



# Use of Council Open Space – Commercial Health and Fitness Providers Terms and Conditions

(A \$25 annual fee applies to all Bookings)

## 1. Introduction

The foreshore, parks and reserves are highly valued by the Frankston City community. Quality open spaces throughout the community encourage people to get out and take part in physical activity and lead a healthy and active lifestyle.

Frankston City Council (Council) supports opportunities for the community to participate in safe, supervised health and fitness activities that enhance physical and social wellbeing. Commercial health and fitness providers are increasingly recognising the attraction of conducting such activities in these pleasant outdoor environments.

Council has adopted regionally developed principles that will guide Council's management of the use of Council Open Space by commercial health and fitness groups. This system aims to manage these activities in a manner that balances industry needs, supports safe, physical wellbeing activities, provides protection of natural assets and maintains community access and amenity.

## 2. General principles

- Council supports managed commercial health and fitness groups using Council owned or managed reserves, with the primary consideration given to land management and conservation, community access and amenity.
- Council's Local Laws, via a permit, provides the authority, scope, usage objectives and enforcement to manage these activities.
- Formalised booking will be aligned with the current seasonal sportsground allocation processes.
- Applications will only be taken from trainers who have appropriate insurance cover.
- The terms of use will ensure that social, cultural and environmental impacts are minimised and that activities will only be in appropriate designated areas.

- Under the conditions of the Council permit
  - Numbers will be as per current COVID restrictions
  - Conduct must not be aggressive or intimidating
  - Noise cannot disturb the “quiet enjoyment” of other users or residents
  - Signage will not be permitted
  - There must be no damage or obstruction to any assets
  - Any equipment used must be portable by an individual by hand.
- Fees will balance the commercial nature of the activity with the community health benefits. The fee structure aims to recover direct costs to assist in the effective management of the use of public open space.

### **3. Scope**

These terms and conditions will apply to all commercial health and fitness providers who seek to use Council owned or managed reserves and foreshore for the provision of health and fitness training services for financial gain including, but not limited to:

- Personal training – personalised health, fitness and exercise instruction for individuals.
- Group class – supervised health, fitness, exercise and relaxation classes.

The terms of the permit will apply to all beaches, parks, reserves, foreshore areas that are owned or managed by Council as per the Frankston planning Scheme and Council Local Laws.

Council approved commercial health and fitness providers must only operate in accordance with the terms of the permit and Council Local Laws.

### **4. Exclusion zones**

No organised commercial fitness training or organised ball sports are permitted in the following areas or sites of; high pedestrian activity; cultural, social or environmental significance; or areas designated for children’s play or family amenity. Specific areas where these activities are prohibited include, but are not limited to the following:

- Playgrounds.
- Trees, garden beds and vegetation.
- Picnic and barbecue facilities.
- Park furniture, buildings and structures.
- Environmentally sensitive areas such as bushland, foreshore areas, including sand dunes.
- Socially or culturally sensitive areas, including memorials, shrines and public art works.
- Any designated sportsgrounds without a specific booking.
- Stairways within open spaces and public footpaths may be transited but not used for training activity.
- Any other areas that may be nominated by Council at any time.

- Any areas that may be temporarily closed by Council.

## **5. Permissible fitness activities under the policy (subject to Council approval)**

- Gym sessions (with or without hand weights, fitballs, skipping ropes etc)
- Boxing and pad training
- Organised exercise program for aerobic activity, running groups, stretch and relaxation
- Circuit training
- A combination of any of the above.

## **6. Excluded activities**

- Aggressive or intimidating activities
- Amplified music or use of amplified audio (voice) equipment
- Organised ball sports are restricted to designated sportsgrounds
- The offering for sale of clothing, merchandise, equipment, refreshments, goods, services or products
- The display of advertising signage including banners or 'A' Frame signs.
- The setting up of gymnasium type equipment (eg weight benches, weight stacks, stationary bikes, punching/ boxing bags, treadmills, steppers etc)

## **7. Eligibility**

The following criteria must be met to be eligible for a permit to provide commercial health and fitness training activities in Council owned or managed reserves. Evidence of the following must be provided at the time of application.

