

## Outdoor Dining

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### PURPOSE

Our Mediterranean climate combined with our rich cultural diversity and access to high quality local produce and wine, is leading to increased demand for outdoor dining across Adelaide.

Outdoor dining is a popular pastime and adds to the area by creating vibrant and dynamic street frontages. Well planned and maintained outdoor dining areas add to the amenity of the City and urban life generally and will be facilitated in appropriate locations throughout the City.

Guidelines and conditions for approval are required in order to:

- maximise the benefits to traders, residents and visitors,
- ensure maximum safety and convenience for patrons, pedestrians and occupants of vehicles,
- ensure all legislated requirements are met,
- assess outdoor dining applications and issue permits as necessary.

Outdoor dining will only be approved if the public area is being used primarily for the purpose of selling and serving food, with or without alcoholic beverages.

### BACKGROUND

Council has a vested interest in outdoor dining as:

- a land owner (of road reserve), administering the Local Government Act 1999,
- as the development assessment authority, administering the Development Act 1993,
- as the responsible body administering a number of other Acts which impact on outdoor dining.

#### **Local Government Act 1999**

Under Sections 221 and 222 of the Local Government Act 1999, Council is required to authorise the use of road reserve (including footpaths) for business purposes.

#### **Development Act 1993**

An outdoor dining area in some instances (particularly if located on a footpath area) will require a Development Approval (both provisional Development Plan consent and/or provisional building rules consent) under the Development Act 1993.

The application could involve change of land use, and the erection of fixtures could constitute building work for the purpose of the Act and would therefore require Council approval.

#### **Other legislation**

*Disability Discrimination Act 1992* - in matters relating to access to premises, goods services and facilities, and advertisements.

*Food Act 2001* - regarding compliance with the provisions of the Food Safety Standards by businesses involved in the sale of food.

*Public and Environmental Health Act 1987* - regarding the responsibility of Council to promote proper standards of public and environmental health and to have appropriate measures in place.

## **POLICY STATEMENT**

This policy governs the following aspects of outdoor dining:

1. Location
2. Urban design
3. Operator management
4. Council administration

### **1. Location**

In determining whether a location is appropriate for outdoor dining, the important considerations are access, circulation, safety and the relationship between the outdoor dining area and associated food preparation area.

#### *1.1 Outdoor dining on public footpath areas*

Outdoor dining is appropriate on footpath areas as long as they are of sufficient width to enable the location of tables and chairs and such other fixtures and fittings as may be agreed, without compromising pedestrian access or the safe and convenient movement of vehicles.

Outdoor dining on the footpath should be associated with an approved restaurant, café or other premises providing meals and may extend beyond the boundaries of that facility only with the express consent of the adjoining property owner.

#### *1.2 Pedestrian access*

The location of furniture along the footpath area must maintain adequate access for pedestrians, including mobility impaired persons and people with prams. The width of footpath required for pedestrian access may vary depending on the volume of pedestrian traffic.

#### *1.3 Diner safety*

Outdoor dining areas must provide for diner safety.

For outdoor dining to be considered, a suitable crash barrier system is required. There will need to be sufficient room for the crash barrier and any partial enclosure structures if required. (Refer to 2.2 of this policy)

#### *1.4 Traffic safety*

The location of outdoor dining areas must give due consideration to adjacent road conditions and must not impact on traffic safety and vehicular sightlines.

Outdoor dining areas located at intersections should be set back from the corner at least to the property line in order to maintain motorists' sightlines.

### 1.5 *Car Parking*

Where development approval is required pursuant to the Development Act 1993, car parking requirements will be calculated at a rate either stipulated in the relevant Development Plan or as deemed appropriate based on conventional car parking rate standards. The seasonality of the facility will also be taken into consideration.

### 1.6 *Local Area Management Plans*

Specific management plans which may exist for a suburb or precinct within the City will take precedence in determining the location of an outdoor dining area.

## 2. **Urban Design**

Outdoor dining can effectively complement and enhance the existing streetscape character of a precinct. However, it is important that the design, layout, furniture and accessories are therefore in keeping with the key character elements of the precinct.

