

WAITAKERE CITY COUNCIL

WAITAKERE CITY BYLAWS

CHAPTER 4

MOBILE OR TRAVELLING SHOPS, AND
HAWKERS

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WAITAKERE CITY COUNCIL
WAITAKERE CITY BYLAW

CHAPTER 4

MOBILE OR TRAVELLING SHOPS, AND HAWKERS AND ITINERANT
TRADERS

401 Interpretation

401.1 In this Part of this bylaw:-

HAWKER means any person who carries or takes about any goods, wares, or merchandise for sale not in pursuance of any invitation to call with, or of any previous order of request for, such goods, and includes a peddler and any person who exposes for sale any goods, wares, or merchandise carried or taken about by him, or solicits the custom of any other person; and whether any such person shall cry any such goods, wares, or merchandise or not, but does not include any person who uses any vehicle as a mobile or travelling shop.

KEEPER in relation to any mobile or travelling shop, means the person by whom or on whose behalf any business is carried on by means of that mobile or travelling shop.

MOBILE OR TRAVELLING SHOP means a vehicle, whether self-propelled or not, from which goods, wares, or merchandise are offered or exposed for sale in the street, or from which goods, wares, or merchandise may be ordered (whether or not in pursuance of any invitation to call with the goods, wares, or merchandise) or from which services are offered for sale in the street; but does not include any vehicle on or from which food is sold for consumption in or at the vehicle, or any vehicle used for the purpose of transporting and delivering goods, wares or merchandise pursuant to a prior order placed for the delivery of goods, wares, or merchandise.

402 Exemptions

402.1 The provisions of this Part of this bylaw as to hawkers and keepers of mobile or travelling shops shall not apply to the owner of a fishing vessel registered under Part IV of the Fisheries Act 1983 and in respect of which a boat-fishing permit is for the time being in force, where he or a person appointed by him in that behalf, sells fresh fish or fresh shellfish (being fresh fish or fresh shellfish taken from that vessel in accordance with the conditions of the permit) from that vessel at the place where it is moored, berthed, or beached or from a stall (including a vehicle used as a stall) within 450 metres of that place, or to sellers of printed books, pamphlets, magazines or newspapers.

403 Licence Required

- 403.1 No person, whether acting on his own account, or as the servant of another person, shall engage in the trade or calling of or carry on business in any manner or to any extent as a hawker or keeper of a mobile or travelling shop with respect to goods or articles of any description whatsoever (except as provided in the preceding clause), without having first obtained a licence from the local authority so to do.

404 Application

- 404.1 Every person desirous of obtaining a hawker's or keeper's licence shall make applications to the Clerk, in the form set out in the First Schedule hereto, and shall with such application furnish such evidence of good character as the local authority may require, and in the case of an application for a keeper's licence shall state the number of vehicles to be used.

405 Sale of Food for Human Consumption

- 405.1 Every application under the last preceding clause shall also state whether the applicant is desirous of hawking or selling from a mobile or travelling shop articles of food for human consumption and whether with or without other goods, wares, or merchandise, and in any such case where a motor vehicle is to be used, shall specify the registered number of that vehicle.
- 405.2 If the applicant is desirous of hawking or selling articles of food for human consumption such application shall be accompanied by all licences which the applicant may be required to obtain under the provisions of any Act, regulation or bylaw relating to the licensing and regulation of certain trades and businesses.
- 405.3 Before issuing any licence for a hawker or keeper of a mobile or travelling shop, the local authority shall satisfy itself that any motor vehicle to be used in connection with hawking or selling food for human consumption, and that any premises to be used for the storage of such food, are suitable for the purpose.

406 Fees and Expiry of Licence

- 406.1 The local authority may issue licences to trade and carry on business as hawkers or keepers of mobile or travelling shops and every licence, at whatever time of the year the same may be issued, shall terminate on day and month then next ensuing as may be prescribed by resolution of the local authority, and for every such licence shall be paid to the local authority such fee as the local authority may be resolution from time to time prescribe for that particular class of licence.
- 406.2 The local authority may at its discretion issue temporary licences upon payment of such fee whether per day or otherwise, and subject to such conditions as the local authority may impose.

407 Form of Licence

407.1 Every hawker's or keeper's licence shall be in the form set out in the Second Schedule hereto and shall take effect according to the tenor thereof.

408 Production of Licence

408.1 Every licensed hawker or keeper of a mobile or travelling shop shall at all times when hawking, or selling from his mobile or travelling shop, carry his licence with him and shall show the licence to any constable or authorised officer of the local authority who shall demand production of the licence.

409 Name to appear on Vehicle

409.1 Every licensed hawker or keeper of a mobile or travelling shop shall whilst hawking or selling from his mobile or travelling shop or exercising or carrying on his business, trade, or calling of a hawker or keeper of a mobile or travelling shop in some conspicuous place on the exterior of any vehicle or container, in which he takes or carries his goods or wares, have his name legible painted thereon in letters not less than 25mm in height.

410 Moving On

410.2 Any person who fails to comply with any request made by a constable, traffic officer, or authorised officer of the local authority pursuant to clause 410.1 hereof shall be guilty of an offence against this bylaw.

