

 City of Ryde

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# **Footpath Activity Controls Policy**

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Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## Contents

1. Scope .....	4
2. Purpose .....	4
3. Principles / Responsibilities .....	5
4. References and Legislation .....	10
5. Endorsement and Approval .....	10
6. Attachments .....	11

<b>Footpath Activity Controls Council Policy</b>		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

# Footpath Activity Controls Policy - Definitions

## 1. Scope

This policy applies to footpath activity on any **public footpath or public plaza area** in the City of Ryde Local Government Area that is owned or under the care, control and management of Council, on **land which is zoned business or industrial** under the Ryde Local Environmental Plan 2014. In particular, it applies to footpath areas adjacent to public roads situated within the towncentres, local and neighbourhood centres, and the industrial areas in the City.

Examples of footpath activity covered by this policy include street vending, such as the display of goods for sale from a newspaper stand, sale of fruits and vegetables from a stall or barrows on a footpath, and the display and sale of articles from stalls operated by charitable organisations and community groups. This policy also includes election activities and identifies footpath activities which are prohibited in City of Ryde.

## 2. Purpose

The purpose of this policy is to provide clear guidelines for applicants and the community with respect to Council's expectations for the display of goods and other footpath activities. This policy identifies acceptable locations and circumstances for footpath and street vending activities in the City of Ryde; provides clarity on the types of activities that are permissible (subject to Council's consent/approval) and prohibited in the areas where this policy applies and outlines the requirements for applications.

The objectives of this Policy are:

- To enable Council to give consideration to the multiple use of footpaths in a manner which complements the interests of the business community, residents and visitors in locations that are suitable for that purpose;
- To encourage footpath activities that are compatible with other community uses of the public space and that contribute positively to the streetscape character of centres within the City of Ryde;
- To ensure that pedestrian and vehicular traffic safety is not compromised by footpath activities;
- To ensure that an adequate, accessible, and safe pathway is available for general pedestrian circulation at all times;

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

- To ensure that surrounding properties are not adversely impacted by footpath activities, either visually or by the conduct and nature of those activities;
- To enable Council to receive income for the commercial use of public places under its control;
- To ensure that activities undertaken by non-profit organisations are appropriately regulated and coordinated;
- To assist Council in meeting its obligations and responsibilities under the Local Government Act 1993, the Environmental Planning and Assessment Act 1979, and the Roads Act 1993 with respect to footpath activities.

### 3. Principles / Responsibilities

This section explains what applicants need to do to apply for approval for footpath activity and also provides information regarding ongoing management and operational matters for footpath activity areas.

#### 1 Application Requirements

All activities permissible under this policy require the written approval of Council under all or a combination of the:

- Roads Act 1993 (approval/permit)
- Local Government Act 1993 (approval)
- Environmental Planning and Assessment Act 1979 (consent).

Application form/s for the above approvals are available from Council's Customer Service Centre, 1 Pope Street Ryde, telephone (02) 9952 8222 or on Council's website at [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au).

In some cases, exemptions from the need for approval (under the Local Government Act 1993) or for development consent (under the Environmental Planning and Assessment Act 1979) are available, such as for changes of use within the activity area.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 1.1 Activity in Existing Approved Activity Areas

Applications for the use of existing approved activity areas will generally be required to be submitted a minimum of 28 days prior to the planned commencement of the event or activity to enable time to process requests.

## 1.2 Street Vending involving Food Items

Applications for the use of a footpath in these areas will be required to include details demonstrating compliance with food handling requirements.

## 1.3 Charitable and Community Group Activities

The approval requirements for charitable organisations and community groups will be at the discretion of Council. Requests will be required to demonstrate compliance with the general requirements under this policy.

## 1.4 Election Activities

The approval requirements for election activities will be at the discretion of Council. Requests will be required to demonstrate compliance with the general requirements under this policy.

## 2 Fees

Application fees will be charged in accordance with Council's current Schedule of Fees and Charges which is reviewed by Council on an annual basis.

