



# Outdoor trading (dining) policy

Version 2, October 2022



City of Port Phillip Outdoor trading (dining) policy

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## Policy governance

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City Growth and Culture, Safety and Amenity

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Vibrant Port Phillip

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**Associated instruments:**

City of Port Phillip Outdoor trading (dining) policy



Business Parklet Guidelines

Footpath Trading Guidelines

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**Supersedes:**

Business Parklet Policy 2021

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## 1. Purpose

This Policy sets out how City of Port Phillip will manage the provision of outdoor trading opportunities across the municipality under Local Law No. 1.

## 2. Outcomes

Desired outcomes of this policy:

- Encourage activation and vibrancy in our main streets, activity centres and laneways, which makes them more enjoyable and safer for our community.
- Ensure that outdoor trading enhances the quality of streetscapes and activity centres.
- Ensure that the City of Port Phillip's 'brand' as a vibrant, sophisticated, arts-focussed community is represented by strong design and visual outcomes being apparent in approved parklets and activations.
- Support our local businesses and economy to survive and thrive and be more resilient to future economic shocks.
- Balance the activation of public space with amenity requirements of surrounding businesses and the community more broadly.
- Ensure activation of public space meets (and in some cases exceeds) accessibility, public safety and sustainability requirements.
- Ensure businesses that benefit from use of public space make a fair contribution for this use through appropriate fees, charges and upkeep responsibility.
- Provide certainty to businesses, community, Councillors and staff on the way requests to use public space in new ways will be treated (and any fees, charges and engagement required) to ensure applications can be considered efficiently, effectively and in a timely manner.
- Ensure appropriate oversight and compliance measures are in place to provide our community with confidence that public safety, maintenance and legislative requirements are being achieved and the policy objectives are being met.
- For temporary activities only, test and trial new uses of public space, which could inform longer-term public space priorities, projects and investment by Council.
- When considering shared public space, ensure a balanced and equitable sharing of opportunities between the public, hospitality traders and non-hospitality traders adjoining the public space.

### 3. Definitions

Term	Definition
Council	City of Port Phillip
Parklet	Re-purposed on-street parking spaces designed to extend public space to provide an additional place for congregation, accessible public seating, street greening and additional pedestrian space.
Outdoor trading	For the purpose of this policy, outdoor trading refers to business parklets, footpath trading or permanent outdoor dining.
Business Parklet	Parklet used for commercial purposes.
On-street parking	Designated parking spaces located on public roads that may be occupied by a vehicle for a specified period.
City Permits Panel	An internal panel of Council officers that consider: <ul style="list-style-type: none"> <li>• applications that do not meet the requirements of the Footpath Trading Guidelines, Mobile Food Vehicle Guidelines, or Business Parklet Guidelines, but that Council may wish to support or trial</li> <li>• an applicant's review of a Council Officer decision regarding a permit</li> <li>• any matters that relate to serious or ongoing breaches of permit conditions and any matters that assist in the objectives and implementation of the Footpath Trading Guidelines, Mobile Food Vehicles Guidelines, or Business Parklet Guidelines along with Senior Officers as required.</li> </ul>
Footpath trading	The use of a footpath for outdoor dining or other commercial trading activity, where chairs, tables or other equipment are removed from the footpath outside the permitted hours of operation.
Permit	Refers to a permit issued under the Port Phillip Local Law that authorises a use or activity.
Permit holder	The person to whom the permit has been issued.
Permanent outdoor dining	Permanent infrastructure on a public footpath or public space (note not in a car park or it would be a parklet) used for dining during permitted times and that may be available





Term	Definition
	for public use outside of permitted times. These spaces may be used by a single business or shared by multiple businesses. 'Permanent' refers to a time period of <i>at least</i> five years with review mechanisms built during and after that time.

## 4. Scope

This policy applies to all outdoor trading on Council managed land and car parking spaces within the Municipality.

This policy does not apply to the following:

- Community parklets.
- Events.
- Street parties.
- Trading on or in the foreshore or reserves.
- Road or laneway closures.

This document should be read alongside the Business Parklet Guidelines and the Footpath Trading Guidelines.

## 5. Relevant Council Policies

The following City of Port Phillip documents are relevant to this policy:

- Local Law Number 1.
- Activating Laneway Strategy.
- Draft Public Space Strategy.
- Parking Management Policy.
- Integrated Transport Strategy.

