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## **1. PREAMBLE**

This policy outlines Council's responsibilities and powers in relation to Outdoor Dining Areas within the City of Holdfast Bay.

### **1.1 Background**

The City of Holdfast Bay is one of South Australia's premier seaside destinations and tourist areas accommodating interstate, regional and overseas travellers. Due to this Council maintains a vision of developing, managing and promoting the city and all it has to offer; including its restaurants, cafes, and licensed premises. As such, to aid local businesses in furthering their economic development, Council offers business operators the opportunity to lease an area of footpath (Council land/property) adjacent to their shop frontage for the specific purpose of providing an additional outdoor area for patrons to consume food and/or beverages.

### **1.2 Purpose**

This policy sets out the terms of reference for Outdoor Dining Areas ("Permit Area"), the extent to which a Permit Area may be approved, and the provisions to which a Permit Holder is constrained by.

### **1.3 Scope**

This policy applies to all approved Outdoor Dining Areas within the City of Holdfast Bay.

### **1.4 Definitions**

Building or Property Frontage means the property boundary at the edge of the footpath;

Business Operator means the proprietor of the business within a property but not the Owner;

Café Screens are screens that are used in the outdoor areas of cafes and restaurants, generally located on the public footpath to provide protection from the weather;

Council means a council within the meaning of the Local Government Act 1999;

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Council land/property means all roads, footpaths, buildings, land, reserves, structures, community centres etc. owned and/or maintained by the City of Holdfast Bay and its Workers;

Liquor Licence means a liquor licence within the meaning of the Liquor Licensing Act 1997;

Outdoor Dining Area ("Permit Area") means the area where outdoor dining is permitted as shown on the approved plan supplied with the Outdoor Dining permit and marked on the ground by small metal disks;

Outdoor Dining Permit ("Permit") means an authorised permit issued by council to a party giving lease of an approved area for a business to operate an Outdoor Dining Area ("Permit Area");

Owner means the owner of the title of the land;

Pedestrians mean the users of the public footpath;

Permit Holder means a person/entity authorised and given licence via Permit by Council to operate an Outdoor Dining Area;

Private Property means any property which is not owned by Council or an agency of the Crown;

Setback means the distance that the boundary of the outdoor dining area is from adjacent places, such as the kerb, neighbours property or building line.

### 1.5 Strategic Reference

Placemaking: Creating vibrant and safe places  
Community: Providing welcoming and accessible facilities  
Economy: Supporting and growing local business  
Economy: Making it easier to do business  
Economy: Boosting our visitor economy

## 2. PRINCIPLES

- 2.1 Council purposefully seeks to activate public spaces with alfresco dining.
- 2.2 Restaurants and other providers of food or dining services within the Council the City of Holdfast Bay must submit an Outdoor Dining Permit application to Council prior to establishing an outdoor dining area adjacent to or associated with their business;
- 2.3 An Outdoor Dining Permit ("Permit") may be issued by Council to an Applicant for the purpose of providing an area ("Permit Area") for patrons to consume food and/or beverages (as defined by section 5 of the Food Act 2001);

