

Footpath Trading Policy

Amended June 2013



CONTENTS

INTRODUCTION	3
PURPOSE OF THE REVISED FOOTPATH TRADING POLICY	4
FOOTPATH ZONES	5
1. Specific location and setback requirements	6
2. Service authority works and special events	7
DESIGN AND OPERATION REQUIREMENTS	8
3. Café furniture	8
4. Display and placement of goods or signs including Real Estate signs	9
5. Ancillary Items (umbrellas, heaters, pot plants etc)	9
6. Temporary Barrier Screens and café blinds/awnings	10
7. Conduct of Patrons	10
8. Conduct of Serving Staff	11
9. Litter Control	11
10. Alcohol	11
11. Noise and entertainment	11
LICENCE APPLICATIONS, INSURANCE REQUIREMENTS AND ADMINISTRATION	11
12. Public liability insurance and indemnity	11
13. Applications for a Footpath Trading Licence (Public Space Licence Agreement)	12
14. Notification of an application for a licence	12
15. Licence renewal	13
16. Amendment of licence conditions or endorsement of an amended licence plan	13
17. Decision making by Council	13
18. Licence fee and period of licence	15
19. Enforcement of footpath trading	15

INTRODUCTION

Council aims to provide a safe environment for people who move through the City. Part of this responsibility requires Council to provide a clear path for all people to move along footpaths.

Council has a legal responsibility for the regulation of trading activities in public places. The City of Yarra has a diverse range of strip shopping centres and business precincts that attract local people, interstate and international visitors. These centres and precincts provide specialised and unique shopping, entertainment and dining experiences as well as provide shopping and service facilities for local residents. Mobile Food Vehicles are also a Yarra feature.

Yarra's businesses contribute to the liveability and vitality of the municipality, particularly in the major retail strips of Bridge Road, Swan Street, Brunswick Street, Victoria Street and Smith Street.

Council is committed to ensuring that the vibrancy of our strip shopping centres and business precincts are enhanced by providing the opportunity for footpaths to be used for people to dine outdoors. Footpath trading enables cafés and restaurants in Yarra to add value to the whole dining experience. In addition, footpaths may be used for the display of goods for sale where appropriate.

The presence of people in outdoor dining areas increases the sense of safety in our streets.

Pedestrian safety is a primary concern for footpath use. Council's Footpath Trading Policy has been developed with this distinction in mind. Council is committed to ensuring good access for people to move along footpaths with good access and as a minimum, to meet the requirements of the Commonwealth *Disability Discrimination Act* (1992).

The essential key to an effective accessible pedestrian system throughout shopping precincts is the development and maintenance of a continuous accessible path of travel. This should extend out from the property line to provide a consistent footpath environment inclusive of the needs of all of the community, including older persons and people with a disability. In order to achieve this, any street furniture, signs, trader's activities or displays must be located towards the kerb side, not along the property line.

What is footpath trading?

Footpath trading is the use of sections of footpaths for commercial activities as approved by the Yarra City Council, including the provision of outdoor dining areas and the display of goods and signs. It also includes approved activities conducted by Mobile Food Vehicles which have not been engaged as part of either a private function or an organised event or festival.

Who does the Policy apply to?

The Revised Footpath Trading Policy applies to the approved use of all footpaths within the City of Yarra for commercial purposes, by an organisation, individual, mobile food vehicle or other business.

Where this Policy refers to "the principal business", this means the business being lawfully conducted within a building directly adjoining the footpath area proposed for footpath trading.

How does the Policy relate to Council's Roads and Council General Local Law (2016)

The Local Law provides that Council approval is required for the display of goods or signs on any roadway (including a footpath). Approval is also required for the placement of a table, chair, umbrella or other furniture on a roadway. The requirements for a Public Space Licence Agreement (Footpath Trading Permit) required by the Local Law are detailed in this Policy.

The Revised Footpath Trading Policy derives from Council's responsibilities for the care and management of footpaths in the municipality in addition to the Local Law.

A breach of any condition of a Public Space Licence Agreement by a trader, or any person operating a commercial activity as governed by this Policy without a current Public Space Licence Agreement is a breach of Councils Local Law with strict liability.

What matters are covered by the Policy?

