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LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

**ACTIVITIES IN THOROUGHFARES
AND PUBLIC PLACES
LOCAL LAW 2014**

**LOCAL GOVERNMENT PROPERTY
LOCAL LAW 2014**

**TRADING IN PUBLIC PLACES
LOCAL LAW 2014**

LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES
LOCAL LAW 2014**

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LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES
LOCAL LAW 2014

Under the powers conferred on it by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Subiaco resolved on 2 December 2014 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This local law may be cited as the *City of Subiaco Activities in Thoroughfares and Public Places Local Law 2014*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

applicant means a person who applies for a permit;

authorised person means a person appointed by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

built-up area has the meaning given to it in the *Road Traffic Code 2000*;

bulk rubbish container means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government's regular domestic rubbish collection service;

carriageway has the meaning given to it in the *Road Traffic Code 2000*;

CEO means the chief executive officer of the local government;

commencement day means the day on which this local law comes into operation;

Council means the council of the local government;

crossing means a crossing giving access from a public thoroughfare to—

- (a) private land; or
- (b) a private thoroughfare serving private land;

district means the district of the local government;

footpath has the meaning given to it in the *Road Traffic Code 2000*;

garden means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

intersection has the meaning given to it in the *Road Traffic Code 2000*;

kerb includes the edge of a carriageway;

lawn means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

liquor has the meaning given to it in section 3 of the *Liquor Control Act 1988*;

local government means the City of Subiaco;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government 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;

lot has the meaning given to it in the *Planning and Development Act 2005*;

nuisance means—

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well being of another person;
- (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) anything a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that anything done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law;

owner or **occupier** in relation to land does not include the local government;

permissible verge treatment means any of the verge treatments listed in clause 2.7(2);

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

person does not include the local government;

premises for the purpose of the definition of “public place” in this clause means a building or similar structure, but does not include a carpark or a similar place;

public place includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include—

- (a) premises on private property from which trading is lawfully conducted under a written law; and
- (b) local government property;

Regulations means the *Local Government (Functions and General) Regulations 1996*;

sign includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;

street tree means any tree planted or self sown within the road reserve or on the verge, for the purposes of contributing to the streetscape.

thoroughfare has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;

town planning scheme means a town planning scheme of the local government made under the *Planning and Development Act 2005*;

vehicle includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (b) a pram, a stroller or a similar device; and

verge means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath.

1.4 Application

This local law applies throughout the district.

1.5 Repeal

(1) The *City of Subiaco Activities in Thoroughfares and Public Places Local Law* as published in the *Government Gazette* of 4 January 2005 is repealed.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2) specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

1.6 Assistance animals

This local law is subject to any written law and any law of the Commonwealth about assistance animals as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth).

PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1—General

2.1 General prohibitions

A person shall not—

- (a) plant any plant which is not maintained at or below 0.5m in height on a thoroughfare so that the plant does not create a sightline hazard.

- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) damage a street tree or remove a street tree or part of a street tree irrespective of whether the street tree was planted by the owner or occupier of the lot abutting the thoroughfare or by the local government, unless—
 - (i) the removal of the street tree is authorised by the local government in writing; or
 - (ii) the person is acting under authority of written law
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, roller-blades or similar device.

2.2 Activities allowed with a permit—general

- (1) A person shall not, without a permit—
 - (a) dig or otherwise create a trench through or under a kerb or footpath;
 - (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
 - (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
 - (d) cause any obstruction to a water channel or a water course in a thoroughfare;
 - (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
 - (f) damage a thoroughfare;
 - (g) fell or damage any street tree;
 - (h) fell any tree onto a thoroughfare;
 - (i) unless installing, or in order to maintain, a permissible verge treatment—
 - (i) lay pipes under or provide taps on any verge;
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
 - (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
 - (k) on a public place use anything or do anything so as to create a nuisance;
 - (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
 - (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare; or
 - (n) plant a tree in a thoroughfare.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

2.3 No possession and consumption of liquor on a thoroughfare

- (1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless—
 - (a) that is permitted under the *Liquor Control Act 1988* or under another written law; or
 - (b) the person is doing so in accordance with a permit.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 2—Vehicle crossing

Subdivision 1—Temporary crossings

2.4 Permit required

- (1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains, footpath, existing materials and street trees, where—
 - (a) a crossing does not exist; or
 - (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.

- (2) The “person responsible for the works” in subclause (1) is to be taken to be—
- (a) the builder named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
 - (b) the registered proprietor of the lot, if no building permit has been issued under the *Building Act 2011* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

Subdivision 2—Redundant vehicle crossings

2.5 Removal of redundant crossing

- (1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.
- (2) The local government may give written notice to the owner or occupier of a lot requiring her or him to—
- (a) remove any part of or all of a crossing which does not give access to the lot; and
 - (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal
- within the period of time stated in the notice, and the owner or occupier of the lot shall comply with that notice.

Division 3—Verge treatments

Subdivision 1—Preliminary

2.6 Interpretation

In this Division, unless the context otherwise requires—

acceptable material means organic mulch of particle size not greater than 50mm.

Subdivision 2—Permissible verge treatments

2.7 Permissible verge treatments

- (1) An owner or occupier of land which abuts on a verge may on that part of the verge directly in front of her or his land install a permissible verge treatment.
- (2) The permissible verge treatments are—
- (a) the planting and maintenance of a lawn including reticulation pipes and sprinklers;
 - (b) the planting and maintenance of a garden provided that—
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb; and
 - (iii) any plants in the garden are not listed as harmful plants by the Department of Agriculture in Bulletin No. 4641, July 2009.
 - (c) the installation of an acceptable material; or
 - (d) the installation over no more than 30 per cent of the area of the verge (excluding any approved footpath and/or vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

2.8 Only permissible verge treatment to be installed

- (1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment, unless authorised by a permit to do so.
- (2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.9.