### 2.1 *Partial Enclosure*

Partial enclosure of an outdoor dining area may be desirable for a number of reasons:

- Protection from the elements which can result in the extension of the season for the profitable operation of the outdoor dining area,
- Protection from excessive traffic noise,
- The provision of an environment where people who smoke can do so whilst dining out in public,
- The definition of the outdoor dining area which can assist with the management of patrons.

Partial enclosure can take a variety of forms such as fixed and temporary screens, blinds, bollards and planter boxes. In order that partial enclosures do not obstruct pedestrians or interfere with motorists' sightlines, the following criteria apply:

- No more than two sides to be enclosed in order to maintain accessibility and openness,
- Any structure positioned perpendicular to the kerb must enable an area of free and unrestricted access to the public,
- Enclosure structures must not obscure visibility for road or footpath users,
- Enclosure structures to be positioned no closer than 600mm from a crash protection barrier,

- Enclosure structures must not be used for general advertising purposes,
- Enclosure structures must be structurally sound and fixed in such a way as to not cause injury,
- Enclosure structures should be cleaned weekly and maintained in a good condition at all times,
- The maximum horizontal length of each screen or blind should not exceed 5m, with a maximum of three such structures permitted per operator, per street frontage,
- Where enclosure structures are greater than 500mm in height, appropriate setbacks are required to maintain sightlines for motorists,
- Enclosure structures will not be permitted if they require the relocation of street furniture or street trees,
- Enclosure structures will be at the cost of the operator,
- Notwithstanding the guidelines which may apply in heritage areas, transparent panels should have a solid edging in a primary colour and a horizontal 100mm solid line at the midway point to maximise visibility for sight impaired persons,
- Materials used should not generate an unreasonable level of glare for motorists.

#### Screens (additional information)

- to be a maximum of 1.5m in height,
- must not obscure visibility with screens greater than 900mm in height to be constructed of a durable and transparent safety material.

#### Blinds (additional information)

- to be constructed of a transparent and durable material,
- must be affixed to the underside of the canopy and must be rolled up when not in use,
- should not be used with canopies or verandahs above 4m in height,
- should not be used outside the months of April – September inclusive unless there are extremely adverse weather conditions.

## 2.2 Protection Barriers

- Approved crash tested protection barriers must be installed to protect patrons, and must be positioned a minimum of 300mm from the kerb, and with gaps between them not exceeding 1200mm,
- Protection barrier casings must complement the streetscape in terms of design and colour,
- Notwithstanding the guidelines that may apply in heritage areas, protection barriers should be painted in a contrasting colour to buildings and the footpath to maximise visibility for the sight impaired,
- The operator is responsible for the provision and installation of protection barriers.

### 2.3 Furniture

Street furniture needs to be durable and easily maintained. If the furniture is not fixed, it should be removed at the close of business each day. The following minimum areas are required:

- 2 person table and chairs -- 2m<sup>2</sup>
- 3 person table and chairs -- 3.5m<sup>2</sup>
- 4 person table and chairs -- 4m<sup>2</sup>

### 2.4 Other Accessories

- Additional features of outdoor dining could include planter boxes, heaters and umbrellas,
- Planter boxes are not to be used in place of protection barriers and should not be placed in such a way as to obstruct pedestrians,
- Umbrellas are permitted when there is no verandah or other canopy or where these structures are above 4m in height,
- Umbrellas must have a minimum clearance of 2m above the footpath level, and must be removed from the footpath area when not in use,
- Umbrellas must be secured against the effects of the wind, and must be closed or removed during extremely windy conditions,
- Heating and cooling units may be installed with the permission of the Council. Such units should be specifically designed for outdoor operation and must not be able to be operated by patrons,
- Heating and cooling units must be serviced and maintained regularly,
- Where outdoor dining applies outside daylight hours, adequate lighting must be provided, but in such a way as to not impact adversely on neighbouring properties,
- Chasing and/or flashing lights will not be permitted,
- Advertising signage will only be permitted in accordance with the requirements of the Development Act 1993 and Council's By-law – Moveable Signs.

NOTE: the establishment of accessories is at the expense of the operator and must not result in the need to relocate any existing street furniture, fixtures/services or street trees.

## 3. Operator Management

The operator of the outdoor dining area is required to manage the area to Council's satisfaction.

