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<i>Sponsor/Group:</i>	General Manager City Growth

Trading in Public Places Policy

Purpose and Scope

1. This Policy provides for businesses, groups and individuals to apply to use public places for trading activities that are consistent with the purpose of this Policy.
2. The purposes of this Policy are to:
 - a. protect the public from nuisance
 - b. protect, promote, and maintain public health and safety
 - c. minimise the potential for offensive behaviour in public places
 - d. regulate trading in public places
 - e. regulate, control, or prohibit signs; and
 - f. ensure public spaces are safe and used in ways that positively contribute to the city's identity and people's enjoyment of public spaces.
3. In applying these purposes, Council decisions will take into account the following principles. Public spaces should:
 - a. provide culinary, entertainment and art experiences that generate activity and vibrancy
 - b. be attractive, clean and safe
 - c. promote a welcoming image of Hamilton to residents and to visitors
 - d. facilitate easy access for pedestrians and cyclists
 - e. provide spaces for people to gather for activities or social engagement and interaction; and
 - f. strengthen the existing function of public space locations.

Definitions

Definition	Detail
Busker	Means any person/s performing for voluntary donations in any public place, such as an itinerant musician or actor.
Council	Means Hamilton City Council.
Food Truck	Means a type of Mobile Shop entirely equipped to cook, prepare, serve, and/or sell food. May have on-board kitchens and prepare food or heat up food that was prepared in a commercial kitchen. May also sell hot or cold beverages. Food Trucks may only offer food/beverage related items. A Food Truck is a subcategory of Mobile Shops.
Enforcement Officer	Means a person appointed by Council to exercise the powers of an Enforcement Officer in relation to offences against, and infringement offences under, the Local Government Act 2002, including enforcement of Council Bylaws.
Event	A temporary or infrequent activity in a public place that does not require the construction of a permanent building, the installation of permanent infrastructure or services, or works such as vegetation clearing or other operational work. Events often involve large groups of people and include carnivals, parades, concerts, markets, craft or trade fairs, field days, open days, displays and the like.

Hawker	Means any person/s who, in a public place, solicits sales or orders for sales of any goods, not in pursuance of any invitation to call with, or of any previous order or request for such goods but does not include any person who operates a vehicle as a Mobile Shop.
Heritage precinct	Areas of special heritage character as defined in the District Plan.
Heritage buildings	Buildings of special heritage character as defined in the District Plan.
Mobile shop	Means a vehicle from which goods are offered or exposed for sale in any public place, or from which goods or services may be ordered whether or not as a result of any invitation to call; it does not include any vehicle used to transport goods that have been ordered for delivery. Includes Food Trucks. A Mobile Shop is not a Stall.
Market	Any outdoor place, accessible to the public, where goods are offered for sale, which usually consists of a number of merchandise stalls or Mobile Shops or Food Trucks grouped together. A market is a type of event.
Merchandise display	A display located in a public place outside a premise from which goods are offered or exposed for sale.
Public place	Includes any place or space that is not private property, and which is open to the public but excludes reserves which are regulated by the Parks, Domains and Reserves Bylaw 2007 and any amendments to that Bylaw.
Road	Means: <ul style="list-style-type: none"> • a road defined in section 315 of the Local Government Act 1974 and includes any street, motorway, beach, place to which public have access whether as of right or not • any bridge, culvert, ferry, ford forming part of a road or street or motorway or place to which the public have access whether as of right or not • all sites at which vehicles may be weighed for the purpose of the Land Transport Act 1998 or any other Act; and • any service land or mall forming part of a road.
Road frontage	The front/s of a premise that face out onto a public place.
Shade awning	Means a single free-standing or cantilevered shade or protective covering that may also be fixed to a building or that extends out over the footpath. It does not include a gazebo, marquee or tent.
Sign	Means any material or device used for the purposes of advertising or to disseminate information, or any other similar purpose. These may include, but are not limited to: any poster, placard, handbill, flags, banners, writing, picture, or device for advertising or other purposes that is displayed in, on or over any public place, including placed on a footpath.
Stall	Includes any stationary but moveable stand or similar structure on or at or from which goods are sold or exposed for sale. A Mobile Shop or Food Truck is not a Stall.
Trade or trading	Includes but is not limited to the exchange, purchase, or sale of goods; the provision of entertainment activities in return for donations; keeping a Mobile Shop; busking; hawking; locating and operating a Stall; displaying merchandise; setting out street furniture.

