLA 1990 as amended.
- Introduction of the Pavement Licensing Policy and Process following the introduction of the Business & Planning Act 2020.
- Introduction of the Private Market Operator Licence Policy and Process
- Clarity of the code of conduct for Traders Associations and Stakeholder involvement, including how to create a Trader Association.
- Collection of updated and relevant governance and terms of reference, processes and procedures pertaining to the ongoing management, delivery and enforcement of the service such as Service handbooks, Advisory Board Meetings and commodity regulations etc.

### Terms and Conditions

4.2.2 There are a number of significant updates to the Terms and Conditions documents specifically pertaining to;

- Creation of the Borough's first ever bespoke T&C for Shop Front and Pavement Trading.
- Improving the appearance of stalls, gazebos and trading units across all markets, shop fronts and street trading.
- Conditions updated to reflect current consumer legislation.
- To provide more specific conditions to ensure full compliance with aspects to waste management from licence holders.

- Additional conditions to recognise changes in the industry such as many traders now trade directly from specially made vehicles or receptacles such as pods, many of which are street food traders.
- Improvements to the management and food standards across street food traders.
- Providing more specific conditions to ensure full compliance with aspects of health and safety legislation.
- Modernise the position which presently allows a permanent licence to be passed on to a relative or assistant after a defined period of years.
- To improve the vetting of potential traders and shop front licence applicants, particularly street food traders/vendors which are an expanding area of the markets and shop fronts service.
- Re introduce support and processes for Maternity Leave and Long-Term Sick in line with the legislation.
- To revise the conditions regarding management and enforcement, whilst clarifying the severity of contraventions and the enforcement process in line with the council's enforcement policy.

## **Fees and Charges**

4.2.3 The primary drivers of the fees and charges amendments are outlined below and implemented to;

- Adopting a fair and consistent commercial pricing strategy to reflect the financial viability of each site on an individual basis to ensure they are self-financing.
- Eliminate and reduce future risks for the need of public funds to subsidise the costs of running the markets service, with any surplus reinvested back into the service.
- Levying fees & charges which reflect the true cost to the Council of providing the markets/street trading, shop front trading, Pavement and Privately Operated Sites.
- Encouraging markets/street trading, shop front, pavement and private market trading to continue to thrive and in turn further support growing local employment and driving the local economy.
- To facilitate strategic development of specific markets and trading sites – growing markets, increasing occupancy, improving layouts, seeing an uplift in the quality of goods on offer and developing specialised markets where demand exists;
- Supporting new and existing traders to grow their businesses and enterprises within the London borough of Hackney.

## Officer Licensing Panel (OLP)

4.2.4 The previous approach and terms of reference of the Officer Licensing Panel was identified, in its current format, to pose risks to the Council in terms of transparency and compliance to the legislation. The following amendments were made accordingly;

- OLP meetings to be held monthly and not ad hoc, as the legislation states that once applications are made the Council has a duty to decide within a reasonable timescale whether to grant the application or not. 28 days is viewed legally as a reasonable timeframe.
- All of the Trader applications processes and revised forms, which were updated in 2019, are to continue to operate as they do now with no further recommended changes.
- The Markets and Street Trading Operations Manager now uses more than one platform to advertise the monthly closing date for applications and available pitches. All vacant pitches are now advertised in multiple points in the markets, not just at the markets office and an email is sent to all traders advertising the monthly OLP and closing date with a link to the application process. This will ensure all traders are communicated to effectively and given a fair opportunity to apply if they so wish. This approach will also create a more open and transparent process than previously perceived by traders.
- The previous procedure of copies of the traders' applications being shared to give an opportunity for respective trader's associations to provide comments and decisions on other traders' applications ceased as this was in contravention with the legislation and placed the Council at risk. The process has been realigned in accordance with the LLA 1990. It will also remove the risk of the council breaching GDPR data protection guidelines by sharing personal information and application data of traders to unauthorised third parties. The Markets Team continue to contact and seek comments from respective services such as Environmental Health and Trading Standards regarding any application where their advice/approval is required.
- The continuation of the current process for trader representation at the OLP is retained, as this is robust and legally compliant with the legislation. Additionally, the minimum three-week (3) notice period of the date of OLP when representation is required shall also remain in place.
- The Delegated Authority for decision-making for the Officer Licencing Panel has been transferred from the Director of Public Realm to the Head of Service for Parking and Markets Services and in their absence to the Service Area Manager for Markets & Street Trading.
- The Head of Service for Parking and Markets Services and/or Service Area Manager for Markets, Shop Fronts & Street Trading will chair the panel meeting and will be supported by 2 of the following officers; Markets and Street Trading Operations Manager, Principal Licensing and Development Manger and the Shop Fronts Team Leader who will form a panel of senior officers to make decisions on traders

applications to issue, renew, vary or revoke a Market/street/shop front/pavement or private market operator trading licence and hear any traders licensing issues that may arise.

