

Footpath Activities Policy



City of
KINGSTON

Contents

1. Purpose of the Policy	2
2. Scope	2
3. Definitions.....	2
4. Responsible Executive	2
5. Policy owner	2
6. Related Documents.....	2
7. Delegation Authority.....	3
8. Policy Statement	3
9. Policy Details.....	3
10. Decision Guidelines	13
11. Transition/Translation arrangements	13
12. Review.....	13

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RESPONSIBLE EXECUTIVE	General Manager Planning and Development
POLICY OWNER	Manager City Economy and Innovation

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1. Purpose of the Policy

This Policy aims is to ensure a safe and vibrant environment that reflects Kingston's energy and continues to facilitate a wide range of street trading opportunities by allowing private businesses to trade on the city's footpaths, enabling those enterprises to profit from the use of public land.

2. Scope

This Policy applies to all applications, amendments and renewals for a Footpath Activities Permit.

3. Definitions

Footpath Trading includes:

- Tables and chairs
- Portable wind barriers
- Permanent Glass Screens
- Umbrellas
- Transparent drop-down blinds
- Heaters
- A-Frame signs
- Tear drop banners and flags
- Display of goods
- Cooking food on the footpath

4. Responsible Executive

General Manager Planning and Development

5. Policy owner

Manager City Economy and Innovation

6. Related Documents

- Disability Discrimination Act 1992
- Community Local Law
- Road Management Act 2004
- Road Safety Act 1986
- Building Act 1993
- Food Act 1984
- Meat Industry Act 1993

- Kingston Planning Scheme
- Footpath Activities Standards
- Footpath Activities Permit Application Form
- Footpath Activities Form of Indemnity
- Footpath Activities Amendment and Renewal Forms

7. Delegation Authority

Council officers have delegated authority from the Chief Executive Officer to issue permits and enforce permit conditions.

8. Policy Statement

The City of Kingston is committed to supporting and enhancing local business, street life and village shopping.

While acknowledging the importance of street trading as a means to enhance the vibrancy of our local community and support the sustainable growth of local businesses, Council must be mindful that footpaths are available for all persons.

Council has a clear obligation to allow for pedestrians to move through the streetscape in a safe and accessible manner. It is important to acknowledge that commercial use of public space is a privilege not a right.

The principle objectives of the Footpath Activities Policy are to:

1. Promote a vibrant street life which balances the interests and needs of residents, ratepayers, business operators and visitors to the municipality;
2. Regulate and control the placement of objects on footpaths to ensure:
 - safe and unobstructed passage for pedestrians, in particular those who have sight and movement impairments or disabilities;
 - safe and unobstructed vision for drivers of vehicles and cyclists;
 - limited impact on the residential amenity and the streetscape characteristics of the shopping centre; and
 - fairness and consistency between traders in the use of footpaths.

9. Policy Details

9.1. Community Local Law

The Footpath Activities Policy is administered under the Community Local Law.

No items may be placed on the footpaths within the City of Kingston except in accordance with a permit issued by Council under its Community Local Law. To be granted a permit, a business operator must sign an agreement to comply with this policy and accompanying standards. Non-compliance is an offence against the above Local Law and will result in enforcement measures being taken.

This policy is supported by the Footpath Activity Standards which set out the specific requirements of the policy. These standards may be amended from time to time.

Council reserves the right to place conditions on a permit to provide certainty and manage possible impacts on neighbourhood amenity.

Council retains the right to refuse a permit application where the application is not consistent with Council's Footpath Activities Policy and supporting standards or where Council is of the view that public safety may be compromised. Council may also cancel a permit where there is evidence of non-compliance with the Footpath Activities Policy or where changed circumstances make the footpath activities no longer consistent with the overall public benefit.

This policy and supporting standards should be read in conjunction with Community Local Law to ensure a complete and thorough understanding of an applicant's rights and obligations.

9.2. Footpath Zones

Footpath widths within Kingston's village shopping centres vary from centre to centre and from street to street. In all situations, trading activity must deliver a clear, continuous and safe path of travel for pedestrians and provide a relaxed environment that enhances the streetscape and other functions of the area.

The footpath is divided into four zones to ensure a balance between public and commercial uses. The specific requirements for each zone are contained within the Footpath Activities Standards. The City of Kingston reserves the right to vary zones to meet community requirements. The zones consist of:

9.2.1. Pedestrian Zone

The Pedestrian Zone is the area of footpath that is measured from the property boundary and is for the exclusive use of pedestrians. No goods/services, furniture or trading can occur in this zone at any time.

