



Leicester  
City Council

## WARDS AFFECTED

All Wards

### FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Cabinet

15<sup>th</sup> October 2007

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### Rival Markets Policy

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#### Report of the Corporate Director, Regeneration and Culture

#### 1. PURPOSE OF REPORT

- 1.1 To discuss the option of revising the Rival Markets Policy to allow an organisation to operate up to twelve Farmers Markets per year (currently three).

#### 2. SUMMARY

- 2.1 Leicester City Council holds market franchise rights, and these are enshrined in a Market Charter. This allows the Council to control all markets operated within a 6 2/3<sup>rd</sup> mile boundary of its own operated markets. The Council also holds statutory market rights under the Food Act 1984, which gives Leicester City Council a statutory right to hold a market.
- 2.2 In 1985 the Council approved licensing regulations within an adopted Rival Markets policy that permitted potential operators to hold markets within the area providing certain criteria were met.
- 2.3 Operators accordingly license events such as car boot sales and specialist fairs. The Council receives approximately £10,000 per annum in licence fees.
- 2.4 The Rival Markets Policy was revised in 2004 following the outcome of a court judgement in Leeds City Council Vs Watkins 2003. See section 4.2 Legal Implications for a summary of this case. The revised policy was smoothly implemented from January 2005, and the current policy is attached at Appendix One.
- 2.5 Blaby District Council has under the current policy operated three Farmers Markets each year in 2005 and 2006, and has been granted approval to hold six Farmers Markets in 2007, in recognition of the support Farmers Markets provide to local producers. These events have proved successful and Blaby District Council has applied to operate monthly Farmers Markets.

- 2.6 The Markets Forum recommends that the current Rival Markets Policy remains unchanged, with any operator only permitted to hold three Farmers Markets per annum, on the grounds that three per annum is reasonable.
- 2.7 It is good for local authorities to be seen to be proactive and responding to genuine public need, and as such regular Farmers Markets have been held in Leicester since 2003 to support local producers. Granting additional rights to support local producers would only enhance Leicester City Council's ethos of being proactive and accommodating to public need and demand.
- 2.8 Determining a change in the Rival Markets Policy is a Cabinet matter. Cabinet may consider amending the Rival Markets policy to include a separate category for Farmers Markets, which will allow for up to twelve Farmers Markets to be held during any twelve-month period, subject to the following conditions:

#### **General Conditions**

- (a) Farmers Markets to be defined as themed markets whereby local Farmers meet at a market to sell their own produce.
- (b) Farmers should live within a 30-mile radius of the operated market, and the operator should supply the Council with a register of all Farmers trading together with the address of the farm.
- (c) Farmers Markets will be permitted for the sale of the Farmers own produce only. This produce shall not be produce that has been bought to directly sell on.
- (d) Farmers Markets will be limited to a maximum of 25 trading positions (i.e. stalls/ vehicles/pitches). Each trading position shall be of a standard size with a maximum size of 8x6 feet (2.5 x 1.5 metres).
- (e) It is the responsibility of the operator and the organiser to ensure that the market does not become a nuisance to residents or neighbouring businesses, and are operated in an appropriate manner, including compliance with relevant legislation for public events and with Environmental Health and Trading Standards requirements.
- (f) Permission shall only be granted to any organisation or individual during the course of any twelve-month period to hold a maximum of twelve Farmers Markets. Individuals shall be regarded as persons who are actually the organisers of the event. One individual will be permitted to apply per household.
- (g) No Farmers Market will be approved if it is proposed to operate it from a venue within 3 miles of a site previously authorised to hold such events.
- (h) Any site or premises may only be used for a maximum of twelve Farmers Markets during the course of any twelve-month period, with not more than one market being held on a Sunday in any 28-day period.

- (i) Should any part of the site or premises be used for a market, any other part of the site or premises should not be deemed as a separate site or premises for the purposes of the condition. A site must be of a different location and have separate boundaries and be a suitable distance from other operated sites, as described from time to time by the council.
- (j) If, in the opinion of the Council, any organiser of a Farmers Market either directly or indirectly contravenes any of these conditions, then the City Council will not issue that organiser with any further licences to operate any markets within the 6 2/3<sup>rd</sup> boundary for a period of five years from the date of the breach.
- (k) Any venue used for the purposes of a Farmers Market which, in the opinion of the Council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.
- (l) Periodic visits will be made to licensed markets by an officer of the City Council to ensure compliance with the licensing conditions. The standard conditions attached to any licence will include a right of access for authorised Council Officers. Any non-compliance with the conditions, including attempts to avert payment of the full licence fee, will result in future applications being refused.

#### **Licence Fees**

- (a) A market licence fee will be charged of £300.00 per trading day, as per other market licence applications. The fee should be paid in full not less than 28 days before the event.
- (b) A refund of a cancelled market is available, providing written notification is provided 7 days prior to the event. The refund will be £200.00 per trading day.

