

## Notice of Meeting:

I hereby give notice that an extraordinary Meeting of the Council will be held on:

**Date:** Thursday 2 December 2021  
**Time:** 2.00pm  
**Meeting Room:** Council Chamber/Audio Visual Link  
**Venue:** Municipal Building, Garden Place, Hamilton

Lance Vervoort  
Chief Executive

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## Extraordinary Council *Kaunihera* OPEN AGENDA

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### Membership

**Chairperson** Mayor P Southgate  
*Heamana*

**Deputy Chairperson** Deputy Mayor G Taylor  
*Heamana Tuarua*

<b>Members</b>	Cr M Bunting	Cr A O’Leary
	Cr M Gallagher	Cr R Pascoe
	Cr R Hamilton	Cr S Thomson
	Cr D Macpherson	Cr M van Oosten
	Cr K Naidoo-Rauf	Cr E Wilson
	Cr M Donovan	

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Monthly – or as required

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*Menetia Mana Whakahaere*

**29 November 2021**

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## **Purpose**

The Council is responsible for:

1. Providing leadership to, and advocacy on behalf of, the people of Hamilton.
2. Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

## **Terms of Reference**

1. To exercise those powers and responsibilities which cannot legally be delegated by Council:
  - a) The power to make a rate.
  - b) The power to make a bylaw.
  - c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
  - d) The power to adopt a Long Term Plan or Annual Plan, or Annual Report.
  - e) The power to appoint a Chief Executive.
  - f) The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan, or developed for the purpose of the Council's governance statement, including the 30-Year Infrastructure Strategy.
  - g) The power to adopt a remuneration and employment policy.
  - h) The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
  - i) The power to approve or amend the Council's Standing Orders.
  - j) The power to approve or amend the Code of Conduct for Elected Members.
  - k) The power to appoint and discharge members of committees.
  - l) The power to establish a joint committee with another local authority or other public body.
  - m) The power to make the final decision on a recommendation from the Parliamentary Ombudsman, where it is proposed that Council not accept the recommendation.
  - n) The power to amend or replace the delegations in Council's *Delegations to Positions Policy*.
2. To exercise the following powers and responsibilities of Council, which the Council chooses to retain:
  - a) Resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
  - b) Approval of any changes to Council's vision, and oversight of that vision by providing direction on strategic priorities and receiving regular reports on its overall achievement.
  - c) Approval of any changes to city boundaries under the Resource Management Act.
  - d) Adoption of governance level strategies plans and policies which advance Council's vision and strategic goals.

- e) Approval of the Triennial Agreement.
- f) Approval of the local governance statement required under the Local Government Act 2002.
- g) Approval of a proposal to the Remuneration Authority for the remuneration of Elected Members.
- h) Approval of any changes to the nature and delegations of the Committees.
- i) Approval of all Council and Committee Advisory Groups and their terms of reference.
- j) Appointments to, and removals from, CCO CCTO and CO boards;
- k) Approval of proposed major transactions or constitutional adjustments of CCOs, CCTOs and COs.
- l) Approval or otherwise of any proposal to establish, wind-up or dispose of any holding in, a CCO, CCTO or CO.
- m) Approval of city boundary changes, including in respect of Strategic Boundary Land Use Agreements.
- n) Approval Activity Management Plans.

**Oversight of Policies and Bylaws:**

- *Corporate Hospitality and Entertainment Policy*
- *Delegations to Positions Policy*
- *Elected Members Support Policy*
- *Significance and Engagement Policy*

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**1 Apologies – *Tono aroha***

**2 Confirmation of Agenda – *Whakatau raarangi take***

The Council to confirm the agenda.

**3 Declaration of Interest – *Tauaakii whaipanga***

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

**4 Public Forum – *Aatea koorero***

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6727.