The Pedestrian Zone must provide a continuous and accessible path of travel along the property boundary. It must also provide for the safety of all of the community including meeting the access needs of people with mobility aids, prams and shopping trolleys.

The minimum clearance required between a proposed footpath trading area and the building will vary depending on the overall width of the footpath, pedestrian activity, safety and circulation requirements. The specific requirements are contained within the Footpath Activities Standards.

9.2.2. Trading Zone

The Trading Zone is the area between the Pedestrian Zone and the Kerb Zone. This zone allows for commercial use including furniture, goods/services and trading. All commercial use must be contained within this zone and can only occur during permitted trading hours. The width of this zone will vary depending on the overall width of the footpath, the width of the adjoining pedestrian zone and any clearances from public infrastructure that is located within the trading zone.

Any application for footpath activities that may impact on the public safety at an intersection or pedestrian crossing will be referred to Council's traffic department. A

site assessment by Council's traffic engineers will be required. In some instances footpath trading will not be permitted.

9.2.3. Kerb Zone

The Kerb Zone is the area between the Trading Zone and the face of the kerb. This area must remain clear of any footpath items approved within the trading zone. The width of this area will vary depending on the parking conditions adjacent to the area.

Parking spaces adjacent to a kerb help to protect footpath trading activity from moving traffic. Where there is no parking next to a kerb, the footpath trading application will be referred to Council's traffic department for consideration. In some instances, due to the footpath width, parking restrictions and public safety concerns, footpath trading may not be permitted.

9.2.4. Access Zone

The Access Zone is the area between two trading zones. Pedestrians must be provided with adequate access to the footpath when crossing the road or alighting from a parked vehicle. A gap must be left between adjoining trading zones with each zone set back from their respective property boundary. If there is no adjacent trading zone, the current business may trade up to the property line. However, if an adjacent trading zone is established at a later date, the required gap for both properties will apply.

9.3. Public Infrastructure

The City of Kingston provides public infrastructure to meet community needs. This includes public seating which gives people the opportunity to rest while walking to and from their destination. Public seating also provides informal meeting places. For the wellbeing of the community, it is important that public seats are appropriately spaced to support people of all ages and abilities. It is also necessary that other items of public infrastructure, such as litter bins and bicycle stands, are positioned to meet community needs.

As a general rule, public infrastructure that is already in place will not be moved or removed (relocated or repositioned) to accommodate footpath trading. However, in special circumstances applicants may request the City of Kingston to consider relocating public seats, litter bins or bicycle stands. This will only be considered if the new location provides an equal or better outcome for the general community.

Furniture will only be relocated to the front of another premise if the property owner and business operator both agree. All costs associated with the relocation of any public infrastructure, including the reinstatement of footpath, will be borne by the person applying for the permit. Prospective business operators should not assume that infrastructure will be moved and should take this into account when selecting a site.

The required clearance distances for footpath trading elements from public infrastructure are listed in the Footpath Activities Standards. Public infrastructure on footpaths has priority over commercial interests (footpath trading) at all times.

Existing street furniture and infrastructure must not be used for any trading purposes including for business signage or displays.

9.4. Occupying an adjacent premises

Should a business operator seek to extend their trading zone across the adjoining premises, written permission is required from the business occupying the adjacent premises and remains subject to Council review and approval. This agreement would run with the owner of the adjacent business and not with the property owner. Thus the agreement would be nullified if the business were to close or change hands. If the neighbouring business is sold, a new letter of approval must be obtained from the new business occupier.

The City of Kingston will assess each application on a case-by-case basis and reserves the right to refuse a permit if the outcome compromises the streetscape or is considered to be against community interest. The agreement of the neighbouring business operator does not automatically imply Council approval.

If a business operator has obtained a permit to trade in front of a neighbouring business, the required clearance must be in place between the two trading areas to allow pedestrian access to the footpath.

The footpath is a public space and as such is not owned by any one business. This means that a business owner cannot charge “rent” for the footpath space in front of their premises.

9.5. Design Standards

Streets that are attractive, clean and pleasant, with well-maintained public spaces, draw people into those areas. Footpath trading activities can make a positive contribution to the overall appearance and economic viability of a shopping strip through the adoption of good design practices.

Unless specific exemptions are granted by the City of Kingston, footpath trading elements must:

- Be of a high standard in appearance, durable, portable, windproof and approved by the City of Kingston.
- Remain within the approved Trading Zone for the duration of their use.
- Not cause any undue obstruction or danger, restrict the reasonable access or exit from any premises, or obstruct the vision of motorists at intersections.
- Not be fixed and be removed at the end of business each day or as specified in permit conditions (Council approved permanent glass screens are exempt).
- Ensure Council assets are not damaged.

