



NAME OF POLICY: Display of Business Merchandise and Objects on Council Footpaths

POLICY MANUAL: Governance

BACKGROUND

The display of business merchandise on footpaths provides economic benefits to traders and contributes to the overall vibrancy of the City's retail and commercial precincts. However, the unregulated and ad-hoc use of footpaths to display business merchandise and objects used for promotional and aesthetic purposes, can create potential trip hazards and restrict the provision of a safe and clear path of travel for pedestrians, especially for persons who are visually and/or mobility impaired.

These concerns are heightened on The Parade, Norwood given the high volume of pedestrian traffic that is juxtaposed with a range of objects on the footpaths including, but not limited to, business merchandise, objects used for promotional and aesthetic purposes, street furniture, outdoor dining areas, moveable signs such as A-Frame signs and feather signs, bins, discarded shopping trolleys, buskers and people queuing and waiting to enter popular shops and cafes.

In order to ensure that the display of business merchandise and objects on footpaths occurs in a manner that maximises the benefits to traders and ensures maximum safety, accessibility and convenience for pedestrians and patrons, the Council is required to ensure that displays on footpaths are established, operated and maintained in an appropriate manner.

Pursuant to Section 222 of the *Local Government Act 1999*, the Council is vested with the power to grant a permit for the use of streets, roads and road related areas (including footpaths) held in its care for use for business purposes. The Council is also empowered to make the granting of a permit subject to conditions.

This Policy sets out the obligations of traders in respect to the display of business merchandise and objects on footpaths throughout the City and provides a consistent framework, against which applications for permits for such displays are to be assessed.

DISCUSSION

This Policy applies to the display of business merchandise and objects that are located on footpaths (ie. road reserves), which are under the care and control of the Council, by virtue of Section 208 of the *Local Government Act 1999*. The Application of this Policy does not include any moveable signs (including A-frame signs) that are controlled under the Council's By-Law No. 2 – Moveable Signs.

For the purposes of this Policy, "footpaths" has the same meaning as "public road" under the *Local Government Act* and includes road reserves, thoroughfares and alley ways.

For the purposes of this Policy, "Business Merchandise" means the offer or exposure for sale of any merchandise, goods, wares, commodity, article or thing.

For the purposes of this Policy, "Objects" means the exposure and/or display of any merchandise, goods, wares, commodity, article or thing for aesthetic purposes and/or used to promote or advertise a business, shop or services; promote or advertise items for sale or services on offer within the associated business or shop; or promote or advertise or support any charity, event or function.

For the purposes of this Policy, "Council" means the Council or a Council employee, acting under delegated authority.

Legislative Requirements

There are three (3) separate Acts which directly apply to the display of business merchandise and objects that are located on footpaths and should be read in conjunction with this Policy:

1. *Local Government Act 1999;*
2. *Disability Discrimination Act 1992; and*
3. *Retail and Commercial Leases Act 1995*

Before displaying business merchandise and objects on a footpath, Traders must ensure that they are fulfilling their obligations with respect to each of these pieces of legislation.

KEY PRINCIPLES

1. The Council aims to provide clear, safe and unobstructed access for pedestrians of all abilities on its footpaths in accordance with Council's statutory responsibilities and the requirements of the *Disability Discrimination Act 1992*.
2. The Council aims to ensure that competing uses of its footpaths are properly balanced and that public footpath use is in keeping with the desired future character of the City's retail and commercial precincts.
3. The Council acknowledges the importance of footpath trading and displays in enhancing the amenity, viability and safety of the City's retail and commercial precincts. However, trading on the footpath is not a right; it is a concession granted to traders by the granting of a Permit.
4. The Council has a duty to properly manage land under its care and control and to protect the interests of the community at large in accessing and using land under its care and control.
5. The broad interests of the community and the Council should not be harmed, or the public unreasonably inconvenienced by private use of footpaths.

POLICY

General Matters

1. No goods or merchandise are to be placed on or over a Council footpath in contravention of legislation.
2. It is a condition of all permits granted in respect to Applications to display business merchandise and or objects on Council footpaths, that the details of this Policy are adhered to at all times, other than where an exemption from a particular aspect of the Policy has been granted by the Council, and that exemption is noted as a Special Condition in the Permit for the relevant premises.
3. Permits will only be issued to a business operator to display business merchandise and or objects on Council footpaths if the Council is satisfied that adequate, safe and obstruction free access and path of travel can be provided for pedestrians of all abilities to business premises, street furniture and pedestrian access points.
4. The grant of a Permit does not confer exclusive rights of a public footpath for business purposes other than an authorisation to trade or display business merchandise and objects on the footpath in strict accordance with the Permit Conditions for the period of the Permit.

