

KAPITI COAST DISTRICT COUNCIL TRADING IN PUBLIC PLACES POLICY

14 July 2017

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1. INTRODUCTION

In keeping with the vision in the *Future Kāpiti Long Term Plan 2015-35 - Kāpiti – Vibrant, diverse and thriving* and the Outcome ‘*Thriving economy, vibrant culture, diverse community*’, the Council is committed to encouraging trading in public places while managing any adverse effects from these activities.

The vision and goals of the Kāpiti District Economic Development Strategy 2015-18 have also been taken into account as the policy has been developed, in particular:

a) The development pathway *Foster a productive business environment*:

We want our businesses to:

- enjoy the ease of doing business with no unnecessary impediments to growth;
- be able to network with likeminded businesses;
- *find it easy to navigate through regulatory processes*;
- have access to mentors, support, talent, investment, capital and markets.

The Council’s focus on *Open for Business* includes developing *customer focused regulatory functions*. Council is committed to helping applicants to understand and obtain the regulatory approvals they may need for their trading activities.

The Council’s 2017 Public Places Bylaw which came into effect on 2017 regulates trading activities in public places to ensure appropriate standards of public health, safety, pedestrian priority and visual amenity are maintained. The 2017 Trading in Public Places Policy (the Policy) has been developed in order to support the implementation of the 2017 Public Places Bylaw in respect of these activities.

Please note: this Policy applies to public places only. Trading activities taking place on private property must comply with the District Plan.

1.1. Policy Objective

The aim of this Policy is to ensure that trading activities in public places on the Kāpiti Coast can occur while public health, traffic safety and efficiency, pedestrian priority and visual amenity standards are maintained.

This Policy guides:

- the granting of licences for trading in public places;
- the types of trading that are allowed; and
- the conditions that may be imposed for managing:
 - public health and safety;
 - waste management;
 - pedestrian access;
 - impacts on established businesses; and
 - traffic flow.

The Council cannot restrict trading for anti-competitive reasons or in a way that is contrary to the intent of the Commerce Act 1986.

1.2. Scope of Activities

This Policy provides guidelines for the following trading or trading related activities on streets and public places:

- open air markets;
- temporary events;
- mobile shop trading;
- outdoor dining, foot path stalls, sandwich boards; and
- any other trading activity.

Please note: In some circumstances, these activities may also require resource consent. Please contact the duty planner on ph (04) 296 4700 / 0800 486 486 for guidance and information.

1.3. Interpretation

In this Policy, unless the context requires otherwise:

Authorised Officer	means any person authorised by the Council to carry out any of the duties provided for under this Policy and includes any Council Enforcement Officer ¹ .
Temporary event	has the same meaning as the definition for Temporary event in the Kapiti Coast District Council District Plan 1999 or any of its future amendments. The current definition is as follows: a temporary event must of an intermittent nature and can include entertainment, cultural or sporting temporary events. A temporary event includes structures associated with the temporary event. This definition excludes permanently licensed premises.
Licence	means a licence, permit, registration, written consent or approval issued as per the requirements of any Act of Parliament, Council Bylaw or Policy.
Mobile shop (also known as a 'travelling shop' or mobile vendor)	means a mobile unit, whether self-propelled or not, located on a road or other public place offering or exposing goods and / or services for sale (for example, flower carts, coffee carts and food trucks). It does not include mobile libraries.
Open Air Market	means any outdoor public place that is accessible to the public, where goods or service are offered for sale, and usually consists of several merchandise stalls grouped together. These markets occur on a regular basis generally operating on one particular day each month or week throughout the year.

¹ See the Kapiti Coast District Council General Bylaw 2010 for the definition of Enforcement Officer.

