

Distribution of publications and other like printed materials

Submission by the New South Wales Council for Civil Liberties to the Sydney City Council

General Comments

1. The New South Wales Council for Civil Liberties ('CCL') notes the City of Sydney's (*Draft*) *Policy for Distribution of Printed Matter and Other Material on Footways 2007* dated February 2007 ('the Draft Policy').
2. CCL is concerned that the new policy is disproportionate and complex. It will also be expensive to administer and to comply with. It does not reflect existing Council policy. It also fails to acknowledge the legitimate expectation of every individual to express their opinions freely and free of government interference.
3. The ability to freely distribute written material to the public has been an important feature of Western democracies at least since the Glorious Revolution of 1688. When an individual or an organisation cannot afford to advertise in the media, or when (as has happened from time to time) the mainstream media organisations refuse to accept their material, the distribution of pamphlets or newspapers is the only effective way of getting their opinions heard.
4. The importance of free speech is expressed in the Universal Declaration of Human Rights. This is, most importantly, a right to political speech. But it is not only that. Struggling musicians should be free to distribute, without a permit, promotional material for their next gig at a Newtown pub. Likewise, the local branch of basket weavers should be able to distribute material encouraging people to join their club or to attend an exhibition, or a student should be free to advertise a room for rent in shared accommodation.
5. CCL believes that the central issue in developing a proportionate response is one of scale. The Draft Policy is generally excessive because it fails to distinguish between small-scale and large-scale distribution.
6. If a large number of people stand in one place to distribute material, or if substantial structures are erected, footpaths will be impeded. It is reasonable to regulate such activities—to require a permit, and to charge a small fee to cover the cost of administration. Similarly, commercial ventures paid for by their advertising, involving the distribution of very large numbers of newspapers (such as the daily distributions of MX) might be regulated, to ensure that pedestrian access is not unduly impeded.
7. However, the same cannot be said for small-scale distribution. People distributing political pamphlets, community service announcements, looking for a lost cat or a new flatmate cannot be said to impact on the City in the same way as large-scale distributors. It is clearly a disproportionate response to apply to small-scale distributors the same rules applied to large-scale distributors. As a disproportionate response, the Draft Policy is incompatible with the fundamental right of every individual to freedom of speech.

8. CCL recommends that the Council redraft the policy to enhance, rather than restrict, the freedom of speech of people living in the City.

The Draft policy does not reflect existing policy

9. CCL notes that the Draft Policy seeks to enshrine the *old* permit system.¹
10. Under the old permit system *everyone* who wished to distribute pamphlets and leaflets on public footpaths was required to obtain a permit and pay a fee to Council.² After CCL made enquiries of the City of Sydney's Street Events Coordinator in March 2007, it became clear that this system has been abandoned. City Rangers found it impossible to police the permit system. They found that most citizens were unaware of the permit system and simply assumed that they had a right to distribute such material. Those who obtained permits were not happy with the system because they saw others distributing material without paying.
11. The existing system has been implemented as a matter of pragmatism. It has not yet been committed to paper. Nevertheless, it is in place and when people ring the Council they are informed of the new policy.

Existing policy is less restrictive

12. According to the City of Sydney's Street Events Coordinator, a permit is *not* required for the small-scale distribution of pamphlets and leaflets on City of Sydney footpaths. However, the erection of any structures (such as a card-table or box) requires a permit.
13. The conditions attached to such permit-free small-scale distribution are:
 - no more than four people from one group may distribute leaflets in one location;
 - distributors must not obstruct the footpath;
 - distributors must not impede pedestrians, stall-holders, shops or offices;
 - distributors must not litter;
 - selling is not permitted.
14. The new policy does not apply to some public spaces, such as Martin Place and Chifley Square. The old permit system applies in these exempt public spaces. There is no written list of these exempt public spaces, making it difficult for citizens to know which system applies where.
15. If a permit is required, then a fee is payable. However, the fee may be waived for charities and community groups.
16. This policy is not a written policy and is, consequently, not available on the Councils' website. Only the old system is available online.

¹ Planning Policy Subcommittee, *Proposed Policy and Procedures for the Distribution of Printed Matter and Other Material on the Public Footway* (5 March 2007) S034077, [12].

² see

<<http://www.cityofsydney.nsw.gov.au/Business/ApprovalsPermitsAndNotifications/PamphletAndLeafletDistribution.asp>>.

