

Outdoor Dining in Public Places Policy 2023

1. Introduction

Outdoor dining can bring life, interest and colour to the public places of Ōtautahi Christchurch and can make a valuable contribution to the city's vitality, culture and economy.

Under the Public Places Bylaw 2018, any commercial outdoor dining activity requires approval because it is 'trading in a public place' and because the tables and chairs are deemed 'obstructions of a public place'. This policy sits alongside the Trading and Events in Public Places Policy 2018, which provides Council's policy for other forms of trading in public places such as temporary retail stalls and food-trucks.

The Council website has information on how to apply for an outdoor dining licence, guidance for applicants and licensees covering the design and operation of outdoor dining areas and sets out the conditions that are generally applied to outdoor dining licences. While most licenced outdoor dining areas are located on the footpaths of public roads, outdoor dining may also be permitted in a park, provided the outdoor dining is consistent with the purpose of the park.

2. Purpose

This policy provides the framework for the management of outdoor dining activities in Council-controlled public places. It seeks to balance the competing demands for public spaces; to allow commercial outdoor dining activities in appropriate locations while ensuring:

- 1) footpaths are accessible for all; and
- 2) the amenities of the central city, suburban centres and rural townships are maintained and enhanced.

3. Policy Scope

- 3.1 The policy details the criteria for approving outdoor dining in Council controlled public places including conditions applicable to outdoor dining licences. It does not cover other Council approvals which may be required, such as an alcohol licence, building consent or approval for a structure on the road.
- 3.2 The Council has developed Outdoor Dining Guidance (to be attached/ linked) to assist owners of hospitality businesses wanting to apply for outdoor dining licences. The guidance outlines the appropriate design and operation of outdoor dining areas and sets out the standard conditions that are generally attached to licences.

4. Definitions

4.1 For the purpose of interpreting this policy, the following terms are defined:

TERM	DEFINITION
Council	means the Christchurch City Council
Outdoor dining	means the use of an area of a public open space, such as an area of road or park, for café and restaurant activities.
Outdoor dining licence (licence)	<p>means an approval of the Council which permits the licensee to occupy a defined area of public open space, to locate dining furniture in that area, and to serve customers. Every outdoor dining licence is subject to terms and conditions specific to that licence.</p> <p>Explanatory note: <i>An outdoor dining licence is personal to the named licensee and the licensee has the right to restrict the use of their furniture to customers. However a licence does not grant exclusive use of an area or create a property right and the general public have the right to pass through an outdoor dining area at any time except where other restrictions apply, e.g., under the Sale and Supply of Alcohol Act 2012.</i></p>
Outdoor dining structure	<p>includes any enclosure, furniture, canopy, barrier or outdoor dining equipment which is fixed to the surface of the road or which covers the road surface e.g. a platform over the road.</p> <p>Explanatory note: <i>All structures on roads require the approval of the Council and the Council's Structures on Roads Policy 2020 applies. In some locations where the footpath is too narrow for outdoor dining, the construction of an outdoor dining 'parklet' may be an option; a 'parklet' is a platform built over part of the road corridor, normally over a former parking space.</i></p>
Park	has the same meaning as park or reserve in Council's Parks and Reserves Bylaw 2016 and includes any reserve, domain, foreshore, open space or greenspace area.
Pedestrian	means any person on foot or who is using a powered wheelchair or mobility scooter or a wheeled means of conveyance propelled by human power, other than a cycle.
Road	means all land within the public road reserve including footpaths, walkways and shared zones.

4.2 This policy contains explanatory notes which are not part of the policy and may be updated, amended or deleted as required. They are used for a number of reasons, including to provide additional helpful information, or because the information may be subject to change and needs to be updated before the policy has to be updated.

