

P11-003 Encroachment Licences for On-street Dining

Approved by the Council on 24 May 2011. Reviewed and amended 21 May 2019.

POLICY PURPOSE

The purpose of this policy is to clarify the encroachment licence process for on-street dining to enable transparent decision-making and management of this activity in New Plymouth District.

POLICY STATEMENTS

This policy supports the provisions of the New Plymouth District Council Bylaw 2008 Part 5 Public Places as the regulatory requirement for encroachment licences in New Plymouth District.

The following information underpins the management and decision-making for encroachment licences for on-street dining:

Defining on-street dining

1. On-street dining is the activity of providing seated diners the opportunity to consume food and/or liquor on a public footpath or road that is operated in conjunction with an adjoining premise that is licensed to sell food and/or liquor.

Council position on on-street dining

2. The community enjoys the convenience and ambience that on-street dining brings to the district. The public realm, including on-street dining, has a key role to play in the experience of the city centre for all. Done well, on-street dining enhances vibrancy and safety, making the city a more attractive place to visit, work and invest. This policy and the associated design and operation guidelines have been compiled to maintain standards that allow on-street dining to co-exist with the primary uses of the footpath by pedestrians and for public street furniture, plantings and utilities.
3. The focus of on-street dining is to provide an al fresco experience for seated diners. On-street dining areas may be used for drinking alcohol as long as the design and layout of the area primarily provides for seated dining and/or drinking. On-street dining encroachment licences are unlikely to be approved for activities where the design and layout does not provide for or promote seated dining. This is to ensure that the activity occurs within the defined boundaries of the licenced area and is less likely to breach the licenced area and impede on other parts of the road reserve.

Scope of policy

4. This policy applies to any proposed on-street dining on any local road reserve and State Highway reserve in New Plymouth District that has a posted speed limit of 50kmph or less.
5. This policy may also be applied to proposed dining situations in any public place in New Plymouth District at the discretion of the Council.

Requirement for an on-street dining encroachment licence

6. The New Plymouth District Council Bylaw 2008 Part 5 Public Places requires that no person may occupy a road, reserve, park, or airspace above a road, reserve or park for any purpose unless that person has:
 - a) Obtained an encroachment licence, airspace or subsoil lease or licence to occupy from the Council; and
 - b) Paid the relevant fee.
7. An encroachment licence to occupy the road reserve is required for all on-street dining activities.

Application process and requirements

8. An application form must be completed for all on-street dining encroachment activities.
9. An application must contain the required level and standard of information before it can be accepted for processing by the Council.
10. The application will be assessed in relation to this policy and the associated New Plymouth On-Street Dining Guidelines.
11. The applicant is required to submit for approval and then implement an on-street dining activity management plan for their proposed dining activity. The plan will identify how the licence holder, in the practical sense, will meet the licence conditions on a day to day basis. This has been introduced to ensure the applicant knows what is expected for their activity to continue and to ensure the applicant is committed to meeting the encroachment licence requirements.

Principles for assessing on-street dining

12. The following principles will be used to assess applications for on-street dining.

On-street dining should be implemented in a manner that:

- Meets the intent of the 'key outcomes' outlined within the New Plymouth On-Street Dining Guidelines.
- Does not require any alteration or fixture to the footpath, utilities or other Council or community assets.
- Does not deter or inconvenience pedestrians or vehicles from using the adjacent public places.
- Its location maintains the safety of its customers and the users of the adjacent public places.
- Does not significantly obstruct or adversely affect the safe and efficient passage of pedestrians or vehicles.
- Does not significantly affect access to or use of adjacent businesses and/or properties. Trade competition is excluded from consideration.
- The design of furniture and its siting does not detract from the visual appearance of the area.
- Will not, in terms of occupation and activity, extend beyond the boundaries of the approved licensed area.
- Is complementary to existing uses of the area.
- Is consistent with existing consents and licences.
- Enhances the heritage values of the immediate area.
- Is safe for users with adequate protection from vehicle traffic where risk arises.

The New Plymouth On-Street Dining Guidelines will be used to determine the extent to which applications meet these principles.

Smoke free on-street dining

13. To support the Council's Smoke Free Parks and Outdoor Areas Policy and the New Zealand Government's goal of a smoke free New Zealand by 2025, smoke free on-street dining areas are encouraged.
14. The Council will provide a 50% discount on the annual rental of encroachment licences for smoke free on-street dining areas.

Issuing an on-street dining encroachment licence

15. A licence is not transferable and when a property or business is sold, the new owners will need to apply for a new licence.

16. A licence will be subject to such conditions of operation as are necessary to ensure that the intent of this policy is met. These will include, but are not limited to, the following conditions:
- That the licence holder will maintain the dining area in a clean, tidy and presentable manner.
 - That all on-street dining furniture will be removed from the public place at the end of the day's trading.
 - That the licence holder will have public liability insurance and will be able to provide evidence that the insurance is current.
 - The ability for the Council to review the encroachment licence at any time.
 - The right of the Council with appropriate notice to require the temporary cessation of on-street dining to enable works to be carried out or to accommodate a special event.
17. It is the responsibility of the licensee to ensure that the conditions of an on-street dining encroachment licence are met when the activity operates.

Licence duration and review

18. An On-street dining encroachment licence will be issued for a maximum duration of two years with an annual review.

Costs and Charges

19. Fees and charges for encroachment licences are set as part of the Annual Plan or Long Term Plan process and are detailed in the Schedule of Fees and Charges.
20. Annual rentals are reviewed in accordance with the Schedule of Fees and Charges.
21. The licensee is responsible for all costs associated with the installation, operation and ongoing maintenance of the on-street dining activity.
22. The licensee is responsible for any costs of damage to Council owned property associated with the provision of the on-street dining activity.
23. The licensee is responsible for the cost of maintaining the required level of public liability insurance.
24. The licensee is responsible for any costs associated with the reinstatement of road reserve arising from the on-street dining activity or its removal. Any remedial works will be undertaken by a Council approved contractor at the full cost to the licensee.

Advertising

25. The New Plymouth District Plan and New Plymouth District Council Bylaws control advertising in public places. Advertising signage must conform to these controls except that on-street dining furniture may also display the following:
- The premise name and/or logo.
 - A product supplier brand name and/or logo.

Situations when on-street dining may cease

26. On-street dining may cease or be required to cease where:
- The licensee surrenders the licence.
 - The licensee ceases trading.
 - Any associated costs remain unpaid.
 - A breach of licence conditions occurs.
 - A review of the licence finds that on-street dining is no longer feasible in accordance with this policy due to changed circumstances (e.g. significant increases in pedestrian flows) or changes to

the use of the adjoining carriageway (e.g. the establishment of a pedestrian crossing point or parking facilities) or the need to use the footpath for any other primary purpose.

Guidelines for on-street dining

27. The On-street Dining Guidelines provide information on the ways in which this policy may be met, the application process and the status of any licence issued prior to this policy. The guidelines will be used in conjunction with this policy to assess any application for an on-street dining encroachment licence.

POLICY CONTACT

The policy holder is Customer and Regulatory Services.

POLICY REVIEW

Reviewed five yearly (next review 2024).