- A quorum of 3 was agreed from the previously held two, to ensure a decision can always be made and avoid a deadlock scenario.
- Adoption of an additional appeal/review process to be heard in person by an Independent Head of Service within 28 days of receipt of the review request of the OLP decision. The trader must put in a written request within 21 days of the date of the OLP decision to refuse the application. This will not affect the traders statutory right to lodge an appeal with the Magistrates court after an internal appeal/review is heard but will provide the council an additional layer to reduce risk or reputational damage if we have to defend a decision in court.
- Following the outcome of this additional appeal process the trader can exercise their legislative right to appeal to the council's decision to refuse to issue, renew or revoke a current permanent/temporary licence through the OLP to the Magistrates Court. The trader can proceed directly to appeal the decision to the Magistrates court if they so wish.

## **Pavement Licence Process & Procedure Implementation**

4.2.5 Following the Governments introduction of the Business & Planning Act 2020. The Service had to create a brand-new licensing process and set of procedures in 6 weeks. The new legislation and procedures adopted lawfully allow the Markets, Shop Fronts and Street Trading Service to create the following processes as part of our statutory duty to fulfil our obligations under the Business and Planning Act 2020:

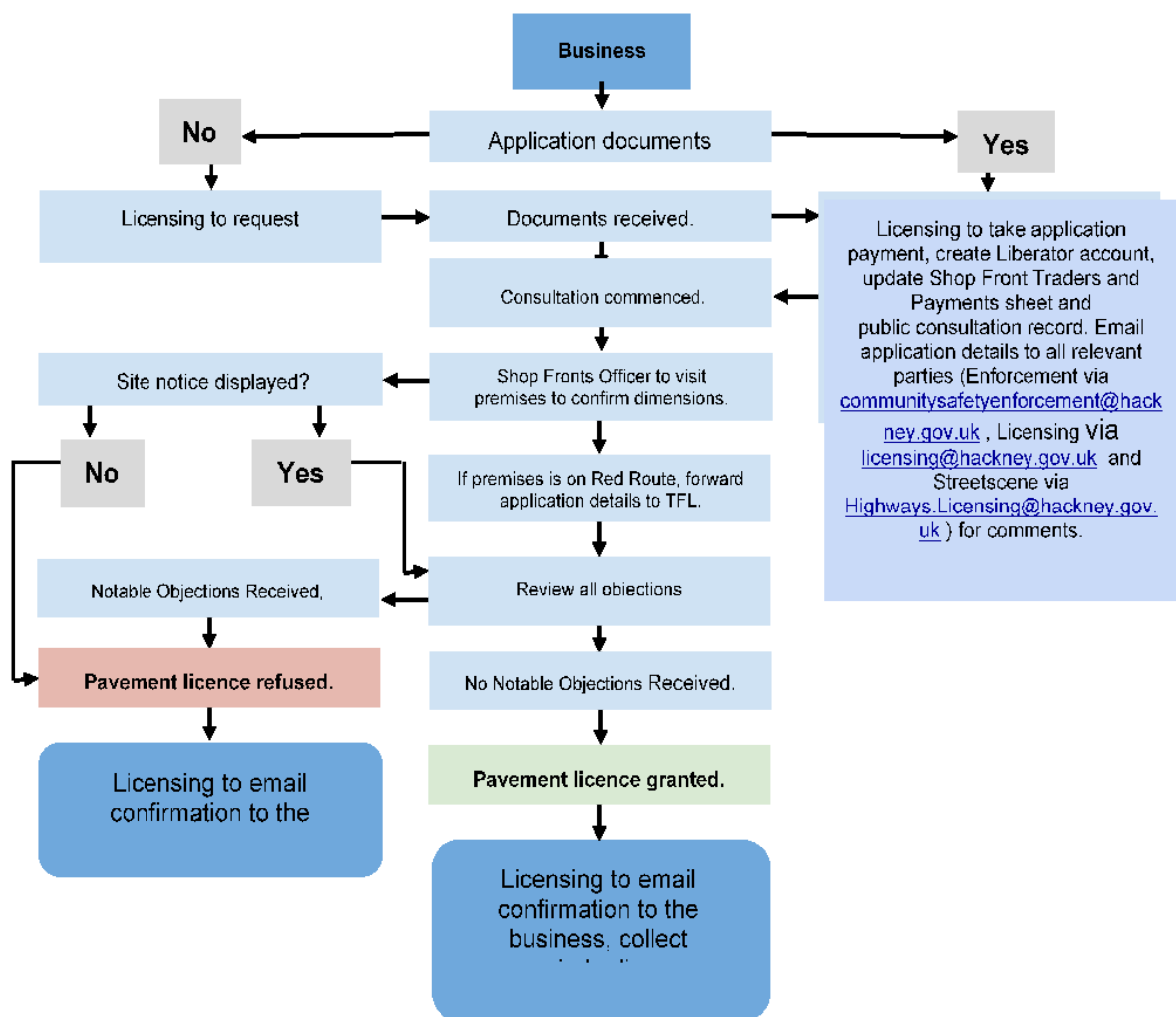
- Creation of website pages and application process map.
- New application forms both digitised and paper based were designed and implemented providing the ability for businesses to access on line, in person or via email on request.
- A dedicated email inbox was created and incorporated into the service to receive applications and answer any queries.
- Creation of a Pavement Licence Policy.
- Creation of a set of Terms and Conditions for the Pavement licence, underpinned by the legislation.
- Creation of a Fees and Charges schedule in line with the Legislative guidelines. \*
- Creation of a Licence plate to be displayed once issued in accordance with the legislation and localised terms and conditions.
- Adoption of any National Terms and Conditions as specified by the Secretary of State.
- Creation and adoption of the Licensing and enforcement processes and procedures.

