

**City of
Port Phillip**

**FOOTPATH ACTIVITIES
LOCAL LAW NO 7 (2009)**

CITY OF PORT PHILLIP

FOOTPATH ACTIVITIES LOCAL LAW NO 7

TABLE OF CONTENTS

PART 1 PRELIMINARY	1
1. TITLE	1
2. OBJECTIVES.....	1
3. THE POWER TO MAKE THE LOCAL LAW	1
4. COMMENCEMENT AND REVOCATION	1
5. APPLICATION	1
6. INTERPRETATION	1
PART 2 FOOTPATH ACTIVITIES	3
7. PERMIT REQUIRED	3
8. CONSIDERING APPLICATIONS	3
9. EVIDENCE OF PERMIT	4
10. GUIDELINES	4
11. OFFENCES.....	4
12. SPECIAL EVENTS	4
PART 3 ADMINISTRATION AND ENFORCEMENT	5
DIVISION 1 – ADMINISTRATION	5
13. APPLYING FOR A PERMIT	5
14. FEES	5
15. ISSUE OF PERMITS.....	5
16. DURATION OF PERMITS.....	5
17. PERMIT CONDITIONS	6
18. CANCELLATION OF PERMITS	6
19. CORRECTION OF PERMITS	7
20. REGISTERS.....	7
21. EXEMPTIONS	7
22. OFFENCES	7
DIVISION 2 – ENFORCEMENT	8

23.	COMPLYING WITH DIRECTIONS	8
24.	POWER OF AUTHORISED OFFICERS	8
25.	TIME TO COMPLY	8
26.	FAILURE TO COMPLY WITH NOTICE TO COMPLY	8
27.	POWER OF AUTHORISED OFFICERS TO ACT IN URGENT CIRCUMSTANCES	8
28.	POWER OF AUTHORISED OFFICER TO IMPOUND	9
29.	INFRINGEMENT NOTICES	10
30.	PAYMENT OF PENALTY	10
31.	WAIVER AND WITHDRAWAL	10
	SCHEDULE 1 APPLICATION FOR PERMIT FOR PLACEMENT OF OBJECTS ON A FOOTPATH.....	11
	SCHEDULE 2 NOTICE TO COMPLY.....	12
	SCHEDULE 3 INFRINGEMENT NOTICE.....	13
	SCHEDULE 4 PENALTIES FOR INFRINGEMENT NOTICE PURPOSES.....	14
	SCHEDULE 5.....	15
	INDEMNITY.....	15
	GUARANTEE.....	16

**CITY OF PORT PHILLIP
FOOTPATH ACTIVITIES LOCAL LAW NO 7**

**PART 1
PRELIMINARY**

1. TITLE

This is the Footpath Activities (Local Law No. 7 2009).

2. OBJECTIVES

The principal objectives of this Local Law are to:

- (1) provide for the peace, order and good government of the Municipality and the administration of the Council's functions and powers;
- (2) promote a vibrant street life which balances the interests and needs of residents, ratepayers and visitors to the Municipality;
- (3) regulate and control the placement of objects on Footpaths to achieve fairness and consistency between traders in the use of Footpaths; and
- (4) regulate and control the placement of objects on Footpaths to ensure:
 - (a) safe and unobstructed passage for pedestrians, in particular, those who may be physically or visually impaired;
 - (b) safe and unobstructed vision for drivers of vehicles and cyclists; and
 - (c) limited impact on the residential amenity and the streetscape that characterises the Municipality.

3. THE POWER TO MAKE THE LOCAL LAW

This Local Law is made under section 111 and Schedules 10 and 11 to the Act.

4. COMMENCEMENT AND REVOCATION

- (1) This Local Law comes into operation on 1 July 2009.
- (2) From the operational date of this Local Law, Footpaths Activities Local Law 1999 (Local Law No. 7) is revoked.

5. APPLICATION

This Local Law operates throughout the whole municipal district.

