

Report to Overview and Scrutiny Committee



Date of meeting: 7 December 2021

Portfolio: Community and Regulatory Services (Councillor A. Patel)

Subject: Proposed Epping Forest District Market Policy

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Recommendations/Decisions Required:

Overview and Scrutiny Committee are asked to comment and make recommendations on the adoption of an Epping Forest District Market Policy and associated Fees Policy, for consideration by Cabinet at its meeting on 25 January 2022.

Report:

1. The Council recognises the important contribution that markets can make to the local economy and the character of an area. Markets can deliver economic growth and regeneration; they offer an opportunity for small businesses to get started for a relatively modest financial outlay, help increase town centre vitality and contribute in a number of ways to the local communities they serve.
2. The promotion of markets is an important inclusion in the town centre regeneration projects for Epping, Loughton, Ongar, Waltham Abbey and Buckhurst Hill, and for the district as a whole. It is also particularly relevant, following the coronavirus pandemic which has redirected community focus towards the outside shopping and hospitality experience.
3. The Council currently controls street trading in the district through Street Trading Consents, by powers vested in it, under Schedule 4 of Part 3 of The Local Government (Miscellaneous Provisions) Act 1982. However, these Consents are most appropriately applied to a single trader operating from one stall or vehicle and not to market events which consist of multiple stalls each selling different products by different individual traders. In order to support the vision of the Council to encourage markets as part of the district's economic diversification, it is necessary to look to alternative legislation.
4. The Council has powers under Part 3 of the Food Act 1984, to hold markets within its area and has the right to licence and control the frequency of such markets. It is good practice for Councils to publish a Market Policy and have a licensing regime that allows it to influence the nature and type of market for the benefit of the community; to distinguish between commercial and community-based markets or those with a strong charitable element; to ensure conditions are in place to meet legislative controls including to protect public safety; and that these can be consistently and fairly applied to all traders wishing to operate in the district.
5. The Market Policy will include commercial and community-based markets or those with a strong charitable status. However, Council run markets fall outside the scope of the Market Policy. This includes North Weald Market operating under a lease agreement with the Council, and any other Council operated occasional market events, such as plant and craft fairs, Christmas and summer markets, festivals and other themed markets across the district. Markets that operate by virtue of an historic Royal Charter are also out of scope, these being the weekly markets run by the Town Councils at Epping, Ongar and Waltham Abbey. Such markets are also entitled to the right of protection within a common law distance of six and two third miles - measured 'as the crow flies'. This common law entitlement is part of a local authority's market rights and has been upheld by a Court of Appeal.

6. The draft Market Policy, has been subject to a full public consultation including relevant partners, authorities, trading bodies, local businesses, Town and Parish Councils. The consultation was published on the website for the full consultation period. A number of comments have been received and several amendments have been made to the original draft. The new amended draft Policy is at Appendix 1 of this report. A summary of the consultation comments is documented at Appendix 2, together with any proposed amendments or officer comments and these are explained in more detail in the section '**Consultation undertaken**' below.

7. The Policy includes a licensing process that requires certain insurances and documentation to be presented at application stage, with an appropriate fee and, on approval, the market licence will be subject to licence conditions to protect public safety, nuisance, highways issues and other regulatory concerns. It is proposed that all commercial markets will be subjected to the licensing regime, however, only large-scale community-based or charitable markets, will require a licence. This rationale is to ensure that the small, ad hoc markets, many of which have operated for many years across the district without any adverse issues or complaints arising, are not burdened with unnecessary bureaucracy. It is considered however, that a community/charitable market operating 25 or more stalls should be included in the licensing regime as the risks to public safety and other environmental health, health and safety etc are likely to be relevant and justify scrutiny.

8. A charging process will be included within the licensing regime. A Fees Policy and schedule is proposed at Appendix 3 of this report. The fees for commercial markets vary depending on the size and frequency of the market event over the year and have been calculated based on reasonable and proportionate estimate of the time required to process applications, initial site visits, draft licence agreement and ongoing costs associated with compliance visits, responding to enquiries, complaints and associated administration. It is proposed that community-based or charitable markets providing 25 or more stalls are charged a flat fee of £100 to cover administrative costs. An additional cost per market may apply where such a market is held more than once in any calendar year and will be based on the market formula set for commercial markets. These fees, if approved will be included in the Council's current Fees and Charges Schedule and will be subject to the Council's annual fee review.

9. Finally, Cabinet will be asked to ratify a piece of legislation relevant to this Market Policy, that is known to have been adopted by Members historically but does not appear in any current records. The Council has adopted Section 37 of the Local Government (Miscellaneous Provisions) Act 1982, that requires any person intending to hold a temporary market to notify the Council in advance, so that if appropriate the Council can take steps to remove the permitted development rights to hold such a market and require the operator to apply for planning permission to do so. However, whilst the Council's Constitution references the said legislation in its delegations, no minuted records exist to evidence the adoption of the legislation in the first instance. Our Legal Services recommend that for completeness and to protect against any potential challenge in the courts, that this legislation be ratified and minuted again by the current Cabinet.

10. Overview and Scrutiny Committee are asked to comment on the proposed Epping Forest District Market Policy and the Market Fees Policy, before its consideration at Cabinet on 25 January 2022.

Reason for decision:

The Council wants to encourage a market trading environment that compliments the surrounding area and retail offer, that is sensitive to the needs of all users of our town centres and provides a diversity of choice for consumers.

A Market Policy is proposed that will allow the Council to influence the nature and type of markets in a particular locality for the benefit of the community. It will also include an appropriate regulatory framework, through a licensing regime that will set licence fee conditions to protect public safety, nuisance, highways issues and other regulatory concerns

Applications for a Market Licence administered and enforced by the Licensing Team within the Regulatory Service will be subject to a fees schedule that will be reviewed annually.

Options considered and rejected:

The Council has a policy for controlling street trading of single market operators in the district by virtue of street trading consents. However, it is not appropriate to apply this mechanism to market events which consist of multiple stalls each selling different products by different individual traders.