Council will also charge a fee for the use of the footpath or Council owned land (permit fee). The initial fee for new footpath activity approvals will be based on the *Schedule of Fees and Charges* forming part of that year's *Operation Plan*. Foreexisting permits, the fee is reviewed annually in accordance with the approval conditions.

**Note 1:** Payment of permit fees will only be required following the approval of the applications under the Roads Act/Local Government Act.

**Note 2:** Payment must be made in full before a permit can be issued.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

### 3 Conditions of Approval

The approval holder will be responsible for making sure the footpath activity and area is operated in accordance with the conditions attached to the approval(s), and where it applies, any conditions attached to the development consent.

Conditions will include matters identified in this policy, and ongoing management requirements such as:

- Maintaining structures and display furniture in physically sound and aesthetically acceptable conditions;
- Cleaning of the approved activity area;
- Disposal of waste – suitable commercial waste collection services to be arranged as street rubbish bins are not to be used for disposal of waste;
- Removal and storage of display furniture away from public areas at relevant times (outside business hours, in periods of bad weather);
- Markers identifying the boundaries of the approved area must remain in place through the duration of the approval.

### 4 Period of Development Consent

Where development consent is issued, unless otherwise specified, the period for consent will be for a maximum of 5 years and will be concurrent with the associated approval under the *Roads Act 1993* or *Local Government Act 1993*.

**Note:** Applications to extend/renew development consent should be lodged at least 6 months before expiration of the consent if continuity of use is required.

### 5 Period of Approval and Variation of Approval

Approvals issued under the *Roads Act 1993* and *Local Government Act 1993* will apply for a maximum of 5 years. An approval to use a footway or public space may be varied or revoked at any time and this applies notwithstanding any associated development consent that applies.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 6 Compliance and Work on Public Footpath and Plaza Areas

Council may modify or revoke an approval to use a footpath or public plaza or have the agreed conditions of the permit modified at any time in order to maintain optimal pedestrian movement or the safety and amenity of the area.

Council may also revoke or modify an approval at any time if all or part of the *approved activity area* is required for road or infrastructure construction, or in the event of non-compliance with the footpath activity approval.

In any of the above circumstances, reasonable notice shall be given and a reasonable period of time, as set out in the approval, will be provided before the notice becomes effective. Notice periods will be abridged where there is any risk to public safety and amenity.

Council retains management and ownership of its footpaths and public plazas at all times. Council has the right to access and remove all trading items at any time for any purpose considered appropriate under its obligations and responsibilities.

No compensation is payable in the event of Council or any other statutory authority carrying out works which require the removal of any trading items. Approval holders cannot claim for any loss of income or refund of fees as a result of works carried out by Council or other Service Providers on Council Owned or Council Controlled footpaths, plazas and public areas.

Breaches include but are not limited to:

- non-payment of rental fee;
- encroachment beyond the *approved activity area*;
- non-compliance with the *footpath activity approval* and the controls set out in this Policy

Non-compliance will be enforced by way of a written warning for a first offence and a fine in all other circumstances. Continual non-compliance may result in the approval being revoked or enforcement action taken.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023



## 7 Change of Ownership

*Roads Act 1993* approvals/permits and *Local Government Act 1993* approvals will automatically cease upon any change of ownership or occupancy of the activity area or associated premises.

A new application is required for any change of ownership.

## 8 Display of Footpath Activity Approval

Footpath Activity Approvals will be issued as part of the Council approval process. A copy of the *Footpath Activity Approval* that includes a plan of the approved area must be kept visible on the approved area (the display table, display stands) or displayed in a clear and visible position inside the front window of the associated premises and is to be produced on request by any authorised person.

## 9 Renewal of Footpath Activity Approval

The *Footpath Activity Approval* must be renewed on an annual basis before the arrival of the renewal date.

It is the approval holder's responsibility to ensure the renewal of the *Footpath Activity Approval* before the arrival of the renewal date.

If the renewal is not made by this date, the activity is to cease until the *Footpath Activity Approval* is re-approved.

