



**Outdoor Dining Policy  
Consultation Draft  
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## 1. Purpose of the Policy

Street dining plays an important role in the vitality and activity of public spaces.

Although encouraging street dining and trading, Council has a responsibility to ensure the general public are not put at risk or hindered in movement. Maintaining clear, accessible freedom of movement is important in the design and placement of any outdoor dining arrangements.

This policy applies to the business who use the footpath and/or streets in the City of Maribyrnong for outdoor dining and trading, this includes:

- All hospitality and traders based in Maribyrnong who are eligible to apply. The exceptions are stand-alone bottle shops, tobacco shops, venues with an electronic gaming machine or other gambling components
- Community not for profit organisations or businesses outside of hospitality can apply to Council separately on an as-needs basis and these will be assessed on their merits for decision
- Council Officers who are assessing applications for permits.

## 2. Definitions: Parklet and Street furniture

The City of Maribyrnong has been proactive in the temporary Parklet Program with overwhelming support to maintain it in some form of permanency. In order to do this, there needs to be clear understanding of the design, placement, use and appropriateness of parklets as not all environments are suited to them.

Whilst parklets will not always be appropriate or suitable, street furniture will in most occasions be a suitable alternative. To assist businesses in this evaluation, simple definitions have been created

**Parklet** - A parklet is a micro public open space created by placing a temporary structure in one or two parking bays or within a closed road environment. They are an extension of the footpath that provide protected seating, shade and amenity for the occupants while partaking in a meal or refreshments.

**Community Parklet** – Council owned parklet used by the general community without the expectation of having purchased anything.

**Street furniture** – Street furniture is commonly described as tables and chairs placed on the footpath or nature strip directly outside a business whilst ensuring clear passage for pedestrians and accessibility to parked vehicles. In this document, street furniture also includes items such as “A” frames, heaters, windbreakers, planter boxes and goods for sale etc.

## 3. Safety Principles in general

In order to maintain a safe environment for the general public, safety principles have been developed to ensure a structured standard is maintained.

**Safety and Amenity** - Street dining should be designed to create an attractive, comfortable and pleasant environment and should not negatively impact on the safety of public amenity. The outdoor dining space should be non-invasive and respectful of city amenity. Safety features, well-designed and maintained furniture associated infrastructure is essential.

**Access** - Ensuring ease of access for people of all ages and abilities is a fundamental principal of design and delivery. Outdoor dining areas should ensure usability and inclusion of people of all ages and abilities, including compliance with disability legislation and standards.

**Placement and Design** - A well designed and placed outdoor dining space is essential to ensure people enjoy the experience in a safe environment. Street dining should be integrated to ensure it does not negatively impact on street use, building entrances, emergency access and in particular, traffic flow or placed in a location which may impede people with disability.

**Vehicular Access** - The establishment of outdoor dining must not compromise essential or emergency vehicle access or obstruct loading, construction zones and entrances to private buildings and carparks.

**Smoking** - All outdoor dining areas are now smoke-free meaning that smoking is banned in outdoor dining areas throughout Victoria. Whilst smoking can occur at venues where they only provide snacks, they must have a 4 metre buffer zone between them and any other outdoor dining area.

#### **4. Decision making**

Where applications meet all the Guidelines, the Council will normally grant a permit.

In special circumstances exist, the application will be referred to the appropriate business unit for further consideration. The business unit will provide its recommendation to an authorised officer who will approve or refuse the permit application.

The business unit will assess all applications using these guidelines, but where a situation arises that is not covered by these guidelines, an application will be assessed for safety and appropriateness and may be granted on a case by case assessment.

#### **5. Footpath zones**

To simplify the use of footpaths, they are broken into three zones being –

- Pedestrian zones
- Trading zones
- Kerb zones

Existing trees, artwork, street furniture, public infrastructure and the width of the footpath, may prohibit or limit footpath trading activity.

##### **5.1 Pedestrian Zone**

The pedestrian zone is an unobstructed pedestrian footpath corridor not less than 1.5 metres in width and measured between the property line and nearest object such as table or chairs within the trading zone

To ensure a continuous and accessible path of travel, no furniture, signage or displays of goods are permitted within the pedestrian zone at any time.

