Footpath Trading Policy 2018

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<th>Policy type</th>
<th>Council</th>
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<td>Directorate</td>
<td>City Services</td>
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<tr>
<th>Directorate</th>
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<td>City Services</td>
<td>Regulatory &amp; City Compliance</td>
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<td>9 October 2021</td>
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1. Background

Footpaths, as their primary purpose, have a multitude of uses beyond being just a pavement and enabling safe, unobstructed access for pedestrians. Footpaths provide for a variety of amenities, such as seating, bike racks, rubbish bins, and important infrastructure such as telecommunications, power poles and the like. They can accommodate decorative items, including bollards, landscaping and public art, and also provide spaces for commercial purposes. Footpaths are important, functional public spaces where people like to be, stay, play and communicate.

The Footpath Trading Policy 2018 (the policy) has been developed to maintain the balance between pedestrian access, trading activities and ensuring an enjoyable shopping experience. Council aims to provide a safe environment for people who move through the City of Moonee Valley, and part of this aim requires Council to provide a clear unobstructed footpaths for the public to access and travel along.

In addition, the policy has been developed to provide a framework for the sustainable use and management of our footpath trading areas. The policy explains when and how to trade on the footpath.

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 trading and, in particular, outdoor dining. Council’s Footpath Trading Policy 2018 has been developed with local community consultation and is committed to ensuring that safe and unobstructed access is maintained, to meet the requirements of the Commonwealth Disability Discrimination Act 1992.
2. Purpose

Council owns and maintains footpaths, and therefore has a legal responsibility for the regulation of any footpath activities undertaken in the space. Council aims to support businesses by providing fair fees to traders while supporting innovation and encouraging creativity for use of the footpath. This policy explains when and how to trade from the footpath.

Policy priorities for considering footpath trading applications:

i) Public Safety - footpaths are safe and have an unobstructed passage for all pedestrians and safe and unobstructed vision for drivers and cyclists.

ii) Accessibility - footpaths are easily navigated by all pedestrians, including those who are physically or vision impaired.

iii) A city that responds to a changing economic landscape with businesses and shopping strips that are thriving and flourishing.

iv) Striking streetscape - streets are attractive, clean and pleasant, and heritage significance is enhanced.

v) Leisure opportunities - footpath trading encourages local interaction and fosters outdoor dining to be an enjoyable experience.
3. **Scope**