Non Profit Organisations	means an individual or group (including sports groups, school groups, charitable and community groups) who are fundraising and 100% of the profit goes to the named community or charitable organisation.
Public Place	means an area that is open to or used by the public which: <ul style="list-style-type: none"> a) is owned by Kapiti Coast District Council or vested in or under the care, control and management of the Kapiti Coast District Council; and b) Includes roads, streets, footpaths, courts, alleys, pedestrian malls, cycle tracks, lanes, access-ways, walkways, bridle-ways, thoroughfares, squares, reserves, parks, pools, community halls, libraries, cemeteries, beaches, and recreational grounds.
Recreation Equipment	means any equipment used for recreational purposes such as kayaks, canoes, boats, surf boards, bicycles, roller blades, or scooters.
Retail Stalls	means any stand, stall, tent, mobile shop, vehicle, vessel or other setup from which goods and/or food are sold.
The Council	means the Kāpiti Coast District Council or any committee, community board, or an enforcement officer authorised to exercise the authority of the Council.
Trading	means the selling, displaying or promotion of any goods and services whatsoever, whether for commercial or not-for-profit purposes, in, on, or over a public place. Trading applies to permanent, temporary and mobile shop (i.e. vehicle) traders and includes but is not limited to the following activities in or on a public place under the control of Council: <ul style="list-style-type: none"> a) the sale, display or dispensing of goods, including food, drink, newspapers, fuel and lubricant; b) the provision of commercial services on a public place including shoe shining services, taking photographs, and the hire of recreational equipment; c) the provision of outdoor dining facilities for the consumption of food and drinks, including those offered by a alcohol licensed premises; d) open air markets, street stalls and busking selling, displaying or dispensing goods or services; e) the giving away of goods on a public place, including newspapers and magazines, to advertise any product, service or entertainment; f) the soliciting or collection of any subscription or donation; and g) soliciting sales or orders for sales of any goods, not in pursuance of any invitation to call, or of any previous order or request for such goods (this is also known as hawking).

1.4. Other requirements

The Council reserves the right to grant **licences** for all other trading activities in public places throughout the District.

The Council will charge a fee for a licence. Non Profit Organisations may not be required to pay a licence fee.

Licences are non-transferable and can be revoked in accordance with the Kapiti Coast District Council Public Places Bylaw 2017.

Any person with a license issued under the Kapiti Coast District Council Public Places Bylaw 2017 must display or carry a copy of that licence prominently for the view of members of the public, if the licence indicates that it must be displayed, or have it available to be inspected by an Authorised Officer or sworn member of the Police.

A licence for trading activities will not be required for trading in a public place if the applicant has already obtained a resource consent pursuant to the District Plan, provided that the resource consent includes conditions which address the assessment criteria in this Bylaw (Clause 8.1 of the 2017 Public Places Bylaw).

2. ASSESSING APPLICATIONS

Applicants are encouraged to contact Council early on because Council officers will be able to help them understand and navigate through the relevant regulatory requirements of the 2017 Public Places Bylaw and other statutes such as the Resource Management Act 1991 and the Building Act 2004.

2.1. Written approval

Unless otherwise stated, Council approval will be required for any trading activities or event in a public place.

2.2. Principles

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

Principles	Explanation
Quality and amenity	Trading in public places should contribute to a thriving economy, vibrant culture and a diverse community on the Kāpiti Coast. Maintaining a high quality street / park / public place environment that contributes to this vision.
Accessible and safe public places	Ensuring that safe and unobstructed pedestrian and vehicle access is provided and maintained for all users of public places.
Appropriate locations	In determining where an activity can be located, consideration will be given to the impact on the local environment, whether appropriate standards of health and safety, pedestrian and vehicle access and visual amenity can be maintained.