##### **5.2 Trading Zone**

The trading zone is the space between the pedestrian zone and the kerb zone.

This area will vary in space dependent on the size of the footpath and the distance of the kerb zone which is typically 600mm wide and measured from the edge of the roadway guttering.

All items such as table's chairs, goods on display and signage must be contained within this zone at all times and a minimum of 1 metre between each adjoining trading zones.

To ensure adequate access between the road and the pedestrian zone, a 1.5 metre space must be provided at the centre of trading zones where the distance exceeds 10 metres in length.

### 5.3 Kerb Zone

The kerb zone is the area between the gutter and the trading zone with a minimum 600mm clearance for parked vehicles allowing passengers to alight without obstruction. This area may be reduced upon application and assessment.

## 6. Adjacent premises

Tables and chairs and goods/services are permitted only outside the premises to which they relate and must be contained within the property line with the required set back, unless permission from the adjacent proprietor is obtained.

No proprietor is permitted to rent public space to an adjoining business making a request for use of adjacent space.

Operators may request an extension of their trade zone to adjacent businesses. Written permission from the adjacent business is required and must be submitted with the application but final review and approval will sit with Council.

If approved, the agreement from the adjacent business must be renewed each year and submitted to Council with any renewal of permits.

The approval to operate on the adjacent property will be revoked upon closure, change of ownership or management of the adjacent business or if the proprietor of the adjacent business or Council revokes such permission.

## 7. Permits required

To simplify the process of creating outdoor dining spaces, three permit types are available to meet the needs of businesses within this policy.

**Street furniture permit** – Involving the extension of trade to the footpath outside the business requiring assessment by Local Laws prior to approval

**Parklets permit**- Involving occupancy of on street parking spaces requiring consultation with businesses and on most occasions traffic engineering design and approval.

**Laneway/street dining permit** - Involving occupancy of roadway within a closed road/laneway area.

### 7.1 Transfer of ownership

A permit is issued to the operator of a business at a specific premises and is not transferable on the sale or transfer of ownership of the business. There is no legal attachment of the permit to the sale or transfer of ownership of a business.

A new proprietor may apply for an outdoor dining permit and maintain the current status and set up of the previous permit until the application is processed and approved. For this to occur, the new proprietor must make application for a new permit within 28 days of acquisition of the business so that the outdoor dining option remains valid.

The application will require assessment and approval prior to issue to ensure the conditions are met or any modifications to the outdoor dining set up comply with the permit applied for.

### 7.2 Revoking, suspending, or amending an outdoor dining approval

Where Council needs to revoke, suspend, or amend an approval for outdoor dining the approval holder will be given notice of Council's intention and will be given an opportunity to make representations to Council

Applicants should be aware that Council will revoke, suspend or amend an approval for

outdoor dining if:

- the conditions of the approval are breached;
- the use of the road or footway area for outdoor dining is causing public safety or public access to be compromised;
- the road or footway area is needed for public works;
- the road or footway area is needed for a special event;
- the road or footway area is needed to manage an increase in pedestrians;
- the approval is based on the temporary amendments to these guidelines that support business recovery from Covid-19 and those temporary amendments are not extended.

### 7.3 Display of permit registration

Permit holders must display the current permit registration sticker clearly and legibly on the shop-front window

### 7.4 Land occupation

No area of Council land is to be occupied by way of placement of street furniture, parklets or equipment in preparation of land occupation until such time as the applicable permit is paid and issued to the applicant.

## 8. Fee structure

### 8.1 Permit fees for dining

There are four fee types applicable to permits which will be either charged annually or on a six monthly basis. A one off application fee is applicable for unusual or non-standard application requests.