Policy

Outdoor Dining Areas

4. Cafes, bars and restaurants wishing to use part of the footpath space directly outside their premises for outdoor dining must obtain a permit from Council.
5. Applicants must provide the information in Schedule 3 when applying for a permit for outdoor dining.
6. An applicant wishing to serve alcohol as part of an outdoor dining area must apply to the District Licensing Authority for an alcohol licence or a variation of the area to which their alcohol licence applies.

General conditions that apply to Outdoor Dining Permits

7. There must be a continuous 2.0-metre-wide clearway maintained on all footpaths at all times with the exception of Victoria Street within the area contained in the map in Schedule 4 which must be a continuous 1.7 metre wide clearway.
8. The outdoor dining area must not cause any damage to any ornamental verge or kerbing.
9. Use of fixed furniture is not permitted.
10. All street furniture (tables, chairs, planter boxes, pull-down blinds etc.) must be arranged within the dining areas in compliance with this Policy and as provided for in the permit.
11. No sharp edges or projections which could cause injury are permitted and all street furniture must be of durable construction.
12. Permit holders are responsible for cleaning the footpath and removing litter in the outdoor dining areas.
13. No waste material including sweepings, detergents and cleaning agents is to be disposed of into the street gutter or stormwater drains.
14. An outdoor dining permit must be either displayed or be available for inspection by an Enforcement Officer if requested.
15. The owner of the premise must hold public liability insurance to a minimum value of \$2,000,000 indemnifying Council against any claim arising from damage caused by any piece of outdoor furniture in the outdoor dining area.
16. The boundaries of an outdoor dining area must be clearly defined through use of barriers or other appropriate street furniture from 6pm until the end of the trading day.
17. Between 1am and the end of the trading day all outdoor dining furniture on the kerbside of the clearway must be removed and secured so that it cannot be accessed or used by customers or the public.
18. Between the end of the trading day and 7am all street furniture used in an outdoor dining area must be secured together so that it cannot be used by the public and, as far as practicable, removed from the footpath or when requested by Council to enable street works, services or repairs, or other public utilities.
19. Permit holders must comply with Council requests to remove some or all of the street furniture used in outdoor dining areas during normal business hours during a special event.
20. Ashtrays must be provided, except where smoking is prohibited.

Layout of outdoor dining areas

21. All outdoor dining areas must observe the layout requirements set out in Schedules 1 and 3.

Café umbrellas and shade awnings

22. Umbrellas or shade awnings must be of stable design and properly secured to prevent blowing over in strong wind.
23. Umbrellas or shade awnings must not penetrate or damage the surface of Council footpaths or interfere with pedestrian movement.

Planter boxes

24. Planter boxes must not be fixed to the footpath and must be strong, durable and wind resistant. The planter boxes and plants must be well maintained.

Heaters

25. Heaters may be free-standing or fixed to verandas.
26. Overhead heaters must be securely fixed to verandas and should be turned off outside of hours of business.
27. Free standing patio heaters should be of stable design and of a height not exceeding 2.5 metres measured from the base to the top of the heater. They should be located on a flat surface.
28. All heaters must be located away from combustible materials and used in accordance with the operating instructions. They must not be placed where they pose a safety or fire hazard.
29. Fire extinguishing equipment must be kept in close proximity to where the heaters are being used.