The Draft Policy needs to be modified

17. A modified policy is attached to this document. The modifications respect and facilitate freedom of speech within the City. The right to small-scale distribution, subject to public safety, is guaranteed. The modifications reflect the expectations of citizens that they may distribute material on the footpath, within reasonable limits.
18. In essence, small-scale distribution is defined as involving no more than six people from one organisation distributing material in any one location. A temporary structure of no more than two card tables is permitted. While this definition restricts freedom of speech, it does so in a limited and reasonable fashion that balances individual freedom against public safety.
19. A list of conditions is included in the Policy for small-scale distribution. These conditions are designed to ensure public safety while respecting freedom of speech. The conditions ensure that the footpath is not obstructed and passage of pedestrians is not impeded. Council officers will not interfere with anyone who complies with these conditions.
20. The conditions should be freely and publicly available, so that everyone knows what is required of them when distributing material on a small-scale. The publication of these conditions, resolved by Council, will ensure that the Policy for small-scale distribution is clear and will be implemented in a consistent and well-understood fashion.
21. The modified policy also acknowledges human rights law, by quoting the *Universal Declaration of Human Rights* and implementing the acceptable limits placed on freedom of expression from the *International Covenant on Civil and Political Rights*. Mention of international human rights law is not a new innovation at the level of local government, for example the Hume City Council acknowledges human rights in its *Citizens' Bill of Rights*.³ CCL encourages the City Council to adopt this approach more often.
22. CCL notes that Australia has ratified the *International Covenant on Civil and Political Rights* (ICCPR). Article 19 of the ICCPR guarantees freedom of expression. Freedom of expression is not unlimited. Freedom of speech may legitimately be restricted by law, where necessary, to protect the rights and reputations of others and to maintain public order and health.
23. CCL further notes that in 2006, the UN Human Rights Committee, which is responsible for determining if a country has violated the ICCPR, found that a Queensland law which required a citizen to obtain a Council permit before making a political speech in a pedestrian mall was a violation of the ICCPR.⁴ The Committee did not say that all permit systems are invalid, but rather that they need to be compatible with free speech. The Human Rights Committee stated that:⁵

³ Hume City Council, *Social Justice Charter 2004*, <<http://www.hume.vic.gov.au/Files/SocialJusticeCharter2004FINALwCover.pdf>>.

⁴ see *Coleman v Australia*, <http://www.nswccl.org.au/issues/hr_violations.php#Coleman>.

⁵ *Coleman v Australia* (2006) UN Doc CCPR/C/87/D/1157/2003, [7.3].

Even if a State party may introduce a permit system aiming to strike a balance between an individual's freedom of speech and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant. In the present case, the author made a public address on issues of public interest. On the evidence of the material before the Committee, there was no suggestion that the author's address was either threatening, unduly disruptive or otherwise likely to jeopardise public order in the mall; indeed, police officers present, rather than seeking to curtail the author's address, allowed him to proceed while videotaping him. The author delivered his speech without a permit. For this, he was fined and, when he failed to pay the fine, he was held in custody for five days. The Committee considers that the State party's reaction in response to the author's conduct was disproportionate and amounted to a restriction of the author's freedom of speech which was not compatible with article 19, paragraph 3, of the Covenant. It follows that there was a violation of article 19, paragraph 2, of the Covenant.

24. The High Court of Australia also defends the right to free political speech against attempts to restrict it. As Justice McHugh put it, in *Coleman v Power*, "...the system of representative and responsible government cannot operate without the people and their representatives communicating with each other about government and political matters".⁶ Laws that burden political communication are only valid if they are reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.⁷
25. The modifications CCL has made to the Draft Policy more closely resemble existing Council policy. The modifications also ensure that the Council's policy does not operate in a way that is incompatible with the fundamental right of everyone to freedom of expression and opinion.

Martin Bibby

Chris Holder

Doug Nicholson

Michael Walton

For the New South Wales Council for Civil Liberties

⁶ *Coleman v Power* [2004] HCA 39, [89] (McHugh J).

⁷ See *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567-568 and *Coleman v Power* [2004] HCA 39, [93] (McHugh J), [196] (Gummow & Hayne JJ, agreeing), [211] (Kirby J, agreeing).

City of Sydney

(Draft) Policy for

**Distribution of Printed Matter and
Other Materials on Footways 2007**

With suggested amendments of NSW Council for Civil Liberties, March 2007

1 Introduction

The City acknowledges and respects the fundamental right of every individual to freedom of speech, as enshrined in article 19 of the *Universal Declaration of Human Rights*, which states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The City respects the right of individuals to distribute, on a small-scale on the public footway, publications and other like printed matter, distributed free of charge or for a charitable donation, without interference from the City, subject only to the restrictions which are listed in this Policy and are necessary for:

- (i) respect of the rights of others; or
- (ii) the protection of public order or public health.

