

Guidelines for the commercial vending of goods placed on footpaths

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1. Introduction

The City of West Torrens acknowledges that suitably positioned goods placed on the public footpath can enhance shopping enjoyment and provide an economic benefit to traders.

However, unrestricted and uncontrolled use of footpaths for commercial use can create visual clutter, pose risks to pedestrians using the footpath and have a potential impact on motorist sightlines. It is Council's responsibility to ensure that the commercial use of its footpaths for the display of goods is managed without undue disruption to pedestrian convenience and safety and does not detract from the social function and general enjoyment of the street by the community.

2. Statutory requirements

2.1 Local Government Act, 1999

Under Section 222 of the Local Government Act 1999 a person must not use a public road for business purposes unless authorised to do so by a permit.

Under Section 224 of the Act Council may attach conditions to the granting of such a permit and under Section 225 Council may, by notice in writing, cancel a permit for breach of a condition.

Under Section 242 an application for the Council's authorisation to use a road for a business purpose must be decided within two months after the relevant date and, if not decided in this time, will be taken to have been refused.

2.2 Disability Discrimination Act 1992

The Disability Discrimination Act (D.D.A.) makes it an offence for providers of goods, services and facilities to discriminate against a person because of his or her disability. The Act also makes it an offence for public places to be inaccessible to people with a disability.

2.3 Environment Protection Act 1993

Section 25 of the Environment Protection Act 1993 imposes the general environmental duty on all persons undertaking an activity that might cause pollution, to take all reasonable and practical measures to prevent or minimise the resultant environmental harm.

3. Definitions

Council includes Council members, employees and agents.

Applicant means all persons named in the application form for a permit, all of whom will be bound by the conditions of the permit. All references to persons include a corporation.

Goods means any merchandise, wares, products, articles, boxes, stands or other items but does not include any moveable sign which does not require a Council permit.

Permit means a permit for the placement of goods for sale or display on the footpath within the City of West Torrens.

Road extends from the property boundary to property boundary and includes the carriageway, footpaths and verges owned or under care and control of Council.

4. The permit

4.1 The permit

A permit for commercial vending on footpaths entitles the permit holder to place goods that they want to display, offer or expose for sale, on or over the footpath area outside their business premises. The permit does not, however, grant exclusive rights over the relevant public space. The ability to trade on the footpath is a concession granted to traders, only when the Council is satisfied that there is no danger to community safety or adverse affect on the street amenity.

A commercial vending permit will be:

- issued in the name of the applicant
- transferable at Council discretion
- valid only for the times and dates on the permit
- valid only for the area stipulated on the permit
- valid only for the activity described on the permit
- subject to fees and charges set out in the City of West Torrens Fees and Charges Schedule, as endorsed by Council
- subject to the conditions set out in these Guidelines
- subject to any other directions made by Council.

The City of West Torrens is under no obligation to remove any Council owned property (eg litter bin, public seat) to allow commercial use of the footpath. If the Council agrees to relocate or remove Council property, the business that makes the request will cover all costs.

Council reserves the right to relocate or remove an object located on the footpath, if additional public infrastructure items need to be located, or to ensure public safety during major constructions or major events.

Council may amend the permit conditions at any time with or without the consultation of the permit holder and add or remove directions to the permit in addition to conditions at any time.

Council reserves the right to cancel or suspend a permit at any time.

4.2 Permit applications

An application for a permit must be made on the approved Council Application Form.

Applications will be considered on their merits and assessed against conditions in the Guidelines.

Applications must be accompanied with documentation to enable Council to assess whether the conditions for approval have been met. This documentation is specified at Section 6.

Permits will be issued for one year and expire on 30 June each year. An application form (renewal) will be posted to all permit holders during the month of May each year and must be returned to Council 2 weeks before the start of the new financial year.

4.3 Activation of a permit

A permit will not commence to operate and no merchandise, wares or items for sale / display are to be placed on the footpath until:

- the permit has been issued to the applicant
- payment is received of all fees
- a Certificate of Currency showing the required level of Public Liability Insurance is returned to the Council endorsed by the permit holder's insurer

4.4 Permit holder responsibilities

The permit holder is to ensure that the commercial vending authorised by the permit is undertaken in accordance with the drawings and details submitted with the application, complies with the conditions of these Guidelines and with Council policy and by-laws.

