

Notice of Meeting:

I hereby give notice that an ordinary meeting of Strategy & Policy Committee will be held on:

Date: Tuesday 16 February 2016
Time: 2:00pm
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Strategy & Policy Committee OPEN AGENDA

Membership

Chairperson Cr A O'Leary
Deputy Chairperson Cr A King
Members Her Worship the Mayor J Hardaker
Cr G Chesterman
Cr M Forsyth
Cr M Gallagher
Cr K Green
Cr D Macpherson
Cr G Mallett
Cr R Pascoe
Cr L Tooman
Cr E Wilson
Cr P Yeung

Quorum: A majority of members (including vacancies)

Meeting Frequency: Six weekly

Brendan Stringer
Committee Advisor

11 February 2016
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www.hamilton.govt.nz

Terms of Reference:

- To develop and recommend strategies, plans and policies to the Council that advance the Council's vision and goals, and comply with the purpose of the Local Government Act.
- To monitor implementation and effectiveness of strategies, plans and policies.
- Develop and recommend bylaws to the Council.
- Develop and approve submissions to government, local authorities and other organisations.

Power to act:

- Recommend all strategies, policies and plans.
- Approve all submissions made by Hamilton City Council to other Councils, central government and other bodies.
- Recommend reserve management plans.
- In relation to bylaws, approve for consultation and consider submissions.

Power to recommend:

- Bylaws to Council.
- Strategies, policies and plans.
- Reserve management plans.

Sub-committees:

This Committee will be supported in its work by the:

- Civil Defence and Emergency Management Sub-committee.
- Community Forum Sub-committee.
- Business and Investment Sub-committee.
- Hearings Sub-committee.

Matters may be referred to this Committee from the:

- Event Sponsorship Sub-committee.
- External Funding Sub-committee.
- Council Controlled Organisations (CCO) Sub-committee.

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1 Apologies

2 Confirmation of Agenda

The Committee to confirm the agenda.

3 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4 Public Forum

No Public Forum is required.

Committee: Strategy & Policy Committee **Date:** 16 February 2016

Report Name: Recommendations from
Business and Investment
Subcommittee 9 February
2016 **Author:** Julie Clausen

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Public Places Bylaw 2016 and Public Places Policy</i>
Financial status	<i>The budget allocated for the project has been assigned within the Strategy Budget. The costs are budgeted at \$9,450 and consist of staff time and legal advice.</i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Councils Significance Policy, a decision in accordance with the recommendations is/is not considered to have a high degree of significance</i>

1. Purpose of the Report

- The purpose of the report is to present recommendations from the Business and Investment Subcommittee on the Public Places Bylaw 2016 and the Public Places Policy to Strategy and Policy Committee for approval to Council.

3. Executive Summary

- In 2015 the Business and Investment Subcommittee was tasked to review the Public Places Bylaw 2009 and Public Places Policy.
- This work has been completed with the Subcommittee and the Public Places Bylaw 2016 and the Public Places Policy are now ready for Strategy and Policy Committee to approve to Council.
- The recommendations requested in this report are from the Business and Investment Subcommittee meeting on 9 February 2016.

7. Recommendations from Management

- a) That the report be received.
- b) That the Public Places Bylaw 2016 be changed to include:
 - i. Amend Clause 7.1 to:

Subject to the exemptions and exclusions set out in Schedule 1, a person must hold a permit issued by Council to undertake in a public place any trading or to collect donations for charity.
 - ii. Add: Schedule 1: Exclusions and Exemptions:

The Old English Baked Potatoes van operating in Civic Square is entitled to continue to trade without a mobile shop permit under the Public Places Bylaw 2016 and continue to pay the current fee of a mobile shop permit of \$120 and a use of trading in Civic Square fee of \$164.30 per week. This entitlement will cease upon the sale or closure of this business.
- c) That as per the recommendations from the Business and Investment Subcommittee meeting 9 February 2016:
 - i. The Public Places Bylaw 2016 be adopted with the above inclusions as per (b); and
 - ii. The Public Places Policy be adopted.
- d) The Public Places Bylaw 2016 and Public Places Policy come into force on the 25 February 2016.

8. Attachments

9. Attachment 1 - Public Places Bylaw 2016 (Revision 1)
10. Attachment 2 - Public Places Policy
11. Attachment 3 - Options for Permit Fees

12. Key Issues

13. In 2015 the Business and Investment Subcommittee was tasked to review the Public Places Bylaw 2009 and Public Places Policy.
14. This work has been completed with the Subcommittee. There were no recommendations for change to the Public Places Bylaw. Subsequent to submissions and hearings staff provided recommendations for changes to the amended draft Public Places Policy. A copy of the full report is [linked here for](#) background.
15. The amended draft Public Places Policy was approved by the Business and Investment Subcommittee at its meeting on the 9 February 2016 subject to the following changes:
 - i. Mobile Shops – Information Required for Permit:

That clause 5.1(VI) in Schedule 3 of the Draft Public Places Policy be amended to change “a 200m radius” to read “a 100m radius”.
 - ii. Busking Conditions

That clause 5.2.1(III) of the Draft Public Places Policy be amended to change “11pm” to read “8:30pm”.