## 10 Insurance

All approval holders will be required to carry and maintain public risk liability insurance to the minimum value of \$20 million for utilisation of the footpath area and are required to provide evidence of that cover with their application and whenever required by Council.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 4. References and Legislation

This policy is prepared under the following Acts (and associated regulations) applicable to footpath activities:

- Environmental Planning and Assessment Act 1979
- Local Government Act 1993
- Roads Act 1993
- Food Act 2003

This policy is to be read in conjunction with other plans and policies of Council including:

- City of Ryde Local Environmental Plan 2014 (LEP 2014)
- City of Ryde Development Control Plan 2014 (DCP 2014)
- City of Ryde Outdoor Dining Policy 2020
- City of Ryde Enforcement Policy 2008
- City of Ryde Access and Equity Policy 2009
- City of Ryde Enforcement Policy 2020

This policy has been prepared with reference to the *Street Vending* manual prepared by Transport for NSW and the Department of Local Government in consultation with the Police Service and Local Government and Shires Associations (1996).

## 5. Endorsement and Approval

The policy has been reviewed in April 2021 with minor changes.

The policy will be scheduled for reviewed by April 2023.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 6. Attachments

### Attachment 1: FOOTPATH ACTIVITY CONTROLS POLICY - DEFINITION

The following definitions are for the purposes of this policy.

**advertising structure** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

The term is defined as follows: **advertising structure** means a structure used or to be used principally for the display of an advertisement.

**approved activity area** means the site of the public footpath / plaza area for which an approval for use for footpath activity has been granted.

**classified road** – means any of the following: a main road, a State highway, a freeway, a controlled access road, a secondary road, a tourist road, a tollway, a State work. (See *Roads Act 1993*, Part 5 for further details.)

**footpath** - means the part of a road that is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).

**footpath activity approval** means the approval which must be held by the proprietor of the premises if they wish to carry out business operations on Council’s footpaths or public plaza areas.

**kiosk** means retail premises used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.

**public road** has the same meaning as in the *Roads Act 1993*:

The term is defined as follows:

- (a) any road that is opened or dedicated as a public road, whether under this or any other Act or law, and
- (b) any road that is declared to be a public road for the purposes of this Act.”

**regulated period** for an election means:

- (a) the period starting with the roll closing date and ending 6pm on election day; and
- (b) all days to which polling for the election is adjourned.

**road** means a public road or a private road within the meaning of the *Roads Act 1993* and includes a classified road.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

# Footpath Activity Controls Policy - Definitions

**standing vehicle** includes any vehicle, whether registered or not, which is stopped on a public road or a public place for the purposes of selling any article.

**street vending** involves the selling of articles either directly or from a stall or standing vehicle in a public street or a public place. For the purposes of this policy it relates to street vending on the public footpath and in public plazas.

**street vending structure** a structure referred to in Section 138 of the *Roads Act 1993* in respect of which street vending consent may be granted.

**temporary structure** has the same meaning as in the Environmental Planning and Assessment Act 1979.

The term is defined as follows: **temporary structure** includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

**third party advertising** means any advertising other than that which identifies the subject premises itself.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## Attachment 2: FOOTPATH ACTIVITY CONTROLS POLICY – GUIDELINES

### Guideline

This guideline provides guidance on activity areas and activity types and is divided into five sections:

1. **Permitted Activities** by the Footpath Activity Controls Council Policy;
2. **Prohibited Activities;**
3. **Activity Areas** - criteria for the location and siting of footpath activity areas;
4. **Activity Types - General Requirements:** requirements applicable to all footpath activities;
5. **Activity Types – Specific Requirements:** additional requirements for particular activities (street vending, charity/community group activities, and election activities).

### 1. Permitted Activities

The policy covers the following main areas of footpath activity:

*Street vending* activity comprising:

- **Commercial activities:** *street vending* such as display of goods, street stalls, streetmarkets (but excluding outdoor dining which is covered by a separate policy);
- **Non-commercial (not-for-profit) activities:** charity and community group street stalls and badge/pin days, street collections (including sale of “The Big Issue” magazine), information and promotional displays for non-commercial/not-for-profit activities, streetstalls for political purposes (election activities);

**Note:** Busking may be considered in plazas and urban squares (such as Eastwood Mall, West Ryde Plaza and Trim Place) subject to approval by Council and compliance with the requirements of this policy. Council may also take into account any other matters such as the type of entertainment and noise levels.