Design, Appearance & Size of Displays and Objects

5. Displays and Objects shall:

- 5.1 be not less than 600mm high and cover an area of footpath no less than 600mm x 600mm, so that they are of sufficient size to not become trip hazards to pedestrians;
- 5.2 have a base designed to be detectable to a visually impaired person navigating the footpath with the aid of a cane (ie. the incorporation of a bar or panel spanning the otherwise open base of the object and having a minimum 30% luminance contrast with the footpath);
- 5.3 only be displayed on the footpath during the hours that the relevant business premises are lawfully open to the public and must be removed outside trading hours to allow for industrial cleaning of the footpath (with the exception of planter boxes); and
- 5.4 only display business merchandise or objects that advertises or promotes the relevant business or the goods or services available within the relevant business and displays must not include offensive or explicit advertising material.

The Permit Holder is responsible for:

- minimising hazards through:
 - ensuring that edges of objects do not jut out from the main body of the object and are maintained in good condition with no rough or sharp edges;
 - ensuring that no part of the base of any display or object projects excessively beyond the edges of the display or object; and
 - designing for stability by ensuring that the display or object is appropriately proportioned and weighted (as a guide, a weight of 15kg may achieve this);
- ensuring that the object is stable and does not pose a safety risk. If the object is determined to be a hazard, the permit holder is responsible for ensuring the object is repaired or replaced; and
- bearing the costs associated with the relocation of existing street furniture (if approval is granted, at the absolute discretion of the Council) to facilitate the siting of business merchandise displays or objects adjacent the kerb line.

Siting Criteria

6. Displays and Objects shall:

- 6.1 not obstruct access to infrastructure or permitted activities, such as parking, public transport stops, loading zones, outdoor dining, underground services or building entrances;
- 6.2 not obstruct access to public street furniture such as seats, bicycle parking, drinking fountains, rubbish bins, telephone booths and post boxes;
- 6.3 not obstruct safe visibility for footpath and carriageway users; and
- 6.4 generally not extend beyond the width of the shopfront with which the display and/or object/s is associated.

7. Clearances and Setbacks

7.1 Pedestrian Zone

- 7.1.1 A minimum clear pedestrian access path of no less than two (2) metres width adjacent to the building line, for a vertical height of 2.5 metres above the footpath, is required to be maintained on The Parade, Norwood. In all other areas of the City, a minimum clear pedestrian access path width adjacent the building line of 1.5 metres, for a vertical height of 2.5 metres above the footpath is required.

The display of business merchandise and objects shall generally be located adjacent the kerb line. However, in some cases (other than in respect to premises located on The Parade, Norwood and at the absolute discretion of the Council) it may be possible for displays to be located adjacent the building line in circumstances where it is, in the opinion of the Council, impractical and cost prohibitive for it to be located adjacent to the kerb. In such cases, permit applications will be reviewed by a Disability Access Consultant and any design solutions recommended by the Disability Access Consultant would be required to be implemented.

In such circumstances and to avoid any doubt, the Council will bear the cost of engaging the Disability Access Consultant and the cost of any modifications required to the footpath where the installation of tactile markers is required. The cost of implementing any other recommendations by the Disability Access Consultant, will be borne by the Applicant/Permit Holder.

- 7.1.2 In cases where business merchandise and objects are displayed for two or more adjoining premises, a minimum clearance of one (1) metre between displays must be provided, to enable pedestrian access to the kerb alignment, to ensure the crossing of streets is not unduly disrupted and no items should obstruct access to litter bins, public seats, post boxes and other items of street furniture.
- 7.1.3 No displays of any kind or objects will be allowed on the footpath at intersections/corner sites in the area between the projected building lines and the kerb alignment, so as to provide substantial standing space and clear sightlines for pedestrians at the intersections.
- 7.1.4 The Pedestrian Zone must be kept clear of any type of obstructions to pedestrian movement and shore lining, including, but not limited to, business merchandise displays, signs, or objects of any kind, including promotional materials, items and articles, planter boxes, objects displayed for aesthetic purposes, charity boxes.