The Revised Footpath Trading Policy covers:

- Which parts of footpaths may be used for footpath trading or the display of goods or signs;
- licence requirements for the use of a Trading Activity Area;
- specific requirements for particular types of footpath trading activities and items;
- general requirements in relation to public infrastructure and special events;
- administration of the Policy, including application requirements, decision making, fees, public liability insurance and transfers of licences; and
- enforcement of licences and the Revised Footpath Trading Policy.
- Council's Mobile Food Vehicle Guidelines which may be read as an appendix to this Policy.

Purpose of the Revised Footpath Trading Policy

The Revised Footpath Trading Policy aims to ensure that safe and accessible pathways are provided for everyone in the community to use. Council has a legal responsibility under the Commonwealth *Disability Discrimination Act* 1992 to ensure the development and maintenance of a continuous accessible path of travel along footpaths. This path of travel, the "walking zone", should extend from the property line with no obstruction or projections.

Yarra City Council is responsible for ensuring safe pedestrian walkways. Where this is achieved, Council may allocate space for footpath trading or mobile food vehicles to operate.

WHAT PERMISSION WILL BE REQUIRED?

Will a licence be required to place items on or to trade on the footpath?

An annual Public Space Licence Agreement (referred to in this Policy as "**licence**") is required from Council and constitutes permission to place furniture, signs or goods on the footpath under Council's *Roads and Council Land Local Law No. 2* of 2012.

If any works are proposed to fix an item to the footpath, a Road Opening Permit may also be required from Council.

In limited circumstances a planning permit may also be required under the Yarra Planning Scheme for certain works.

There is an exemption from the need for a permit for the use of land on a road (including a footpath) in clause 62.02 of the Yarra Planning Scheme. No such planning permit will be required however if the use is associated with the use of adjoining land and is authorised by Council under a Local Law (such as via a footpath trading licence).

A Public Space Licence Agreement constitutes written consent for the purpose of Section 66 (advertising on roads) of the *Road Management Act* 2004.

GUIDING PRINCIPLES

- (a) Council aims to provide clear, safe and unobstructed access at all times for pedestrians of all abilities on Yarra's footpaths in accordance with Council's statutory responsibilities.
- (b) Footpath trading activity must relate to and must make a positive contribution to the urban character and amenity of the area and surrounding residential or heritage areas.
- (c) A user-friendly Policy for traders must be developed to clarify the permission required for footpath trading, the standards to be observed and suitable areas for trading.
- (d) Council strongly supports the long-term viability and sustainability of retail strips.
- (e) Council acknowledges the importance of footpath trading in enhancing the amenity, vitality and safety of the City of Yarra's commercial areas, particularly our activity centres.
- (f) Footpath Trading does not include the sale, offering for sale or consumption of alcohol on any footpath or public space. A licenced premise which has a current Public Space Licence Agreement does not have authority under that Agreement, to sell or allow alcohol to be consumed within their trading zone.

PUBLIC INFRASTRUCTURE

The Yarra City Council is committed to providing street furniture that is accessible, safe and comfortable. The provision of public seating gives people the opportunity to rest and take time out. Public seating also provides a place for people to pause along busy walking routes, and creates informal meeting places. Well maintained public places improve the perception of how safe a place is and support the public's desire to occupy and use those places. Footpath trading must not compromise the ability for the general public to access street furniture or public infrastructure.

Footpath Zones

Walkways must extend out from the property line and provide a safe, clear and consistent pathway to meet the needs of all users. In order to achieve this, any street furniture, signs, trader's activities or displays must be placed towards the kerbside, not along the property line.

To provide a clear and suitably unobstructed footway for pedestrian access, there are three main functions of each footpath - the **Walkway Zone**, the **Trading Activity Zone** and the **Kerbside Zone**.

The size of these zones will vary depending on the width of the footpath.

Walkway Zone: extends from the property line to allow suitable passage by footpath users. This area of the footpath must be kept free from any items or structures at all times.

