

# CITY OF WALNUT CREEK OUTDOOR DINING POLICY

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## INTRODUCTION

Through a series of pilot programs and extensive community outreach, the City of Walnut Creek has developed a comprehensive Outdoor Dining Policy (ODP) for Walnut Creek restaurants. Prior to the pandemic, the City had several separate programs that managed portions of the outdoor dining spaces, both public and private. With the increased use of outdoor space to support restaurants and the Council's desire to make on-street dining permanent, it became clear that a more consistent and holistic approach was needed.

The purpose of the ODP is to create an enhanced experience for diners and shoppers, through the use of expanded outdoor dining and improvements to streetscape aesthetics. Outdoor dining has been found to add to the vibrancy of downtown and provides expanded service opportunities for restaurants citywide.

This ODP was developed over a 14-month timeframe in partnership with key stakeholders including Walnut Creek Downtown and downtown restaurants, guided by input from a City Council Ad Hoc Committee and regular study sessions with the full City Council. Many City departments worked collaboratively to build a program that achieved the City Council's goals and resulted in a policy that could be implemented. This involved the following: City Manager's Office - Economic Development, Community Development, Parking, Public Works and Engineering, Arts and Recreation, and the Police Department. The result is a comprehensive policy with consideration of land use requirements, parking impacts, building and traffic safety, and overall community enhancement.

## I. POLICY GOALS

This policy evolved from a discussion that was called Downtown NEXT, which began in February 2021. As the City Council, businesses, community and staff thought about the lessons learned throughout the COVID journey and what to make permanent, the City defined its overarching goals. The City then used these goals to guide the development of an outdoor dining policy:

- A. Operate collaboratively, engaging businesses, community members, customers and key partners in the discussion and development of next steps
- B. Fill vacant spaces in a competitive environment
- C. Continue outdoor dining opportunities in a balanced way
- D. Place-making - Make Downtown a destination
- E. Enhance a pedestrian-friendly environment
- F. Optimize/maximize use of public space
- G. Achieve holistic parking management
- H. Create an equitable and sustainable Plan
- I. Help businesses open and expand as quickly as possible

This policy hereby replaces the existing City programs of Tables and Chairs, parklets, and all other methods in use for accommodating outdoor dining like encroachment permits. This results in a comprehensive policy that includes all elements of supporting outdoor dining in the Downtown. In order to streamline the implementation of this policy, the Public Works Director is granted the authority to define the processes and procedures needed to fully implement the ODP.

## II. POLICY ELEMENTS

### A. LOCATION

#### 1. Downtown

Walnut Creek’s walkable downtown lends itself to a variety of outdoor dining options from which restaurants can choose. Restaurants and bars are allowed to utilize adjoining sidewalks, private parking lots, and/or on-street dining as some of the outdoor dining options – adding to the visual aesthetic and pedestrian experience. This policy applies to properties in Downtown only, due to the availability of parking garages, other on-street parking and an existing Parking In-Lieu Fee program.

The ODP provides direction for use of outdoor spaces for the purposes of dining, and can be utilized with the following options (see Image 1):

- a. Permitted Outdoor Dining Structure (PODS) - PODS are stand-alone outdoor dining structures permitted for operation in public on-street parking spaces or in private parking lots.
- b. City-owned Dining Patios – Outdoor dining can take place on city-owned property or within the public right-of-way, with the addition of a city-approved barrier or fencing. In some cases, these may be attached to the building.
- c. Private Dining Patios – Private property can be utilized for the purpose of outdoor dining, in addition to interior operations. These may be attached to the building.
- d. Privately-owned Parking Lot Dining Patios–These are outdoor dining patios permitted for operation in private parking lot parking spaces that are adjacent to their restaurant building for outdoor dining space. These could be attached to the building or built as a detached structure.
- e. Sidewalk Dining – Sidewalks without a barrier or fence can be used for food service or non-alcoholic beverages.