The City permits, with approval, the use of the public footway for the large-scale distribution of publications, other like printed matter, and other materials of a promotional nature as being consistent with the public nature of roadways provided:

- (i) the convenient, safe and efficient operation of the footway for pedestrian movement is maintained as its primary function; and
- (ii) the distribution activity does not involve any sale.

Within this general intent the City will distinguish between, where applicable, the exchange of money as a sale (commercial transaction) and the exchange of money as a charitable donation.

1.1 Citation

This is the *City of Sydney Policy for the Distribution of Printed Matter & Other Material on Footways*.

1.2 Land to which this Policy applies

- This Policy applies to all land within the City of Sydney (see Figure 1).

1.3 Objectives

The objective of this Policy is:

- (i) to facilitate the orderly distribution of printed matter and other material on Council's footway;
- (ii) to set out the need or otherwise to obtain approval from the City for the distribution of publications, other like printed matter, and other materials of a promotional nature on Council's footway; and

- (iii) to establish criteria to ensure that this activity:
- (a) respects the right of every individual to freedom of expression;
 - (b) maintains sufficient footpath area for pedestrian movement; including the needs of pedestrians with disabilities;
 - (c) causes minimum interruption to other street activities;
 - (d) maintains the general amenity and ambience of localities;
 - (e) does not restrict access to adjacent premises; and
 - (f) maintains an environment that is clean and safe.

1.4 Relationship to other plans, policies and documents

- This document should be read in conjunction with the relevant Local Environmental Plan applying to the land.
- Separate policy documents exist in respect to the establishment, on the footpath, seating related to restaurant activity, and the display of goods related to adjoining shops.

1.5 Date of adoption and operation

- (i) This Policy was adopted by the Council of the City of Sydney on XXXXX
- (ii) This Policy commenced operation on XXXXX

1.6 Application of provisions

- These provisions apply to new proposals and to existing operations which do not have approval and as such need to apply for approval.
- The provisions for large-scale distribution in this Policy will primarily be used by the City to assess proposals on public roadway land. These provisions may also be used to assess proposals on other land for which Council has responsibility such as community land or Crown Reserve.

1.7 Permitted activities

- The activity is limited to the distribution, by hand and without charge, of:
 - (i) publications or other like printed matter; and
 - (ii) other materials of a promotional nature.
- ~~There is to be no associated spruiking.~~

1.8 Required approvals for large-scale distribution

- Development consent is required unless the activity comes within the definition of *exempt development* under the relevant Local Environmental Plan.
- A permit to occupy public land is required from the Council.
- A condition of an activity being *exempt development* is that the distributor must hold a permit to occupy public land.
- If a structure is proposed, approval under the *Roads Act 1993* is required.

1.8A Approval not required for small-scale distribution

- Council approval is not required for small-scale distribution. No fee is payable.
- 'Small-scale distribution' means distribution in a location where there are fewer than six people from one group distributing material and who may erect a temporary structure no larger than two card-tables.
- The "Conditions for Small-Scale Distribution on Footpaths" will apply to small-scale distribution.
- The Conditions will be available free of charge to anyone who requests them. The Conditions will be available on the City's website.
- Council officers will not interfere with small-scale distribution that complies with the Conditions.

1.9 Concurrent consideration and issue of approvals

- The City may consider each required application and may issue any consent and/or approval concurrently.

1.10 Fees to occupy the public road for large scale distributions where approval is required

- The City will charge a fee for the use of the footway.
- The fee will be as determined by the City from time to time in its Schedule of Fees and Charges.
- This Schedule may provide for a nil fee where an activity is carried out for a charitable or other non-commercial purpose.

1.11 Distribution of food or drink samples

- Applicants wishing to distribute material containing food or beverages are advised to contact the City's Health Unit in respect to any applicable health regulations.

2 Provisions for large-scale distribution

These Provisions do not apply to small-scale distribution.

• • •

3 Conditions for small-scale distribution on footpaths

The following conditions apply to all small-scale distribution:

- (1) no more than six people from one group may distribute material in any one location;
- (2) distributors must not obstruct the footpath;
- (3) distributors must not impede pedestrians or access to shops, offices or stalls;
- (4) distributors must take special care to ensure that pedestrians with disabilities are not impeded;
- (5) distributors can erect a temporary structure, but it must be no larger than two standard-sized card tables;
- (6) any temporary structure must be stable, including in wind gusts, and distributors should take care to ensure that such structures will minimise injury if bumped into by a pedestrian;
- (7) distributors must remove the temporary structure when they have finished;
- (8) distributors must collect all distributed material that has been discarded within a radius of 15 metres from the distribution point;
- (9) selling is not permitted, but donations may be taken;
- (10) all distribution is to occur on the public footway (i.e. the footpath, not on the carriageway of the road).