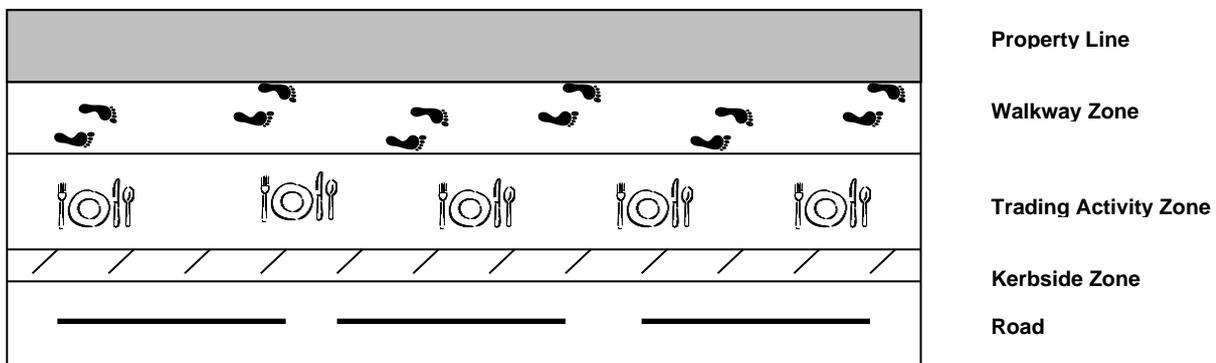
Trading Activity Zone: this is the only area of the footpath where the placement of goods, café furniture and ancillary items may be authorised.

Kerbside Zone: a minimum buffer of clear footpath must be provided from the kerb to allow for access to and from parked vehicles, including loading zones. Where there is a disabled parking bay, the setback from the kerb will need to be greater. This area of the footpath must be kept free from any items or structures at all times.

1. Specific location and setback requirements

How do I identify the various footpath “zones”?

Total Footpath Width	Less than 3.5m wide	3.5 m and wider
Walkway Zone	Minimum 1.5 m from the property line towards the kerb	Minimum 1.8 m from property line towards the kerb
Trading Activity Zone	Remaining area once walkway and kerbside zones are identified	Remaining area once walkway and kerbside zones are identified
Kerbside Zone	Minimum 0.4 m from the kerb of the road	Minimum 0.4 m from the kerb of the road
	Minimum 1.5 m if a disabled parking space adjoins the footpath	Minimum 1.5 m if a disabled parking space adjoins the footpath
	Minimum 0.7 m if a loading zone adjoins the footpath	Minimum 0.7 m if a loading zone adjoins the footpath



- 1.1 A clear access way of at least 0.5 metres must be provided and maintained on either side of the frontage of the principal business to create a walkway from the kerbside through the Trading Activity Zone. Where there is an extended shop frontage, an applicant may be required to maintain through-access at additional points from the kerbside. If footpath trading is authorised across the entire frontage of the premises, a 1 m clear access way must be provided every 3 m.
- 1.2 Where premises are adjacent to an intersection, the Trading Activity Zone must not extend past the property line.
- 1.3 No footpath trading will be allowed beyond the “vehicle stop line” on the approach side of any pedestrian crossing, and an equivalent distance on the opposite side, whether controlled by traffic lights or not.

- 1.4 In order to facilitate a clear and consistent unobstructed footway for pedestrian access, footpaths of less than 2.5 metres cannot be used for footpath trading.
- 1.5 With written approval by Council the authorised footpath trading furniture may be retained on the footpath for 30 minutes beyond the approved on site trading times. *The Operator may serve food and beverages on these tables and chairs subject to the appropriate liquor licence requirements. Council reserve the right:*
 - (a) *to impose any conditions that it may deem appropriate when approving an extension of trading hours (including but not limited to restrictions on the service of alcohol); and*
 - (b) *To withdraw or vary any approved variations to the footpath trading licence due to adverse amenity impact to the area.*
- 1.6 A minimum clearance of 0.5 metres, or greater if deemed appropriate by Council or a relevant statutory authority, must be provided on either side of any asset permanently affixed to the footpath such as rubbish bins, parking meters, and/or bike racks.
- 1.7 A minimum clearance of 1.0 metre, or greater if deemed appropriate by Council or a relevant statutory authority, must be provided on either side of a bus or tram stop or public seat. In the case of the new style 'super tram stops' footpath trading will not be permitted within a minimum of 2 metres either side of the tactile strip designating passenger access zones. Council may extend this exclusion area if upon assessment of the site; a greater distance is required to ensure safety and unobstructed access to the tram stop.
- 1.8 Any request to move (or remove) rubbish bins, parking meters, public seating and /or bike racks, or other public infrastructure (under the Yarra Footpath Trading Policy) must only be approved at Director level. Traders should take this into account when selecting a site. The approval for re- locating these items will only be considered if all costs associated with these works are at the applicant's expense and the items may be relocated nearby" A deposit against such re-location costs may be required.
- 1.9 Items which are placed on the footpath pursuant to a licence must be stable and suitably designed to prevent damage to the footpath, withstand weather conditions and maintain an attractive appearance. Umbrellas and similar items which may easily be dislodged or moved by the weather conditions must be suitably anchored to prevent them becoming a hazard.
- 1.10 All items associated with footpath trading must be removed from the footpath daily, within 30 minutes of the time at which footpath trading has ceased or by 11:00 pm at the latest unless an extension of time has been authorised by Council.
- 1.11 No footpath trading will be allowed between public seating and the property line, or between public seating and a road (including both roads on a corner)