**Note:** *standing vehicles* will only be considered in plaza areas subject to Council approval.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

Street vending activities are described further under section 5.1.

Activities which involve the use of temporary structures such as tents, marquees, booths and other temporary enclosures are not covered by this policy. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 applies to temporary structures and places of public entertainment.

## 2. Prohibited activities

Activities which are prohibited on public *footpaths* and in public plaza areas in the City of Ryde include:

- Display of A-frame advertising signs (excluding for election purposes);
- standing vehicles and mobile vending vehicles on footpaths;
- any other activity not identified under this policy.

## 3. Activity Areas

### 3.1 Pedestrian Access and Circulation

Council aims to provide a safe, equitable and accessible environment for people who move through the City. As part of this responsibility, Council gives priority to providing a clear path for free movement and safe circulation for pedestrians of all ages and mobility along footpaths and through plaza areas. Access for all includes people with strollers, children, the elderly and people with disabilities, including wheelchair users and those using aids to assist with mobility and sensory impairments. Where possible, circulation areas are to be located under shelter.

### 3.2 Existing *Approved Activity Areas*

To assist in the provision of pedestrian priority, specific areas in centres and in other locations covered by this policy may already be identified and approved by Council for use for footpath activity. Contact should be made with Council as to the locations of these ***approved activity areas***.

### 3.3 Proposed Activity Areas

Proposals for use of the footpath or plaza areas will be considered subject to applications demonstrating compliance with this policy.

Council will take the following into account in determining suitable locations:

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

# Footpath Activity Controls Policy - Definitions

- The relationship of the proposed footpath activity to surrounding land uses;
- The volume of pedestrian traffic, other footpath and outdoor dining activity in the area;
- The location and alignment in relation to other approved footpath and outdoor dining activity areas, street furniture, traffic controls, access to kerbside parking and vehicular access ways;
- The impact of the reduction of width of the footpath on the capacity of the footpath to provide the required pedestrian capacity;
- Adequate space for the pedestrian mobility, especially people with disabilities and for the passage of prams and wheelchairs.

Applicants for proposed activity areas will need to provide information in response to the above criteria and demonstrate compliance with the following:

- A clear and continuous path of a minimum 2 metres width is available for pedestrian circulation and access, including providing passing space for people with disabilities (refer Australian Standard AS 1428);
- The ground surface is sufficiently level, safe, stable and firm to provide adequate stability to display stands and their contents;
- Those conducting the activity and those attending have sufficient space to avoid encroachment on pedestrian circulation;
- Those attending the activity, viewing displays, purchasing goods will not cause hazards or intrude upon the access way into and out of premises in accordance with the circulation and access requirements for people with disabilities (refer Australian Standard AS 1428);
- Those attending the activity and the placement of displays and goods will not intrude upon sightlines for motorists on nearby roadways;
- The activity area and the activity do not intrude on the effective use or impact the access for maintenance of street furniture (seating, rubbish bins, planter boxes, light poles, etc);
- A minimum setback of three metres is required from street corners, bus stops, taxi stands, vehicular driveway crossings. A minimum 600mm setback is required from the kerb face. Footpath activities proposed on *classified roads* may require the concurrence of Transport for NSW.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

### 3.4 Delineation of Boundaries of Approved Activity Areas

Council requires all boundaries of the **approved activity area** to be physically marked out onsite in an approved manner. In some circumstances, areas may already be so marked.

Where they are not, delineation of boundaries of display areas will be required to the satisfaction of Council.

Council may require the delineation of area boundaries by the use of metal disc markers (pictured below). Where markers are required, Council will install on land in its ownership, at cost to the approval holder. In paved areas, metal discs are installed flush with the paved surface.



**Figure 1**

**Example of metal discs installed by Council in pavements to mark the boundaries of footpath activity areas.**

### 3.5 Traffic Safety

Footpath activities, such as street vending, can have an adverse effect on traffic safety and operation. It is imperative that the safety of pedestrians and motorists using the road is not prejudiced by footpath activity.