Diversity and suitability of activities	Encouraging diversity of trading activities and ones with a point of difference, so that they have the ability to attract people.
Non-privatisation of public place	Trading activities must not be perceived as privatising public places and the space should be maintained for the purpose of a shared public and commercial space Public places should provide opportunities for the public to participate in the public environment – leisure, retail, recreation and entertainment.
Minimising impacts of activities	Ensuring that any activities avoid inconvenience and nuisance and that any impacts (noise, traffic, obstructions) are appropriately mitigated. Ensuring that public places are not damaged by trading activities so that the public can continue to enjoy them. Ensuring the effects on parking, traffic movement and existing businesses will be taken into account.
Transparency and efficiency	Improving transparency in decision making and, administration efficiency, i.e., open for business.

Businesses, groups and individuals licenced to use public places for trading activities are responsible for managing those activities in accordance with the 2017 Public Places Bylaw.

2.3. Assessment Criteria

The Council will consider (but not be limited to) the following matters when assessing an application for a trading licence under this Policy including:

Criteria	Explanation
Activity	What type of goods and services are being sold? Does the activity comply with other relevant regulatory requirements such as the District Plan? Does the operator have management measures in place to manage high standards of public health and safety?
Location	Is the location suitable for the planned activity? Is it easily accessible? Will it cause nuisance or pose a risk to public safety? Applications for approvals will be assessed against their suitability using criteria such as past experiences, impacts on the surrounding environment and whether the activity is consistent with other council policies and plans.

Quality and design	<p>Does the quality, style and design of the market, mobile shop, sign or stall make a positive contribution to the surrounding environment?</p> <p>The layout and orientation should be selected based on the size of the available space.</p>
Food management	Do operators have an approved food hygiene qualification (where appropriate)?
Hours of operation	Are the hours and days of operation such that it does not permanently occupy the public space?
Public liability insurance	Does the operator have appropriate public liability insurance?
Traffic management	<p>Are appropriate traffic management measures in place to avoid adverse effects on the safety and flow of pedestrians and vehicles?</p> <p>This may include the constraints on the capacity of available parking in the area, pedestrian access and safety, and any other traffic safety issues. Under the Traffic Bylaw 2010, no person shall sell or offer any goods or services of any kind for payment or donation (including the washing and cleaning of windows of any vehicle) or solicit any subscription or collection on any road intersection (excluding the footpath) or within 100 metres of the intersection (excluding the footpath) on any of its approaches.</p>
Barriers, canopies, awnings, signage and screens	<p>Are barriers, canopies, awnings, signage and screens associated with the trading activity kept to a minimum?</p> <p>Are they appropriately designed and fixed or weighted so they do not have adverse effects on traffic and pedestrians?</p>
Landowner approvals	Does the landowner (the Council) require any particular conditions?
Waste management	Are appropriate waste management and disposal measures in place?
Adverse effects	<p>Are any other businesses adversely affected (for example, physical access is blocked)? Note: trade competition cannot be considered.</p> <p>Is the local community adversely affected (for example, by excessive noise or offensive odours)?</p>

2.4. Conditions

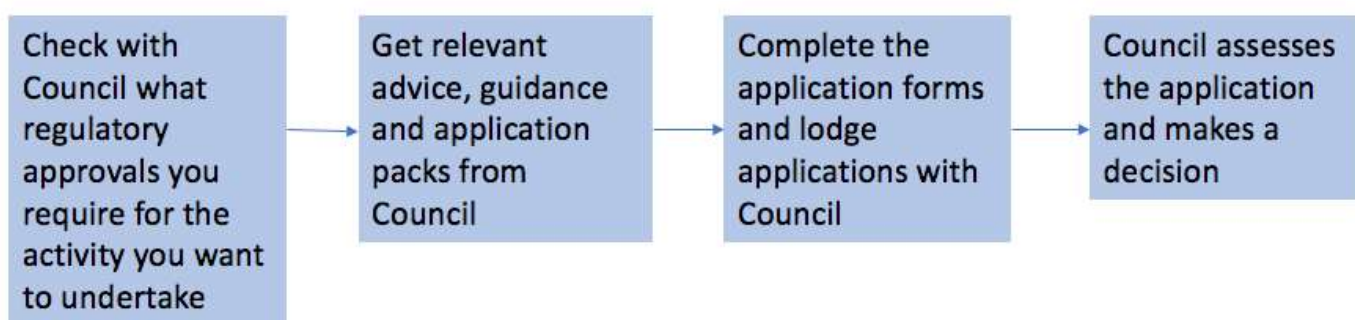
The Council may impose conditions concerning the following matters:

