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LOCAL GOVERNMENT ACT 1995

SHIRE OF ASHBURTON

**LOCAL LAW RELATING TO TRADING IN
PUBLIC PLACES**

LOCAL GOVERNMENT ACT 1995

SHIRE OF ASHBURTON

LOCAL LAW RELATING TO TRADING IN PUBLIC PLACES

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LOCAL GOVERNMENT ACT 1995

SHIRE OF ASHBURTON

LOCAL LAW RELATING TO TRADING IN PUBLIC PLACES

In pursuance of the powers conferred upon it by the above mentioned Act and all powers enabling it, the Council of the Shire of Ashburton hereby records having resolved on the 17 February 1998 to make the following local law.

PART 1—PRELIMINARY**1. Citation**

This local law may be cited as the Shire of Ashburton Local Law Relating to Trading in Public Places.

2. Commencement

This local law comes into effect fourteen (14) days after the date of its publication in the *Government Gazette*.

3. Repeal of Previous Local Laws

(1) The Shire of Ashburton Local Law Relating to the Use of and Activities in Streets published in the *Government Gazette* on 28 October 1994 and all other local laws relating to Hawkers, Stallholders and Traders are hereby repealed.

(2) The Shire of Ashburton Local Law for the Management and Use of the Tom Price Shopping Mall Rotunda published in the *Government Gazette* on 18 May 1984 and all other local laws relating to the Tom Price Shopping Mall Rotunda are hereby repealed.

4. Content and Intent

This local law provides for rules and guidelines, which apply to the conduct of Hawkers, Stall Holders and Traders in Public Places within the district.

5. Interpretation

(1) In this local law, unless the context otherwise requires:

“the Act” means the Local Government Act 1995.

“amusements” means merry-go-rounds, swing boats, shooting galleries, water chutes, and other things usually conducted for amusement at fairs, carnivals, and shows, whether conducted at a fair, carnival, or show or elsewhere, and includes dancing rooms, skating rinks, and amusement parks however designated, and whether conducted at a fair, carnival, or show, or elsewhere.

“authorised person” means the Chief Executive Officer, or any Environmental Health Officer, Building Surveyor or any Ranger employed by the local government, or any other person appointed by the local government as an authorised person for the purposes of this local law.

“Community Association” means an institution, club, society or body, whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and the members of which are not entitled or permitted to receive any pecuniary profit from the transactions thereof.

“Hawker” means a person who trades by travelling from town to town or house to house soliciting orders for or carrying to sell or hire or exposing for sale or hire any goods, wares, merchandise or services but does not include commercial travelers or other persons selling or buying or seeking orders for goods, wares and merchandise or services for or from persons who are dealers therein.

“licence” means a licence issued pursuant to this local law.

“local government district” means the local government district of the Shire of Ashburton.

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

“stall” means a movable or temporarily fixed structure, stand or table in, on or from which goods, wares, merchandise or services are sold, hired or offered for sale or hire.

“stallholder” means a person in charge of a stall.

“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 purpose of offering them for sale or hire, inviting offers for sale or hire, soliciting orders or carrying out any other transaction therein, and includes the activities of a Hawker and a Stallholder.

“Trader” means a person who carries out trading and includes a Hawker, Stallholder and Amusement operator.

“vehicle” includes every conveyance, not being a train, boat, aircraft, or wheelchair and every object capable of being propelled or drawn on wheels or tracks by any means.

(2) Unless otherwise defined herein the terms and expressions used in this local law shall have the same meaning given to them in the Act.

(3) Where a term is not defined in this local law, the Act or regulations, the terminology is to be taken from the Oxford Dictionary.

PART 2—APPLICATIONS AND LICENCES

6. Licences

(1) A person shall not undertake the activities of a Trader as prescribed by this local law within the district unless that person holds a current licence issued by an authorised person pursuant to this local law.

Penalty: \$5,000 and if the offence is of a continuing nature to an additional penalty of \$500 for each day or part of a day during which the offence has continued.

(2) A licence issued under subclause (1) shall be for a term of 12 months unless specified in the licence.