Powers vested in the Council under Part 3 of the Food Act 1984, allows it to hold markets within its area and affords the right to licence and control the frequency of such markets. It is also good practice for councils to publish a Market Policy and have a licensing regime that allows it to influence the nature and type of market for the benefit of the community.

To not adopt a new policy to address market trading events prevents the Council from having the necessary framework to influence and control the market offer to local communities and fails to provide a robust and fair regulatory regime.

Consultation undertaken:

There is no statutory requirement to consult before determining this licensing policy however the Council has chosen to consult with the following:

- The National Association of British Market Authorities (NABMA)
- The National Market Traders Federation (NMTF)
- Members of the Council, including Town and Parish Councils
- Local businesses
- Existing operators
- Essex Police
- Essex Fire and Rescue
- Essex Highways
- Essex Trading Standards
- Epping Forest Planning Authority
- Environmental Health
- Relevant Council services responsible for planning, environmental health, licensing, economic regeneration, legal services and town centre operations

A copy of the policy was also placed on the Council's website inviting comments.

The consultation ended on 6 December 2021. A table of consultation responses received is attached at Appendix 2, which includes confirmation of any amendments made to the Policy as a result of such responses, and any other associated officer comments.

Any additional consultation responses received after the submission of this report to Overview and Scrutiny Committee will be reflected in the report to Cabinet on 25 January 2022.

The Committee may want to note particularly, the following substantive changes to the first draft submission of the Market Policy as a result of consultation responses and further officer considerations:

- A new paragraph is inserted at 8.4 that states that 'community-based markets with up to 24 stalls will not require a market licence however, the Council's expectation is that they shall comply with the market rules and conditions detailed in this policy as a matter of good practice. Those with 25 or more stalls will require a market licence to which a fee will apply'. This has been included, to ensure that the small, ad hoc markets, many of which have operated for many years across the district without any adverse issues or complaints arising, are not required to apply for a market licence which is considered an unnecessary burden.
- A new paragraph inserted at 11.4 under 'Market Fees' reinforces that a market event with less than 25 stalls does not need a licence and therefore no fee is payable. Any community market that falls under the licensing regime by virtue of having 25 plus stalls will only have to pay a one-off administrative fee. An additional cost per market may apply where a community-based or charitable market with 25 stalls or above is held more than once in any calendar year; any additional cost will be calculated using the market formula contained within the general market licence fee structure.

Resource implications:

There will be no additional staff resource.

A market licence, as required under the Policy, will be subject to an annual fee payable by the market operator. The fees will be reviewed annually and included in the Councils fees and charges schedule

Legal and Governance Implications:

The Council has powers under Part 3 of the Food Act 1984, to hold markets within its area and the right to licence and control the frequency of markets within its district.

Section 37 of the Local Government (Miscellaneous Provisions) Act 1982, is also relevant to the Market Policy. Whilst the Council's constitution references the said legislation in its delegations, no minuted records exist to evidence the adoption of the legislation in the first instance. Cabinet is therefore being asked to ratify and minute the adoption of the legislation again for completeness.

Safer, Cleaner, Greener Implications:

The Market Policy and licence conditions are designed to protect public safety also ensure a suitable waste management plan and that an adequate Event Management Plan and relevant risk assessments are in place.

The provision of outdoor markets may also provide residents and visitors additional confidence on the high street following the covid pandemic experience.

Background Papers:

Epping Forest Council Economic Policy: Nurturing Growth 2020-2025

Buckhurst Hill Regeneration Study 2021
Epping Regeneration Study 2021
Loughton High Road Regeneration Study 2021
Loughton Debden Regeneration Study 2021
Waltham Abbey Regeneration Study 2021

Impact Assessments:

Risk Management

Risk management will be considered with every licence application. Depending on the size and nature of the market event this may include submission of an Event Management Plan and relevant Risk Assessments. Other considerations will include: any previous applications being refused, or consent being revoked; potential risk to the public in terms of highway safety and obstruction such as interference with sight lines, junctions, accesses, pathways and crossings; free flow of pedestrians or vehicles in the street, with particular regard for the visually impaired or those with other physical disability; the nature of goods to be traded, including those deemed inappropriate or to have an adverse health or environmental risk; the likelihood of activity to present crime and disorder or anti-social behaviour risk; potential for noise, odour and litter or encourage vermin; comments received from consultees; other required permissions or consent; and any conflict with any other Council policy. These will be considered by Licensing Officers prior to any market event and additional requirements or adjustments agreed with the market operator before start date.

Equality:

See EQIA at Appendix 4



Market Policy

This document provides policy and guidance for persons wishing to hold private, commercial and/or charity markets together with car boot sales or similar across the district of Epping Forest.

Epping Forest District Council Market Policy

1. Introduction

- 1.1 Epping Forest District Council (“the Council”) recognises the important contribution that markets can make to the local economy and the character of an area. Markets can deliver economic growth & regeneration; they offer an opportunity for small businesses to get started for a relatively modest financial outlay, help increase town centre vitality and contribute in a number of ways to the local communities they serve.
- 1.2 The promotion of markets is an important inclusion in the town centre regeneration projects for Epping, Loughton, Ongar, Waltham Abbey, Buckhurst Hill and the district as a whole and is particularly relevant, following the coronavirus pandemic which has redirected community focus towards the outside shopping and hospitality experience.
- 1.3 The purpose of this policy is to create a market trading environment that compliments the surrounding area and retail offer, is sensitive to the needs of all users of our town centres and provides a diversity of choice for consumers. It seeks to encourage and stimulate investment from local traders and to create a quality and sustainable offer to our residents and visitors.
- 1.4 The Council recognises that there are many different types of market activities and accordingly, the Market Policy is intended to cater for each type. In particular, the Market Policy distinguishes between commercial markets and those that are largely community-based with a strong charitable element. Sections 7 & 8 of the Market Policy deals with the different types of market activities and sets out the Council's approach when considering applications in respect of such markets.
- 1.5 This policy has been written with a view to supporting the following objectives:
 - Recognise the importance and contribution of markets to the wellbeing of the local economy;
 - Enhance the economic diversity of the area;
 - Protect and, where possible, enhance the amenity and character of the District and local communities within it;
 - Offer opportunity for local traders and businesses;
 - Provide traders with guidance and clarity;
 - Encourage residents to spend locally on their High Streets and support their local business community;
 - Ensure coherence with Council policies and relevant legislation; and
 - Promote fairness, transparency and consistency.

