



NELSON MANDELA BAY DRAFT POLICY

Draft Outdoor Dining Policy

Working Draft 1.0 for Public Participation

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Written submissions can be submitted to:

Mr M Baloyi at mbaloyi@mandelametro.gov.za or
Mr S Potgieter at spotgiet@mandelametro.gov.za

EXECUTIVE SUMMARY

DRAFT NMBM OUTDOOR DINING POLICY

INTRODUCTION

This Municipality is not immune to the global trends of dining outdoors on a portion of a **public place** which is used for the purpose of extending the services of a **restaurant**. **Outdoor dining** contributes to the amenity of our streets and other public places within the Municipality by providing a place to eat, but also a venue for meeting, a place to watch passersby and to engage actively in the social life.

Whereas **Council** recognises the key role that restaurants and their outdoor dining activities plays in contributing to the quality of public places and urban life and, in particular, their positive contribution in creating active vibrant streets with opportunities for social interaction and leisure.

There is a need to adopt a developmental approach to outdoor dining within a well-managed municipal area. This requires that, in managing outdoor dining, consideration must also be given to:

- a. the promotion of a safe and healthy environment for all users of public places;
- b. the promotion of social and economic development;
- c. municipal planning; and
- d. the management of public places and public roads.

The policy thus seeks to encourage the use of public places for outdoor dining purposes in a manner that, it:

- a. is easily integrated with the existing business activities;
- b. makes a positive contribution to the streetscape;
- c. does not interfere with the pedestrian and vehicular traffic flow; and
- d. does not compromise the safety of pedestrians utilizing the public place and that of road users.

Whereas, **Council** has competence in terms of Part B of Schedules 4 and 5 of the Constitution relating to such matters as the control of street trading, public places, municipal roads, licensing and control of undertakings that sell food to the public. Council has a duty to provide a safe and healthy environment for its citizens in terms of the provisions of section 4(2) (i) of the Municipal Systems Act no 32 of 2000.

Furthermore, Section 11 (3) (a) of the Municipal Systems Act no. 32 of 2000, entitles a Municipality to exercise its legislative or executive authority by inter alia creating, developing and adopting policies. This policy is deemed to contribute to the fulfilment of

the provisions of the said sections of the Constitution of the Republic of South Africa and the Municipal Systems Act.

Therefore, the **Council** acting in terms of section 156 read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, and read with section 11 of the Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended, hereby makes the Outdoor Dining policy.

POLICY OBJECTIVE

The objective of the policy is to harness and manage the potential of outdoor dining in creating a vibrant and robust street environment by increasing the opportunities for social and cultural life in appropriate areas of the Municipality

MAIN POLICY PROPOSALS

The outdoor dining policy proposes the following:

1. **Principles: Safety, Accessibility, Cleanness, and Street Façade.** These proposes policy principles should be taken into consideration when dealing with outdoor dining proposals.
2. **Outdoor Dining Facility Management:** the policy introduces measures to be implemented as part of 'outdoor dining facility management'. This include the maintenance of the Outdoor Dining Facility, the protection of asset which belong to the Municipality, and the operation measures to be taken into consideration for the greater benefit of all.
3. **Layout Design Specifications:** The policy introduces layout design specifications to be followed in conjunction with the policy principles. This include a minimum of 1.5m sidewalk which must be maintained for pedestrian circulation in all locations in the Municipality.
4. **Furniture and Accessories:** the policy gives guidelines with regards to the type of furniture which should be used in an outdoor dining area. This include the role to be played by Council/ Municipality in determining the type of furniture to be used in a specific outdoor dining area.
5. **Public Liability Insurance:** the policy recommends that the permit holder must take out a public liability insurance in respect of injury, loss or damage occurring on the **restaurant** and the outdoor dining area, and the insurance will also note all the indemnities provided by the permit holder in favour of the Council.

APPLICATION PROCESS

1. **Eligibility:** An owner or tenant of an existing restaurant abutting Council owned sidewalk or public place which is to be utilized for outdoor dining purposes can apply.
2. **Process:** Application will be circulated to relevant departments through the normal 'Subdivision and Land Matters' (SALT) process for evaluation and recommendations.

3. **Assessment Criteria:** Each application will be assessed against this Outdoor Dining Policy, Zoning Scheme, Spatial Plans, applicable Legislations and By-laws.
4. **Lease and the Lease fees:** a portion of public place may be leased for outdoor dining purposes upon approval, and the lease agreement shall be valid for 12 months (shall be renewed annually). There will be a fee for the leasing of the applicable portion of the sidewalk or public place.
5. **Standard Conditions of Approval:** The policy recommends a set of conditions which may be imposed.

ENFORCEMENT AND PENALTIES

The conduct of outdoor dining establishments will be monitored and a record of contraventions committed by each operator will be maintained. Non-Compliance may lead to penalties being issued and/ or the permit being revoked.

CANCELLATION AND SUSPENSION OF PERMIT AND / OR LEASE

The Outdoor Dining rights granted by *Council* to the *Permit Holder* will be subject to termination by the *Council* if any breach of conditions upon which such rights were granted is not remedied in compliance with a notice served by the *Council* upon the outdoor dining *Permit Holder*, which notice shall require that the breach be remedied within a specific period. The Council may also suspend the permit temporarily to enable infrastructural work on Council owned land.

POLICY REVIEW

The policy will be reviewed every five years.

USHWANKATHELO LWESIGQEBA

UMGAQO WOKUTYELA NGAPHANDLE

INTSHAYELELO

Lo Masipala akakho ngaphandle kumrhiba kazwelonke wokutya ngaphandle kwicandelo likawonke-wonke elisetyenziswa ukwandisa iinkonzo zokutyela. Ukutyela ngaphandle kunegalelo kwiindawo zolonwabo kwizitalato nakwezinye iindawo eziphantsi koMasipala, ngokunikezela ngeendawo zokutyela, kodwa ikwayindawo yeendibano, ikwayindawo yokubukela abantu abehla benyuka babengabakhoyo phakathi kwabantu.