Pull-down blinds and screens

30. Requests to include screens and/or pull-down blinds in outdoor dining areas will be assessed on a case-by-case basis. Consideration will be given to the potential for the screen/pull-down blind to obscure surveillance by Council CCTV cameras and to safety issues for pedestrians, cyclists and motorists caused by obscured sight lines.
31. If an applicant wishes to use screens and/or pull-down blinds this information must be included with the permit application and Outdoor Dining Area Plan. Details of any proposed fixing of a pull down blind to the pavement must also be included.
32. All pull-down blinds and screens must be rolled up or removed from the footpath outside of the hours specified in the outdoor dining area permit.

Barriers

33. Barriers may be used to define the boundaries of an outdoor dining area.
34. Barriers shall not exceed a maximum height of 0.9m.
35. Clearance from the ground is required to allow stormwater run-off.
36. Barriers must be of stable construction to prevent blowing over in strong wind.

Signs

37. Signs in public places are regulated under this Policy. The District Plan regulates signs on zoned land.
38. This Policy does not apply to:
 - a. signs erected for or on behalf of Council; and
 - b. billboards and overhead street banners (note: contact Strategy and Communication's Group, Hamilton City Council).
39. A person wishing to erect a sign in or over a public place must obtain a permit.
40. No Council-owned land is to be used to erect election signs for Parliamentary Elections or local body elections.

General conditions that apply to signs

41. All signs must be maintained in good order and condition. An Enforcement Officer may issue a notice requiring specified remedial work to be carried out if that officer reasonably believes the sign does not comply with this clause or if a sign will cause a safety hazard.
42. A maximum of one sign per road frontage is permitted.
43. The footpath sign must not obscure road user's visibility or be placed in a position that restricts vehicle access to a right of way or to any public place which provides a right of access for vehicles.
44. The permitted size for signs is set out in Schedule 2.
45. A footpath sign must be located in a way that does not impinge on the continuous clearway and it must observe the setback requirements in Schedule 1.
46. The footpath sign must not resemble a warning sign or road traffic sign.
47. The footpath sign must not have sharp edges or projections which may cause injury to pedestrians.
48. The sign must be constructed to ensure it is secure against all weather conditions and gusts of wind.
49. An Enforcement Officer may request removal of sign/s to allow works or maintenance services to take place.
50. Advertising shall not be illuminated, have reflective surfaces or resemble a traffic sign.

51. All signs are to be removed from the footpath outside of hours of business.
52. Signs on verandas are restricted to signs advertising businesses, services or products located on the site associated with the sign.
53. Signs located on top or beneath verandas should be structurally sound and be fixed to the veranda in a safe manner.
54. Signs attached beneath verandas should leave a clearance of 2.75m to the footpath.
55. Signs attached beneath verandas should observe a setback of 0.5m from a vertical line from the edge of the kerb.
Signs located on top and on the fascia of a veranda must not extend beyond the fascia of the building and will be set back not less than 0.5m from an imaginary vertical line from the road kerb.

Signs in Heritage Areas

56. The design and location of signs in a public place in a heritage area or outside a heritage building (as defined or listed in the District Plan) must be compatible with the heritage significance of the area or the building so that they do not detract from that significance.
57. Signs in heritage areas or outside heritage buildings will be assessed on a case-by-case basis and special consideration may apply to signs approved for use to ensure that signs do not materially affect the heritage value of the area and/or building.