6. INTERPRETATION

Unless the contrary intention appears in this Local Law:

"Act"	means the <i>Local Government Act 1989</i> .
"Advertising Sign"	means any freestanding hoarding, such as a sandwich board sign.
"Authorised Officer"	means a person appointed under section 224 of the Act as an authorised officer for the purpose of this Local Law.
"Council"	means the Port Phillip City Council.
"Footpath"	means the area between the property boundary and the kerbside of a road in the Municipality that is provided for use by pedestrians.
"Footpath Object"	means an object listed in clause 7 of this Local Law that is Placed on a Footpath in the municipality.
"Guidelines"	means any guidelines made by the Council under clause 10 of this Local Law.
"Local Law"	means this Footpath Activities (Local Law No. 7 2009).
"Municipality"	means the municipal district of the Council.
"Owner"	means the owner of the property adjoining the Footpath that is (or is proposed to be) the subject of a permit for one or more Footpath Objects.
"Placed", "Places", "Placing" and "Placement"	include permitting the relevant Footpath Object to remain on the Footpath, as well as the actual act of putting the Footpath Object on the Footpath.
"Planter Boxes"	means a container made of any material designed to display plants on footpaths or for segregating parts of the footpath (whether containing plants or not).
"Screen"	means a covered frame or the like, movable or fixed, serving as a partition between the footpath and the road or segregating parts of the footpath.

PART 2
FOOTPATH ACTIVITIES

7. PERMIT REQUIRED

- (1) A person must obtain a permit from the Council before he or she Places one or more of the following objects on a Footpath:
- (a) tables;
 - (b) chairs;
 - (c) umbrellas;
 - (d) Screens;
 - (e) Planter Boxes;
 - (f) goods for sale;
 - (g) other equipment ancillary to a business; or
 - (h) Advertising Signs.
- (2) A person who fails to obtain a permit for the Placement of a Footpath Object where he or she is required to do so is guilty of an offence against this Local Law.

Penalty: 20 penalty units

8. CONSIDERING APPLICATIONS

In deciding whether to grant a permit for the Placement of a Footpath Object, the Council may have regard to:

- (1) the effect on pedestrian traffic flows and safety;
- (2) the impact on the appearance of the street and its surroundings;
- (3) the impact on residential amenity;
- (4) the duration of the use;
- (5) the effect on vehicular traffic flows and safety;
- (6) compatibility with other uses in the street;
- (7) whether it is complementary to the primary adjoining use;
- (8) whether it is less intensive than the primary adjoining use;
- (9) the applicant's previous record of compliance;
- (10) any relevant policies of the Council; and

- (11) any other matter relevant to the application.

9. EVIDENCE OF PERMIT

- (1) When the Council grants a permit for the Placement of a Footpath Object, it must provide a registration sticker to the permit holder as evidence of the currency of the permit.
- (2) If a permit is issued for one or more Footpath Objects listed in paragraphs (a) to (g) of clause 7, the permit holder must display the sticker in the shop window of the premises to which the permit relates.
- (3) If a permit is issued for an activity in paragraph (h) of clause 7 the permit holder must affix the sticker to the Advertising Sign to which the permit relates.
- (4) A person who fails to display the sticker will be guilty of an offence against this Local Law.

Penalty: 10 penalty units

10. GUIDELINES

- (1) The Council may make Guidelines for the Placement of Footpath Objects on Footpaths and in those Guidelines may:
- (a) designate precincts where Footpath Objects may or may not be Placed having regard to the physical characteristics and the capacity of the Footpath to accommodate the Footpath Objects; and
- (b) identify standards that are applicable to the Footpath Objects and their Placement.

11. OFFENCES

- (1) A person Placing a Footpath Object on a Footpath in clause 7 must comply with the Guidelines.
- (2) A person who fails to comply with the requirements of the Guidelines that are specified for a particular use or are applicable to all uses is guilty of an offence against this Local Law.

Penalty: 20 penalty units

12. SPECIAL EVENTS

- (1) This Local Law does not apply to a sporting, recreational, cultural, commercial or social gathering of people that is to take place on a Footpath.
- (2) Where a person proposes to organise a sporting, recreational, cultural, commercial or social gathering of people that is to take place on a Footpath, the person must obtain a permit in accordance with clauses 7 and 12 of Community Amenity Local Law No 3.

PART 3
ADMINISTRATION AND ENFORCEMENT

DIVISION 1 – ADMINISTRATION

13. APPLYING FOR A PERMIT

- (1) A person who wishes to apply for a permit may do so by lodging with the Council:
 - (a) a completed application in the form of Schedule 1, attaching a plan indicating the location of the use on the Footpath, the indemnity form in Schedule 5 and (if the applicant is company), the guarantee in Schedule 5; and
 - (b) the appropriate application fee.
- (2) The Council may require an applicant to provide additional information before dealing with an application for a permit or for exemption.
- (3) The Council may require a person making an application for a permit to give public notice which will entitle any person to make a submission and to be heard in accordance with section 223 of the Act.