# Council Report

**Committee:** Council **Date:** 02 December 2021  
**Author:** Frances Cox-Wright **Authoriser:** Kelvin Powell  
**Position:** Policy and Bylaw Lead **Position:** City Safe Unit Manager  
**Report Name:** Extension of outdoor dining permits into public places in response to Covid-19 dining restrictions

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To inform the Council on progress to enable outdoor dining to make increased use of public spaces in response to Covid-19 hospitality restrictions.
2. To seek approval from the Council for staff to consider applications for outdoor dining permits that make increased use of public places on a case-by-case basis; and revise the method by which fees and charges for outdoor dining permits will be waived for 12 months.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

3. That the Council:
  - a) revokes points b) through to f) of the resolution relating to **waiver of fees and charges for outdoor dining permits** approved by the Council on 11 November 2021 (*point 18 of the this staff report*) ; and
  - b) approves instead, to:
    - (i) refund all fees that have been paid for outdoor dining permits for the 2021/22 year; and
    - (ii) issue all new outdoor dining permit applications or extensions, without fees and charges, through to 30 June 2022;
  - c) approves **increased use of public places for outdoor dining** and directs staff to consider applications for outdoor dining permits, or permit extensions, that make reasonable increased use of a public place beyond what is currently permitted under the Trading in Public Places Policy, on a case-by-case basis;
  - d) delegates authority to the City Safe Unit Manager to make the final decisions on all permits considered in recommendation c) above;
  - e) notes that all outdoor dining permits and extensions must still comply with the purpose and principles of the [Trading in Public Places Policy](#);
  - f) notes that the extension of outdoor dining permits into public places is part of the Council's efforts to support Hamilton's hospitality industry, which has been significantly impacted by Covid-19 restrictions on dining; as such, it is intended to be temporary and will be reviewed by 30 April 2022 to consider whether it is appropriate to make further

provision.

## **Executive Summary - *Whakaraapopototanga matua***

4. As of 25 November 2021, Council has 112 active outdoor dining permits, of these 112 permits:
  - i. 73 are in the Central Business District (CBD)
  - ii. 41 have an associated alcohol licence
  - iii. 30 are both in the CBD and have an alcohol licence.
5. On [11 November 2021](#), Council approved a range of recommendations from the Central City River Plan Advisory Group, which were aimed at supporting hospitality businesses in Hamilton in response to Covid-19 restrictions on dining.
6. Following these recommendations, a letter was sent to central Government in support of the letter from the Restaurant Association requesting legislation be amended to enable temporary variations to on-licence conditions to support increased outside dining during Covid-19 restrictions.
7. Staff have worked with hospitality industry representatives to understand their preferences and ensure Council is in the best possible position to respond to any legislative change that would enable temporary variations to on-licence conditions.
8. Unless and until central Government announces any legislative changes, Council cannot permit any extension of the areas in which alcohol is permitted to be served, other than by the usual process, which takes a considerable length of time.
9. At the 11 November Council meeting, Council agreed to waive fees and charges for outdoor dining permits for 12 months. Following further discussions with operational staff and industry representatives, staff recommend revised wording for this decision. The recommendations have the same intended effect but would be simpler to implement and align with what industry representatives have requested in terms of timing.
10. Staff have worked directly with industry representatives on ways to fairly and safely enable outdoor dining to make increased use of public places beyond what is currently permitted.
11. As there are a wide range of spaces and factors involved in any extension, staff recommend that Council allow staff to consider applications for outdoor dining permits, or permit extensions, that make reasonable increased use of a public place on a case-by-case basis. Permits would be approved where the purposes and principles of Council's [Trading in Public Places Policy](#), are met. Staff recommend that the final decision for approval of a permit of this kind rest with the City Safe Unit Manager.
12. In assessing applications for outdoor dining in public places, staff will work proactively to negotiate and agree with applicants in each case, in an effort to find a solution that works for the business and the community.
13. Staff have also refreshed and simplified outdoor dining permit application forms to ensure the process is as straightforward as possible for applicants.
14. The recommendations in this report align with the Council's intention to support Hamilton's hospitality sector who have been significantly impacted by Covid-19 restrictions on dining. The changes are intended to be temporary and will be reviewed by 30 April 2022, to consider whether it is appropriate to make further provision.

## **Background - *Koorero whaimaarama***

### ***Active outdoor dining permits***

15. Council currently has 112 active outdoor dining permits across the city. Combined, these permit a total of 440 tables for outdoor dining.
16. Of the 112 permits:
  - 73 permits are in the Central Business District
  - 41 permits have a licence under the Sale and Supply of Alcohol Act (SASAA)
  - 30 permits are **both** in the Central Business District **and** have a licence under the SASAA.
17. Of the 30 permits in the CBD with alcohol licences, staff anticipate that less than half are likely to want to expand their outdoor dining area, based on discussions with industry representatives to date.