Nangona isiGqeba siyiqaphela eyona nxaxheba iphambili yeendawo zokutyisa abantu neentshukumo zabo zokutyela ngaphandle eziyidlalayo zinegalelo kumgangatho

weendawo zikawonkewonke nobomi basezixekweni, ngakumbi impembelelo yazo entle ukwakha iindawo ezintshukumo iphilayo ezinamathuba okuxubana nabantu nolonwabo.

Kukho imfuneko yokuqhuba indlela yophuhliso kwinkqubo yokutya ngaphandle kummandla kaMasipala onolawulo olululo. Le meko ifuna ukuba ekulawuleni ukutyela ngaphandle, makube kho ingqwalasela kwezi zinto zilandelayo:

- a. ukunyusa umgangatho wokhuseleko nesimo esinempilo kubantu bonke abasebenzisa ezi ndawo zikawonkewonke;
- b. ukunyusa umgangatho wokuphuhlisa ezintlalo nezozoqoqosho;
- c. ucwangciso olululo lukaMasipala:
- d. ulawulo olululo lweendawo neendlela zikawonkewonke.

Lo mgaqo ke ngoko ujongene nokukhuthaza ukusetyenziswa kweendawo zikawonkewonke ukutyisa abantu ngaphandle ngendlela yokuthi:

- a. ngokulula ixube nezoshishino ezikhoyo;
- b. ibe negalelo elilungileyo kwinkangeleko yezitalato;
- c. ibe ayibaphazamisi abahambi ngeenyawo nabahambi ngeenqwelomafutha
- d. inganikezeli ekuphazanyisweni kokhuseleko lwabahambi ngeenyawo abasebenzisa ezi ndawo zikawonkewonke nabo basebenzisa iindlela.

Nangona iQumrhu lolawulo ligqibelele ngokubhekiselele kwiCandelo B leenkcazelo 4 no-5 yoMgaqosiseko kunxulumene nezo meko zokulawula urhwebo lwasezindleni, iindawo zikawonkewonke, iindlela zikaMasipala, iziqinisekiso okanye amaphepha-mvume nokulawula iintshukumo zokuthengisa ukutya ebantwini, linenxaxheba yokunikezela ngesimo esikhuselekileyo nesinempilo kubemi balo ngokubhekiselele kwizininikezelo zeCandelo 4 (2) (i) soMthetho weeNkqubo zooMasipala u-32 ka-2000.

Ngaphezu koko, iCandelo 11 (3) (a) loMthetho weeNkqubo zooMasipala ligunyazisa uMasipala ukuba asebenzise amagunya akhe omthetho okanye igunya lakhe lequmrhu lolawulo, ngoku kulandelayo, phakathi kwezinye, adale, aphuhlise ayamkele imigaqo. Lo mgaqo ulindeleke ukuba uthathe inxaxheba ukuzalisekisa isinikezelo sala macandelo abhekiswe kuwo oMgaqosiseko weRepublic yaseMzantsi Afrika noMthetho weeNkqubo zooMasipala.

Ngoko ke, iQumrhu lisenza ngokubhekiselele kwiCandelo 156 lifundwe neCandelo B leNkcazelo 5 yoMgaqosiseko weRepublic yoMzantsi Afrika yafundwa neCandelo 11 loMthetho weeNkqubo zooMasipala ka-2000 (32 ka-200) njengokuba ilungisiwe, ngoku yenza umgaqo wokuTyela ngaPhandle.

IINJONGO ZOMGAQO

Injongo yalo mgaqo kukubamba alawule okuqulathwe kukutya ngaphandle ukudala imo enentshukumo nokomelela ngokwandisa amathuba okuxubana nabanye nobomi benkcubeko kwimimandla echanekileyo kaMasipala.

IZIPHAKAMISO EZIPHAMBILI ZOMGAQO

Umgaqo wokutyela ngaphandle uphakamisa oku kulandelayo:

1. **Imithetho:** *Ukhuseleko, ukufikeleleka, ucoceko, nenkangeleko eyamkelekileyo.* Le mithetho iphakanyisiweyo yomgaqo mayiqwalaselwe xa kuthethwa ngeziphakamiso zokutyela ngaphandle.
2. **Ukulawulwa kwezibonelelo zokutya ngaphandle;** Umgaqo ubonisa amanyathelo anokulandelwa njengxenye yolawulo lwezibonelelo zokutyela ngaphandle. Oku kuquka ukukokosa izibonelelo zendawo zokutyela ngaphandle, ukukhusela izinto ezixabisekileyo zikaMasipala neendlela zokusebenzisa ziqwalaselwe ngendlela eya kunceda wonke umntu.
3. **Amanqaku okucwangcisa ubume:** Umgaqo ubonisa amanqaku okucwangcisa ubume amawalandelwe ngokudibene nemithetho yomgaqo. Oku kudibanisa ubuncinane be-1,5m besithuba sokuhamba emasigcinwe ukubonelela ukuhambahamba kwabahambi ngeenyawo phakathi kuMasipala.
4. **Impahla nezixhobo ezincedisayo:** Umgaqo unika isikhokhelo ngokubhekiselele kuhlobo lwempahla enokusetyenziswa kumhlaba othile wendawo yokutyela ngaphandle. Oku kuquka inxaxheba ethathwa liQumrhu/nguMasipala ukuqingqa olona hlobo lwempahla inokusetyenziswa kumhlaba othile wendawo yokutyela ngaphandle.
5. **Inshorensi yesakalo kuluntu:** Umgaqo uphakamisa ukuba lowo uneempephamvume makakhuphe inshorensi yesakalo kuluntu ngokubhekiselele kwingozi, kwilahleko okanye umonakalo onokwenzeka kwelo ziko lokutyela okanye kwindawo yokutyela ngaphandle, yona inshorensi iya kuqaphela zonke iimbuyezeko ezinikezelwe nguloo mntu unemvume ngenkxaso yeQumrhu.