- a) details of the approval holder
- b) the type of activity covered by the approval
- c) time / designated hours of operation
- d) duration of the approval (i.e. approval period and expiry date)
- e) location / site to be occupied
- f) approval date and approving officer's details

- g) safety and hygiene requirements
- h) use of signage
- i) use of musical chimes or other audible devices for attracting customer beyond a certain time (for instance, no later than 5pm in winter and 7pm in summer time)
- j) litter, cleanliness (adequate waste management and minimisation plans)
- k) presentation and standards of stalls, mobile shops, markets
- l) type of goods or products
- m) ensuring that there are no obstructions to pedestrian access;
- n) public liability insurance.

3. APPLICATION PROCESS

All applications to undertake trading activities or street performances will be considered on a case by case basis. The typical process for applying for an approval is:



4. GUIDELINES

4.1. Trading at temporary events

Any group or individual interested in holding a temporary event in a public place must make an application² to the Council.

The following guidelines outline the conditions of approval for temporary events in public places (these guidelines are in addition to the requirements listed in section 2 of this Policy).

The Council will approve temporary events in public places on a case-by-case basis, taking into account the matters set out in this section and section 2 above.

This completed application must be submitted to the Council **a minimum of 40 days** before the planned temporary event or market, **or earlier if a resource consent is required.**

Please note: Depending on the nature of the temporary event, other consents or licences may be required as well, for example, a resource consent pursuant to the Resource Management Act 1991 or a building consent pursuant to the Building Act 2004. Please contact the Council on ph (04) 296 4700 / 0800 486 486 for guidance and information.

² Application forms are available from the Council's Compliance Team, Ph: 04 296 4700 / 0800 486 486

4.2. Trading at open air markets

Any group or individual interested in establishing an open air market in a public place must make an application³ for an open air market licence⁴ to the Council.

The following guidelines outline the conditions of approval for open air markets in public places (these guidelines are in addition to the requirements listed in **section 2** of this Policy).

The Council will consider applications for the establishment of open air markets in public places on a case-by-case basis, taking into account the following matters

- whether adequate clear footpath is available for pedestrians around the market and its market stalls. As a minimum, the Council will expect a 1.8 metre width from the edge of any stall or associated display to the nearest kerb edge or obstruction;
- whether the hours and days of operation of the market is such that it does not permanently occupy the public space
- whether appropriate traffic management measures are in place to avoid adverse effects on the safety and flow of pedestrians and vehicles
- whether barriers, signage and screens associated with the market are kept to a minimum and are appropriately designed and fixed or weighted so as to not give rise to adverse effects on traffic and pedestrians
- whether the individual stall holders have approved food hygiene qualifications, where food is to be sold, and the market and stalls have appropriate food storage and preparation facilities to meet food hygiene regulations
- whether adequate access to public toilets has been provided.

The completed application must be submitted to the Council **a minimum of 20 days** before the planned market.

Please note: Depending on the nature of the open air market, other regulatory approvals may be required as well, for example, a licence to occupy a public place, a resource consent or a building consent. Please contact the Council on ph (04) 296 4700 / 0800 486 486 for guidance and information.

4.3. Mobile shops

Any group or individual interested in operating a mobile shop in a public place must make an application⁵ to the Council.

The following guidelines outline the conditions of approval for mobile shops in public spaces (these guidelines are in addition to the requirements listed in **section 2** of this Policy).

