



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

6181



PERTH, FRIDAY, 10 NOVEMBER 2000 No. 234 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.15 PM

LOCAL GOVERNMENT ACT 1995

CITY OF PERTH

**ALFRESCO DINING
LOCAL LAW 2000**

LOCAL GOVERNMENT ACT 1995

CITY OF PERTH

ALFRESCO DINING LOCAL LAW 2000

ARRANGEMENT

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Repeal
- 1.3 Application
- 1.4 Definitions

PART 2—LICENCES

- 2.1 Licence required
- 2.2 Exemptions
- 2.3 Application for a licence
- 2.4 Determination of application
- 2.5 Licence period
- 2.6 Renewal of licence
- 2.7 Transfer of permit
- 2.8 Variation of licence conditions
- 2.9 Display and production of licence
- 2.10 Removal and impounding of goods
- 2.11 Use of the alfresco dining area by public
- 2.12 Notice to carry out work and failure to comply
- 2.13 Cancellation or suspension of licence
- 2.14 Temporary removal of alfresco dining area
- 2.15 Objection and appeal rights
- 2.16 Transitional

PART 3—ALFRESCO DINING POLICY

- 3.1 Policy making power
- 3.2 Policy-making procedures
- 3.3 Amendment or revocation of the Alfresco Dining Policy

PART 4—ENFORCEMENT

- 4.1 Notices under the Local Law
- 4.2 Offences and penalties
- 4.3 Infringement notices and modified penalties

SCHEDULES

1. Prescribed offences
2. Infringement Notice
3. Notice of withdrawal of Infringement Notice

LOCAL GOVERNMENT ACT 1995

CITY OF PERTH

ALFRESCO DINING LOCAL LAW 2000

Under the powers conferred upon it by the *Local Government Act 1995*, the Council of the City of Perth resolved on 24 October 2000 to make and submit for confirmation by the Governor the following local law.

PART 1—PRELIMINARY**Citation**

1.1 This local law may be cited as the *City of Perth Alfresco Dining Local Law 2000*.

Repeal

1.2 (1) This Local Law repeals Local Law No. 13—Relating to Eating Areas published in the *Government Gazette* on 28 February 1986.

(2) Where a policy was made or adopted by the City of Perth under or in relation to Local Law No 13, then the policy is to no longer have any effect on and from the day on which this Local Law comes into operation.

Application

1.3 This local law applies throughout the district.

Definitions

1.4 In this local law, unless the context otherwise requires —

“**Act**” means the *Local Government Act 1995*;

“**alfresco dining area**” means an area in which tables, chairs and other structures are provided for the purpose of the consumption of food or beverages or both by the public;

“**alfresco dining**” means outdoor dining or drinking or both in a public place;

“**alfresco dining policy**” means a policy adopted by the Council under Part 3 of this local law;

“**approval sticker**” means a sticker issued by the Council signifying that a licence has been issued;

“**authorized person**” means—

(a) the CEO; or

(b) any other officer of the City of Perth or any other person appointed by the Council to be an authorized person for the purposes of this local law;

“**CEO**” means the chief executive officer of the City of Perth;

“**City property**” means anything except a thoroughfare—

(a) which belongs to the City of Perth;

(b) of which the City of Perth is the management body under the *Land Administration Act 1997*; or

(c) which is an otherwise unvested facility under section 3.53 of the Act;

“**Council**” means the Council of the City of Perth;

“**district**” means the district of the City of Perth;

“**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.

The term does not include—

(a) Any boarding-house or lodging-house; or

(b) 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.

“**furniture**” means chairs, tables, waiters’ stations, planter boxes, umbrellas, screens, barriers, awnings and any other structure set up in the alfresco dining area;

“**fee**” means fees imposed and determined by the Council under sections 6.16—6.19 of the Act being an application fee and a fee to use a place controlled by the City of Perth;

“**Health Act**” means the *Health Act 1911*;

“**licence**” means a licence issued by the Council under this local law;

“**licence period**” means the period referred to in subclause 2.5;

“**licensee**” means a person who holds a valid licence;

“**local public notice**” has the meaning given to it in section 1.7 of the Act;

Note: Section 1.7 of the Act states—

“(1) Where under this Act local public notice of a matter is required to be given, a notice of the matter is to be—

(a) published in a newspaper circulating generally throughout the district;

(b) exhibited to the public on a noticeboard at the local government offices; and

(c) exhibited to the public on a noticeboard at every local government library in the district.

