

TRADING IN PUBLIC PLACES POLICY – PROPOSED FINAL TEXT

*Proposed text added by officers before 27 November 2014 is shown in blue.

Proposed deleted text by officers shown as crossed-out.

*Text deleted in accordance with Committee recommendations on 27 November 2014 is shown in red-deleted.

1. Definitions

Commercial – means ‘business activity’, i.e. an undertaking carried on for pecuniary gain or reward.

~~Commercial guided tours—groups managed by a guide for commercial purposes on public spaces for recreation, education or interpretation. For example, walking, mountain biking, horse trekking and cemetery tours.~~

~~Commercial functions / events—commercial events that have exclusive use of a land area for up to 6 days at any one time.~~

The Council - The Wellington City Council or any committee or elected member of the Council or officer authorised to exercise authority of the Council.

Hawker - Trading from a vehicle and only stopping long enough to sell to a customer.

~~Non-Commercial guided tours—same definition as for commercial guided tours except for a tour to qualify as a “non-commercial guided tour”, the organisations running the tour must be:~~

- ~~• an incorporated society or trust~~
- ~~• a registered charity~~
- ~~• a voluntary organisation that does not make financial profits from running guided tours beyond supporting the organisation’s activities run by volunteers, or~~
- ~~• Council volunteers.~~

Open Air Market - Any outdoor place, accessible to the public, where goods are offered for sale, which usually consists of several merchandise stalls grouped together.

Organised commercial group fitness activities –commercial fitness training activities. For example:

- Gym sessions or circuit training (with or without equipment)
- Bootcamps
- Boxing and pad training
- Organised aerobic activity.

~~Permit—written permission to carry out an event / function that does not require an interest in land.~~

Public Place - Any road, street, footpath, court, alley, square, pedestrian mall, lane or access-way of a public nature open to or used by the public as of right and every

place to which the public have access and every reserve, park, domain, beach, foreshore and recreational ground within the City, subject to the provisions of the Reserves Act 1977.

Recreation Equipment - Any equipment used for recreational purposes such as kayaks, canoes, boats, surf boards, bicycles, roller blades, or scooters.

Reserve – means an area of land classified under the Reserves Act 1977 or managed under other legislation (such as a Wellington Town Belt Act).

Reserve Management Plan – means an adopted management plan for any park, reserve or other type of open space under the Reserves Act 1977 or under other legislation (such as a Wellington Town Belt Act).

Retail Kiosk - A small, permanent structure used to sell goods such as newspapers, magazines or confectionary items.

Temporary Retail - Any stand, stall, tent, mobile shop, vehicle, vessel or other and Food Stalls setup from which goods and / or food are sold that is open in a temporary nature and removed when not in use. Note that 'Temporary' has a different meaning for Town Belt land¹.

Trading - The act of selling or trading, or offering to sell or trade, goods or services, with or without use of a vehicle.

2. Introduction

Trading in public places can add to the character, vibrancy, visitor experience and safety of the city. It is important however to control trading activities in public places to ensure appropriate standards of health, safety, pedestrian priority and visual amenity are maintained. It is also important to consider the potential impacts on established businesses when determining where street vending activities can occur.

3. Objectives

The policy is to ensure that the public trading activities in Wellington City make public places more safe, lively and attractive without inhibiting the safety and efficiency of pedestrian movement. The Policy guides:

- the granting of licences or permits for trading in public places (if applicable)
- the types of trading that are allowed
- conditions for
 - _ health and safety
 - _ pedestrian access
 - _ consideration of established businesses.

¹ Refer to the Wellington Town Belt Act – Section 5 'Interpretation', at www.legislation.govt.nz

4. Principles of the Policy

The following principles shall apply when considering trading activities in public places:

- The Council's decision to license and/or encourage trading in public places is reflective of its strategic vision for the city.
- Pedestrian priority should be enhanced to facilitate more efficient and safe walking routes in Wellington and to encourage more people to walk as their primary transport mode where possible.
- Wellington streetscapes and public places should be vibrant, safe and attractive.
- Wellington public places should provide opportunities for pedestrians to participate in the public environment - leisure, retail, recreation and entertainment.
- Businesses, groups and individuals that are permitted to use public places for trading activities are responsible for managing those activities in accordance with Council guidelines.
- Private trading activities that introduce changes to paving or street furniture (e.g. barriers) for amenity purposes will generally not be permitted.
- Trading activities should add to the city's vibrancy, improve public safety and strengthen the existing function of areas.
- The effects on existing businesses will be taken into account.
- Fees shall be set on a cost-recovery basis, unless specifically stated otherwise for individual activities. Licence holders or other permitted activities should not be unfairly advantaged over established businesses that have rent or rates overheads.