INKQUBO YOKWENZA ISICELO

1. **Ongofanelekileyo:** Umnini wesakhiwo okanye umqashi kumzi wokutyela owayame indledlana kaMasipala okanye umhlaba kawonkewonke onokusetyenziselwa ukutyela ngaphandle kwabantu
2. **Inkqubo:** Isicelo siya kujikeleziswa kuloo masebe achanekileyo ngokwenkqubo eqhelekileyo yocando nemicimbi yemihlaba yovavanyo neziphakamiso.
3. **Indlela yokuvavanya:** Isicelo ngasinye siya kuvavanywa kuthelekiswa nomgaqo wesakhiwo sokutyela ngaphandle, inkqubo yemida yomhlaba, ucwangciso lomhlaba, ulawulo oluchaphazelekayo nemithetho enxulumene nalo.
4. **Unikezelo lomhlaba ngentlawulo nentlawulo yawo:** Inxalenye yendawo kawonkewonke inako ukunikezelwa ngesivumelwano sentlawulo ukuqhuba indawo yokutyela ngaphandle xa sisamkeleka, isivumelwano eso siya kusebenza iinyanga ezilishumi elinambini (12) (siya kuhlaziywa kunyaka ngonyaka). Kuya kuba kho intlawulo yokuqeshisa ngalo ndawo inendlela okanye indawo yoluntu.

5. **limeko zokuvumeleka ezisemgangathweni:** Umgaqo uphakamisa uluhlu lweemeko ezinokubekwa.

EZISISINYANZELO NEZOHLWAYO

Indlela yokuziphatha kumzi wokutyela ngaphandle iya kujongwa nengxelo yongenelelo olwenziweyo ngulowo ugunyazisiweyo iya kugcinwa. Ukuba oku akwenzekanga, kuya kukhokhelela ekubeni kube kho izohlwayo ezikhutshwayo ibeke ngolo hlobo isivumelwano siyarhoxiswa.

UKUCINYWA NOKUXHONYWA KWESIVUMELWANO SOMHLABA OKANYE SENDAWO

Amalungelo eziko lokutyela ngaphandle anikezelweyo liQumrhu kuneempepha-mvume anganqanyulwa liQumrhu lolawulo ukuba ulwaphulo lweemeko ezibekiweyo alulungiswanga ngokwesaziso esikhutshwe liQumrhu kubantu abanemvume yeziko lokutyela ngaphandle. Isaziso eso siya kufuna ukuba oku kungabanjwa kwaso kulungiswe lingaphelanga ixesha elibekiweyo. IQumrhu linako nokusixhoma esi sivumelwano okwethutyana ukunika ithuba lomsebenzi weziseko kumhlaba kaMasipala.

UHLAZIYO LOMGAQO

Lo mgaqo uya kuhlaziywa qho emva kweminyaka emihlanu (5).

UITVOERENDE OPSOMMING

BELEID INSAKE BUITENSHUISE UITEET

INLEIDING

Die Munisipaliteit is nie immuun teen die wêreldwye tendense om buitenshuis uit te eet op 'n gedeelte van 'n **openbare plek** wat gebruik word met die doel om die dienste van 'n **restaurant** uit te brei nie. **Buitenshuisse uiteet** dra by tot die aantreklikheid van ons strate en ander openbare plekke in die Munisipaliteit deur 'n plek te verskaf om te eet, maar ook 'n lokaal om te ontmoet, 'n plek om verbygangers dop te hou en om aktief aan die sosiale lewe mee te doen.

Die **Raad** erken die sleutelrol wat restaurante en hul buitenshuisse aktiwiteite speel om tot die gehalte van openbare plekke en die stadslewe, en veral hul positiewe bydrae tot die skepping van aktiewe, lewendige strate met geleenthede vir sosiale interaksie en ontspanning, by te dra.

Daar bestaan 'n behoefte om 'n ontwikkelingsbenadering tot buitenshuisse uiteet in 'n goed bestuurde munisipale gebied aan te neem. Dit vereis dat om buitenshuisse uiteet te bestuur, oorweging ook geskenk moet word aan –

- a. die bevordering van 'n veilige en gesonde omgewing vir alle gebruikers van openbare plekke;

- b. die bevordering van maatskaplike/sosiale en ekonomiese ontwikkeling;
- c. munisipale beplanning; en
- d. die bestuur van openbare plekke en openbare paaie;

Dié Beleid streef dus daarna om die gebruik van openbare plekke vir buitenshuise uiteet aan te moedig op so 'n wyse dat dit –

- a. maklik met die bestaande besigheidswerkzaamhede geïntegreer word;
- b. 'n positiewe bydrae tot die straatkap maak;
- c. nie met die voetganger- en voertuigverkeersvloei inmeng nie; en
- d. nie die veiligheid van voetgangers wat die openbare plek gebruik en dié van padgebruikers in gevaar stel nie.

Aangesien die **Raad** ingevolge Deel B van Skedules 4 en 5 van die Grondwet bevoegdheid het in verband met aangeleenthede soos die beheer van straathandel, openbare plekke, munisipale paaie, lisensiëring en die beheer van ondernemings wat kos aan die publiek verkoop, is dit die **Raad** se plig om ingevolge die bepalings van Artikel 4(2) (i) van die Wet op Munisipale Stelsels, Nr. 32 van 2000, 'n veilige en gesonde omgewing vir sy inwoners te verskaf.

Voorts maak Artikel 11 (3) (a) van die Wet op Munisipale Stelsels, Nr. 32 van 2000, 'n munisipaliteit daarop geregtig om sy wetgewende of uitvoerende gesag uit te oefen deur onder andere beleidsrigtings te skep, te ontwikkel en te aanvaar. Dié Beleid word geag tot die nakoming van die bepalings van gemelde artikels van die Grondwet van die Republiek van Suid-Afrika en die Wet op Munisipale Stelsels by te dra.

Die **Raad** handel dus ingevolge Artikel 156, saamgelees met Deel B van Skedule 5 van die Grondwet van die Republiek van Suid-Afrika, en saamgelees met Artikel 11 van die Wet op Munisipale Stelsels, 2000 (Wet Nr. 32 van 2000), soos gewysig, en stel dit hiermee die Beleid insake Buitenshuise Uiteet daar.