- Current public liability insurance which indemnifies Council to a minimum of \$10 million – (See clause 16 for insurance requirements)
- Current professional indemnity insurance which indemnifies Council to a minimum of \$5 million – (See clause 16 for insurance requirements)

## **8. Groups excluded from this policy**

The policy does not apply to the following groups engaging in not for profit health and fitness activities:

- Non commercial health and fitness training
- Non commercial walking groups
- Surf life saving clubs
- Commercial Water Sport groups
- Activities of local schools under the supervision of a teacher
- Activities of local sporting clubs and associations.

## **9. Nature and size of groups**

Council officers will determine the maximum number of persons permitted per group depending on the nature of the activity, equipment used and area requested. However, a permit will not be issued for groups that have more than **15** participants.

## **10. Allocation of permits**

A permit will authorise the named permit holder to use Council owned or managed reserves for health and fitness activities in accordance with these terms and conditions on a non-exclusive basis. The permit is valid for the stipulated season\*, location, session, maximum number of participants and activity type. Permits may be cancelled by Council if the terms of the permit are breached. If the permit is not reasonably utilised then Council may also cancel the permit.

## **11. Permit period - seasons\***

Winter season - 1 April to 30 September.

Summer season - 1 October to 31 March.

A permit is valid for one season only or on a pro-rata basis for that season.

## **12. Application assessment**

The assessment of applications will be based on the following:

- Usage demand, intensity of use of the area and times requested.
- Number and nature of existing permit holders in the area.
- Other activities (passive and active) being undertaken in the area.
- Special events that may be occurring in the area.
- Nature of activities to be undertaken and the potential impact on other users and neighbouring residents during the times requested.
- Whether the activities will contribute to increasing congestion or user conflict in the area requested.
- Past connection of permit holder to the area requested.
- Management of the natural and built assets to preserve and protect the environment.
- Compliance history with permit/s of the applicant within Frankston or other municipalities.

In considering the above, Council officers may decide to:

- a. approve the application and issue a permit
- b. issue a limited permit with restrictions on the number and types of activities, group size and the time and location of activities
- c. not approve a permit.

Permits will only be issued in the name of the applicant and/or business and are not transferable. All trainers must be insured and eligible to operate under the permit in accordance with the eligibility conditions – refer to section 7.

**13. Identification requirements**

Each approved commercial fitness operator will be issued a permit in the name of the applicant (person or business name) that will detail the terms of the permit, such as maximum number of participants, activity type, location and times of session. This must be available to be shown to authorised Council officers on request.

**14. Permit fees**

Fees will be charged in accordance with Council’s fees and charges, and invoiced prior to commencement of activities. Fees are payable within one month of the commencement date of the permit. Council may cancel a permit if payment has not been received by the due date.

<b>Fee Categories:</b> Rates according to Council current fees and charges.	
Personal Training (one to one)	No charge per usage
Group (2-15 participants)	\$25 Annual Administration Fee

**15. General permit conditions**

Each commercial fitness and health trainer approved by Frankston City Council and issued a permit:

1. Must only provide the activities for which they are suitably qualified and that have been approved by Council.
2. Must only operate in the areas and at the times specified by Council in the permit.
3. Must manage the activities to minimise wear and tear on grassed areas (this includes rotating within the designated area and / or alternating activities).
4. Must comply with reasonable directions of Council's Local Laws officers and other authorised Council officers in relation to any unacceptable practices.
5. Must produce evidence of the permit when requested by a Council officer.
6. Shall prior to commencing static / grid training, inspect the immediate area to ensure no hazards are evident and take appropriate action to remove those hazards or alternatively move the training site and, without undue delay, report to Council the hazard or any other hazardous matters observed during the training that may require Council’s attention.
7. Shall not assign their rights under this permit or attempt in any other manner to transfer their rights under the permit to any other person or business, it being clearly understood that the permit is issued to a particular person and/ or business is not transferable.
8. When conducting training on Council reserves shall always conduct themselves in a proper and orderly manner and be considerate to other reserve users and adjacent residents.