16. The Business and Investment Subcommittee passed the following resolution:
 - (a) *the report be received;*
 - (b) *the Draft Public Places Bylaw 2016 be recommended to Strategy and Policy Committee for adoption;*
 - (c) *the amended Draft Public Places Policy be recommended to Strategy and Policy Committee for adoption; and*
 - (d) *staff present options for the proposed permit fees to the Strategy and Policy Committee meeting on 16 February 2016.*
17. Staff were requested by the Subcommittee to provide clarification on the following points:
- 18. Alignment of the map in the Public Places Policy to the Central City Transformation Plan (CCTP) precincts.**
19. The Central City area defined in Schedule 4 of the Public Places Policy is based on the map associated to the existing Policy. The area covers parts of the Business District and the South End precincts of the CCTP.
- 20. Fire Safety and Evacuation Regulations 2006 and Council's responsibility under the Health and Safety at Work Act 2015.**
21. Section 36 of the Health and Safety at Work Act 2015 ('the Act'), which comes into force on 4 April 2016, outlines who the primary duty of care sits with under the Act. A Person Conducting a Business or Undertaking ('PCBU') has the primary duty under the Act.
22. In most circumstances Council would not have liability under the Act. Allowing permit holders to place outdoor furniture on the footpath would not generally amount to having a level of management or control of the (permit holder's) workplace. It is for the business that is operating out the of premises to ensure that the furniture is placed and stored appropriately and in a way that complies with its obligations under the Act and the Fire Safety and Building Evacuation Regulations 2006.
23. However, there is at least a theoretical possibility that Council could have liability under the Act. Applicants for permits are required to provide a plan for the position of the furniture (Schedule 3, clause 2.(II)). In approving an application, Council is requiring the furniture to be positioned as in the application, which arguably means that Council would have a level of control over the workplace and would have liability as a PCBU. If Council approved an application which included a furniture layout that was unsafe from a fire safety perspective then Council could conceivably have liability under the Act.
24. This can be resolved by:
 - i. Having a robust internal process to check the furniture layout plans and to require amendments where the furniture (particularly heaters) is poorly placed before the application is approved.
 - ii. Including conditions on the permit which relate to fire safety. These conditions will be incorporated into permits issued after the 1 July 2016.
- 25. Rights of the existing mobile trader in Garden Place (Civic Square)**
26. The existing vendor in Garden Place (Civic Square) was granted, via a Council resolution dated 25 February 2009, existing use rights which would cease on the sale or closure of the business.
27. The City Solicitor has advised that the existing resolution does not survive the adoption of the Pulic Places Bylaw 2016.

28. To ensure the existing use rights are maintained the following change to the Public Places Bylaw 2016 is recommended:

- i. Amend Clause 7.1 to: Subject to the exemptions and exclusions set out in Schedule 1, a person must hold a permit issued by Council to undertake in a public place any trading or to collect donations for charity.
- ii. Add: Schedule 1: Exclusions and Exemptions

The Old English Baked Potatoes van operating in Civic Square is entitled to continue to trade without a mobile shop permit under the Public Places Bylaw 2016 and continue to pay the current fee of a mobile shop permit of \$120 and a use of trading in Civic Square fee of \$164.30 per week. This entitlement will cease upon the sale or closure of this business.

29. The attached Public Places Bylaw 2016 has been amended with this recommendation.

30. The Old English Baked Potato van would be excluded from the Public Places Policy and therefore would be in addition to the number of mobile traders provided for under the Public Places Policy s4.5(i).

31. Mobile traders on parks and reserves

32. Parks and Open Spaces have been undertaking a trial with 4 approved mobile traders operating from Swarbrick Landing. The trial ends in June 2016 and based on results to date it is intended that permit fees will be set under the Fees and Charges Schedule for 2016/2017. The permit fees will be set in alignment with the existing Public Places Policy mobile traders permit fees.

33. Permit fees and charges for mobile traders

34. Fees and charges are not set in the Public Places Policy but set under the Fees and Charges Schedule.

35. Options for consideration in regard to permit fees are outlined in the Attachment 3: Permit Fee Options.

36. Financial and Resourcing Implications

37. Resourcing has been covered within existing budgets.

38. Risk

39. The current Public Places Bylaw 2009 will be automatically revoked on 25 February 2016. If a Public Places Bylaw is not adopted and operational by 25 February 2016, there will be no Public Places Bylaw in place. With no Bylaw, Council will not have the ability to regulate the issues in relation to trading in public places. The risk is mitigated by ensuring that a Bylaw is adopted by Council at the 18 February 2016 Council meeting.

Signatory

Authoriser	Debra Stan-Barton, Acting General Manager City Environments
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Hamilton City Council
BYLAWS

Approved By: Council	Date Adopted : 25 February 2016
Date In Force: 25 February 2016	Review Date: 25 February 2021

HAMILTON CITY PUBLIC PLACES BYLAW 2016

This bylaw is made by the Hamilton City Council under the powers given to it by the Local Government Act 1974, Local Government Act 2002 and any amendments to those Acts.

Hamilton City Council BYLAWS

This bylaw repeals The Hamilton City Public Places Bylaw 2009.

1. PURPOSE

1.1. The purpose of this bylaw is to:

- a) Protect the public from nuisance.
- b) Protect, promote, and maintain public health and safety.
- c) Minimise the potential for offensive behaviour in public places.
- d) Regulate trading in public places.
- e) Regulate, control, or prohibit signs.

2. APPLICATION

2.1. This bylaw applies to any public place within the Hamilton City Council boundary.

3. DEFINITIONS

3.1. The following definitions apply to this bylaw, except where inconsistent with the context:

Council	means Hamilton City Council.
Enforcement Officer	means a person appointed by Council to exercise the powers of an enforcement officer in relation to offences against, and infringement offences under, the Local Government Act 2002, including enforcement of Council bylaws.
General Manager	means the Council General Manager responsible for the administration and enforcement of this Bylaw.
Person	includes an individual, a corporation sole, or a body of persons whether corporate or otherwise.
Public Place	means any place or space that is owned or controlled by Council and which is open to the public, and any road whether or not it is controlled by the Council, but excludes reserves which are regulated by the Parks, Domains and Reserves Bylaw 2007 (including any amendments to that bylaw).
Road	means: <ul style="list-style-type: none"> • a road defined in s315 of the Local Government Act 1974 and includes any street, motorway, beach, place to which public have access whether as of right or not; • Any bridge, culvert, ferry, ford forming part of a road or street or motorway to which the public have access whether as of right or not; • All sites at which vehicles may be weighed for the purpose of the Land Transport Act 1998 or any other Act; and • Any service land or mall forming part of a road.

Hamilton City Council BYLAWS

Sign a sign is any material or device used for the purposes of advertising or to disseminate information, or any other similar purpose. These may include, but are not limited to: any poster, placard, handbill, flags, banners, writing, picture, or device for advertising or other purposes that is displayed in, on or over any public place, including placed on a footpath.