This policy extends to all individuals and businesses seeking to utilise footpaths for commercial or other purposes within the City of Moonee Valley. Commercial purposes typically include the placement of advertising signs, temporary street stalls, tables and chairs, temporary retractable awning, blinds and ancillary equipment such as umbrellas, heaters, planter boxes and permanent and temporary café screens.
4. Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Advertising sign</td>
<td>Any A-frame, board, sign, banner (whether portable, affixed or attached to any land or building) which provides information about the occupier of land, building, or business. Any sign advertising goods, services, events or competitions, or which provides directions to the location of property or land.</td>
</tr>
<tr>
<td>Ancillary activity</td>
<td>Includes busking, barbeques, raffles, charity collections, temporary stands persons campaigning for any Local, State or Federal election or any other activity that may be designated from time to time.</td>
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<tr>
<td>Authorised Officer</td>
<td>A person appointed by Council to be an Authorised Officer under section 224 of the Local Government Act 1989.</td>
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<tr>
<td>Clearway</td>
<td>The area between the side boundary of each premises and commencement of the trading zone.</td>
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<tr>
<td>Council</td>
<td>Moonee Valley City Council.</td>
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<tr>
<td>Delineation marker</td>
<td>Circular marker disks, inserted into the footpath, to allow pedestrians and traders to distinguish the permitted trading zone.</td>
</tr>
<tr>
<td>Exclusion zone</td>
<td>Refers to the following areas;</td>
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<tr>
<td></td>
<td>• A distance of 10 metres from an intersection;</td>
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<tr>
<td></td>
<td>• A distance of 20 metres before and 10 metres after a pedestrian or school crossing or traffic lights;</td>
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<tr>
<td></td>
<td>• An area adjacent to a bus zone, loading zone, mail zone or a no stopping area.</td>
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<tr>
<td>Footpath trading</td>
<td>The use of footpath for commercial activities.</td>
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<tr>
<td>Footpath width</td>
<td>The distance from the face of the kerb (verge) face to the outside edge of the property line.</td>
</tr>
<tr>
<td>Kerbside zone</td>
<td>The area between the kerb (verge) face and the outer edge of the trading zone.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Not-for-profit groups</td>
<td>Are groups or individuals collecting to fund or manage charitable programs and/or work or to promote an issue, and include local kindergartens, local primary and secondary schools, sporting clubs, local volunteer groups and community service organisations.</td>
</tr>
<tr>
<td>Outdoor dining</td>
<td>Outdoor dining provided on Council or privately owned land.</td>
</tr>
<tr>
<td>Outdoor dining furniture</td>
<td>Fixed or movable tables, chairs, benches etc. which are provided for the use of patrons of a café, bar or restaurant with outdoor dining.</td>
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<tr>
<td>Pedestrian zone</td>
<td>The area between the property line and the inner edge of the Trading Zone.</td>
</tr>
<tr>
<td>Permit</td>
<td>A permit issued by Moonee Valley City Council, authorising outdoor dining, temporary stalls, signage or any other ancillary activity within the trading zone.</td>
</tr>
<tr>
<td>Public asset</td>
<td>All permanent fixtures, such as bike racks, seats, bins, pedestrian crossing controls, fire hydrants and other emergency assets, parking meters and signs, traffic signal boxes, public transport shelters.</td>
</tr>
<tr>
<td>Service authority</td>
<td>Any company or public body responsible for the installation of telecommunications, gas, electricity, water and sewage or drainage facilities in or on a road or a road reserve, including a footpath.</td>
</tr>
<tr>
<td>Special use zone</td>
<td>Specified areas such as bus, taxi, loading and no stopping zones, access parking spaces for people with disabilities.</td>
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<tr>
<td>Temporary retractable awning</td>
<td>Any horizontal awning that is fixed to a building and projects over a footpath to form a verandah, or a vertical drop-down awning (including partial and full length) that is fixed to verandahs and projects over a footpath.</td>
</tr>
<tr>
<td>Temporary stall</td>
<td>Stalls or displays of information or merchandise available for sale.</td>
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<tr>
<td>Trading zone</td>
<td>The area between the pedestrian zone and the kerbside zone.</td>
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5. **Responsibility**

The City Compliance unit is responsible for the administration and enforcement of this policy.

The Economic Development unit is responsible for communicating with and supporting traders in adhering to this policy.

In granting a Footpath Trading Permit, it is necessary to adhere to the following legislation:

- *Commonwealth Disability Discrimination Act 1992*
- *Local Government Act 1989*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Liquor Control Reform Act 1998*
- *Tobacco Act 1987*
- *Planning and Environment Act 1987*
- *Council’s Activities and General Amenities Local Law 2018*
6. Policy

6.1 The footpath

6.1.1 Footpath zone
In order to provide a clean, attractive, safe, unobstructed path at all times for all abilities and commercial purposes, Council describes the footpath in the following three zones:

- Pedestrian zone
- Kerb zone
- Trading zone

6.1.2 Pedestrian zone
The pedestrian zone is the area that extends from the property line to the potential trading zone, to allow for a continuous and accessible path of travel for footpath users. This area is for the exclusive use of pedestrians and must be kept free at all times.

A minimum 1.8m clear pedestrian walkway (measured from the building line) must be maintained at all times in major pedestrian arterials:

- Puckle Street and Mt Alexander Road, Moonee Ponds
- Union Road, Ascot Vale
- Racecourse Road, Flemington
- Keilor Road, Niddrie

The 1.8m pedestrian zone is the minimum width required for two (2) people using wheelchairs to pass each other.

All other areas the minimum width will be 1.2m.

Note: Council reserves the right to prescribe an alternative width to ensure a safe environment and unobstructed footpath for all people to move without hindrance or danger from trading activities.