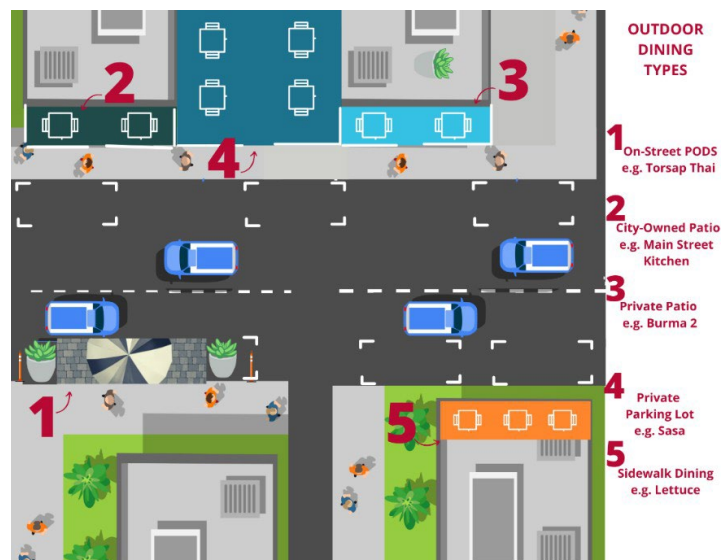


Image 1 – Downtown outdoor dining types

Restaurant and bar owners may participate in outdoor dining through an application process, selecting their outdoor dining request from one or more of the above five (5) options. Applications are available through the City of Walnut Creek Public Works Department.

## **2. Citywide**

Outdoor dining remains a feature throughout the City of Walnut Creek. Businesses wishing to implement outdoor dining in other locations in the City can contact the Community Development Department on appropriate next steps. Depending on the unique nature of the property, the City may require applicants to obtain certain approvals, including but not limited to Use Permits. On-street outdoor dining is not permitted outside of the Outdoor Dining Overlay Zone. Additionally, as needed, the City may adopt amendments to this ODP in the future, to more specifically address outdoor dining citywide.

## **B. PERMITTING, LICENSING AND OTHER REQUIREMENTS**

Restaurants and bars are required to comply with the regulations outlined in this ODP in order to operate in new outdoor dining spaces. Additionally, outdoor dining located in the public right-of-way must obtain a License Agreement and adhere to all requirements established in the License Agreement.

### **1. Application and Fees**

An application submission is required to comply with the City's ODP. The application determines property ownership, starts the process for review of site plan and design elements, reviews the impact to the streetscape, and determines insurance requirements.

Fees are also assessed in the application process, including administrative processing, required inspections, ongoing enforcement, and fees for use of space where applicable. Administrative fees are assessed based on the Outdoor Dining Fee Structure and the City's Master Fee Schedule.

### **2. Operator Permit**

An Operator Permit is required of all businesses participating in all or part of the ODP, and dictates permitted uses in the outdoor dining space and standards for managing operations. Applications will be reviewed to determine if business qualifies to participate in outdoor dining, and if an Operator Permit can be issued. All users of the ODP must complete and adhere to regulations as outlined in the Operator Permit. Restaurants and bars are not allowed to participate without a City-issued Operator Permit. Conditions established in the Permit include, but are not limited to, the following:

- a. Hours of operation
- b. Alcohol service and service hours
- c. Music and entertainment
- d. Restrictions on restaurant operations and outdoor dining uses
- e. Special events
- f. Security and safety
- g. Maintenance
- h. Penalties for non-compliance

Businesses currently operating outdoors under a Deemed Approved Status, or an existing Conditional Use Permit or Administrative Use Permit may continue such outdoor operations pursuant to the applicable authorization. However, any extension or expansion of outdoor operations beyond such existing authorization will require adherence to an Operator Permit. Operator Permits are available

through the application process. Permit requirements are subject to change based on community conditions and must be renewed annually.

Businesses operating an outdoor dining space under the temporary Rebound Program are not automatically authorized for permanent outdoor dining and must reapply under the new ODP.

#### *Noncompliance*

Restaurants and bars found to be non-compliant with the Operator Permit will incur penalties for violations, including potential suspension, modification, or revocation of the Operator Permit.

### **3. License Agreement**

Restaurants and bars located in the public right-of way, including on-street Permitted Outdoor Dining Structures, City-owned Patios, and Sidewalks are required to enter into a License Agreement with the City. The License Agreement is an agreement between the business owner and the City, serves as authorization for the business to operate in the public right-of-way, establishes restrictions and requirements for use of the licensed area, establishes a license fee for the space, and is revocable.