Explanatory Note: Please refer to Schedule 2 of the Public Places Policy for detail.

Trade or trading includes but is not limited to the exchange, purchase, or sale of goods; the provision of entertainment activities in return for donations; keeping a mobile shop; busking; hawking; locating and operating a stall; displaying merchandise; setting out street furniture.

3.2 Explanatory notes are for information only. They do not form part of this bylaw, and may be made, amended, revoked or replaced by the Council at any time without a formal process.

4. PUBLIC PLACES

4.1. Persons occupying or using public places should take all reasonable steps to:

- a) Protect the public from nuisance.
- b) Protect, promote, and maintain public health and safety.
- c) Minimise the potential for offensive behaviour in public places.

5. ACTIVITIES THAT MAY CAUSE AN ADVERSE AFFECT ON PUBLIC HEALTH OR SAFETY IN A PUBLIC PLACE

- 5.1. Any person intending to undertake any activity in a public place which is not specified in Council's Public Places Policy and which may cause an adverse effect on public health or safety in that public place, must obtain approval from Council to undertake the activity.
- 5.2. The General Manager will not unreasonably withhold permission, and may impose conditions to protect the public's health and safety.

6. ACTIVITIES THAT MAY CAUSE A NUISANCE IN A PUBLIC PLACE

- 6.1. Any person intending to undertake any activity in a public place which is not specified in Council's Public Places Policy and which may cause nuisance in that public place must obtain approval from Council to undertake the activity.
- 6.2. The General Manager will not unreasonably withhold permission, and may impose conditions to protect the public from nuisance.

7. PERMITS

- 7.1. **Subject to the exemptions and exclusions set out in Schedule 1**, a person must hold a permit issued by Council to undertake in a public place any trading or to collect donations for charity.
- 7.2. Any permit granted is personal to the person and is not transferable.

Hamilton City Council
BYLAWS

7.3. Council may revoke a permit if the holder fails to comply with the permit conditions and may refuse to issue that person with a new permit.

7.4. Council may waive any application under this bylaw if an approval is granted through another existing mechanism such as signs permitted by the District Plan Rule or a resource consent.

7.5. A person must hold a permit issued by Council to erect any sign in, on or over any public place.

8. FEES

8.1. The Council may charge fees for permits, including fees to process an application, to review an existing approval and to inspect activities and charges for the period of that approval.

9. OFFENCES

9.1. Any person who does not comply with this bylaw commits an offence.

9.2. The following are offences against this bylaw:

- a) Obstructing emergency vehicles from gaining access to a public place.
- b) Obstructing service vehicles from gaining access to a public place.
- c) Trading in a public place without a valid permit.
- d) Failure to produce a permit to an authorised officer upon request.
- e) Failure to comply with the conditions of a permit issued.
- f) Trading or carrying on an activity in a public place in such a way that causes nuisance or affects public health and safety.
- g) Erecting a sign in, on or over any public place without a valid permit.

10. PENALTIES AND POWERS

10.1. Under section 242 of the Local Government Act 2002, any person who breaches this Bylaw commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

The COMMON SEAL of the HAMILTON CITY COUNCIL
was hereunto affixed in the presence of:

Councillor: _____

Councillor: _____

Chief Executive: _____

Hamilton City Council
BYLAWS

Schedule 1: Exclusions and Exemptions

The Old English Baked Potatoes van operating in Civic Square is entitled to continue to trade without a mobile shop permit under the Public Places Bylaw 2016 and continue to pay the current fee of a mobile shop permit of \$120 and a use of trading in Civic Square of \$164.30 per week. This entitlement will cease upon the sale or closure of this business.

First adopted:	25 February 2009
Revision dates/version:	18 February 2016 / Version 3
Next review date:	In conjunction with the Public Places Bylaw 2016
Engagement required:	In conjunction with the Public Places Bylaw 2016
Document number:	D-2049849
Associated documents:	D-2049881
Sponsor/Group:	City Growth



PUBLIC PLACES POLICY

Purpose and Scope

1. This policy provides for businesses, groups and individuals to apply to use public places for trading activities that are consistent with the purpose of this policy.
2. The purposes of this policy are to:
 - I. Protect the public from nuisance.
 - II. Protect, promote, and maintain public health and safety.
 - III. Minimise the potential for offensive behaviour in public places.
 - IV. Regulate trading in public places.
 - V. Regulate, control, or prohibit signs.
 - VI. Ensure public spaces are safe and used in ways that positively contribute to the city's identity and people's enjoyment of public spaces.
3. In applying these purposes, Council decisions will take into account the following principles. Public spaces should:
 - I. Provide culinary, entertainment and art experiences that generate activity and vibrancy.
 - II. Be attractive, clean and safe.
 - III. Promote a welcoming image of Hamilton to residents and to visitors.
 - IV. Facilitate easy access for pedestrians and cyclists.
 - V. Provide spaces for people to gather for activities or social engagement and interaction.
 - VI. Strengthen the existing function of public space locations.

Definitions

Busker	means any person/s performing for voluntary donations in any public place, such as an itinerant musician or actor.
Council	means Hamilton City Council.
Enforcement officer	means a person appointed by Council to exercise the powers of an enforcement officer in relation to offences against, and infringement offences under, the Local Government Act 2002, including enforcement of Council bylaws.
Hawker	means any person/s who, in a public place, solicits sales or orders for sales of any goods, not in pursuance of any invitation to call with, or of any previous order or request for such goods but does not include any person who operates a vehicle as a mobile shop.
Heritage precinct	areas of special heritage character as defined in the District Plan.
Heritage buildings	buildings of special heritage character as defined in the District Plan.
Mobile shop	means: <ul style="list-style-type: none"> • a vehicle from which goods are offered or exposed for sale

