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**LOCAL GOVERNMENT ACT 1995**

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**CITY OF BUNBURY**

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**LOCAL LAWS RELATING TO STREET  
TRADING AND TRADING IN OTHER  
PUBLIC PLACES**

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**LOCAL LAWS RELATING TO  
OUTDOOR EATING AREAS**



**LOCAL GOVERNMENT ACT 1995**

## CITY OF BUNBURY

**LOCAL LAWS RELATING TO STREET TRADING AND TRADING IN OTHER PUBLIC PLACES**

Under the powers conferred by the Local Government Act 1995 and by all other powers, the Council of the City of Bunbury resolved on the 23rd day of June 1998 to repeal Local Laws Relating to Street Trading and Trading in other Public Places published on the *Government Gazette* of 6th September 1991 and make the following Local Laws Relating to Street Trading and Trading in other Public Places.

**Interpretation**

1. In these local laws unless the context otherwise requires—
  - “Authorised Officer” includes any Environmental Health Officer, employed by the Council and the CEO or any other person appointed by the Council as an authorised officer for the purposes of these local laws;
  - “CEO” means the Chief Executive Officer of the City of Bunbury;
  - “clause” means a clause of these local laws;
  - “community association” means an institution, association, club, society or body, whether incorporated or not, the object 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;
  - “Council” means the Council of the City of Bunbury;
  - “Footpath” includes a path used by, or set aside or intended for use by, both pedestrians and cyclists;
  - “Licence” means a licence issued by Council under clause 6;
  - “Licensee” means a person to whom a licence is granted under these local laws;
  - “Public Event” includes a market, festival, fair, parade or other similar event conducted on a street or public reserve with specific approval of Council;
  - “Public Reserve” includes park lands, squares, reserves, beaches, and other lands, included in or adjoining a district, and set apart for the use and enjoyment of the inhabitants of the district and includes parks and other lands acquired for the public purposes, and vested in or under the care, control, or management of the municipality of the district;
  - “Street” includes a highway and thoroughfare as defined in the Local Government Act 1995 which the public are allowed to use and includes every part of the highway or thoroughfare, and other things including bridges and culverts appurtenant to it;
  - “Trading” means selling or hiring of goods, wares, merchandise or services or offering goods, wares, merchandise or services for sale in a street or other public place and includes displaying them for sale, inviting offers for sale, soliciting orders or carrying out any other transaction therein.
2. These local laws shall not apply to the conducting of street entertainment, trading by a community association or trading at a public event.
3. No person shall carry on trading in any street footpath or public reserve within the City of Bunbury unless that person is acting within the specifications of a current licence issued under these local laws and for which all fees and charges have been paid.
4. An application for a licence shall be in writing and shall:
  - (1) include the full name and address of the applicant;
  - (2) specify the proposed number and the names and addresses of assistants to be engaged by the applicant in trading pursuant to the licence;
  - (3) specify the location for which the licence is sought;
  - (4) be accompanied by an accurate plan and description of any proposed stand, table, structure or vehicle which may be used for trading;
  - (5) specify the proposed days and hours of trading;
  - (6) 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:
  - (1) the applicant has committed a breach of clause 3,8,9 or 10 and Council resolves that the licence should be refused.
  - (2) the proposed activity or place of trading is in the opinion of Council undesirable;

