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LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK-BALINGUP

**LOCAL LAW—EATING AREAS
IN STREETS AND OTHER
PUBLIC PLACES**

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Pursuant to the powers under the *Local Government Act 1995* the Council of the Shire of Donnybrook/Balingup makes the following Local Law.

1. Citation

This Local law may be cited as the *Shire of Donnybrook-Balingup Local law—Eating Areas in Streets and Other Public Places*.

2. Interpretation

(1) In this Local law, unless the context otherwise requires;

“**Act**” means the *Health Act 1911* as amended,

“**Council**” means the Council of the Shire of Donnybrook-Balingup,

“**District**” means the district of the Shire of Donnybrook-Balingup,

“**Eating Area**” means an area in which tables, chairs and 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,

“**Health Act**” means the *Health Act 1911* and includes the *Food Hygiene Regulations 1993*,

“**Licence**” means a licence issued by the Council under this Local law to set up and conduct an eating area,

“**Licensee**” means the holder of a licence issued under this Local law,

“**Proprietor**” includes the owner, the occupier, and any person having the management or control of any restaurant,

“**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, agent or instrumentality of the Crown or the Council,

“**Restaurant**” means any, or any part of any, land, premises or place on or in which meals are prepared for service, or are served to the public for gain or reward but does not include—

(a) a boarding house or lodging house; or

(b) a 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,

“**Chief Executive Officer**” means the Chief Executive Officer of the Shire of Donnybrook-Balingup and includes an Acting Chief Executive Officer.

(2) Except where—

(a) express provision is made to the contrary; or

(b) the context requires otherwise,

words and expressions used in this Local law have the same meaning as are given to them in the Health Act.

3. Application

This Local law—

(a) applies and has force and effect throughout the whole of the district; but

(b) does not apply to any eating area set up or conducted in or on a place which is on private property notwithstanding that the public are allowed to use that place.

4. Prohibition

A person shall not set up or conduct an eating area in a street or public place—

(a) other than in a portion of a street or public place adjoining a restaurant.

(b) unless the person is the proprietor of the Restaurant referred to in paragraph (a);

- (c) unless the person is the holder of a valid and current licence issued under this Local law; and
- (d) otherwise than in accordance with the approved licence plan and any terms and conditions set out in, or applying in respect of, the licence.

5. Application for Licence

The proprietor of a restaurant seeking the issue of a licence to set up and conduct an eating area in a street or public place shall make written application and forward the application to the Chief Executive Officer together with—

- (a) the fee and the charge prescribed from time to time by the Council;
- (b) two copies of a plan and specification of the proposed eating area on a scale of 1:50 showing—
 - (i) the location and dimensions of the proposed eating area and the means by which the eating areas are to be separated from the balance of the street or public place; and
 - (ii) the position of all tables, chairs, and other structures proposed to be provided in the eating area and which of such items, if any, are to be retained within the eating area at all times;
- (c) two copies of both a plan and specifications on a scale of 1:200 showing the eating area and all land, together with any improvements, public facilities and parking restrictions, within 30 metres of the boundaries of the eating area;
- (d) a colour photograph or photographs of the tables, chairs and other structures to be set up in the eating 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 eating area;
- (f) written particulars of arrangements made in respect of public liability insurance of not less than \$10,000,000; and
- (g) other information that the Council considers necessary in the circumstances of the case.

6. Determination of Application

- (1) The Council may refuse to consider an application for a licence, which does not comply with the requirements of Clause 5.
- (2) The Council may in respect of an application for a licence—
 - (a) refuse the application; or
 - (b) approve the application on such terms and conditions if any, as it sees fit.
- (3) Where the Council approves an application for a licence, it shall;
 - (a) issue a licence; and
 - (b) cause to be attached to the licence a licence plan showing the area of a street or public place within which the eating area may be set up or conducted.
- (4) For the purpose of the Local law, a licence plan attached to a licence shall be deemed to form part of the licence.
- (5) A licence issued by the Council under this clause is valid from the date of issue until 31st December of the year of issue unless it is sooner cancelled under this Local law.

7. Variation of Licence Conditions

- (1) A licensee may apply in writing to the Council to vary or remove any of the terms and conditions of the licence.
- (2) Without limiting the generality of subclause (1), a licensee who, for the purposes of a function or event, wishes to set up or conduct an eating area on a day or hour not permitted by the licence, shall—
 - (a) apply in writing to the Council, at least 14 days before the day or time for which approval is sought;
 - (b) state in the application the nature of the function or event concerned and the day or time for which approval is sought; and
 - (c) forward with the application the fee prescribed.
- (3) The Council 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 terms and conditions, if any, as it sees fit.
- (4) Where the Council approves an application under this clause, it shall advise the licensee in writing of the variation and the terms and conditions applying in respect of the licence shall be varied accordingly.