411 Local Authority May Prescribe Conditions

411.1 The local authority may, either upon the issue of any licence to any hawker or keeper of a mobile or travelling shop or at any time by notice in writing under the hand of the Chief Executive Officer served on any licensed hawker or keeper of a mobile or travelling shop-

- (a) Prescribe any condition or conditions in compliance with which such hawker or keeper of a mobile or travelling shop must carry on his trade or business, and any hawker or keeper of a mobile or travelling shop who shall fail to comply in all respects with any such requirements within any period specified for compliance shall be guilty of an offence against this part of this bylaw; or
- (b) Require such hawker or keeper of a mobile or travelling shop to discontinue the use of any vehicle so employed by him.

411.2 It shall be a condition of the licence where a vehicle is to be used for the sale of food for human consumption that no vehicle other than that specified in that licence shall be used for the purpose without the approval of the Environmental Health Officer of the local authority concerned.

- 411.3 No mobile or travelling shop shall be permitted to operate during the hours of darkness as defined in the Traffic Regulations 1976.
- 411.4 Any musical chimes operated in or on a mobile or travelling shop shall be used in a properly modulated manner and only while the said shop is moving, and not at all within the vicinity of any hospital or place of worship where a service is being conducted.
- 411.5 Every mobile or travelling shop shall be fitted with a wash hand basin connected to an adequate supply of hot and cold water and shall also be fitted with a suitable refuse water container except in such case where only pre-wrapped goods are sold from the mobile shop in which case the Inspector may require a sink or similar facility, and/or a suitable container to be provided it, in his opinion, such fittings or containers are necessary for cleaning working utensils, and/or for disposing of waste fluids.
- 411.6 Every keeper of a mobile or travelling shop shall wear clean overclothing, and shall cause such clothing to be kept in a clean and sanitary condition at all times to the satisfaction of the Environmental Health Officer.
- 411.7 Every hawker, peddler, keeper of a stall or keeper of a mobile or travelling shop shall conduct his business in such a manner that selling shall be done at the kerbside only and where possible entirely off the carriageway.
- 411.8 Every hawker, peddler, keeper of a mobile or travelling shop, upon being requested so to do by any Police Officer, Traffic Officer or duly authorised Officer of Council, and as often as so requested, shall alter the position from which he is conducting his business on any road or public place to such other part of the road or public place indicated by such Officer. In no case shall any stop on any road or public place be longer than 10 minutes. This clause shall not apply where a permit for a stand has been issued under the provisions of Clause 417 of this bylaw.
- 412 Licence not Transferable**
- 412.1 No licence issued under this Part of this bylaw shall be transferable to any other person and no such licence shall authorise any person other than the person named therein to carry on the trade of business of a hawker or to keep a mobile or travelling shop.
- 413 Cleanliness of Vehicle**
- 413.1 Every licensed hawker or keeper of a mobile or travelling shop or any person operating on behalf of such hawker or keeper who takes or carries about any article of food for sale shall keep and maintain every vehicle, box, basket, pack or other container used or connected therewith in a thoroughly clean and sanitary condition to the satisfaction of the Environmental Health Officer.

414-416 Deleted

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STANDS AND STALLS

417 Permit Required

417.1 No person shall without having first obtained a permit from the local authority so to do -

- (a) Stand in or occupy any portion of any public place with, or place or maintain on any portion of any public place, any stall, structure, or contrivance for the purpose of distributing or selling any food or refreshments, newspapers, lottery tickets, textiles, hardware; or
- (b) Stand in or occupy any portion of any public place with, or place or maintain on any portion of any public place any weighing, knife-grinding, automatic vending, or slot entertainment machine or any other similar structure, apparatus or contrivance.

417.2 Notwithstanding in this part of this bylaw no hawker, peddler, keeper of a stall, or keeper of a mobile or travelling shop shall carry on the streets or parts of streets specified in the Fourth Schedule of this Chapter and such other streets or parts of streets as Council may from time to time by resolution determine provided that where the stall is to be established for a charitable cause, this prohibition shall not apply where there is a stand is established on a recognised shopping centre on a site approved by the local authority.

418 Application

418.1 Every application for a permit shall be in such form as the local authority may require

419 Conditions of Permit

419.1 Every permit shall be issued by the local authority and shall be subject to such conditions as the local authority may impose and shall state therein the term of expiry thereof, the portion of any public place on which the applicant is permitted to stand, the hours during which he may so stand, and the class of article or goods he proposed and it is permitted to sell, and no person shall stand or sell except in conformity with the terms of such permit.

420 Permit Fee

420.1 For every such permit there shall be payable to the local authority such fee as the local authority may by resolution from time to time prescribe.

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THIRD SCHEDULE

Deleted

FOURTH SCHEDULE

Streets and Public Places or parts thereof where stands prohibited.

Airport Road	Karekare
Beach Valley Road	Lincoln Road
Brighams Creek Road	Marine Parade South
Bruce McLaren Road	Piha Road
Clarke Road	Pomaria Road
Edmonton Road	Portage Road
Garden Road	Railside Ave
Glendale Road	Rathgar Road
Godley Road	Scenic Drive
Great North Road	State Highway 16
Henderson Valley Road	Swanson / West Coast Road
Hobsonville Road	Te Atatu Road
Huia Road	Titirangi Road
Larnoch Road	Waitakere / West Coast Road

**APPLICATION FOR A HAWKER'S (ITINERANT TRADER'S) (KEEPER OF A
MOBILE OR TRAVELLING SHOP'S) LICENCE**

..... Council

To the Chief Executive Officer

..... Council

I of hereby apply of a (Hawker's) (Itinerant
Trader's) (Keeper of a Mobile or Travelling Shop's) Licence under the provisions of
Chapter of the Council's bylaws made in that behalf.