2.9 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment shall—

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment; or
- (b) not place any obstruction on or around the verge treatment; and
- (c) not disturb a footpath on the verge.

2.10 Notice to owner or occupier

The local government may give a notice in writing to the owner or the occupier of a lot abutting on a verge to make good, within the time specified in the notice, any breach of a provision of this Division.

Subdivision 3—Existing verge treatments

2.11 Transitional provision

(1) In this clause—

former provisions means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.

(2) A verge treatment which—

- (a) was installed prior to the commencement day; and
- (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions;

is to be taken to be a permissible verge treatment for so long as the verge treatment remains of the same type and continues to comply with the former provisions.

Subdivision 4—Public works

2.12 Power to carry out public works on verge

Where the local government or an authority empowered to do so under a written law disturbs a verge, the local government or the authority—

- (a) is not liable to compensate any person for that disturbance;
- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any—
 - (i) verge treatment and, in particular, any plant or any acceptable material or other hard surface; or
 - (ii) sprinklers, pipes or other reticulation equipment.

Division 4—Property numbers

Subdivision 1—Preliminary

2.13 Interpretation

In this Division, unless the context requires otherwise—

number means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2—Assignment and marking of numbers

2.14 Assignment of numbers

The local government may assign a number to a lot in the district and may assign another number to the lot instead of that previously assigned.

*Division 5—Fencing***2.15 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act**

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act—

- (a) a public place, as that term is defined in clause 1.3; and
- (b) local government property.

*Division 6—Signs erected by the local government***2.16 Signs**

(1) A local government may erect a sign on a public place specifying any conditions of use which apply to that place.

(2) A person shall comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

2.17 Transitional

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under clause 2.16 if—

- (a) the sign specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; and
- (b) the condition of use specified is not inconsistent with any provision of this local law.

*Division 7—Driving on a closed thoroughfare***2.18 No driving on closed thoroughfare**

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless—
- (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
 - (b) the person has first obtained a permit.;
- (2) In this clause—
closed thoroughfare means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

PART 3—ADVERTISING SIGNS ON THOROUGHFARES*Division 1—Preliminary***3.1 Interpretation**

In this part, unless the context otherwise requires—

advertising sign means a sign used for the purpose of advertisement and includes an “election sign”;

direction sign means a sign which indicates the direction of another place, activity or event, but does not include any such sign erected or affixed by the local government or the Commissioner of Main Roads;

election sign means a sign or poster which advertises any aspect of a forthcoming Federal, State or local government election; and

portable direction sign means a portable free standing direction sign; and

portable sign means a portable free standing advertising sign.

*Division 2—Permit***3.2 Advertising signs and portable direction signs**

- (1) A person shall not, without a permit—
- (a) erect or place an advertising sign on a thoroughfare; or
 - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m² in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.
- (3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—
- (a) on a footpath;
 - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
 - (c) on or within 3m of a carriageway;
 - (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
 - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

3.3 Matters to be considered in determining application for permit

In determining an application for a permit for the purpose of clause 3.2(1), the local government is to have regard to—

- (a) any other written law regulating the erection or placement of signs within the district;
- (b) the dimensions of the sign;
- (c) other advertising signs already approved or erected in the vicinity of the proposed location of the sign;
- (d) whether or not the sign will create a hazard to persons using a thoroughfare; and
- (e) the amount of the public liability insurance cover, if any, to be obtained by the applicant.

*Division 3—Conditions on permit***3.4 Conditions on portable sign**

If the local government approves an application for a permit for a portable sign, the application is to be taken to be approved subject to the following conditions—

- (a) the portable sign shall—
 - (i) not exceed 1m in height;
 - (ii) not exceed an area of 1m² on any side;
 - (iii) relate only to the business activity described on the permit;

- (iv) contain letters not less than 200mm in height;
 - (v) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;
 - (vi) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
 - (vii) be secured in position in accordance with any requirements of the local government;
 - (viii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and;
 - (ix) be maintained in good condition; and
- (b) no more than one portable sign shall be erected in relation to the one building or business.

3.5 Conditions on election sign

If the local government approves an application for a permit for the erection or placement of an election sign on a thoroughfare, the application is to be taken to be approved subject to the sign—

- (a) being erected at least 30m from any intersection;
- (b) being free standing and not being affixed to any existing sign, post, power or light pole, or similar structure;
- (c) being placed so as not to obstruct or impede the reasonable use of a thoroughfare, or access to a place by any person;
- (d) being placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing;
- (e) being maintained in good condition;
- (f) not being erected until the election to which it relates has been officially announced;
- (g) being removed within 24 hours of the close of polls on voting day;
- (h) not being placed within 100m of any works on the thoroughfare;
- (i) being securely installed;
- (j) not being an illuminated sign;
- (k) not incorporating reflective or fluorescent materials; and
- (l) not displaying only part of a message which is to be read with other separate signs in order to obtain the whole message.

PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1—Animals and vehicles

4.1 Leaving animal or vehicle in public place or on local government property

(1) A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place or on local government property so that it obstructs the use of any part of that public place or local government property, unless that person has first obtained a permit or is authorised to do so under a written law.

(2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

(3) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

4.2 Prohibitions relating to animals

(1) In subclause (2), “owner” in relation to an animal includes—

- (a) an owner of it;
- (b) a person in possession of it;
- (c) a person who has control of it; and
- (d) a person who ordinarily occupies the premises where the animal is permitted to stay.