2. Service authority works and special events

- 2.1 Service authorities or Council may require the use of public land, including a footpath, to undertake works, or for a planned event. When this occurs Council's will give seven days' notice in advance to licence holders who may be affected. In an emergency, sites may need to be cleared immediately. Licensees will be responsible for the movement of all items and any associated costs.
- 2.2 During of special events (e.g. Spanish Fiesta), footpath trading including the placement of signs and goods displays will not be permitted in the location being utilised for the event unless Council grants an exemption.

Design and Operation Requirements

3. Café furniture

- 3.1 Café furniture and ancillary items will only be permitted at premises where the primary activity of business is the service of food and beverage and those which are registered under the *Food Act 1984* to serve food and/or beverages. Premises having their primary activity being the sale of packaged liquor are not eligible for a Public Space Licence Agreement.
- 3.2 For safety reasons, barrier screens may need to be provided where any tables and chairs are approved and will also be subject to the requirements of this Policy and must be shown on the endorsed plan under the licence.
- 3.3 No item may be permanently fixed to any footpath or roadway without express written approval of Council. Approval from the Compliance Branch is required and a Road Opening Permit from Council's Services Contracts Unit must be obtained for works to the footpath to enable the temporary installation of café furniture, ancillary items or any goods or signs.
- 3.4 An item approved for footpath trading or display may in appropriate circumstances be secured to the footpath by a lock-in device provided that pre-approval is given by Council's Compliance Branch. Lock-in devices will only be approved where the device lies flush with the footpath when the items are not displayed. If a lock-in device is fitted without Council approval, an Authorised Officer may require the lock-in device to be removed and the footpath reinstated to its original condition at the expense of the licence holder.
- 3.5 Traders must reimburse Council for any reinstatement works as a result of any damage to footpaths caused by any furniture or other items. Enforcement action may also be taken by Council if appropriate.
- 3.6 Any items placed on the footpath should be of a contrasting colour to their background to assist people with vision impairment.
- 3.7 Each item proposed to be located on the footpath must be shown on the endorsed plan under the licence. This includes umbrellas, heaters, planter pots and/or planter boxes.
- 3.8 All ancillary items including umbrella canopies must be fully contained within the Trading Activity Zone.
- 3.9 All items must be placed so that they do not encroach upon any traffic control work, traffic or directional sign, public garden bed, public street furniture or any other public asset, at any time.
- 3.10 Tables and chairs, ancillary furniture, goods or signs may generally only be displayed directly outside the premises to which they relate. Permission may be granted to extend the placement of items on the footpath outside an adjoining premise. A 0.5 metre setback from each property line boundary must be retained. Any application for trading in front of an adjoining property must be accompanied by written permission from the proprietor of that adjoining property. Public liability insurance must be extended to include the adjoining footpath area.
- 3.11 Any 'A-Frame' and similar signs or goods displays may only be placed outside the immediately adjacent premises.
- 3.12 A separate cash register is not permitted on the footpath, nor may food or drink be prepared, cooked or heated in the Trading Activity Zone unless specific approval is granted.

