

Guidelines for temporary vending from street stalls

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1. Introduction

Council believes that community organisations should be afforded the opportunity to use public footpaths to sell goods and services. Temporary street stalls can enhance the vitality of an area, help community organisations to remain viable and heighten the sense of 'belonging' in a community.

Council will allow temporary vending from street stalls placed on footpaths by local community organisations and registered charities for the purposes of fund raising, promoting awareness, increasing membership or attracting sponsorship for their organisation.

2. Statutory requirements

2.1 Local Government Act, 1999

Under Section 222 of the Local Government Act 1999 any person wanting to place tables and chairs or any other furniture on the footpath area of any road, street or public place under the care and control of Council, for the purpose of providing to the public food or drink for consumption, is required to obtain a permit from Council.

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 (DDA) 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.

'Business purpose' in the context of these guidelines means conducting activities to generate funds or to increase patronage / membership / goodwill so as to secure the financial viability of a community organisation. Examples include a market stall to fund raise for a charity, a sausage sizzle to raise funds for the local sporting club, or sale of work by a local craft guild for reinvestment in the guild. It does not include the sale of items by an individual for individual profit. All funds must be reinvested entirely within the organisation.

'Permit' means a permit for the placement of outdoor dining furniture 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 the care and control of Council.

'Stall/Street Stall' means any market stall, stand, table, trestle, BBQ or other structure used in temporary vending.

'Temporary vending' means the erection of a street stall for the purpose of selling food, goods, or services to raise funds for local community organisations or for the purpose of promoting awareness, attracting sponsors or increasing membership of those organisations.

4. The permit

4.1 The permit

A permit for temporary vending entitles the permit holder to place approved street stalls and carry out business activities on the footpath in front of their premises or, with approval, in front of Council facilities.

A temporary vending permit will be:

- issued in the name of the organisation
- non transferable
- 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 any 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 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 will be made on the approved Council application form.

Applications will be accompanied with documentation to enable Council to assess whether the conditions of issue have been met. This documentation is specified at section seven.

Permits will be issued for the temporary period required by the community organisation but will generally be for no more than three business days or one weekend.

4.3 Activation of a permit

The permit will not commence to operate and no street stalls to be placed on the footpath until:

- 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 organisation is to ensure that the temporary vending authorised by the permit is undertaken in accordance with the documentation accompanying 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 attached Guidelines for Temporary Vending from Street Stalls 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 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 those operating the street stall are suitably identified and hold the permit on site for production to Council's Compliance officers, or the police should that be required.

To ensure that those operating the street stall can provide proof of identity when requested by an authorised Council employee or by the police.

In the event that the 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 permit 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 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. Eligibility for permits

Council restricts the use of temporary street stalls to locally based, not-for-profit community organisations operating adjacent to local community facilities, Council buildings or the premises of charitable organisations.

The conditions for placement of street stalls on footpaths are:

- the width of the footpath is at least than 3.4 metres
- a width of at least 1.8 metres is kept clear for pedestrians
- a minimum of 60cm is kept clear between the stall and the kerb
- the speed limit of the road is 60km/h or lower
- the stalls are not placed within 10 metres of intersecting roads
- the site has not been associated with loss of control crashes.

The sale of goods from the street stall will not, in the opinion of Council, have a detrimental effect on nearby commercial premises by presenting unreasonable competition to their trading.

The erection of street stalls will be limited to two occasions per year for charitable organisations and one per year for other community organisations

6. Special conditions of permits

- The organisation will ensure that litter or waste is prevented from falling, spilling or blowing onto the footpaths or gutters.

- Within two hours of the close of the stall the organisation will ensure the area is cleared of all rubbish and left in a neat and tidy condition.
- The street stall will remain in its designated location and no movement of the street stall to any other location will be permitted without separate approval.
- Street stall operators will comply with Council's health and hygiene requirements.
- Street stall operators will not harass or hinder passing pedestrian traffic.
- Vehicles associated with the approval will not park on footpaths or plaza areas.
- Street stall operators will not play amplified music or oration, or other amplified noise.
- 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.

7. 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 sketch or drawing showing the length and width of the proposed display area, its location on the footpath and the position where street stalls are to be placed.

8. Compliance

8.1 Monitoring

Authorised officers of Council will monitor outdoor dining areas and operators are required to comply with any direction provided by such officer.

8.2 Placement of street stalls without a permit

Where an organisation places a street stall on the footpath without a permit, Council will require the organisation to remove the goods immediately from the footpath. Failure to do so (or subsequent reinstatement of the stalls without a permit) may result in the issue of an expiation notice.

8.3 Breaches of permit

If the permit holder breaches a provision of this permit, and fails to remedy the breach, Council may require the remove the stalls and cease trading.