5. Objectives

5.1 The objectives of the policy are to:

- Enable the use of footpaths and other public places for outdoor dining where appropriate;
- Protect and enhance the amenity of the city centre, suburban areas and rural townships;
- Maintain pedestrian priority, by ensuring safe, adequate and predictable pathways along footpaths suitable for all pedestrians, including wheelchair and mobility scooter users;
- Ensure that outdoor dining activities are carried out in a manner which is consistent with the Council's bylaws, strategies, policies and plans;

Explanatory note: *Particular regard will be given to the Smokefree and Vapefree Public Places Policy and the Equity and Access for People with Disabilities Policy.*

- Ensure that any outdoor dining within a park complies with the Act that the land is held under e.g. the Reserves Act 1977 and is consistent with any relevant management plan.
- Generally describe the Council’s approval process for outdoor dining licences, and for the monitoring and review of licences; and,
- Ensure that any fees and charges for outdoor dining licences cover the costs of administration and include an appropriate amount (rental) for the commercial use of public land.

6. Application for an outdoor dining licence.

6.1 All businesses or individuals intending to engage in outdoor dining must first obtain Council approval in the form of a licence.

6.2 Applications for a licence must be made in the form required, and be accompanied by the relevant fee (if any). If further information or modifications to the application are required, Council officers will discuss this with the applicant.

Explanatory note: *New applications must include the following information:*

- *Photos or plans of the locality showing existing street furniture, street trees, fire exits, proximity to bus stops, intersections, etc.;*
- *A plan showing the dimensions, layout and elements (furniture, barriers, signage, etc.) of the outdoor dining area and the adjoining clear pathway for pedestrians;*
- *Details (e.g. brochures or photos) of the design, colour, finish and materials of the proposed furniture, signage, plant containers/pots, screens and other accessory objects; and*
- *Information on the proposed type of activity including hours of operation, and whether other approvals are required, e.g. an alcohol licence.*

6.3 The Council will assess each application on a case-by case basis.

6.3.1 Particular regard will be given to ensuring that:

- An accessible pathway is provided for pedestrians of all ages and abilities on any footpath adjoining an outdoor dining area.
- The dining area itself is accessible for pedestrians of all ages and abilities.
- The design and operation of an outdoor dining area (including its layout, type, quality and colour of furniture, fittings etc.) is appropriate to the locality.

6.4 The Council will notify the applicant in writing of its decision on the application. Should the Council decline an application, the reasons for refusal will be provided in writing.

6.5 An approval under this policy gives the applicant the right to operate an outdoor dining area in accordance with this policy, in the specified area, and subject to compliance with the agreed terms and conditions of their licence.

Explanatory note: *A licence to occupy an area and undertake outdoor dining is not an approval for a structure on the road or for the purposes of food hygiene, sale of alcohol, building, resource consent, traffic management, or any other regulatory function of the Council.*

6.6 Key requirements applicable to outdoor dining licences:

6.6.1 Every outdoor dining area on legal road shall provide an adequate pedestrian pathway aligned with the Waka Kotahi guidance and with Council’s Streets and Spaces Design Guide.

Explanatory note: *The recommended clear pathway widths can be found in the Outdoor Dining Guidance [to be attached]. The required width of clear pathway alongside any outdoor dining area will vary depending on the location of the outdoor dining area and the type of road. Council requires a minimum width of 3 metres for pathways on main roads and 2.4 metres in areas of the Central City. For most other locations the Council will require a minimum width of at least 2 metres.*

- 6.6.2 Every outdoor dining area and its surroundings shall be kept clean, tidy and clear of litter and waste. Waste or litter generated by the outdoor dining area is not to be deposited in the Council provided street litter or recycling bins.

Explanatory note: *All licences include a condition for the management of waste generated by the outdoor dining activity. In addition, a licence may include specific requirements to manage waste in accordance with a waste management plan approved by the Council.*

- 6.6.3 Every licensee of an outdoor dining area is encouraged to display smoke-free and vape-free signage. Ashtrays or other receptacles for smoking or vaping litter are discouraged in an outdoor dining area.