6.1.3 Kerb zone
The kerb zone is the area between the face of the kerb and the trading zone. This zone is important for the safety of pedestrians entering and exiting the road, including access to and from parked vehicles, access to loading and delivery bays. The kerb zone must be kept free from any items or structures at all times.
The minimum distance between the face of the kerb and the trading zone is 500mm. Council will determine the appropriate clearance rates in circumstances where the kerb zone clearance may need to be increased (reducing the trading area) e.g. where a shop front faces an existing or proposed loading zone, delivery bay, bus stop, tram stop and/or taxi rank or other infrastructure. In some instances, footpath trading will not be permitted on grounds of traffic and/or pedestrian safety.

6.1.4 Trading zone

The potential trading zone is the only area of the footpath that allows for commercial activity (subject to an annual Footpath Trading Permit).

It is the permit holder’s responsibility to ensure items remain within the trading zone. All footpath trading permit items must not present a tripping hazard to pedestrians.

A gap of one (1) metre must be left between abutting property boundaries. This is to be achieved by a reduction of 0.5 metres at the side of each boundary. This is to ensure that adequate access is provided for pedestrian safety when crossing the road, and to allow passengers access to the footpath when exiting a vehicle.

If a trading zone extends greater than 10 metres in length, a gap or opening of no less than one (1) metre must be created in the centre of the trading zone.

Note: Council reserves the right to prescribe an alternative width to ensure a safe environment and unobstructed footpath for all people to move without hindrance or danger from trading activities.

If the permit holder requires to make any opening (excavation) in any part of Council infrastructure, they are required to apply for ‘Consent for Works’ and pay a separate permit fee.

6.2 Parking and transport

Footpath trading has the potential to restrict the delivery of goods to abutting properties, restrict passengers’ access to vehicles, impact on access to public transport and restrict driver visibility and impede safe driving.

Any application that has these potential impacts will be referred to the Technical Services Department for assessment, and may not be permitted / may be restricted.
6.3 Guidelines relating to specific activities on footpaths

Council has available the following four types of footpath trading permits:

6.3.1 Street activation

The Footpath Trading Policy 2018 permits commercial activities that promote and support a positive contribution to the urban character and amenity of a street. Commercial activities that support the principles of place-making are encouraged in the following ways:

a) Public art

Public artworks, both historic and contemporary, are an important part of our city’s character. Council recognises that public art contributes to Moonee Valley’s economy, cultural life and social life and create a lively and engaging city. Examples of public art could include:

i) art work integrated into the fabric of a building
ii) a sculptural or decorative installation located in an open space
iii) text or poetry inscribed in a footpath or on public seating
iv) a mural, footpath design or wall relief, including green walls
v) creative markers which reflect the historical character of the precinct
vi) performance or multimedia presentations.

Note: Public art is considered to add value to the urban character of the street, and as such incurs no fee. If the installation contains a business name or any call to action, such as a website or phone number, the installation will be considered advertising and incur the relevant fee.

b) Pots and planter boxes

Pot and planter boxes may be used in conjunction with chairs and tables, or simply to add to the urban forest of the street. Pots and planter boxes in outdoor eating areas must comply with the following provisions:

i) All planters shall be removed at sunset or at the close of business each day.
ii) Planter boxes may be placed within the designated trading zone.
iii) The applicant shall keep the planter boxes and the plants clean, healthy and in good repair at all times.
iv) Signage and advertising on planter boxes is not permitted.
v) Maximum height of plants and the planter box is 800mm.

6.3.2 Display of goods

The display of goods on footpaths is prohibited in the city of Moonee Valley, with the exception of fresh fruit and vegetable stands and flower and plant stands, which must comply with the following guidelines:

i) Compliance with the footpath clearances as outlined in section 6.1 of this policy.
ii) Display structures must be secure, stable and portable, as well as of quality design. Stands must not be fixed to the footpath or any street sign pole or infrastructure.
iii) All goods and structures shall be removed at sunset or at the close of business each day. Displayed structures after sunset will require specific approval and will need to be adequately lit.

Consideration of congestion will be applied during the assessment of a display of goods permit application, with ‘officer’s discretion’ to be applied to ensure equitable outcomes.

a) Temporary stalls

Temporary stalls are permitted for not-for-profit organisations (evidence will be required at the application stage), stalls that may be incorporated into a public event endorsed by Council or other ancillary activities as defined under this policy. The permit period runs for a maximum of up to 14 consecutive days.