(2) An owner of an animal shall not—

- (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
- (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
- (c) train or race the animal on a thoroughfare.

(3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area, unless that person does so under a permit or under the authority of a written law.

Division 2—Shopping trolleys

4.3 Interpretation

In this Division—

retailer means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

shopping trolley means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

4.4 Shopping trolley to be marked

A retailer shall clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

4.5 Person not to leave trolley in public place

A person shall not leave a shopping trolley in a public place other than in an area set aside for the storage of shopping trolleys.

4.6 Retailer to remove abandoned trolley

(1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.

(2) A retailer shall remove a shopping trolley within 24 hours of being so advised under subclause (1), unless the retailer—

- (a) requests the local government to collect and deliver the shopping trolley to the retailer; and
- (b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

PART 5—STREET TRADING

Division 1—Applying for a permit

5.1 Application for permit

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law shall—

- (a) be in the form determined by the local government;
- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The local government may require an applicant to give local public notice of the application for a permit.

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

5.2 Decision on application for permit

(1) The local government may—

- (a) approve an application for a permit unconditionally or subject to any conditions; or
- (b) refuse to approve an application for a permit.

(2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.

(3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

Division 2—Conditions

5.3 Conditions which may be imposed on a permit

The local government may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;

- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

5.4 Imposing conditions under a policy

(1) In this clause—

policy means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 5.2(1)(a).

(2) Under clause 5.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 5.2(2).

(4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

(5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

5.5 Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.

(2) The local government may vary the conditions of a permit by giving written notice to the permit holder, and the permit holder shall comply with those conditions as varied, effective from the date the written notice is given.

Division 3—General

5.6 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 5.10.

5.7 Renewal of permit

(1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit;

(2) The provisions of—

- (a) this Part; and
- (b) any other provision of this local law relevant to the permit which is to be renewed

shall apply to an application for the renewal of a permit with all necessary changes as the context requires.

5.8 Transfer of permit

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

- (a) be made in writing;
- (b) be signed by the permit holder and the proposed transferee of the permit;
- (c) provide such information as the local government may require to enable the application to be determined; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by—

- (a) an endorsement on the permit signed by the CEO; or
- (b) issuing to the transferee a permit in the form determined by the local government.

(4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

5.9 Production of permit

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

5.10 Cancellation of permit

(1) Subject to clause 6.1, a permit may be cancelled by the local government if the permit holder has not complied with a—

- (a) condition of the permit; or
- (b) provision of any written law which may relate to the activity regulated by the permit

(2) On the cancellation of a permit the permit holder—

- (a) shall return the permit as soon as practicable to the local government; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 6—OBJECTIONS AND APPEALS**6.1 Application of Part 9 Division 1 of the Act**

When the local government makes a decision—

- (a) under clause 5.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.

PART 7—MISCELLANEOUS NOTICES**7.1 Notice to redirect or repair sprinkler**

Where a lawn or a garden is being watered with a sprinkler which is on the lawn or the garden, in a manner which causes or may cause an inconvenience or obstruction to any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the lawn or the garden, requiring the owner or the occupier or both to move or alter the direction of the sprinkler or other watering equipment.

7.2 Hazardous plants

(1) Where a plant in a garden creates or may create a hazard for any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the garden to remove, cut, move or otherwise deal with that plant so as to remove the hazard.

(2) Subclause (1) does not apply where the plant was planted by the local government.

7.3 Notice to repair damage to thoroughfare

Where any portion of a thoroughfare has been damaged, the local government may by notice to the person who caused the damage order the person to repair or replace that portion of the thoroughfare to the satisfaction of the local government.

7.4 Notice to remove thing unlawfully placed on thoroughfare

Where any thing is placed on a thoroughfare in contravention of this local law, the local government may by notice in writing to the owner or the occupier of the property which abuts on that portion of the thoroughfare where the thing has been placed, or such other person who may be responsible for the thing being so placed, require the relevant person to remove the thing.

PART 8—ENFORCEMENT**8.1 Offence to fail to comply with notice**

Whenever the local government gives a notice under this local law requiring a person to do any thing, if the person fails to comply with the notice, the person commits an offence.

8.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 8.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

*Division 1—Offences and penalties**Subdivision 1—General***8.3 Offences**

(1) Any 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) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

*Subdivision 2—Infringement notices and modified penalties***8.4 Prescribed offences**

(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, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised 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.

8.5 Forms

Unless otherwise specified, for the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1—Offences and modified penalties

(Clause 8.4)

Item	Clause	Description	Modified Penalty \$
PART 2—Activities in Thoroughfares and Public Places			
1	2.1(a)	Plant of 0.50m in height on thoroughfare to not create a sightline hazard	125
2	2.1(b)	Damaging lawn or garden	125
3	2.1(c)	Remove or damage a street tree	350
4	2.1(d)	Placing hazardous substance on footpath	200
5	2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
6	2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125
7	2.1(g)	Riding of a bicycle, skateboard or similar device on mall or verandah of shopping centre	125
8	2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
9	2.2(1)(b)	Throwing or placing anything on a verge without a permit	125
10	2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
11	2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
12	2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
13	2.2(1)(f)	Damage a thoroughfare	125
14	2.2(1)(g)	Felling or damaging any street tree without a permit	200
15	2.2(1)(h)	Felling tree onto thoroughfare without a permit	200
16	2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	125
17	2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
18	2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	125
19	2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	125
20	2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	125
21	2.2(1)(n)	Plant a tree on a thoroughfare	125
22	2.3(1)	Consumption or possession of liquor on thoroughfare	125
23	2.4(1)	Failure to obtain permit for temporary crossing	250
24	2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	350
25	2.8(1)	Installation of verge treatment other than permissible verge treatment	250