14. FEES

- (1) The Council may, from time to time, by resolution determine fees for the purpose of applying for permits and exemptions under this Local Law.
- (2) In determining any fees and charges, the Council may establish a structure of fees, including a minimum or maximum fee.
- (3) The Council may waive, reduce or alter a fee with or without conditions.
- (4) Where a permit is issued after the commencement of the financial year for the remainder of the year, the Council may vary the normal fee by charging an amount which is proportionate to the period for which the permit will apply (corrected to the quarter of that financial year).

15. ISSUE OF PERMITS

The Council may:

- (1) issue a permit, which must include an endorsed plan and any conditions applicable to the Placement of the Footpath Object(s); or
- (2) refuse to issue a permit.

16. DURATION OF PERMITS

- (1) A permit is in force until the expiry date indicated on the permit, unless it is cancelled before the expiry date.
- (2) All permits issued under this Local Law expire on the next 30 June after the day on which it is issued.

17. PERMIT CONDITIONS

- (1) In addition to any requirements in the Guidelines, a permit may be issued containing conditions which the Council considers to be appropriate in the circumstances including:
 - (a) the payment of an additional fee or charge;
 - (b) the permitted hours for which the Footpath Object may remain on the Footpath;
 - (c) a specified duration, commencement or completion date;
 - (d) the rectification, remedying or restoration of a situation or circumstance;
 - (e) where the applicant is not the Owner, the consent of the Owner;
 - (f) the requirement to comply with any policies that the Council has in force from time to time;
 - (g) the removal of any goods or equipment from the Footpath during particular hours;
 - (h) the production of a current public liability policy on which the Council's interest is noted; and
 - (i) the granting of some other permit or authorisation.
- (2) The conditions of a permit must be set out in the permit.
- (3) The Council may, during the currency of a permit, alter the conditions of a permit if it considers it to be appropriate to do so, after providing the permit holder with an opportunity to comment on the proposed alteration.
- (4) A person to whom the Council has issued a permit must ensure the conditions of the permit are complied with.
- (5) A person who fails to comply with any condition of a permit is guilty of an offence against this Local Law.

Penalty: 20 penalty units

18. CANCELLATION OF PERMITS

- (1) The Council may cancel a permit if it considers that:
 - (a) there has been a serious or ongoing breach of the conditions of the permit;
 - (b) a notice to comply has been issued but not complied with within seven days after the time specified in the notice for compliance;
 - (c) there was a significant error or misrepresentation in the application for the permit; or

- (d) in the circumstances, the permit should be cancelled.
- (2) Before it cancels a permit, the Council must provide to the permit holder an opportunity to make a written submission on the proposed cancellation.
- (3) If a permit holder is not the Owner and the Owner's consent was required to be given to the application for the permit, the Owner must be notified of any notice to comply and of the reason why it has been served.

19. CORRECTION OF PERMITS

- (1) The Council may correct a permit in relation to:
 - (a) an unintentional error or an omission; or
 - (b) a material miscalculation or mistake of description of a person, thing or property.
- (2) The Council must notify a permit holder in writing of any correction to his or her permit.
- (3) If the permit holder is not the Owner and the Owner's consent was required to be given to the application for the permit, the Owner must be notified of any correction to the permit.

20. REGISTERS

- (1) The Council must maintain a record of permits and exemptions, including details of corrections and cancellations.
- (2) The Council must maintain a register of determinations and Guidelines prepared for the purposes of this Local Law.
- (3) The Council must ensure that the registers are available for public inspection at the office of the Council during normal business hours.

21. EXEMPTIONS

- (1) The Council may by written notice exempt any person or class of persons from the requirement to have a permit, either generally or at specified times.
- (2) An exemption may be granted subject to conditions.
- (3) A person must comply with the conditions of an exemption.
- (4) An exemption may be cancelled or corrected as if it were a permit.

22. OFFENCES

A person who makes a false representation or declaration (whether oral or in writing), or who intentionally omits relevant information in an application for a permit or exemption, is guilty of an offence under this Local Law.

Penalty: 10 penalty units

DIVISION 2 – ENFORCEMENT

23. COMPLYING WITH DIRECTIONS

A person must comply with any lawful direction or instruction of an Authorised Officer, member of the Police Force or emergency service when requested to do so in urgent circumstances or for public safety reasons, whether or not a person has a permit under this Local Law.

Penalty: 5 penalty units.

24. NOTICE TO COMPLY – POWER OF AUTHORISED OFFICERS

If a breach of the Local Law continues after a request to stop or remedy the breach has been made, an authorised officer may issue a warning or a notice to comply in the form of Schedule 2 on the person who is breaching the Local Law.