7. Applications

(1) Every application for a licence shall be in the form provided in Schedule 1 and shall be accompanied by:

- (a) an accurate plan of the proposed site location;
- (b) accurate plans and/or photographs describing any proposed stand, table, structure, vehicle or stall proposed to be used for trading; and
- (c) the Application/Renewal Fee as determined by the local government pursuant to clause 17.

(2) Every application shall be forwarded to the local government four (4) weeks prior to the date(s) of proposed operation.

(3) The local government shall cause such application, once approved, to be displayed on the local government noticeboards within the Town in which the applicant proposes to trade.

8. Licence Certificate

(1) The local government shall issue to every licensee a licence certificate in the form set out in Schedule 2, for which the licensee shall pay the relevant sum determined by the local government pursuant to clause 17.

(2) No licence is valid until the fees and charges have been paid.

(3) In granting a licence, the local government shall have regard to any policy statements it has in relation to the proposed location of the activities the subject of the application

9. Transfer of Licence

(1) A licence issued under this local law may only be transferable to another person where a licensee by reason of illness, accident or other cause is unable to comply with the local law.

(2) At the written request of the licensee, the local government may issue a permit, in the form provided in Schedule 4 authorising a person nominated by the licensee, to act in the licensee's stead.

(3) Such authorisation shall only be in effect during the period that the licensee is unable to comply with the local law or until the term of the licence expires, whichever is earlier.

10. Licence Renewal

An application for a licence renewal shall be subject to the requirements of clause 7, as if it was a fresh application, and shall be accompanied by the licence certificate then in force.

11. Council May Refuse to Issue a Licence

The Council may refuse to issue a licence if:

- (a) 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;
- (b) the gathering of customers would impede pedestrian or vehicle movements, or cause conflict with other activities;
- (c) the location is not provided with sufficient off-road parking so as to prevent a traffic hazard or danger to the public.
- (d) the proposed activity does not conform to the requirements of the Health Act 1911.

PART 3—CONDUCT

12. Conditions

(1) The Licensee shall:

- (a) display the licence certificate in a conspicuous place on the vehicle, temporary structure or a stall used whilst trading;
- (b) have the name of the trader (or his/her assistant(s) where appropriate) displayed on the vehicle, temporary structure or stall;
- (c) when selling goods, wares or merchandise by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the Weights and Measures Act 1915;
- (d) not cause or make an outcry, noise or disturbance likely to be a nuisance or cause annoyance to any person in that vicinity;
- (e) not deposit or store any box or basket containing goods, wares or merchandise under the vehicle of the licensee or upon a roadway or footpath so as to obstruct the movement of pedestrians or vehicles;

- (f) not use or display or permit to be used or displayed any advertisement, placard, poster, streamer sign or signboard on or about the place specified in the licence other than price tags on the goods, unless they relate to the business specified in the licence;
- (g) not use or permit to be used any flashing light or intermittent light apparatus or device on or from the place specified in the licence unless conducting an amusement;
- (h) not conduct trade from a public place unless there is adequate off-road parking adjacent to the place of trading for the parking of customers vehicles;
- (i) be responsible for the cleaning of the trading area, to the satisfaction of the local government during the time of operation and at the close of operations each day; and
- (j) ensure that at all times the activity conforms to the requirements of the Health Act 1911.

(2) The person to whom the licence has been granted shall ensure that the conditions are observed at all times.

(3) If any condition is not observed that person commits an offence against this local law and the local government may, in addition to or as an alternative to, any court proceedings in respect of such an offence exercise the power of Clause 13 to cancel the licence or exercise the power of Clause 19.

13. Cancellation

(1) The local government may by written notice cancel any licence issued under this local law for any reason set out in Clause 11 or on the grounds that:

- (a) the licensee is not conducting the business the subject of the licence in a respectable, safe or sober manner;
- (b) the licensee has assigned the licence without permission of the local government or no longer carries on the business the subject of the licence;
- (c) the licensee is not regularly carrying on the business for which the licence was granted;
- (d) the licensee has breached a condition of the licence.

(2) Upon the cancellation of a licence, the holder thereof shall forthwith return the licence certificate to the local government and shall forfeit all fees and charges paid in respect of the licence.

PART 4—MISCELLANEOUS

14. Selling of Newspapers

The requirements for a valid licence to be held pursuant to this local law shall not apply to the selling or offering for sale of newspapers, unless being sold from a stall.

