

Guidelines for the temporary placement of a container on a public road

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1. Introduction

Council recognises there will be times where residents and businesses will need to:

- organise for the delivery of a storage container to a premises or
- hire a waste skip or container to dispose of building or other waste that cannot be disposed of through the regular Council kerbside collection service or a regular commercial service;
AND
- organise for such a container to be temporarily placed on the road or footpath because of inadequate space to locate the container on private property or because the container cannot be physically lifted inside a property because of powerlines or other physical constraints.

Council has developed guidelines for the safe placement and use of waste and storage containers on roads and footpaths in the City of West Torrens so as to maintain public safety and amenity and the free flow of traffic.

The Guidelines specify the conditions for the placement of containers and provide a framework for assessing applications and managing the system of authorisations for such activities.

2. Statutory requirements

2.1 Local Government Act, 1999

Under Section 221 of the Local Government Act 1999 a person must not make an alteration to a public road without the authorisation of Council.

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

Under Section 223 Council must consult the public where an authorisation would result in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic (vehicular or pedestrian) to any material degree.

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.

Under Section 234 Council can remove and dispose of any structure or object from a public road if it has been placed there without an authorisation or the authorisation has expired.

2.2 Disability Discrimination Act 1992

The Disability Discrimination Act (D.D.A.) 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

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

Authorisation means an authorisation for the temporary placement of a waste or storage container within the City of West Torrens.

Council includes Council members, employees and agents.

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

Storage container is a shipping container (ie container used to carry goods for transport by sea, road, rail or air) or other large container designed to be transported and placed within private property, or on a road or other land. Examples of such containers are those containers used to transport household contents interstate or overseas, and containers delivering imported goods to a business premises.

Waste container is a mini skip, shipping container or other large container designed to be transported and placed within private property, or on a road or other land, for the disposal of builder's rubble, waste, large tree loppings, earth or household or other rubbish that cannot be disposed of through the regular the kerbside collection service.

It does not refer to the mobile garbage bins provided by Council as part of its regular kerbside collection service nor to garbage bins provided by commercial supplier as part of a regular collection service.

Supplier is an individual or company who owns, leases, rents or otherwise provides and is responsible for a waste or storage container and hires it to the public.

Hirer is an individual or organisation who requests a supplier to deliver a waste or storage container to a location for a specified period off time.

4. The authorisation

4.1 The Authorisation

An authorisation to alter a public road entitles the authorisation holder to temporarily place a waste or storage container on a public road or footpath.

An authorisation to alter a public road will be:

- issued in the name of the applicant
- non transferable
- valid only for the times and dates on the authorisation
- valid only for the area stipulated on the authorisation
- valid only for the activity described on the authorisation
- 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.

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

Council reserves the right to cancel or suspend an authorisation at any time.

4.2 Applications for an authorisation

An application for an authorisation must be made on the approved Council Application Form.

An application may be made by the supplier or the hirer of a waste or storage container provided all the conditions of the authorisation can be met.

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

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

Authorisations will be issued for the period of placement of the waste or storage container on the road or footpath or for a period of seven days, whichever is the lesser.

Where an extension of the authorisation is sought, payment of an additional authorisation fee will be made prior to the granting of an extension.

4.3 Activation of an authorisation

An authorisation will not commence to operate and no containers are to be placed on the road or footpath until:

- the applicant has received a copy of the authorisation signed by Council
- 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 authorisation holder's insurer.

4.4 Responsibilities of the holder of an authorisation

The holder of an authorisation will ensure that the activities specified in the authorisation are undertaken in accordance with the details submitted with the application and comply 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 State and Federal legislation. The issue of the authorisation does not absolve the authorisation holder or their agents from any overriding legislation.
- To maintain in good condition and to recognised standards all containers placed on 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 authorisation.

- To maintain a current public risk insurance policy in the name of the authorisation holder insuring the authorisation 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 placement of containers by the waste container supplier.
- To provide proof, upon the request of Council, of current Public Liability Insurance at any time.
- To not assign or otherwise transfer an authorisation 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 an authorisation. (Changes to the activity may cause conditions to the permit to be altered. If this is the case a new authorisation will be issued).
- To make an authorisation available for inspection upon request by an authorised Council officer or Police Officer.
- At the expiration or earlier termination of this authorisation to remove, if so directed by the Council, any structure or object placed on the road and to reinstate the road to the satisfaction of the Council.
- To ensure that pedestrian access and cleanliness of the footpath is maintained at all times.
- To minimise any disturbances or nuisances to owners of land adjacent to the road or to vehicles or pedestrians travelling along the road.

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

An authorisation does not confer on the authorisation holder 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 holder of an authorisation 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 authorisation.

