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LOCAL GOVERNMENT ACT 1995

TOWN OF CLAREMONT

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

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LOCAL LAW RELATING TO TRADING IN PUBLIC PLACES

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LOCAL GOVERNMENT ACT 1995**TOWN OF CLAREMONT****LOCAL LAW RELATING TO TRADING IN PUBLIC PLACES****PART 1—PRELIMINARY**

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

1. Citation

This local law may be cited as the *Town of Claremont 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 Town of Claremont By—Laws Relating to Stalls published in the *Government Gazette* on 7 October 1983 and all other local laws relating to Hawkers, Stallholders and Traders are hereby repealed.

4. Content and Intent

This local law provides for the regulation and control 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 Town of Claremont.

“unobstructed” means a clear path of travel for pedestrian movement of not less than 1800mm, or as otherwise required by the approving authority.

“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.

“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.

“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 a person who operates amusements.

“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.

(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.

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 licence, 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) provide at all times an unobstructed clear path of travel for pedestrians as indicated on the approved plan;

- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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
- (k) 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. 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.

16. 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.

17. Infringement Notices

Any offence under this local law is a prescribed offence for the purposes of the Local Government (Functions And General) Regulations 1996 and an infringement notice may be given in the form of Form 2 in Schedule 1 of those Regulations.

A withdrawal notice of any infringement notice given pursuant to this local law shall be in the form of Form 3 in Schedule 1 of the Local Government (Functions And General) Regulations 1996.

18. 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 maximum fine of Two Thousand Five Hundred Dollars (\$2500) 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)(g);
- (f) using a flashing or intermittent light in contravention of clause 12(1)(h);
- (g) failure to clean or leave clean the trading area in contravention of clause 12(1)(j);

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

19. 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

Town of Claremont

Local Law Relating to Trading in Public Places

APPLICATION FOR A STREET 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

Town of Claremont

Local Law Relating to Trading in Public Places

STREET TRADER'S LICENCE

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
Town of Claremont

SCHEDULE 3**LOCAL GOVERNMENT ACT 1995****Town of Claremont***Local Law Relating to Trading in Public Places***TRANSFER OF STREET TRADER'S LICENCE**

The Council of the Town of Claremont transfers the licence to trade situated at:

..... (Location)
from the present holder (Present Licensees Name)
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
Town of Claremont

.....
Date

Passed by resolution at a meeting of the Town of Claremont Council held on the 28 July 1998.

Dated this 30 April 1999.

The common seal of the Town of Claremont was affixed hereto in the presence of—

PETER OLSON, Mayor.
ROBERT STEWART, Chief Executive Officer.