2. Consultation and Review of the Market Policy

- 2.1 There is no statutory requirement to consult before determining this licensing policy however to ensure openness and transparency, prior to implementing this policy the Council has chosen to consult with the following:

- The National Association of British Market Authorities (NABMA)
- The National Market Traders Federation (NMTF)
- Members of the Council, including Town and Parish Councils
- Local businesses
- Existing operators
- Essex Police
- Essex Fire and Rescue
- Essex Highways
- Essex Trading Standards
- Epping Forest Planning Authority
- Environmental Health
- Relevant Council services responsible for licensing, economic regeneration, legal services and town centre operations

2.2 A copy of the policy was also placed on the Councils website inviting comments.

2.3 This policy may be reviewed from time to time by the portfolio lead for Regulatory Services. Any revisions made to the policy shall take effect on publication of the policy (as revised) on the Councils website. The policy will also be submitted to the Councils Licensing Committee for overview at 5-year intervals, or sooner if deemed appropriate.

2.4 Anyone wishing to comment on this policy may do so in writing to the Licensing Team Manager, Epping Forest District Council, Civic Offices, 323 High Street Epping CM16 4BZ or via the Councils comments, compliments and complaints page on the Councils website at [Comments, compliments and complaints – Epping Forest District Council \(eppingforestdc.gov.uk\)](http://eppingforestdc.gov.uk) .

3. Council and Charter Markets

3.1 Epping Forest District Council licenses private operators to operate the following markets:

- North Weald Market – every Saturday and Bank Holiday Monday between 8am & 3pm

3.2 The Town Councils in the following areas either do or can operate a market by virtue of an historic Royal Charter:

- Waltham Abbey Market – every Tuesday and Saturday
- Epping Market – every Monday
- Ongar Market – first Sunday of every month

4. Epping Forest District Council's Market Rights

4.1 The towns of Epping, Waltham Abbey and Ongar are legally entitled, by virtue of historic Royal Charter to operate weekly markets. In more recent times, powers have been vested in local authorities under, what is now, Part III of the Food Act 1984, to hold markets and have the right to licence and control the frequency of markets within their district.

- 4.2 In addition to the regular Council markets listed above, the Council may also operate occasional market events, such as plant and craft fairs, Christmas and summer markets, festivals and other themed markets across the district. Accordingly, the above list is subject to change and shall be updated as part of a periodic review of the Council's Market Policy.
- 4.3 Any market other than a market operated by Epping Forest District Council or a Charter market, will be subject to this policy.
- 4.4 The Council has also adopted Section 37 of the Local Government (Miscellaneous Provisions) Act 1982 that requires any person intending to hold a temporary market to notify the Council in advance, so that if appropriate, the Council can take steps to remove the permitted development rights to hold such a market and require the operator to apply for planning permission to do so.
- 4.5 This right has been exercisable for many years and this policy takes into account the relevant legislation.

5. What is a market event and who does the market policy apply to?

- 5.1 The Council's Market Policy is intended to apply to all market events held in the district of Epping Forest that are not a Charter market or are not operated by Epping Forest District Council.
- 5.2 The legal definition of a market is a 'concourse of buyers and sellers' (this means that the public are entitled to attend market events to buy and sell). It should be comprised of not less than five stalls, stands, vehicles (whether moveable or not) or pitches from which articles are sold by a range of different sellers.
- 5.3 A market may be held either outdoors or indoors and on public or private land and includes car boot sales, antique and craft markets, general markets, food markets, farmers' markets and charitable markets but does not include jumble or table-top sales held for charitable or community purposes. However, this list is not exhaustive.
- 5.4 There will be an operator of the market who will be responsible for the organisation and delivery of the market event. A Market Operator means the person, body or organisation to which a market licence is granted by the Council.
- 5.5 A market may sometimes be held as part of a wider event. When this arises the market element (comprising of 5 or more stalls) of the event shall be subject to the Market Policy. Where a premises licence for a wider event (which includes a market element) has been issued by the Council then a separate licence may not be required. However, this requirement shall be determined on a case-by-case basis.
- 5.6 This market policy does not apply to street trading activities. Street trading is controlled by a separate licensing process and relates to the granting of individual trader consents. Further information about street trading activities can be found on the Epping Forest District Council website:
<https://www.eppingforestdc.gov.uk/licensing/apply-for-a-licence/street-trading/>

6. Licensing of Markets under the Council's Market Policy

- 6.1 The Council's consent to a market, by the grant of a market licence, must be given prior to the event taking place. Any market that takes place without such a licence shall be in

breach of the Market Policy and may be subject to the enforcement action described in Section 14 below.

- 6.2 Market licenses are issued to the Market Operator identified in the application (“the Market Operator”) and are not transferrable.
- 6.3 The Council shall consider applications in respect of the following categories of market events:
- a) Commercial markets; and
 - b) Community-based markets (operated for a good cause or special event, with a strong charitable element).

The criteria set out in Section 5 above will be relevant in respect of both Commercial and Community-based markets.

7. Commercial Markets

- 7.1 A commercial market is one which is operated for profit and where the traders are engaged in a business activity of selling goods for their own purposes. The Council shall consider applications in respect of commercial markets whilst also having regard to the following matters:
- No market shall be authorised unless it can be demonstrated that the proposed market complements existing retail activity in the local area and supports the Council’s objective of helping to create a thriving local economy that is attractive and welcoming and does not prejudice the overall market offer. Please note: A lawful Council operated market, Charter market or other market which the Council has issued a licence, is entitled to the right of protection within a common law distance of six and two third miles - measured ‘as the crow flies’. This common law entitlement is part of a local authority’s market rights and has been upheld by a Court of Appeal.
 - The applicant is required to provide a site plan showing the extent of the proposed market area and proposed layout of stalls.
 - Design of stalls must enhance the visual appearance of the area and be constructed in a suitable style and of appropriate materials i.e. simple, functional stalls with canopies or awnings of traditional or modern design.
 - The applicant is required to undertake a risk assessment in relation to the proposed operation of the market and make this available for inspection by the Council upon request.
 - The applicant must ensure that all other necessary consents and licences have been obtained prior to the market taking place. All traders must comply with any relevant statutory requirements, bylaws and other legislation.
 - Where necessary consultation with police, fire, health & safety and highways should be carried out together with any other relevant body.
 - The relevant application fee must accompany the application. The licence fees for any markets licence consist of a non-refundable fixed application fee and a sliding scale

fee based on both the size of the market and the frequency with which the market is to be held.