There are two different types of mobile shop traders:

1. Those that can be considered 'roaming' as they move onto another location after a certain time period (for example, 20 minutes). As a general principle,

³ Application forms are available from the Council's Compliance Team, Ph: 04 296 4700 / 0800 486 486

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⁵ Application forms are available from the Council's Compliance Team, Ph: 04 296 4700 / 0800 486 486

- 'roaming' approvals will only be issued to operators selling prepared food or drink (for example, Mr Whippy); and
2. Those that park up in one fixed location to solicit business. As a general principle, this type of trading is not allowed in road reserves unless the site has a formal parking area (such as a rest area).

The Council will consider applications for mobile trader licences in public places on a case-by-case basis, taking into account the nature of the public place, the potential effects on the general public and nearby businesses, and the factors identified in **Section 2** above.

The Council may impose the following (but not limited to) conditions on an approval for mobile shops:

- the exact location(s) and duration of occupation of the mobile shop or stall and any associated signage (limited to two) and displays
- that the design and construction of stalls and mobile shops will be of a good standard and should be appropriate for the local surroundings
- a requirement to operate and park/position the vehicle in a safe manner which is not likely to cause a hazard to pedestrians or other traffic
- the use of chimes or other audio devices other than when the mobile shop is moving and is not in the vicinity of a church or hospital or causing a nuisance to residents
- a limitation on the duration of the approval
- a limitation that the approval applies only to the applicant and may not be transferred.

Please note: depending on where they operate, mobile shops may often require a resource consent as well. Please contact the duty planner on ph (04) 296 4700 / 0800 486 486 for guidance and information.

4.4. Outdoor dining, footpath stalls and sandwich boards

Any group or individual interested in operating outdoor dining or having footpath stalls or sandwich boards in a public place must make an application⁶ to the Council.

This section guides the prioritisation of footpath space for pedestrian activity, conditions for the licensing of non-pedestrian activities on footpaths and the use of temporary footpath obstructions such as dining furniture, footpath stalls and sandwich boards. The primary purpose and priority use for footpaths is safe and efficient pedestrian movement. The Council requires that a minimum continuous unobstructed footpath width of **1.2 metres** is maintained to ensure pedestrian movement.

On occasion the available footpath space is such that the designated width is unachievable because of the large variation in footpath widths that exist throughout the Kapiti District. To account for this, an Authorised Officer may make minor discretionary modifications to the ideal minimum unobstructed footpath width as appropriate. Where in the opinion of an Authorised Officer, any dining furniture, footpath stall, sandwich board or other obstruction becomes an unacceptable barrier to the use of the

⁶ Application forms are available from the Council's Compliance, Monitoring and Enforcement Team, Ph: 04 296 4700 / 0800 486 486

footpath or hinders the flow of pedestrians, the Licence holder or person acting on his or her behalf will be required to remove, or reposition, the offending obstruction immediately.

A Licence is required before outdoor dining or footpath stalls are permitted on any public footpath. If a sandwich board does not comply with Appendix 1 of this policy, a licence will be required.

Applicants must provide the following when submitting an application for a Licence:

- a) A scaled site plan of existing conditions that accurately show:
- the width of the footpath from the building façade to the kerb edge;
 - the proposed location and size of the temporary dining furniture, sandwich board, footpath stall or other obstruction in relation to existing features, including the kerb edge, neighbouring properties, street trees, rubbish bins, street light poles, signs, pillars, street furniture, fire hydrants, parking meters, telephone boxes, mail boxes or any other significant features on the footpath;
 - there is a clear continuous width of 1.2 metres of unobstructed pedestrian thoroughfare in relation to the temporary obstruction;
 - the location of doorways and service openings.

Outdoor Dining

The following guidelines outline the conditions of approval for outdoor seating areas on footpaths and other public spaces (these guidelines are in addition to the information requirements listed in section 2 of this Policy).