Item	Clause	Description	Modified Penalty \$
26	2.9	Failure to maintain permissible verge treatment or placement of obstruction on verge	125
27	2.10	Failure to comply with notice to rectify default	125
28	2.16(2)	Failure to comply with sign on public place	125
29	2.18(1)	Driving or taking a vehicle on a closed thoroughfare	350
PART 3—Advertising signs on thoroughfares			
30	3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	125
31	3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
PART 4—Obstructing animals, vehicles or shopping trolleys			
32	4.1(1)	Animal or vehicle obstructing a public place or local government property	125
33	4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
34	4.2(2)(b)	Animal on public place with infectious disease	125
35	4.2(2)(c)	Training or racing animal on a thoroughfare	125
36	4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
37	4.5	Person leaving shopping trolley in public place other than trolley bay	125
38	4.6(2)	Failure to remove shopping trolley upon being advised of location	125
PART 5—Permits			
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PART 8—Enforcement			
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Dated: 5 December 2014.

The Common Seal of the City of Subiaco was affixed by the authority of a resolution of Council in the presence of—

STEPHEN TINDALE, Chief Executive Officer.
HEATHER HENDERSON, Mayor.

LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2014

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LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Subiaco resolved on 25 November 2014 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Subiaco Local Government Property Local Law 2014*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

applicant means a person who applies for a permit under clause 3.2;

authorised person means a person appointed by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

boat means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski and an engine driven model vessel;

building means any building which is local government property and includes a—

- (a) hall or room;
- (b) covered space including a gazebo;
- (c) corridor, stairway or annexe of any hall or room; and
- (d) jetty.

CEO means the chief executive officer of the local government;

children's playground means an area set aside for use by children and noted by the presence of dedicated children's playground equipment and the presence of either sand or other form of soft fall surface;

commencement day means the day on which this local law comes into operation;

Council means the council of the local government;

date of publication means, where local public notice is required to be given of a matter under this local law, the date on which notice of the matter is published in a newspaper circulating generally throughout the district;

determination means a determination made under clause 2.1;

district means the district of the local government;

fauna means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal—

- (a) any class of animal or individual member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur.

function means an event or activity characterised by all or any of the following—

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) organisation by or on behalf of a club;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

liquor has the same meaning as is given to it in section 3 of the *Liquor Control Act 1988*;

local government means the City of Subiaco;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act;

nuisance means—

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well being of another person;
- (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) anything a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that anything done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law;

manager means the person for the time being employed by the local government to control and manage a facility which is local government property and includes the person's assistant or deputy;

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

person does not include the local government;

prohibited drug is given its meaning under section 4 of the *Misuse of Drugs Act 1981*;

Regulations means the *Local Government (Functions and General) Regulations 1996*;

Schedule means a schedule in this local law;

sign includes a notice, flag, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols;

trading means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of—

- (a) offering them for sale;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any transaction in relation to them; and

vehicle includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven

but excludes—

- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
- (d) a trolley;
- (e) a pram, a stroller or a similar device; and
- (f) boat.

1.4 Interpretation

In this local law, unless the context otherwise requires, a reference to local government property includes a reference to any part of that local government property.

1.5 Application

(1) This local law applies throughout the district.

(2) Notwithstanding anything to the contrary in this local law, the local government may—

- (a) hire local government property to any person; or
- (b) enter into an agreement with any person regarding the use of any local government property.

1.6 Repeal and transitional provisions

(1) The *Local Government Property Local Law*, published in the *Government Gazette* on 4 January 2005, is repealed.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY*Division 1—Determinations***2.1 Determinations as to use of local government property**

- (1) The Council may make a determination in accordance with clause 2.2—
 - (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
 - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
 - (c) as to the matters in clauses 2.7(2) and 2.8(2); and
 - (d) as to any matter ancillary or necessary to give effect to a determination.
- (2) The determinations in Part 2—
 - (a) are to be taken to have been made in accordance with clause 2.2;
 - (b) may be amended or revoked in accordance with clause 2.6; and
 - (c) have effect on the commencement day.

2.2 Procedure for making a determination

- (1) The CEO is to give local public notice of the Council's intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that—
 - (a) the Council intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
 - (a) consider those submissions; and
 - (b) decide—
 - (i) whether or not to amend the proposed determination; or
 - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, the CEO is to give local public notice—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, the CEO is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

2.3 Discretion to erect sign

The CEO or an authorised person may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

2.4 Determination to be complied with

A person must comply with a determination.

2.5 Register of determinations

- (1) The CEO is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.
- (2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

2.6 Amendment or revocation of a determination

- (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination, the CEO is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

*Division 2—Activities which may be pursued or prohibited under a determination***2.7 Activities which may be pursued on specified local government property**

(1) A determination may provide that specified local government property is set aside as an area on which a person may—

- (a) bring, ride or drive an animal;
- (b) take, ride or drive a vehicle, or a particular class of vehicle;
- (c) fly or use a motorised model aircraft;
- (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
- (e) launch, beach or leave a boat;
- (f) take or use a boat, or a particular class of boat;
- (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
- (h) play or practice—
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (i) ride a bicycle, a skateboard, rollerblades, a sand board or a similar device; and
- (j) wear no clothing.

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—

- (a) the days and times during which the activity may be pursued;
- (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
- (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
- (d) may limit the activity to a class of vehicles, equipment or things, or may extend it to all vehicles, equipment or things;
- (e) may specify that the activity can be pursued by a class of persons or all persons; and
- (f) may distinguish between different classes of the activity.