DOELWIT VAN BELEID

Die doelwit van dié Beleid is om die potensiaal van buitenshuise uiteet in te span en te bestuur om 'n lewendige en robuuste straatomgewing te skep deur die geleenthede vir 'n sosiale en kultuurlewe in toepaslike gebiede in die Munisipaliteit te verhoog.

HOOFBELEIDSVOORSTELLE

Die Beleid insake Buitenshuise Uiteet stel die volgende voor:

1. **Beginnels:** *Veiligheid, toeganklikheid, reinheid en straatfront.* Dié voorgestelde beleidsbeginsels moet in aanmerking geneem word wanneer voorstelle rakende buitenshuise uiteet oorweeg word.
2. **Bestuur van Buitenshuise-uiteetonderneming:** Die Beleid stel maatreëls in wat as deel van die 'bestuur van Buitenshuise-uiteet-onderneming' geïmplementeer moet word. Die sluit in die instandhouding van die buitenshuise-

uiteetfasiliteit, die beskerming van bates wat aan die Munisipaliteit behoort en die bedryfsmaatreëls wat tot die groter voordeel vir almal in aanmerking geneem moet word.

3. **Uitlegontwerpspesifikasies:** Die Beleid lê uitlegontwerpspesifikasies neer wat saam met die beleidsbeginsels gevolg moet word. Dit sluit in 'n sypaadjie van minstens 1.5 m wat vir voetgangersirkulasie op alle plekke in die Munisipaliteit behou moet word.
4. **Meubels en toebehore:** Die Beleid verskaf riglyne met betrekking tot die tipe meubles wat op 'n buitenshuise uiteetgebied gebruik moet word. Dit sluit in die rol wat deur die Raad/Munisipaliteit gespeel word in die bepaling van die tipe meubels wat in 'n spesifieke buitenshuise uiteetgebied gebruik moet word.
5. **Versekering vir openbare aanspreeklikheid:** Die Beleid bevel aan dat die permithouer 'n versekeringspolis vir openbare aanspreeklikheid uitneem ten opsigte van besering, verlies of skade wat in die **restaurant** en buitenshuise uiteetgebied mag plaasvind, en die versekering sal ook al die vrywarings wat deur die permithouer ten gunste van die **Raad** verskaf word, vermeld.

AANSOEKPROSES

- 1 **Geskiktheid:** 'n Eienaar of huurder van 'n bestaande restaurant aangrensend aan 'n sypaadjie of openbare ruimte wat deur die Raad besit word, wat vir die doeleindes van buitenshuise uiteet benut gaan word, kan aansoek doen.
- 2 **Proses:** Die aansoek sal deur die normale 'Onderverdelings- en Grondsake' na die betrokke departemente vir evaluering en aanbevelings gesirkuleer word.
- 3 **Evalueringsmaatstawwe:** Elke aansoek sal geëvalueer word teenoor dié Beleid insake Buitenshuise Uiteet, die Soneringskema, Ruimtelike Planne en toepaslike wetgewing en verordeninge.
- 4 **Huurkontrak en huurgeld:** 'n Gedeelte van 'n openbare plek mag by goedkeuring vir buitenshuise uiteetdoeleindes gehuur word en die huurooreenkoms sal vir 12 maande geldig wees (moet jaarliks hernu word).
- 5 **Standaard Voorwaardes vir Goedkeuring:** Die Beleid beveel 'n stel voorwaardes wat opgelê mag word aan.

TOEPASSING EN STRAWWE

Die gedrag van buitenshuise uiteetondernemings sal gemoniteer word en 'n rekord sal gehou word van oortredings wat deur elke operateur gepleeg word. Nie-voldoening kan daartoe lei dat strawwe opgelê word en/of die permit herroep word.

KANSELLASIE EN OPSKORTING VAN PERMIT EN/OF HUURKONTRAK

Die buitenshuise uiteetregte wat deur die *Raad* aan die *Permithouer* toegestaan word, sal onderworpe wees aan beëindiging deur die *Raad* indien enige breuk van die voorwaardes waarop sodanige regte toegestaan is, nie reggestel word ter voldoening aan 'n kennisgewing wat deur die *Raad* aan die buitenshuise uiteet*permithouer* beteken

is nie, welke kennisgewing sal vereis dat die breuk binne 'n spesifieke tydperk reggestel word. Die Raad mag ook die permit tydelik opskort om infrastruktuurwerk op grond in Raadsbesit toe te laat.

HERSIENING VAN BELEID

Die Beleid sal elke vyf jaar hersien word.



OUTDOOR DINING POLICY

Working Document 1.0

13 July 2017

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1. DEFINITIONS

In this policy, unless the context indicates otherwise:-

"authorised official" shall mean an official of the Council who has been delegated with the authority to administer, implement and enforce the provisions of this policy;

"business hours" shall mean operating hours and shall be considered to mean the time from which an establishment shall open to the time that it shall close and cease to operate;

"certificate of acceptability" means a certificate of acceptability issued by the Municipality in terms of the Regulations Governing General Hygiene Requirements For Food Premises and the Transport of Food made in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and published by Government Notice R962 of 23 November 2012;

"Consent Use" shall mean additional use rights permitted in terms of the applicable zoning scheme in a particular use zone with the need to obtain consent of Council prior to implementation;

"Council" shall mean the municipal council of the Nelson Mandela Bay Metropolitan Municipality established established in terms of Part 2 of Schedule 1 of Notice 85 in the Eastern Cape Provincial Gazette No. 654 on 27 September 2000, promulgated in terms of Section 12(1) of the Local Government: Municipal Structures Act No. 117 of 1998, for the municipal area described in such Notice;

"council special consent" shall mean a consent use right granted by the Council of the Nelson Mandela Bay Metropolitan Municipality in terms of the applicable land use scheme and or other related policies.

Council may, where an application is made for a Consent Use as provided for in the Zoning Scheme, grant or refuse such an application and/or impose such conditions as it may deem fit¹.