	<p>in any public place, or from which goods or services may be ordered whether or not as a result of any invitation to call;</p> <ul style="list-style-type: none"> it does not include any vehicle used to transport goods that have been order for delivery.
Market	any outdoor place, accessible to the public, where goods are offered for sale, which usually consists of a number of merchandise stalls grouped together.
Market	any outdoor place, accessible to the public, where goods are offered for sale, which usually consists of a number of merchandise stalls grouped together.
Merchandise display	a display located in a public place outside a premise from which goods are offered or exposed for sale.
Public Place	includes any place or space that is not private property and which is open to the public but excludes reserves which are regulated by the Parks, Domains and Reserves Bylaw 2007 and any amendments to that bylaw.
Road	<p>means:</p> <ul style="list-style-type: none"> A road defined in s315 of the Local Government Act 1974 and includes any street, motorway, beach, place to which public have access whether as of right or not; Any bridge, culvert, ferry, ford forming part of a road or street or motorway or place to which the public have access whether as of right or not; All sites at which vehicles may be weighed for the purpose of the Land Transport Act 1998 or any other Act; and Any service land or mall forming part of a road.
Road frontage	the front/s of a premise that face out onto a public place.
Shade Awning	means a single free standing or cantilevered shade or protective covering that may also be fixed to a building or that extends out over the footpath. It does not include a gazebo, marquee or tent.
Sign	means any material or device used for the purposes of advertising or to disseminate information, or any other similar purpose. These may include, but are not limited to: any poster, placard, handbill, flags, banners, writing, picture, or device for advertising or other purposes that is displayed in, on or over any public place, including placed on a footpath.
Stall	includes any stationary but moveable stand or similar structure on or at or from which goods are sold or exposed for sale.
Trade or trading	includes but is not limited to the exchange, purchase, or sale of goods; the provision of entertainment activities in return for donations; keeping a mobile shop; busking; hawking; locating and operating a stall; displaying merchandise; setting out street furniture.

Policy

1. Outdoor Dining Areas

- 1.1 Cafes, bars and restaurants wishing to use part of the footpath space directly outside their premises for outdoor dining must obtain a permit.
- 1.2 Applicants must provide the information in Schedule 3 when applying for a permit for outdoor dining.
- 1.3 An applicant wishing to serve alcohol as part of an outdoor dining area must apply to the District Licensing Authority for an alcohol license or a variation of the area to which their alcohol licence applies.

1.4 General conditions that apply to Outdoor Dining Permits

- 1.4.1 There must be a continuous 2.0 metre wide clearway maintained on all footpaths at all times.
- 1.4.2 Existing permit holders at the adoption of this Policy are exempt from clause 1.4.1 until the renewal of their permit on 1 July 2016.
- 1.4.3 The outdoor dining area must not cause any damage to any ornamental verge or kerbing.
- 1.4.4 Use of fixed furniture is not permitted.
- 1.4.5 All street furniture (tables, chairs, planter boxes, pull-down blinds etc.) must be arranged within the dining areas in compliance with this policy and as provided for in the permit.
- 1.4.6 No sharp edges or projections which could cause injury are permitted and all street furniture must be of durable construction.
- 1.4.7 Permit holders are responsible for cleaning the footpath and removing litter in the outdoor dining areas.
- 1.4.8 No waste material including sweepings, detergents and cleaning agents is to be disposed of into the street gutter or stormwater drains.
- 1.4.9 An outdoor dining permit must be either displayed or be available for inspection by an enforcement officer if requested.
- 1.4.10 The owner of the premise must hold public liability insurance to a minimum value of \$2,000,000 indemnifying Council against any claim arising from damage caused by any piece of outdoor furniture in the outdoor dining area.
- 1.4.11 The boundaries of an outdoor dining area must be clearly defined through use of barriers or other appropriate street furniture from 6 pm until the end of the trading day.
~~Adequate supervision of the outdoor dining area must be maintained from 6pm until the end of the trading day.~~
- 1.4.12 Between 1am and the end of the trading day all outdoor dining furniture on the kerbside of the clearway must be removed and secured so that it cannot be accessed or used by customers or the public.
- 1.4.13 Between the end of the trading day and 7am all street furniture used in an outdoor dining area must be secured together so that it cannot be used by the public and, as far as practicable, removed from the footpath or when requested by Council to enable street works, services or repairs, or other public utilities.
- 1.4.14 Permit holders must comply with Council requests to remove some or all of the street furniture used in outdoor dining areas during normal business hours during a special event.
- 1.4.15 Ashtrays must be provided, except where smoking is prohibited.

1.5 Layout of outdoor dining areas

- 1.5.1 All outdoor dining areas must observe the layout requirements set out in Schedules 1 and **Schedule 3**.

1.6 Café umbrellas and shade awnings

- 1.6.1 Umbrellas or shade awnings must be of stable design and properly secured to prevent blowing over in strong wind.
- 1.6.2 Umbrellas or shade awnings must not penetrate or damage the surface of Council footpaths or interfere with pedestrian movement.

1.7 Planter boxes

- 1.7.1 Planter boxes must not be fixed to the footpath and must be strong, durable and wind resistant. The planter boxes and plants must be well maintained.

1.8 Heaters

- 1.8.1 Heaters may be free standing or fixed to verandas.
- 1.8.2 Overhead heaters must be securely fixed to verandas and should be turned off outside of hours of business.
- 1.8.3 Freestanding patio heater should be of stable design and of a height not exceeding 2.5 metres measured from the base to the top of the heater. They should be located on a flat surface.
- 1.8.4 All heaters must be located away from combustible materials and used in accordance with the operating instructions. They must not be placed where they pose a safety or fire hazard.
- 1.8.5 Fire extinguishing equipment must be kept in close proximity to where the heaters are being used.

1.9 Pull-down blinds and screens

- 1.9.1 Requests to include screens and/or pull-down blinds in outdoor dining areas will be assessed on a case by case basis. Consideration will be given to the potential for the screen/pull-down blind to obscure surveillance by Council CCTV cameras and to safety issues for pedestrians, cyclists and motorists caused by obscured sight lines.
- 1.9.2 If an applicant wishes to use screens and/or pull down blinds this information must be included with the permit application and outdoor dining area plan. Details of any proposed fixing of a pull down blind to the pavement must also be included.
- 1.9.3 All pull-down blinds and screens must be rolled up or removed from the footpath outside of the hours specified in the outdoor dining area permit.