1. The number of vehicles which I propose to use is
2. I am / am not desirous of (hawking) (selling from a mobile or travelling
shop) articles of food for human consumption.
3. The registered number / numbers of the vehicles for (hawking) (selling
from a mobile or travelling shop) articles of food for human consumption
is / are
4. The following evidence of my good character is
attached:.....

I herewith tender the prescribed fee of

Dated at this day of 19

..... Signature of Applicant

WAITAKERE CITY COUNCIL

DRAFT PUBLIC PLACES BYLAW 2006

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WAITAKERE CITY COUNCIL

DRAFT PUBLIC PLACES BYLAW 2006

Introduction

Citation

This bylaw may be cited as the Waitakere City Council Public Places Bylaw 2006.

Commencement

This bylaw comes into force on .

Revocation

Waitakere City's bylaw No. 4 (1990) Chapter 2 Public Places, and Chapter 4 Mobile or Travelling Shops and Hawkers, are revoked with effect from the commencement date of this Public Places Bylaw 2006.

Purpose

This bylaw is made under Part 8 of the Local Government Act 2002. Its purpose is to regulate and control a range of activities which may be lawfully carried out in roads, public places, reserves and other places under the control of the Council in order to;

- (a) protect the public from nuisance or,
- (b) protect promote and maintain public health and safety or,
- (c) minimise the potential for offensive behaviour in public places or
- (d) regulate trading in public places.

Interpretation

Definitions

In this bylaw:

"Berm" means grass verge kept mown.

"Busker" means any person who plays, acts, sings, dances or otherwise performs or entertains in a public place for reward or otherwise.

"Charitable Cause" means a non-profit organisation that raises funds for the benefit of a community group or for the overall benefit of the public.

"Food" has the same meaning as in the Food Act 1981.

"Footpath" means that part of the road as is laid out or constructed for use by pedestrians, and includes a grass verge or berm, kerbing, and channelling but does not include the carriageway.

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"Flea market" means an open air market consisting of stalls occupied by traders, offering goods for sale or exchange or service for reward.

"Hawker" means a person who displays or offers unsolicited goods or services for sale in a public place but does not include a keeper of a licensed mobile or travelling shop;

"Keeper" means a person who owns or operates a mobile or travelling shop;

"Mobile or travelling shop" means a vehicle, whether self-propelled or not from which goods are offered or exposed for sale, or from which goods, or services may be ordered (whether or not in pursuance of any invitation to call with the goods, wares, or merchandise), in a public place but does not include any vehicle from which food is sold for consumption within that vehicle.

"Outdoor café" means an outdoor seating area established in a public place, with the consent of the Council where food and drink may be consumed.

"Stall" means a stall, tent, barrow, awning, table trestle, newspaper box, or display stand, temporary structure or place on, at or from which goods, wares merchandise or services may be purchased or ordered but does not include a mobile shop.

"Public place" means a place which is under the control of the Council and is open to or being used by the public, whether or not there is a charge for admission and includes a road whether or not under the control of the Council and any part of a public place.

"Road" has the same meaning as in section 315(1) Local Government Act 1974 and includes all land within the legal boundaries of the road irrespective of whether it has been formed as carriageway, footpath grass verge or berm.

Activities requiring Consent

Display of goods

No person shall display any goods, wares or merchandise for sale, outside any shop or other business premises so as to encroach upon or hang over any public place, without the written consent of the Council and then only in compliance with the conditions of that consent.

Appeals, Raffles, Collections

- (1) No person shall on any road or public place:
 - (a) conduct any appeal, or
 - (b) carry out any fund raising activity, or
 - (c) sell any raffle or lottery ticket or conduct any raffle or lottery or
 - (d) solicit any donation, subscription or other monetary contribution whatever,for more than ten hours in any six month period, without first obtaining written consent from the Council and subject to any conditions of that consent.
- (2) Applications must be received by the Council not less than seven days before the date of the proposed use.

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Consents

Consent Request

Every application for consent must be in writing setting out full details of the proposal, the date, time and place of the proposed use and the full name and residential address of the applicant.

Grant of Consent

- (1) Upon payment to the Council of such fee as the Council may by resolution determine, the Council may issue written consent.
- (2) Consent may be subject to conditions including but not restricted to: duration, time, location, safety requirements, use of signage, playing of music, litter and site rental, and failure to comply with such conditions constitutes a breach of this bylaw.

Revocation

A consent may be revoked by the Council at any time upon written notice.

Activities requiring a Licence

Outdoor Cafes

No person shall occupy a public place or footpath for the purposes of operating an outdoor cafe area without a licence issued by the Council and only in compliance with the conditions imposed by that licence and any Outdoor Dining Policy made by the Council from time to time.

Trading

No person shall:

- a) sell, or offer for sale any goods, wares, merchandise or food,
- b) perform or offer to perform a service,
- c) solicit for the purpose of prostitution,
- d) perform as a busker in a public place,
- e) be the keeper of a mobile or travelling shop,

in a public place without a licence issued by the Council and only in compliance with the conditions imposed by that licence and in accordance with any Public Places Trading Policy made by the Council from time to time.

