



Footpath Trading Code 2009

Background

Footpath trading, including outdoor dining has added interest, colour and appeal to the Shire's townships for many years and is an important part of Cardinia's shopping experience. Equally important however is Council's responsibility to manage and maintain pedestrian safety, traffic flow and improve visual amenity.

Footpaths are public spaces. **Pedestrian access and safety is the primary purpose of footpaths**, not trading. *Council's Footpath Trading Code 2009* has been developed with this distinction in mind.

Consistent with this, traders may not undertake any activity on the footpath without a permit issued under this Code. This is designed to ensure that Cardinia's shopping experience remains as enjoyable as possible for *all* people who live, work in or visit the shire, while at the same time ensuring that everyone in the community is able to exercise their right to access our footpaths in a safe, dignified and unhindered manner.

The ability to trade on the footpath is not a right; it is a privilege granted to traders where there is no compromise to community safety, accessibility or general amenity.

Why have a Code?

The aim of the Footpath Trading Code is to:

- maintain a practical balance between pedestrian safety and access and the activities of traders, and
- regulate all commercial activity on our footpaths to achieve fairness and equity between traders

Guiding Principles of the Cardinia Footpath Trading Code

- Council aims to provide clear, safe and unobstructed access at all times for pedestrians of all abilities on Cardinia's footpaths in accordance with Council's statutory responsibilities.
- Footpath activity must make a positive contribution to the character and amenity of both the immediate shopping precinct and surrounding area.
- There needs to be a clear policy for traders.
- Council supports the long term viability and sustainability of retail strips.
- Footpath trading is a privilege, not an entitlement.

Benefits of a Footpath Trading Code

- improved access and safety for everyone
- improved pedestrian traffic flow
- improved sightlines for pedestrians
- improved business amenity and appeal
- improved traffic flow and sightlines
- improved shopper numbers and patronage

Statutory obligations

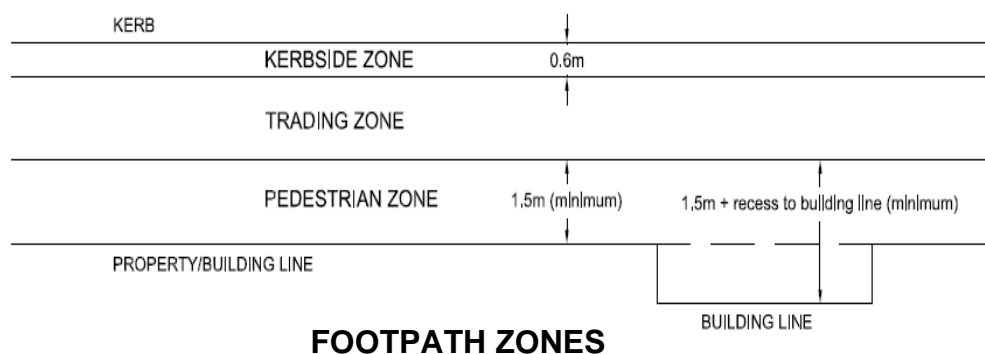
Council's legal requirements are defined in a range of Acts, Standards, and Provisions including:

- *Disability Discrimination Act (DDA) 1992*
- *Australian Standard 1428 Parts 1 and 2*, and
- Part 13, *AustRoads Guide to Traffic Engineering Practice: Pedestrians*

The *DDA* makes it illegal for anyone to make it difficult for a person with a disability to enter a business or use a footpath. The Human Rights and Equal Opportunity Commission is the body responsible for administering the *DDA* and its adoption of the content of *Australian Standards 1428 Parts 1 and 2* via an advisory note on access to premises further defines Council's responsibilities in this area. The *State Road Management Act 2004* also affirms Council's obligation to ensure the safety of footpath users space.

Council has a legal obligation to provide a safe environment for people to move within and through the shire. Part of this obligation is **to provide a continuous, accessible path of travel on its footpaths**. To achieve this Council has an obligation to ensure that there is a minimum distance of clear path from the building line for all people to move comfortably, that is, unhindered and without obstruction, along our footpaths.

This area of clear pathway (a minimum of 1.5 metres) from the building line applies even when a premises is set back from the existing building line of other traders. (Please refer to diagram below)



FOOTPATH ZONES

Footpath zones

When this set back occurs, the trading and kerbside zones of the recessed business premise does not alter – as in the diagram above, the trading and kerbside zones of the set back business remain consistent with that of other traders. Authorised officers can provide greater guidance on this matter as required.

In order to provide a clear and consistently unobstructed footway for pedestrian access, the footpath is divided into three zones. Footpaths of less than 2.9 metres cannot be used for street trading unless otherwise approved by Council.

Pedestrian zone

This extends from the building line or shop front of the premises for an absolute minimum of 1.5 metres.

This ensures a continuous accessible path of travel for all pedestrians.

No items may extend into this zone at any time.