- The outdoor seating area must be immediately outside of the applicant's premises.
- Tables and chairs are to be high quality, durable, waterproof and weather resistant, designed for outdoor use, be well maintained and must comply with NZS 4121: Design for Access and Mobility.
- The outdoor seating area must not interfere with safe and efficient pedestrian movement and the minimum unobstructed footpath width of 1.2 metres.
- The outdoor seating area must allow for unobstructed access to and from the premises.
- The layout and orientation of furniture in the proposed seating area must allow for at least 0.6 metres of unobstructed space between the seating and the kerb line, in addition to the 1.2 metre unobstructed footpath width.
- Adequate space is to be provided within the area to allow for easy movement and chair use.
- Toilet accommodation on the premises must be sufficient to for the increased number of persons using the outdoor seating area.
- Outdoor seating areas will not be permitted on street corners with pedestrian crossings or near entry points of designated crossings.
- Full details of any heating devices, their planned location, and safety measures taken to ensure they are stable and secure, are to be provided with the application.
- Private trading activities that introduce changes to paving or street furniture for amenity purposes require specific approval.
- Evidence of public liability insurance, to the satisfaction of the Council that covers any proposed outdoor seating area.

- Disclosure of whether alcohol is to be supplied/served/consumed in any proposed outdoor seating area⁷.
- All temporary obstructions, including seating, tables, umbrellas and heating devices must be removed from the footpath outside of the business trading hours and stored away from the public area so that they do not impede public access.
- The licence holder is responsible for ensuring that patrons keep the outdoor seating within the approved boundaries of the outdoor seating area
- Temporary or permanent barriers in outdoor seating areas must have separate approval by Council. If approved they are to be located within the designated outdoor seating area.
- Outdoor seating areas may be required to be marked as stipulated by the Council. To assist in the detection of approved outdoor seating areas and temporary obstructions by people with visual impairments, tactile or solid barriers may be required as part of the design. The cost of installing, maintaining and removing outdoor seating markers will be met by the licence holder.
- The licence holder is required to regularly clean the approved seating area including tables, chairs, and immediate footpath surrounds. Where smoking is allowed ashtrays or other suitable devices must be provided and maintained.
- The Licence and approved site plan must be made available to an Authorised Officer on request.

Footpath Stalls

The following guidelines outline the conditions of approval for footpath stalls on footpaths and other public spaces (these guidelines are in addition to the requirements listed in section 2 of this Policy).

- A retailer may place a stall outside the frontage of their premises at any time during trading hours, however the stall is only to be in place for the display and sale of merchandise related to the retailing activity
- The stall is to be placed as close as practicable to the shop frontage and not interfere with safe pedestrian movement and the minimum unobstructed footpath width of 1.2 metres.
- All goods displayed in, on or at a stall are to be free from sharp edges or projections which may cause injury to pedestrians and be free from any form of nuisance and not hazardous to the public at large. All goods must be secure from falls and wind gusts.

Non-profit groups operating fundraising stalls must also apply for a licence from the Council⁸.

Sandwich Boards

If the guidelines in Appendix 1 are met, you are permitted to place a sandwich board (without the need for a licence) on the footpath immediately outside your premises.

⁷ Any person who intends to sell alcohol from an outdoor dining area is required to apply for a re-definition of their liquor licensed area. Please contact the Kapiti Coast District Council Liquor Licensing inspector 04 296 4700.

⁸ The Council has identified a number of sites throughout the District for community groups to sell goods. See the Kapiti Coast District Council Customer Services 04 296 4700 for details.

The Council reserves the right to inspect the board at any time and may set additional conditions as it sees fit.

Sandwich boards need to be placed so that they do not impede pedestrian access or the minimum 1.2 metre unobstructed footpath width. Only one sandwich board is permitted per premises.

Where there are several organisations wanting to use a sandwich board at the same premises (e.g. outside shopping malls) the Council will work with the affected people and the property owner to develop a compliant solution, such as shared signage on one sandwich board or a directory.