5. Scope of activities

The Trading in Public Places Policy provides guidelines for allowing the following trading activities on streets and public places:

- temporary retail and food stalls
- retail kiosks
- recreational equipment hire
- hawking
- open air markets
- ~~commercial functions / events~~
- ~~organised commercial group fitness activities~~

- **commercial guided tours**

For the above activities, relevant governing frameworks (i.e. Reserves Management Plans, local area frameworks agreed to by the Council, relevant legislation (including Bylaws) and District Plans) would take precedence over this TPPP, in the event of any inconsistencies between this TPPP and relevant governing frameworks.

6. Where is trading in public places allowed?

The Council will **permit and/or** grant licences against certain guidelines for trading in public places as an activity that will bring life and atmosphere to locations in the city as well as enhance the experience of certain areas. Factors that could be considered when determining locations for street vending activities include whether:

- the location
 - works well with the rest of the city
 - is highly visible
 - is easily accessible
 - has low activity levels and/or less than desired public safety
 - is consistent with relevant governing frameworks (i.e. Reserves Management Plans, local area frameworks agreed to by the Council, relevant legislation (including Bylaws) and District Plans)
- trading activities
 - do not disrupt safe and efficient pedestrian flows
 - support or enhance the existing function of the location
 - do not negatively effect locations designated as scenic areas or quiet open space.

~~The Wellington Waterfront Limited is responsible for approving trading activities along the land designated as the 'Waterfront'. Wellington City Council will require Wellington Waterfront Limited to provide an open air market on the waterfront.~~

The Council manages the waterfront under the Wellington Waterfront Framework and the design guidelines and protocols previously established by Wellington Waterfront Limited.

7. Temporary Retail and Food Stalls, Retail Kiosks and Recreational Equipment Hire

The Council reserves the right to grant licences for temporary retail and food stalls, recreational equipment hire and retail kiosks in public locations throughout the city.

The Council will charge a fee for the licence. Licences are non-transferable and can be revoked at anytime due to non-compliance. The licence must be displayed to the public at all times.

The Council is responsible for identifying and agreeing any potential kiosk locations and designs and the terms of individual leases.

7.1 Type of commercial goods allowed

The type of goods that are allowed at temporary retail and food stalls, and kiosks, include handcrafted items, art, prepared food for consumption by the public, and produce such as fruit, vegetables, and flowers.

The Council wants to reinforce the image of Wellington as a creative capital by supporting vendors that sell art, photography and handcrafted items. The goods for a temporary retail stall must be approved by the Council during the application process. Licences may be revoked if goods are sold that are not consistent with what was approved by the Council.

Recreational equipment hire may also be licensed in public places, contingent on the above guidelines being adhered to.

7.2 Health and Safety Regulations

Temporary stalls selling fresh produce must obtain a certificate of registration under Regulation 4 of the Food Hygiene Regulations 1974. The stall operator must pay the prescribed Council fee for a certificate of registration. Stalls must comply with relevant food safety and hygiene regulations. Stall operators that do not comply with food safety and hygiene regulations will have their certificate of registration and their temporary retail stall license revoked.

7.3 Times of operation and licence duration

The times of operation will be stated in the licence as will the duration of the licence. Stall holders that operate outside the times outlined in the licence may have their licence revoked.

7.4 Stall appearance and storage

The Council must approve the appearance of the stall. A photograph or a detailed sketch of the stall must be included in the application for a temporary retail stall. The stall must maintain high standards of appearance at all times. No changes may be made to the stall without prior approval.

The stall operator must be in attendance at all times.

Stalls are generally not permitted to be stored on site overnight and must be removed from the public place when not in use. The Council may revoke the stall licence if the licence holder does not keep the stall appearance tidy and safe to the satisfaction of the Council.

The trading area should be left clean and tidy to the satisfaction of the Council and all rubbish must be properly disposed of. No rubbish should be stored in public view during operating hours. No goods are permitted to be stored outside a kiosk when not in use.

The operator must keep noise to reasonable levels to the satisfaction to the Council.