- All market traders must hold a current public liability insurance policy with cover of at least £5,000,000.00 (five million pounds) for any one claim. The policy must indemnify the Council and its employees against any claim, howsoever arising. Details including name and address of insurance company and policy number must be provided to the Council and upon each renewal date updated details produced and filed in the Council office prior to the market taking place.
- All trading standards guidelines, health and safety requirements and any other relevant legislation must be adhered to. Food businesses with articles exposed or offered for sale for human consumption shall comply with current food & hygiene regulations and be able to demonstrate the required certification.
- Food businesses trading should have a minimum food hygiene rating of 3 (standards are generally satisfactory) or above.
- Type of goods to be sold. The goods must complement and not conflict with goods sold by other retailers in the immediate area.
- Consideration being given to the adjacent retail offer to each individual pitch and limiting the number of those selling similar goods. This encourages diversity of offer and operators should seek to complement rather than compete.
- Demonstrates a preference to the use of local traders and businesses.

7.2 Following outline approval of an application a licensing agreement must be entered into between the Market Operator and the Council and such licensing agreement must be signed by both the Council and the Market Operator before the market takes place. The licence agreement will cover the issues set out in this section and all other matters the Council deems to be relevant including, but not limited to the following:

- Waste disposal arrangements. Applicants have a legal responsibility under the Environmental Protection Act 1990 and other related legislation to safely contain and legally dispose of any waste produced.
- Road closures and traffic management
- Noise and nuisance
- Health & Safety
- Power usage
- Market Operator agrees to allow access to appropriate Council Officers in the interest of public safety.

Any other requirements the Council consider appropriate.

8. Community – Based Markets

- 8.1 Community-based markets are normally organised by local communities or groups with the intention of raising funds for a specific cause or celebrating a special event.
- 8.2 The markets must be operated on a non-profit basis to assist a charity or community, and the operator shall supply relevant information to the Council if requested. Whilst it is acknowledged that some traders will be selling goods for their own purposes, the Council will look for the event to have a strong charitable element in the way the event is organised.
- 8.3 Where a market is being operated on behalf of a registered charity, the operator must provide written permission from the charity organisation to raise funds on their behalf.
- 8.4 Community-based markets with up to 24 stalls will not require a market licence however, the Councils expectation is that they shall comply with the market rules and conditions detailed in this policy as a matter of good practice. Those with 25 or more stalls will require a market licence to which a fee will apply.
- 8.5 In respect of any licence the operator must have adequate insurances, comply with Trading Standards guidelines, health and safety requirements and any other legislative requirements or other statutory provisions laid down by the Council.
- 8.6 Where applicable, a licensing agreement will be entered into between the operator and the Council and such licensing agreement must be concluded before the market takes place. This agreement will include and insist on such other requirements as are deemed appropriate to ensure consumer and public safety standards.

9. Process for Determining Market Applications

- 9.1 An electronic version of the Council's Market Policy, together with the relevant market licence application form, can be viewed and downloaded from <https://www.eppingforestdc.gov.uk/xxxxxxx>.
- 9.2 The application accompanied by the relevant fee should be completed and submitted to licensing@eppingforestdc.gov.uk
- 9.3 The application process will consider such matters as (but not limited to):
 - Has an adequate Event Management Plan been completed with the inclusion of any relevant Risk Assessments? The purpose of the risk assessment is to:
 - a) Identify elements of the event or infrastructure that could cause injury or illness
 - b) The likelihood that someone could be harmed and how seriously (the risk)
 - c) What action will be taken to eliminate the hazard, or if this is not possible, control the riskThe risk assessment will form an important part of the overall event management plan however, the event management plan should consider wider issues including; noise levels and the likelihood of noise disturbance to local residents, crime and disorder, evacuation, parking, stewarding and marshals, staff training, ingress and egress of attendees etc.

Further details on event planning can be found on the Health and Safety Executive website here [Event safety - Running an event safely \(hse.gov.uk\)](https://www.hse.gov.uk/event-safety/) Has the operator held other events within the district, if so, how many and at what frequency?

- Previous applications being refused, or licence being revoked.

- Has permission been granted by the venue/landowner?
- Potential risk to the public in terms of highway safety and obstruction such as interference with sight lines, junctions, accesses, pathways and crossings.
- Free flow of pedestrians or vehicles in the street, with particular regard for the visually impaired or those with other physical disability.
- Road safety, including existing traffic orders and waiting restrictions.
- The nature of goods to be traded. Including those deemed inappropriate or to have an adverse health or environmental risk.
- Likelihood of activity to present crime and disorder or anti-social behaviour risk.
- Whether the grant would create conflict with the trade of existing businesses.
- Likelihood of noise, odour and litter or encourage vermin.
- Comments received from consultees.
- Obtaining of any other required permission or consent.
- Conflict with any other Council policy.

9.4 The Council will aim to deal with applications within a period of 28 days of receipt. Applicants are urged to apply as early as possible to ensure that the Council has adequate time to consider the relevant matters in an appropriate way. In considering the application the Council will require sufficient information to deal with all the issues set out in the criteria listed above and also covered on the application form. Failure to provide full information as highlighted above may lead to a delay in the Council reaching its decision or the application being refused.

9.5 The Council will consult on applications and in doing so it will share information with other agencies as appropriate including Police, Essex County Council Highways, Planning and Environmental Health etc.

9.6 The guidelines detailed in sections 7 & 8 of this policy will be applied when an application is made and received by the Council.

9.7 Where an application is refused, the Council will set out the reasons for its decision in writing. If the applicant wishes to appeal the decision it should do so, in writing, within fourteen days of the Council's written decision. Please see section 10 in respect of the appeals procedure below.