(3) This clause is subject to any written law and any law of the Commonwealth about assistance animals as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth).

2.8 Activities which may be prohibited on specified local government property

(1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sand board or a similar device;
- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (e) taking or using a boat, or a particular class of boat;
- (f) the playing or practice of—
 - (i) golf, archery, pistol shooting or rifle shooting; or
 - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (h) the traversing of land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.

(2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular—

- (a) the days and times during which the activity is prohibited;
- (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
- (c) that an activity is prohibited in respect of a class of vehicles, equipment or things, or all vehicles, equipment or things;
- (d) that an activity is prohibited in respect of a class of persons, or a specified number of persons, or all persons; and
- (e) may distinguish between different classes of the activity.

(3) In this clause—

premises means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

Division 3—Transitional

2.9 Signs taken to be determinations

(1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

PART 3—PERMITS

Division 1—Preliminary

3.1 Application of Part

This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government to do so.

Division 2—Applying for a permit

3.2 Application for permit

(1) Where a person is required to obtain a permit under this local law, that person must apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law must—

- (a) be in the form determined by the CEO;
- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The CEO may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The CEO may require an applicant to give local public notice of the application for a permit.

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

3.3 Decision on application for permit

(1) The CEO may—

- (a) approve an application for a permit unconditionally or subject to any conditions; or
- (b) refuse to approve an application for a permit.

(2) If the CEO approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the CEO.

(3) If the CEO refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

Division 3—Conditions

3.4 Conditions which may be imposed on a permit

(1) Without limiting the generality of clause 3.3(1)(a), the CEO may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee;
- (b) compliance with a standard or a policy adopted by the Council;
- (c) the duration and commencement of the permit;
- (d) the commencement of the permit being contingent on the happening of an event;
- (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (f) the approval of another application for a permit which may be required by the local government under any written law;
- (g) the area of the district to which the permit applies;
- (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
- (i) the obtaining of public liability insurance in an amount and on terms reasonably required by the local government.

(2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—

- (a) when fees and charges are to be paid;
- (b) payment of a bond against possible damage or cleaning expenses or both;
- (c) restrictions on the erection of material or external decorations;
- (d) rules about the use of furniture, plant and effects;
- (e) limitations on the number of persons who may attend any function in or on local government property;
- (f) the duration of the hire;
- (g) the right of the CEO to cancel a booking during the course of an annual or seasonal booking, if the CEO sees fit;
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

3.5 Imposing conditions under a policy

(1) In this clause—

policy means a policy adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

(2) Under clause 3.3(1)(a) the CEO may approve an application subject to conditions by reference to a policy.

(3) The CEO is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

(4) An application for a permit is taken not to have been approved subject to the conditions contained in a policy until the CEO gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

(5) Sections 5.94 and 5.95 of the Act apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

3.6 Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, the permit holder must comply with each of those conditions.

(2) The CEO may vary the conditions of a permit, and the permit holder must comply with those conditions as varied.

Division 4—General

3.7 Agreement for building

Where a person applies for a permit to erect a building on local government property the local government may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

3.8 Duration of permit

(1) A permit is valid for one year from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.12.

3.9 Renewal of permit

(1) A permit holder may apply to the CEO in writing prior to expiry of a permit for the renewal of the permit.

(2) The provisions of this Part apply to an application for the renewal of a permit as though it were an application for a permit.

3.10 Transfer of permit

(1) An application for the transfer of a valid permit must—

- (a) be made in writing;
- (b) be signed by the permit holder and the proposed transferee of the permit;
- (c) provide such information as the CEO may require to enable the application to be determined; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(2) The CEO may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the local government.

(4) Where the CEO approves the transfer of a permit, the local government is not required to refund any part of any fee paid by the former permit holder.

3.11 Production of permit

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

3.12 Cancellation of permit

(1) Subject to clause 7.1, a permit may be cancelled by the CEO if the permit holder has not complied with a—

- (a) condition of the permit; or
- (b) determination or a provision of any written law which may relate to the activity regulated by the permit.

(2) On the cancellation of a permit the permit holder—

- (a) must return the permit as soon as practicable to the CEO; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5—When a permit is required

3.13 Activities needing a permit

(1) A person must not without a permit—

- (a) subject to subclause (3), hire local government property;
- (b) advertise anything by any means on local government property;
- (c) erect, on local government property, a structure for public amusement or for any performance, whether for gain or otherwise;
- (d) teach, coach or train any other person on local government property;
- (e) plant any plant or sow any seeds on local government property;
- (f) carry on any trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
 - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
- (g) except for an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stop any vehicle on local government property;
- (h) conduct a function, or undertake any promotional activity, on local government property;
- (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
- (j) light a fire on local government property except in a facility provided for that purpose;
- (k) parachute, hang glide, abseil or base jump from or onto local government property;
- (l) erect a building or a refuelling site on local government property;
- (m) make any excavation on or erect or remove any fence on local government property;
- (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
- (o) deposit or store any thing on local government property;
- (p) depasture, tether, drive or ride any horse, sheep, cattle, goat, camel, mule, pig or other similar animal on local government property;
- (q) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly; or
- (r) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property.

(2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

(3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1).

3.14 Permit required to camp outside a facility

(1) In this clause—

facility has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.