- Creation and delivery of the decision-making process for the issuance or refusal of licence applications. This is a multi service process with a tight turnaround time of 10 days following the initial application.
- Live application process fully accessible by residents and stakeholders can be accessed via the council [Consultation Hub](#).
- All Documentation can be viewed on the webpage found [here](#).

\*Important to note the fee is set for £100 per application by Government and costs the borough to operate at present.

4.2.6 The below process flow chart highlights the application process for the pavement licences:

### Pavement Licence Flow Chart





## **Private Operator Licences**

- 4.2.7 Historically the council has not had any regulatory control or relationship with private operators within the borough and had no policy or process in place to mitigate any negative impact to our streets, residents and existing market operations. Nor was there an established, cooperative approach to delivering retail offerings that benefit the local community and stimulate growth in both local employment and the local economy.
- 4.2.8 From 1 April 2020 the Council introduced its market rights to licence private operators. The legislation does not permit retrospective licences; however, it provides the ability to request and enforce specific conditions on existing operators was permitted and as such provided the Council the opportunity to manage and mitigate the volume of operators, types of commodities sold and protect the Councils reputation in doing so.
- 4.2.9 The current approach taken implemented from April 1<sup>st</sup> 2020 which consists of:
- Creation of website pages and application processes can be accessed [here](#).
  - New application forms both digitised and paper based were designed and implemented providing the ability for businesses to access on line, in person or via email on request.
  - A dedicated email inbox was created and incorporated into the service to receive applications and answer any queries.
  - Amendment to the existing Markets Service Policy regarding Private Operators.
  - Creation of a set of Terms and Conditions for the Pavement licence, underpinned by the legislation.
  - Creation of a Fees and Charges schedule which is the cheapest in both London and the UK.
  - Creation of a Licence plate to be displayed once issued in accordance with the legislation and localised terms and conditions.
  - Creation and adoption of the Licensing and enforcement processes and procedures.
  - Creation and delivery of the decision-making process for the issuance or refusal of licence applications.

## **Traders Association & Stakeholder Code of Conduct Guide**

- 4.2.10 Following requests for support from traders and residents on how to create and manage a representative body and become a stakeholder, we have introduced a guidance document to encourage, engage and explain how to set up or operate a Traders Association. Traders Associations can engage with the Council, by collaborating on performance, strategic aims and objectives and to raising concerns or questions. Additionally, to protect the

markets, traders and Council from stakeholders who are operating unlawfully, not conducting themselves or managing their organisation in line with the policies or legislation.

4.2.11 All Council Officers and Elected Members have a code of conduct in place that provides a framework for their behaviour, decisions and actions taken. This aligns all Stakeholders to the Council processes and procedures and supports them in maximising their input and actions in delivering both operational and strategic aims and objectives. The code of conduct covers off the below subsections;

- Serving the public
- Representing the Traders
- Honesty and Integrity
- Accountability
- Respect for Others
- Management & Leadership
- Political Neutrality

4.2.10 The guide also covers off educational information and explanations to support interested parties in creating an association and existing licence holders taking up roles, within established organisations in ensuring they are complaint and operating effectively. It also provides;

- Expansion on the Code of Conduct headings.
- How to create a representative body such as a Traders Association
- Roles & Responsibilities
- How to deal with finances, membership and maintenance of records.
- Creating a Constitution
- Holding meetings and elections such as AGMs and EGMs
- Guidance on dealing with press enquiries
- Social Media online content Guidance

### **Other Guidance and Terms of Reference Information Included**

4.2.11 Also included in the Rules of Governance and Terms of Reference are the following updated documents;

- Copies of the Markets Service and Pavement Licence Policies
- All of the Different Licence Terms and Conditions
- A Board guidance
- Commodity Regulations
- Markets/Street Trading Handbook
- Shop Front Trading Handbook (also includes A board Guidance)
- Markets Strategy
- Enforcement Policy
- Terms of Reference (TOR) for Strategic and Operational Meetings
- TOR for the Markets Service Advisory Board Meetings

- TOR for The Corporate Committee
- Social Media code of conduct and Guidance
- Unreasonable and Unreasonably Persistent Customer Behaviour Policy & Guidance

4.2.12 This document will be reviewed twice yearly at six (6) month intervals to ensure it is fully up to date and the new edition updated on the website and link sent to all existing licence holders.