7.5 Application process

The application for a temporary retail stall licence must include:

- detailed information of the type of goods to be sold (the Council may request to see the goods)
- the proposed days and hours of operations
- a photograph or detailed sketch of the vending stall
- the application fee
- evidence of public liability insurance
- information required for food hygiene and safety registration

8. Hawking

The Council permits hawking outside the Central Business District as defined in the District Plan.

Hawkers selling food must obtain a certificate of registration under Regulation 4 of the Food Hygiene Regulations 1974. Hawkers selling food must comply with food safety and hygiene regulations. Food-selling hawkers that do not comply with food safety and hygiene regulations will have their certificate of registration revoked. Hawkers must pay the prescribed Council fee for a certificate of registration.

Trading from a fixed location is not permitted.

Hawkers must properly dispose of their rubbish. The operator must keep noise to reasonable levels to the satisfaction of the Council.

9. Open Air Markets

The Council may license the establishment of open air markets on public places on a case-by-case basis, taking into account the nature of the public place and the potential effect on existing businesses. Individuals or groups must receive licensed permission from the Council to operate an open air market in a public place. Licence conditions may include:

- identifying the type of goods that can be sold at the market
- ensuring adequate space for pedestrians
- allocating set hours and days for operation
- identifying issues relating to storage.

Any group or individual interested in establishing an open air market on public land should contact the Council.

Stall holders in open air markets, on public or private land, where food is sold, need to obtain a certificate of registration under Regulation 4 of the Food Hygiene Regulations 1974.

10. Commercial functions / events

~~Organisers of commercial functions / events must apply for permits for exclusive use of a land area. Bonds may be required on a case by case basis to cover risks of damage.~~

~~Details needed in the application include contact details, the type, date and time of event, number of people attending and special requirements. Organisers would also need to confirm that they have appropriate systems for managing health and safety under the Health and Safety in Employment Act and agree to any other conditions, such as those prescribed by Reserve Management Plans.~~

~~Council sponsored events under the Events Policy – i.e. iconic, regional or community events e.g. Island Bay Festival may be discounted or free.~~

10. Organised commercial group fitness activities

Organisers of commercial outdoor fitness groups and exercise classes must abide by the Code of Conduct annexed to this policy. Otherwise, the Council may take legal action to prevent the fitness trainer or exercise class using Council spaces.

Permission for these activities does not generally need to be approved by the Council. Note, however, that if the activity is proposed on a sports-field, then approval will be required and fees will need to be paid as per the standard booking fees and conditions for sports-field use.

12. Guided tours

~~Organisers of commercial guided tours taking place within Reserve areas throughout the city must apply for licences to Council officers in the Council Business Unit that administers parks and open spaces and pay relevant fees (at levels equal to or below cost recovery). Organisers of non-commercial guided tours (as defined by this policy) must obtain permission to run their activities, but are exempt from licensing.~~

12.1 Licence conditions

~~Organisers of guided tours must have systems in place to manage safety and comply with the Health and Safety in Employment Act and its Regulations, including having public liability insurance.~~

~~Guided tour operators also need to:~~

- ~~— prevent damage to public spaces~~
 - ~~— report any damage or safety hazards to the Council immediately on 499-4444~~
 - ~~— not restrict access to other people who want to use a given public space~~
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- ~~comply with any Reserves Management Plans covering the area where a tour takes place (Council will advise on this)~~
- ~~meet health and safety standards~~
- ~~provide a quality experience for visitors~~
- ~~comply with any other conditions that may be set as part of the permit, including any guidelines that the Council provides with the permit.~~

12.2 Application process

~~The application for a commercial guided tour operator licence must include:~~

- ~~company name~~
- ~~likely size of tour~~
- ~~nature of tour – e.g. walking, mountain bike training, horse riding~~
- ~~where and when the tour will take place~~
- ~~approximate frequency that it would take place~~
- ~~evidence of public liability insurance.~~

11. Fees, Monitoring and Enforcement

Fees, unless specifically stated otherwise for individual activities, will be set in alignment with the Council's revenue and financing policy which requires that the costs of this policy will be fully recovered from licence fees. Licence Fees are expected to include the costs of:

- licensing/permitting
- monitoring and enforcement
- administration
- additional resources that the applicant requests or expects from the Council – such as Council providing higher than normal levels of service on a particular space, extra facilities, equipment hire or extra maintenance.

The Council reserves the right to charge a rent for occupancy of public spaces in addition to the licence fee. Such a rent would be assessed by the value of the location and to ensure that businesses on private property are not unfairly disadvantaged.