4. Display and placement of goods, al fresco furniture and associated items or signs including Real Estate signs

- 4.1 The placement of goods on the footpath must not exceed a height of 1.5 metres, length of 3 metres and depth of 0.75 metres for any single item. If planter boxes are placed on the footpath, the 1.5 m height will also include the height of any plant or foliage.
- 4.2 A 1 metre clear access will be required for every 3.0 continuous metres of stands/goods and al fresco dining furniture and associated items to ensure that pedestrian access from the roadway is maintained.
- 4.3 Fixed or temporary shop awnings to protect goods may only be installed with appropriate permission from Council. Awnings must be kept in a state of good repair. Council may direct that they be removed.
- 4.4 Inflatable signs, portable electric signs, illuminated, revolving, spinning or flashing signs, flags and banners must not be displayed on or above the footpath area except with the specific written approval of Council. In addition, promotional flags or any other items or signs attached to doorways or shop facades must provide a minimum of 2.2 metres clearance above the footpath.
- 4.5 Display of goods will not be authorised where they diminish the amenity, safety and/or appearance of an area. Goods display stands must be kept in a state of good repair or Council may direct they be removed.
- 4.6 Signs or goods must not be placed on roundabouts, roadways, traffic islands or garden beds at any time, including signs fitted to trailers or vehicles parked for the purpose of advertising. Council may require such trailers or vehicles to be removed or may remove them at the cost of the owner.
- 4.7 Advertising signs should have a contrasting colour to their background to assist people with vision impairment.
- 4.8 An individual advertising sign must not exceed 600mm in width or an overall height of 1000mm inclusive of 100mm legs.
- 4.9 A maximum number of 2 signs may be authorized and generally only if the premises has two separate frontages.
- 4.10 Real Estate Agents must obtain an annual licence to display free-standing signs (pointer boards) and must adhere to the requirements of this Policy with respect to the placement of all signs. Free-standing Real Estate Agent signs (pointer boards) may only be displayed between 8.00 am and 5.00 pm on the day of a property sale or 30 minutes before and after a premise is open for inspection.
- 4.11 Stands and signs on or above the footpath must be secured in a manner which ensures that they do not create a risk for pedestrians, property or passing traffic. Unless otherwise approved, they must not be reliant on, or physically fixed or attached to any Council infrastructure. Any securing device must be removed when the sign or stand is not displayed.

5. Ancillary Items (umbrellas, heaters, pot plants etc)

- 5.1 A licence will not be issued to allow ancillary items unless café furniture has also been approved. In order to place any such items on the footpath (even where permission has been granted for café furniture), they must be shown on the endorsed plan under the licence.
- 5.2 Overhead outdoor heaters must be affixed to an awning or verandah. Council approval will be required for the installation of fixed heaters. Building or Planning Permits may be required for these items.

- 5.3 If patio heaters (which have a base on the footpath) are used, they must be located within the Trading Activity Zone, covered by the traders' public liability insurance and shown on the endorsed plan under the licence.
- 5.4 All outdoor heaters must comply with safety standards specified by the Energy Safe Victoria which may be obtained by telephoning Energy Safe Victoria on 1800 069 588 or from their website at www.esv.vic.gov.au
- 5.5 Where umbrellas are approved, they must be a minimum of 2.2 metres high at the lowest point and easily removable. They must also be securely anchored to a base to prevent dislodgement by wind or other adverse weather conditions.
- 5.6 All new planter boxes must be easily removable and must not cause damage to the footpath or any other Council asset. They must also have a locking mechanism to prevent them moving and creating or becoming a hazard when placed on the footpath.
- 5.7 Planter boxes must be maintained with healthy plants or else permission will be revoked and the boxes required to be removed. Planter boxes must be kept free from cigarette butts and other litter. They must be kept in good condition.

6. Temporary Barrier Screens and café blinds/awnings

- 6.1 Temporary barrier screens must not exceed a height of 1.2 metres above the footpath. Existing licensed barrier screens which exceed the 1.2 metre height requirement may be allowed to remain at the discretion of an Authorised Officer. This permission will be reviewed by Council when there is a request to renew or transfer a licence.
- 6.2 Signage on any barrier screens or 'A-Frame' signs must be to the satisfaction of the authorised authority. No signage may be pornographic, offensive or otherwise detract from local amenity.

7. Conduct of Patrons

- 7.1 The licensee is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must:
 - (a) ensure that patrons do not move tables and chairs into the Walkway or Kerbside Zones;
 - (b) ensure that patrons do not allow pets, prams, bicycles or any other items to obstruct the Walkway or Kerbside Zones;
 - (c) ensure that staff do not serve food or beverages to a person in the Walkway or Kerbside Zones;
 - (d) ensure patrons do not congregate in the Walkway or Kerbside Zones;
 - (e) adhere to the endorsed site plan and licence conditions at all times; and
 - (f) ensure that patron behaviour does not interfere with other persons.