## 6. Background

Outdoor trading is a valuable use of public space. It can improve the look of our streets and add life and vibrancy to shopping strips. It supports both modern and traditional traders and helps create a prosperous local economy.

Footpath trading opportunities provide valuable commercial opportunities for businesses by extending their floor space and advertising their presence. It provides the community and visitors opportunities to shop, dine and drink outside.

Business parklets are a well-established method of activating public spaces in Australia and overseas. In September 2020, Council started to allow businesses to trial the expansion of their outdoor dining with a range of outdoor activations. This was a response to the adverse impacts COVID-19 was having on local businesses and the increased pressure being placed on public outdoor spaces.

This policy formalises parklets as part of our municipality and is informed by key learnings from the trial. It considers the positive impact parklets have on the vibrancy of our local businesses and the wider community. It ensures that business parklets are implemented in a balanced way and that businesses make an appropriate contribution for the use of public space and to their upkeep.

This policy also considers the appropriate requirements for longer-term outdoor dining installations, where a trader or group of traders may wish to invest in a shared or independent structure that would be permitted for longer-term use (at least 5 years).

## 7. Requirement for permit

7.1 Extended trade via Footpath Trading or a Business Parklet may only be erected and occupied on Council managed land if:

- A permit has been issued under Local Law No. 1

7.2 Two permit types will be available for Business Parklets:

- Seasonal permits which will be issued for up to a period of six months over the summer between November and April each year.
- Annual permits which will be issued for up to 12 months.

7.3 Annual permits will be issued for Footpath Trading.

7.4 Depending on the nature of a 'permanent' activation, a different category of permit may need to be considered such as a planning permit or an events permit.

7.5 Each permit type has different design requirements, as defined within the respective guideline.

7.6 A permit applies only to the premises for which it is issued and is not transferable from one premises to another on the sale or transfer of ownership. There is no legal attachment to the sale or transfer of ownership of a business.

7.7 To ensure a permit remains valid, the new proprietor must apply to transfer the ownership of the existing permit within 28 days and ensure that the current permit complies with the Business Parklet or Footpath Trading Guidelines.

7.8. Council reserves the right to reassess and amend permit conditions to ensure compliance with the Business Parklet or Footpath Trading Guidelines.



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- 7.9. It is the responsibility of the existing proprietor to include the balance of any remaining permit fees in the sale of the business.
- 7.10. An upfront transfer of ownership fee is required for officer assessment and liaison.
- 7.11. Seasonal permits expire at the end of the summer high season. Seasonal permits cannot be renewed.
- 7.12. Annual permits expire within 12 months and permit holders notified how to renew each year.
- 7.13. Annual permits can seek a maximum of two renewals (for a maximum occupation of three years), provided they are in good standing. After this period, a new application and assessment must be made.
- 7.14. Permit renewal requests will require a site inspection and rectification of any permit noncompliances.
- 7.15. Permit renewals will only be issued upon receipt of all required information, including Current Public Liability Insurance and any applicable fees.
- 7.16. If a permit is not renewed before expiry, a new application will be required.
- 7.17 Permits for longer-term / permanent activations will need to be renewed / reconsidered based on the terms of the particular permit. For example, a planning permit will have a different set of requirements to an event permit.
- 7.18. Any permit fees are non-refundable.
- 7.19. Council must investigate any complaints received. These are investigated by the Local Laws unit and any identified matters addressed with the permit holder.
- 7.20. Council reserves the right to amend or cancel a permit in accordance with the Local Law or in cases where it deems the permit is no longer supported by the outcomes in this policy or where significant and valid opposition emerges from neighbouring traders or residents.
- 7.21. Once a permit has expired or cancelled, all third-party assets must be removed within seven days.
- 7.22. If Council proposes to amend or cancel a permit the permit holder would have an opportunity to make a submission on whether the amendment / cancellation should occur and this would be considered by Senior officers and if relevant, an internal appeals panel.
- 7.23. Local Laws authorised officers may issue enforcement action in relation to any breaches of the permit conditions or the Local Law.

Refer also to Council's Complaint Handling Policy visit  
<http://www.portphillip.vic.gov.au/complaints.htm>

## 8. Application process

### Method of application

The application requirements and decision-making process are outlined in the Business Parklet Guidelines and the Footpath Trading Guidelines.