8. Renewal of Licence

- (1) A licensee may apply in writing to the Council by December 1 in each year for the renewal of the licence and shall submit with the application for renewal—
 - (a) the fee and the charge prescribed; and
 - (b) written confirmation that the public liability insurance required under clause 5(f) has been affected for the renewal period.

(2) Upon receipt of an application for the renewal of a licence, the Council, subject to subclause (3), may—

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

(3) If an application for the renewal of a licence is not received by the Council by December 1 in the year prior to which the licence has been sought, the Council may refuse to consider the application.

9. Transfer of Licence

(1) An application for the transfer of a licence shall—

- (a) be made in writing.
- (b) be signed by the Licensee and the proposed transferee of the Licence;
- (c) include any information that the Council may require to enable the application to be determined; and
- (d) be forwarded to the Chief Executive Officer together with the fee prescribed.

(2) Upon receipt of an application for the transfer of a licence, the Council may—

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

(3) Where the Council approves the application for transfer of a licence, the Council shall transfer the licence by—

- (a) an endorsement to the effect signed by the Chief Executive Officer; and
- (b) the issue of its written consent.

(4) Where the Council approves the transfer of a licence it shall not be required to refund any part of the fee or charge paid by the former licensee.

10. Cancellation of Licence

(1) The Council may cancel a licence where the licensee has—

- (a) been convicted of an offence against—
 - (i) this Local law;
 - (ii) the Health Act; or
 - (iii) any other law relating to the setting up or conducting of eating areas; or
- (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the Council.

(2) Where the Council cancels a licence under this clause—

- (a) the Council shall advise 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 advice; and
- (c) the Council shall not be required to refund any part of the fee or charge paid by the licensee in respect to the cancellation of the licence.

11. Obligations of the Licensee

(1) a licensee shall—

- (a) ensure that the eating area is conducted at all times in accordance with the provisions of this Local law;
- (b) ensure that the eating area is kept in a clean and tidy condition at all times;
- (c) maintain the chairs, tables and other structures, set up in the eating area in good and serviceable condition at all times;
- (d) display the license in a conspicuous place in the adjoining eating house and whenever requested by an Environmental Health Officer to do so shall produce to the officer the license.

(2) Whenever, in the opinion of the Council, any work is required to be carried out as a result of setting up or conduct of an eating area, the Council may give notice to the licensee of that eating area, to carry out that work within the time limited by the notice.

(3) A licensee who neglects or refuses to comply with a notice given under sub clause (2) commits an offence.

(4) Where a licensee neglects or refuses to comply with a notice under sub clause (2), the Council may do the work required by the notice to be done and recover from the licensee, in a court of competent jurisdiction, the expense incurred by it in so doing.

(5) In the clause, “work” includes the removal, alteration, repair, reinstatement or reconstruction of a street or footpath or any other part of a street or footpath from or in connection with the setting up or conduct of an eating area.

12. Offences and Penalties

A person who commits a breach of this Local law commits an offence and is liable on conviction to a maximum penalty of—

- (a) \$1,000 in the case of clause 4(c); or

- (b) \$500.00 in the case of a breach of any other clause, and in addition in either case to a maximum daily penalty during the breach of \$50.00.

Adopted at a meeting of the Shire of Donnybrook/Balingup held on 24th day of July 2002.

The Common Seal of the Shire of Donnybrook/Balingup was affixed by authority of a resolution of the Council in the presence of—

F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.

On this 25th day of July 2002.

**SHIRE OF DONNYBROOK-BALINGUP
APPLICATION FOR LICENSE/RENEWAL OF LICENCE**

To the Chief Executive Officer
Shire of Donnybrook-Balingup

I, (full name)
of, (Residential Address)
..... (Postal Address)
..... (Occupation)
..... (Phone number)

apply for a license/ renewal of license to set up and conduct an eating area under the Shire of Donnybrook-Balingup Local law relating to Eating Areas in streets or other public places

I declare that the following details are true and correct—

Details of Eating Areas in Streets and Other Public Areas

1. Location of proposed eating area
.....
2. Description of Restaurant
.....
3. Proposed days of operation
.....
4. Proposed hours of operation
.....
5. Proposed number of tables and chairs
.....
6. Proposed number of other structures
.....
7. Description of tables and chairs including materials and dimensions
.....
8. Description of other structures including materials and dimensions
.....

I declare that—

- (a) the restaurant 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 restaurant and am licensed in respect of that restaurant in accordance with Division 3 of part V of the Health Act.