15. Street Entertainment

(1) The requirements for a valid licence to be held pursuant to this local law shall not apply to a person/group conducting street entertainment, however the provisions of clause 7(1)(a) & (b), 7(2) and 7(3) of this local law shall apply.

16. Exemption

(1) Notwithstanding Clause 8 the local government may grant without fee or charge, a licence to conduct a stall or carry out trading in a public place for any period specified in such licence if the stall or trading is conducted by a Community Association or if the trading is carried out in a portion of the street or public place immediately adjoining the normal place of business of the licence holder.

(2) The provisions of clause 7(3) do not apply to community associations or if the trading is carried out in a portion of the street or public place immediately adjoining the normal place of business of the licence holder.

17. Fees and Charges

The fees and charges in relation to this local law will be set in accordance with Part 6, Division 5, and Subdivision 2 of the Local Government Act 1995.

18. Infringement Notices

(1) An infringement notice in respect of any offence prescribed in clause 19 of this local law:

- (a) may be given under section 9.13 of the Act and shall be in or to the effect of Form 1 Schedule 3;
- (b) may be given under section 9.16 of the Act and shall be in or to the effect of Form 2 Schedule 3;

(2) A notice under section 9.20 of the Act withdrawing an infringement notice shall be in or to the effect of Form 3 of Schedule 3.

19. Penalty Provisions

(1) Any person failing to do any act directed to be done or any act forbidden to be done by this local law, or any notice under this local law, commits an offence.

(2) If the penalty to which a person is liable for committing an offence against this local law is not specified, the penalty is a fine of Five Hundred Dollars (\$500) and if the offence is of a continuing nature, to an additional penalty of Fifty Dollars (\$50) for each day or part of a day during which the offence has continued.

(3) A modified penalty may be imposed by the issue of an infringement notice for the following offences:

- (a) failure to display the Licence certificate in contravention of clause 12(1)(a);
- (b) failure to have the name of the trader (or his/her assistant(s) where appropriate) displayed in contravention of clause 12(1)(b);
- (c) failure to use scales tested and certified in accordance with the provisions of the Weights and Measures Act 1915 in contravention of clause 12(1)(c);
- (d) obstructing pedestrians or vehicles by depositing a box or basket in contravention of clause 12(1)(e);
- (e) displaying advertisements and the like in contravention of clause 12(1)(f);
- (f) using a flashing or intermittent light in contravention of clause 12(1)(g)
- (g) failure to clean or leave clean the trading area in contravention of clause 12(1)(i);

(4) A modified penalty payable on an infringement notice issued under sub clause (3) is Fifty Dollars (\$50).

20. Objection and Appeal Rights

When the local government makes a decision as to whether it will:

- (a) grant a person a licence under this local law; or
- (b) renew, vary or cancel a licence that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

Schedule 1

LOCAL GOVERNMENT ACT 1995

Shire of Ashburton

Local Law Relating to Trading in Public Places

APPLICATION FOR A TRADER'S LICENCE

1. Name of applicant:

2. Address of applicant:

3. Application being made on behalf of:

4. Is the application being made on behalf of a Community Association as defined in this local law (Please circle)? **Yes / No**

5. Name/s of assistant/s:

6. Address of assistant/s:

7. The type of goods, wares, merchandise or service proposed to be sold or hired

8. Specific location of the proposed site for which the licence is being sought:
(To be accompanied by an accurate plan of the proposed site location)

.....

.....

.....

9. Description of any proposed stall, stand, table, structure or vehicle which may be used for trading:
(To be accompanied by accurate plans and/or photographs)

.....

.....

.....

10. The period for which the licence is sought:
From: To:

11. Proposed days and hours of trade:
.....

.....