"Executive Director" shall mean a manager directly accountable to the Municipal Manager Local as contemplated in the Government: Municipal Systems Act No. 32 of 2000, as amended;

¹ "Council's Special Consent" as defined in terms of the Draft NMBMM Integrated Zoning Scheme

“fixed item” shall mean immovable furniture that will not be removed from an outdoor dining area at the end of the trading day;

“food truck” or “mobile restaurant” shall mean a vehicle or trailer equipped to cook or prepare and sell food. These vehicles can be used to prepare food directly from an on-board kitchen, or it can be used to sell pre-packaged food (*but may include ice-cream trucks incidental thereto*);

“kerb line” shall refer to the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge, as defined in section 1 of the National Road Traffic Act No. 93 of 1996;

“licensed restaurant” shall mean a restaurant licensed in terms of the Liquor Act No. 59 of 2003;

“Municipality” shall mean the Nelson Mandela Bay Metropolitan Municipality, a Category A Municipality established in terms of Part 2 of Schedule 1 of Notice 85 in the Eastern Cape Provincial Gazette No. 654 on 27 September 2000, promulgated in terms of Section 12(1) of the Local Government: Municipal Structures Act No. 117 of 1998, for the municipal area described in such Notice;

“outdoor dining” shall mean dining outdoors on a portion of **public place** which is used for the purpose of extending the services of premises whose main function is for the provision of food and beverages to the public. Such premises include restaurants and mobile restaurant. Outdoor dining will be directly associated with the **restaurant** that holds the outdoor dining special consent/ permit and will only operate when those premises are open for business;

“outdoor dining facility” or “outdoor dining area” shall mean an area that is used by patrons to sit down and consume meals and / or beverages from an existing restaurant or mobile restaurant. Outdoor dining facilities are temporary and only used during business hours of operation;

“permit holder” shall mean the person who has been granted permission by **Council of the Nelson Mandela Bay Metropolitan Municipality** to operate an **outdoor dining facility** on municipally owned land;

“Policy” shall mean the Outdoor Dining Policy of the **Municipality**;

“public place” shall mean any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for use by the general public and is owned by or vests in the ownership of a Municipal Council, and includes a public open space and a servitude for any similar purpose in

favour of the general public, as defined in the Spatial Planning and Land Use Management Act No.16 of 2013;

"restaurant" shall mean a business where meals and beverages are sold for onsite or offsite consumption. Alcoholic beverages can only be sold and consumed subject to the requirements of the Liquor Act and Council's Liquor Outlet By-Law as amended from time, and subject to Council's consent.

"shoulder" shall mean that portion of the road, street or thoroughfare between the edge of the roadway and the kerb line, as defined in the National Road Traffic Act No. 93 of 1996;

"sidewalk" shall mean that portion of a verge intended for the exclusive use of pedestrians, as defined in Section 1 of the National Road Traffic Act No. 93 of 1996;

"street furniture" shall mean any furniture installed by the Council on the street for public use, this may include seating benches, planters, pavement litter bins, pole-mounted bins, bus shelter, pavement clocks and drinking fountains;

"verge" shall mean that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway on the shoulder, as defined in section 1 of the National Road Traffic Act 93 of 1996.

"Zoning Scheme" shall mean the Integrated Zoning Scheme of the Nelson Mandela Bay Metropolitan Municipality;

2. INTRODUCTION

WHEREAS the council recognises the key role that restaurants and their outdoor dining activities plays in contributing to the quality of public places and urban life and, in particular, their positive contribution in creating active vibrant streets with opportunities for social interaction and leisure;

WHEREAS the council recognises the need to adopt a developmental approach to outdoor dining within a well-managed municipal area. This requires that, in managing outdoor dining, consideration must also be given to –

- a. the promotion of a safe and healthy environment for all users of public places;
- b. the promotion of social and economic development;
- c. municipal planning; and
- d. the management of public places and public roads;

WHEREAS the Council has competence in terms of Part B of Schedules 4 and 5 of the Constitution relating to such matters as the control of street trading, public places, municipal roads, licensing and control of undertakings that sell food to the public;

AND WHEREAS Section 11 (3) (a) of the Municipal Systems Act no. 32 of 2000, entitles a municipality to exercise its legislative or executive authority by inter alia creating, developing and adopting policies. In addition, section 4(2) (i) of the Municipal Systems Act no 32 of 2000 places a duty on Council to provide a safe and healthy environment for its citizens. This policy is deemed to contribute to the fulfilment of this duty.

NOW THEREFORE the Council acting in terms of section 156 read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended, hereby makes the following policy:

2.1. Policy Document

The new outdoor dining trends seems to be growing in popularity in the **municipality**. The urban renewal projects has also created new opportunities for outdoor dining on public places. The implication of the use of a public place for **outdoor dining** is that certain challenges are created which require consideration and guiding principles for the proper management thereof. This renders a number of problems related to undefined streetscape, public health and cleansing, as well as public liability matters in respect of guarding public safety and indemnifying the **Council**.

The construction and placement of decks on sidewalks in order to create a flat surface on which to place tables, chairs and umbrellas; the construction of awnings and shade extending onto **public place** and **sidewalks** are some of the challenges that need to be addressed.

Therefore, the **Council** will utilise this policy to control, manage and promote the usage of public places situated within the Municipality for outdoor dining. This policy is not limited to **Council** owned land only, but may also be utilised to provide guidance for the design of outdoor dining facilities on private land located within the jurisdiction of the Nelson Mandela Bay Municipality.

2.2. Policy Objective

The objective of the policy is to harness and manage the potential of **outdoor dining** in creating a vibrant and robust street environment by increasing the opportunities for social and cultural life in appropriate areas of the **Municipality**.

3. POLICY APPLICATION

The *Policy* applies to the entire *Municipality*.