2.9 Legal Services have advised on the suggested conditions.

### **3. RECOMMENDATIONS**

- 3.1 To recommend that the Rival Markets Policy be amended, with effect from 1<sup>st</sup> January 2008, to include provisions relating to themed markets in accordance with the reasons suggested in the report.
- 3.2 To grant delegated authority to the Corporate Director of Regeneration and Culture, in consultation with the Cabinet Lead Member to grant permissions under the Policy.
- 3.3 To grant delegated authority to the Corporate Director of Regeneration and Culture, in consultation with the Cabinet Lead Member, to be able to amend any fees.

## **4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

### **4.1. *Financial Implications***

This will result in additional income of £2,700 per annum, plus an additional £300 per trading day from any other approved Farmers Markets in the market franchise area.  
*(Martin Judson – R&C Head of Finance)*

### **4.2 *Legal Implications***

Leicester City Council has established Market Rights by way of Historic Market Charter. This means that no other market can take place within the prescribed distance of six and two-third miles of the Councils current markets - City Centre and Beaumont Leys. The Council also has a legislative power to establish and acquire a Market under Section 50 of the Food Act 1984. The Council needs to give permission for any rival market to take place within that distance of six and two-third miles and a fee is payable and criteria has to be met.

4.3 If any rival market takes place without the Council's permission, the Council can seek an injunction via High Court application to prevent the market taking place or continuing and also make a claim for damages.

4.4 The current policy could only be challenged via defence to a High Court application as mentioned above. However if the Council do change their Policy there is opportunity for the decision to be challenged by Judicial Review within a 3 month period of the decision being made.

4.5 Any change in Policy is only possible by Cabinet in accordance with its terms of reference under the Constitution.

### **4.6 Leeds City Council Vs Watkins 2003**

In this case Leeds City Council was successful in having its market rights upheld. The court found that there was no evidence to show that the Council had adopted an obstructive or anti-competitive policy. The court found that the Council legitimately held market charter rights, and in this particular case any rival market would have undermined the protection afforded to Leeds City Council by the markets charter under common law.

4.7 The defence to holding such markets were that prevention would be contrary to the provisions of the Competition Act 1998, and that the Council's policy prevented, restricted or distorted competition and/or constituted an abuse of dominant position, contrary to Articles 81 and 82 of the Treaty of Rome. No evidence was shown that this was the case and both defences failed. The courts therefore granted the Council final injunctions to restrain the defendants from holding unlicensed seasonal Sunday markets/ car boot sales without its licence or consent.  
*(Jamie Guazzaroni – Solicitor Resources Department)*

## **5. OTHER IMPLICATIONS**

OTHER IMPLICATIONS	YES/NO	Paragraph References within the report
Equal Opportunities	NO	
Policy	YES	
Sustainable and Environmental	NO	
Crime and Disorder	NO	
Human Rights Act	NO	
Elderly/People on Low Income	NO	

## 6. RISK ASSESSMENT MATRIX

Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/ appropriate)
1. Other operators apply to hold monthly farmers markets, leading to a proliferation of markets within the market charter area	H	M	The criteria for acceptance of Farmers Markets applications have been tightly defined

L – Low  
M – Medium  
H - High

L – Low  
M–Medium  
H - High

## 7. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

## 8. CONSULTATIONS

- Martin Judson – R&C Head of Finance
- Anthony Cross – Head of Litigation, Resources Department
- Jamie Guazzaroni – Solicitor Resources Department
- Dina Nathwani – Solicitor Resources Department

## 9. REPORT AUTHOR

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## DECISION STATUS

<b>Key Decision</b>	No
<b>Reason</b>	N/A
<b>Appeared in Forward Plan</b>	N/A
<b>Executive or Council Decision</b>	Executive (Cabinet)

## Appendix One – Current Rival Markets Policy

### LEICESTER CITY COUNCIL RIVAL MARKETS RULES AND REGULATIONS

#### 1. INTRODUCTION

- 1.1 Leicester City Council operates retail markets in the Market place, and also at Beaumont Leys Shopping Centre. Any market that is operated, other than by the City Council, within a radius of 6 2/3rd miles of any retail market shall be deemed to be a Rival Market.
- 1.2 A market shall be deemed a Rival Market, irrespective of the type of goods or general nature of the market. The legal definition of a market, being "a concourse of buyers and sellers" shall apply in the determining whether an event constitutes a rival market or not. In this respect such events as car boot sales, antiques fairs etc shall be deemed rival markets.