8. Conduct of Serving Staff

- 8.1 Staff at cafes with kerbside trading must give pedestrian movement priority over their own movements across the Walkway Zone.

9. Litter Control

- 9.1 Each licence holder is responsible for maintaining the area within and around the Trading Activity Zone in a clean and safe manner.
- 9.2 Licence holders must supply each outdoor table with a wind-proof ashtray at all times. Traders are responsible to regularly clean cigarette ash, butts and any other litter in and around the Footpath Trading Zone generated by patrons.

10. Alcohol

- 10.1 Prior to the service or consumption of alcohol within the Footpath Trading Zone, an applicant must obtain and provide Council with a copy of a current liquor licence that includes the relevant part of the footpath as part of the licensed area (via a "redline plan"). A trader's right to occupy the footpath area is however granted only via the footpath trading licence. The approved hours for Footpath Trading may vary from any other hours allowed by any other licence or permit. A liquor licence does not give a trader the legal right to trade on any Council footpath or land without an accompanying Footpath Trading Licence. All conditions of the footpath trading licence and Policy must be adhered to at all time within any "redline" area that encroaches on Council land.

11. Noise and entertainment

- 11.1 Each license holder must ensure that no noise or other disturbance emanates from the footpath trading activity and which causes a nuisance to others or detriment to the amenity of the neighbourhood.
- 11.2 No outdoor speakers, sound amplification equipment or jukeboxes are permitted on any footpath, except with the specific written approval of Council. The licence will be endorsed to show this permission if granted.

No live entertainment is permitted within the Trading Activity Zone or elsewhere on the footpath area without the written permission of Council.

Licence Applications, Insurance Requirements and Administration

12. Public liability insurance and indemnity

- 12.1 A licence will not be issued by Council unless the applicant indemnifies Council against any suit, action, proceeding, judgement, claim, demand, cost, expense, loss or damage for which Council becomes or may become liable in relation to the death or injury to any person or the damage to any property caused by anything authorised by a licence.
- 12.2 The licensee must maintain a public liability Policy of insurance for an amount of not less than \$20 million. The Policy must be able to meet any possible claim which may be sustained against the licensee or Council in relation to the death or injury to any person or the damage to any property arising out of anything authorised by the Licence Agreement.

13. Applications for a Footpath Trading Licence (Public Space Licence Agreement)

13.1 Applicants must:

- complete and sign an application for a Public Space Licence Agreement (as it is known under Council's Local Law); or where appropriate a Mobile Food Vehicle Permit application. These forms are available on the Council web site.
- provide payment of the appropriate fee to Yarra City Council;
- provide a plan, drawn to scale, showing:
 - the location and dimensions of the principal shop frontage, the adjoining shop frontages and the width of the Kerbside Zone and Walkway Zone (refer to the table in Clause 1);
 - all existing fixed street and footpath features within or near the footpath trading such as trees, light poles, rubbish bins, bike racks and/or public transport shelters and any parking restrictions or controls in place;
 - the location and dimensions and all proposed items to be placed on the footpath, and
 - details of any proposed advertising on café barriers or A Frame signs.
 - In the case of MFVs, copies of relevant Food Act Registration, Statement of Trade, and proof of valid vehicle registration must also be provided.
- acknowledge that it is the responsibility of the licence holder to comply with all legislation and legal requirements relevant to the activity permitted pursuant to a licence and to ensure that employees and agents similarly comply.

13.2 In accordance with Clause 12 of the Policy, the applicant must provide a Certificate of Currency in relation to a public liability Policy of insurance, insuring against liability for the death of, or injury to any person, or damage to any property, arising out of the display that will be authorised by the licence, which lists:

13.2.1 A minimum of \$10 million in public liability;

13.2.2 the insured (including situation of risk);

13.2.3 the Company insuring it;

13.2.4 expiry date; and

13.2.5 policy number.

13.3 The completed Application Form, Certificate of Currency and licence fee can be delivered in person to the Richmond Town Hall or posted to Community Amenity Unit, City of Yarra, and P.O. Box 168 Richmond 3121.