- (2) This clause does not apply to a facility operated by the local government.
- (3) Except in accordance with a permit, a person must not—
- (a) camp on, or lodge at, local government property;
 - (b) occupy any structure at night for the purpose of sleeping on local government property;
 - (c) park a vehicle on local government property where that vehicle is being used, by that person or any other person, for purposes of camping or sleeping on local government property; or
 - (d) erect a tent, camp, hut or similar structure on local government property.
- (4) The maximum period for which the CEO may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

3.15 Permit required for possession and consumption of liquor

- (1) A person, on local government property, must not consume any liquor or have in her or his possession or under her or his control any liquor, unless—
- (a) that is permitted under the *Liquor Control Act 1988*; and
 - (b) a permit has been obtained for that purpose.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 6—Responsibilities of permit holder

3.16 Responsibilities of permit holder

A holder of a permit must, in respect of local government property to which the permit relates—

- (a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (b) leave the local government property in a clean and tidy condition after its use;
- (c) report any damage or defacement of the local government property to the CEO; and
- (d) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Control Act 1988* for that purpose.

PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1—Behaviour on and interference with local government property

4.1 Behaviour which interferes with others

A person must not, in or on any local government property, behave in a manner which—

- (a) is likely to interfere with the enjoyment of a person who might use the property;
- (b) is likely to cause a nuisance; or
- (c) interferes with the enjoyment of a person using the property.

4.2 Behaviour detrimental to property

(1) A person must not, in or on local government property, behave in a way which is or might be detrimental to the property.

(2) In subclause (1)—

detrimental to the property includes—

- (a) removing anything from the local government property such as a rock, a plant or a seat provided for the use of any person; and
- (b) destroying, defacing or damaging anything on the local government property, such as a plant, a seat provided for the use of any person or a building.

4.3 Taking or injuring any fauna

(1) A person must not take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorised under a written law to do so.

(2) In this clause—

animal means any living thing that is not a human being or plant; and

4.4 Removing or damaging any flora

(1) A person must not remove or damage any flora which is on or above any local government property, unless that person is authorised to do so under a written law or with the written approval of the CEO.

(2) In this clause—

flora means all vascular plants other than plants recognised as weeds.

4.5 Intoxicated persons not to enter local government property

A person must not enter or remain on local government property while under the influence of liquor or a prohibited drug.

4.6 No prohibited drugs

A person must not take a prohibited drug on to, or consume or use a prohibited drug on local government property.

4.7 Refusal of entry to local government property

(1) An authorised person may refuse to allow entry, or suspend admission, to any local government property by any person whom he or she believes has behaved or is likely to behave in a manner contrary to the provisions of this Part.

(2) This refusal or suspension can be for any period of up to 12 months as decided by that authorised person.

(3) A decision made under this clause is a decision to which clause 7.1 applies.

*Division 2—Signs***4.8 Signs**

(1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.

(2) A person must comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is—

- (a) not to be inconsistent with any provision of this local law or any determination; and
- (b) to be for the purpose of giving notice of the effect of a provision of this local law.

PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY*Division 1—Fenced or closed property***5.1 No entry to fenced or closed local government property**

A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorised to do so by the CEO or an authorised person.

*Division 2—Toilet blocks and change rooms***5.2 Only specified gender to use entry of toilet block or change room**

(1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—

- (a) females, then a person of the male gender must not use that entry of the toilet block or change room; or
- (b) males, then a person of the female gender must not use that entry of the toilet block or change room.

(2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—

- (a) under the age of 8 years; or
- (b) otherwise permitted by an authorised person to use the relevant entry.

PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY**6.1 No unauthorised entry to function**

(1) A person must not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except—

- (a) through the proper entrance for that purpose; and
- (b) on payment of the fee chargeable for admission at the time.

(2) The CEO may exempt a person from compliance with subclause (1)(b).

PART 7—OBJECTIONS AND APPEALS**7.1 Objection and appeal rights**

Division 1 of Part 9 of the Act applies to a decision under this local law—

- (a) to grant, renew, amend or cancel a permit or consent; and
- (b) to refuse to allow entry, or to suspend admission, to any local government property.

PART 8—MISCELLANEOUS**8.1 Authorised person to be obeyed**

A person on local government property must obey any lawful direction of an authorised person and must not in any way obstruct or hinder an authorised person in the execution of her or his duties.

8.2 Persons may be directed to leave local government property

An authorised person may direct a person to leave local government property where she or he reasonably suspects that the person has contravened a provision of any written law.

8.3 Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the CEO in any manner he or she thinks fit.

8.4 Liability for damage to local government property

(1) Where a person unlawfully damages local government property, the CEO may by notice in writing to that person require that person within the time required in the notice to, at the option of the CEO, pay the costs of—

- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
- (b) replacing that property.

(2) On a failure to comply with a notice issued under subclause (1), the CEO may recover the costs referred to in the notice as a debt due to it.

PART 9—ENFORCEMENT*Division 1—Notices given under this local law***9.1 Offence to fail to comply with notice**

A person who fails to comply with a notice given to him or her under this local law commits an offence.

9.2 Local government may undertake requirements of notice

If a person fails to comply with a notice given to him or her under this local law the CEO may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

*Division 2—Offences and penalties***9.3 Offences and general penalty**

(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 this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

9.4 Prescribed offences

(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, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

- (a) the 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.

9.5 Form of notices

(1) For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

(2) Where an infringement notice is given under section 9.16 of the Act in respect of an offence against clause 2.4, the notice is to contain a description of the alleged offence.

*Division 3—Evidence in legal proceedings***9.6 Evidence of a determination**

(1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.

(2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.

(3) Subclause (2) does not make valid a determination that has not been properly made.