Flea markets

No person shall operate or occupy a stall in a flea market in any public place without a licence issued by the Council and only in compliance with the conditions imposed of that licence and in accordance with the Public Places Trading Policy made by the Council from time to time.

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Licences

Application for a Licence

Every application for a licence shall state the full name and residential address of the applicant and clearly describe the nature of the activity proposed.

The Council may also require other information or documents in support of the licence application including but not limited to;

- (a) the registration number of any motor vehicle to be used as part of the activity
- (b) if the application involves the sale or preparation of food, all other licences or registrations which the applicant is required to obtain under any other Act, Regulation, or Bylaw and details of any premises to be used for the storage or preparation of such food,
- (c) applications for licences to sell goods, or be the keeper of a mobile or travelling shop shall be accompanied with photographic identification of the applicant and such evidence of good character as the Council may require.

Fee and Expiry of Licence

- (1) Upon payment to the Council of such fee as the Council may by resolution determine, the Council may issue a licence for 12 months or such other period as the Council may decide.
- (2) The Council may issue temporary licences upon payment of the relevant fee and subject to the conditions of that licence.

Production and display of Licence

- (1) Every holder of a licence shall at all times when trading in a public place carry the licence with him or her, and on demand show the licence to a police officer or authorised officer of the Council.
- (2) Every keeper of a licensed mobile or travelling shop shall, at all times while selling from that shop, publicly display the License in a conspicuous place upon that shop.

Licence Conditions

- (1) The Council may from time to time prescribe conditions in accordance with any Public Places Trading Policy or Outdoor Dining Policy made by the Council from time to time which may include but is not restricted to; duration, time of day, days of the week, location, type of goods or services to be offered for sale, area available to be used for the purposes of selling, persons entitled to sell, safety and hygiene requirements, use of signage, use of musical chimes, litter, and site rental and any licensee who fails to comply in all respects with such conditions shall be in breach of this bylaw;
- (2) It shall be a condition that where any vehicle specified in a licence for a mobile or travelling shop becomes unavailable for such use, any proposed substitute vehicle must not be used for that purpose without the written approval of Council.

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- (3) It shall be a condition of every mobile or travelling shop licence that;
- (a) No vehicle will be permitted to stand or remain stationary within 45m of a street intersection.
 - (b) No keeper shall trade within 100 metres of any shop that sells similar goods.
 - (c) No keeper shall conduct business in one position for more than 30 minutes without moving on, (subject to any other restrictions in force setting a lesser period).
- (4) It shall be a condition of every street trading licence, that upon being requested to do so by a police officer, or authorised Council officer and as often as so requested, every street trader shall move from a selling position in or on a public place to another part of that public place or to such other public place as that officer may direct.

Licence not transferable

No licence is transferable and no licence authorises a person other than the person named in the licence to carry on the trade or business specified on the licence in a public place.

Surrender of licence

The holder of a licence may surrender it at any time.

Suspension of licence

Revocation of licence

A licence issued under this bylaw shall be deemed to have been revoked if the holder of that licence is convicted of an offence under this bylaw for breaching any condition of the licence.

Trading without a Licence

- (1) Any person who is trading in a public place without a licence issued by the Council shall, when required to do so by an authorised Council Officer or a Police Officer, immediately remove from the public place all goods, signs, stalls, vehicles and other equipment used by that person for trading.
- (2) Where any person fails or refuses to comply with a requirements of an authorised Council Officer or a Police Officer made pursuant to sub clause 1 above, the officer or Police Officer may remove from the public place any trade goods, signs or offending vehicles and other equipment used by that person.
- (3) Any trade goods, signs, stall, vehicle or other equipment removed by an authorised Council Officer or Police Officer shall be kept in safe custody on Council premises and shall be released to the owner upon payment of the expenses and costs of removal.

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- (4) Any trade goods, signs, stall or vehicles removed by an authorised Council Officer or Police Officer pursuant to Sub Clause (2) above that have not been claimed by the owner within 10 days of removal may be disposed of by the Council in any manner that the Council thinks fit.
- (5) Any proceeds from the disposal of such trade goods, signs, stalls or vehicles shall, after the recovery of all costs incurred by Council, be returned to the owner.

Register

The Council shall keep a register of the names and residential addresses of all persons to whom licences are issued, and the register may be inspected by any person during the Council's normal office hours.

Administration

Fees

The Council may by resolution prescribe fees in respect of any licence, authority, approval, permit, or consent from, or inspection by the Council under this bylaw.

Powers of Delegation

In all cases where this bylaw provides for the issue of any order, certificate, notice requisition, licence or consent, such order, certificate, notice, licence or consent shall be deemed to be issued in compliance with this bylaw if the same is issued by any officer of the Council authorised by the Council, or to whom the Chief Executive Officer may have sub delegated the relevant powers for that purpose.

Offences and Breaches

A person commits a breach of this bylaw who:

- (a) Does or causes to be done or knowingly permits or suffers to be done or is concerned in doing anything whatsoever contrary to or otherwise than as provided by this bylaw;
- (b) Omits or neglects to do, or knowingly permits or suffers to remain undone anything which ought to be done at the time and in the manner provided by this bylaw;
- (c) Knowingly permits or allows any condition to exist or continue to exist contrary to this bylaw or neglects to comply with any notice given to that person under this bylaw;
- (d) Obstructs or hinders any officer of the local authority in the performance of any duty to be discharged by that officer under or in exercise of any power conferred by this bylaw;
- (e) Fails to comply with any lawful notice or direction given under this bylaw;
- (f) Fails to comply with conditions attached to any licence or consent.