Markets, Events and Stalls

58. A market or other event is not permitted to operate without a permit from Council. Permits may be for a single date or for recurring dates. Applicants must provide the information in Schedule 3 when applying for a permit to operate a market, event or an individual Stall.
59. Council's general policy is to encourage Stalls to be part of managed markets or events, however, permits for individual Stalls will be considered on a case-by-case basis. An applicant wishing to operate a stand-alone Stall is not permitted to operate without a permit.
60. A market or event operator granted a permit is responsible for each individual Mobile Shop or Stall owner complying with permit conditions and for having the necessary food and alcohol licences.
61. The type and number of Mobile Shops present at a market or event is at the discretion of the permit holder.
62. A permit shall not be given to any market or event consisting predominantly of food trucks, that intends to operate in the Central City (see the map in Schedule 4).
63. Waste minimisation and cleaning arrangements following the business hours of the market or event will be included in the permit conditions.
64. The management and minimisation of waste at a market or event must comply with the Hamilton Waste Management and Minimisation Bylaw 2019.
65. The following conditions will apply to Stalls and Mobile Shops, including trading within a market or event. Stalls and Mobile Shops:
 - a. must not sell offensive material.
 - b. must not obstruct or hinder the flow of pedestrians in any public place.
 - c. selling, preparing and handling food must comply with food hygiene regulations and hold the necessary food licenses.
 - d. selling alcohol must hold the necessary alcohol licences.

Merchandise display

66. The following conditions will apply to merchandise displays:
 - a. Merchandise should be placed up against the façade of the shop it belongs to.
 - b. Merchandise displays must observe the requirements on setbacks and clearways set out in Schedule 1.
 - c. The merchandise display must not have sharp edges or projections which may cause injury to pedestrians or create a nuisance.
 - d. Merchandise displays must not contain any form of offensive material.

- e. Merchandise displays are to be removed at the end of trading hours or when requested by Council staff to enable street works, services or repairs, or other public utilities.

Mobile Shops (includes Food Trucks)

- 67. Mobile Shops are not permitted to operate without a permit. A permit to operate may be given as part of a permit for a market or event, or as a stand-alone permit. Applicants must provide the information in Schedule 3 when applying for a permit for a Mobile Shop.
- 68. Mobile Shops are not permitted to operate within the Central City (see the map in Schedule 4) other than as part of a market or event.
- 69. The following conditions apply to all Mobile Shops.
 - a. No Mobile Shop is permitted to operate in a traffic zone where the posted speed limit is greater than 60km per hour.
 - b. The location of Mobile Shops will not impede or inconvenience the flow of traffic, pedestrians or customers and must not breach any Bylaw or traffic legislation.
 - c. Permits may include permission to have tables and chairs in close proximity to a Food Truck for the purposes of dining. Council has sole discretion to determine what constitutes close proximity.
 - d. Mobile Shops selling, preparing and handling food must comply with food hygiene regulations.
 - e. Mobile Shops selling food or alcohol must hold the necessary food or alcohol licences.
 - f. Hours of operation:
 - i. Standalone Mobile Shops are only permitted to operate between the hours of 6am and 10pm.
 - ii. Mobile Shops operating as part of a market or event may operate for the same hours as the market or event is permitted to operate.
 - g. The permit must be displayed at all times.

Busking, hawking and charitable collections

- 70. Buskers, hawkers and charitable collectors are not permitted to operate without a permit from Council. Applicants must apply for a permit before commencing trading.

Busking conditions

- 71. The following conditions apply to buskers.
 - a. No busker will impede or inconvenience the flow of pedestrians and customers.
 - b. Buskers must be courteous and mindful of surrounding businesses and the general public. If valid complaints are received, a permit may be revoked.
 - c. Busking is permitted between the hours of 8.30am and 8.30pm but no busker is permitted to remain in a single location for longer than two continuous hours.
 - d. Buskers must not enter any premises unless authorised by a person having control of those premises.
 - e. Buskers are to carry a copy of the permit at all times and must produce a copy of to any Enforcement Officer if requested.
 - f. Buskers are not permitted to use voice enhancement equipment, including, microphones, amplifying equipment and loud hailer, unless they are part of an event approved by Council.
 - g. A reasonable level of noise is to be maintained at all times having regard to the place and situation. If, at the Council's discretion, it is decided that a reasonable level of noise has not been maintained a permit may be revoked.
 - h. Permits will be issued for a period of no more than six months.

Hawkers conditions

- 72. The following conditions apply to hawkers.
 - a. Hawkiers are not permitted to operate within the area shown in the map in Schedule 4.
 - b. Hawkiers must not enter premises which display a written notice prohibiting their entry.