Temporary stalls enliven the city with ‘pop-up’ style shops. Casual street trading is permitted within designated areas of Moonee Valley’s business precincts, including:

- Corner of Pratt and Puckle Streets, Moonee Ponds
- Wallis Mall, Niddrie
- Pridham Plaza, Flemington
- other designated locations

Note: Submitting an application does not guarantee that a permit will be granted. Assessment of each application will
be based on the answers and information provided for the temporary stall.

6.3.3 Advertising

The display of advertising tools is permitted, and typically may include signage advertising the business name, products or suppliers. This may include free standing advertising signs, boards, notices, structures, A-frames, menu boards, banners or other similar devices that are used for the purposes of encouraging sales or notifying people of the presence of a business where goods or services may be obtained.

Consideration to the value of such advertising on footpaths should be made before applying for a footpath trading permit.

a) Small structures and displays

This applies to paper stands used by newsagencies, flags erected on the front of buildings, photo stands, baskets used by real estate agencies, newspaper baskets and bunting (collection of flags). These structures and displays are permitted, provided safety and access are maintained along the footpath and do not exceed 1m in height, and are removed at sunset or at the close of business each day.

Flags, signs or bunting are not to overhang a footpath at a height of less than 2.4m from the surface of the footpath, as outlined in section 6.1 of this policy.

b) Advertising signs

The display of advertising signs or boards is permitted under the following provisions:

i) Compliance with footpath clearances as outlined in section 6.1 of this policy.

ii) The sign or structure must be a suitably designed and constructed (no hand written signs, with the exception of menu boards) with no sharp edges.

iii) The design of the advertising sign or board should be compatible with street furniture and landscaping in the activity centre.

iv) All signs must be removable and designed not to be blown over by wind or storms. Signs are not to be attached or placed against other structures e.g. poles, rubbish bins, bike parking etc.
v) Signs must not have any further attachments, such as flags or moving parts.
vi) Only one such sign or structure shall be allowed on each frontage of a business.
vii) The sign or structure may only be placed immediately in front of the business to which it relates. Exception will apply to businesses within arcades or businesses sited above a property that abuts the footpath.
viii) All signs and structures shall be removed at sunset or at the close of business each day. Signs and structures used after sunset shall be in adequately lit locations.
ix) Signs shall not be internally illuminated, flashing, revolving, spinning or have reflective surfaces.

x) Regard must be given to the number of signs in the area, their impact on pedestrian safety and the amenity of the street.

6.3.4 Outdoor dining

The commercial use of footpaths for outdoor dining is permitted, and includes furniture and ancillary equipment that encourage thriving activity centres.

a) Chairs and tables

Tables and chairs placed on a footpath to extend business activities should be of commercial quality and conform to relevant Australian Standards.

i) Compliance with the footpath clearances as outlined in section 6.1 the footpath zone.

ii) Tables and chairs are to be placed immediately in front of the business to which they relate. They may be placed in front of an adjacent business if written agreement is received from the adjacent business owner and a separate permit is obtained from Council. Permits will not be granted for licensed venues outside their property boundary.

iii) A current planning permit and liquor licence is required if liquor is to be sold, consumed or served within the footpath trading area. The footpath must be included as part of the ‘licensed area’ on the liquor licence.

iv) Other provisions:
• Should a business apply for a permit for dual frontage property, such as a corner business, one fee will apply based on the total area applied for.
• All tables and chairs are to be portable. No fixed or permanent tables are permitted.
• Chair legs must not damage the pavement. If any of the items cause damage to the pavement, Council will repair the pavement and recover the cost from the permit holder.
• All tables and chairs shall be removed at sunset or at the close of business each day, and stored by the business owner.
• Tables and chairs designed to be used after sunset shall be in adequately lit locations.
• The applicant shall keep the outdoor furniture clean, and in good repair at all times.
• The applicant shall keep the area around the tables and chairs tidy and litter free at all times.
• Signs and advertising is prohibited on tables and chairs, unless integrated into the design, related only to said business, and approved by Council.
• Employees waiting on outdoor cafés and their customers must give way to pedestrians at all times.
• Separate cash register and counter facilities are not permitted.