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Enforcement and Penalties

Pursuant to s.239 Local Government Act 2002, every person who breaches a bylaw, commits an offence and is liable on summary conviction to the penalties set out in s.242 Local Government Act 2002.

The Council may also apply to a District Court for an injunction restraining a person from committing a breach of the bylaw pursuant to s.162 Local Government Act 2002.

Dispensations

The Council may grant a dispensation from full compliance with any provision in this bylaw where the Council's Group Manager; Regulatory is of the opinion that full compliance is unnecessary.

Written application for a dispensation shall include full details of the relief sought and the reasons for the application. The Council's Group Manager; Regulatory shall consider the application and may either refuse or grant it subject to such conditions as he/she considers appropriate.

**Adopted at a meeting of the Waitakere City Council on
2006.**

by Resolution

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WCC Outdoor Dining Policy (DRAFT)

1.0 Introduction

Outdoor dining (e.g. outdoor eating and drinking on City footpaths) enhances urban life by providing an active street frontage that is vibrant, dynamic, comfortable and attractive. The presence of people dining on the street increases the sense of safety and security in the street and provides restaurant and café owners with the opportunities of extending their businesses and promoting patronage with a more visible presence. This activity is of considerable value to the town centres and suburban areas alike, for social and recreational purposes and is welcomed.

However, it is also clear that the creation of privately controlled, enclosed street spaces can result in a number of potentially undesirable environmental effects, in terms of health and safety, pedestrian movement/obstruction and visual amenity issues.

This policy is intended to guide the Council in decision making regarding the desirability or otherwise of permitting the use of public space for outdoor dining. The Council, as landowner needs to consider the private, commercial benefits and balance the environmental and community benefits and negative effects of these uses for public space. This balance is reflected in this policy.

The policy has been drawn up having regard to the following matters:

1. The relevant policies, objectives and rules contained within the Waitakere City District Plan.
2. Other relevant Council policies, strategies and bylaws.
3. The Council provides public space for the benefit of the general public, not for commercial benefit.
4. That the Policy be fair and equitable to all businesses.
5. Only protection for outdoor diners from fair weather to moderate adverse weather wind conditions can be expected.
6. The Council is mindful of the cumulative effects of enclosing structures and advertising.
7. A co-ordinated, complementary approach will be required where there are a number of adjoining owners to the street space.
8. The Council wishes to avoid excessive visual clutter and ensure a high quality of street enclosures and furniture.
9. The Council wishes to ensure that enclosures and furniture do not adversely affect the appearance or architectural or historic integrity of the buildings with which they are associated, nor the view along the street or across a public space.
10. Pedestrian movement should not be unduly hindered.
11. The needs of disabled, young and elderly users of the public street space must be considered
12. The Council does not wish to inhibit the temporary use of the street space for special events.
13. Consideration of the impact of the Sale of Liquor Act 1989 and the Smoke Free Environments Amendment Act 2003 on the demand for the use of street space for the purposes of liquor consumption and smoking, which may be associated with dining.
14. Public liability insurance that will ensure that the Council is satisfactorily indemnified against any potential claims.

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2.0 Definition

“Outdoor café” means an establishment providing food or drink which has an outdoor seating area in a public place and which is under the control of the person named on the licence issued under the relevant food and hygiene regulations or liquor licences.

The preparation of food any kind (excluding the addition of simple garnishes, condiments or flavourings to food by food service staff), in any public place, even when in association with outdoor cafe dining, falls outside the scope of this policy, and is prohibited unless a specific consent or licence is obtained for the food preparation.

3.0 Consent to use public place for outdoor cafe dining

Any public space that is proposed to be utilised for outdoor cafe dining, shall be subject to written consent from Council with attached conditions as decided by Council.

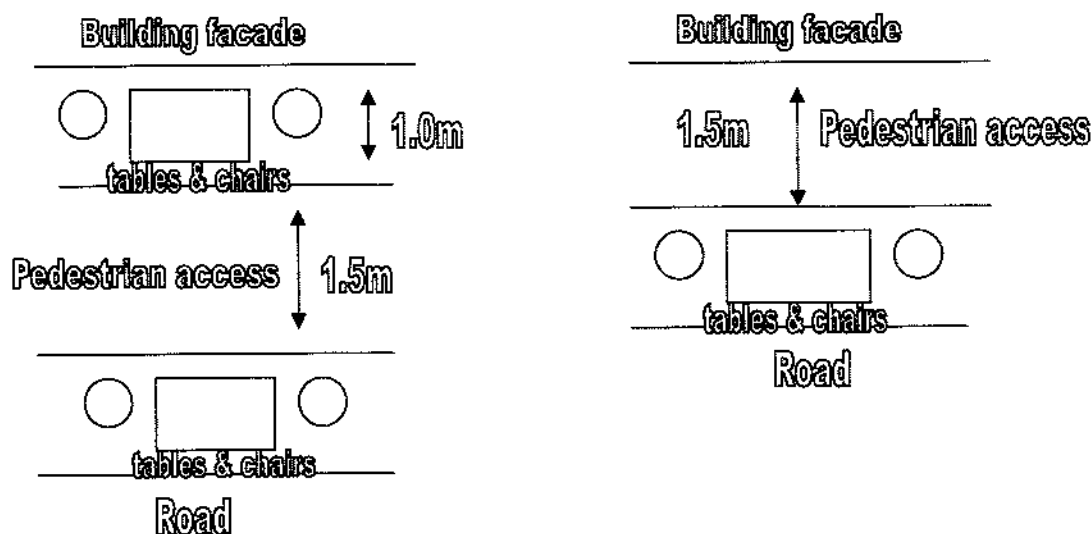
No application for consent to utilise a public place for outdoor cafe dining will be considered where the dining is not associated with and of a scale subsidiary to an adjoining site within either a Community Environment or within a site scheduled for Retail Activity.