(2) Unless expressly stated otherwise it is sufficient if the notice is—

(a) published under subsection (1)(a) on at least one occasion; and

(b) exhibited under subsection (1)(b) and (c) for a reasonable time, not being less than—

(i) the time prescribed for the purposes of this paragraph; or

(ii) if no time is prescribed, seven days.”

“**month**” means calendar month;

Note: The reckoning of months is dealt with in section 62 of the Interpretation Act 1984.

“**proprietor**” includes the owner, the occupier, and any person having the management or control of any eating-house.

“**public place**” includes—

(a) any thoroughfare or place which the public are allowed to use; and

(b) City property; and

Note: “Thoroughfare” is defined in section 1.5 of the Act as—

“a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end.”

“**utility**” means any State, Commonwealth or other body which provides an essential service such as electricity, gas, water, drainage, telecommunications or traffic control, and has equipment on, in or under a public place for that purpose.

Note: The Interpretation Act 1984 is of assistance in construing this local law. Words and expressions used in this local law which are not defined in this local law have the meanings given to them in the Local Government Act 1995.

PART 2—LICENCE

Licence Required

2.1 Unless exempted under subclause 2.2, a person shall not, in any public place, set up or conduct an alfresco dining area—

(a) unless that person is a licensee or is acting on behalf of a licensee;

(b) unless that person is the proprietor of an eating house which has direct frontage to the portion of the public place to which the licence relates; and

(c) other than in accordance with—

(i) the conditions of the licence;

(ii) the provisions of this local law and the alfresco dining policy; and

(iii) any written law.

Exemptions

2.2 (1) The Council may exempt a person or class of persons from the requirement to have a licence.

(2) An exemption may be—

(a) made by written notice; or

(b) specified in the alfresco dining policy.

(3) The power to exempt may be exercised—

(a) on the application of a person; or

(b) at the Council’s own initiative.

(4) An exemption under paragraph (1) may be given subject to any conditions the Council thinks fit.

(5) An exemption may apply to, or in respect of—

(a) a particular event;

(b) particular goods or services; or

(c) a period of time.

(6) The requirement to obtain a licence under clause 2.1 does not apply to any act or omission done by a person on reserve land as that term is defined in the *Forrest Place and City Station Development Act 1985*, which act or omission is authorized to be done by that person by virtue of a contract with the City of Perth.

Application for a licence

2.3 (1) An application for a licence is—

- (a) to be made by the proprietor of an eating house which has direct frontage to the portion of the public place to which the application relates;
- (b) to comply with the alfresco dining policy and this local law; and
- (c) to be forwarded to the CEO together with the application fee and written particulars of arrangements made in respect of public liability insurance in an amount and on terms reasonably required by the Council.

(2) The City of Perth or CEO may require an applicant to provide additional information reasonably related to an application before determining the application.

(3) The City of Perth may require an applicant to give local public notice of the application for a licence.

Determination of application

2.4 (1) The City of Perth may refuse, without considering its merits, an application for a licence that does not comply with the requirements of subclause 2.3.

(2) In considering an application for a licence, the City of Perth is to have regard to the alfresco dining policy and may have regard to any other matters that it considers to be relevant.

(3) The City of Perth may, in respect of an application for a licence—

- (a) refuse to approve an application; or
- (b) approve the application subject to any conditions it thinks fit.

(4) Without limiting the scope of the City of Perth's discretion under paragraph (3), the City of Perth may refuse an application for a licence if, in its opinion—

- (a) the proposed alfresco dining does not conform with the requirements of the *Health Act* or any other written law;
- (b) the proposed alfresco dining area is undesirable;
- (c) the proposed furniture is unsuitable, in any respect, to the location in which the licence is to operate;
- (d) the proposed licensee has been convicted during the preceding five years of an offence against—
 - (i) this local law or its predecessor;
 - (ii) the *Health Act*;
 - (iii) the Liquor Licensing Act 1988; or
 - (iv) any other written law which affects to alfresco dining; or
- (e) the proposed licensee is not a fit and proper person to hold a licence.