9.8 All decisions to grant a market licence are made at the discretion of Epping Forest District Council. The Council may issue a licence for up to one year or a lesser period where appropriate if the trading activity is seasonal or of a temporary nature.

10. Appeals Process

- 10.1 If the Council determines to refuse an application for a market licence, it will contact the applicant and set out the reasons for its decision in writing.
- 10.2 There is no statutory right of appeal against the refusal to issue a market licence. However, the applicant may appeal against the decision through the Epping Forest District Council complaints procedure.
- 10.3 If the applicant wishes to appeal the decision it should do so, in writing, within fourteen days of the Council's written decision, setting out the reasons why the applicant believes the decision is unwarranted.
- 10.4 On receipt of an appeal request the decision will be reviewed by the Service Manager for Regulatory Services and the applicant informed of the outcome in writing.

11. Market Fees

- 11.1 A reasonable administrative fee will be charged for applications. The fees are set on a cost recovery basis, taking into consideration the time and cost to the Council in determining the application. If the application is successful, there will be an additional fee to cover the cost of ongoing compliance visits.
- 11.2 The additional fee is payable once the application has been granted by the Council. An agreement between the applicant and the Council will be drawn up by the Council and this will require the appropriate fee to be paid at least 7 days prior to the event taking place.
- 11.3 The fees are payable annually and are determined on the type, size and frequency of the market using the following categories:
 - Up to 14 stalls
 - 15 – 24 stalls
 - 25 - 34 stalls
 - 35 – 44 stalls
 - 45 – 54 stalls
 - 55 – 100 stalls
- 11.4 In respect of community-based or charitable markets, markets with up to 24 stalls will not require a market licence and accordingly no fee will apply. For those with 25 stalls or above a flat fee is charged to cover administrative costs. An additional cost per market may apply where a community-based or charitable market with 25 stalls or above is held more than once in any calendar year and any additional cost will be calculated using the market formula contained within the fee structure shown above.
- 11.5 Fees do not include any other fees that may be charged for the operator to comply with other relevant legislation, for example, a Game Licence, Alcohol Licence, Planning or Highways permission.
- 11.6 Fees are reviewed annually and are available on the Council's website.

12. Other Approvals

- 12.1 It is important to emphasise that any approval given by the Council in accordance with this Market Policy shall not remove the requirement for any other relevant approvals, consents or licences to be obtained by the Market Operator.
- 12.2 Where the market is being held on private land, the Market Operator must ensure that approval from the relevant landowner is obtained prior to submitting the market application.
- 12.3 The Market Operator should also consult with the Councils Planning Department to ascertain whether planning consent is required for the market to operate. Any market held in the same location for 14 or more days in a calendar year will require planning consent. Contact: Planning.Admin@eppingforestdc.gov.uk / 01992 564000.
- 12.4 The Market Operator shall be responsible for any temporary road closures and associated traffic management arrangements that may be required in order to facilitate the operation of the market. Essex County Council has legal powers to temporarily close roads and divert traffic in order to facilitate various types of event. Applications for temporary road closures in relation to markets should, in the first instance, be addressed to Essex County Council (see www.essex.gov.uk for more information).
- 12.5 Attention is also drawn to the provisions of the Licensing Act 2003 in respect of any entertainment provided at the market or where a Temporary Events Notice might be required in respect of the sale of hot food or alcohol. Contact: licensing@eppingforestdc.gov.uk / 01992 564000.
- 12.6 The Council has approved the adoption of Section 37 of the Local Government (Miscellaneous Provisions) Act 1982. This Section deals with temporary markets and any operator of a temporary market, together with the occupier of land on which the market is to be held, are required to give to the Council not less than one month's notice of the holding of the market.
- 12.7 Any notice given by the operator and the occupier of the land shall state:
- The full name and address of the person intending to hold the market
 - The day or days on which it is proposed that the market will be held and its proposed opening and closing times
 - The site on which it is proposed that the market will be held; and
 - The full name and address of the occupier of the land if he is not the person intending to hold the market.
- 12.8 It is important to emphasise that the requirements of Section 37 are quite separate to the licensing of events under the Council's Market Policy set out in Section 9. The operator and the occupier of the land should ensure that a notice is given to the Council under the requirements of Section 37 as soon as proposals for a temporary market are under consideration. This will enable the Council to give preliminary consideration to a proposal and indicate its likely view on a subsequent application for a markets licence.

13. Renewing or Termination of the Market Licence

- 13.1 Market licences will be granted for a maximum 12-month period. Operators should re-submit their application if they wish to continue to operate a regular market. This must be done at least one month before their current market licence expires. No reminders will be sent

- 13.2 The market licence may be terminated by either party by giving twenty-eight days' notice in writing.

14. Enforcement

- 14.1 The Council will monitor the application of its Market Policy and any market event which is operated after the date of the adoption of this Market Policy.
- 14.2 Any market which is not approved by the Council under its Market Policy will be subject to legal action and the Council may seek an appropriate remedy in the courts to prevent the market being held and/or damages as appropriate.
- 14.3 Any Market Operator acting in contravention of any market licence granted by the Council will run the risk of the licence being terminated by the Council with immediate effect on such terms as the Council determines and, in such circumstances, the Council reserves the right to refuse any future applications for market licences submitted by the Market Operator concerned or any person or organisation associated with the Market Operator.
- 14.4 Any costs associated with enforcement action deemed necessary as a result of the Market Operator's failure to comply with the Market Policy will be recovered from the Market Operator.
- 14.5 It is the responsibility of the Market Operator to ensure compliance with the conditions of the market licence. This includes ensuring that all traders are aware and comply with relevant conditions.
- 14.6 The Council will deal with complaints about markets using its existing policies depending upon the complaint.