All applications for consent to utilise a public place for outdoor cafe dining must be in direct association with a lawfully existing eatinghouse (i.e. café or restaurant) registered pursuant to the Food Hygiene Regulations 1974 and that is directly adjacent to the outdoor cafe dining area in question and that will provide the food and drink to diners in the outdoor cafe dining area.

Council will determine the level of pedestrian access, the nature of any enclosure partitioning off the outdoor café dining area and the type and nature of any street furniture, to be stipulated in any consent for outdoor cafe dining.

4.0 Pedestrian Access

No consent for the use of public streets for outdoor cafe dining will be considered where any footpath width is less than 3 metres. A minimum clear width of 1.5 metres of footpath remaining clear and free of any obstacle or obstruction is required. All public streets used for outdoor cafe dining shall have full pedestrian access maintained to a width of at least 1.5 metres of footpath at not more than 1 metre from the building facade.



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5.0 Nature of any enclosure used to partition off outdoor café dining areas

The types or levels of enclosures for outdoor cafe dining that may be proposed to be placed on the street have been identified as follows:

- Level 1* *No enclosure* – street furniture in an open street setting with generally unimpeded physical and visual access by pedestrians.
- Level 2* *Minimal enclosure* – Street furniture in an open street setting within a physically defined consented area, restricting public but not visual access.
- Level 3* *Partial enclosure* – Street furniture partially enclosed by low level glazed sunscreens and overhead canopies and verandas.
- Level 4* *Full enclosure* – Street furniture with continuous or semi continuous overhead, side and front enclosures (even where retractable) that are supported by structural frames with columns in the public space.

Enclosures of levels 1, 2, and 3 will be permitted. Enclosures of level 4 (i.e. fully enclosed outdoor dining areas) **will not** be permitted.

6.0 Street Furniture

The type and design of street furniture must be of a high standard in appearance and style, made of quality materials, with finishes that are attractive and durable. In all circumstances the street furniture to be used in any outdoor cafe dining must be approved by Council before use.

Street furniture should be unobtrusive in nature, complementing the culture, character and significance of the street in style, appearance, materials, finishes and colours.

Council may specify the style, amount and positioning of all street furniture.

Electrical lighting is not permitted within any outdoor cafe dining area. Existing fixed street furniture provided by the Council may not be incorporated into any outdoor cafe dining area.

Street furniture shall include only the following items appropriate to each level of enclosure:

- Level 1* No enclosure: Outdoor dining furniture - Tables, chairs and umbrellas.
- Level 2* Minimal enclosure: Outdoor dining furniture - Tables, chairs and umbrellas
 Street furniture - bollards, planters, ropes, menu stands, gas heaters, safety rails.
- Level 3* Partial Enclosure: Outdoor dining furniture - Tables, chairs and umbrellas.
 Street furniture - bollards, planters, ropes, menu stands, gas heaters, safety rails.
 Overhead canopies with quality canvas or tensile fabric and retractable metal frames and/or glazed canopies fixed to the

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building façade. No canopy supports to be located in public areas.

Side enclosures to consented areas (at right angles to street façades) from transparent, laminated or toughened glass 1800mm in height fixed to planters or pavement support posts.

Transparent laminated or toughened glass front enclosures of a maximum height of 1300mm. Where consented areas have a perimeter at street corner then the 1800mm glazed side screen may be returned at 1800mm high along the frontage for 1200mm, at that street corner.

There shall be a clear visual differentiation between the permanent features of the public spaces and the street furniture associated within a consented area.

7.0 Temporary structures

This Policy does not apply to temporary structures in a functional street used by motor vehicles. It should be noted that formal traffic stopping procedures are required if structures in streets are to be erected.

8.0 Private use of public airspace

The issue of enclosures to upper level floors projecting out over public airspace has not been specifically addressed by this policy which relates to ground level uses and falls outside this policy.

9.0 The application process

The process for assessing applications to license public street space for outdoor dining is outlined in Appendix 1.

10.0 Conditions

Any consent shall also be subject to the detailed specific conditions which may include conditions governing the operation of the consented area, appearance, location and design of any items of street furniture, and shall be subject, where required, to obtaining Resource Consent, Building Consent, Liquor Licence, fire and safety requirements, signage consents and Bylaw approvals as appropriate.

General consent conditions, as outlined in appendix 2 shall apply to all outdoor cafe dining consents.

11.0 Information Requirements

To ensure that a good standard of amenity is maintained, a suitable standard of exterior furniture and layout will be required, as a condition of consent. Applicants will therefore be required to obtain approval for the furniture style, standard and layout. The information submitted with an application shall include all the information requirements listed in Appendix A.