1.10 Barriers

- 1.10.1 Barriers may be used to define the boundaries of an outdoor dining area.
- 1.10.2 Barriers shall not exceed a maximum height of 0.9m.
- 1.10.3 Clearance from the ground is required to allow stormwater run-off.
- 1.10.4 Barriers must be of stable construction to prevent blowing over in strong wind.

2. Signs

2.1 Signs in public places are regulated under this policy. The District Plan regulates signs on zoned land.

2.2 This policy does not apply to:

- signs erected for or on behalf of Council; and
- billboards and over head street banners (*note: contact Strategy and Communication's Group, Hamilton City Council*).

2.3 A person wishing to erect a sign in or over a public place must obtain a permit.

2.4 No Council owned land is to be used to erect election signs for Parliamentary Elections or Local Body Elections.

2.5 General conditions

2.5.1 All signs must be maintained in good order and condition. An enforcement officer may issue a notice requiring specified remedial work to be carried out if that officer reasonably believes the sign does not comply with this clause or if a sign will cause a safety hazard.

2.5.2 A maximum of one sign per road frontage is permitted.

2.5.3 The footpath sign must not obscure road users visibility or be placed in a position that restricts vehicle access to a right of way or to any public place which provides a right of access for vehicles.

2.5.4 The permitted size for signs is set out in Schedule 2.

2.5.5 A footpath sign must be located in a way that does not impinge on the continuous clearway and it must observe the setback requirements in Schedule 1.

2.5.6 The footpath sign must not resemble a warning sign or road traffic sign.

2.5.7 The footpath sign must not have sharp edges or projections which may cause injury to pedestrians.

2.5.8 The sign must be constructed to ensure it is secure against all weather conditions and gusts of wind.

2.5.9 An enforcement officer may request removal of sign/s to allow works or maintenance services to take place.

2.5.10 Advertising shall not be illuminated, have reflective surfaces or resemble a traffic sign.

2.5.11 All signs are to be removed from the footpath outside of hours of business.

2.5.12 Signs on verandas are restricted to signs advertising businesses, services or products located on the site associated with the sign.

2.5.13 Signs located on top or beneath verandas should be structurally sound and be fixed to the veranda in a safe manner.

2.5.14 Signs attached beneath verandas should leave a clearance of 2.75m to the footpath.

2.5.15 Signs attached beneath verandas should observe a set back of 0.5m from a vertical line from the edge of the kerb.

2.5.16 Signs located on top and on the fascia of a veranda must not extend beyond the fascia of the building and will be set back not less than 0.5m from an imaginary vertical line from the road kerb.

2.6 Signs in Heritage Areas

- 2.6.1 The design and location of signs in a public place in a heritage area or outside a heritage building (as defined or listed in the District Plan) must be compatible with the heritage significance of the area or the building so that they do not detract from that significance.
- 2.6.2 Signs in heritage areas or outside heritage buildings will be assessed on a case by case basis and special consideration may apply to signs approved for use to ensure that signs do not materially affect the heritage value of the area and/or building.

3. Markets, Stalls and Merchandise Displays

3.1 Street Markets and Stalls

- 3.1.2 A street market is not permitted to operate without a permit.
- 3.1.3 Council's general policy is to encourage stalls to be part of managed street markets however permits for individual stalls will be considered on a case by case basis. An applicant wishing to operate a stand alone stall is not permitted to operate without a permit.
- 3.1.4 Applicants must provide the information in Schedule 3 when applying for a permit to operate a street market or an individual stall.
- 3.1.5 A market operator granted a permit is responsible for each individual stall owner complying with permit conditions and for having the necessary alcohol licenses.
- 3.1.6 Cleaning arrangements following the business hours of the market will be included in the permit conditions.
- 3.1.7 The following conditions will apply to stalls, including those stalls in a street market:
 - I. Stalls must not sell offensive material.
 - II. Stalls must not obstruct or hinder the flow of pedestrians in any public place.
 - III. Stalls selling, preparing and handling food must comply with food hygiene regulations.
 - IV. Stalls selling alcohol must hold the necessary alcohol licenses.

3.2 Merchandise Display

- 3.2.1 The following conditions will apply to merchandise displays:
 - I. Merchandise should be placed up against the façade of the shop it belongs to.
 - II. Merchandise displays must observe the requirements on setbacks and clearways set out in Schedule 1.
 - III. The merchandise display must not have sharp edges or projections which may cause injury to pedestrians or create a nuisance.
 - IV. Merchandise displays must not contain any form of offensive material.
 - V. Merchandise displays are to be removed at the end of trading hours or when requested by Council staff to enable street works, services or repairs, or other public utilities.

4. Mobile Shops

- 4.1 Mobile shops are not permitted to operate without a permit. A permit to operate may be given as part of a permit for an event or street market, or as a stand alone permit.
- 4.2 Unless approval is granted under clause 4.5 below, mobile shops are not permitted to operate within the Central City (see the map in Schedule 4).
- 4.3 Applicants must provide the information in Schedule 3 when applying for a permit for a mobile shop.
- 4.4 The following conditions apply to all mobile shops:
- I. No mobile shop is permitted to operate in a traffic zone where the posted speed limit is greater than 60km per hour.
 - II. The location of mobile shops will not impede or inconvenience the flow of traffic, pedestrians or customers and must not breach any bylaw or traffic legislation.
 - III. Permits may include permission to have tables and chairs in close proximity to the mobile shop for the purposes of dining. Council has sole discretion to determine what constitutes close proximity.
 - IV. Mobile shops selling, preparing and handling food must comply with food hygiene regulations.
 - V. Mobile shops selling alcohol must hold the necessary alcohol licenses.
 - VI. Hours of operation are only permitted between 6am – 10pm.
 - VII. The permit must be displayed at all times.
- 4.5 In addition to the conditions in clause 4.4 above, the following extra conditions apply to mobile shops permitted to operate within the Central City (see the map in Schedule 4):
- I. Up to 3 permits only may be granted at any one time.
 - II. They will be granted for a maximum period of 6 months only.
 - III. They will be issued for a specified location which will be in one of the permitted locations identified in the map in Schedule 4.
 - IV. Trading hours will be specified in the permit and may extend to 3am taking into account the location.
 - V. No alcohol consumption or sales will be permitted.
 - VI. Permit applications for intake 1 (period 1 July to 31 December) must be received by Council on 1 May of the year the permit relates to.
 - VII. Permit applications for intake 2 (period 1 January to 30 June) must be received by Council on 1 December of the year prior.
 - VIII. Permit for the Central City mobile shops will be assessed on the information in Schedule 3 – clause 5.