9.5.1. Tables and Chairs

Tables and chairs must, at all times, be confined within the trading zone approved by Council:

- All chairs and tables must have rubber pads on their legs to protect the footpath surface.

Furniture must be positioned to ensure that the back of chairs does not encroach into the adjoining Pedestrian Zone or Kerb Zone during use. In narrow trading zones chairs should not be positioned with the back adjoining the Pedestrian Zone.

9.5.2. Portable Café Screens

Portable café screens can be used to assist businesses in containing their tables and chairs within their approved Trading Zone and provide wind protection for patrons. Screens must:

- comply with the advertising specifications in section 9.5.10 of this Policy and the dimensions set out in the Footpath Activities Standards.

9.5.3. Glass Screens

Semi-permanent glass screens may be permitted subject to available space and existing street infrastructure and traffic conditions. Applications will be assessed on a case-by-case basis and will only be considered where the footpath is of sufficient width to ensure that public accessibility is not compromised.

Pedestrian access to the footpath must be preserved so Council is unlikely to approve an application for semi-permanent glass screens if this would create a continuous row of screens along the footpath

All costs associated with the installation, maintenance, removal and reinstatement of the footpath will be met by the applicant. In the interests of public safety, any damage must be repaired immediately.

Semi-permanent glass screens must comply with the advertising specifications in section 9.5.10 of this Policy and the dimensions set out in the Footpath Activities Standards.

The design and construction of glass screens must meet Australian Standards. Approval from Council must be obtained to ensure compliance with proper standards and safety requirements and to ensure Council assets are protected.

Applicants will be required to provide a Maintenance Management Plan which will include, as a minimum, details on a cleaning schedule, graffiti removal process and timing for repair of damaged screen.

Applicants will also be required to enter into an agreement with Council that will cover installation requirements, maintenance and removal.

9.5.4. Umbrellas

Umbrellas must:

- Only be used in areas where there are no conflicts with existing building canopies, trees, or any other structures unless approved by the City of Kingston.
- Comply with section 9.5.10 of this Policy and the dimensions set out in the Footpath Activities Standards.
- Not extend beyond the Trading Zone.
- Be secured at all times and removed in times of strong winds or storms.

The design and construction of permanent footings must meet Australian Standards. Approval from Council must be obtained to ensure compliance with proper standards and safety requirements and to ensure Council assets are protected.

9.5.5. Transparent drop-down blinds

Transparent drop-down blinds may be permitted subject to available space, prevailing urban character, existing street infrastructure and traffic conditions. Pedestrian access to the footpath must be preserved so Council is unlikely to approve an application for a transparent drop down blind if it would create a continuous row of blinds along the footpath. Applications will be considered on a case-by-case basis and are subject to the following conditions:

- Anything attached to a building or verandah requires street projection consent from Council and building approval. An application under Building Regulations 2018 (Council report and consent application form) is required to be submitted to Council's Building Department for approval.
- No advertising is permitted on a blind.
- Blinds must be UV resistant to avoid breakdown of the material and loss of transparency.
- Blinds must be secured with appropriate weights or fixing devices. If weights are used they must be placed so as not to cause any tripping hazard.
- All fixings must be fully concealed within the footpath and not create a trip hazard when not in use.
- Council approval must be obtained prior to inserting fixings into the footpath.
- The applicant will be responsible for any footpath restoration work that is required as a result of the use of fixings.
- All blinds should be retractable.
- Blinds must not intrude into the pedestrian or kerb zone.
- Blinds should not obscure sight lines within 10.0 metres of an intersection and all applications will be referred to Council's traffic engineer for approval.

A footpath activities permit and building permit from a private building surveyor must be obtained prior to any construction and works. The building surveyor will advise if an *Asset Protection Permit* is required for any *Protection of the Public* requirements.

9.5.6. Heaters

Heaters must:

- Be licensed as part of a permit and covered by the business owner's public liability insurance.
- Comply with Australian Standard AS 1956 and be certified by the Australian Gas Association.
- Be located within the Trading Zone only. In some instances, where the footpath has a narrow Trading Zone, the use of heaters may not be permitted.
- If the heater is attached to the building, an application under Building Regulations 2018 (Council report and consent application form) is required to be submitted to Council's Building Department for approval.
- The works will also require a building permit to be issued by a registered building surveyor.