**Council decisions to support hospitality in response to Covid-19 restrictions**

18. On [11 November 2021](#), Council approved the following recommendations from the Central City River Plan Advisory Group Meeting of 2 November 2021:
  - a) **requests** staff draft a letter to central Government, to be signed by the Mayor and Deputy Mayor, supporting the letter of 22 October from the Restaurant Association to the Ministry of Justice, requesting amendment to the relevant legislation to enable temporary variations to on licence conditions to support outside dining during Covid-19 restrictions;
  - b) **approves** all outdoor dining permits that expired between 17 August 2021 (the date of most recent Covid-19 Level 4 lockdown in Hamilton) and 11 November 2021 (inclusive) to automatically be extended for 12 months until 11 November 2022 without fees and charges;
  - c) **approves** all outdoor dining permits that were issued or renewed between 17 August and 11 November 2021 (inclusive) and incurred fees and/or charges to be automatically extended for 12 months from expiry date without further fees and charges;
  - d) **approves** all outdoor dining permits that expire between 12 November 2021 and 28 February 2022 (inclusive) to automatically be extended for 12 months from the date of expiry without fees and charges;
  - e) **approves** all new applications for outdoor dining permits received between 12 November 2021 and 28 February 2022 (inclusive) to be prioritised for processing, processed without fees and charges, and be issued for 12 months;
  - f) **notes** that b)-d) above will be reviewed by 28 February 2022 to consider whether it is appropriate to make further provision for automatic extension of permits and fees and costs to be waived based on the impact of Covid-19 restrictions;
  - g) **requests** staff to progress work on ways to fairly and safely enable outdoor dining to make increased use of public spaces beyond what is currently permitted, including targeted engagement with key stakeholders, and to report back to Council as soon as reasonably possible.

**Discussion - Matapaki**

**Letter to central Government**

19. Following these decisions, a letter signed by the Mayor and Deputy Mayor was sent to central Government. This letter indicated support for the Restaurant Association's letter of 22 October 2021 to the Ministry of Justice, requesting amendment to the relevant legislation to enable temporary variations to on-licence conditions to support outside dining during Covid-19 restrictions.
20. Staff have since worked with hospitality industry representatives to understand their needs if Central Government were to make changes to on-licence conditions for outdoor dining with



alcohol. The industry has clearly expressed the desire to expand outdoor dining areas into a wider public space **and be able to serve alcohol in these extended areas.**

21. Unless and until Central Government amends the Sale and Supply of Alcohol Act 2012, Council cannot accommodate any fast-track extension of the area alcohol is permitted to be sold and supplied within. The existing process for obtaining or amending a liquor licence takes a considerable length of time.
22. Staff are confident that the recommendations in this report put us in as good a position as possible to act quickly if the legislative changes requested in Council's letter are progressed by central Government.

***Waiver of fees and charges for outdoor dining permits***

23. Following Council approval of recommendations b) through to f) referenced in paragraph 17 above, staff have engaged with hospitality industry representatives and operational staff to implement this decision.
24. All Hamilton City Council outdoor dining permits are issued for the duration of the financial year – i.e. from date of application, through to 30 June each year. For practical reasons, industry representatives have indicated that rather than receive a 12-month permit extension from the date of issue, their preference would be to receive a refund of the fees and charges for permits issued for the 2021/22 year, and for new permits to be issued without fees and charges through to 30 June 2022.
25. In response to this preference, staff recommend that the Council revoke recommendations b) through to f) of the Recommendations from the Central City River Plan Advisory Group Meeting of 2 November 2021, approved by Council on 11 November 2021; and agree, instead, to:
  - i. refund all fees that have been paid for outdoor dining permits for the 2021/22 year; and
  - ii. issue all new outdoor dining permit applications or extensions, without fees and charges, through to 30 June 2022.
26. This recommendation achieves the same goal of supporting our hospitality sector who have faced hardship due to Covid-19 restrictions but has the added benefits of:
  - i. aligning with the preferences of industry representatives; and
  - ii. being simpler for staff to implement.

