



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

5733



PERTH, THURSDAY, 16 OCTOBER 1997 No. 176 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.30 PM

LOCAL GOVERNMENT ACT 1995

CITY OF SUBLIACO

**LOCAL LAW No. 49
RELATING TO ALFRESCO DINING**

**LOCAL LAW No. 50
RELATING TO STREET TRADING**

LOCAL GOVERNMENT ACT 1995**CITY OF SUBIACO****LOCAL LAW No. 49
RELATING TO ALFRESCO DINING**

Pursuant to its powers under the Local Government Act 1995 the City of Subiaco makes the following local law.

Interpretation

1. In this local law unless the context otherwise requires—

“Act” means the Local Government Act 1995;

“Council” means the Council of the City of Subiaco.

“dining area” means an area in which tables, chairs or other structures are provided for the purpose of the supply of food or drink to the public or the consumption of food or drink by the public;

“eating house” has the meaning given to it in and for the purposes of the Health Act 1911.

“licence” means a licence issued by the Council under this local law to set up and conduct a alfresco dining area;

“licence plan” means a plan attached to and forming part of a licence depicting those areas of a street or public place within which an alfresco dining area may be set up and conducted.

“proprietor”

(a) has the same meaning given to it in and for the purposes of Division 3 of Part V of the Health Act 1911; or

(b) means the holder of a licence granted under the Liquor Licensing Act 1988 where the premises in question are the subject of a hotel licence, a hotel restricted licence or a restaurant licence;

“public facility” means any structure, item or fitting whether in a street or public place that is the property of or has been provided by a Government Department, instrumentality of the Crown or the Council;

“Schedule” means a Schedule to this local law;

“street” includes a highway and a thoroughfare which the public are allowed to use and include every part of the highway or thoroughfare.

Application of local laws

2. This local law does not apply to any alfresco dining area set up or conducted on private property notwithstanding the public are allowed to use that area.

Prohibitions

3. No person shall set up or conduct an alfresco dining area in a street or public place—
- (a) other than in a portion of a street or public place adjoining an eating house;
 - (b) unless the person is the proprietor of the eating house referred to in Clause 3(a) of this local law;
 - (c) unless the person is the holder of a valid and current licence issued pursuant to this local law; and
 - (d) otherwise than in accordance with the licence plan and any conditions on the licence.

Application for Licence

4. A proprietor of an eating house seeking the issue of a licence shall make application in the form prescribed in the Schedule 1 and shall forward the application to the Council together with—

(a) the fee and the charge prescribed in Schedule 3;

(b) a plan and specification of the proposed eating area on a scale of 1:50 showing—

(i) the location and dimensions of the proposed alfresco dining area and the means by which the alfresco dining area is to be separated from the balance of the street or public place;

(ii) the position of all tables, chairs and other structures proposed to be provided in the alfresco dining area and which of such items, if any, are to be retained within the alfresco dining area at all times;

(c) a plan and specification on a scale of 1:200 showing the alfresco dining area and all land and improvements thereon within thirty metres of the boundaries of the alfresco dining area including any public facility and parking restrictions;

- (d) a colour photograph or photographs of the tables, chairs and other structures to be set up in the alfresco dining area;
- (e) a written statement of the manner in which foodstuffs and other dining accessories are to be conveyed to and protected from contamination within the alfresco dining area;
- (f) written particulars of arrangements made in respect of public liability insurance of not less than five million dollars (\$5,000,000); and
- (g) any other information the Council considers necessary in the circumstances of the case.

Council Consideration of an Application

5. The Council shall not be obliged to consider an application for a licence which is incomplete in relation to the requirements of Clause 4 of this local law.

6. The Council may in respect of an application—

- (a) refuse the application; or
- (b) approve the application on such terms and conditions as it thinks fit.

7. Where the Council approves an application it shall issue a licence in the form of Schedule 2, such licence expiring on the 30th day of June next, and shall cause to be attached to the licence plan which shall form part of the licence.

Renewal or Transfer of Licence

8.1 A proprietor who is the person named in a licence may—

- (a) apply in writing to the Council by the 1st day of June in each next year for the renewal of the licence and shall submit with the application for renewal the fee and the charge prescribed in Schedule 3;
- (b) at any time seek the Council's consent to alter any of the conditions of the licence and such application shall be treated as though it were an application for a licence to the extent of the alteration;
- (c) for the purpose of a function or event, apply in writing at least fourteen (14) days before the function or event, for Council's consent to the operation of the alfresco dining area on a day or time not permitted by the licence.

8.2 An application pursuant to local law 8.1(c) shall state the nature of the function or event, the additional day and time sought and be accompanied by the fee prescribed in Schedule 3.