5. Busking, Hawking and Charitable collections

- 5.1 Buskers are not permitted to operate without a permit. Applicants must apply for a busking permit before commencing trading.

5.2 Busking conditions

5.2.1 The following conditions apply to buskers:

- I. No busker will impede or inconvenience the flow of pedestrians and customers.
- II. Buskers must be courteous and mindful of surrounding businesses and the general public. If valid complaints are received, a permit may be revoked.
- III. Busking is permitted between the hours of 8.30am and ~~1am 11pm~~ 8.30pm but no busker is permitted to remain in a single location for longer than 2 continuous hours.
- IV. Buskers must not enter any premises unless authorised by a person having control of those premises.
- V. Buskers are to carry a copy of the permit at all times and must produce a copy of to any enforcement officer if requested.
- VI. Buskers are not permitted to use voice enhancement equipment, including, microphones, amplifying equipment and loud hailers, unless they are part of an event approved by Council.
- VII. A reasonable level of noise is to be maintained at all times having regard to the place and situation. If, at the Council's discretion, it is decided that a reasonable level of noise has not been maintained a permit may be revoked.
- VIII. Permits will be issued for a period of no more than 6 months.

5.3 Hawkers conditions

5.3.1 The following conditions apply to hawkers:

- I. Hawkers are not permitted to operate within the area shown in the map in Schedule 4.
- II. Hawkers must not enter premises which display a written notice prohibiting their entry.
- III. Shop doorways must be kept clear.
- IV. When visiting premises, a Hawker must leave immediately if requested to do so by the owner or occupier of the premises.
- V. Identification must be worn at all times.
- VI. The flow of pedestrians must not be impeded or inconvenienced in any way.
- VII. Hawkers are only permitted to trade during the hours of 8.30am and 8.30pm.

5.4 Charitable collections

- 5.4.1 No one is permitted to collect charitable donations in a public place without a permit.
- 5.4.2 Applicants must provide the information in Schedule 3 when applying for a permit to collect charitable donations.
- 5.4.3 Approval may include conditions such as location and hours permitted for the activity.

6. Other Activities on Footpaths

- 6.1 Cafes, bars and restaurants and other businesses wishing to use part of the footpath space directly outside their premises for entertainment or promotional activities must apply for a permit.

- 6.2 Applications will be considered on a case by case basis taking into account:
- I. The impact the activity could have on existing approved activities already occurring in or around the location.
 - II. Public health and safety and public nuisance.
 - III. Proposed hours for the activity to operate.
 - IV. Whether the activity is a one off event or reoccurring.
- 6.3 Any application will take into account any other permits granted for the space that is the subject of the application.
- 6.4 General Conditions**
- 6.4.1 Voice enhancement equipment, including microphones, amplifying equipment and loud hailers are not permitted.
- 6.4.2 A reasonable level of noise is to be maintained at all times having regard to the place and situation. If, at the Council's discretion, it is decided that a reasonable level of noise has not been maintained a permit may be revoked.
- 6.4.3 The activity must not impede or inconvenience the flow of traffic, pedestrians and customers.
- 6.4.4 The activity must not interfere in traffic visibility.
- 7. General Permit Conditions**
- 7.1 All applications for any permit must be made on the approved application form, contain all the information requested and be accompanied by the prescribed fee. Applications not complying with the requirements will not be processed.
- 7.2 Approval may be withheld if the applicant has previously breached approval conditions.
- 7.3 Permits under this policy are issued by the City Safe Unit.
- 7.4 Unless specified otherwise, all permits are issued for 12 months and will automatically expire.
- 7.5 Permits automatically expire when a business holding a permit is sold.
- 7.6 Permits issued under this policy are not transferable.
- 7.7 A permit may be cancelled or amended if:
- I. If permit conditions are breached.
 - II. Other valid reasons that require cancellation, such as streetscape upgrades or refurbishment.
- 7.8 Council reviews fees annually changes are notified by public notice.
- 7.9 The applicant must pay the full permit fee and have met all the requirements of the permit prior to it being issued.

8. Enforcement

- 8.1 Permit conditions are monitored regularly to ensure activities in public places are occurring in terms of the permit granted. The following process applies if permit condition/s are breached:
- I. First breach: verbal notification of the breach and request to rectify.
 - II. Failure to rectify: a written warning to that permit holder identifying the issue/s and required remedy.
 - III. Failure to remedy: the Council will consider revoking the permit.
- 8.2 Individuals or groups that trade on footpaths or other public spaces without a permit will be asked to remove their material and cease the trading activity. Council will issue a written warning to the person.
- 8.3 If the infringement persists, Council reserves the right to confiscate the stall setup or trading material under sections 163 and 164 of the Local Government Act 2002.
- 8.4 The Council may dispose of confiscated property under to section 168 of the Local Government Act 2002.

Schedule 1: Footpath Layouts

1. There must be a continuous 2.0 metre wide clearway maintained on all footpaths at all times.
2. The 2.0 metre clearway must exist when the tables and chairs are in use.
3. The continuous clearway must be in the middle of the footpath.
4. The vertical height permitted under this policy is a maximum height of 2.2 metres.
5. The minimum distance from the kerb must be 0.5 metres.
6. The minimum setback from all street trees, street furniture (such as benches and seats), cycle racks, phone boxes, mobility parking zones and bus stops must be 1 metre.