15. Market Rules and Conditions

- 15.1 The Market Operator shall not permit the sale, exchange or giving away of live animals, birds, fish, reptile or other livestock on the market place.
- 15.2 No firearms (real or imitation), air weapons, sheath knives, cut-throat razors, hunting/fighting knives, bows or crossbows may be available for sale (domestic cutlery is permitted). The sale of any item that may be deemed to be of a harmful, objectionable or offensive nature, or that is prohibited by current Acts of Parliament, is not permitted.
- 15.3 Loudspeakers, instruments or other noise generating appliances are not to be used or shall be so moderated as not to cause any nuisance, annoyance or disturbance.
- 15.4 Where the market is held on the public highway, there must be an absolute minimum of 0.450 metres from the kerb edge to a market stall/person serving at the market stall.
- 15.5 Vehicles to unload and load the market are not exempt from existing parking restrictions/taxi bays/disabled parking bays, therefore it is important to consider where they can park safely without having an impact on any other highway user.
- 15.6 Where the market is held on the public highway, market vehicle parking should be considered as most locations cannot accommodate all day parking.
- 15.7 Where the market is held on private land, the Market Operator must ensure that there is adequate parking on the market site for both sellers and buyers.
- 15.8 Where applicable, the Market Operator must ensure that there are sufficient stewards on duty to control traffic entering and leaving the market site and to control parking on the site in a safe manner.
- 15.9 Market loading and unloading must not cause any trip hazards.

- 15.10 Traders/the Market Operator must supply their own stalls, including any tables and awnings.
- 15.11 Awning and stalls used must be stable in all weather conditions and not present a danger to other market/highway users.
- 15.12 Awnings for stalls must not present trip hazards.
- 15.13 Market stalls and stock should not block any highway crossing facilities and/or any access to highway crossing facilities.
- 15.14 Market stalls should not be placed in any particularly narrow sections of the footway.
- 15.15 Market stalls should be allocated positions that ensure any queues do not block the footways.
- 15.16 Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, older people and those with mobility needs. A width of 2m should be maintained but where this is not possible, 1.5m will be the minimum width allowed. Market stalls must be located to ensure that queues do not impede access routes.
- 15.17 Stalls should not have goods spread across the footway in front of them.
- 15.18 The Market Operator must provide suitable receptacles for the disposal of litter and ensure that all rubbish is removed from the vicinity of the market at the end of the day's trading.
- 15.19 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 Council may direct.
- 15.20 No goods may be displayed or sold which in the opinion of the Council are inappropriate, dangerous or likely to cause offence to other traders or members of the public.
- 15.21 No goods may be displayed or sold that are counterfeit or in breach of copyright or patent.
- 15.22 No mains-powered electrical goods may be sold except for new items still in their original packaging.
- 15.23 Second-hand or used electrical goods may not be sold, even if PAT-tested
- 15.24 All traders must familiarise themselves with the conditions of the licence issued by the Council.
- 15.25 All incidents, accidents and "near misses" involving Traders, their staff or members of the public must be recorded and reported as soon as possible to the Council.

This list is not exhaustive, additional conditions may be added or removed to the licence dependant on the type and size of the event.

Responder	Comment	Proposed Action Taken
Essex Police – received via email	15.16 An acceptable width of footway should be left available at all times – What is “acceptable “ it maybe useful to stipulate a distance or for example “ Wheel chair , pushchair access “	<p>Amend 15.16 to include; Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, older people and those with mobility needs. A width of 2m should be maintained but where this is not possible, 1.5m will be the minimum width allowed. Market stalls must be located to ensure that queues do not impede access routes. This is consistent with pavement licensing policy.</p> <p>Outcome achieved; This is consistent with current pavement licensing policy and provides clear guidance to operators.</p>
Friends of Swaines Green - organisers of the annual May Fayre – received via email	<p>Point 1.</p> <p><i>5.4 There will be an operator of the market who will be responsible for the organisation and delivery of the market event. A Market Operator means the person, body or organisation to which a market licence is granted by the Council.</i></p> <p><i>5.5 A market may sometimes be held as part of a wider event. When this arises the market element (comprising of 5 or more stalls) of the event shall be subject to the Market Policy. Where a premises licence for a wider event (which includes a market element) has been issued by the Council then a separate licence may not be required. However, this requirement shall be determined on a case-by-case basis.</i></p> <p>Clearly we will need a market licence for the May Fayre, but this implies we would require a licence for a ‘wider event’ – is this correct and what further licence would we need?</p> <p>Point 2.</p> <p>We note that our May Fayre is a ‘Community based market’ according to your section 8, although the implications are not clear.</p> <p><i>8.4 In respect of any licence the</i></p>	<p>Point 1.</p> <p>Amend draft policy to state; Community-based markets with up to 24 stalls will not require a market licence however, the Councils expectation is that they shall comply with the market rules and conditions detailed in this policy. Those with 25 or more stalls will require a market licence to which a fee will apply.</p> <p>Advice given regarding other licensing requirements that may apply i.e. premises licence or Temporary Event Notice if Alcohol is to be sold.</p> <p>Outcome achieved; To remove the requirement for small to medium events to apply for a market licence but to encourage compliance with the market rules and conditions detailed in the policy as a matter of good practice.</p> <p>Point 2.</p> <p>No proposed action. The policy states that all market traders must hold a current public liability insurance policy with cover of at least £5,000,000.00 (five million pounds) for any one claim, but we do not specify an amount for the operator. The Councils view is that this is a matter for the operator to determine in discussion with their insurer as they will be best placed to advise on the appropriate level of insurance cover required.</p> <p>Should the Council determine to remove the</p>