8.3 Where it is proposed that the proprietor named in a licence be replaced by another person the proprietor and that person shall, prior to the date proposed for the replacement, make application in writing to the Council for the licence to be transferred and shall submit the licence to be transferred together with the written application to the Council and the Council may in its discretion on payment of the fee prescribed in Schedule 3 transfer the licence by endorsement upon the licence and by the issue of consent in the form of Schedule 4.

Where the Council approves of the transfer of a licence for the remaining period of the licence it shall not be obliged to refund any part of the fee or charge paid by the former licensee.

Obligations of Proprietor

9. A proprietor who is the person named in a licence—

- (a) shall ensure that the alfresco dining area is conducted at all times in accordance with the provisions of this local law;
- (b) shall ensure that the alfresco dining area is kept in a clean and tidy condition at all times;
- (c) shall maintain the chairs, tables and other structures set up on the alfresco dining area in good and serviceable condition at all times;
- (d) shall be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the street or public place arising from the conduct of the alfresco dining area or the actions of persons in that area and the Council may recover such costs from the proprietor in a court of competent jurisdiction as a debt owing to it;
- (e) shall be solely responsible for payment of all rates and taxes levied upon the land occupied by the alfresco dining area;
- (f) shall display the licence in a conspicuous place in the adjoining eating house and whenever requested by an Environmental Health Officer to do so shall produce the licence to that officer.

Offences and Penalties

10. A person who contravenes or fails to comply with any provisions of this local law commits an offence and is liable on conviction to a penalty of \$5,000.00 and to a further penalty of \$500.00 in respect of each day or part of a day during which the offence has continued.

11. The Council may cancel a licence where the proprietor has been convicted of an offence against this local law, the Health Act or any other law relating to the setting up or conducting of alfresco dining areas or has transferred or assigned or attempted to transfer or assign the licence without the consent of the Council and upon cancellation of a licence the Council shall not be obliged to refund any part of the fee or charge paid in relation to the licence.

SCHEDULE 1
City of Subiaco
Application for Licence

To: Chief Executive Officer
City of Subiaco

I.....(Full Name)
of.....(Residential Address)
.....(Postal Address)
.....(Occupation)

I HEREBY MAKE application for a licence to set up and conduct an alfresco dining area pursuant to City of Subiaco local law No. 49 Relating to Alfresco Dining.

I HEREBY DECLARE that the following details are true and correct—

Details of Proposed Alfresco Dining Area

1. Location of proposed alfresco dining eating area;
2. Description of eating house adjacent to proposed alfresco dining area;
3. Proposed days of operation;
4. Proposed hours of operation;
5. Proposed number of tables;
6. Proposed number of chairs;
7. Proposed number of other structures;
8. Description of tables and chairs including materials and dimensions;
9. Description of other structures including materials and dimensions.

I HEREBY DECLARE THAT—

- (a) the eating house referred to in Item 2 above is registered as required by Division 3 of Part V of the Health Act; and
- (b) I am the proprietor of the eating house and am licensed in respect thereof in accordance with Division 3 of Part V of the Health Act 1911.

The following are attached—

- (a) A plan and specification of the proposed alfresco dining area on a scale of 1:50 showing—
 - (i) the location and dimensions of the proposed alfresco dining area and the means by which the alfresco dining area is to be separated from the balance of the street or public place;
 - (ii) the position of all tables, chairs and other structures proposed to be provided in the alfresco dining area and which of such items, are to be retained within the alfresco dining area at all times;
- (b) a plan and specification on a scale of 1:200 showing the alfresco dining area and all land and improvements thereon within 30 metres of the boundaries of the alfresco dining area including any public facility or parking restriction;
- (c) a colour photograph or photographs of the tables, chairs and other structures to be set up in the alfresco dining area;
- (d) a written statement of the manner in which foodstuffs and other dining accessories are to be conveyed to and protected from contamination within the alfresco dining area;
- (e) written particulars of arrangements made in respect of public liability insurance of not less than five million dollars (\$5 000 000).

I enclose—

- (a) the prescribed fee of \$
and
- (b) the prescribed charge of \$

Dated the

day of

19

.....
(Signature of Applicant)

SCHEDULE 2

City of Subiaco

Licence to Set up and Conduct an Alfresco Dining Area

The licence is issued to—

.....(Full Name)
of.....(Address)

This licence authorises the person named above to set up and conduct an alfresco dining area—

- (a) on those portions of the street or public place shaded in on the licence plan attached hereto and forming part of this licence; and
- (b) in compliance with the conditions specified hereunder—

(insert conditions)

This licence is valid from the day of 19 and expires at 12.00 o'clock midnight on the 30th day of June 19 or on it's sooner cancellation.