Schedule 1—Prescribed offences

Item	Clause	Description	Modified Penalty \$
PART 2—Determinations in respect of local government property			
1	2.4	Failure to comply with determination	150
PART 3—Permits			
2	3.6	Failure to comply with conditions of permit	150
3	3.13(1)	Failure to obtain permit	150
4	3.14(3)	Failure to obtain permit to camp outside a facility	150
5	3.15(1)	Failure to obtain permit for liquor	150
6	3.16	Failure of permit holder to comply with responsibilities	150
PART 4—Behaviour on all local government property			
7	4.1	Behaviour which interferes with others	150
8	4.2(1)	Behaviour detrimental to property	150
9	4.3(1)	Taking or injuring any fauna	150
10	4.4(1)	Removing or damaging any flora	150
11	4.5	Under influence of liquor or prohibited drug	150
12	4.8(2)	Failure to comply with sign on local government property	150
PART 5—Matters relating to particular local government property			
13	5.1	Unauthorised entry to fenced or closed local government property	150
14	5.2	Gender not specified using entry of toilet block or change room	150
PART 6—Fees for entry on to local government property			
15	6.1(1)	Unauthorised entry to function on local government property	150
PART 8—Miscellaneous			
16	8.1	Failure to obey lawful direction of an authorised person	300
17	8.2	Failure to obey lawful direction of an authorised person to leave local government property	300
PART 9—Enforcement			
18	9.1	Failure to comply with notice	300

Dated: 5 December 2014.

The Common Seal of the City of Subiaco was affixed by authority of a resolution of the Council in the presence of—

STEPHEN TINDALE, Chief Executive Officer.
HEATHER HENDERSON, Mayor.

LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

TRADING IN PUBLIC PLACES LOCAL LAW 2014

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LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

TRADING IN PUBLIC PLACES LOCAL LAW 2014

Under the powers conferred on it by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Subiaco resolved on 25 November 2014 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This local law may be cited as the *City of Subiaco Trading in Public Places Local Law 2014*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Purpose

The purpose of this local law is to provide for the regulation, control and management of outdoor dining areas, street markets, trading and street entertainment, in any street or public place within the district.

1.4 Repeal

The *City of Subiaco Trading in Public Places Local Law 2000* as published in the *Government Gazette* on 26 July 2000 and as amended and published in the *Government Gazette* on 10 December 2004 is repealed.

1.5 Application

This local law applies throughout the district.

1.6 Interpretation

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

applicant means a person who applies for a permit;

application fee means the fee payable upon lodgement of an application for a permit and which relates to the lodgement, assessment and determination of the application but does not include the permit fee;

authorised person means a person appointed by the local government under section 9.10 of the Act;

CEO means the chief executive officer of the local government;

charitable organisation means an institution, association, 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 from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium;

Council means the Council of the local government;

district means the district of the local government and includes any area placed under the jurisdiction of the local government pursuant to section 22 of the *Health Act 1911*;

Food Act means the *Food Act 2008*;

food business has the meaning given to it by section 10 of the *Food Act 2008*;

Health Act means the *Health Act 1911*;

hire includes offer to hire and expose for hire;

incorporated association means an association incorporated under the *Associations Incorporation Act 1987*;

Liquor Act means the *Liquor Control Act 1988* and includes any regulations made under that Act;

local government means the City of Subiaco;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government 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;

notice means a notice issued in accordance with Part 8;

nuisance means—

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well being of another person;
- (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) anything a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that anything done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law;

outdoor dining area means an outdoor 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;

outdoor dining permit means a permit issued under this local law to set up and conduct an outdoor dining area;

permit fee means the fee payable upon the issue of a permit;

permit holder means the person to whom a valid permit has been issued under this local law;

planning approval means an approval for development granted by the local government under a local planning scheme;

private property means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or the subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;

proprietor includes the owner, the occupier and any person having the management or control of any registered food business;

public place includes—

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law;

registered food business means premises which are registered by the local government under the *Food Act 2008*;

stall means a movable or temporarily fixed structure, stand or table in, on or from which goods, wares, merchandise, produce or services are displayed, sold, hired or offered for sale or hire and includes a vehicle;

street means any highway, thoroughfare or land, otherwise used for vehicular or pedestrian traffic, and includes all the land lying between property lines, including the street verge and footpath;

street entertainment means the conduct in a public place, of any form of theatrical, artistic, musical, audio or visual performance and includes busking;

street entertainment permit means a permit issued under this local law to engage in street entertainment;

street fundraising means the soliciting of pledges or commitments from members of the public to provide future donations for a charitable purpose;

street market means a collection of stalls, stands or displays erected on a street or other public place for the purpose of selling goods, wares, merchandise, or services or carrying out any other transaction;

street market permit means a permit issued under this local law to conduct a street market;

street trading permit means a permit issued under this local law to carry on trading in a street or public place;

trading includes—

- (a) selling, hiring or gifting goods, wares, merchandise or services or the soliciting of orders for goods or services, in a street or other public place;
- (b) displaying goods in any public place for the purpose of—
 - (i) offering them for sale or hire;
 - (ii) inviting offers for sale or hire;

- (iii) soliciting orders for them; or
- (iv) carrying out any other transaction in relation to them; and
- (c) going from place to place, whether or not public places, and—
 - (i) offering goods or services for sale or hire;
 - (ii) inviting offers or soliciting order for the sale or hire of goods or services; or
 - (iii) carrying out any other transaction in relation to goods or services,
- (d) street fundraising; and
- (e) the setting up of a stall and conducting business at a stall.

vehicle includes every conveyance, not being a train, vessel or aircraft and every object capable or being propelled or drawn, on wheels or tracks, by any means.

PART 2—PERMITS—GENERAL

2.1 Permits

The provisions of this Part apply to all permits issued under this local law unless otherwise specified.