25. TIME TO COMPLY

- (1) A notice to comply must state the time and date by which the situation must be remedied.
- (2) The time required by a notice to comply must be reasonable in the circumstances having regard to:
 - (a) the amount of work involved;
 - (b) the degree of difficulty;
 - (c) the availability of necessary materials or other necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant factor.

26. FAILURE TO COMPLY WITH NOTICE TO COMPLY

A person who fails to comply with a notice to comply served on that person is guilty of an offence.

Penalty: 5 penalty units.

27. POWER OF AUTHORISED OFFICERS TO ACT IN URGENT CIRCUMSTANCES

- (1) In urgent circumstances arising as a result of a failure to comply with this Local Law, an Authorised Officer may take action to remove, remedy or rectify a situation without first serving a notice to comply if:
 - (a) the Authorised Officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice, may place a person, animal, property or thing at risk or in danger; and

- (b) wherever practicable, a senior officer is given prior notice of the proposed action.
- (2) In deciding whether circumstances are urgent, an Authorised Officer must take into consideration, to the extent relevant:
 - (a) whether it is practicable to contact:
 - (i) the person by whose default, permission or sufferance the situation has arisen; or
 - (ii) the Owner or the occupier of the premises or property affected; and
 - (b) whether there is an urgent risk or threat to public health, public safety, the environment or animal welfare.
- (3) The action taken by an Authorised Officer under sub-clause (1) must not extend beyond what is necessary to cause the immediate abatement of or minimise the risk or danger involved.
- (4) An Authorised Officer who takes action under sub-clause (1) must ensure that, as soon as practicable:
 - (a) details of the circumstances and remedying action are forwarded to the person on whose behalf the action was taken; and
 - (b) a report of the action taken is submitted to the Chief Executive Officer.

28. POWER OF AUTHORISED OFFICER TO IMPOUND

- (1) Where a person owning or responsible for items, goods and equipment has ignored a request from an Authorised Officer to remove them, the items goods and equipment may be removed and impounded.
- (2) If an Authorised Officer has impounded anything in accordance with this Local Law, the Council may refuse to release it until the appropriate fee or charge for its release has been paid to the Council.
- (3) The Council may, by resolution, fix charges (general or specific) for the purposes of this clause.
- (4) As soon as it is reasonably practicable to do so, the Authorised Officer must serve a written notice on the owner or person responsible for the item which has been impounded setting out the fees and charges payable and time by which the item must be retrieved.
- (5) If, after the time required in a notice of impounding, an impounded item is not retrieved, an Authorised Officer may take action to dispose of the impounded item according to the following principles:
 - (a) where the item has no saleable value, it may be disposed of in the most economical way; and

- (b) where the item has some saleable value, the item may be disposed of either by tender, public auction or private sale but failing sale may be treated as in paragraph (a).
- (6) When the identity or whereabouts of the owner or person responsible for the impounded item is unknown, the Authorised Officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with sub-clause (5) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.
- (7) Any proceeds from the disposal of impounded items under this Local Law must be paid to the owner or to the person who, in the opinion of the Council, appears to be authorised to receive the money, except for the reasonable costs incurred by the Council in the administration of this Local Law.
- (8) If a person described in sub-clause (7) cannot be identified or located within six months of the date of the notice of impounding, any proceeds of the sale cease to be payable to that person, and may be retained by the Council for municipal purposes, subject to the provisions of the *Unclaimed Moneys Act 1962*.

29. INFRINGEMENT NOTICES

- (1) An Authorised Officer may issue an infringement notice in the form of the notice in Schedule 3.
- (2) The fixed penalty in respect of an infringement is the amount set out in Schedule 4.

30. PAYMENT OF PENALTY

- (1) A person issued with an infringement notice may pay the penalty amount to the Council at the address indicated on the notice.
- (2) To avoid prosecution, the penalty indicated must be paid within 28 days after the day on which the infringement notice is issued.
- (3) A person issued with an infringement notice is entitled to disregard the notice and defend the prosecution in court.

31. WAIVER AND WITHDRAWAL

- (1) Within 28 days of receiving an infringement notice a person may make a written request to the Council that the infringement notice be withdrawn.
- (2) An Authorised Officer may at any time withdraw an infringement notice either as a result of the consideration of a written representation received or with a view to prosecuting for an offence.
- (3) Where an infringement notice is withdrawn, the person upon whom it was served is entitled to a refund of any payment which that person has made.