Permit holders will be responsible for meeting the following standard conditions for the term of a permit:

- To comply with all applicable industry standards, health or safety standards, current standards of Standards Australia or any applicable Codes of Practice.
- To comply with relevant Council By-Laws and Policy and with the Guidelines for Commercial Vending of Goods Placed on Footpaths.
- To comply with State and Federal legislation. The issue of the permit does not absolve the permit holder or their agents from any overriding legislation.
- To maintain in good condition and to recognised standards all structures erected or installed on or over the road. Such structures remain the property of the applicant pursuant to Section 209 of the Local Government Act, 1999.
- To indemnify and to keep indemnified the Council its employees, servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the issuing and granting of the permit.
- To maintain a current public risk insurance policy in the name of the permit holder insuring the permit holder for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000) in the terms set out below.
- To accept total responsibility to make good any damage that occurs to Council roads or to public infrastructure as a result of the erection or installation of structures by the permit holder.
- To provide proof, upon the request of Council, of current Public Liability Insurance at any time.
- To not assign or otherwise transfer a permit without first obtaining the consent of the Council in writing.
- To notify Council and obtain prior approval for any changes to the approved activity contained in the permit. (Changes to the activity may cause conditions to the permit to be altered. If this is the case a new permit will be issued).
- To notify Council within 14 days of any changes to circumstances that would affect the validity of the permit (eg change of ownership of a company).
- To make the permit available for inspection upon request by an authorised officer or Police Officer.
- At the expiration or earlier termination of this permit to remove, if so directed by the Council, any structure or object erected or installed on the road and to reinstate the road to the satisfaction of the Council.
- To ensure that all goods are contained securely and are removed from the footpath at the end of the day, and that pedestrian access and cleanliness of the footpath is maintained at all times.

In the event that a permit holder has failed to comply with any of the conditions of the permit or for any other justifiable circumstance, including reinstatement, maintenance, repair or removal, the Council may revoke the permit.

A permit does not confer on the applicant any exclusive right, entitlement or interest in the road (unless specifically provided pursuant to Section 223 of the Local Government Act, 1999) and does not derogate from the Council's powers arising under the Act.

Insurance

The permit holder will agree to indemnify and to keep indemnified the Council, its employees, servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the issuing and granting of the permit.

Notwithstanding the above, the Permit Holder shall not be rendered liable for personal injury to or the death of any person or loss of or damage to any property resulting from any breach by the Council of any provision of this Permit or any negligent act or omission of the Council or its employees, servants and agents.

The permit holder will maintain a current public risk insurance policy in the name of the permit holder insuring the permit holder for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000) against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against the permit holder in relation to the activity.

The permit holder will provide confirmation of insurance to Council in the form of a Certificate of Currency. Such a Certificate will bear the endorsement of the Insurer indicating that the Insurer accepts the indemnity given by the permit holder and any excess payable for each claim.

The permit holder, where appropriate, will ensure that it is licensed or registered to carry out the activity authorised by the issuing of this permit.

The permit will become immediately invalid if the permit holder ceases to have current public liability insurance as set out above.

5. Special conditions of permits

5.1 Location

To maintain public access and circulation, goods must be:

- located entirely within the alignments of the permit holder's premises and not encroach across the frontage of adjacent properties
- not exceed a width of 80cm
- allow a minimum of at least 1.8 metres of footpath to be kept clear for pedestrians at all times
- allow a minimum space of at least 60 cm from the kerb face to be kept clear of goods at all times.

In some locations the width of the footpath and the right for the public to access public use facilities including litter bins, public seats, pedestrian footpath access points, bus zones, loading zones, disabled parking and passenger loading/unloading zones and the like, may restrict the area that is available. This can mean that sometimes none of the footpath is available for the display of goods.

Similarly, locations that have been associated with loss of control crashes are unsuitable for the display of goods and Council will not issue permits in these circumstances.

The City of West Torrens is under no obligation to remove any street furniture (eg litter bin) to allow a business use of the footpath. In rare circumstances where an alternative location can be found, the street furniture may be removed at the expense of the business that makes the request.

5.2 Layout and setback

The following minimum layout and setbacks that must be satisfied prior to a permit being issued.

