

Smoking Enclosure Permit

Terms and Conditions

Whilst the provision of having designated smoking areas can be necessary to segregate customers from passing pedestrians, it is important that these areas are properly administered and managed to ensure that they meet the high standards expected in Cardiff. They should not obstruct the highway, create a hazard for pedestrians or create a cleansing issue.

Please see below the Terms and Conditions of the Permit.

1. This is a separate permit to a Street Café Permit. It is for a separate area. No furniture, tables and chairs must be located in the smoking enclosure at any time.
2. Before agreeing to permit for a smoking enclosure on the public highway, the Council must ensure that the public's rights to use the highway are not detrimentally affected.
3. The Council's bye-laws, policies and standards also need to be complied with for health, safety and environmental reasons.
4. This guide relates only to the possible establishment of a smoking enclosure on a highway. (Smoking Enclosures on private land are not covered by this guide. They do not need a permit, although they may require planning permission.) You should check with the Council to establish the status of the land in question. Land which you consider to be private may in fact have become highway if the public have enjoyed access over it for at least twenty years or if the Council have formally adopted the land.
5. Permissions to use the highway for smoking enclosures are granted by the issue of permits by the Council as the Highway Authority under the Highways Act 1980. Any Enclosure placed on the highway without permission is classed as an illegal obstruction and the Council will take enforcement action in such cases.
6. A proposal to extend the smoking enclosure beyond the width of your own frontage also needs the express consent of any other interested frontager who is affected by the proposal.
7. If you wish to serve alcohol for consumption in the defined area, you will need a premises licence which allows for OFF sales and consumption in that defined area. A premises licence can be applied for or varied through the local licensing authority, Cardiff County Council.
8. If the applicant is a limited company or LLP then upon dissolution, administration or insolvency of that company / partnership, the Permit will become void and the use of the

defined area will not be permitted. The permit cannot therefore be transferred. A new permit will have to be applied for by a new operator.

9. If the applicant is a sole trader or an unincorporated partnership, upon the bankruptcy of that person or partner, the permit will become void and the use of the defined area will not be permitted. The permit cannot therefore be transferred. A new permit will have to be applied for by a new operator.
10. The applicant / operator for the smoking enclosure permit can only be the current premises licence holder (if the premises has a premises licence). No third party operators will be accepted.
11. The smoking enclosure should generally occupy an area directly in front of and be visible from your existing premises.
12. The needs of other users of the highway should be taken into account e.g. pedestrians, tradespeople, adjacent businesses. A clear pedestrian route of a minimum of 2metres must be maintained at all times.
13. Emergency exit routes from your own and adjacent buildings should not be obstructed by the smoking enclosure and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.
14. The layout of the area and means of enclosure must provide adequate access and circulation space for all customers.
15. The Smoking enclosure should not be located where they will impede drivers' sight lines or obscure highway signs.
16. If it is intended to operate the smoking enclosure during the hours of darkness the applicant should consider the level of lighting in the proposed area. Whilst this may be perfectly adequate for a highway it may need supplementing to allow your area to operate safely.
17. Once the size and layout of a smoking enclosure is agreed it is important that it is adhered to at all times. All activities associated with the smoking enclosure must be contained within the agreed boundary including all ashtrays, planters, barriers/fencing etc.
18. In all instances, the means of enclosure for the smoking area, such as barriers or planters should be stable and sturdy, not contain protruding parts and have a tapping rail. Limited advertising may be permitted on the enclosures but will be restricted to the name of the café only. They must not be used to advertise services or products sold.

19. The licensee will be responsible for the cleanliness of the smoking enclosure area at all times. Care should also be taken to ensure that litter does not stray or get blown further afield.
20. All smoking areas must be provided with at least one metal (or other fire retardant material) ashtrays suitable for outdoor use, that is made from unperishable material. This must be emptied regularly and not overflow on to the highway.
21. The Litter (Fixed Penalty Notices) Order 1991 makes it an offence to throw cigarette ends on the floor, which could result in a fixed penalty notice of £100 for the smoker. Signs should be displayed stating this and asking people to use the ashtrays provided.
22. Failure to comply with the cleaning requirements will jeopardise renewal of the permit and may result in a Fixed Penalty Notice.
23. The Council will not permit any fixtures to or any excavation of any kind to the surface of the highway.
24. Every effort should be made to avoid causing damage to the highway or adjacent property. The cost of rectifying any damage to the highway surface or to street furniture caused by any activity connected with the operation of the smoking enclosure may be recharged to the licensee.
25. The licensee will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the highway under the permission granted.
The Council will, therefore, require the licensee to take out third party public liability insurance in the sum of at least £5,000,000.
Details of the third party liability insurance should be enclosed with the smoking enclosure permit application.
26. Granting a permit to operate a smoking enclosure does not imply an exclusive right to the area. The operator of the smoking enclosure should be aware that the Council reserves the right to gain access to the area for cleaning, repairing and maintaining the highway or street furniture. Other organisations, such as statutory undertakers, may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the permit temporarily if, for any reason, it becomes necessary.
27. Under the terms of the Highways Act 1980 the Council has to advertise applications for smoking enclosure permits for not less than 28 days by posting notices in the vicinity of the

proposed smoking enclosure. These notices set out details of the proposals and invite representations to be made by people who may be affected.

28. The fee for processing an application for a smoking enclosure permit covers the administrative and legal costs incurred in the preparation and issue of the permit. It is based on the area applied for.
29. Once your application has been processed and approved you will be contacted by a finance officer for payment for the permit. The Permit is not issued until full payment has been received. The Officer will send an e-copy of your permit showing exactly what the permit covers and the expiry date. Permits are granted for 12 months. The Expiry date will be stated on the permit. The permits are renewable at the discretion of the Council.
30. The Council will carry out periodic inspections to make sure that all the terms and conditions of the Permit are being adhered to. The Council may suspend or terminate a permit if any of the conditions of the permit are breached.
31. If it is considered that a criminal offence has been committed involving the holder of the permit and related to the permit under the Highways Act 1980 then the permit holder will be firstly offered a fixed penalty notice of £100 to remedy the situation on a civil basis. If the fixed penalty notice is not accepted or another offence is committed then the matter will be referred for a criminal prosecution.
32. If the operator of the smoking enclosure operates without a valid permit, then the means of enclosure may be removed and stored at a fee until either a permit is granted or the items are collected by the operator.

Please send your completed application form with your attached documents to:

NeighbourhoodServices-BusinessSupport@cardiff.gov.uk

**Cardiff Council
Neighbourhood Services,
Room 301, County Hall,
Atlantic Wharf,
CARDIFF
CF10 4UW**

Please advise this office should there be a change to an operating or administrative address.