9.5.7. A-Frame Signs

A-Frame Signs must:

- Not be fixed to any footpath, pole or any other structure.
- Comply with the height and width dimensions set out in the Footpath Activities Standards.
- Be limited to one sign per premises unless approved by the City of Kingston.
- Be securely placed and windproof.
- Be displayed within the Trading Zone unless approved by the City of Kingston. A permit may be granted for an application where the business has no street frontage and the sign is placed outside premises not occupied by the applicant.

9.5.8. Tear Drop Banners and Flags

Tear drop banners or flags will be considered as an alternative to A-frame signs to advertise the name of a business.

- Banners must be secured with appropriate weights or fixing devices. If weights are used they must be placed so as not to cause any tripping hazard.
- All fixings must be fully concealed within the footpath and not create a trip hazard when not in use. The fixings must be marine grade stainless steel. Specific Council approval must be obtained prior to inserting fixings into the footpath as not all footpath treatments are suitable. The applicant will be responsible for any footpath restoration work that is required as a result of the use of fixings.
- Signage, whether A-Frame or banner, will be limited to one sign per premises.

9.5.9. Display of Goods

Display of goods gives businesses the opportunity to show items that are sold within the premises. The selling of these items on the footpath is not permitted.

The following standards apply to the approved use of the footpath for display of goods:

- Goods must be secured, protected and displayed in an approved barrier so they are not displaced by wind or other elements or create an unsightly display on the public thoroughfare.
- No loose items or boxes containing items are permitted on the footpath. All display of goods must be located within a stand or table.
- Display stands on wheels must ensure that the wheels are lockable so as not to create a safety hazard.
- Displays must comply with the dimensions set out in the Footpath Activities Standards unless an exemption has been granted by Council. Appropriately designed displays that exceed these dimensions may be granted approval if Council deems that the amenity of the streetscape will be enhanced and safety considerations are met.
- Goods or their displays must not be fixed to any footpath, building, asset, pole or other structure.
- The display must not take up the entire width of the Trading Zone. Sufficient space should be provided for customers within the Trading Zone to stop and browse at the display without intruding into the Pedestrian Zone.
- Goods must not be hung on shop fronts or awnings.

9.5.10. Advertising

Council understands the need for businesses to engage in marketing and advertising as a part of their comprehensive business strategy. As such, Council allows for identification and promotion signs that meet, not only the needs of the business, but

considers the amenity of the area and streetscape appearance for the whole community.

- Business and third party signage must comply with the specifications set out in the Footpath Activities Standards.
- Details of any proposed signage on furniture must be submitted with any application to trade on the footpath.
- No café or commercial advertising is allowed on chairs or tables unless required for identification purposes only and placed in an unobtrusive manner allowing for identification by traders of business property.
- Portable electric, illuminated or flashing, revolving/spinning signs are prohibited.

9.5.11. Waste and Litter

To ensure the hygiene and cleanliness of a footpath is maintained, the following standards apply:

- Litter must be immediately cleared from the trading area by the permit holder.
- Food scraps or other rubbish generated by footpath trading must be immediately removed and deposited within the permit holder's own bins kept within the premises.
- Litter generated by footpath trading must not be disposed of into street gutters, stormwater drains, adjacent footpath areas or placed in public litter bins.
- No noise or other disturbance can emanate from the footpath activity so as to cause a nuisance to others or detriment to the amenity of the neighbourhood.
- Windproof ashtrays should be provided as required. The permit holder is responsible for all cigarette ash, butts and other litter generated by patrons of their footpath trading areas.

9.5.12. Cooking food on the footpath

Applications for a permit for cooking on the footpath (including barbeques) will be assessed on a case-by-case basis and will only be considered where the footpath is a minimum of 3.2 metres wide to ensure that public accessibility is not compromised.

Pedestrian access to the footpath must be preserved so Council is unlikely to approve an application for cooking on the footpath if it would create a continuous row of food equipment along the footpath.

- Permanent barbeques and cooking stations are not permitted.
- Cooking on the footpath is permitted once a week on either a Friday or Saturday only.
- No sale of product is to occur on public land, any exchange of money is to be within the business premises.
- Council retains the right to add any additional conditions to the permit as required to ensure public safety is not compromised.

To be eligible the business must:

- Have a minimum 3.2-metre-wide footpath.
- Be able to accommodate the BBQ or cooking station within the designated Trading Zone.
- Be able to accommodate the required health and safety equipment within the designated Trading Zone.

- Undertake the cooking activity on either a Friday or Saturday only, as nominated by the business.
- Be able to meet applicable Food Safety requirements.
- Submit and adhere to a Risk and Safety Plan.
- Can remove and store the equipment on private premises at the end of each trading day.
- Meet all the requirements for holding a Footpath Activities Permit, including Public Liability Insurance of \$20 million.