### 3.1 Identification of Outdoor Dining Area

The operator is required to display the required permit in a prominent location, indicating the approved outdoor dining area and showing approved seat numbers.

### 3.2 *Cleanliness*

- It is the responsibility of the operator to keep the area clean at all times, including steam cleaning of the area,
- Food and beverage spills are to be cleaned up regularly and disposed of correctly,
- Waste is not to be discharged into the stormwater system.

### 3.3 *Table Service*

- Staff of the operator are responsible for cleaning tables and ensuring waste is disposed of appropriately,
- Meals are to be prepared in the building and not within the outdoor dining area,
- Tables should not be preset with cutlery, glasses or unprotected food.

### 3.4 *Dogs*

Outdoor dining areas are places where there is the potential for dog owners to combine dog walking with socialising at the local café. While it is up to operators to determine if dogs will be allowed, the following conditions will apply:

- Dogs must be under effective control at all times and must not be a nuisance to other patrons or pedestrians,
- Dogs must not be fed from the table, although water may be provided.

### 3.5 *Smoking*

No more than 70% of the outdoor dining area can be enclosed (to comply with provisions of the Tobacco Products Regulation Act 1997, as of October 2007).

Where smoking is allowed in the outdoor dining area, the following conditions apply:

- Ashtrays must be provided, emptied and replaced on a regular basis,
- The outdoor dining area and footpath must not be allowed to be littered with cigarette butts.

### 3.6 *Damage to property*

Any damage to property by patrons is the responsibility of the operator, with all restitution at the cost of the operator.

### 3.7 *Amplified music*

Amplified music or live entertainment is not permitted without Council approval.

### 3.8 *Toilets*

Toilets might only become an issue if there is a change in use from a shop to a restaurant, and there are a significant number of tables and chairs proposed.

## 4. **Council Administration**

### 4.1 *Permits*

- Applicants will need to complete an application form, including a site plan drawn to appropriate scale showing the actual area proposed for use and the siting of furniture and other structures,
- If approved, a permit will be issued which must be clearly displayed on the premises,
- All permits are for one year, with an expiry date of 30 June,
- Operators are required to comply with all conditions of approval and the permit,
- Authorised Officers of the Council will monitor outdoor dining areas and operators are required to comply with any direction provided by the Officer,
- Repeated breaches will result in the cancellation of the authorisation without refund.

### 4.2 *Fees*

An annual permit fee applies, based on the number of tables and chairs in the outdoor dining area, as indicated in Council's list of fees and charges and the Application Form.

### 4.3 *Public liability*

Operators are required to hold public liability insurance to a minimum value of \$10,000,000, which specifically indemnifies the City of Mitcham (as a 'specified person') for the purpose of Section 48(1) of the Insurance Contents Act 1984.

The contents of this policy should be read and applied in conjunction with the Outdoor Dining Guidelines.

The Chief Executive Officer has delegated authority to sign any Outdoor Dining Agreement. The Principal Member is a co-signatory to any Agreement.

Where an outdoor dining application is contrary to a local area management plan, the application must be put to Council for a decision.

## **POLICY REVIEW**

This Policy will be subject to review every four (4) years or sooner at the discretion of the relevant General Manager.

The CEO has delegated authority to endorse any amendments to the Policy that do not vary the intent of the policy.

**RESPONSIBLE POSITION/DEPARTMENT**

Manager Development Assessment

**ADDITIONAL CROSS REFERENCES**

Delegations Manual, Outdoor Dining Guidelines, Outdoor Dining Application Form

**RELATIONSHIP TO STRATEGIC PLAN**

(cross reference to relevant section of Strategic Plan where relevant)

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**COMMITTEE:** 13 December 2005, Corporate & Community Services

**ADOPTED BY COUNCIL:** 20 December 2005

**UPDATED:** 9 May 2006, Corporate & Community Services

**VERSION HISTORY**

<b>VERSION</b>	<b>AUTHOR(S) POSITION</b>	<b>CHANGES</b>	<b>DATE</b>
1	Manager Development Assessment	New Policy	20 December 2005
2	Governance Officer	Refer to Full Council Resolution 12 November 2019 Item 9.4	12 November 2019