- goods on display must not exceed a height of 1.2 metres with a minimum height of 600mm measured from the footpath
- overhanging objects must have a minimum clearance of 2.5 metres measured from the footpath
 - goods are prohibited within:
 - 2 metres of an intersection
 - 1.2 metres of a pedestrian ramp
 - 1.2 metres of a rubbish bin or street furniture
 - within a bus zone or bus stop
 - goods will be placed at least 2 metres from a cross over or property entrance;
 - where a loading zone, disabled parking zone or a passenger loading zone is in front a premises, a minimum space of 1.2 metres must be provided for footpath access at all times.
 - an unbroken continuous display of goods cannot exceed 1.5 metres in a direction parallel to the footpath (e.g. trestle, display table).

At any time during the permit period, Council may assess the pedestrian density in the vicinity of the display of goods. If in the opinion of Council the pedestrian density is such that the free flow of pedestrians would be restricted or obstructed by the display of goods, Council reserves the right to refuse such application, cancel any current permit or amend the Permit conditions

5.3 Design and construction

Goods on or above the footpath must not pose a hazard or obstruction to users of the footpath. Goods that will generally not be permitted on the footpath include:

- sharp / protruding items
- items with oscillating / moving parts including fans, banners or bunting.
- items that have illuminated or flashing lights
- reflective items that pose a risk to vehicular traffic\
- items that are unstable
- any other items that Council may declare inappropriate.

Where an applicant wishes to shield the display of goods with an umbrella, the umbrella will be:

- sufficiently anchored down to withstand winds
- have a minimum clearance of 2.1 metres above the footpath
- not extend beyond the kerb and
- have minimal advertising, limited to the name of the business or the business logo.

The Permit Holder will not permit any third party advertising on or about the displayed goods other than price tags and small labels associated with the displayed goods.

Permit Holders may display a mobile advertising sign directly adjacent to the area that goods are for sale, provided that the sign complies with all provisions of Council By-Law 4 Moveable Signs.

5.4 Other special conditions

The permit holder will ensure that all goods are securely contained and do not spill, stain or litter the footpath.

The permit holder will maintain the cleanliness of the footpath area during business hours and clean up the area at the close of business each day.

The permit holder will ensure that all goods and associated structures are removed from the footpath at the end of the business day.

The permit conditions may be amended at any time by Council. Permit holders will be notified in writing of the changes

Council may add or remove directions in addition to conditions at any time. Failure to comply with directions will be taken as failing to comply with a condition of the permit.

6. Documents to be submitted to Council

Applications for permits will be accompanied with documentation to enable Council to assess whether the conditions of issue have been met. This documentation will include:

- Certificate of Currency of public liability insurance, as specified in 4.4 above.
- A detailed (dimensions shown) drawing or sketch showing how the proposed goods are to be positioned on the footpath in accordance with the Layout and Setback Criteria as detailed above. (Please note that an inadequate sketch may delay the assessment process).
- Photographs depicting the site and the proposed location of structures for displaying goods

7. Compliance

7.1 Monitoring

Authorised Officers (of Council) will monitor the display of goods on Council footpaths and operators are required to comply with any direction provided by such officer.

7.2 Display of goods without a permit

Where a premises displays goods on the footpath without a permit, Council will require the business owner or employees to remove the goods immediately from the footpath. Failure to do so (or subsequent reinstatement of goods without a permit) may result in the issue of an expiation fee and Council may impound the goods.

Businesses will ensure that permits are renewed promptly to avoid such action being taken.

7.3 Breaches of permit

If the permit holder breaches a provision of this permit, Council will give the permit holder written notice to remedy the breach which has occurred.

Repeated breaches of authorisation may result in the cancellation of the permit without refund.

- First breach of the authorisation – verbal warning issued with compliance to be achieved within 28 days
- Second breach of the authorisation – written notice with compliance to be achieved within 28 days
- Third Breach - cancellation of the permit.

Council may give less than 28 days notice should it be determined that the grounds for cancellation are to protect the health and safety of the public, or otherwise to protect the public interest.

7.3 Removal of goods

On termination or expiration of a permit, the permit holder will remove all goods and associated structures from the footpath within twenty eight (28) days calculated from the date of service of written notice of termination. Where such goods and structures are not removed within twenty eight (28) clear days, the Council will be entitled to remove the goods and structures.

7.4 Revocation or suspension of a permit

The permit may be revoked or suspended by the Council at any time by written notice to the Permit Holder under Section 225 of the Local Government Act 1999. The revocation or suspension of the permit by the Council shall not give rise to any claim for damages on any basis by the Permit Holder.