Signature of Applicant:

Date:

Schedule 2

LOCAL GOVERNMENT ACT 1995

Shire of Ashburton

Local Law Relating to Trading in Public Places

LICENCE FOR TRADERS

- 1. Name of Licensee:
- 2. Address of Licensee:
- 3. Date of issue of Licence:
- 4. Date of Expiration of Licence:
- 5. Requirements, Terms and Conditions:
 - (a) Location to which the Licence applies:
 - (b) The type of goods, wares, merchandise and services permitted to be sold or hired:
 -
 - (c) Description of the stall, stand, table, structure or vehicle permitted to be used for trading:
 -
 - (d) Name and Address/es of assistants who may be engaged at any one time:
 -
 -
 - (e) The permitted days and hours when the trading may take place:
 -
 - (f) Other requirements, terms and conditions applicable to this Licence:
 -

.....
Chief Executive Officer
Shire of Ashburton

Schedule 3

LOCAL GOVERNMENT ACT 1995

FORM 1

Shire of Ashburton

Local Law Relating to Trading in Public Places

NOTICE TO OWNERS OF VEHICLE INVOLVED IN OFFENCE

Date/...../.....

To: (1)

Of: (2)

It is alleged that on/...../..... at (3).....

at (4) your vehicle:

Make:

Model:

Registration:

Was involved in the commission of the following offence:

.....

.....

contrary to clause of the **Local Law Relating to Trading in Public Places**.

You are required under section 9.13 of the Local Government Act 1995 to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless:

- (a) within 28 days after being served with this notice;
 - (i) you inform the Chief Executive Officer or another authorised officer of the Local Government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; and

(ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

or

(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as it allowed.

(5).....

(6).....

Insert:

- (1) Name of owner or "the owner"
- (2) Address of owner (not required if owner not named)
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Signature of authorised person
- (6) Name and title of authorised person giving notice

Schedule 3

LOCAL GOVERNMENT ACT 1995

FORM 2

Shire of Ashburton

Local Law Relating to Trading in Public Places

INFRINGEMENT NOTICE

Serial No.

Date/...../.....

To: (1)

Of: (2)

It is alleged that on/...../..... at (3).....

at (4)

In respect of vehicle:

Make:

Model:

Registration:

you committed the following offence:

.....
.....

contrary to clause of the **Local Law Relating to Trading in Public Places**.

The modified penalty of the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid on an authorised person at (5)..... within a period of 28 days after the giving of this notice.

Unless within 28 days after being served with this notice;

(a) you pay the modified penalty; or

(b) you:

- (i) inform the Chief Executive Officer or other authorised person of the Local Government as to the identity and address of the person who was the driver or person in charge of the above vehicle at the time the offence is alleged to have been committed; or
- (ii) satisfy the Chief Executive Officer that the above vehicle had been stolen or was being unlawfully used at the time the offence is alleged to have been committed, you will in the absence of proof to the contrary, be deemed to have committed the above offence and court proceedings may be instituted against you.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

(6)

(7)

Insert:

- (1) Name of alleged offender or "owner"
- (2) Address of alleged offender
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Place where modified penalty may be paid
- (6) Signature of authorised person
- (7) Name and title of authorised person giving notice

Schedule 3

LOCAL GOVERNMENT ACT 1995

FORM 3

Shire of Ashburton

Local Law Relating to Trading in Public Places

WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No.

Date/...../.....

To: (1)

Of: (2)

Infringement Notice No. dated/...../.....

In respect of vehicle:

Make:

Model:

Registration:

For the alleged offence of

has been withdrawn.

The modified penalty of the offence is \$

- ❖ has been paid and a refund is enclosed.
- ❖ has not been paid and should not be paid.
- ❖ *Delete as appropriate.*

(3)

(4)

Insert:

- (1) Name of alleged offender to whom infringement notice was given or "the owner"
- (2) Address of alleged offender.
- (3) Signature of authorised person
- (4) Name and title of authorised person giving notice

Schedule 4

LOCAL GOVERNMENT ACT 1995

Shire of Ashburton

Local Law Relating to Trading in Public Places

TRANSFER OF A LICENCE

The Council of the Shire of Ashburton transfers the licence to trade situated at:

..... *(Location)*

from the present holder *(Present Licensees Names)*

to *(New Licensees Name)*

of *(New Licensees Address)*

for the period from the date of this transfer until the

In accepting this Transfer of Licence, the transferee agrees:

- (a) to indemnify and hold indemnified the Local Government claims for compensation however arising from the operation of the Trade: and
- (b) not to seek from the Local Government 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
Shire of Ashburton

.....
Date

Dated this 17th day of February 1998.

The Common Seal of the Shire of Ashburton was hereunto affixed in the presence of:

BRIAN HAYES, President.
DAVID G. CAREY, Chief Executive Officer.



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