- (3) the proposed stand, table, structure or vehicle for which the licence is sought is in the opinion of Council unsuitable in any respect to the location
- 6.** The Council may issue a licence and may specify conditions which relate to that licence:
- (1) defining the expiry date of the licence;
  - (2) defining the specific place to which the licence applies or limiting the trading area to not less than 400 metres from an established outlet selling similar goods;
  - (3) defining the number, type, form and construction as the case may be or any stand, table, structure or vehicle which may be used for trading;
  - (4) defining the particulars of the goods, wares, merchandise or services in respect of which trading may be carried on;
  - (5) defining the days and hours when trading may be carried on;
  - (6) requiring the licensee to maintain 3rd party liability insurance at all times to a value determined by Council resolution.
- 7.** A licence shall be in the form of the Schedule to these local laws and shall specify:
- (1) the full name and address of the licensee;
  - (2) the dates of issue and expiration of the licence;
  - (3) the place to which the licence applies;
  - (4) the number, type, form and construction as the case may be or any stand, table, structure or vehicle which may be used for trading;
  - (5) the particulars of the goods, wares, merchandise or services in respect of which trading may be carried on;
  - (6) the number and the full names and addresses of assistants (if any) who may be engaged at any one time in trading pursuant to the licence;
  - (7) the days and hours when trading may be carried on;
  - (8) the details of the 3<sup>rd</sup> party liability insurance conditions.
- 8.** A licensee or assistant specified in a licence shall not:
- (1) engage in or permit any trading in any goods, wares, merchandise or services other than those specified in the licence;
  - (2) engage in or permit any trading in a place other than that specified in the licence;
  - (3) deposit, place or store any goods, wares or merchandise on any street, footpath or other public reserve other than on the place to which the licence applies;
  - (4) cause or permit or suffer any nuisance to exist, arise or continue on or from the permitted place specified in the licence;
  - (5) create any noise or disturbance to the annoyance of nearby occupants or passers-by;
  - (6) obstruct the free passage of pedestrians on any footpath or street.
- 9.** A licensee shall not:
- (1) 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;
  - (2) transfer, assign or otherwise dispose of the licence.
- 10.** A licensee or assistant specified in a licence shall:
- (1) personally attend at the place specified in the licence at all times when trading is conducted on or from that place;
  - (2) keep the place and any stand, table, structure or vehicle specified in the licence in a clean and safe condition and in good repair;
  - (3) keep the place and any stand, table, structure or vehicle specified in the licence free from trade refuse and other refuse and rubbish;
  - (4) on demand produce the licence to any authorised officer of the Council or any police officer;
  - (5) remove the stand, table, structure or vehicle and all of his goods, wares, merchandise and signs from the place to which the licence applies and leave that place clean and vacant in all respects:
    - (a) at the conclusion of the permitted hours of operation specified in the licence
    - (b) whenever not trading on the place to which the licence applies.
- 11.** A licence is valid for the period between the date of issue and the date of expiry specified in the licence, which period shall not exceed twelve (12) months, or until its revocation. The licence fees shall be determined by resolution of Council and may include a differential fee based on area. The fees shall be paid by the licensee, to the Council, before the licence is issued
- 12.** The Council may revoke a licence if:
- (1) the licensee or assistant specified in a licence commits an offence against clause 3,8,9 or 10 or;
  - (2) 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 written reasons for the revocation and shall refund the fee having first deducted the fee applicable to the period from the issuing of the licence to the revocation thereof.

14. Any person who contravenes or fails to comply with any provision of clause 3,8,9 or 10 commits an offence and is liable on conviction to:

- (1) a maximum penalty of One Thousand Dollars (\$1000.00)
- (2) a maximum daily penalty of One Hundred Dollars (\$100.00) per day while the offence is continued.

**Schedule**

LOCAL GOVERNMENT ACT 1995

*The Municipality of the City of Bunbury*

LOCAL LAWS RELATING TO TRADING IN STREETS AND PUBLIC PLACES

**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) Place to which licence applies

.....  
.....

(b) Description of stand structure or vehicle to be used by the licensee.

.....  
.....

(c) Particulars of the 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 when trading may be carried on

.....  
.....

(f) 3<sup>rd</sup> party liability insurance conditions applicable to this licence

.....  
.....  
.....

.....  
Chief Executive Officer

Dated this 25th day of June 1998.

The Common Seal of the City of Bunbury was hereunder affixed in the presence of—

G. M. CASTRILLI, Mayor.  
G. P. BRENNAN, Chief Executive Officer.



**LOCAL GOVERNMENT ACT 1995**

## CITY OF BUNBURY

**LOCAL LAWS RELATING TO OUTDOOR EATING AREAS**

Under the powers conferred by the Local Government Act 1995 and by all other powers, the Council of the City of Bunbury resolved on the 23rd day of June, 1998 to repeal Local Laws Relating to Outdoor Eating Areas published in Government Gazette of 31<sup>st</sup> March 1994 and to make the following Local Laws Relating to Outdoor Eating Areas.