Trading zone

The only area of the footpath where approved goods, signs, café furniture and ancillary items or activities may be placed.

This is the balance of the footpath width in between the pedestrian and kerbside zones.

Kerbside zone

Comprises a minimum width of 0.6 metres from the kerb. This 'buffer' zone separates vehicles from seated patrons and allows access to and from parked vehicles.

Outdoor dining – conduct of patrons

The permit holder is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must:

- Ensure that patrons do not move tables, chairs or other ancillary items into any area other than the permitted area
- Ensure that patrons do not allow pets, prams, bicycles or any other personal item to cause any obstruction to the clear walkway area
- Ensure that staff do not serve food or beverage (excluding takeaway sales) to a person not in the permitted area
- Ensure that patrons do not congregate in the clear walkway area.
- Adhere to the endorsed site plan and permit conditions at all times
- Ensure that patron behaviour does not interfere with the use or enjoyment of the area by other patrons or members of the public

Outdoor dining – conduct of serving staff

Staff at cafes with a footpath trading permit shall give pedestrian movement priority over their own movements across the clear walkway area.

Good access is good business

Parents with young children, older adults with carers and people with a disability, their friends and families are significant users of shops, cafes, banks and other community services and activities. Collectively this group represents a significant percentage of all shoppers in the community. Businesses that provide **good access** to these community members will reap the benefits of their patronage. By providing **access for all** businesses, building owners and traders are expanding their markets to a much broader customer base.

Businesses that do not provide access for all however will be in a less favourable position commercially. Quite simply, 'Good Access is Good Business'. For a copy of the *Good Access is Good Business* handbook please contact Council on 1300 787 624 and a complimentary copy will be sent to you.

Decision Making

Local conditions will influence where items may be placed. An authorised officer* cannot permit activity where it would compromise pedestrian or vehicle traffic safety or cause detriment to the amenity of the area. Relevant local conditions include the width of the footpath, proximity to major roads, parking restrictions, clearways, trees, angle parking, the number of pedestrians at particular times of the day and the location of residences.

An authorised officer has the right to consent to an application as submitted or with modifications and with conditions as set out in the permit.

An authorised officer has the right to reject an application, modify the conditions of the existing permit or revoke a permit if:

- 1.1 the line of vision of pedestrians crossing at an intersection or crossing is interfered with so as to obscure oncoming traffic;
- 1.2 the line of vision of the driver of a vehicle is interfered with so as to not properly see pedestrians, signals or signs;
- 1.3 permit requirements have not been met and there is continuing failure to comply with directions;
- 1.4 the permit holder fails to maintain public liability insurance; and

- 1.5 under any other circumstances that the authorised officer believes a safety hazard to pedestrians, motorists or cyclists will be created or will cause detriment to the amenity of the area;
- 1.6 the health and amenity of the area is compromised through the inability to provide toilet facilities where the total seating capacity of the business exceeds 20 seats, and
- 1.7 the pedestrian and, or, operation of the permit area is considered to be detrimental to the aesthetics, amenity and the benefit of the locality

The issuing of a permit is deemed to be an opportunity offered by Council to the applicant if set conditions and guidelines are met. It is not an entitlement for every business to have access to a trading zone, even if the area is deemed suitable. Council may choose to conduct, allow or allocate the footpath space for other activities at its discretion. This may include the provision of other services or activities.

* An authorised officer refers to an officer appointed under section 224 of the *Local Government Act 1989*.

Enforcement

To be granted a permit under this code, an applicant must agree to comply with this *Footpath Trading Code 2009* and sign the application form which contains a condition to this effect. The permit holder is liable for any breach of the conditions set out in this code, including those committed by their staff or volunteers.

Council officers will check for compliance with the code on a regular basis. Upon detection of a breach of the local law, the *Footpath Trading Code 2009* or a specific permit condition, an authorised officer may take the following action:

- **An verbal direction**
- **A written ‘notice to comply’, or**
- **A written ‘official warning notice’, or**
- **An ‘infringement notice’**
- **Further fines and or, permit cancellation, and or prosecution**

An authorised officer may also impound any items that are placed on the footpath that do not comply with local laws, this code and any conditions placed on a permit.

Incidents of non-compliance will be noted on a permit holders file and will be taken into consideration in delivering an appropriate penalty at a later date should further incidents of non-compliance be noted.

Second and subsequent fines will be issued without additional warning for further acts of non-compliance.

Incidents of non-compliance will be taken into consideration when requests to vary or add to a permit are considered for approval.

Traders will be required to sign a renewal form acknowledging that they understand the enforcement protocol and its implications before they are issued with a permit each year.

If you have any questions please ask an authorised officer or contact Councils Local Laws staff on 1300 787 624. Compliance with the code is imperative for the safety of the Cardinia community.

Alterations to Footpath Trading Code

Cardinia Shire Council will review this code on a regular basis as required and reserves the right to make any alterations it deems necessary.