Notwithstanding the above, the holder of an authorisation 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 Authorisation or any negligent act or omission of the Council or its employees, servants and agents.

The holder of an authorisation will maintain a current public risk insurance policy in the name of the authorisation holder insuring the authorisation 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 authorisation holder in relation to the activity.

The holder of an authorisation 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 authorisation holder and any excess payable for each claim.

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

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

5. Special conditions of authorisation

5.1 Location of container

The holder of an authorisation will ensure that the container is placed in the following manner:

- as close as practicable and parallel to the kerb
- at least 10 metres from any road intersection or junction
- at least 2 metres from a crossover or property entrance
- so that the footpath is not obstructed and a minimum of at least 1.8 metres of footpath is kept clear for pedestrians at all times
- not within a prohibited or restricted parking zone or area
- not on a road where the speed limit is 80km/hr or higher
- not in a position blocking access to utility service manholes or devices which require servicing such as traffic signal boxes, telephone boxes, post boxes, fire hydrants and plugs.

Approval will not be granted for a street where there would be less than three (3) metres clearance between the object and the centre line of the road or to the opposite kerb line of the road.

Additional conditions, specific to the placement site, may also be imposed for safety or access requirements.

5.2 Visibility of container

A flashing light will be placed each end of the container on the road side and be operated between sun-set and sun-rise.

Alternatively, yellow retroreflective tape will be placed on the corners of containers as a safety measure for motorists, pedestrians and cyclists. Damaged tape will be replaced to ensure that adequate visibility is maintained.

Flag orange bunting or plastic traffic safety cones or barrier mesh will be placed around the container during daylight hours.

5.3 Cleanliness of the area

The holder of an authorisation will ensure the road is left in a clean and tidy condition at the end of each day and at the end of the period of the authorisation.

Where Council has to undertake cleaning or tidying of the road, the authorisation holder will be liable to reimburse Council for all costs incurred by Council in the cleaning or tidying the road.

5.4 Maintenance and repair

The supplier of containers will, during the period of the authorisation, ensure that the containers are in good safe and proper repair and condition.

Council may at any time inspect the containers and the supplier will comply with all reasonable requirements of the Council in relation to the maintenance and repair of the containers.

5.5 Directions of government departments and statutory authorities

The holder of an authorisation will:

- comply with all relevant requirements of government departments and statutory authorities and comply with any direction of Council which is required by a Government department or statutory authority.
- ensure that containers do not interfere with or cause damage to or affect in any way any wire, post, cable, pipe or other item which is the property of the Electricity Trust of South Australia, Telstra, SA Water and/or United Water, Boral Ltd, or other Federal, State or Local Government department or authority or other infrastructure owner.
- accept total responsibility to make good any damage that occurs to the above public infrastructure.

5.6 Damage to the road

The holder of an authorisation will take all reasonable precautions to avoid damage to the road and any Council owned property located within or adjacent to the road.

The authorisation holder will immediately notify the Council of damage that does occur to the road or any Council owned property located within or adjacent to the road;

Any damage whether unintentionally or negligently resulting from the holding of an authorisation will be recovered under the provisions of Section 233 of the Local Government Act 1999.

Where damage is caused to the footpath and reinstatement work is necessary, Council will carry out the reinstatement work at the authorisation holder's expense.

The authorisation holder will be responsible for reimbursing the Council for all its reasonable costs to repair or rectify any damage caused as a result of the use or misuse of the road.

6. Documents to be submitted to Council

Applications for authorisations 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 description of the container (specifying its dimensions), the proposed location of the container on the road, and the reasons why the container cannot be located on private land (eg because of insufficient space or access).

7. Compliance

7.1 Monitoring

Authorised Officers (of Council) will monitor the placement of containers on public roads and footpaths and authorisation holders are required to comply with any direction provided by such officer.

7.2 Erection of structures without an authorisation

Where a container is placed on a road or footpath without an authorisation, Council will require the property owner to remove the container immediately from the footpath. Failure to do so (or subsequent reinstatement of structures without an authorisation) may result in the issue of an expiation fee and Council may impound the structures.

Property owners will ensure that authorisations are kept current to avoid such action being taken.

7.3 Breaches of authorisation

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

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

- First breach of the authorisation – verbal warning issued with compliance to be achieved within 24 hours.
- Second breach of the authorisation – written notice with compliance to be achieved within 24 hours.
- Third breach - cancellation of the authorisation.

Council may give less than 24 hours 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 containers

On termination or expiration of an authorisation, the authorisation holder will remove all containers from the road or footpath within 48 hours calculated from the date of service of written notice of termination.

7.4 Revocation or suspension of an authorisation

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