Schedule 2: Signs Dimensions

1. The definition of a sign is contained in the definition section of the policy.
2. The approved dimensions for a flag or banner, that is either affixed or free standing, is:
 - No larger than .75m wide
 - No larger than 3.2m high



3. The maximum approved dimensions for any other sign is:
 - No larger than 600mm wide
 - No larger than 750mm high
 - The maximum base area is 0.45 square metres



Schedule 3: Application Requirements for Certain Permits

1. General Requirements

- 1.1 All applications must be in the prescribed format and contain the information requested.
- 1.2 Applications not complying with these requirements will not be processed.
- 1.3 All applications must include the prescribed fee.

2. Information Required for Outdoor Dining Permit

- 2.1 Applications for an Outdoor Dining Permit must include two copies of a plan and specifications of the proposed outdoor dining area on a scale of 1:50 showing:
 - I. The location and dimensions of the proposed outdoor dining area.
 - II. The position of furniture including tables and chairs, planter boxes, screens, heaters, blinds/dividers, patio heaters, signage and umbrellas to be provided in the proposed outdoor dining area (please refer to Schedule 1 for these requirements).
 - III. The area either side of the boundaries (up to 10 metres) of the proposed area indicating the location of all footpaths, public facilities, public places, streets and street alignments.
 - IV. Photographs or brochures of the furniture to be set up in the proposed outdoor dining area.
 - V. Specifications for enclosures or screens/dividers including ground and supporting fixtures. This includes any semi continuous or continuous overhead, side and front enclosures (including those that are retractable) that are supported by any fixed supports, structural frames or columns in the public place, whether or not the enclosure contains outdoor furniture.

3. Information Required for Street Market Stalls Permit and Individual Stalls Permit

- 3.1 Applications for a Street Market Stall must include:
 - I. A scale plan showing:
 - the extent of the public area to be occupied
 - the siting and the number of market stalls proposed
 - any associated facilities such as public toilets.
 - II. Specifications of any barriers, signs and screens including any ground supporting fixtures.
 - III. A traffic management plan showing:
 - the location of ingress and egress to the market
 - any parking provided, any temporary measures to control traffic to and from the market site
 - measures for loading and unloading of market goods and stall set up and pack down
 - the contact details for a person responsible for implementing the traffic management plan.
 - IV. Details of public liability insurance.
 - V. The name, address and contact details of the applicant and market operator.
 - VI. The details of the type of market stalls, hours of operation and names, addresses and contact details for each market stall operator.
 - VII. Evidence that all market stalls selling, preparing and handling food comply with food hygiene regulations.
 - VIII. Evidence that all market stalls selling alcohol hold the necessary alcohol license.

4. Information Required for Charitable Collections Permit

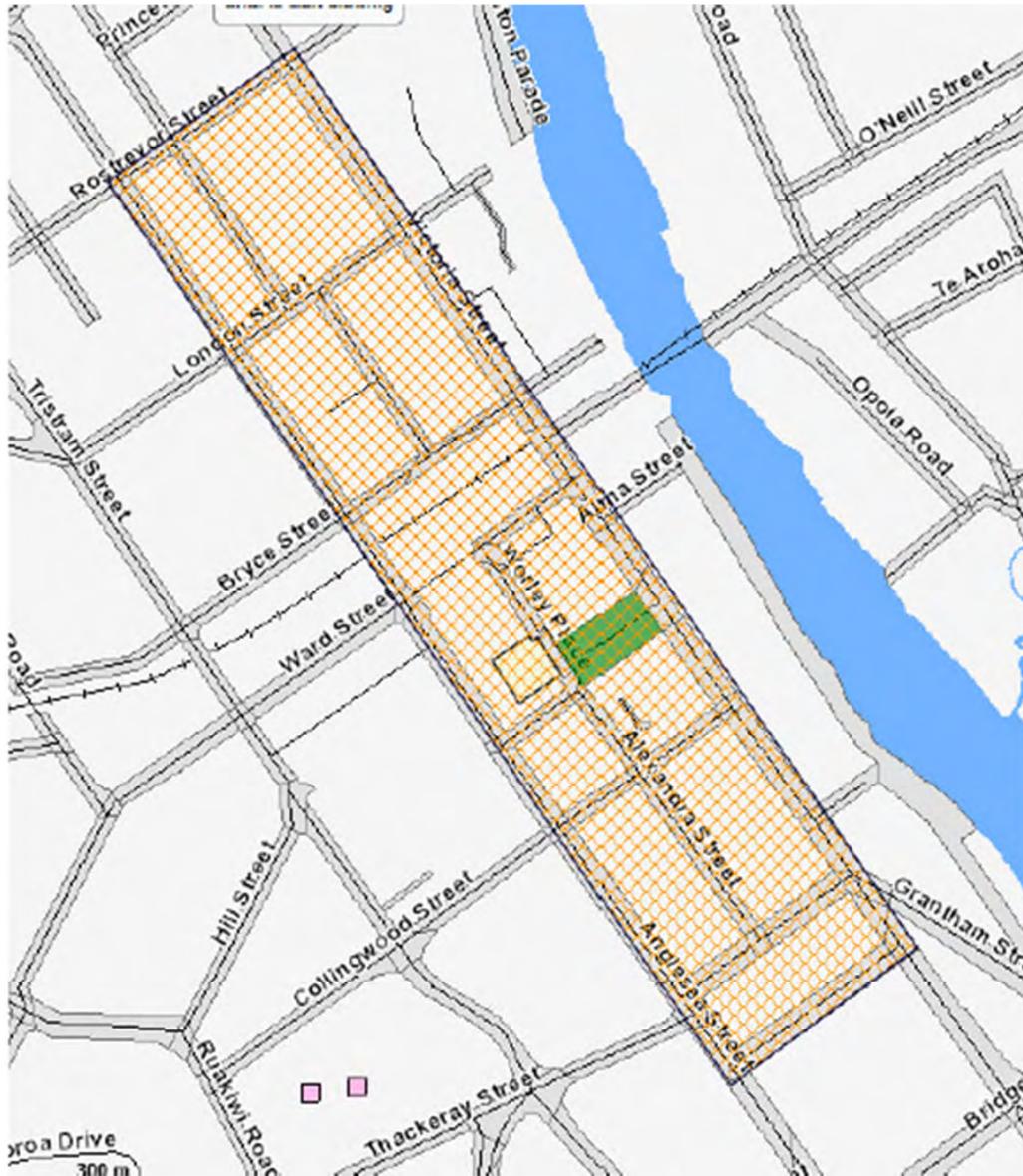
- 4.1 Applications for approval to collect charitable donations must include:
 - I. The date, time and location of the intended donation collection.
 - II. Approval from the Charity to collect donations.