7.2 Kerbside Buffer Zone

- 7.2.1 The purpose of the Kerbside Buffer Zone is to provide a separation between road users and business merchandise displays and other objects on the footpath. The extent of the Kerbside Buffer Zone required is dependent on a number of circumstances, as outlined in the table below:

TABLE 2: KERBSIDE BUFFER ZONE REQUIREMENTS

Siting of Business Merchandise Displays and/or Objects on The Parade, Norwood	Required Distance from Kerbside (measured from the top of the gutter)
Adjacent a vehicular travel lane	600mm
Adjacent parallel parking spaces	600mm
Adjacent angle parking spaces	900mm
Adjacent a loading zone, bus stop or taxi rank	1000mm

- 7.2.2 No business merchandise displays, planter boxes, screens, articles, items or objects of any kind are allowed within the Kerbside Buffer Zone up to a height of 2.5 metres above the footpath level, other than existing permanently affixed planter boxes as at the initiation date of this Policy.

Administrative Matters

8. Cleanliness

The Permit holder shall maintain the display area, including the footpath, in a clean, hygienic and tidy state at all times.

9. The Council may suspend a Permit by giving reasonable notice (except in the case of emergencies) to the Permit Holder, if the Council requires the footpath for events, festivals, footpath maintenance or works.

10. Permit Fees

All Permits will be issued free of charge on an annual basis.

11. Insurance Requirements

Applicants will be required to indemnify the Council against any claims for loss and/or injury by third parties and to provide evidence of public liability insurance cover to the amount of \$20,000,000.

12. Permit Approval

The Council will grant a Permit to those Applications which comply with the requirements of this Policy. Once the Permit is approved, the Council will notify the Applicant and issue a Permit.

The Permit becomes valid when:

- a signed Permit and Permit sticker has been issued by the Council to the Applicant;
- the Permit sticker has been affixed so that it is:
 - displayed on a shopfront window adjacent to the entrance of the permit holder's business premises, or if this is not possible, an equally visible location; and
 - located at a height between 1 and 2 metres above ground level.

13. Monitoring and Enforcement of the Policy

13.1 Renewal of an existing Permit

A Permit to display business merchandise or objects is generally issued for a period of one (1) year. An application to renew a Permit should be made no less than two (2) months prior to the expiration of the current Permit, by way of completing a Footpath Display Permit Agreement form, which is sent out to all Permit holders annually by the Council. Any proposed changes to the terms of the Permit should be noted on the Permit Agreement form, for the consideration of the Council.

Upon receipt of the completed Permit Agreement form and evidence of indemnity for the Council against any claims for loss and/or injury by third parties and public liability insurance cover to the amount of \$20,000,000, a delegate of the Council will sign the Permit Agreement Form and return a copy to the Applicant, together with a Permit sticker to be displayed on the front window of the premises.

13.2 Monitoring and Enforcement

Permit holders are required to ensure that all conditions of the Permit, including this Policy, are adhered to at all times. Authorised Officers of the Council will monitor footpath business merchandise display areas for compliance with this Policy and any other conditions specific to the relevant Permit.

Where business merchandise or objects are displayed on footpaths without a valid Permit being in place, an expiation fee applies and the operator of the business will be ordered, pursuant to Section 262 of the *Local Government Act 1999*, to cease the use of the footpath for outdoor trading purposes. The operator will have the opportunity to apply for a Permit to display business merchandise or objects and if approved, can recommence the display at that time.

13.3 Suspension or Cancellation of Permit and Further Action

The Council may cancel or suspend a Permit for a breach of Condition or for any other reason set out in this Policy. However, the Council will provide the Permit Holder written notice of the proposed cancellation or suspension stating the grounds on which the Council proposes to act.

The Permit Holder will be provided reasonable time to make representations to the Council on the proposed suspension or cancellation (unless it is deemed by the Council that the reason for the suspension or cancellation relates to an emergency or places the health and safety of the public at risk).

In the event that business merchandise or objects continue to be displayed, despite a Permit being cancelled or suspended by the Council or an order from the Council to cease the use, the Council will take the appropriate action to ensure that the use ceases, which may include the removal of the display from the footpath and/or prosecution for a breach of the *Local Government Act 1999*.

REVIEW PROCESS

The Council will review this Policy within five (5) years of the endorsement of the Policy.

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is the Council's Manager, Development Assessment, telephone 8366 4567.

ADOPTION OF THE POLICY

This Policy was adopted by Council on 28 November 2016, to be implemented from 1 July 2017. This Policy was reviewed and adopted by Council on 3 February 2020.

TO BE REVIEWED

This Policy is to be reviewed by 28 February 2025.