The business must submit a proposal with their application covering the following:

- A diagram with the layout of the proposed cooking station.
- An explanation of the food to be cooked and how it will be served.
- Nominated day (Friday or Saturday) for this activity to occur.
- How the business will maintain a clear and accessible footpath, taking into consideration queuing and serving of food.
- A Risk Management Plan covering the activities to take place and how it will be managed to eliminate any risk to customers and pedestrians.
- Identification of potential impacts such as smells, fumes, splatter and how this will be controlled.
- How the footpath will be cleaned and the frequency of this.
- Waste Management Plan, including how any waste generated from this activity will be managed and disposed of.

Note: Charitable organisations are exempt from this provision.

9.6. Management Responsibilities

The Footpath Activities Policy aims to balance the different interests and needs of businesses, residents and visitors. Each has an important role to play in creating vibrant retail precincts.

9.6.1. Operator Responsibilities

The permit holder must operate in accordance with Council's Community Local Law, Council's Footpath Activities Policy and supporting standards and any specific conditions placed on individual permits at all times. It is the responsibility of the permit holder to monitor and manage their footpath trading at all times.

The Permit holder is responsible for the conduct of patrons utilising tables and chairs and must:

- Ensure that tables and chairs remain in the Trading Zone and are not moved by patrons.
- Ensure any cooking equipment and any associated queuing is maintained within the Trading Zone.
- Ensure that prams, bikes and any other personal items do not obstruct the Pedestrian Zone.
- Ensure patron's dogs are supervised and not impeding the pedestrian access.
- Maintain a clear and accessible footpath, taking into consideration queuing and serving of food.

9.6.2. Council Rights and Responsibilities

The City of Kingston will continue to maintain and manage the use of its land and reserves the right to reclaim access to and remove all footpath trading at any time for any purpose deemed appropriate by Council.

Where Council, service authorities and others are required to carry out works within the road reserve (or works at or adjacent to the permit holders footpath trading area) which require removal and/or alteration to the footpath trading arrangements, no compensation is payable for any removal of fittings or fixtures associated with the footpath trading permit or for the loss of trade experienced due to these works. Any reinstatement of fixtures or fittings to do with the footpath-trading permit is the responsibility of the permit holder (this does not include refitting public infrastructure).

Council regularly requires access to footpath areas for the purposes of maintenance and asset renewal programs. Due to the necessity to source labour and materials during business hours, it is impractical to program these works outside shop trading hours. Except for emergency works, Council will give reasonable notification of such works but reserves the right to occupy the Trading Zone for the purpose of asset maintenance or renewal. No compensation will be payable by Council for the loss of use of the Trading Zone.

In special circumstances, such as if works take a prolonged period of time, Council has the discretion to waive fees or provide refunds for new or renewal permits. All Policy requirements will continue to apply irrespective of whether permit fees are waived or not.

9.6.3. Compliance protocol

Council staff will monitor and evaluate all footpath trading on a regular basis. Any observed infringement of the Footpath Activities Policy, standards or individual permit conditions will result in enforcement action being taken.

Upon detection of a breach of the Community Local Law, Footpath Activities Policy or a specific permit condition, Council (including its staff and authorised officers) may take any of the following actions depending on the non-compliance.

1. Provide advice to the permit holder on how to comply with the conditions of the permit.
2. Issue Written Notice to Comply– a first and final written notice – Must comply within the time limit stated.
3. Issue Infringement Notice – fine for non-compliance.
4. Issue further fines or permit suspension for a minimum period of three months and/or prosecution.
5. Revoke / cancel the permit.

Where Council Officers have identified an immediate risk to public health or safety, the permit may be suspended immediately until the business has undertaken remedial action to rectify the risk or non-compliance.

Council may also impound any items that are placed on the footpath that do not comply with Community Local Law, this Policy or any conditions placed on a permit.

Prior to cancellation of a permit, Council will provide the permit holder with an opportunity to make comment on the proposed cancellation. Incidents of non-compliance will be noted and may be taken into consideration for future permit applications. Second and subsequent fines will be issued without additional warning for further acts of non-compliance. Failure to maintain public liability insurance is considered a serious breach.

10. Decision Conditions

The City of Kingston may apply site specific permit conditions to provide certainty and manage possible impacts on neighbourhood amenity.

11. Transition/Translation arrangements

This Policy will commence 26 November 2019

12. Review

This Policy is to be reviewed by 30 June 2021