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- 2.4 Council may consider approving an extension of a Permit Area to an adjacent property frontage if the adjacent business operator does not choose to pursue an Outdoor Dining Permit or Goods on Council Footpath Permit;
- 2.5 For the purpose of section 2.2 and 2.3 of this policy, Council reserves the right to:
  - 2.5.1 assess and consider each application on its individual merits;
  - 2.5.2 exclude and/or ban certain activities from occurring within a Permit Area; and
  - 2.5.3 base the determination of an application on any potential impacts the proposed Permit Area may have on the community;
- 2.6 At the time of application or any time thereafter Council reserves the right to cancel, suspend or revoke an Outdoor Dining Permit, amend its operating hours, and/or further restrict its conditions if nuisances, health or public safety issues/concerns emerge as a consequence of persons utilising the respective Permit Area;
- 2.7 The Permit Holder or the Council may terminate the Permit by serving upon the other twenty four (24) hours' notice in writing;
- 2.8 If a Permit is terminated, all furniture, fittings, fixtures and structures must be removed from the area by the Permit Holder within twenty four (24) hours;
- 2.9 Activities undertaken in the Permit Area by the Permit Holder must be in accordance with sections 221 and 222 of the Local Government Act 1999;
- 2.10 An Outdoor Dining Permit is issued for a maximum period of one calendar year at the commencement of each financial year;
- 2.11 An Outdoor Dining Permit bears no relationship to the sale of the business, is not transferable between parties and lapses once the Permit Holder is no longer the business owner. Should the Permit Holder sell the business, a vendor must inform an incoming business operator that he/she is required to submit a subsequent application for an Outdoor Dining Permit;
- 2.12 The Permit Holder shall not:
  - 2.12.1 supply food and/or beverages in the Permit Area between the hours of 2.00 am and 7.00 am of any day;
  - 2.12.2 supply liquor (approved under section 69 of the *Liquor Licensing Act 1997*) in the Permit Area between the hours of 12.00 am and 8.00 am of any day (in accordance with Council's Liquor Licensing Policy);
  - 2.12.3 use any part of a permit area solely for the purpose of providing a 'designated smoking area' (or similar);

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- 2.12.4 allow any person to smoke (or similar) within a Permit Area when any food and/or beverage is consumed within that area;
- 2.13 The Permit Holder shall at all times ensure that a clear unobstructed footpath is maintained between the business frontage and the approved Permit Area to ensure a safe pedestrian thoroughfare (in accordance with section 2.2.1 of the City of Holdfast Bay's City Wide Outdoor Dining Urban Design Guidelines);
- 2.14 Permit Areas must clearly define setbacks and ensure allowance is made for pedestrian movement around or through the area;
- 2.15 Design criteria must ensure that structures such as permanent umbrellas, sails, awnings, gazebos and canopies are of high quality design and constructed in appropriate locations;
- 2.16 All permanent constructions (including Café Screens) need to comply with all relevant building codes and standards, and be in accordance with the City of Holdfast Bay's City Wide Outdoor Dining Urban Design Guidelines. It will remain the responsibility of the Owners/Business Operator to maintain constructions;
- 2.17 Awning screens must be made of clear plastic so as to retain visibility into the active footpath zone. Any screening should not restrict movement and encourage open use of an area.
- 2.18 It should be noted that in accordance with sections 2.13 and 2.14 of this Policy, Permit Areas of a significantly large (not typical) scale may be considered 'change of use' of the footpath and are also subject to Development Approval;
- 2.19 Where a permanent structure is proposed for a Permit Area, and/or the removal of the structure will be inconsistent with section 2.7 of this policy, occupancy of the land will no longer be deemed to be consistent with the Outdoor Dining Permit guidelines. Instead, an Encroachment Licence Agreement will be executed and a commercial fee will be applied for the use of the respective land.
- 2.20 Permanent structures must not obstruct line of sight for vehicle and pedestrian traffic;
- 2.21 Owners/Business Operators are fully responsible for all installation and maintenance costs associated with all facilities and construction associated with an outdoor dining area;
- 2.22 Owners/Business Operators are fully responsible for maintaining cleanliness and public safety in all outdoor dining areas;
- 2.23 Owners/Business Operators will be held liable for any damage caused to Council property and infrastructure by their installation, removal, modification or use of any outdoor dining area.

### 3. REFERENCES

#### 3.1 Legislation

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- *Liquor Licensing Act 1997*
- *Local Government Act 1999*
- *Development Act 1993*
- *Food Act 2001*
- *Tobacco Products Regulations Act 1997*

### 3.2 Other References

- *City of Holdfast Bay City Wide Outdoor Dining Urban Design Guidelines*
- *City of Holdfast Bay Liquor Licensing Policy*
- *City of Holdfast Bay By-Law No. 3 [2.32] – Local Government Land*