**PORT PHILLIP CITY COUNCIL
FOOTPATH ACTIVITIES LOCAL LAW**

SCHEDULE 1

***APPLICATION FOR PERMIT FOR PLACEMENT OF OBJECTS ON A
FOOTPATH***

Applicant's name:

Applicant's mailing address and contact number:

Site for footpath occupation

Site address (and business name, if applicable):

Hours of operation:

Type and number of items to be placed on the footpath:

Type of item	Number	Details/ specifications (materials constructed with, size of sign etc. Brochures may be attached)
Advertising signs		
Tables		
Chairs		
Umbrellas		
Screens		
Heaters		
Planter Boxes		
Goods for sale (please specify type): _____		

Please attach:

a plan showing the proposed location of items to be placed on the footpath;

proof of public liability insurance to at least \$5,000,000;

the applicable fee; and

the indemnity form in Schedule 5 of this Local Law. If an applicant is a company, the guarantee in Schedule 5 must also be completed and attached.

**PORT PHILLIP CITY COUNCIL
FOOTPATH ACTIVITIES LOCAL LAW**

SCHEDULE 2

NOTICE TO COMPLY

To:

(name)

.....

(address)

.....

The following constituted a breach under clauses.....of the Council's Footpath Activities Local Law. To remedy this breach you must carry out the following work within..... days from the date of this Notice.

Breach:

Work to be carried out:

You should contact.....(contact officer) between the hours of.....and.....for further information about this Notice.

If you fail to comply with this Notice you will be guilty of an offence and liable for the payment of a penalty of \$.....for the offence. If you do not remedy the breach the Authorised Officer may carry out the work and you will be liable for the cost of the work in addition to the above penalty.

Date:

Name of Authorised Officer:

Phone number of Authorised Officer:

Note: If this Notice relates to a contravention of a permit or a condition of a permit and there is failure to comply with this Notice, the permit may be cancelled.

If you do not wish to have the permit cancelled, you should comply with this Notice or write to the Council about why the permit should not be cancelled.

**PORT PHILLIP CITY COUNCIL
FOOTPATH ACTIVITIES LOCAL LAW**

SCHEDULE 3

INFRINGEMENT NOTICE

Date of Notice: _____ No. of Notice: _____

To: _____
(insert name)

(address)

I, _____ (*full name of Authorised Officer*), being an Authorised Officer of the Port Phillip City Council have reason to believe that you have committed one or more infringement offences under the Footpath Activities Local Law No 7 2009.

YOUR OFFENCE(S) (tick as applicable)

- Clause 7 - **Failure to obtain a permit for one or more Footpath Objects** – 10 penalty units
- Clause 9(4) - **Failure to affix a sticker to window of premises or sign** – 2 penalty units
- Clause 11(2) - **Failure to comply with the Guidelines** – 10 penalty units
- Clause 17(5) - **Failure to comply with the conditions of a permit** – 10 penalty units
- Clause 22 - **Making a false representation/declaration/omitting information on an application for a permit** – 2 penalty units
- Clause 23 - **Failing to comply with directions of an Authorised Officer or member of police force or emergency service** – 2 penalty units
- Clause 26 - **Failure to comply with a Notice to Comply** – 2 penalty units

Date of offence: _____ Time: _____ am/pm Location: _____

HOW TO PAY

If you pay the penalty indicated within 28 days of the date of this Notice to Port Phillip City Council, this matter will not be brought to Court and no conviction will be recorded. Payment may be made by cheque or money order posted to Port Phillip City Council Cheques should be crossed "Not negotiable" and made out to the Port Phillip City Council),

If you do not pay within 28 days, costs will be added and the matter will be taken to Court.

YOUR RIGHTS

You are entitled to disregard this Notice and elect to have this matter determined in a Court, or if you are a child in the Children's Court. Please notify Council immediately if you wish to have this matter determined in a Court.

You or a person acting on your behalf may apply to have the decision to issue this Infringement Notice internally reviewed by Council. All applications for review must be in writing and must provide full details and particulars.

_____ (signed by Authorised Officer).

**PORT PHILLIP CITY COUNCIL
FOOTPATH ACTIVITIES LOCAL LAW**

SCHEDULE 4

PENALTIES FOR INFRINGEMENT NOTICE PURPOSES

		<i>Penalty Units</i>
Clause 7	Failure to obtain a permit for a footpath activity	10
Clause 9(4)	Failure to affix a sticker to window of premises or sign	2
Clause 11(2)	Failure to comply with Guidelines	10
Clause 17(5)	Failure to comply with the conditions of a permit	10
Clause 22	Making a false representation/declaration/omitting information on an application for a permit	2
Clause 23	Failing to comply with directions of Authorised Officer/member of police force/emergency service	2
Clause 26	Failure to comply with a Notice to Comply	2