(5) If the City of Perth approves an application for a licence, it is to issue a licence in the form set out in the alfresco dining policy.

(6) If the City of Perth refuses to approve an application for a licence, it is to give written notice of that refusal to the applicant.

(7) Without limiting the scope of the City of Perth's discretion under paragraph (2), the alfresco dining policy may set out—

- (a) the considerations to which the City of Perth may have regard in determining an application;
- (b) the grounds on which the City of Perth may refuse to approve an application for a licence; and
- (c) where the City of Perth approves an application for a licence subject to conditions, the conditions that may be imposed.

Licence period

2.5 A licence is valid for 12 months from the date on which it is issued unless—

- (a) a different period (that is, greater or less than 12 months) is specified in the licence; or
- (b) it is sooner cancelled or suspended under this local law.

Renewal of licence

2.6 (1) A licensee may apply to the City of Perth in writing not later than two months before the expiry of a licence for the renewal of the licence.

(2) The provisions of this local law relevant to the licence which is to be renewed shall apply, with such modifications as are required, to an application for the renewal of a licence.

Transfer of licence

2.7 (1) An application for the transfer of a valid licence is to—

- (a) be made in the form set out in the alfresco dining policy;
- (b) be forwarded to the CEO together with any administration fee; and
- (c) provide information as the City of Perth or the CEO may require to enable the application to be determined.

(2) The City of Perth may approve an application for the transfer of a licence, refuse to approve it or approve it subject to any conditions it thinks fit.

(3) In determining an application under this clause, the City of Perth is to have regard to the alfresco dining policy.

(4) Where the City of Perth approves an application for the transfer of a licence, the transfer may be effected by—

- (a) an endorsement on the licence signed by the CEO; or
- (b) issuing to the transferee a licence in the form determined by the City of Perth and set out in the alfresco dining policy.

(5) The transfer takes effect on and from the date of the endorsement on the licence or from the date on which a new licence is issued.

(6) Where the City of Perth approves an application for the transfer of a licence, it is not required to refund any part of the fee paid by the former licensee.

Variation of licence conditions

2.8 (1) A licensee may apply in writing to the City of Perth to vary or remove any of the conditions of a licence.

(2) The City of Perth may, in respect of an application made under this clause—

- (a) refuse the application; or
- (b) approve, in whole or in part, the application on such conditions, if any, as it thinks fit in accordance with this local law.

(3) In determining an application under this clause, the City of Perth is to have regard to the alfresco dining policy and this local law.

(4) If the City of Perth approves an application to vary the conditions of a licence, it is to give the licensee written notice of the variation and the conditions applying in respect of the licence are to be varied accordingly.

(5) If the City of Perth refuses to approve an application to vary the conditions of a licence, it is to give written notice of that refusal to the licensee.

Display and production of licence and approval sticker

2.9 (1) A person shall not display a licence or approval sticker unless—

- (a) the licence is valid and current; and
- (b) he or she is the licensee or acts on behalf of the licensee.

(2) A licensee must display an approval sticker in accordance with the alfresco dining policy.

(3) A licensee, or person acting on behalf of the licensee, must produce to an authorized person the licence immediately upon being required to do so by the authorized person.

Removal and impounding of goods

2.10 Where an alfresco dining area is conducted without a licence, or in contravention of a condition of a licence, any furniture may be removed by an authorized person and impounded under Part 3 Division 3 Subdivision 4 of the Act.

Use of the alfresco dining area by public

2.11 A person shall leave an alfresco dining area when requested to do so by the licensee on the ground that the person is being disruptive and a nuisance. Failure to do so constitutes an offence.

Notice to carry out work and failure to comply

2.12 (1) Where, in the opinion of the City of Perth, any work is required to be carried out as a result of the setting up or conduct of alfresco dining, the City of Perth may give notice to the licensee to carry out the work within the time specified by the notice.