14. Notification of an application for a licence

14.1 Before a licence is granted for the first time or if an amendment is sought to an approved plan or condition of a licence a public notice must be prominently displayed for 14 days before Council makes a decision in respect of the licence or amendment to allow for public submissions.

In the case of a mobile food vehicle application, if the proposed site is adjacent to or sufficiently close to a residential area, Council may require consultation with affected residences.

15. Licence renewal

15.1 Licences are issued until 30 September of each year. A licence may be renewed upon:

- the payment of the specified annual fee;
- proof of current public liability insurance to the specifications in this Policy; and
- acknowledgement that it is the responsibility of the licence holder to comply with all legislation and legal requirements relevant to the activity permitted pursuant to a licence and to ensure that employees and agents similarly comply.
- If a Public Space Licence Agreement or MFV Permit is issued on a trial basis for a specified period, a pro rata fee payment system will apply.

Council reserves the right to refuse to renew a licence in its absolute discretion.

16. Amendment of licence conditions or endorsement of an amended licence plan

16.1 A licence holder can make an application to Council to amend a condition/s of a licence or to vary anything approved in the endorsed plan at any time. Council may approve an amendment at its discretion and will consider the matters in the section below in making that decision. Council will also have regard to the operation of the approved footpath trading under the current licence.

16.2 A licence holder may be advised by Council that an amendment is so significant that a new application for a licence will be required. Public notification of an application to amend a licence or vary an approved plan may be required prior to Council making its decision. Advertising may also be required.

17. Decision making by Council

17.1 The following matters may be considered by Council in assessing an application for a Public Space Licence Agreement (footpath trading) having regard to the available footpath area and local conditions:

- having regard to local conditions, whether the footpath trading proposal has the potential to compromise pedestrian or traffic safety, public amenity or impact negatively on the functionality of a footpath, roadway, car parking space, loading bay, public amenity and or asset or the like;
- the visual impact of the proposal, including the potential to create visual clutter or poor street image (especially in the case of display of goods);
- the potential amenity impacts of the proposal, including the cumulative impact of footpath trading on nearby occupancies;
- whether a condition restricting trading or display hours is warranted, having regard to matters such as the use and development of surrounding land, the location of the footpath trading, the nature of the use of the footpath and any management conditions including the hours of operation of nearby commercial premises;
- the interaction between the proposed use of the footpath area including proposed structures with existing heritage elements;
- key features of the local environment;
- the nature, design, layout and function of the proposed structures and associated land use; and
- any impacts on other public land or public infrastructure/assets having regard to the available footpath area and local conditions.

17.2 Decision Guidelines for proposed kerbside dining in **new or refurbished** kerbside extension areas

In determining an application in these areas officers will consider the following criteria in forming an opinion as to whether or not the proposed application should be approved or not (and if so, the degree of any dining areas) having specific regard to the following considerations

The general considerations are:

- a) the intent of the newly created/refurbished kerbside space and how any commercial activity in this space would impact on that intent;
- b) the size of the kerb extension and its capacity to have any tables and chairs in a suitable arrangement that complies with this policy;
- c) the impact of the proposal on existing public facilities in this space and whether the required clearance distances (see other clauses in this policy) can be met;
- d) the impact of the proposal on the possible future provision of public facilities in this space (with sufficient clearance from those public facilities to be comfortable for those activities e.g. public seats, cycle hoops) and;
- e) whether or not any kerb extension on the other side of the intersection is used for kerbside dining, and if so, to what extent.

The specific considerations are:

- f) in considering any proposed commercial activity in new or recently refurbished kerbside extension, the following specific criteria shall apply:
 - i the area shall not be totally occupied by the proposed commercial activity to the extent that the community is effectively prevented from using the space or the future installation of public facilities such as public seating, cycle hoops etc is precluded;
 - ii the area shall be designed in a manner so as to allow the public to still move through /across the space;
 - iii in this regard, the criteria assessed as part of the consideration of the proposal will include the following:

Will the presence of commercial tables and chairs for outdoor dining negatively impact on the area in any of the following ways?