Explanatory note: *The Council supports the national ‘Smokefree Aotearoa Action Plan 2025’ and has adopted the Smokefree and Vapefree Public Places Policy which identifies “licenced footpaths for outdoor dining” as key areas of Council land to make ‘smoke and vape free’.*

- 6.6.4 The term of a licence can be up to three years.

Explanatory note: *Each application is assessed individually and Council may decide that a shorter term e.g. one year, is appropriate. At Council’s discretion, Council may allow a licence to be renewed (a simple online process) on the same terms and conditions as the previous licence. Situations in which the Council may decide not to renew a license or to require a licensee to complete a new application for approval include:*

- *To address problems associated the outdoor dining area or its operation e.g. non –compliance with this policy and/or with conditions of a previous licence;*
- *To address changes to the outdoor dining area or its operation (e.g. different furniture, size of area, layout or hours of operation); and*
- *Where there are proposed changes or upgrades to the road corridor.*

- 6.7 This policy supersedes any approval previously given by the Council and holders of an existing outdoor dining licence must apply for a new approval in accordance with this policy. Any current approval with an expiry date may continue until the expiry date.

Explanatory note: *The Council proposes to review each of the existing outdoor dining licences and to work with licensees to replace current licences with new licences which comply with this policy. This is likely to be a progressive process, for example to replace current licences without an expiry date with fixed term licences (generally a three year term).*

7. Fees

- 7.1 Fees and charges will be set in alignment with the Council’s Revenue and Financing Policy. They are reviewed annually to cover:

- Administrative costs for the assessment and processing of applications;
- Monitoring and enforcement;
- Rental for the occupancy of public space assessed by the value of the location;

- The cost of any additional Council services required due to the operation of the outdoor dining area e.g. the cost to collect waste /litter generated by an outdoor dining area.

Explanatory note: At the time of the publication of this policy, the Council charges one annual fee which covers both the Council's administrative costs for operating a licensing system and an amount (rental) for occupation of public space. The fee is set at a level that reflects the value of the location and ensures that businesses on private property are not unfairly disadvantaged.

8. Monitoring and Compliance

- 8.1 Licence holders are responsible for managing activities in accordance with this policy, the terms and conditions of their licence, guidelines and legislation.
- 8.2 The Council will monitor outdoor dining activities in public places to ensure that activities are being operated in compliance with this policy and the licence terms and conditions, and that no unauthorised trading is occurring in public places.
- 8.3 Safety considerations remain paramount, and officers retain the option of requiring immediate action in the event of an outdoor dining activity creating a risk to public safety.
- 8.4 Where a licensee does not comply with the terms and conditions of their licence the Council may take one or more of the following steps:
- Verbally notify the licensee of the issue;
 - Issue a written warning and required remedy; or
 - Review or revoke the licence and take any other steps to prevent the outdoor dining activity in a public place.
 - Require immediate removal of the licensee's furniture and other equipment.
 - If the infringement persists, the Council reserves the right to confiscate the equipment.

Explanatory note: The Council will give the licensee at least one month's notice of its intention to review or to revoke the licence. The confiscation of equipment is pursuant to sections 163 and 164 of the Local Government Act 2002. The Council may dispose of confiscated property pursuant to section 168 of the Local Government Act 2002. Reasonable costs incurred as a result of enforcement may be recovered from the person responsible for the non-compliance.

- 8.5 Any person who operates an outdoor dining activity without a licence will be asked to remove their equipment and cease the activity. The Council may issue a written warning and/or invite an application for an approval.

Explanatory note: Where a person fails to remove their furniture and continues to operate an outdoor dining activity without approval, the Council reserves the right to take action under the Local Government Act or other legislation, including the actions outlined above in 8.4 (e).

9. References and related documents

Document	Link
Guidance for applicants and licensees	TBC

Public Places Bylaw 2018	https://www.ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/bylaws/public-places-bylaw-2018/
Trading and Events in Public Places Policy	https://www.ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/policies/licensing-and-commercial-activities-policies/trading-and-events-in-public-places-policy-2018/

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