b) Umbrellas

Umbrellas may be used in conjunction with displays or chairs and tables, under the following provisions:

i) Compliance with footpath clearances as outlined in section 6.1 of this policy.

ii) Umbrella/s are of a robust design and secured at all times.

iii) Umbrella/s are removed in times of high winds or storms.

iv) The lip of umbrella/s is not lower than 2.1m above the surface level of footpath.

v) The umbrella/s must not obstruct any footpath or vehicular movement or vision.
c) Café screens

Café screens may be used in conjunction with chairs and tables. There are two styles of café screen considered appropriate for use in association with outdoor eating facilities fixed and portable screens:

- **Fixed screens**
  
  Fixed screens or glass screens are permitted in special circumstances. They may be permitted subject to available space, urban character and the existing street infrastructure and traffic conditions. They are not permitted if they adversely affect the openness or character of the streetscape. Screens are used to assist businesses with containing their furniture within their approved trading zone.

  In terms of design, refer to the separately supplied PDF Technical Note for Café Screens.

  Responsibility for street cleaning where fixed screens are installed may become the responsibility of the footpath permit holder.

  Fixed screen approval is granted as part of a Footpath Trading Permit, however installation of the screen/s requires approval via a Works in Road Reserve application (made online via Council’s website).

  If the business applicant no longer requires the use of the fixed screens, the screens will need to be removed and the footpath returned to its original condition.

- **Portable screens**

  Portable screens are preferred by Council and may include canvas screens, decorative fencing or planter boxes.

  i) All portable screens shall be removed at sunset or at the close of business each day, and stored by the business owner.

  ii) Portable screens designed to be used after sunset shall be in adequately lit locations.

  iii) The portable screen must have a lightweight frame and be securely anchored. The use of
large sandbags, cement blocks and large containers is not permitted.

iv) The applicant shall keep the screens clean and in good repair at all times.

v) Business signage and advertising on portable canvas screens shall be limited to 30 per cent of the total area.

d) Delineation markers

Delineation markers (circular marker disks) are supported by Council, as these assist traders and pedestrians to distinguish the permitted trading zone from the required pedestrian zone.

Installation by Council will be progressively undertaken as part of any future capital works upgrades, at the time of installation of fixed screens, and in situations where continual non-compliance exists. The installation of delineation markers will be covered by the permit fee where relevant (mandatory with the placement of fixed screens and tables and chairs).

e) Outdoor heaters

Gas heaters are permitted in conjunction with outdoor eating facilities that have café screens, and must comply with relevant Australian Standards.

Fixed gas heaters that are permanently connected to a mains pressure gas supply are safer and preferred by Council. Fixed gas heaters (or any part of) must be installed a minimum of 600mm from the kerb and within the footpath trading zone.

In addition, there must be at least a 2.2m vertical clearance between the bottom of the heater and the ground level.

6.4 Charity collectors

Only not-for-profit groups or individuals are permitted to conduct charity collections on footpaths, following the issuing of a permit. Applicants will not be provided with a designated location and are expected to be mobile.

The total number of days that any one organisation can collect within the municipality is three (3) days per application. The maximum
The number of collections per year is three (3). A minimum of 14 days is required to process the application. Applications made more than six months prior to the proposed collection period will not be considered.

Collection of subscriptions, automatic debiting or ongoing payment subscriptions is not permitted as part the permit to operate. Collections may only be undertaken for monetary donations or sale of charity promotional items.

Operators will be required to show documentation of their not-for-profit status at application stage. If approved, charity collectors will be required to display an identification card while undertaking collections within the municipality.

Note: Submitting an application does not guarantee that a permit will be granted. Assessment of each application will be based on the answers and information provided.

### 6.5 Temporary retractable awnings

Awnings can provide protection from the weather and can complement the streetscape. Awnings should be simple in style and appearance, and made of quality materials which are safe and durable. Awnings need to comply with footpath clearances as outlined in section 6.1 of this policy.

A planning permit is required for all new awnings that are not retractable.
6.5.1 Design guidelines for temporary retractable awnings

Awnings should be designed to ensure that shop fronts are visible and to avoid clutter. If they are full length, they should be transparent where possible, to allow views for pedestrians.