In accepting this licence, the person so named above hereby agrees to indemnify and hold indemnified the Crown and the Council against any claims for compensation arising from the operation of the alfresco dining area and further agrees not to seek from the Crown or the Council or any person acting on their behalf, compensation by way of damages or loss of income arising from any public work within the street or public place.

.....
Chief Executive Officer

Issued this day of 19

SCHEDULE 3

City of Subiaco

Fees and Charges Payable

Licence application fee—

\$200 per annum or part thereof.

Licence renewal fee—

\$100 per annum or part thereof.

Licence transfer fee—

\$20.

Additional trading fee—

\$20 per day or part thereof.

Charge to be paid in addition to the fee—

\$100 per square metre per annum or part thereof.

SCHEDULE 4

City of Subiaco

Transfer of Licence

City of Subiaco being the Local Authority for the District of the City of Subiaco under the provisions of and for the purposes of the Local Government Act 1995 hereby transfer the licence to set up and conduct and alfresco dining area situated at

from the present holder

to the

transferee

of

for

the period from the date of this transfer until the 30th June next.

In accepting this Transfer of Licence, the person so named above hereby agrees to indemnify and hold indemnified the Crown and the Council against any claims for compensation howsoever arising from the operation of the alfresco dining area and further agrees not to seek from the Crown or the Council or any person acting on their behalf, compensation by way of damages or loss of income arising from any public work within the street.

.....
Chief Executive Officer.

Dated the 13th day of October 1997.

The Common Seal of the City of Subiaco was hereunto affixed by authority of a resolution of the Council in the presence of—

[L.S.]

P. McALLISTER, Acting Mayor.
P. WALKER, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995**CITY OF SUBIACO****LOCAL LAW No. 50
RELATING TO STREET TRADING**

Pursuant to its powers under the Local Government Act 1995 the City of Subiaco makes the following local law.

1. In this local law, unless the context otherwise requires—

“authorised officer” includes any ranger, law enforcement officer, Environmental Health Officer, Chief Executive Officer or any other person appointed as an authorised person for the purposes of this local law;

“public place” includes a street, way, park, reserve and place which the public are allowed to use, whether the street, way or place is or is not on private property;

“trading” means selling or hiring of goods, wares, merchandise or services, or offering goods, wares, merchandise or services for sale or hire, in a street or other public place and includes displaying goods, wares or merchandise for the purposes offering them for sale or hire, inviting offers for sale or hire, soliciting orders or carrying out any other transaction therein;

“licence” means a licence issued under this local-law;

“licensee” means the person to whom a licence under the local law has been issued;

“street” includes a highway and a thoroughfare which the public are allowed to use and include every part of the highway or thoroughfare, and other things including bridges and culverts appurtenant to it.

2. This local law shall not apply to the selling or offering for sale of newspapers.

3. No person shall carry on trading in any street or public place unless that person—

- (a) is the holder of a valid licence or is an assistant specified in a valid licence;
- (b) is acting in compliance with the requirements, terms and conditions of a current licence for which all fees have been paid; and
- (c) not being a person exempt under Clause 7 of this local law from payment of the charge specified in the Second Schedule hereto, and has paid that charge.

4. An application for a licence shall be in writing and shall—

- (a) include the full name and address of the applicant;
- (b) specify the proposed number and the names and addresses of assistants to be engaged by the applicant in trading pursuant to the licence;
- (c) specify the location for which the licence is sought;
- (d) be accompanied by an accurate plan and description of any proposed stand, table, structure or vehicle which may be used for trading;
- (e) specify the proposed days and hours of trading;
- (f) specify the proposed goods, wares, merchandise or services in respect of which trading will be carried on.

5. The Council may refuse to issue a licence if—

- (a) the applicant has committed a breach of Clauses 3, 8, 9 or 10 of this local law;
- (b) the proposed activity or place of trading is in the opinion of Council undesirable;
- (c) the proposed stand, table, structure or vehicle is in the opinion of Council unsuitable in any respect to the location for which the licence is sought;
- (d) the needs of the district or the portion thereof for which the licence is sought are in the opinion of Council adequately catered for in relation to the goods, wares, merchandise or services in respect of which trading will be carried on.