	<p><i>operator must have adequate insurances, comply with Trading Standards guidelines, health and safety requirements and any other legislative requirements or other statutory provisions laid down by the Council.</i></p> <p>We have insurance for the May Fayre, but there is no indication of what level is 'adequate'. How should we interpret that?</p> <p>Point 3.</p> <p><i>9.3 The application process will consider such matters as (but not limited to):</i></p> <ul style="list-style-type: none"> <i>• Has an adequate Event Management Plan been completed with the inclusion of any relevant Risk Assessments?</i> <p>No information is given on what you consider an Event Management Plan to comprise, nor of what Risk Assessments you would require. Please clarify to provide enough information so that this requirement can be complied with. Does the Council require a copy of these documents as part of the licensing process?</p> <p>Point 4.</p> <p><i>15. Market Rules and Conditions</i></p> <p><i>15.1 The Market Operator shall not permit the sale, exchange/giving away or display of live animals, birds, fish, reptile or other livestock on the market place.</i></p> <p>We need a lot more clarity on this point. We normally include</p>	<p>requirement for community/ charity-based markets with less than 25 stalls to hold a market licence, then the Council will not be imposing any formal requirements on the event organisers. However, it is the Councils expectation that all operators comply with the market rules and conditions detailed in the policy as a matter of good practice.</p> <p>Outcome achieved; Clarification provided</p> <p>Point 3.</p> <p>Amend policy to include; Market operators, should have a risk assessment in place to protect themselves, volunteers, traders and those attending the event from potential harm. The purpose of the risk assessment is to;</p> <ul style="list-style-type: none"> • Identify elements of the event or infrastructure that could cause injury or illness • The likelihood that someone could be harmed and how seriously (the risk) • What action will be taken to eliminate the hazard, or if this is not possible, control the risk <p>The risk assessment will form an important part of the overall event management plan however, the event management plan should consider wider issues including; noise levels and the likelihood of noise disturbance to local residents, crime and disorder, evacuation, parking, stewarding and marshals, staff training, ingress and egress of attendees etc.</p> <p>Further details on event planning can be found on the Health and Safety Executive website here Event safety - Running an event safely (hse.gov.uk)</p> <p>Outcome achieved; Clarification and guidance provided to applicants.</p> <p>Point 4.</p> <p>Amend 15.1 as follows;</p> <p>15.1 The Market Operator shall not permit the sale, exchange/giving away of live animals, birds, fish, reptile or other livestock</p>
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	<p>stalls supporting charities for ferrets, owls, sometimes lizards etc., and these stalls have these animals on display for the public to see and sometimes handle. This is typical for a public event of this type anywhere in the country, and it would be very disappointing not to have these.</p> <p>In addition, we need to determine if this regulation prevents us from having a dog show, ferret races, or a bird of prey demonstration, for example. If it does not, then this regulation needs expressing more clearly.</p>	<p>on the market - place.</p> <p>Outcome achieved; This will no longer prohibit the exhibition of animals etc.</p>
Epping Horticultural Society (EHS) – telephone enquiry	Concerns raised that annual EHS flower show at St Johns Church Epping will under the proposed policy require a market licence due to the event having between 6 -12 stalls and this will not be financially viable.	<p>Amend 8.3 of draft policy as follows; Community-based markets with up to 24 stalls will not require a market licence however, the Councils expectation is that they shall comply with the market rules and conditions detailed in this policy as a matter of good practice. Those with 25 or more stalls will require a market licence to which a fee will apply.</p> <p>Outcome achieved; To remove the requirement for small to medium events to apply for a market licence but to encourage compliance with the market rules and conditions detailed in the policy as a matter of good practice.</p>
Officer correction/ modification	<p><i>11.3 The fees payable is determined based on whether the application is for the grant or renewal of an existing licence and the type, size and frequency of the market using the following categories.</i></p> <ul style="list-style-type: none"> • <i>Up to 10 stalls</i> • <i>11 – 30 stalls</i> • <i>31 plus stalls</i> 	This paragraph is corrected to reflect that we do not propose a renewal process; a licence will be for 12 months and renewable annually. Also the criteria of number of stalls per fee has been amended to reflect more realistic costs
Officer correction/ modification	<p><i>13.2 The Council will not send out reminders for renewals. It is up to the operator to renew their application on time. Lapsed market licences will be dealt with as new applications.</i></p>	This paragraph is deleted as we do not propose a renewal process. A licence will be granted for 12 months and a new licence application submitted each year as per 13.1

Commercial Markets

1. An initial administrative fee is charged as part of the market licence application process, which is non-refundable, regardless of the application outcome, subject to mitigating circumstances
2. An additional fee is payable once the application has been granted by the Council
3. The Market Licence will be for a period of 12 months after which a new application will be required

Fee Schedule

The fees are payable annually and are determined on the size and frequency of the market

Number of Stalls	Application Fee (including 1 st Market)	Additional amount per market	Example annual cost for 12 markets
Less than 15	£100	£10	210
15 - 24	£150	£15	315
25 - 34	£200	£20	420
35-44	£300	£30	630
45 – 54	£400	£40	840
55 - 100	£500	£50	1,050

The fees have been calculated based on reasonable and proportionate estimate of the time required to process applications, initial site visits, draft licence agreement and ongoing costs associated with compliance visits, responding to enquiries, complaints and associated administration.

Community- based and Charitable Markets

1. Market events with up to 24 stalls do not require a markets licence and no fee is applicable
2. Market events comprising 25 stalls require a market licence. A single fee of £100 is charged as part of the market licence application process which is non-refundable, regardless of the application outcome, subject to mitigating circumstances.
3. Where a community-based or charitable market with 25 stalls or above is held more than once in any calendar year, an additional cost per market may apply which will be calculated using the 'additional amount per market' formula contained in the fee structure table above.

These fees are subject to the Councils fee review policy and will be reviewed every 12 months.

Equality Impact Assessment

1. Under s.149 of the Equality Act 2010, when making decisions, Epping District Council must have regard to the Public Sector Equality Duty, ie have due regard to:
 - eliminating unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act,
 - advancing equality of opportunity between people who share a protected characteristic and those who do not,
 - fostering good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
2. The characteristics protected by the Equality Act are:
 - age
 - disability
 - gender
 - gender reassignment
 - marriage/civil partnership
 - pregnancy/maternity
 - race
 - religion/belief
 - sexual orientation.
3. In addition to the above protected characteristics you should consider the cross-cutting elements of the proposed policy, namely the social, economic and environmental impact (including rurality) as part of this assessment. These cross-cutting elements are not a characteristic protected by law but are regarded as good practice to include.
4. The Equality Impact Assessment (EqIA) document should be used as a tool to test and analyse the nature and impact of either what we do or are planning to do in the future. It can be used flexibly for reviewing existing arrangements but in particular should enable identification where further consultation, engagement and data is required.
5. Use the questions in this document to record your findings. This should include the nature and extent of the impact on those likely to be affected by the proposed policy or change.
6. Where this EqIA relates to a continuing project, it must be reviewed and updated at each stage of the decision.
7. All **Cabinet, Council, and Portfolio Holder reports must be accompanied by an EqIA**. An EqIA should also be completed/reviewed at key stages of projects.
8. To assist you in completing this report, please ensure you read the guidance notes in the Equality Analysis Toolkit and refer to the following Factsheets:
 - Factsheet 1: Equality Profile of the Epping Forest District
 - Factsheet 2: Sources of information about equality protected characteristics
 - Factsheet 3: Glossary of equality related terms
 - Factsheet 4: Common misunderstandings about the Equality Duty
 - Factsheet 5: Frequently asked questions
 - Factsheet 6: Reporting equality analysis to a committee or other decision making body