4. LEGAL REQUIREMENTS

4.1 No person may operate an *outdoor dining facility* on *Council* owned land unless he/she has complied with all relevant legislation, including :

- (a) the applicable **Zoning Scheme** with specific reference to parking (the relevant parking section, read with Department Of Transport (DOT) Parking Standards), zoning, as well as any other development controls and policies applicable to that particular area;
- (b) the design of the outdoor dining area must comply with the provisions of the Municipality's 'Fire Safety By-Law' particularly when it comes to the aspect of 'access for emergency vehicles';
- (c) the National Building Regulations and Building Standards Act 103 of 1977 where the structure/s of an outdoor dining area is an extension of an existing building; or/and where the development of an outdoor dining area results in the alteration of building/s on an adjacent associated property, must comply with said Act and its regulations;
- (d) the South African Music Rights Organisation (SAMRO) licence requirements, where the business or person that plays background, recorded, broadcast or live music in public, must obtain a music usage license from SAMRO. A licence is required if background music is to be played to the patrons of the *outdoor dining facility*.
- (e) the Broadcasting Act 4 of 1999 as amended, where the *outdoor dining facility* is supplied with a television set for the benefit of patrons/customers, a television licence must be obtained in accordance with the provisions of said Act;
- (f) the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 as amended, and the Regulations governing general hygiene requirements for food premises and the transport of food, formulated in terms of section 35, read with section 40, of the Health Act 63 of 1977 and the **Municipality's** Health By-law, where a Certificate of Acceptability must be obtained from the **Municipality's** Environmental Health Officer;
- (g) the Tobacco Products Control Act 83 of 1993 as amended, and the Regulations Relating to Smoking In Public Places and Certain Outdoor Public Places, where it is a requirement that signs are displayed in areas designated for smoking and no-smoking signs are displayed elsewhere;
- (h) the Eastern Cape Liquor Act 10 of 2003, if liquor is to be served to the customers in the *outdoor dining facility*, a liquor licence must be obtained in accordance with the provisions of this act prior to the operation of the establishment.

5. POLICY PRINCIPLES

5.1. Safety

5.1.1 Safety is an important issue and the **permit holder** will be responsible for all aspects of safety related to the outdoor dining space. Considering that the **Municipality's** sidewalks are public spaces, both pedestrians and patrons must therefore enjoy safety and security at all times.

5.1.2 In order to enhance safety measures, outdoor dining areas must therefore:

- a) Be located in areas which are considered to be safe by the **Municipality** and must avoid locations that are deemed to be unsuitable within reason;
- b) Meet the clearances and setbacks specified in the applicable Municipal bylaws;
- c) Ensure that lines of sight for both motorists and pedestrians at road intersections are not impeded;
- d) Ensure that access for the elderly and physically disabled is not compromised;
- e) Meet any special requirements that the Council may introduce from time to time and/or relating to specific locations;
- f) Ensure that the safety of adjoining businesses and/or buildings is not compromised; and
- g) Not obstruct normal pedestrian flow along sidewalks at any time.

5.2. Accessibility

5.2.1 Non-motorised transport facilities of the Municipality are public property and have to always be treated as such. Outdoor dining will therefore be permissible only when associated with existing or proposed eating establishments that are accessible to the general public. Access points will be designed and placed in a manner that gives consideration to able bodied as well as persons with disabilities.

5.3. Cleanliness

5.3.1. The **permit holder** is responsible for keeping the outdoor dining area clean, free from litter and waste materials. The **permit holder** will bear the cleaning cost of the outdoor dining area and street furniture. Appropriate refuse receptacles are to be provided on site to be used by patrons, which are cleaned and emptied regularly by the **permit holder**.

5.4. Street Facade

- 5.4.1. The design features of the outdoor dining area will complement the surrounding environment in a manner that it engages pedestrians and enhances social interactions, and does not compromise the health and safety of pedestrians.

6. OUTDOOR DINING FACILITY MANAGEMENT

6.1. Maintenance

- 6.1.1 It is the responsibility of the **permit holder** to appropriately manage and supervise the **outdoor dining facility** to ensure that patrons' behavior does not lead to damage of public/private property. Any damage on the footpath, public utilities or existing infrastructure, of which in the opinion of **Council** has been caused by the **outdoor dining facility**, must be repaired at the **permit holder's** expense to the satisfaction of **Council**. As a mechanism of protecting the public realm, the **Council** may apply added conditions of lease or modify existing conditions at any time.

- 6.1.2 **Council** in its own discretion may also choose to cancel a lease due to challenges associated with maintenance of the **outdoor dining facility**. Any decks placed on Council property must be maintained adequately and regularly to ensure safety of patrons and adherence to hygiene requirements.

6.2. Asset Protection

- 6.2.1. Any form of asset owned by the **Municipality**, can it be street trees, street bins, seats, paving and other **Council** fixtures are not to be disturbed by the **permit holder**. Removal, replacement or relocation of these assets are subject to the approval of **Council**. Council will ensure the protection of asset by promoting development of outdoor dining that does not diminish nor impact the provision of services to the public.
- 6.2.2. Council will therefore use its discretion to grant approval or refusal of removal, replacement or relocation of any form of asset belonging to the Municipality. Where approval of the removal, replacement or relocation of any form of asset belonging to the Municipality has been granted, it will be at the cost of the permit holder.

6.3. Operation

6.3.1. Operating Hours

The outdoor dining area shall only operate during the approved business hours of the subject restaurant. Any activities undertaken within the outdoor dining area beyond Council approved business hours will be deemed unauthorized activities, and all removable outdoor dining furniture (and or shade structures) and other associated items will be removed from the footpath and stored in the premises.

6.3.2. Noise

Noise can result in very subjective reactions from the general public, and the fact that outdoor dining will be happening on Council owned land it is important to ensure that noise level is kept at acceptable level which does not diminish the rights of the general public.

7. LAYOUT DESIGN SPECIFICATIONS, FURNITURE AND ACCESSORIES

7.1. Layout Design Specifications

7.1.1 The layout design of an outdoor dining area will complement the nature of the street façade. As such, there will be no uniformity when it comes to the designs of an outdoor dining area as each layout will be determined by the nature and character of the street.

7.1.2 A minimum of 1.5m sidewalk must be maintained for pedestrian circulation in all locations in the Municipality.

7.1.3 This 1.5m sidewalk must be along the kerb line or at the discretion of Municipality.

7.1.4 The following safety measures will apply:

- a) No **outdoor dining** will be permitted within 4m of moving traffic. This 4m buffer is inclusive of street parking lanes.
- b) **Outdoor dining** may not be permitted in areas where underground bulk essential services exist.
- c) The placement of outdoor dining furniture will not obstruct the views of the users of a **public road** or **public place**. The Municipality will apply its discretion to direct the placement of furniture in the interest of safety of all road users.
- d) A minimum setback of 5m from the kerblines is required at intersections of local roads to avoid a blind rise as per 'Basic Distance Criteria'.