- c. Shop doorways must be kept clear.
- d. When visiting premises, a hawker must leave immediately if requested to do so by the owner or occupier of the premises.
- e. Identification must be worn at all times.
- f. The flow of pedestrians must not be impeded or inconvenienced in any way.
- g. Hawkers are only permitted to trade during the hours of 8.30am and 8.30pm.

Charitable collections

- 73. No one is permitted to collect charitable donations in a public place without a permit.
- 74. Applicants must provide the information in Schedule 3 when applying for a permit to collect charitable donations.
- 75. Approval may include conditions such as location and hours permitted for the activity.

Other Activities on Footpaths

- 76. Cafes, bars, restaurants and other businesses wishing to use part of the footpath space directly outside their premises for entertainment or promotional activities must apply for a permit.
- 77. Applications will be considered on a case-by-case basis taking into account:
 - a. the impact the activity could have on existing approved activities already occurring in or around the location
 - b. public health and safety and public nuisance
 - c. proposed hours for the activity to operate; and
 - d. whether the activity is a one-off event or reoccurring.
- 78. Any application will take into account any other permits granted for the space that is the subject of the application.

General conditions

- 79. Voice enhancement equipment, including microphones, amplifying equipment and loud hailer are not permitted; unless permitted as part of an event. A reasonable level of noise is to be maintained at all times having regard to the place and situation. If, at the Council's discretion, it is decided that a reasonable level of noise has not been maintained, a permit may be revoked.
- 80. The activity must not impede or inconvenience the flow of traffic, pedestrians and customers.
- 81. The activity must not interfere in traffic visibility.

General Permit Conditions

- 82. All applications for any permit must be made on the approved application form, contain all the information requested and be accompanied by the prescribed fee. Applications not complying with the requirements will not be processed.
- 83. Approval may be withheld if the applicant has previously breached approval conditions.
- 84. Permits under this Policy are issued by the City Safe Unit.
- 85. Unless specified otherwise, all permits are issued for 12 months and will automatically expire.
- 86. Permits automatically expire when a business holding a permit is sold.
- 87. Permits issued under this Policy are not transferable.
- 88. A permit may be cancelled or amended if:
 - a. permit conditions are breached; or
 - b. other valid reasons require cancellation, such as streetscape upgrades or refurbishment.
- 89. Council reviews fees annually and changes are notified by public notice.
- 90. The applicant must pay the full permit fee and have met all the requirements of the permit prior to it being issued. This clause does not apply to applicants for Personal Hire Device Permits in circumstances where fees are to be determined on a per ride basis.

Enforcement

91. Permit conditions are monitored regularly to ensure activities in public places are occurring in terms of the permit granted. The following process applies if permit condition/s are breached.
 - a. First breach: verbal notification of the breach and request to rectify.
 - b. Failure to rectify: a written warning to that permit holder identifying the issue/s and required remedy.
 - c. Failure to remedy: the Council will consider revoking the permit.
92. Individuals or groups that trade on footpaths or other public spaces without a permit will be asked to remove their material and cease the trading activity. Council will issue a written warning to the person.
93. If the infringement persists, Council reserves the right to confiscate the Stall setup or trading material under sections 163 and 164 of the Local Government Act 2002.
94. The Council may dispose of confiscated property under section 168 of the Local Government Act 2002.

Schedule 1: Footpath layouts

1. There must be a continuous 2.0-metre-wide clearway maintained on all footpaths at all times.
2. The 2.0 metre clearway must exist when the tables and chairs are in use.
3. The continuous clearway must be in the middle of the footpath.
4. The vertical height permitted under this policy is a maximum height of 2.2 metres.
5. The minimum distance from the kerb must be 0.5 metres.
6. The minimum setback from all street trees, street furniture (such as benches and seats), cycle racks, phone boxes, mobility parking zones and bus stops must be 1 metre.