Name of permit or application type	Fee and unit of measurement
<b>Outdoor dining fee:</b> applicable to footpaths and nature strips	<b>\$180.00</b> Per table and 4 chairs up to 1 metre square per annum
<b>Outdoor dining fee:</b> applicable to footpaths and nature strips	<b>\$300.00</b> Per rectangular table and 6 to 8 seated positions per annum
<b>Extended outdoor dining PARKLET fee:</b> applicable to parklets occupying carparks extending footpath trading	<b>\$30.00</b> Per square meter per annum*
<b>Extended outdoor dining PARKLET fee:</b> applicable to all outdoor dining areas occupying closed street or laneway locations.	<b>\$50.00</b> Per square meter per annum
<b>All permits issued for a period of 6 months</b>	<b>50% of applicable annual permit fee</b>
<b>Application fee for Non-standard applications</b> # see Sect.9.5 for explanation	<b>\$200</b> one off administration fee (non-refundable)

*\*Example – Occupying a standard parallel car parking space (2.3m x 6.5m) would cost \$450 per annum, based on occupation of 15 square metres.*

## **8.2 Outdoor dining permit fees**

This fee is applicable to standard outdoor dining areas where the occupation is restricted to the footpath area directly outside the business and within the boundaries of the property.

Fee variances will be applicable depending on the type of seating and table configurations such as square tables or rectangular tables.

## **8.3 Extended outdoor dining parklet fee**

This fee is applicable to outdoor dining placement other than the footpath with fees applicable to parklet structures placed within a car park space directly outside the business.

Additional fees are applicable to outdoor dining which occupies areas of roadways, lanes ways or other public roads which have been closed off from traffic

Fees for the use of public space for outdoor cafes and outdoor dining are charged on per square metre per annum/ per permit basis. If a business holds both an outdoor café/ outdoor dining permit and a parklet permit, a permit fee will be charged separately for each permit type.

## **8.4 Half yearly fees**

Where a business would prefer to pay for permit fees six monthly, this options is available with the applicable fee being 50% of the original fee

## **8.5 Application fee for Non-standard applications**

Where a business has a project, idea or concept which is not covered by these guidelines or exceeds the design rules, a request for consideration may be submitted.

In order for this to be thoroughly considered, a full application must be submitted including written concept and design documentation.

An application fee will be applicable to any concept application submitted.

# **9. Parklet Management**

Parklets can be created with the placement of suitable structures within some parking bays in front of a food business to create additional dining spaces and activity in the street

Applications for parklets will be considered on a case-by-case basis due to the complexity and varying environments our businesses operate in, such as small or side streets, speed limits, traffic conditions and associated traffic impacts such as trams, buses, heavy vehicle etc.

To ensure the safest possible environment is created, design guidelines have been developed and will be strictly adhered to.

## **9.1 Ineligible locations**

Due to safety reasons and vehicle access issues, streets with the following elements are not suitable:

- Streets with speed limits above 50km/h
- Roads with clearways/tow-away zones
- Streets with protected cycle lanes
- Streets with service/utility access panels or storm drains within the parking space
- Spaces designated as loading and disabled zones.
- Police and emergency vehicle parking.
- Any location considered inappropriate by Council due to safety or negative impact to

the amenity

In areas deemed ineligible for parklets, the business will still be eligible to apply for standard footpath dining. The ineligibility applies to parklets on the roadway only.

## **9.2 Laneway/Street dining**

The City of Maribyrnong as part of the pop up Parklet Program closed off a number of streets and laneways to allow for the expansion of parklets to occupy areas, other than parallel carpark spaces where streets and roads continue to operate.

In order for this to continue or expand, suitable roadways must be closed to through traffic and freely open to pedestrians, but not impede the safe and expedient passage of emergency vehicles around the vicinity of the road closure.

Where a particular section of roadway has been chosen as a suitable location to close off and meets the criteria for occupancy for parklets, adjoining businesses will have the opportunity to apply for the use of such space.

## **9.3 Parklet Construction and Maintenance**

The business owner shall be responsible for all costs associated with the construction and maintenance of the parklet, in addition to the insurance requirements as outlined at section 15. Failure to adequately maintain the parklet may result in permission being revoked.

## **10. Unique Areas**

While the general Outdoor Dining Guidelines set the framework for assessment regarding appropriate locations for tables and chairs, there are unique areas of the City which require more detailed guidance. Nicholson Street Mall, Footscray and Ballarat Street, Yarraville are two such locations.