License Agreements do not obligate the City to a business' permanent or ongoing use of the public right-of-way. Additionally, should emergencies arise requiring use of the public space where outdoor dining may be located, the City reserves the right to remove the outdoor dining structure if access to the space is required.

### **4. Term**

Operator Permits and License Agreements are valid for a term of one year. License Agreements are valid for a five-year term. Applicants must renew permits and agreements, accordingly, pay any applicable fees, and update insurance information in order to operate.

If a business is found to be non-compliant with this ODP, the Operator Permit, the License Agreement, or other legal requirements, the City may amend or revoke an Operator Permit and/or License Agreement before the completion of the term.

### **5. Safety**

All restaurants utilizing any of the outdoor dining options are required to operate according to City, County and State guidelines to ensure public safety. Businesses must adhere to all safety regulations, inclusive of but not limited to the following:

- a. ADA compliance and accessibility
- b. Only portable propane heaters are allowed; no electric heaters are permitted
- c. Electrical connections
- d. Traffic safety
- e. Emergency access
- f. Public Health guidelines and orders

### **6. Insurance**

All outdoor dining on public property will requires the business to carry and maintain current liability insurance according to City requirements, as referenced in the application process and required by the License Agreement.

## 7. ABC Requirements

All businesses serving alcohol are required to comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable. Alcoholic beverage sales are only allowed in outdoor dining areas to the extent authorized by (1) California Alcoholic Beverage Control, and (2) a City issued Operator Permit, or other Deemed Approved status, Administrative Use Permit, or Conditional Use Permit.

## 8. Appeals

Decisions on ODP application submissions may be appealed to the City Manager or their designee. Decisions on the design of outdoor dining spaces made pursuant to Part IV, Article 12, **Design Review**, of Title 10 may be appealed pursuant to Part IV, Article 5, **Appeals**, of Title 10.

## C. OUTDOOR DINING TYPES

A range of options are available for implementation of outdoor dining, with operational and permitting requirements. Permitted Outdoor Dining Structure (PODS)

PODS are outdoor dining structures permitted for operation in public on-street parking spaces, or in some cases, private parking lots. Extending the dining experience safely into the street or parking spaces provides additional dining options for restaurants and adds to the visual aesthetic of the streetscape. PODS must be constructed to quality standards that enhance the downtown.

### a. General Conditions

- i. Businesses must work with the licensed architect, engineer and contractor of their choosing for design and construction of PODS.
- ii. PODS must be a built structure, following design guidelines and minimum required standards for construction with detailed technical specifications provided in the application process. PODS may either have a roof or constructed without a roof but must be built with a concrete perimeter for safety.
- iii. PODS must be constructed and operate within the linear frontage of the restaurant **only**. They must not encroach within the frontage of a neighboring/adjacent business.
- iv. PODS are allowed in the downtown only, as defined by the Outdoor Dining Overlay Zone, as noted in Exhibit A.

### b. Construction and Design Standards

- i. To maintain consistency while also providing opportunities for customization by restaurant owners, all restaurants must follow general guidelines for PODS construction and design. Detailed technical specifications will be provided to the business' licensed architect or engineer, which will detail minimum required design and engineering construction standards.
- ii. **PERIMETER:** Businesses must build the city-designated concrete perimeter curb, built on-ground for improved traffic safety. This border must be built within the linear frontage of the storefront, and "squared off" to achieve either a square or rectangular configuration. PODS do not need to follow parking space delineation, as they will be built to align with the frontage of the restaurant space. PODS can then be constructed on top of the concrete border.
- iii. **RAILINGS:** All railings must be at least 42" in height.

- iv. HEATERS: Only non-electrical heaters are allowed in PODS and must follow requirements as noted in the engineering drawings and as required by the Contra Costa County Fire Protection District.
- v. DESIGN: Two PODS design options are available: Mix & Match or Custom. These options are intended to provide flexibility, alignment with company branding and aesthetic, while also maintaining high design standards and a consistent look-and-feel in the downtown. Each option can also be constructed with or without a roof, according to stipulations noted below.
  - PODS Roof Options: Roof or No-roof structures
    - To enhance the pedestrian experience and maintain an open and inviting streetscape, roofs on PODS are restricted in use.
    - Roofs are allowed **only** with a PODS space, whether Mix & Match or Custom, **or** on an outdoor dining patio, and **not** with both.
  - PODS Design Options: PODS design style options are as follows:
    - Mix & Match – Options are pre-selected and approved for PODS components including railing, color, material, and pattern, planter color, and roof design as outlined in the PODS Design Guidelines. Businesses can “mix-and-match” from the available options to design PODS that fit within their design aesthetic.