Applications for permanent outdoor dining infrastructure should be made through a discussion with the Manager City Growth and Culture. These will be handled on an 'as needs' basis.

Applications will be considered against several factors to be detailed in the respective guidelines and guided by this policy.

## 9. Assessment criteria

The assessment criteria for footpath trading and business parklets is detailed in the relevant guidelines.

Applications for permanent outdoor dining installations will be assessed against the desired outcomes specified on page five of this policy as well as consultation with neighbouring businesses, trader associations and relevant stakeholders. After this has been completed a recommendation will be made to Council via a briefing and if necessary, a formal meeting.

While this Policy aims to provide structure, it is important to state that where innovative or desirable approaches are made to Council by traders, Council officers have the flexibility to consider such concepts regardless of whether they strictly meet the criteria detailed in the relevant guidelines. This is to facilitate appropriate testing of activations that may be considered for future versions of this policy.

In such situations, officers will consider approving activations on a trial basis with follow up evaluation and consultation undertaken if required. Any trial arrangement would be subject to Council's safety and legislative obligations being met.

## 10. Operational and safety requirements

City of Port Phillip is committed to sustainable practices and requires Business Parklet operators and Footpath traders to adopt sustainable practices where possible.

All operators must use equipment and infrastructure that is well maintained, structurally sound and is able to withstand exposure to climatic conditions.

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Safety checks must be done to evaluate and eliminate any risks or hazards that may harm customers, employees or the community including those from vehicle impacts.

All business parklet structures must be designed in strict accordance with the Business Parklet Guidelines to ensure that pedestrians are safely separated from moving vehicles.

Business parklet operators must accept any impacts as a result of approved events, capital projects or maintenance works by Council or other service providers.

Council may require approvals from other relevant regulatory bodies, including Victoria Police, Department of Transport and Victoria Commission for Gambling and Liquor Regulation. Failure to provide these will result in permits being revoked or not issued.

Council will also consider whether external agencies or internal operations will be impacted by the granting of permits and ensure appropriate egress for cleaning and maintenance is considered.

A detailed list of operational and safety requirements is outlined in the Business Parklet Guidelines and the Footpath Trading Guidelines.

## 11. Review process

A permit applicant seeking a review of an officer decision must provide a submission within 28 days of the date a decision, including all information to be taken into consideration. Submissions must be emailed to: [footpathtrading@portphillip.vic.gov.au](mailto:footpathtrading@portphillip.vic.gov.au). A decision review will be considered by the City Permits Panel, consisting of three senior Council officers, using this Policy and the Business Parklet Guidelines and any other matter deemed relevant.

The permit applicant will be notified of the outcome of the decision review.

## 12. Fees and charges

Public space including parking spaces are a valuable resource for our community.

Fees will be set by utilising a valuation of retail rates and charging an applicable percentage. Any income received is used to administer the policy and for a range of Council services, including maintenance and operations of our streets.

Fees will be set through the annual Council budget process or as varied by Council resolution. An assessment of economic conditions at the time and the impact on businesses will be taken into consideration as part of this process.

The permit-holder will be held responsible for any damage caused to Council assets. All repairs must be undertaken by approved Council contractors.

## 13. Discretion of Council

Council reserves the right to amend or revoke an outdoor trading permit at any time should circumstances change, should a safety risk be identified or should significant negative feedback about the activation be received.

## 14. Special conditions

An applicant must obtain approval for all third-party assets including tables, chairs, lighting, signage, umbrellas, heaters and any weather protection structures prior to purchase and installation. These may require special conditions to be applied to the permit.

## 15. Compliance

All permit holders must comply with Council's Local Law and the Outdoor Dining and Parklet Guidelines.

## 16. Liability

All approved permit holders must:

- have Public Liability Insurance to the minimum amount required by Council.
- indemnify City of Port Phillip from any claim or demand arising from, or in relation to any act, omission, damage, loss, charge, liability, outgoing, payment, expense or cost. The permit holder is responsible for managing risks associated with the activity at its permitted location / site.

Permit holders must operate with caution or cancel activities due to:

- Extreme weather
- Safety concerns
- Identified risks
- Unsafe practices

## 17. Attachments

Footpath Trading Guidelines (due for completion early 2023)

Business Permit Guidelines (due for completion early 2023)



### City of Port Phillip

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