The following are attached—

- (a) Two copies of a plan and specifications of the proposed eating area on a scale of 1:50 showing:
 - (i) the location and dimensions of the proposed eating area and the means by which the eating areas are to be separated from the balance of the street or public place; and
 - (ii) the position of all tables, chairs and other structures proposed to be provided in the eating area and which of such items, if any, are to be retained within the eating area at all times;
- (b) Two copies of both a plan and specifications on a scale of 1:200 showing the eating area and all land together with any improvements, public facilities and parking restrictions, within 30 metres of the boundaries of the eating area;
- (c) A colour photograph or photographs of the tables, chairs and other structures to be set up in the eating 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 eating area; and
- (e) Written particulars of arrangements made in respect of public liability insurance of not less than \$10,000,000.

I enclose—

- (a) The prescribed fee \$; and
- (c) The prescribed charge of \$

Dated this..... day of.....1992.

.....
Signature of Applicant

Fees and Charges Payable—

- 1. Licence Application Fee as prescribed
- 2. Annual Licence Renewal Fee as prescribed
- 3. Licence Transfer Fee as prescribed
- 4. Additional Trading Fee (per day or part thereof) as prescribed

Appendix 1

ASSESSMENT CRITERIA AND ESTABLISHMENT REQUIREMENTS

Applications for the issue of a licence to establish an Outdoor Eating Area shall be assessed against the following criteria/requirements—

1. Application of Local laws and Fees to Private Land

This Local law does not apply to the establishment of Eating Areas on private land, notwithstanding that the Eating Area may be adjacent to, and directly accessible from, a footpath. Applications for Eating Areas on private land are to be dealt with as a development application under the Shire of Donnybrook- Balingup Town Planning Scheme and the Health Act, Regulations and Local laws.

2. Surrounding Land Uses

The proposed Eating Area should be compatible with surrounding land uses and should not be detrimental to those surrounding uses by reasons of such nuisances as interference of pedestrian access, wind-blown rubbish or reduced noise attenuation. The activity should not conflict with, or inconvenience, other retail or commercial activities. Generally, Eating Areas adjacent to, or across, the road from residential properties should be assessed closely as a consequence of reduced noise attenuation. Where doubt exists as to the potential effect of the proposed Eating Area on surrounding land uses, a letter advising of the proposal is to be forwarded to surrounding owners/occupiers giving them the opportunity to comment in writing within 14 days of the date of the letter.

Eating Areas should be confined to the area in front of the Eating House premise.

3. Visual Amenity

Outdoor Eating Area Colour Schemes will be limited to two or three compatible colours.

4. Personal and Traffic Safety

The location of the proposed Eating Area should not jeopardise the safety of patrons, pedestrians, motorists or persons alighting or entering vehicles standing at the kerb. In all cases, a minimum of 2.0 metres on South Western Highway and 1.2 metres on Side Street footpaths shall be maintained to allow for free pedestrian movement along a footpath. A greater width should be considered in high use pedestrian areas.

Pedestrians should be able to make normal use of the footpath without being obliged to step into the road at any point, or make other unwarranted detours. Eating Areas should not be located adjacent to a kerb, except in areas of low vehicular speed/movement. The Eating Area should be “contained” within a clearly and physical demarcated area. Removable barriers may be used to define the eating area.

Dining on footpath areas, rather than within the confines of a building, will always involve an element of danger due to the close proximity of moving vehicles. It is not possible, or intended, that the barriers adjacent to the alfresco dining areas would overcome this danger. The placement of such barriers will only prevent the casual or accidental encroachment of dining furniture and patrons into the road pavement. More specifically, the purpose of the removable barriers is as follows—

- (1) To demarcate the approved alfresco dining area in a manner which is attractive and appropriate to its location
- (2) to ensure the alfresco dining area or patrons do not encroach into the road space adjoining parking bays.
- (3) To ensure appropriate traffic standards are maintained with respect to vehicle sightlines and visual distractions;
- (4) To enable pedestrians to freely and safely move through the alfresco dining area.

Tables and chairs are to be removed overnight.

Eating areas proposed on street corners should be sufficiently away from the corner so as not to interfere with traffic sightlines. The design of tables, chairs and other structures should be such to ensure that they are unlikely to be blown over or dislodged under normal climatic conditions. Umbrellas are to be fixed to a mass base. Permanent shade structures may be permitted.

5. Footpath Widening

Where a proposed eating area requires the widening of, or alteration to, an existing footpath, the application should be assessed with future traffic and parking requirements in mind and should be supported by the Shire Engineer. The cost of all works is to be borne by the applicant, either in cash or as a bank guarantee prior to the issue of the licence.

If Council supports the widening of the footpath areas, the applicant shall be required to pay cash in lieu of the parking space removed in addition to the cost of the work referred to in item 4.