## 4. Activity Types – General Requirements

The following requirements apply in all cases of footpath activity:

### 4.1 Visual Quality, Lighting and Storage Facilities

Any activity, installation, furnishing or enclosure on footpath areas should:

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023



- Be attractive and compliment the streetscape;
- Use quality robust and attractive designs of a type to be approved by Council;
- Be kept in good order, repair and condition at all times.

Any footpath activity approved to operate outside daylight hours must provide and maintain adequate lighting to Council's satisfaction, to ensure the safety and amenity of customers and the general public. Lighting is not to cause adverse impact on surrounding properties.

Adequate storage facilities will be required to be provided in the associated premises or in the building containing the associated premises for display equipment, etc, when not in use.

Equipment may not be left on the public footpath or plaza overnight or when not in use.

## 4.2 Advertisement and Signs

To minimise visual clutter, minimal advertising in the activity area may be permitted where:

- It identifies the premises/business or organisation directly associated with the footpath activity;
- Is in the nature of a corporate logo or identification;
- Is of a minor scale.

**A-frame signs** are prohibited (except in the case of election activities - refer "Election Activities" section).

**Third party advertising** is prohibited.

Details of all signage and advertising must be submitted for approval as part of the application.

## 4.3 Amplified Music, Spruiking and Noise

No amplified music is to be installed or used in connection with footpath activities without the prior approval of Council. Spruiking and the use of public address systems are prohibited in association with footpath activities approved under this policy.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

Any noise created by the activity should be managed and controlled to a degree that there is no adverse impact on the occupiers of surrounding properties or on the amenity of the area generally.

#### 4.4 Health Requirements

Public health standards, specified by Council, are to be observed in connection with the conduct of any activity.

These requirements should be discussed with officers from the Environmental Health and Building Unit prior to the lodgement of the application. Contact should be made with Council's Customer Service Centre prior to lodging any application.

#### 4.5 Merchandise Not to be Displayed on Footpaths

The following types of merchandise are **not** to be displayed on public footpaths or plazas:

- Liquor
- Drugs
- Tobacco
- Unpackaged food (excluding whole fruits or vegetables)
- White goods
- Gases (e.g. Liquid Petroleum Gas [LPG] canisters)
- Corrosives (e.g. car batteries)
- Oxidising materials (e.g. paint stripper)
- Explosives (e.g. boat flares)
- Flammable liquids
- Pornographic material
- Offensive material of any nature

**Note:** This list is not exhaustive. Council reserves the right to order the removal of any merchandise considered to be a risk to the health and safety of the public and environment at any time.

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 5. Activity Types – Specific Requirements

### 5.1 Street Vending Activities

Examples of street vending activities permissible under this policy include:

- Sale of fruits, vegetables, flowers and the like from barrows on a footpath;
- Sale of newspapers and the like from a stand on a footpath;
- Sale of food, drinks, fruits or vegetables from a stall, a standing vehicle or structure (e.g. kiosks) in a pedestrian mall (plaza) or the like not being on private land;
- Sale of food or articles from a box, stall or table located on a footpath, including stalls operated by charitable organisations.

Street vending activities prohibited under this policy are:

- Sale of any goods from a stall, stand, or standing vehicle located on the footpath.

**Note:** Outdoor dining activity (footway restaurant) is a form of street vending covered by a separate policy.

**Note:** for the purposes of this policy the use of *standing vehicles* will only be considered for plaza areas (not footpath areas). Approved street vending vehicles are permitted to make brief intermittent stops at the kerbside to sell.

Due to safety reasons, the sale of articles to passing motorists from street stalls is prohibited. This policy specifies requirements for two main areas of street vending activity:

- Commercial footpath activity (refer 5.2 and 5.3)
- Non-commercial/not-for-profit footpath activity (refer 5.4).

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 5.2 Commercial Footpath Activity

The use of the footpath area will, generally, be limited to the area situated directly in front of an associated industrial retail and retail/business premises. The associated premises must be occupied by a lawful and approved use.