6. A licence shall be in the form of the First Schedule and shall specify—

- (a) the full name and address of the licensee;
- (b) the dates of issue and expiration of the licence;
- (c) the place to which the licence applies;
- (d) the number, type, form and construction as the case may be for any stand, table, structure or vehicle which may be used for trading;

- (e) the particulars of the goods, wares, merchandise or services in respect of which trading may be carried on;
 - (f) the number and full names and addresses of assistants who may be engaged at any one time in trading pursuant to the licence;
 - (g) the days and hours when trading may be carried on;
 - (h) any other requirements, terms or conditions that the Council may seem fit to impose.
7. A fee payable for the issue of a licence is \$50.00—
- (a) in addition to the fee payable for the issue of a licence an applicant for a licence shall before the issue of the licence pay the Council the charge specified in the Second Schedule hereto;
 - (b) a person carrying on trading in portion of a street or public place adjoining his normal place of business is exempt from payment of the charge specified in the Second Schedule hereto.
8. No licensee or assistant specified in a licence shall—
- (a) engage in or permit any trading in any goods, wares, merchandise or services other than those specified in the licence;
 - (b) cause, permit or suffer any nuisance to exist, arise or continue on or from the location to which the licence applies;
 - (c) deposit, place or store any goods, wares or merchandise on any public place other than on the location to which the licence applies;
 - (d) create any noise or disturbance at the location to which the licence applies to the annoyance of occupants of nearby premises or passers-by;
 - (e) obstruct the free passage of pedestrians on any footpath.
9. A licensee shall not—
- (a) in trading use or employ or permit to be used or employed at any one time more than the maximum number of assistants specified in the licence; or
 - (b) transfer, assign or otherwise dispose of his licence.
10. A licensee shall—
- (a) ensure that at all times when the licensee is not present in the licensed area that an authorised person is present in that area;
 - (b) keep the location and any stand, table, structure or vehicle specified in his licence in a clean, safe condition and in good repair;
 - (c) keep the location and any stand, table, structure or vehicle specified in his licence free from refuse and rubbish;
 - (d) on demand produce his licence to any authorised officer or any police officer;
 - (e) remove any stand, table, structure, vehicle, goods, wares, merchandise and signs from the location to which the licence applies and leave that location clean and vacant—
 - (i) at the conclusion of the permitted hours of operation specified in his licence;
 - (ii) whenever trading is not taking place on the on the location to which the licence applies.
11. A licence is valid for the period between the date of issue and the date specified on the licence or the 30th day of June next or until its revocation pursuant to this local law whichever is the earlier.
12. The Council may revoke a license if—
- (a) the licensee or his assistant specified in the licence commits an offence against clause 3,8,9 or 10 of this local law; or
 - (b) the Council or a Crown agency, instrumentality or department requires access to the place to which a licence applies for the purpose of carrying out works on, over or under that place.
13. Where a licence is revoked the Council shall if requested provide the licensee with a written reason for the revocation.
14. (a) Where the licence is revoked under clause 12 (a) of this local law the licensee shall not be entitled to any refund of any fee or charge paid to the Council in respect thereof.
- (b) Where a licence is revoked under clause 12 (b) of this local law the Council shall refund the charge paid in respect thereof having first deducted the charge applicable to the period from the date of issue of the licence to the date of revocation.
15. Any person who contravenes or fails to comply with any provision of clauses 3,8,9 or 10 of this local law commits an offence and is liable on conviction to—
- (a) a maximum penalty of five thousand dollars (\$5,000.00);
 - (b) a maximum penalty of five hundred dollars (\$500.00) in respect of each day or part of a day during which the offence has continued.

FIRST SCHEDULE

Local Government Act 1995

The District of the City of Subiaco Local-law No.50 Relating to Street Trading.

LICENCE

1. Full name and address of licensee:
.....
.....
2. Date of issue of licence:.....
3. Date of expiration of licence:.....
4. Requirements, Terms and Conditions;
 - (a) Location to which licence applies:.....
.....
 - (b) Description of stand, structure or vehicle to be used by the licensee:.....
.....
 - (c) Particulars of goods, wares, merchandise or services in respect of which trading may be carried on:.....
.....
 - (d) Full name and address of assistants who may be engaged at any one time in trading:.....
.....
 - (e) The permitted days and hours which trading may be conducted:.....
.....
 - (f) Other requirements, terms or conditions applicable to this licence:
.....

.....
Chief Executive Officer

SECOND SCHEDULE

Charges

Charge per day:	\$50.00
Charge per week:	\$150.00
Charge per month:	\$300.00
Charge per year:	\$3,000.00

Dated the 13th day of October 1997.

The Common Seal of the City of Subiaco was hereunto affixed by authority of a resolution of the Council in the presence of—

[L.S.]

P. McALLISTER, Acting Mayor.
PATRICK WALKER, Chief Executive Officer.