The licence/permit applicant must pay the full licence prescribed fee and have all the required permits before the licence/permit will be issued.

The Council will monitor trading activities in public places regularly to ensure that traders are complying with their licence, permit or Code of Conduct conditions, and that no unauthorised trading is occurring in public places.

The Council reserves the right to revoke licences, permits or leases for non-compliance issues. The standard protocol for non-compliance is as follows:

1. if a trader does not comply with the conditions of this policy, the Council will verbally notify the trader of the issue
2. if the problem persists, the Council will provide a written warning to that trader identifying the issue(s) and required remedy
3. if the business continues to infringe, the Council will consider revoking the [permit](#), licence or lease, [and take any other steps to prevent the trading on Council land](#).

Individuals or groups that trade on footpaths or other public spaces without a pavement licence will be asked to remove their material and cease with the trading activity. The Council will issue a written warning to the person. If the infringement persists, the Council will reserve the right to confiscate the stall setup or trading material pursuant to sections 163 and 164 of the Local Government Act, 2002, and under part 1.15.1 of the Wellington Consolidated Bylaw: any authorised servant of the Council may pull down, remove or alter any work, material or thing erected or being in contravention of any provision of this bylaw.

The Council may dispose of confiscated property pursuant to section 168 of the Local Government Act, 2002.

Annex - Code of Conduct for Fitness Training on Wellington City Council's managed open spaces

*This Code of Conduct has been endorsed by the Exercise Association of New Zealand and has been informed by Auckland City Council's Code of Conduct

The Council wants to promote active and healthy lifestyles and provide opportunities for people to engage in physical exercise on its parks and other open spaces. Outdoor group exercise classes where participants are motivated to achieve fitness goals are supported by the Council.

Fitness Trainers are not required to obtain landowner approval by way of a concession or booking to operate on the Council's spaces. They are however expected to operate in a manner that minimises:

- damage to open space values and assets,
- conflict with other open space users, and
- negative impacts on adjoining landowners and businesses.

This Code of Conduct outlines the Council's expectations in relation to how Fitness Trainers should conduct their activities on open space in respect to other open space users, health and safety aspects, use of fitness training equipment, parking, promotional material, public liability and the response to complaints.

If a complaint is received about a Fitness Trainer, the relevant Council business unit will contact the Fitness Trainer to:

- a) follow up on any breach of the Code of Conduct with a warning,

- b) invoice the Fitness Trainer for the cost of remediation works, if the complaint relates to damage to the park or park facilities, and /or
- c) assess whether the activity is appropriate for the area, and if necessary, determine alternate site options with the Fitness Trainer.

If significant complaints are received about a Fitness Trainer, the relevant Council business unit will issue a further warning and may take legal action to prevent the fitness trainer or exercise class using Council spaces.

The Council encourages you to be receptive and adaptable at all times to the needs of all park users and to cooperate with and provide information to Council staff upon request to assist with the effective management of our open spaces.

General rules

1. Fitness training activities can operate in accordance with this code of conduct in any open spaces other than those spaces restricted in accordance with a Reserve Management Plan, or those spaces that are otherwise specifically excluded from fitness activities, or where and when other users have paid for exclusive use. Note that if the activity is proposed on a sports field then approval and fees will need to be paid as per the standard fees and conditions for sports field use.
2. Fitness training activities should generally be conducted between 5am and 10pm.
3. Any one fitness training session must have a maximum of 30 participants and last for a maximum of 90 minutes.
4. At all times the Fitness Trainer must conduct the fitness training activities in a manner that does not adversely affect the park, any other open space user(s) and local neighbours or businesses.
5. The Fitness Trainer does not have exclusive use of any area at any time. This means the Fitness Trainer can only use any area while a session is in use, can not set up any semi-permanent space, and must take all equipment away from any open space when a session is not in-progress. The Council may, at its discretion, instruct a fitness trainer to relocate their activity.
6. The Fitness Trainer must:
 - a) Conduct themselves in an orderly and considerate manner and must comply with the Council's noise control guidelines and ensure any noise created during the training shall not unduly impact on other users or nearby residential properties.
 - b) Not use obscene or intimidating language.