7.1.5 The **Council** may use its discretion to allow for the installation of removable decks in cases where the gradient of the **public place** make it impossible to install furniture.

7.1.6 The applicant will be required to mark the outdoor dining area to define the extent of an outdoor dining area. Under no circumstances will the outdoor dining facility be allowed to encroach onto the neighboring / abutting business.

7.1.7 Permanent structures are not permitted on the road reserve.

7.2. Furniture and Accessories

7.2.1. General Provision

- (a) An application will be submitted to **Council** for approval of furniture to be used on the **outdoor dining facility**;
- (b) the colour and style will complement the nature of the surrounding buildings and existing street furniture;
- (c) any form of branding on the furniture other than that of the name of the establishment, must comply with the **NMBM Outdoor Signs (Advertising and Other By-law)**;
- (d) It is the responsibility of the permit holder to ensure that furniture used in the **outdoor dining area** during the night are marked clearly for pedestrian safety. Reflectors will be used to enhance the visual appearance of such items;

7.1.2. Umbrellas

- (a) The Municipality encourages the use of removable umbrellas in the outdoor dining area. The permit holder will be required to ensure that the types of umbrellas used are able to withstand the constant windy conditions in some parts of the metro.
- (b) Umbrellas will be closed:
 - (i) After trading hours; and
 - (ii) During stormy weather conditions, for the protection of non-motorised transport facility users and motorist.

7.1.3. Tables, chairs and benches

- (a) The tables, chairs and benches utilised within an outdoor dining area must be suitable for outdoor use and different weather conditions we have in the metro. Where necessary, Council may apply its discretion to determine the type of tables, chairs and benches which are suitable for an **outdoor dining area** upon assessment of an application for outdoor dining rights.

7.1.4. Gas Heaters

- (a) Gas heaters may be located within the designated outdoor dining area to provide additional comfort to customers during cold weather days or seasons.

7.1.5. Enclosures/ blinds

- (a) Any form of enclosure/blinds used in an **outdoor dining area** will be **Council** approved. **Council** will consider among other things, the visual/aesthetic impact, to allow or refuse the type of enclosure/blinds proposed for an **outdoor dining area**.

8. PUBLIC LIABILITY INSURANCE

- 8.1.** The owner of the restaurant of which outdoor dining rights are sought must take out a public risk insurance policy before outdoor dining rights can take effect.
- 8.2.** The policy will be in respect of injury, loss or damage occurring on the **restaurant** and the outdoor dining area, and it will also note all the indemnities provided by the permit holder in favour of the **Council**.
- 8.3.** On the renewal of the outdoor dining rights / permit/ lease, the **permit holder** must provide **Council** with a copy of the Public Liability Insurance Policy.
- 8.4.** The **permit holder** must inform the **Council** immediately and in writing of any changes on the Public Liability Insurance policy and if it lapses or is cancelled.

9. APPLICATION PROCESS AND PARAMETERS

9.1. Eligibility

- 9.1.1. An owner or tenant of an existing restaurant abutting **Council** owned **sidewalk** or **public place** which is to be utilized for **outdoor dining** purposes.

9.2. Application process

- 9.2.1 An application will be made in writing to the Executive Director: Human Settlements for the lease of a portion of the **sidewalk** or **public place** as stipulated in clause 9.1.1.
- 9.2.2 Application will be circulated to relevant departments through the normal 'Subdivision and Land Matters' (SALT) process for evaluation and recommendations.
- 9.2.3 Upon receipt of the application the Municipal officials from the relevant departments will visit the business premises and make a formal report to Council.

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- 9.2.4 Upon approval of the lease by Council the necessary lease agreement between the Council and the applicant shall be formalised by the signing of the required lease documentation.
- 9.2.5 Proof of Public Liability Insurance may be required before the finalization of the lease agreement.
- 9.2.6 Items and/ or supporting documents to consider during the of the application process:

ITEM	DESCRIPTION
Application form	An application form with applicant's details and the necessary description of the subject site need to be completed and submitted to the Municipality .
Motivation Report	A detailed motivation report explaining the need and desirability of the proposed outdoor dining facility will be submitted as part of the application.
Locality Plan	Locality Plan showing the location of the application site needs to accompany the application.
Site Plan	Site Plan showing the extent of the proposed outdoor dining area will accompany the application. Where decks are to be installed, it needs to be shown in the site plan.
Building Plans	Building plans will be required if decks and or enclosures are to be installed.
Illustrations of Furniture and accessories	Illustration/pictures of the furniture and accessories (Umbrellas, heaters, enclosures, and pot plants) to be used in the outdoor dining area will accompany the application.
Ownership Details	A Title Deed is required to confirm ownership of the business site / property. Where the applicant is renting the business site, a lease agreement will accompany the owner's Title Deed. A consent letter from the owner of the property (business site) giving the applicant the permission to apply for the outdoor dining area will be included as well.
Liquor Licence <i>In terms Eastern Cape Liquor Act, 2003 (Act No 10 of 2003)</i>	If liquor it to be served to the customers in the outdoor dining facility which will be part of the licenced restaurant, a liquor licence must be submitted as part of the application for Council to evaluate the conditions contained in the Liquor Licence.