Schedule 2: Signs dimensions

1. The definition of a sign is contained in the definition section of the policy.
2. The approved dimensions for a flag or banner, that is either affixed or free standing, is:
 - no larger than 0.75m wide; and
 - no larger than 3.2m high.



3. The maximum approved dimensions for any other sign are:
 - no larger than 600mm wide;
 - no larger than 750mm high; and
 - the maximum base area is 0.45 square metres.



Schedule 3: Application requirements for certain permits

1. General requirements

- 1.1. All applications must be in the prescribed format and contain the information requested.
- 1.2. Applications not complying with these requirements will not be processed.
- 1.3. All applications must include the prescribed fee. This clause does not apply to applicants for Personal Hire Device Permits in circumstances where fees are to be determined on a per ride basis.

2. Information required for Outdoor Dining Permit

- 2.1. Applications for an Outdoor Dining Permit must include two copies of a plan and specifications of the proposed outdoor dining area on a scale of 1:50 showing:
 - i. the location and dimensions of the proposed outdoor dining area
 - ii. the position of furniture including tables and chairs, planter boxes, screens, heaters, blinds/dividers, patio heaters, signage and umbrellas to be provided in the proposed outdoor dining area (please refer to Schedule 1 for these requirements)
 - iii. the area either side of the boundaries (up to 10 metres) of the proposed area indicating the location of all footpaths, public facilities, public places, streets and street alignments
 - iv. photographs or brochures of the furniture to be set up in the proposed outdoor dining area; and
 - v. specifications for enclosures or screens/dividers including ground and supporting fixtures. This includes any semi continuous or continuous overhead, side and front enclosures (including those that are retractable) that are supported by any fixed supports, structural frames or columns in the public place, whether or not the enclosure contains outdoor furniture.

3. Information required for a Market Stall Permit and Individual Stall Permit

- 3.1. Applications for a Market Stall must include:
 - i. a scale plan showing:
 - the extent of the public area to be occupied
 - the siting and the number of Market Stalls proposed; and
 - any associated facilities such as public toilets.
 - ii. specifications of any barriers, signs and screens including any ground supporting fixtures
 - iii. a Traffic Management Plan showing:
 - the location of ingress and egress to the market
 - any parking provided, any temporary measures to control traffic to and from the market site
 - measures for loading and unloading of market goods and Stall set up and pack down; and
 - the contact details for a person responsible for implementing the Traffic Management Plan.
 - iv. evidence of public liability insurance to a minimum of \$2 million cover
 - v. the name, address and contact details of the applicant and market operator
 - vi. the details of the type of Market Stalls, hours of operation and names, addresses and contact details for each Market Stall operator (note: A permit shall not be given to any Market or Event consisting predominantly of Food Trucks, that intends to operate in the Central City)
 - vii. evidence that all market Stalls selling, preparing and handling food comply with food hygiene regulations; and
 - viii. evidence that all market Stalls selling alcohol hold the necessary alcohol licence.

4. Information required for a Charitable Collection Permit

4.1. Applications for approval to collect charitable donations must include:

- i. the date, time and location of the intended donation collection; and
- ii. approval from the charity to collect donations.

5. Information required for a Mobile Shop Permit (includes Food Trucks)

5.1. Applications for a Mobile Shop Permit must include:

- i. the intended location and trading hours
- ii. the location of, and distance measurements to, footpaths, roads, all street trees, street furniture (such as benches and seats), cycle racks, phone boxes, mobility parking zones and bus stops and any other structures
- iii. if tables and chairs are intended to be provided:
 - a plan of the location and dimensions of the proposed area where they will be situated, including information about proximity to the Mobile Shop. The dimensions must be to scale 1:5;
 - photographs of the tables and chairs to be provided.
- iv. evidence of public liability insurance to a minimum of \$2 million cover; and
- v. for Mobile Shops selling food, evidence of appropriate food safety / alcohol licences.

Schedule 4: Central City map