**Interpretation**

1. In these local laws unless the context otherwise requires—

“Authorised Person”. includes any Environmental health officer, employed by the Council and the Chief Executive Officer or any other person appointed by the Council as an authorised person for the purposes of these local laws;

“clause” means a clause of these local laws.

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

“eating area” . means an area in which tables, chairs and other structures are provided for the purpose of supplying food or drink to the public or the consumption of food or drink by the public.

“eating house” means any land, premises or place, or any part thereof, on or in which meals are prepared for service, or are served, to the public for gain or reward. This term does not include any building or other structure used temporarily for the preparation for service or service of meals to the public, at any fair, show, military encampment, races, or other public sports, games or amusements.

“Health Act” means the Health Act 1911 (as amended) and includes regulations and local Laws made thereunder.

“licence” means a licence issued by the Council under these local laws to set up and conduct an outdoor eating area.

“licensee” means the person who is the holder of a licence.

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

“outdoor eating area” means an outdoor eating area in a street or public place.

“proprietor”

(1) has the same meaning assigned to it by Section 160 of the Health Act, or

(2) 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 licence or a Restaurant licence granted under, that Act.

“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 these local laws.

2. These local laws do not apply to any outdoor eating area set up or conducted in a place located on private property notwithstanding that the public are allowed to use that place.

3. No person shall set up or conduct an outdoor eating area in a street or public place—

(1) other than in a portion of a street or public place adjacent to an eating house;

(2) unless the person is the proprietor of the eating house referred to in sub-clause (1) of this clause;

(3) unless the person is the holder of a valid and current licence issued pursuant to these local laws; and

(4) otherwise than in accordance with—

(a) licence plans,

(b) declarations by the proprietor in accordance with the First Schedule, and

(c) licence conditions.

4. A proprietor shall complete the form prescribed in the First Schedule to these local laws when applying for a licence. The form shall—

(1) include that person’s full name and address;

- (2) be accompanied by specifications and a plan showing the proposed outdoor eating area. The plan shall be at a scale of not less than 1:50 and show—
    - (a) the location and dimensions of the proposed outdoor eating area, and
    - (b) the position of all tables, chairs and other structures proposed to be provided in the eating area and how such items are to be confined within the outdoor eating area;
  - (3) be accompanied by specifications and a plan on a scale of not less than 1:200 showing the outdoor eating area and all structures thereon including any public facility, parking area or parking restriction within 30 metres of the boundaries of the outdoor eating area;
  - (4) be accompanied by a coloured photograph or a detailed drawing of the tables, chairs and other structures to be set up in the outdoor eating area;
  - (5) provide Council with written particulars of arrangements made with respect to public risk insurance; and
  - (6) provide Council with any other information that the Council considers necessary in the circumstances of the case.
- 5.** Council or an authorised person may approve an application on such terms and conditions, if any, as it sees fit.
- 6.** A licence shall be in the form of the Second Schedule to these local laws.
- 7.** Council or an authorised person may refuse to issue a licence if—
  - (1) the applicant has at any time failed to comply with any provision of these local laws;
  - (2) the applicant has failed to comply with any provision of the Health Act;
  - (3) any element of the proposed outdoor eating area is contrary to any condition of approval made by resolution of Council as an adjunct to these local laws; or
  - (4) the proposed outdoor eating area is in the opinion of Council undesirable,In the case of sub-clauses (3) and (4), Council shall provide the applicant with the reasons in writing.
- 8.** The licensee shall—
  - (1) ensure that the outdoor eating area is conducted at all times in accordance with the provisions of these local laws and the terms and conditions of the licence;
  - (2) maintain the chairs, tables and other structures set up in the outdoor eating area in a clean and serviceable condition at all times;
  - (3) maintain the paving of the outdoor eating area in a clean condition, free from staining and ingrained food deposits;
  - (4) be solely responsible for all or any costs associated with restoring the street, footpath, public facility, tree or plant within or adjacent to the outdoor eating area where damage has been caused as a result of the conduct of the outdoor eating area;
  - (5) not allow for any reason whatsoever business activities associated with the outdoor eating area to obstruct the free passage of pedestrians on any footpath or the free passage of motor vehicles on any street or any part of a footpath used for vehicle crossings, notwithstanding the provisions of these local laws;
  - (6) not allow the outdoor eating area to be situated in such a way that access from the footpath to kerbside parking is unreasonably obstructed;
  - (7) not allow the outdoor eating area equipment to hazardously obstruct the vision of vehicle drivers or pedestrians;
  - (8) produce a licence whenever requested to do so by an authorised person; and
  - (9) not transfer, assign or dispose of the licence.
- 9.** A licence is valid for the period between the date of issue and the following 30 June, or until its revocation.
- 10.** The licence fees and charges shall be determined by resolution of Council in accordance with the provisions of the Local Government Act 1995. These fees shall be paid by the licensee to the Council before the licence is issued.
- 11.** The Council may revoke a licence if—
  - (1) the licensee breaches clause 3 or clause 8
  - (2) the licensee breaches any provision of the Health Act; or
  - (3) 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.
- 12.** Where a licence is revoked the Council shall if requested provide the licensee with written reasons for the revocation and shall refund the fee having first deducted the fee applicable to the period from the issuing of the licence to the revocation thereof.
- 13.** A person who breaches any provision of clause 3 or clause 8 of these local laws commits an offence and is liable on conviction to a maximum penalty of—
  - (1) \$1 000.00 in the case of a breach of clause 3(1); or
  - (2) \$500.00 in the case of a breach of clause 8; and
  - (3) a maximum daily penalty during the breach of \$100.00 per day while the breach continues.