9. Shall conduct their activities so not to dominate, monopolise and / or obstruct any stairways or pathways.
  10. Must not create any noise from training activities that unreasonably disturb other users and adjacent residents.
  11. Shall not suspend boxing or kickboxing bags from trees and / or structures in the public reserves.
  12. Shall ensure that any exercise equipment used does not create any hazards or obstruction.
  13. Must ensure that any training group for which they are responsible, runs in single file when running in narrow areas.
  14. Shall ensure that their clients do not step on or walk on or in any other way inappropriately use park furniture, structures, shrines, memorials, or public art works.
  15. Shall leave the training area in the same condition it was at the commencement of training.
  16. Is only authorised to provide the training sessions specified in their permit and must not sell clothing or equipment or refreshments or any other good, service or product.
  17. Must not display any advertising signage including banners or 'A' frame signs.
  18. Must not interfere with any Council approved or booked activity including but not limited to a wedding, birthday party, function, special event, sport or sporting activity that is being carried out on any Council owned or managed reserve, including the foreshore.
  19. Shall be responsible for satisfying all occupational health and safety legislation and regulations.
  20. Shall be liable for any other fees or levies required by any other public authority or statutory body.
  21. Shall not conduct activities on any areas that Council has withdrawn from use.
  22. Shall ensure that all promotional material is presented in a professional manner and does not contain any material likely to cause offence or embarrassment to any person or Council.
  23. Shall make good any damage to Council assets that have occurred as result of the activities of the trainer and will be liable for all costs incurred by Council.
- Council does not, and will not, accept liability for any activities associated with the permit holder and Council shall not be in any way responsible for any property of the permit holder or any other person associated with the activities of the permit holder.

## **16. Insurance requirements**

### **• Public Liability Insurance**

The permit holder shall at all times during the agreed term, be the holder of a current Public Liability Policy of insurance ("The Public Liability Policy") in respect of the activities specified herein in the name of the permit holder providing coverage for a minimum sum of \$10 million. The Public Liability Policy shall be effected with an insurer approved by Council.

The Public Liability Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by the Council and shall extend to cover the Council in respect to claims for personal injury or property damage arising out of the negligence of the permit holder.

- **Professional Indemnity Insurance**

The permit holder shall, at all times during the agreed term, be the holder of a current Professional Indemnity Policy of Insurance (“the Professional Indemnity Policy”) in respect of the activities specified herein in the name of the applicant providing coverage for a minimum of \$5 million. The Professional Indemnity Policy shall be effected with an insurer approved by the Council.

The Professional Indemnity Policy shall cover such risks and be subject only to such conditions and exclusions as are approved by the permit holder.

## **17. Council’s indemnity**

The permit holder agrees to indemnify and to keep indemnified, the Council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, in connection with the permit holder’s performance or purported performance of its obligations under this application and be directly related to the negligent acts, errors or omission of the applicant.

The permit holder’s liability to indemnify the Council shall be reduced proportionally to the extent that any act or omission of the Council, its servants or agents, contributed to the loss or liability.

## **18. Termination, breaches and appeal process**

Council reserves the right to cancel the permit without further notice if in its sole opinion it has determined that the permit holder has failed to comply with the reasonable direction of an authorised Council officer; or has breached the terms of the permit or the terms and conditions for the use of “Council Open Space – Commercial Health and Fitness Providers”; or conditions contained within the application form; or has any overdue payments or outstanding debts to Council.

Should Council receive a high level or serious complaints about a particular group/trainer or site; Council reserves the right to restrict or cancel the permit. Council will advise the trainer in writing of the nature of the breach, the conditions of the restriction or cancellation of the permit and effective date.

If a trainer does not apply for a permit, the trainer will be advised on the first occasion to cease activities and to apply for a permit. On any subsequent occasions the trainer will be asked to cease activities immediately and may be issued with a penalty notice in accordance with the Local Laws. A permit holder whose permit has been cancelled can appeal in writing to the Chief Executive Officer, Frankston City Council. The Chief Executive Officer, or a delegated officer, will have final determination on the appeal.