Street vending activity and the display of goods and/or information will be considered where:

- Located in front of, or in close proximity (in a space approved by Council) to the associated retail premises;
- Associated with an approved business or industrial premises;
- No street vending will be permitted in association with pubs, restricted premises or any other premises or outlet not identified above.

The following requirements apply to street vending activity:

- All goods must be displayed on stands, racks or in containers above the level of the footpath, unless goods to be displayed are designed in a manner intended to allow for placement on the ground;
- No advertising using amplification or persons calling to the public may be undertaken in association with the display of goods;
- No food may be cooked, processed or prepared for consumption within the area of footpath;
- Display stands are to be aesthetically pleasing, durable, well finished, secure and securely supported at the base;
- Materials and finish of display stands must be weather-resistant;
- Mobile display stands, carts and trolleys are to be fitted with a stabiliser foot or locking wheels/rollers. On sloping sites a tether may be required. Mobile trolley tables are to have at least two wheels which are capable of being locked to prevent movement;
- All goods on display must be adequately secured to the display stand on which they are presented. Display stands for loose articles (e.g. newspapers, stacked fruit, etc.) must be designed to securely hold the displayed goods;
- Temporary furniture and equipment must be stable and not prone to falling over when knocked over by pedestrians or blown over in high winds;

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

- All temporary furniture and equipment must be removed from the footpath and stored within the premises, at all times outside of the approved operating hours of the premises;
- The display stands are not permanent fixtures and are required to be removed at the end of each day's trading;
- Payment points or garbage bins must not be located in the approved activity area.

### 5.3 Street Vending involving Food Items

The handling, display and sale of food items must satisfy the requirements of the Food Act and associated regulations, including that food must be protected from the likelihood of contamination. In this regard the following requirements apply:

- All food displayed for sale must be displayed at least 750mm above ground level.
- All food (other than whole uncut fruit and vegetables) displayed for sale must be packaged to protect the food from the likelihood of contamination.
- Food must be displayed under temperature control, where appropriate, to ensure that microbiological safety of the food will not be adversely affected.

Display stands for food must be designed and constructed so that they are able to be easily and effectively cleaned.

### 5.4 Charitable and Community Group Activities

Charitable and community groups are permitted under this policy to set up temporary food stalls, and conduct other mobile fundraising activities, on the public footpath and public plaza areas in the City of Ryde.

Those conducting the activity (stall holders, etc) must provide appropriate identification relating to the charity organisation or not-for-profit community group and be made available upon request.

All food stalls (other than open food stalls) must comply with the Guidelines for food businesses at temporary event (NSW Food Authority, 2020).

Open food stalls consisting of tables and trestles may be used for the sale of wrapped or packaged, non-potentially hazardous foods (e.g. biscuits and cakes, and other shelf stable foods, not requiring refrigeration).

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023

## 5.5 Election Activities

This section applies to activities related to Local, State and Federal Elections during the **regulated period** of election campaigns.

Street stalls for political purposes are permissible under this policy. In this regard:

- The stall and activity are not to cause obstruction to the free movement of pedestrians, especially children, the elderly and people with disabilities, including users of wheelchairs and other aids to assist disability such as mobility and sensory aids;
- The organisation and/or candidate conducting a stall must display a sign or signs on the stall. A-frame signs may be used (as per Council resolution identified below);
- The organisation and/or candidate must comply with relevant legislation relating to the conduct of elections.

**Note:** Council resolved 9 October 2007 (Ordinary Council Meeting Item 9):

*(a) That at the on-set of each election (Federal, State or Local Government) the General Manager writes to the Registered Officer/Deputy Registered Officer of each political party represented within the City of Ryde seeking their cooperation by not affixing political advertising posters to electricity poles/fences or on any public land.*

*(b) That within 24 hours of notification all political advertising on electricity poles/fences or on public land shall be removed.*

*(c) That political "A" frame signage be permitted provided it is secure, supervised and does not create a hazard or obstruction to pedestrians or traffic.*

Footpath Activity Controls Council Policy		
Owner: Urban Strategy	Accountability: City Planning and Environment	Endorsed: 1 February 2011
CM Reference (PDF): D21/49355	Last Review Date: 7 April 2021	Next Review Date: April 2023