## **11. Liquor Licenses**

Liquor is not to be sold, consumed or served within the trading zone unless approved by the Council and the Liquor Licensing Commission pursuant to the *Liquor Reform Act 1998*.

The trading zone must be included within the area licensed by the liquor licence. For further information about licensing, contact the Council's Statutory Planning Unit on 9688 0200.

## **12. Movement of Infrastructure**

Existing public street furniture or infrastructure may only be moved if an appropriate alternative location can be found and if the applicant pays all costs to have the infrastructure moved or replaced.

## **13. Daily management by permit holders**

It is the permit holder's responsibility to ensure that they operate within the permit condition at all times to preserve the expectations and safety of the public. Permit holders are required to:

- operate in accordance with the conditions of the permit, endorsed plans and the requirements and objectives outlined within these guidelines
- observe all Local Law provisions relating to footpath trading, including noise, responsible serving of alcohol, safety, health and amenity
- maintain access for all users in and around the footpath at all times, re-positioning furniture when moved outside the trading zone by patrons
- uphold the cleanliness of the footpath area, ensuring tables and chairs are kept clean



and litter is removed and deposited in bins kept inside the premises

- remove all approved furniture from the footpath area at the close of business each day to enable Council services to clean the footpath

#### **14. Restitution of a public place**

Following the expiration, cancellation or termination of an Outdoor dining permit, all of the former permit holder's fixed and non-fixed furniture must be removed from the public place.

The restitution is the responsibility of the applicable permit holder and the pavement must be returned to its original condition at the cost of the permit holder.

Authorised Officers from Council are responsible for approving the quality of the work completed and ensuring the pavement is restored to a satisfactory condition including the of sockets and fittings so that there is no visible trace of the fixture.

All furniture and fittings are to be removed from the footpath area from the date the permit is cancelled or expires.

#### **15. Insurance requirements**

The permit holder is required to hold valid public liability insurance to the satisfaction of Maribyrnong City Council including:

- Noting that Maribyrnong City Council is an interested party to the insurance.
- The period covered by the insurance policy, i.e. commencement date and expiration of the policy
- Be a value of \$20,000,000 in respect of any single occurrence as a minimum
- indemnify Maribyrnong City Council against all claims of any kind arising from any negligent act either by the permit holder or the permit holder's agents
- A copy of the Certificate of Currency (public liability insurance) must be attached to all applications and renewal applications for an outdoor dining permit.

#### **16. Management of the footpath**

All land outside the business property line such as the footpath is managed by Council who therefore reserves the right to reclaim access to the footpath and remove all dining and trading authority or remove furniture, at any time where necessary with notification.

#### **17. Compensation and loss of trade**

There is no compensation for the removal of footpath trading furniture or any loss of trade when service authorities and others are required to carry out works within the road reserve.

It is the responsibility of the permit holder to re-instate fittings or fixtures, not the person, service authority or contractor doing the works.

No compensation is provided for any problems, inconvenience or loss of trade resulting from activities or works carried out by the Council or its contractors, at or adjacent to, a permit holder's footpath trading area.

#### **18. Access to underground services**

Underground infrastructure and Services such as sewers, gas, water, telecommunications and electricity will not be obstructed. Any items such as screens, umbrellas and planters

tables and chairs must be relocatable if access to infrastructure is required.

The Council and other service authorities reserve the right to access all underground services within the footpath trading area without notice to the permit holder, at all times.

#### **19. Monitor compliance with approved permit**

The Council's Local Laws Officers monitor the operation of all outdoor dining and trading permits and ensure the conditions of the permit are met.

Following a complaint or observation of a breach of a permit, a Council Officer will contact the permit holder and take the appropriate enforcement action where required to assist in either correcting the breach if necessary cancelling the applicable permit.

#### **20. Appeal process**

Appeals regarding the Outdoor Dining Permit process are to be addressed in writing to the Manager Regulatory Services. Appeals will be assessed against the Outdoor Dining Guidelines.