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12.0 Design Requirements

The following requirements will be taken into account in determining any application for consent. These are intended to ensure that a good quality standard is achieved in all individual facilities.

a) Design

- All street and dining furniture, canopies, screens and signage shall be to an approved standard of design and construction.
- All street and dining furniture should be constructed of substantial materials and with a quality, durable finish suitable for external public use. Timber should be finished with paint, stain or polyurethane to provide a good standard of finish that can be easily cleaned. Canopy materials shall be either canvas or shade cell fabric (woven nylon/rayon open-cell fabric). Steel or other metals shall be finished with a good quality paint finish or shall be anodised or chromed to a standard suitable for external use.
- All individual furniture items such as chairs, tables, umbrellas should be of uniform or complementary design and appearance within any one consented area.
- Umbrellas shall be circular (panelled), rectangular or square and have canvas or similar covering material. Circular umbrellas shall be of a maximum diameter of 2.6m, rectangular or square umbrellas shall have a maximum dimension of 2.6m measured on the diagonal of the umbrella.
- No multiple, interlocking or abutting umbrellas will be permitted.
- Umbrellas shall be freestanding with a single central support. An umbrella may utilise a flush sleeve in the pavement for support provided the umbrella is not permanently fixed and may be removed at any time
- A canopy may be cantilevered horizontally from a building or from a veranda. These canopies shall be not deeper than 4m and shall be fully retractable. A veranda shall not be greater than 3m in depth.
- The clearance between the footpath and the underside of an umbrella shall be not less than 1.8m
- The combined depth of a canopy and/or veranda shall not be greater than the depth of the consented area, 7m or 530mm clear of the kerb line, whichever is the lesser.
- There shall be no vertical supports for canopies in the public space. Vertical supports for verandas will be discretionary and will depend on the site location and the effect of the enclosure on the public space.
- Canopies and verandas proposed to be fixed to heritage buildings will require a Resource Consent for an alteration to a heritage building. Other consent requirements will be dependent on the size and location of the veranda or canopy.
- Bench seating, multiple seating and seats and tables integrated into single furniture units will not generally be acceptable.
- Side and front screens should not be seen as a visual barrier. Therefore they will be plain, transparent laminated or toughened glass, apart from the support structure. Glass shall not be coloured, tinted, obscured, patterned, etched or sandblasted except for safety vision strips which shall have a maximum depth of 100mm.
- The maximum height for side screens will be 1800mm from the ground. Where licensed areas have a perimeter at street corner then the 1800mm glazed side screen may be returned at 1800mm high along the frontage for 1200mm, at that street corner. Front screens shall be glazed transparent screens as for side screens but to a maximum height of 1300mm.
- For safety reasons, no external stays will be allowed to support screens. Instead, screens may be supported by vertical poles placed in a flush sleeve in the

pavement. Alternatively vertical supports may be attached to planters or be free-standing provided no base shall project outside the consented area.

- The planters or other similar elements may be used to define an edge to the licensed area to avoid clutter and spread. Planters shall be between 400mm to 550mm in overall height. Plant material shall be at a maximum of 800 mm height from the ground at any time. Consideration may be given to individual trees or shrubs of greater height where a specific visual emphasis is required and the plant will not form a visual barrier.
- All street furniture shall be self-supporting or cantilevered from within the pavement and not fixed to the pavement. All street furniture shall be stable in windy conditions and shall not present a health and safety risk. Any furniture which does present such a risk shall be removed from the consented area when weather conditions become unsuitable.
- No street furniture including supports in the pavement shall be fixed and shall be immediately removable at the request of a Council Officer for services maintenance and repair, pavement cleaning, or for such other reasonable circumstance as may arise.

b) Colour

- Simple combinations of a small palette of colours in street furniture will be most effective in maintaining a high standard of amenity within and relationships between outdoor areas.
- Colours of furniture may include white, neutral tones (including natural timber) and darker shades of colours such as blue, green or red. Black, dark grey or silver may also be appropriate for some items such as chairs.
- Umbrellas shall be of the same colour or a limited range of related colours within any licensed area. Darker colours generally show less discolouration due to dirt and will probably need to be replaced less often than for lighter coloured material.
- Canopies should preferably be of a single colour to minimise visual clutter. While darker colours will show less discolouration, the larger areas of canopies may suit the use of lighter colours.

c) Layout

- The extent of consented areas shall be identified on the ground. This may be by permanent pavement markers, planters, planter boxes roped bollards and/or side screens. Low level enclosing elements shall provide the visually impaired with sufficient guidance for such persons to remain clear of footpath obstructions within licensed areas.
- The extent of planters and screens etc shall be sufficient to visually define the area but shall need not be continuous around the whole licensed area.
- The layout of the licensed area shall be related to the geometry of the public space, the street grid or other significant features of the space. Any change in layout must be subject to a further approval.
- Signage on canopies or building facades is subject to the District Plan signage rules and may require Resource Consent.
- Signage on the street shall be contained within the consented area and will be subject to the District Plan signage rules and Council bylaws

d) Plant materials - Criteria for selection

Plant materials shall be suitable for the location and purpose. Annuals or perennials will be considered for colour and display. All plant material is to be

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maintained, replaced or supplemented to ensure a good standard of planting at all times of the year.

e) Cyclic Maintenance

The continued appearance of a good quality outdoor area requires consideration of daily, weekly, monthly and yearly maintenance schedules for plant material, tables, chairs, planters, wind screens, lighting, verandas, canopies or other elements. These maintenance schedules shall be submitted to the Council with the application and such maintenance shall be carried out in accordance with the approved schedule as a condition of the consent.