### **4.3 Equality Impact Assessment**

4.3.1 The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.

4.3.2 There is no identified equality impact on any of the groups with protected characteristics emanating from the recommendations in this report.

### **4.4 Sustainability**

4.4.1 This document will be reviewed twice yearly at six (6) month intervals to ensure it is fully up to date and the new edition updated on the Website and link sent to all existing licence holders accordingly, as and when updates are made.

4.4.2 New policies or legislation can only be brought into effect from 1 January or 1 April in regards to Governance pertaining to Markets, Shop Fronts and Street Trading.

4.4.6 The release and subsequent ease of access of this document provides the ultimate transparency of all governance and regulatory policies and procedures pertaining to the service and will further improve compliance from licence holders and allow authorised officers to act swiftly on any breaches and under the delegated powers of enforcement, facilitate them in case managing the end-to-end process internally, rather than passing on cases to external services.

4.4.8 We originally planned in April 2020 to commence the introduction of the Rules of Governance but due to the emerging pandemic and need to support our licence holders and deliver essential services to the local community, we have deferred implementation to April 2021.

### **4.5 Consultations**

There are no consultation issues emanating from the recommendations in the report.

## **4.6 Risk Assessment**

4.6.1 It is important that the London Borough of Hackney adopts a robust and accountable regulatory regime in relation to all aspects of street trading. It needs to ensure that the risk of non-compliance and the regulatory burden to both the Council and the licence holders is minimised.

4.6.2 There are no risk assessment issues emanating from the recommendations in the report.

## **5. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

There are no direct financial implications emanating from the recommendations in the report.

## **6. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE SERVICES**

6.1 Street Trading in the Borough is mainly controlled under the provisions of the London Local Authorities Act 1990 (as amended) (“the Act”).

6.2 Under section 24(1) and (9) of the Act, if the Council consider that street trading should be licenced in their area, they may pass a resolution designating any street within the borough as a “licensed street” for which a street trading licence is required to trade and rescind any designation of a street as a licence street.

6.3 Under section 25 of the Act, the Council is responsible for granting, renewing, varying or revoking all street trading licences.

6.4 Under section 27(3) of the Act, the Council may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal of the same for the proper management and regulation of street trading within the London Borough of Hackney.

6.5 Under section 30 of the Act, any person aggrieved by the refusal by the Council to grant or renew a licence has the right to appeal to the Magistrates’ Court at any time before the expiration of the period of 21 days beginning with the date upon which notification in writing is given of the refusal or decision.

6.6 Section 32 of the Act sets out the council’s ability to charge fees and also the basis as to the level fees that can be set.

6.7 Section 34 and 38 of the Act provides that the Council’s may prosecute in respect of breaches of conditions on a street trading licence and/or illegal street trading, respectively.

- 6.8 The licensing of market and street trading under the 1990 Act is a Council function which has been delegated to the Group Director of Neighbourhoods and Housing to exercise.
- 6.9 Other types of Licensable Street Trading Activities in the borough are also licenced and controlled under the provisions of the following acts The Business and Planning Act 2020, Part III of the Food Act 1984 and The Highways Act 1980. (“the Acts”).
- 6.9 There are no further legal or proprietary implications arising from this report.

## APPENDICES

Appendix 1 - Copy of the Rules of Governance which will be introduced from 1 April 2020. The document is a one stop shop for all governance pertaining to the management, enforcement and operational delivery of the Markets, Shop Fronts and Street trading Service in the London Borough of Hackney.

## BACKGROUND PAPERS

None

<b>Report Author</b>	Daniel O’Sullivan Markets and Street Trading Service Area Manager Daniel.o’sullivan@hackney.gov.uk 0208 356 5981
<b>Comments of the Group Director of Finance and Corporate Resources</b>	Nurur Rahman Group accountant <a href="mailto:Nurur.rahman@hackney.gov.uk">Nurur.rahman@hackney.gov.uk</a> 0208 356 2018
<b>Comments of the Director of Legal and Governance Services</b>	Amanda Nauth Solicitor for Licensing & Corporate <a href="mailto:amanda.nauth@hackney.gov.uk">amanda.nauth@hackney.gov.uk</a> 020 8356 6295 6345