Full length awnings are only to be used for a premises accompanied with outdoor dining or fresh produce which may be impacted by weather conditions, and should contain no advertising signage.

6.5.2 Supported temporary retractable awning types

- Horizontal awnings that are fixed to buildings to form a verandah.
- Partial drop-down awnings which are at least 2.2m above the footpath level.
- Full length drop awnings should be transparent. The awning may include a non-transparent section for the bottom 1m of the awning.
- Drop-down awnings which are transparent and attached to a footpath trading barrier.

Note: No signage or side wings are permitted on awnings.
7. Consultation

The framework for the sustainable use and management of footpaths in this policy was developed in consultation with the local community and permit holders.
8. Process

8.1 Applications

Applicants are advised to familiarise themselves with this policy prior to making an application to Council.

Understanding the responsibilities involved in managing the footpath area, design requirements, legal obligations, costs involved and other relevant matters is important.

Applicants must:

- Complete and sign a Footpath Trading Application Form (available on Council’s website or at one of Council’s service centres).
- Where relevant, provide a copy of the approved Liquor Licence for the premises to which the outdoor area relates.
- Provide a copy of a valid Public Liability Insurance policy for indemnity up to $20 million.
- Provide a plan, drawn to scale 1:100, detailing:
  i) The location and dimensions of the principal shop frontage, the adjoining shop frontages (and their business names), the width of the kerb zone and pedestrian zone and the length of the trading zone.
  ii) All existing fixed street and footpath features within or near the proposed footpath trading area, such as trees, light poles, rubbish bins, bike racks, public transport shelters, fire hydrants, signs, pits, car parking and parking restrictions.
  iii) Details of any proposed advertising including a clear indication of its size and location.
- Pay the nominated fee at the time of lodging the application.

Failure to submit any of the above information required for the application will result in delays in processing the application and / or refusal of the application.

8.2 Application assessment

Upon receipt of an application, an Authorised Officer will process as follows:

- seek input from other departments within Council for comment
- inspect the site to measure the intended trading space
- request additional information from the applicant where required
• advise the applicant of any changes to the application that are required to complete the process
• make an assessment on whether trading from the proposed space is appropriate
• approve or reject the permit application.

If the application is approved, a permit sticker will be provided to the applicant. This sticker must be displayed in the shopfront window. Failure to display the permit sticker is a breach of the permit conditions.

8.3 Permit amendments and transfer of ownership

Requests to amend an existing permit must be made in writing to Council by the permit holder.

Permits cannot be transferred to any other trader. Permit holders can apply to Council for a refund of the unused annual permit fee.

8.4 Renewal of permit

Permits are issued for the financial year on an annual basis. A renewal notice is issued for all existing permit holders.

It is the responsibility of the permit holder to ensure all change to permit details, including changes to public liability insurance policies, are provided to Council.

8.5 Enforcement

The permit holder is responsible for any breach of conditions set out in this policy, including those committed by their staff or patrons. If non-compliance is detected, depending on the severity and / or repetitive nature, an Authorised Officer may undertake the following enforcement action:

• issue a verbal direction
• issue a Notice to Comply
• issue an infringement notice
• cancel, suspend or amend a permit
• impound objects associated with footpath trading, if a permit has been cancelled or suspended, or if a trader doesn’t hold a current permit.
8.6 Public liability insurance and indemnity

The permit holder is responsible for all items placed on the footpath, as well as the activities of persons participating in footpath trading, whether a proprietor, staff member or customer.

The trader must maintain a public liability policy of insurance for an amount of not less than $20 million. The insurance 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 a Footpath Trading Permit.
9. Compensation and loss of trade

Where service authorities and others are required to carry out works within the footpath which require removal and/or alteration to footpath trading arrangements, no compensation is payable for any loss of trade experienced due to these works.

Any problems, inconvenience or loss of trade resulting from activities or works carried out by Council or its contractors, at or adjacent to a permit holder’s footpath trading area will not be considered for payment of compensation.
10. Related documents

**Essential**
- Moonee Valley City Council’s *Activities and General Amenities Local Law 2018*

**General**
- *Council Plan 2017-21*
- *Arts and Culture Plan 2014-18*
- *Disability Action Plan 2013-24*