APPENDIX 1 Public Street Enclosure Policy – decision making process

1. Applications for consent to utilise public street space for outdoor dining should be made to the Manager XXXXXXXXXXXX.
2. The following information will be required from all applicants when submitting an application to Council for consent to undertake outdoor cafe dining:
 - Application form: fully and satisfactorily completed application form including contact details and signatures, together with full payment of any required fee set by Council.
 - A site plan of the proposed outdoor cafe dining site accurately showing the location of the food premise associated with the outdoor cafe dining and the layout of all proposed tables, chairs, screens, umbrellas, etc, and the location of all existing infrastructure (i.e. tree plots, litter bins, public chairs/tables, fire hydrants, neighbouring buildings, street lights, traffic lights, pedestrian crossings, traffic signs, street signs, etc).
 - Photographs of the site: clearly showing the proposed outdoor cafe dining area relative to the associated food premises, neighbouring buildings and existing infrastructure.
 - Details of furniture: colour photographs and/or detailed drawings of all furniture including all: chairs, tables, screens, umbrellas, awnings, planter boxes, gas heaters glazed screens and supports, heaters, bollards/ropes, safety rails, canopies and umbrellas, etc. Specific details of their construction, finishes and colours must also be included.
 - Furniture measurements: length, height and width of screens and planter boxes, and the width span and clearance height of umbrellas and awnings.
 - Details of advertisings: a colour photograph and/or detailed graphic design drawing of any proposed advertising or logos proposed to be placed on any screens or awnings.
 - Public Liability: a Certificate of Insurance for a minimum of two million dollars (\$2,000,000) specifically covering the outdoor cafe dining area and indemnifying the Waitakere City Council against all claims in a form and with an insurer to the satisfaction of the Waitakere City Council.
 - Details of all planting materials
 - Details of the cyclic maintenance schedule
 - A cleaning schedule for the outdoor cafe dining area
 - Further information required for regulatory consents
 - Any other additional information required by Council

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3. The level of pedestrian access, level of enclosure and types of street furniture permitted in any location will be in accordance with the outdoor cafe dining Policy as determined by Manager XXXXXXXX. The decision will be made having regard to the following criteria:
 - i. The ability of the existing sanitary facilities in the associated eatinghouse, to cope with the additional patronage provided for by outdoor cafe dining.
 - ii. Requirements of the District Plan
 - iii. Width of the footpath
 - iv. Level of pedestrian traffic
 - v. Amount and nature of adjoining activity
 - vi. Level of vehicular traffic
 - vii. The impact on the amenity and appearance of the area
 - viii. The level and nature of public liability insurance cover
4. The proposed design, quality, materials, colours and layout of the street furniture will be assessed, to ensure that they are in accordance with the detailed policy requirements of the outdoor cafe dining Policy.
5. In some situations partially enclosing the outdoor café dining area (Level 3 enclosure) will require Building Consent and/or Resource Consent. Applicants will be advised when they submit their application, what will be required.
5. Enforcement action will be taken against businesses undertaking outdoor cafe dining or any business that places any furniture or erects any enclosures on any public place, for which the necessary consent have not been obtained.

APPENDIX 2 – General requirements

All outdoor cafe dining consent holders must comply with both the specific and general conditions of an outdoor cafe dining consent.

The general conditions are:

1. It is the responsibility of the consent holder to comply with the general and specific conditions at all times and to report any changes in circumstances or potential breach of the conditions to Council immediately.
2. It is the responsibility of the consent holder to comply with all laws and other legal requirements relevant to the operation of outdoor cafe dining and to ensure that employees and agents also comply.
3. The consent holder is required to ensure that they maintain a current public liability insurance for a minimum of two million dollars (\$2,000,000), specifically covering the area occupied by outdoor cafe dining and indemnifying Council against all claims, at all times whenever outdoor cafe dining is undertaken.
4. The consent holder may only conduct outdoor cafe dining within the hours and street dining area specified in the specific conditions of the consent.
5. The consent holder is responsible for the good order, conduct and behaviour of patrons using the outdoor cafe dining area.

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6. The consent holder is to ensure that the outdoor cafe dining area and surrounding footpath and locality is kept free from rubbish and that rubbish is placed in proper bins.
7. The consent holder may not allow the consumption of alcohol within the outdoor cafe dining area unless the consent holder possesses a valid liquor licence allowing the consumption of liquor with the outdoor cafe dining area.
8. The consent holder must comply with all reasonable requests or directions given by any authorised officer of Council.
9. The consent holder occupies and uses the outdoor cafe dining area at the consent holders own risk.

Summary of primary requirements for any site to be eligible for consideration for outdoor cafe dining:

1. Outdoor cafe dining must be directly associated with an existing eatinghouse.
2. Outdoor cafe dining must be associated with and of a scale subsidiary to an adjoining site within either a Community Environment or within a site scheduled for Retail Activity.
3. Existing toilet facilities in the associated eatinghouse must be adequate to satisfactorily cope with the increase in patron numbers.
4. The footpath must be at least 3 metres wide.

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