- c) Manage the training to minimise wear and tear on grassed areas (this includes avoiding wet and boggy areas, rotating activity within an area and / or alternating activities, if more than one).
 - d) Not cause damage to grass or intentionally mark it permanently (such as through scraping ground or paint).
 - e) Ensure participants do not step on, or walk on, or in any other way inappropriately use the Council's furniture, structures, public art works, shrines or memorials.
 - f) Ensure that any exercise equipment brought on to the park does not create any hazard or obstruction to park users.
 - g) Ensure training activities do not dominate, monopolise and/or obstruct any stairways or pathways and that their participants run in single file when running in narrow areas.
 - h) Ensure that training activities do not interfere with any other Council pre-approved or booked activities, including but not limited to: functions, special events or sporting activities.
 - i) Ensure the natural features, animals, plants or historic resources within the park are not interfered with, removed, damaged or endangered.
 - j) Ensure any area used is left clean after each period of use and/or in the same condition it was at the commencement of use.
 - k) Inspect the area used for any hazards before each session and take appropriate action to remove hazard or alter session if required, and
 - l) Notify the Council on 499 4444 of any hazards / issues / park maintenance on or in the vicinity of the area which may constitute a danger to the public or the environment or require the Council's attention.
7. The Fitness Trainer's conduct should at all times reflect best industry practice and the operator shall ensure they and their employees comply with all relevant statutes, regulations, by-laws, the District Plan, and with any operative Reserves Management Plan and relevant open spaces policies or plans.
 8. The Fitness Trainer shall cover the costs of any damage caused to the Council's assets and/or any cleaning required as a result of the training activity.

Health and Safety

9. The Fitness Trainer must ensure they:
 - a) Have a First Aid Kit and Cellphone.

- b) Have a policy to deal with extreme weather (such as snow, lightning, or temperatures over 35 degrees celsius).
- c) Satisfy all occupational health and safety legislation and regulations. It is recommended that all trainers be level 2 First Aid qualified, and have appropriate plans in place to deal with emergency situations.

Fitness Training Equipment

10. Any equipment brought on to the park must be portable by an individual by hand and free standing at all times (ie equipment must not be pegged into the ground or hung from trees).
11. The following equipment is expressly prohibited on the park:
 - a) large gym equipment or anything that attaches to any park fixture or trees, (for example, weight benches, weight stacks, stationary bikes, punching/boxing bags, treadmills, steppers), and
 - b) whistles and megaphones.
12. Small equipment not attached to any park fixture or trees is permitted (for example, small plastic cones, speed ladders or hand-held boxing mitts).

Vehicles

13. All vehicles belonging to or directly associated with the operator must use only designated car park facilities on the park unless otherwise agreed with the relevant Council business unit.

Promotional material

14. The Fitness Trainer shall ensure that, where appropriate, all advertising material produced promoting their training activity shall specify that it is being carried out on a park.
15. The Fitness Trainer shall not erect any advertising material such as signs, 'A' frames or banners on the park. The exception to this is a single sign that indicates a session is in-progress, within 15 minutes either side of any fitness session.
16. Any signs indicating that a session is in-progress must be free-standing, not attached to any park fixture or trees, and not block public access to different spaces.
17. The Council reserves the right to restrict the handing out of promotional material such as flyers and brochures, should Council officers consider that such actions by fitness trainers or operators are not kept to reasonable levels.

Public Liability

18. The Council shall not be responsible for any property of the operator its employees or participants that may be left on the park or for any loss of any property.
19. The Council shall not be liable for and does not accept any responsibility for indirect or consequential loss to the operator due to any natural disaster, vandalism, sabotage, fire or exposure to the elements, except where such damage or interference is caused by any wilful act by or negligence on the part of the Council, its employees, agents or contractors.
20. It is recommended the Fitness Trainer takes out an appropriate level of public liability insurance against liability for loss, damage or injury arising out of conducting their fitness training activity.

Recommended Professional Registration

21. Registration with the New Zealand Register of Exercise Professionals at the personal trainer (contractor) level is recommended as a way of ensuring all industry standards are met.

Identification

22. The Fitness Trainer shall wear visible identification at all times with the name and contact details of the responsible manager / operator of the fitness activity.

Complaints

23. If a complaint is received in the first instance Council officers will work with the Fitness Trainer to review whether the issue can be addressed through changes to how the fitness training is undertaken. The Fitness Trainer will be responsible for the cost of any remediation works, if the complaint relates to damage to the park or park facilities. The Fitness Trainer may be requested to relocate their fitness training activity to a more suitable location on the park or to an alternate park.
24. If further significant complaints are received about an operator, the Council may take legal action to prevent the fitness trainer or exercise class using Council spaces.