***Increased use of public places for outdoor dining***

27. Following the directive from Council on 11 November 2021, staff have been engaged directly with hospitality industry representatives to progress ways to fairly and safely enable outdoor dining to make increased use of public places beyond what is currently permitted.
28. There are a wide range of spaces and factors that could be relevant to an extension of outdoor dining into a public place. As such, staff do not recommend a blanket rule should be applied across the city.
29. Staff recommend that Council allow staff to consider applications for outdoor dining permits, or permit extensions, that make reasonable increased use of a public place on a case-by-case basis. Permits would be approved where the purposes and principles of Council's [Trading in Public Places Policy](#), are met. The final decision for approval of a permit of this kind would rest with the City Safe Unit Manager.
30. In assessing applications for outdoor dining in public places, staff will work proactively to negotiate and agree with applicants in each case, in an effort to find a solution that works for the business and the community.

31. Staff have also refreshed and simplified outdoor dining permit application forms to ensure the process is as straightforward as possible for applicants.
32. Staff note that the Government-mandated Covid-19 rules are subject to change, and it is the responsibility of hospitality businesses to adhere to these rules regardless of the conditions of Council-issued permits.

***Impact if the recommendations in this report are not approved***

33. If the recommendations in this report are not approved:
  - i. staff will not be able to temporarily consider applications for outdoor dining permits that make increased use of public places
  - ii. staff will still be able to waive fees and charges for outdoor dining permits for 12 months, as agreed at the 11 November Council meeting, however, this will not be as streamlined, or align with sector preferences, as it would be if the recommendations in this report are approved.
34. The recommendations in this report align with the Council's intention to support Hamilton's hospitality sector which has been significantly impacted by Covid-19 restrictions on dining. The changes are intended to be temporary and will be reviewed by 30 April 2022, to consider whether it is appropriate to make further provision.

**Financial Considerations - *Whaiwhakaaro Puutea***

35. The forecast revenue for outdoor dining permit applications for the 2021/22 year is \$11,000.
36. In the 2021/22 year to date, \$7,975 has been paid to Council in fees and charges for outdoor dining permit applications.
37. Agreeing to refund fees and charges to permits issued for the 2021/22 year will cost Council \$7975 in fees and charges already collected. In addition, Council will forfeit any additional revenue that would have been collected for outdoor dining, which was forecast to be \$11,000 total.

**Legal and Policy Considerations - *Whaiwhakaaro-aa-ture***

38. Staff confirm that the decisions in this report comply with Council's legal and Policy requirements.
39. For clarity, and in compliance with [section 80](#) of the Local Government Act 2002, staff confirm that the decisions in this report may have some inconsistencies with the current Trading in Public Places Policy regarding prescribed fees, charges and duration of some permits, and the physical space that Council will consider permit applications for.
40. To the extent that the decisions in this report are inconsistent with that Policy, these recommendations will prevail for the timeframes specified unless modified by resolution of the Council.

**Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

41. The purpose of Local Government changed in 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the four wellbeings'). The recommendations set out in this report are consistent with that purpose.
42. The subject matter of this report has been evaluated in terms of the four wellbeings during the process of developing this report as outlined below.

## Social

43. The decisions in this report support more people to dine-out in Hamilton, following a period of Covid-19 lockdowns and ongoing restrictions. The ability for people to connect socially with each other, and the business community, supports the social wellbeing of our community as a whole.

## Economic

44. The decisions in this report support Hamilton's hospitality industry to generate income and employment following a significant period of restrictions on trading. This directly impacts business viability, jobs for those within the hospitality sector and the sustainability of hospitality in Hamilton City.

## Environmental

45. The recommendations in this report have a neutral impact on environmental wellbeing. The outdoor dining application process already requires permit-holders to remove any litter in outdoor dining areas; and not to dispose of any waste material in the street gutter or stormwater drains. These rules will extend to any outdoor dining permits in public places.

## Risks - *Tuuraru*

46. The decisions in this report give rise to a key risk that hospitality businesses may incorrectly perceive Council's decision as enabling the sale and supply of alcohol in an increased outdoor dining area. As detailed in paragraph 20, Council is unable to make any changes in this respect, unless and until central Government amends the relevant legislation.
47. To mitigate this risk, staff have provided clear and repeated information as part of the application process, highlighting to applicants that additional requirements apply where alcohol licences are involved.

## Significance & Engagement Policy - *Kaupapa here whakahira/anganui*

### Significance

48. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the recommendation(s) in this report has/have a low level of significance.

### Engagement

49. Given the specific impact on hospitality, and the temporary nature of the recommendations in this report, staff have engaged with stakeholders in a targeted way, through hospitality sector representatives.

## Attachments - *Ngaa taapirihanga*

There are no attachments for this report.