#### 2. LICENSING POLICY

- 2.1 The City Council has approved a policy outlining conditions under which licenses will be issued to operators allowing rival markets to be held.
- 2.2 The licensing policy enables Leicester City Council to regulate markets within its radius to ensure that proposed markets do not become a nuisance to residents, neighbouring businesses and are operated in the appropriate manner.
- 2.3 Any person who wishes to operate a rival market may only do so if such a market has been licensed by the City Council. A license normally will be issued provided the application complies with relevant criteria.
- 2.4 Rival Markets will be categorised into 3 different types:**
- (a) Car Boot Sales
  - (b) Speciality Markets
  - (c) Regular Markets

#### 3. CAR BOOT SALES

- 3.1 Car boot sales will be limited to a maximum of 50 trading positions (i.e.: stalls / vehicles / pitches) each trading position shall be of a standard size with a maximum size of 8x6 feet (2.5 x 1.5 metres).
- 3.2 Car boot sales shall be restricted as far as is possible, to householders selling surplus household articles. No new goods are permitted for sale at any car boot sale. The car boot sale description will also cover events such as computer, records, toy and book fairs providing all other car boot sale criteria are met.
- 3.3 Permission shall only be granted to any organisation or individual during the course of any twelve month period, to hold a maximum of six licenses.

- 3.4 Individuals shall be regarded as persons who are actually the organisers of the event. One individual will be permitted to apply per household.
- 3.5 An organisation shall be deemed a group, e.g. Scouts, P.T.A., Sports Clubs. All events that are for charitable purposes should only be applied for by the Charity concerned. A letter confirming that the full proceeds will be received by the organisation must be sent on application.
- 3.6 A registered charity may apply to hold a car boot sale and will need to supply their registered charities number on application. All proceeds must be received by the registered charity.
- 3.7 Any site or premises may only be used for a maximum of six car boot sales during the course of any twelve-month period. With not more than one market being held on a Sunday in any 28-day period. Should any part of the site or premises be used for a car boot sale, any other part of the site "or premises should not be deemed as a separate site or premises for the purposes of the condition. A site must be of a different location, have separate boundaries and be of a suitable distance from other operated sites, as described from time to time by the Council.
- 3.8 If, in the opinion of the Council, any organiser of a car boot sale either directly or indirectly contravenes any of these conditions, then the City Council will not issue that person with any further licenses to operate any markets within the 6 2/3rd mile boundary for a period of five years from the date of the breach.
- 3.9 Any venue used for the purposes of a car boot sale which, in the opinion of the Council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.

#### 4. CAR BOOT SALE - LICENCE FEES

- 4.1 In respect of a car boot sale organised by commercial operators:  
A £160.00 fee to be paid on application not less than 28 days before the event.
- 4.2 In respect of a car boot sale operated by a non-commercial operator:  
A deposit of £64.00 shall be required upon application not less than 28 days before the event, any balance payable within 14 days after the event. This deposit accounts for the first 20 trading places.  
  
A fee of £3.20 shall be payable for each trading position over 20 let, payable within 14 days after the event, subject to the minimum £64.00 deposit being retained by the council.
- 4.3 In respect of a car boot sale operated by a registered charity:  
A deposit of £20.00 shall be payable on application not less than 28 days before the event, any balance payable within 14 days after the event. This deposit accounts for the first 20 trading spaces.  
  
A fee of £1.00 shall be payable for each trading position over 20 let, payable within 14 days after the event, subject to the minimum £20.00 deposit being retained by the council.
- 4.4 A refund for a cancelled market is available, providing notification is received prior to the day of the event. The refund is as follows:

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Policy0.doc  
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In the case of a commercial operator a £150.00 refund of the fee.

In the case of a non-commercial operator a full refund of the £64.00 fee.

In the case of a registered organisation a full refund of the £20.00 fee.

## 5. SPECIALITY MARKETS - CRITERIA

- 5.1 Speciality markets are themed markets whereby a mixture of new and second hand goods, fresh produce and other products may be sold, for example markets such as Farmers, French, and Continental.
- 5.2 Speciality markets will be limited to a maximum of 50 trading positions (i.e.: stalls / vehicles/ pitches) each trading position shall be of a standard size with a maximum size of 8x6 feet. (2.5 x 1.5 metres).
- 5.3 Speciality markets will be permitted for the sale of both new and second hand products.
- 5.4 Permission shall only be granted to any organisation or individual during the course of any twelve month period, to hold a maximum of three Speciality markets.
- 5.5 Individuals shall be regarded as persons who are actually the organisers of the event. One individual will be permitted to apply per household.
- 5.6 Any site or premises may only be used for a maximum three Speciality markets during the course of any twelve month period, with not more than one market being held on a Sunday in any 28-day period, should any part of the site or premises be used for a market, any other part of the site or premises should not be deemed as a separate site or premises for the purposes of the condition. A site must be of a different location, have separate boundaries and be a suitable distance from other operated sites, as described from time to time by the council.
- 5.7 If, in the opinion of the Council, any organiser of a specialist market either directly or indirectly contravenes any of these conditions, then the City Council will not issue that person with any further licenses to operate any markets within the 6 2/3rd mile boundary for a period of five years from the date of the breach.
- 5.8 Any venue used for the purposes of a Speciality market which, in the opinion of the council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.