- *The clear message of pedestrians through/across the area (that is, impact on the desire lines of pedestrians) – in this regard, some 30% to 50% of the area at minimum should be retained for public space as well as complying with the required dimensions and other aspects as outlined in the policy);*
- *Effectively deny the public from using the space due to the extent and breadth of the proposal having regard to the space, dimensions and proportions of the area (including any proposed windbreaks, screens, furniture or the like);*
- *Create sightline issues for motorists and cyclists at a point when maximum concentration is required regarding safety – that is due to the congregation of persons in this locality (including standing);*

*Will the presence of commercial tables and chairs for outdoor dining **positively** impact on the area in any of the following ways?*

- *Add to the vibrancy and vitality of an area that could benefit from some revitalisation;*
- *Provide a level of activity on the street that does not exist at present and therefore improve public safety due to the presence of persons (passive surveillance etc);*
- *Improve the security of the immediate locality due to the presence of persons;*

Sites not in commercial zones

- g) Where the site is not in a commercial zone or in a commercial area, but rather a standalone site, the further intensity of the trading and its impact on the local amenity by reasons of car parking, noise, safety will be a further consideration.

In these instances, as a general rule, outdoor trading in residential zones will be kept to a minimal supply to enable some improved vitality in the street but not impact unduly on the immediate area by reason of intensity and consequential impacts.

Discretion of approval

An authorised officer (based on the above criteria) may use discretion on the appropriate extent of approval.

Any footpath trading approval may contain condition(s) and or changes to the original proposal in order to bring it into alignment with any of the above criteria.

- 17.3 An application may be approved by Council as submitted, or approved subject to modifications. A licence may also be subject to conditions imposed at Council's discretion and it is a condition of every licence that the Revised Footpath Trading Policy must be complied with at all times.

18. Licence fee and period of licence

Please refer to Council's website for current fees: yarracity.vic.gov.au/footpathtrading

- 18.1 The number of seats available per bench seat will be calculated at a rate of 600 mm is equivalent to one seat.
- 18.2 Unless otherwise specified on the licence, a licence will expire on the 30 September each year except in those instances when it is withdrawn or revoked by an Authorised Officer prior to the expiry date.
- 18.3 If an application is refused, the licence fee less \$100 administration costs will be refunded to the applicant.
- 18.4 A pro-rata refund will be given (less \$100 administration fee) if a licence is forfeited.
- 18.5 Licences may be transferred to a new owner provided there is no change to the approved site plan. Before a new owner commences footpath trading, a written request for a transfer with a current copy of the new owner's Public Liability Insurance and approved layout must be forwarded to and approved by Council. A transfer fee of \$10000 applies. A new licence must be obtained if changes are proposed to the approved site plan or if the business changes its trading activity. In these cases Council will require advertising to be completed before any licence is granted.
- 18.6 A licence will automatically expire if the licensee fails to maintain public liability insurance.

19. Enforcement of footpath trading

- 19.1 Council may instigate enforcement action or modify the conditions of a licence or suspend or revoke a licence after giving notice to the licence holder if:
- 19.1.1 There is non-compliance with any part of this Policy;
 - 19.1.2 Licence conditions have not been met or there is non-compliance with an approved plan and there is failure to comply with directions of an Authorised Officer;
 - 19.1.3 The licensee fails to maintain public liability insurance;
 - 19.1.4 In the opinion of Victoria Police or an Authorised Officer, the footpath trading conducted by the licence holder poses an unacceptable safety hazard to pedestrians, motorists or cyclists;
 - 19.1.5 In the opinion of an Authorised Officer the footpath trading has caused or is causing detriment to the amenity of the area, having regard to any complaints received and/or inspections undertaken; and/or
 - 19.1.6 Instances of ongoing littering or untidiness are observed by Council.
- 19.2 Council may require a licence holder to give written reminders to patrons in an outdoor seating area to keep walkways unobstructed and clean.

- 19.3 Incidents of non-compliance will be noted on a trader's file and will be relevant if enforcement or other action is being considered at a later time.
- 19.4 Incidents of non-compliance will be taken into consideration by Council when requests to vary, renew or obtain a new licence are considered.
- 19.5 An Authorised Officer investigating a breach of this Policy or licence conditions may issue a Notice to Comply or an Infringement Notice whichever is appropriate. Licence holders who are issued two or more Infringement Notices for the same or similar breaches may have their licence immediately revoked, and face prosecution in the Magistrates' Court.
- 19.6 A licence may only be revoked after consultation with the Manager Compliance.
- 19.7 For the purposes of this Policy, a person authorised by Council under Section 224 of the *Local Government Act 1989* is delegated the power to make decisions on behalf of Council.