Mix & Match options are reviewed and approved ministerially by City staff, and do not require review by City commissions.

- Custom – A custom design option is available, adhering to the concrete curb perimeter foundation and placement restrictions as noted above, but allowing for deviations in colors and materials of railings and planters.

The City conducts design review of Custom PODS pursuant to Part IV, Article 12 of Title 10. Custom PODS are first required to be reviewed by the City’s Design Review Commission (DRC) which shall provide its comments and recommendations on the proposed design to City staff. City staff shall consider the degree to which the proposed deviations in colors and materials of railings and planters align with the existing storefront color(s) and design in granting design review approval of Custom PODS.

- Businesses must obtain all necessary City structure inspections and permits for both Mix & Match and Custom options.

c. Safety

All PODS must abide by construction and traffic safety regulations and will be inspected to ensure adherence to safety requirements. Some locations may not be eligible for PODS due to traffic sight-line constraints or other safety issues.

Insurance according to City requirements is also required for operations. Insurance requirements need to be provided during the application process.

d. Fees

- i. One-time. Application and permit fees associated with staff time to review, process, and inspect are applied, as referenced in the Outdoor Dining Fee Structure and Master Fee Schedule.
  - a. PODS constructed in private parking lots and located in the Pedestrian Retail zone are required to pay a fee associated with the removal of parking spaces for conversion to dining space. This is a one-time fee and assessed according to the Parking In-Lieu Program. Additionally, a shared parking study must be completed according to the Community Development Department guidelines and at the business owner's expense.
- ii. On-going. Fees will be applied for PODS and their location in public on-street parking spaces. Fees help recover lost revenue from parking spaces and provide funding for City services, including enforcement, as referenced in the Outdoor Dining Fee Structure and Master Fee Schedule.

**1. City-owned Dining Patios**

City-owned Dining Patios are those outdoor spaces on City property or in the public right-of-way, e.g. a sidewalk. They are also defined by a fenced barrier. Due to the use of public property for private use, specific guidelines apply for the City's requirements in management and oversight of public property.

A property is identified or determined to be public property during the application process.

a. General Conditions

- i. Outdoor dining in a City-owned patio or public right-of-way must be utilized with a City-approved barrier or fencing.

b. Approval Process

- i. Application - An application must be submitted through the Public Works Department.
- ii. Design Review
  - A. The City conducts design review of City-owned dining patios, including but not limited to materials and colors of a platform, railing, canopy/roofing, signage and landscaping, fencing and overall integration into the streetscape pursuant to Part IV, Article 12, **Design Review**, of Title 10.
  - B. Building Permits and Review: If a roof or canopy element is requested, additional Engineering review and building permits is required. No below-ground footings will be approved. Any proposed attachment to a building requires additional permitting and permission from the building owner.
- iii. License Agreement – As an outdoor use on City property, a License Agreement is required, establishing restrictions related to use of the License area, term, and license fees.
- iv. Operator Permit – All restaurants are required to follow all conditions and requirements set forth in the Operator Permit.

c. Fees

- i. One-time. A one-time application fee is assessed in the application process, to address staff time to review, process, inspect, and any necessary building permits, as referenced in the Outdoor Dining Fee Structure and Master Fee Schedule.

- ii. On-going. A license fee will be applied for the outdoor patio on a square footage basis, as referenced in the Outdoor Dining Fee Structure and Master Fee Schedule.

## 2. Private Dining Patios

Private patios can continue use under the ODP, providing an additional dining space for restaurants and adding to overall community vibrancy.

A property is identified or determined to be within private property during the application process.

### a. General Conditions

- i. Outdoor dining on private property must be utilized with a City-approved barrier or fencing.