6. Public Utilities and Amenities

The proposed eating area should be located sufficiently distant from any public utility or any parking restriction of higher priority (eg. Loading bays) so as to not interfere with access to the utility or amenity as the case may be.

7. Health Act requirements

The proposed eating area and its manner of operation is to comply with all the requirements of the *Health Act 1911*, Regulations and Local laws thereunder.

8. Alcohol

In submitting an application to establish an Outdoor Eating Area, applicants will be requested to indicate whether it is intended to serve alcohol to patrons at the tables applied for.

8.1 Where a new proposal includes the sale of alcohol, or it is proposed to modify an existing licence to allow for that possibility, if the Council is prepared to support the proposal in principle, the following conditions will normally be applied—

- (a) The service of alcohol shall not commence until the relevant approval has been obtained from the Liquor Licensing Division of the Office of Racing and Gaming;
- (b) Alcohol shall be served only with bona fide meals;
- (c) No alcohol shall be served other than with meals provided by the associated Eating House;
- (d) The hours of sale of alcohol shall not exceed the licensed hours of the Eating House.

9. Litter Act Requirements

Adequate provision should be made within the proposed Eating Areas for patrons to be able to easily dispose of any rubbish. In areas of potentially higher wind velocities (eg. exposed open areas), particular regard is to be given to the manner of operation of the proposed Eating Area and the type of utensils used to ensure minimisation of wind-blown rubbish.

That, where insufficient litter receptacles are provided, directions shall be given as to the type and nature of receptacles to be provided pursuant to the Litter Act.

Appendix 2

STANDARD CONDITIONS

Where applicable, the following conditions are to be imposed against any licence, its renewal or its transfer—

1. The Eating Area shall not be set up or conducted except in accordance with the Licence Plan and only on the days and during the hours specified hereunder—
Days:.....
Hours:..... to inclusive
2. No more than tables and chairs shall be permitted to remain in the Eating Area. All tables, chairs and other structures shall conform with those specified in the application for the licence.
3. No tables, chairs or other structures shall be set up or permitted to remain in the Eating Area except on the days and during the hours specified in Condition 1 hereof.
4. The Eating Area shall be conducted strictly in accordance with the provision of the Health Act (as amended) and all other regulations and Local laws governing the conduct of an Eating Area.
5. The Eating Area shall be kept free of litter, refuse, rubbish and other disused material at all times during its conduct.
6. All tables, chairs and other structures shall be removed from the Eating Area forthwith upon the direction of any person or body authorised to carry out any works in a street or public place in which the Eating Area is situated.
7. Where the Eating Area is to be conducted during the hours of darkness, the Eating Area is to be well-lit and all electrical wiring is to be placed in such a manner so as not to cause or present a danger to any person.

8. The proprietor hereby agrees to indemnify the Shire and the Crown against any and all claims for compensation howsoever arising from the conduct of the Eating Area and further agrees to hold not less than ten million dollars (\$10,000,000) public liability insurance at all times.

Evidence of such insurance having been effected is to be submitted to the satisfaction of Council prior to the establishment of the Eating Area. Evidence is to be provided on the annual renewal or transfer of a licence. For the purpose of evidence, a copy of the receipt for payment of the insurance will be required.

The insurance policy is to be taken out in the joint names of the Council and the licence holder. The policy to provide indemnity in respect of both injury to person and damage to property in the usual terms and such policy to include (but without limiting the generality of the foregoing) loss or damage to property not owned by the licence holder but under the physical or legal control of the licence holder and contractual liability and such other risks (if any) as the Council might reasonably nominate at the time of granting of the licence.

9. The proprietor of an Eating Area shall not, without the prior written consent of the Council, cause, or allow, the transfer of the licence; the playing of any musical instrument, amplified sound apparatus or electronic apparatus within the Eating Area; place any advertisement, poster, streamers or signs within the Eating Areas, or cause, or allow the conduct of any other form of trading within the Eating Area other than that permitted by the licence.
 10. The licence, the Licence Plan and the conditions of the licence shall, on demand, be shown to an authorised officer of the Council.
 11. The proprietor of an Eating Area shall not deny access to any person acting on behalf of a Government Department, instrumentality of the Crown or the Council where such person requires access for the purpose of carrying out a public work or to create access.
 12. Carry out daily cleaning of tables and surrounding surfaces to standards set down in the Health Act and Health (Food and Hygiene Regulations).
 13. Carry out weekly cleaning, or more frequently if directed/required, to ensure ground surface remains free of stains to Council's satisfaction.
 - Failure to comply with cleaning conditions will result in the licence being revoked within 48 hours of written notice
 - The Council will clean or arrange to be cleaned at the licence holder's expense.
 - The Council is not responsible for loss of earnings if it has to invoke any section of the cleaning condition.
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