## 6. SPECIALITY MARKETS - LICENCE FEES

- 6.1 In respect of a Speciality market licence the sum of £300.00 per trading day is required. The fee should be paid in full not less than 28 days before the event.
- 6.2 A refund for a cancelled market is available, providing written notification is given 7 days prior to the event. The refund will be £200.00 per trading day.



## 7. REGULAR MARKETS CRITERIA

- 7.1 Regular markets will be permitted with no restriction on size of market, goods sold or occasions held.
- 7.2 Applicants wishing to hold a regular market must provide the council with at least 28 days notice before the event.
- 7.3 If it is proposed that the market shall be held for more than 14 days per year, the appropriate planning permission from the relevant local planning authority must be obtained. The planning approval must be granted and evidenced on application of the market. The granting of planning permission alone does not automatically grant the right to hold a licence.
- 7.4 Permission must be received from the venue owner and evidenced on application of the market.
- 7.5 The applicant should also provide:**
- A plan showing the proposed layout of the market.
  - A financial plan
  - The company's policy on consumer protection
  - The company's environmental policy
  - The company's Health and Safety Policy, coupled with necessary risk assessments.
  - Documentary evidence with supporting references demonstrating the applicants experience and track record.
- 7.6 If, in the opinion of the Council, any organiser of a Regular market either directly or indirectly contravenes any of these conditions, then the City Council will not issue that person with any further licenses to operate any markets within the 6 2/3rd mile boundary for a period of five years from the date of the breach.
- 7.7 Any venue used for the purposes of regular markets sale which, in the opinion of the council, either directly or indirectly is used in contravention of these conditions will not be permitted to host any further markets of any description until such time as the matters giving rise to the breach have been remedied to the Council's satisfaction.

## 8. REGULAR MARKETS - LICENCE FEES

- 8.1 In respect of a regular market the sum of £500.00 per trading day is required. The fee should be paid in full not less than 28 days before the event.
- 8.2 A refund for a cancelled market is available, providing written notification is given 7 days prior to the event. The refund will be £250.00 per trading day.

## 9. LICENCE APPLICATIONS

- 9.1 An application for a licence must be made on an official application form obtainable from: The Markets Manager, 3rd floor Market Centre, Leicester LE1 5HQ

9.2 Completed application forms must be returned to the above address, so as to arrive not less than 28 days before the event. The required fees outlined in sections 4, 6, and 8 must accompany all applications.

9.3 All operators who wish to operate markets will be required to submit a passport sized photograph with the application form. Failure to comply with this requirement will result in the application being rejected.

9.4 The organiser undertakes not to affix any notices or signs related to the event to any street furniture, structure or trees on the public highway. Such signs contravene section 132 of the Highways Act 1980.

## 10. FINAL LICENCE FEE

10.1 All non-commercial and registered charity car boot operators issued with a licence will be required to complete a pro-forma indicating the number of trading positions let. The pro-forma that will be sent to applicants with a licence must be returned to the Markets Manager (see 9.1 above) within 14 days of the event being held.

10.2 In respect of non-commercial and registered car boot operators this pro-forma will be used to calculate the balance of the licence fee due. Any such balance must accompany the pro-forma.

10.3 Any charity not completing a pro-forma as required will not be granted any further licences until compliance.

## 11. GENERAL

11.1 All payment of licence fees paid by cheque must be crossed and made payable to Leicester City Council.

11.2 Periodic visits will be made to licensed markets by an officer of the City Council to ensure compliance with the licensing conditions. The standard conditions attached to any licence will include a right of access for authorised Council Officers. Any non-compliance with the conditions, including attempts to avert payment of the full licence fee, will result in future applications being refused.

11.3 The Council has adopted Section 37 of the Local Government (miscellaneous provisions) Act 1982. This requires that the Council be given at least one months notice of any intention to operate or hold a temporary market. Full details of these requirements including the definition of a temporary market are available from the Markets Manager. The requirements of Section 37 are separate and distinct from the application for a licence from the Council under this policy and must be complied with in each case.

11.4 Applications will be treated on an individual basis, however additional conditions may be applied to an Operator / Venue dependant upon circumstances. Such conditions will also be a condition of the licence being granted.

11.5 The Council may from time to time need to consult with external organisations / groups such as Police, Highways Dept, Trading Standards, Emergency Services and residential parties.

11.6 The Council reserves the right to take formal legal action against any person(s) or company who attempts to operate an unlicensed rival market.