### b. Approval Process

- i. Application - An application must be submitted through the Public Works Department.
- ii. Property Owner Approval
  - A. Restaurants requesting outdoor dining on private property must obtain approval from the property owner before any construction or service commences.
  - B. A Property Owner Approval form will be provided and must be completed in the application process.
- iii. Design Review

The City conducts design review of Private dining patios, including but not limited to materials and colors of platform, railing, canopy/roofing, signage and landscaping, fencing, and overall integration into the streetscape pursuant to Part IV, Article 12, **Design Review**, of Title 10. Private Dining Patios will be further evaluated against the degree to which they comply with Chapter 3.3 Outdoor Dining of the City's Non-Residential Design Review Standards + Guidelines. If a roof or canopy element is requested, additional Engineering review will be required.
- iv. Building Permits – All structures require a building permit and appropriate engineering review and approvals.
- v. Operator Permit – All restaurants are required to follow all conditions and requirements set forth in the Operator Permit.

### c. Fees

- i. One-time. A one-time application fee is assessed in the application process, to address staff time to review, process, inspections, and any necessary building permits, as referenced in the Outdoor Dining Fee Structure and the Master Fee Schedule.

## 3. Privately-owned Parking Lot Dining Patios

Businesses may apply to use privately-owned parking lot spaces for outdoor dining service. Parking requirements for parking spaces used are based on the zoning code where the business is located. A property will be identified or determined to be within a private parking lot and the zoning code designation during the application process.

### a. General Conditions

- i. Outdoor dining in a private parking lot must be utilized with a City-approved barrier or fencing.
- ii. The requested parking lot space(s) must be adjacent and connected to the indoor



restaurant.

b. Approval Process

- i. Application - An application must be submitted through the Public Works Department.
- ii. Property Owner Approval
  - A. Restaurants/bars requesting outdoor dining in a private parking lot must obtain approval from the property owner before any construction or service commences.
  - B. A Property Owner Approval form will be provided and must be completed in the application process.
- iii. Design Review
  - A. The City conducts design review of Privately-owned parking lot dining patios, including but not limited to materials and colors of platform, railing, canopy/roofing, signage and landscaping, fencing, and overall integration into the surrounding environment pursuant to Part IV, Article 12, **Design Review**, of Title 10. Private Dining Patios will be further evaluated against the degree to which they comply with Chapter 3.3 Outdoor Dining of the City's Non-Residential Design Review Standards + Guidelines.
  - B. If a roof or canopy element is requested, additional Engineering review is required.
- iv. Building Permits – All structures require a building permit and appropriate engineering review and approvals.
- v. Operator Permit – All restaurants and bars are required to follow all conditions and requirements set forth in the Operator Permit.

c. Fees

- i. One-time. A one-time application fee is assessed in the application process, to address staff time to review, process, inspections, and any necessary building permits, as referenced in the Outdoor Dining Fee Structure and Master Fee Schedule.
  - a. Outdoor dining constructed in private parking lots and located in the Pedestrian Retail zone are required to pay a fee associated with the removal of parking spaces for conversion to dining space. This is a one-time fee and assessed according to the Parking In-Lieu Program.

**4. Sidewalk Dining**

Sidewalks may continue to be used for outdoor dining service. Due to the public property encroachment, specific guidelines apply for the City's requirements in management and oversight of public property.

a. General Conditions

- i. Sidewalk service remains available with tables, chairs, stools, or other seating arrangements with no barriers or railing required.
- ii. Alcohol service is not allowed in sidewalk service.

b. Approval Process

- i. Application - An application must be submitted through the Public Works Department.
- ii. Site Plan Review
  - i. City staff provide review of seating arrangement with review of furnishings,

layout, ADA compliance and overall integration into the streetscape.

- iii. License Agreement – As an outdoor use on City property, a License Agreement is required, establishing restrictions related to use of the License area, including term and fees.
  - iv. Operator Permit – All restaurants are required to complete and adhere to regulations outlined in the Operator Permit.
- c. Fees
- i. One-time. A one-time application fee will be assessed in the application process, to address staff time to review, process, and for inspections.
  - ii. On-going. A use rate will be applied for use of sidewalk space on a per table basis, as referenced in the Outdoor Dining Fee Structure and the Master Fee Schedule.

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EXHIBIT A – OUTDOOR DINING OVERLAY ZONE