(2) Where a licensee neglects or refuses to comply with a notice given under paragraph (1), the licensee commits an offence and the City of Perth may do the work required by that notice to be done and recover from the licensee, in a Court of competent jurisdiction, the expense incurred by it in so doing.

(3) In this clause 'work' includes maintenance, cleaning, removal, alteration, repair, reinstatement or reconstruction of any part of a the alfresco dining area or public place, or both.

Cancellation or suspension of licence

2.13 (1) The City of Perth may cancel a licence where the licensee —

- (a) has not complied with—
 - (i) this local law;
 - (ii) the alfresco dining policy;
 - (iii) a condition of the licence; or
 - (iv) any written law;
- (b) has transferred or assigned or attempted to transfer or assign the licence without the consent of the City of Perth;
- (c) ceases to be the proprietor of the eating house abutting the portion of the public place to which the licence relates;
- (d) is not, in the opinion of the City of Perth, a fit and proper person to conduct alfresco dining;
- (e) is not regularly conducting an eating house or alfresco dining; or
- (f) is bankrupt or an insolvent under administration within the meaning of the *Corporations Law*.

(2) Where the City of Perth cancels a licence under paragraph (1)—

- (a) the City of Perth is to notify the licensee in writing of the cancellation;

- (b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation notice;
- (c) the licensee shall immediately return the licence and approval sticker to the CEO; and
- (d) the licensee is to be taken to have forfeited the fee.

(3) The City of Perth may cancel or suspend a licence if the City of Perth, a utility or a public authority requires access to or near the public place to which the licence relates for the purpose of carrying out works on or in the vicinity of that place.

(4) Where the City of Perth has power to cancel a licence under this clause it may, instead, vary a condition of the licence.

Temporary removal of alfresco dining area

2.14 (1) The licensee is to temporarily remove the furniture when requested to do so on reasonable grounds by an authorized person or a member of the Police Service or an emergency service.

(2) The licensee may replace the furniture removed under paragraph (1) as soon as the person who directed that it be removed allows it to be replaced.

Objection and appeal rights

2.15 A person adversely affected by a decision made by the City of Perth under this Part, including but not limited to a decision to refuse, vary or cancel a licence, may be entitled to object or appeal against the decision under the Act.

Note: Objection and appeal rights are dealt with in Part 9 Division 1 of the Act and in regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996.

Transitional

2.16 A licence issued in accordance with Local Law No. 13 Relating to Eating Areas shall be taken to be a licence granted under this local law and shall be valid for the period specified in the licence unless the licence is cancelled or suspended under this local law.

PART 3—POLICY

Policy Making power

3.1 (1) The City of Perth may make an alfresco dining policy as to any matter in this local law or as to any matter which the City of Perth considers is necessary or convenient for applying, administering or enforcing this local law.

(2) Without limiting the generality of paragraph (1), the alfresco dining policy may, in addition to the matters set out in subclause 2.4(7), include—

- (a) standard conditions which may be applied, unless varied or excluded by the City of Perth in a particular case, to each licensee;
- (b) locations in which alfresco dining is not permitted;
- (c) the obligations of a licensee; and
- (d) any matter ancillary or necessary to give effect to a policy.

Policy making procedures

3.2 (1) The City of Perth is to give local public notice under the Act of its intention to make a policy.

(2) The local public notice referred to in paragraph (1) is to state—

- (a) that the City of Perth intends to make an alfresco dining policy, the purpose and effect of which is summarized in the notice;
- (b) where a copy of the draft alfresco dining policy may be inspected and obtained; and
- (c) where, in what form and during what period, written submissions may be made to the City of Perth.

(3) If no submissions are received in accordance with subclause 3.2(2)(c), the City of Perth is to decide—

- (a) to give local public notice that the proposed alfresco dining policy has effect as a policy on and from the date of publication;
- (b) to amend the proposed alfresco dining policy, in which case paragraph (5) will apply; or
- (c) not to continue with the proposed alfresco dining policy.

(4) If submissions are received in accordance with subclause 3.2(2)(c), the City of Perth is—

- (a) to consider those submissions; and
- (b) to decide—
 - (i) whether or not to amend the proposed alfresco dining policy; or
 - (ii) not to continue with the proposed alfresco dining policy.