5. Information Required for Mobile Shops Permit

5.1 Applications for a mobile shop permit must include:

- I. The intended location and trading hours.
- II. The location of, and distance measurements to, footpaths, roads, all street trees, street furniture (such as benches and seats), cycle racks, phone boxes, mobility parking zones and bus stops and any other structures.
- III. If tables and chairs are intended to be provided:
 - a plan of the location and dimensions of the proposed area where they will be situated, including information about proximity to the mobile shop. The dimensions must be to scale 1:5.
 - Photographs of the tables and chairs to be provided.
- IV. Evidence of public liability insurance to a minimum of \$1 million cover.
- V. Evidence of a track record (This may include any previous experience of delivering the activity/operation in the proposed area or other areas where the operator is new to the proposed area).
- VI. Evidence of how the mobile shop is relevant to the site and extends the range of products and/or services provided by existing businesses within a 100m radius of the proposed site.

Schedule 4: Central City Map



-  Central City (includes both sides of the street)
-  Gardeņ Place
-  Civic Square

Attachment 3: Options for Permit Fees

Staff have been requested to present options for proposed permit fees.

1. Setting of Permit Fees

The Public Places Bylaw 2016 s8.1 provides for Council to set fees for permits.

The fees are not listed in the Public Places Bylaw 2016 but in Councils Fees and Charges Schedule <http://www.hamilton.govt.nz/our-services/Pages/Fees-and-Charges.aspx>

Fees can be set anytime by Council.

2. Current Permit Fees

The current permit fees set in the Public Places Permits Fees & Charges 2015/16 under the Public Places Bylaw 2009 are:

Type	Administration Fee	Permit Fee (all fees include GST)
Mobile Shops (outside Central City)	For a new application - \$85 For a renewal application - \$0	\$120 (based on 12 month permit) If the time period is less than 12 months, the fee is \$10 per month
Merchandise Display	For a new application - \$85 For a renewal application - \$0	\$110.00 per m2 (based on 12 month permit) If the time period is less than 12 months, the fee is \$9.17 per m2
Footpath Signs	For a new application - \$85 For a renewal application - \$0	Central Zone (city centre, Hamilton East, commercial large suburban) \$220.00 (based on 12 month permit) If the time period is less than 12 months, the fee is \$18.33 per month Other Zones (all other zones) \$110.00 (based on 12 month permit) If the time period is less than 12 months, the fee is \$9.17 per month
Table and Chairs	For a new application - \$85 For a renewal application - \$0	\$22.50 per table
Markets	No administration fee	Annual Fee \$155.00 for Small – up to 15 (4x4) stalls Annual Fee \$365.00 for Large – 15 (4x4) stalls or more
Events and Stalls in Garden Place/Civic Plaza	No administration fee	Event Booking \$46 per event Commercial Stall \$235.00 weekly fee
Busking	No administration fee	No permit fee
Charity Collectors	No administration fee	No permit fee
Hawking Permit	No administration fee	\$100 per year

3. Basis for Bylaw fees

The Local Government Act 2002 s150(4) states “The fees prescribed under subsection (1) must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.”

Therefore Council must set the fee based on a cost recovery basis rather than a commercial comparison basis.

4. Proposed Permit Fees

It is proposed the existing fees outlined in point 2: Current Permit Fees remain the same under the Public Places Bylaw 2016.

In addition the following fees will be added:

- Other Activities on Footpaths
- Mobile Shops (Central City)

5. Basis for Bylaw fees

The Local Government Act 2002 s150(4) states “The fees prescribed under subsection (1) **must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.**”

Therefore Council must set the fee based on a cost recovery basis rather than a commercial comparison basis.

6. Options for Fees

i. Other Activities on Footpaths

- It is proposed the Administration Fee is set on the same basis (\$85 per new application) as the existing permits to reflect the cost to recover the administration processing cost.
- It is proposed the Permit Fee be set on a per event basis at \$20 per event based on an assessment of 10 minutes of staff time required at \$100 per hour to inspect the event.

ii. Mobile Shops (Central City)

- It is proposed the Administration Fee is set on the same basis (\$85 per new application) as the existing permits to reflect the cost to recover the administration processing cost.
- The permit fee must be set in regard to LGA s150(4) – that is to not provide to recovery more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.
- Council cannot set a fee based on an economic comparison such as the rental price paid by a similar fixed tenant.

Option 1: Identification of specific costs

It is not anticipated that a mobile shop inside the Central City will require any different or additional Council services (such as litter management, city safety patrol etc) than a mobile shop outside the Central City. Therefore the same permit fee of \$120 per year (\$60 for a six month permit) should be charged.

Option 2: Consideration of Loss Revenue as a cost

If a mobile shop occupied a standard car park size of 10m² space (based on shop being 4-5 metres in length and 2 metres wide), the lost revenue would be the current parking revenue of \$2 per hour (Central City) for a standard business day (8 hours), for 6 days which equates to \$96 per week. For a 26 week (six month permit) this equates to \$2,496.

If the space occupied equates to two standard car parks the lost revenue for a six month permit would be \$4,992.

Option 3: Combination of cost and lost revenue

The recommended option would be a fee based on both the specific costs and the lost revenue.