**First Schedule**  
**CITY OF BUNBURY**  
**APPLICATION FOR LICENCE**

To: City of Bunbury

I, ..... (Full Name)

of ..... (Residential Address)

.....

..... (Postal Address)

..... (Occupation)

Hereby make application for a licence to set up and conduct an outdoor eating area pursuant to City of Bunbury local laws Relating to Outdoor Eating Areas.

I, hereby declare that the following details are true and correct—

1. I am the proprietor of the eating house known as:  
.....  
and located at: .....
2. Location of proposed outdoor eating area: .....
3. Description of eating house adjacent to proposed outdoor eating area—  
.....
4. Proposed licence period: .....
5. Proposed days and times of operation .....
6. Proposed number of tables .....
7. Proposed number of chairs .....
8. Proposed number of other structures .....
9. Description of tables and chairs and other structures including materials and dimensions:  
.....
10. Description of other structures including materials and dimensions:  
.....
11. I have read and understood Council's conditions relating to outdoor eating areas.
12. Other information provided by applicant:  
.....

The following are attached—

- (a) Specifications and a plan showing the proposed outdoor eating area. The plan shall be at a scale of not less than 1:50 and show—
  - (i) the location and dimensions of the proposed outdoor eating area, and
  - (ii) the position of all tables, chairs and other structures proposed to be provided in the outdoor eating area and how such items are to be confined within the outdoor eating area;
- (b) specifications and a plan on a scale of not less than 1:200 showing the eating area and all structures thereon including any public facility, parking area or parking restriction within 30 metres of the boundaries of the outdoor eating area;
- (c) a colour photograph or a detailed drawing of the tables, chairs and other structures to be set up in the outdoor eating area;
- (d) written particulars of arrangements made with respect to public risk insurance.

I enclose—

- (a) the license application fee of \$.....
- (b) additional charges of \$.....

Dated the        day of        .

.....  
(Signature of Applicant)

**Second Schedule**  
**CITY OF BUNBURY**

**LICENCE TO SET UP AND CONDUCT AN OUTDOOR EATING AREA**

This licence is issued to:

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

This licence authorises the person named above to set up and conduct an outdoor eating area:

- (a) on those portions of the street or public place shaded in ..... (colour) 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 ..... and expiring at 12.00 o'clock midnight on the 30<sup>th</sup> day of June ..... or on the sooner revocation of this licence.

.....  
Authorised Person

Issued this ..... day of .....

Dated this 25th day of June 1998.

The Common Seal of the City of Bunbury was hereunder affixed in the presence of—

G. M. CASTRILLI, Mayor.  
G. P. BRENNAN, Chief Executive Officer.

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