(5) If the City of Perth decides to amend the proposed alfresco dining policy, it is to give local public notice—

- (a) of the effect of the amendments; and
- (b) that the proposed policy has effect as a policy on and from the date of publication.

(6) If the City of Perth decides not to amend the proposed alfresco dining policy, it is to give local public notice that the policy has effect on and from the date of publication.

(7) A proposed alfresco dining policy is to have effect as a policy on and from the date of the publication of the local public notice referred to in subclauses (3), (5) and (6).

Amendment or revocation of the alfresco dining policy.

3.3 (1) The City of Perth may amend or revoke the alfresco dining policy.

(2) The provisions of subclause 3.2 are to apply to an amendment of the alfresco dining policy as if the amendment were the proposed alfresco dining policy.

(3) If the City of Perth revokes the alfresco dining policy it is to give local public notice of the revocation and the policy is to cease to have effect on the date of publication.

PART 4—ENFORCEMENT**Notices under this local law**

4.1 (1) If the City of Perth gives a notice under this local law requiring a person to do anything, if the person fails to comply with the notice the person commits an offence.

(2) If a person fails to comply with a notice referred to in paragraph (1) the City of Perth may do the thing specified in the notice and recover from that person as a debt, the costs incurred in so doing.

Offences and penalties

4.2 (1) A person who fails to do anything required or directed to be done under this local law or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) A person who commits an offence under paragraph (1) is liable, upon conviction—

(a) to a maximum penalty of \$5,000; and

(b) if the offence is of a continuing nature, to an additional maximum penalty of \$500 for each day or part of a day during which the offence has continued.

Infringement notices and modified penalties

4.3 (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

(3) For the purpose of guidance only, and before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that—

(a) commission of the prescribed offence is a relatively minor matter; and

(b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

(4) For the purposes of this local law —

(a) the form of the infringement notice given under clause 9.16 of the Act is set out in Schedule 2; and

(b) the form of the notice referred to in section 9.20 of the Act is set out in Schedule 3.

Schedule 1*City of Perth*

ALFRESCO DINING LOCAL LAW 2000

PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
2.1	Establishment or conduct of alfresco dining without a licence	300.00
2.1	Failure of licensee to comply with obligations set out in the alfresco dining local law, policy or licence	100.00
2.11	Failure to leave alfresco dining area when requested to do so by the licensee	50.00
2.9	Failure to— (a) produce licence on request of an authorized person; or (b) display approval sticker	100.00
2.12.(2) or 4.1(2)	Failure to comply with notice given under the local law	100.00

Schedule 2

City of Perth

ALFRESCO DINING LOCAL LAW 2000

INFRINGEMENT NOTICE

Infringement Notice No.

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

To:

Of:

It is alleged that on / / at o'clock
at.....you committed the offence indicated below.

Clause	Description of offence	Penalty
--------	------------------------	---------

If you do not wish to have a complaint of this offence heard and determined by a court, you may pay the modified penalty of \$..... within 28 days after the date of service of this notice.

Payments may be made either by posting this form, together with the amount mentioned above, to the Chief Executive Officer, City of Perth, GPO Box C120, Perth, WA, 6001 or by delivering this form and paying that amount at the City of Perth, Council House, 27 St George's Terrace, Perth, Western Australia between 9am and 5pm Monday to Friday.

.....
Signature of Authorized Person

Schedule 3

City of Perth

ALFRESCO DINING LOCAL LAW 2000

NOTICE OF WITHDRAWAL OF INFRINGEMENT NOTICE

Infringement Notice No.

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

To:

Of:

Infringement Notice No.dated
for the alleged offence of

Has been withdrawn.

The modified penalty of \$.....

- has been paid and a refund is enclosed.
- has not been paid and should not be paid
(delete as appropriate)

.....
Name and title of authorized person giving this notice

.....
Signature

Dated the 24th day of October 2000.

The Common Seal of the City of Perth was fixed by authority of a resolution of the City of Perth in the presence of—

PETER NATTRASS, Lord Mayor.
GARRY HUNT, Chief Executive Officer.