5. FEES

The Council reserves the right to set fees for licences issued under the 2017 Public Places Bylaw. It also reserves the right to charge an occupancy fee for the use of public places in addition to the standard licence fee. A bond may also be required depending on the nature of the activity and the location.

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

6. MONITORING AND ENFORCEMENT

The Council will monitor trading activities in public places regularly to ensure that traders are complying with their licence conditions and that no unauthorised trading is occurring in public places. Individuals or groups that trade on footpaths or other public spaces without a required licence will be asked to remove their material and cease with the trading activity immediately.

The Enforcement Policy 2014 provides general guidance on how compliance, enforcement and prosecution matters are dealt with by the Council.⁹

7. MAKING A COMPLAINT

If a trading activity is causing a nuisance, please contact:

- the Council and, if possible, provide the following information:
 - the name / type of trading activity and operator;
 - location and time of trading activity;
 - nature of the complaint (i.e. what is causing the nuisance).
- If the trading operator is violent, disorderly, behaving offensively, or causing a general nuisance in a way that may impact on public safety, please call the Police.

⁹ <http://www.kapiticoast.govt.nz/Your-Council/Forms-Documents/Policy-and-Strategy/Council-Policies>

APPENDIX 1: SANDWICH BOARDS

Use this flow chart to determine whether you require a sandwich board licence.

Questions about your location	Options	Reasons for rules
Will the sandwich board be placed on the public footpath? Yes	No →	Sandwich boards placed on private property don't require a licence but may require permission from the property manager (e.g. for malls). They should be placed safely and not in doorways or access paths.
Will your sandwich board placed in line with other obstructions, is the remaining clear unobstructed footpath width outside your premises at least 1.2 metres wide? Yes	No →	You'll need to consider an alternative to having a sandwich board. Options could include a smaller board, a shared directory sign mounted on an existing pole, a sign suspended from the awning – or you may not be able to use a sign.
Is there a bus stop, taxi stand, disability park or pedestrian crossing directly outside your premises? No	Yes →	You shouldn't use a sandwich board until you have discussed options with the Council. Please contact 296 4700 and ask to speak to the Council compliance team
Will your sandwich board be the only sandwich board placed outside your premises? Yes	No →	Excess boards at a location can create obstacles for pedestrians trying to cross the road or access car parks and give the street an untidy, cluttered appearance.

Questions about your board	Options	Reasons for rules
Is the total height of the board, including base, equal to or less than 900mm? Yes	No →	You'll need to modify or replace the board so that it fits the required dimensions
Is the width of your sandwich board, measured at any location including the base, equal to or less than 600mm? Yes	No →	The streetscape is limited in width and in the event of an emergency the Council may need to remove sandwich boards. Oversize boards are difficult to move and could cause problems such as visibility issues for traffic (e.g. driver may not see small children waiting to cross the road).
Is the board weighted so that it can't easily be moved by wind or people? Yes	No →	Additional weight could be attached.
Is the base a substantially different colour from the pavement? Yes	No →	A highlighting strip could be attached.
For folding boards, does it lock in the open position? Yes or N/A	No →	A locking clasp must be attached.
Is the board free from sharp edges, protrusions or moving parts? Yes	No →	You'll need to modify the board to make it safe.
You are eligible to place a sandwich board on the footpath		

If you have an item that doesn't fit the description of a sandwich board but you still wish to put some form of advertisement on a public footpath, please contact the Kapiti Coast District Council Compliance Team; and

- follow the flow chart above to determine what aspects of your advertisement do not comply with this Policy;
- prepare additional information in support of your proposal specifically addressing the aspects that don't comply with the policy and highlighting how the proposed items fits the principles of the policy, i.e. to prioritise footpath space for safe and efficient pedestrian movement while contributing to the character and vibrancy of our public places; and
- contact the Council on 296 4700 to discuss your proposal.