Section 1: Identifying details

Your function, service area and team: Regulatory Service; Licensing Team

If you are submitting this EqlA on behalf of another function, service area or team, specify the originating function, service area or team: NA

Title of policy or decision: EFDC Market Policy

Officer completing the EqlA: Tel: 07941003570 Email: sdevine@eppingforesdtdc.gov.uk

Date of completing the assessment: 12 Nov 2021

Section 2: Policy to be analysed

2.1	Is this a new policy (or decision) or a change to an existing policy, practice or project? New
2.2	<p>Describe the main aims, objectives and purpose of the policy (or decision): The Market Policy will contribute and support the delivery of the Councils Economic Policy: Nurturing Growth 2020-25. In particular, the purpose of this policy is to create a market trading environment that compliments the surrounding area and retail offer, is sensitive to the needs of all users of our town centres and provides a diversity of choice for consumers. It seeks to encourage and stimulate investment from local traders and to create a quality and sustainable offer to our residents and visitors.</p> <p>The Council recognises that there are many different types of market activities and accordingly, the Market Policy is intended to cater for each type. In particular, the Market Policy distinguishes between commercial markets and those that are largely community-based with a strong charitable element. Sections 7 & 8 of the Market Policy deals with the different types of market activities and sets out the Council's approach when considering applications in respect of such markets. It also recognises the existing Charter Markets already operating in Epping, Ongar and Waltham Abbey and their protected rights</p> <p>What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)?</p> <ul style="list-style-type: none"> • Recognise the importance and contribution of markets to the wellbeing of the local economy; • Enhance the economic diversity of the area; • Protect and, where possible, enhance the amenity and character of the District and local communities within it; • Offer opportunity for local traders and businesses; • Provide traders with guidance and clarity; • Encourage residents to spend locally on their High Streets and support their local business community; • Ensure coherence with Council policies and relevant legislation; and • Promote fairness, transparency and consistency.
2.3	<p>Does or will the policy or decision affect:</p> <ul style="list-style-type: none"> • service users • employees • the wider community or groups of people, particularly where there are areas of known inequalities? <p>The policy will affect all protected groups. This will include residents, visitors and local businesses;</p> <p>Will the policy or decision influence how organisations operate?</p> <p>The policy will encourage healthy competition and entrepreneurial opportunities for traders; there should be no adverse affects on any protected groups</p>
2.4	<p>Will the policy or decision involve substantial changes in resources?</p> <p>The Policy will include a fees and charges schedule for the application of a Market Licence, to be paid by the market operator, reviewed annually and calculated on a cost recovery basis. There is unlikely to be a necessity for increased staff resources but this will be kept under review</p>
2.5	<p>Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes?</p> <p>The proposed Market Policy supports the Councils Economic Development Strategy 'Nurturing Growth' 2020-2025 as part of the corporate strategy to "develop shared prosperity through growing our local economy"</p>

Section 3: Evidence/data about the user population and consultation¹

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1 What does the information tell you about those groups identified?
As per Equality Analysis Report submission in report to Cabinet C-037-2019/20 on 26 March 2020 'Nurturing Growth – Delivering an Economic Development Plan for Epping Forest

3.2 Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision?

There is no statutory obligation to consult. However, a full public consultation is run from 5 November to 6 December 2021 and the following consultees have been contacted directly:

- The National Association of British Market Authorities (NABMA)
- The National Market Traders Federation (NMTF)
- Members of the Council, including Town and Parish Councils
- Local businesses
- Existing operators
- Essex Police
- Essex Fire and Rescue
- Essex Highways
- Essex Trading Standards
- Epping Forest Planning Authority
- Environmental Health
- Relevant Council services responsible for licensing, economic regeneration, legal services and town centre operations

The comments have been tabled in the report to Members. Several amendments have been made to the original draft Market Policy and the Fees Policy as a result of consultation responses, which in particular, are designed to reduce the administrative burden on the community-based and charitable markets. These are highlighted to Members

3.3 If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary:

Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

Description of impact	Nature of impact Positive, neutral, adverse (explain why)	Extent of impact Low, medium, high (use L, M or H)
Age	<u>Neutral</u> The policy does not discriminate against nor favour any particular group but offers increased opportunity for prosperity and greater opportunities to all groups of society; both protected and not protected. This relates both to individual traders benefitting from the opportunity to trade flexibly without the usual restrictions and responsibilities, financial and otherwise associated with permanent bricks and mortar premises; and the local community and visitors who can purchase goods, often cheaper than high street shops, and providing more choice, that is accessible to all groups both	L
Disability	<u>Neutral</u> As above – and also – the policy takes account of and includes licence conditions for traders that ensures that visibly and mobility impaired residents and visitors are not negatively impacted and can enjoy full access to markets in the same way as able bodied customers	L
Gender	<u>Neutral</u> comments as for Age	L
Gender reassignment	<u>Neutral</u> comments as for Age	L
Marriage/civil partnership	<u>Neutral</u> comments as for Age	L
Pregnancy/maternity	<u>Neutral</u> comments as for Age	L
Race	<u>Neutral</u> comments as for Age	L
Religion/belief	<u>Neutral</u> comments as for Age	L
Sexual orientation	<u>Neutral</u> comments as for Age	L

Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqlA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No x <input type="checkbox"/>	
		Yes <input type="checkbox"/>	If ' YES ', use the action plan at Section 6 to describe the adverse impacts and what mitigating actions you could put in place.