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ITEM	DESCRIPTION
	Where the applicant intends to serve liquor in the outdoor dining area but has not yet obtained the Liquor Licence, such will be treated as part of the additional approvals which will be required before the outdoor dining right comes to effect.
<i>Certificate of Acceptability In terms of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 as amended, and the Regulations governing general hygiene requirements for food premises and the transport of food</i>	A certificate of Acceptability granted by the Council's Environmental Health Officer for the restaurant/café must be submitted as part of the application. Where the applicant has not yet obtained the Certificate of Acceptability, it shall be treated as part of the additional approvals which will be required before the outdoor dining right comes to effect.
<i>Music Usage Licence As required by the South African Music Rights Organisation (SAMRO)</i>	If music is to be played to the customers in the outdoor dining area, Music Usage Licence will be submitted as part of the application. Where the applicant has not yet obtained the Music Usage Licence but intends to play music to the customers in the outdoor dining area, it shall be treated as part of the additional approvals which will be required before the outdoor dining right comes to effect.
<i>TV licence In terms of the Broadcasting Act. 4 of 1999 as amended</i>	A TV licence will be submitted as part of the application if the outdoor dining is to be supplied with a television set for the benefit of customers. Where the applicant has not yet obtained the TV Licence but intends to play a TV set for the benefit of the customers in the outdoor dining area, it shall be treated as part of the additional approvals which will be required before the outdoor dining right comes to effect.
Proof of public liability insurance	A proof of public liability insurance will be submitted as part of the application. Once the application is approved, the applicant will have to amend the public liability insurance and include the approved outdoor dining area in the policy as per the provisions of section 8 of the Policy .

9.3. Assessment Criteria

9.3.1. Generally outdoor dining applications will be assessed based on their individual merits. Each application will be assessed against this Outdoor Dining Policy, Zoning Scheme, Spatial Plans, applicable Legislations and By-laws. In

assessing the application for outdoor dining, Council will have regard to the following criteria:

- a) The outdoor dining area applied for must be an extension of an authorised restaurant and/ or mobile restaurant.
- b) Outdoor Dining Area must not extend to the area in front of neighbouring properties.
- c) The design must be in line with the design specifications as stipulated in clause 7 of the **Policy**.
- d) The design features of the outdoor dining area must complement the surrounding environment.
- e) The general provisions of the applicable Town Planning Scheme.
- f) Where an application for outdoor dining involve **Council** owned land which its zoning does not allow for business activities to occur as primary uses; such application upon approval will be granted a temporal departure or special consent, depending on the provisions of the applicable Town Planning Scheme, to allow for the subject portion of land to be utilized for outdoor dining for the duration of the lease.

9.3.2. Guidelines for assessing outdoor dining applications associated with **Food Trucks/ Mobile Restaurants**. The assessment of outdoor dining applications associated with **Food Trucks/ Mobile Restaurants** will follow the same criteria as outlined in 9.3.1 (a –e), and the following:

- a) Only those **Food Trucks/ Mobile Restaurants** applications which are to utilize Council owned land for outdoor dining purposes as defined in the Policy will be regulated in terms of this policy.
- b) All **Food Trucks/ Mobile Restaurants** operators intending to utilize Council owned land for outdoor dining purposes have to first get informal trading license from the 'Directorate: Economic Development, Tourism and Agriculture' and be demarcated a trading space in terms of the applicable informal trading policy / by-law before applying for outdoor dining permit.

9.4. Parking Requirements for Outdoor Dining Facility

9.4.1. Parking for Outdoor dining facility will be calculated in terms of the provisions of the applicable Town Planning Scheme and / or Department of Transport (DOT) parking standards, and in line with the conditions granted upon the approval of the related business establishment or restaurant.

9.5. Lease

9.4.1 The lease agreement shall be valid for 12 months upon approval.

9.4.2 The lease agreement shall be renewed annually:

- a) If Council is satisfied that the permit holder ran the outdoor dining facility satisfactorily during the previous 12 months ;and
- b) Upon the applicant furnishing proof that the required public liability insurance is in place for the next 12 months.

9.6. Lease Fees

- a) In addition to the application fee, there will be a fee for the leasing of the applicable portion of the **sidewalk or public place**.
- b) The lease fees will be charged annually or at such interval as otherwise determined by Council, and may be subject to an annual review.
- c) The lease fees will be payable to Council within 14 days after the signing of the lease agreement with Council or within such time as otherwise determined by Council and set out in the lease agreement.

9.7. Standard Conditions of Approval

- (a) A minimum of 1.5m sidewalk being maintained for pedestrian circulation.
- (b) Applicant providing to the Council evidence of all appropriate insurances as required by the Policy before the permit takes effect.
- (c) Council accepts no responsibility for any damage or physical injury caused by the owner's operation.
- (d) All Outdoor dining furniture must be stored away from the outdoor dining area outside the permitted hours of operation.
- (e) The outdoor dining area should in no way be used for storage and /or preparation of any food or beverages.
- (f) No sub-letting shall be permitted under any circumstances or for any purpose within the outdoor dining area.
- (g) The outdoor dining permit is not transferable.
- (h) Non-compliance will be enforced by way of a written warning for a first offence. The Permit Holder will be issued with compliance notice and will be given 30 days to comply with the notice.
- (i) Continual with noncompliance may result in the approval or permit being revoked or suspended for a period not less than 6 (six) months.
- (j) Council reserves the right to temporarily suspend the consent for any special events or to enable infrastructural work on Council owned land.

10. ENFORCEMENT AND PENALTIES

- (a) The conduct of outdoor dining establishments will be monitored and a record of contraventions committed by each operator will be maintained.
- (b) Non-compliance will be enforced by way of a written warning for a first offence. The Permit Holder will be issued with compliance notice and will be given 30 days to comply with the notice.
- (c) Continual with noncompliance may result in the approval or permit being revoked or suspended for a period not less than 6 (six) months.
- (d) Subject to sections 10 (b) & (c), Council may utilize the provisions of section 58 of SPLUMA (act no.16 of 2013) to issue further penalties.

11. CANCELLATION AND SUSPENSION OF PERMIT AND / OR LEASE

11.1. The Outdoor Dining rights granted by **Council** to the **Permit Holder** will be subject to termination by the **Council** if any breach of conditions upon which such rights were granted is not remedied in compliance with a notice served by the **Council** upon the outdoor dining **Permit Holder**, which notice shall require that the breach be remedied within a specific period.

11.2. The **Council** may suspend or cancel the permit :

- a) With immediate effect, if it is believed that it is urgently necessary to do so to eliminate or reduce a significant risk to public health posed by the outdoor dining activities; or
- b) May suspend the permit temporarily to enable infrastructural work on Council owned land.

12. POLICY REVIEW

12.1. The policy will be reviewed every five years.