2.2 Planning approval

The requirement for a permit under this local law is additional to the requirement, if any, for a planning approval.

2.3 Application for permit

- (1) A person who is required to obtain a permit under this local law shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall—
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form;
 - (d) provide particulars as to public liability insurance held by the applicant; and
 - (e) be forwarded to the CEO together with any fee imposed and determined by the local government under sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining the application.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the applicant has not complied with subclauses (3) or (4).

2.4 Relevant considerations in determining application for permit

In determining an application for a permit, the local government is to have regard to—

- (a) any relevant policies of the local government;
- (b) the desirability of the proposed activity and its likely impact on the amenity of the locality;
- (c) the location of the proposed activity;
- (d) the suitability of any proposed structure, stall, stand, table or vehicle associated with the proposed activity; and
- (e) any other matters that it considers to be relevant.

2.5 Determination of application

- (1) The local government may, in respect of an application for a permit—
 - (a) approve the application unconditionally or subject to any conditions; or
 - (b) refuse to approve the application.
- (2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.
- (3) A permit may include plans and other supporting documentation as required by this local law.
- (4) If the local government refuses to approve an application for a permit, it is as soon as practicable after the decision is made—
 - (a) to give the applicant written notice of, and written reasons for, the refusal; and
 - (b) inform the applicant of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision.
- (5) Without limiting the discretion of the local government under subclause (1), the local government may refuse an application for a permit, where—
 - (a) it does not comply with the application requirements under this local law;
 - (b) the proposed activity or place of trading is considered by the local government to be undesirable;
 - (c) the proposed structure, stall, stand, table or vehicle is considered by the local government to be unsuitable in any respect to the activity or location for which the permit is sought;
 - (d) the proposed application does not comply with an applicable policy of the local government; or

- (e) the proposed permit holder has been convicted during the preceding five years of an offence under the local law, the *Food Act 2008*, the *Health Act 1911*, the *Liquor Control Act 1988* or any other written law which applies to the proposed trading activity.

2.6 Permit conditions

Without limiting the generality of the local government's discretion to impose conditions on a permit pursuant to clause 2.5(1), the local government may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the grant of another approval, permit, licence or authorisation which may be required under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond as security for such damage; and
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.

2.7 Compliance with conditions

Where—

- (a) an application for a permit has been approved subject to conditions; or
- (b) a permit is to be taken to be subject to conditions under this local law,

the permit holder shall comply with each of those conditions.

2.8 Amendment of permit conditions

(1) A permit holder may apply in writing to the local government to amend any of the terms or conditions of the permit.

(2) The local government may, in respect of an application under subclause (1)—

- (a) amend the permit, either in accordance with the application or otherwise as it sees fit; or
- (b) decline to amend the permit.

(3) The local government may, at any time and irrespective of whether an application is made under subclause (1), amend any of the terms and conditions of a permit.

(4) If the local government amends a permit under subclause (3), it is, as soon as practicable after the decision to amend is made—

- (a) to give to the permit holder written notice of, and written reasons for, its decision to amend; and
- (b) to inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision to amend the permit.

(5) If the local government amends a term or condition of a permit under subclause (3), the amended term or condition of the permit shall apply from the date the permit holder is notified of the amendment in accordance with subclause (4)(a).

2.9 Duration and validity of permit

A permit is valid for six months from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 2.15.

2.10 Permit renewal

Prior to the expiry of a permit, the permit holder may apply for the renewal of a permit, without having to resubmit details required at the time of the initial application, unless otherwise advised in writing by the local government.

2.11 Permit fees

(1) All permit fees and charges applicable under this local law shall be as determined by the local government in accordance with section 6.16 of the Act.

(2) In the event of cancellation of a permit, the permit holder shall not be entitled to a refund of permit fees for the remainder of the permit period.

2.12 Suspension of permit

(1) Subject to clause 2.13, the local government may, by written notice given to the permit holder, suspend a permit if there are reasonable grounds for believing that—

- (a) the permit holder has contravened a term or condition of a permit;
- (b) the permit holder has contravened a provision of this local law; or
- (c) the continued provision of the activity constitutes or will constitute an unacceptable risk to the safety of the public.

(2) The local government may also suspend a permit by written notice to the permit holder for the purpose and duration of any works, proposed or done in or adjacent to the area the subject of the permit, by or on behalf of a Government department, instrumentality of the Crown or the local government.

(3) The suspension notice given under subclause (1) must—

- (a) state the day, or the day and time, on or at which the suspension takes effect;
- (b) state the reasons for the local government's decision to suspend the permit;
- (c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subclause (1)(c); and
- (d) inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision to suspend the permit.

2.13 Revocation of suspension

(1) The local government must, by written notice given to the permit holder, revoke the suspension of a permit if the local government is satisfied that the steps specified in the suspension notice have been taken.

(2) The local government may, by written notice given to the permit holder, revoke the suspension of the permit if it is appropriate to do so in the circumstances of a particular case.

2.14 Duration of permit suspension

The suspension of a permit has effect on the day or the day and time, specified in the suspension notice until one of the following happens—

- (a) the suspension is revoked under clause 2.13;
- (b) the permit is cancelled under clause 2.15 or expires;
- (c) the permit is surrendered in accordance with the provisions of this local law.

2.15 Cancellation of permit

(1) The local government may cancel a permit if—

- (a) the permit holder fails to comply with a condition of the permit;
- (b) the permit holder is convicted of an offence against this local law; or
- (c) the permit holder fails to comply with a notice.

(2) If the local government cancels a permit under subclause (1), it is, as soon as practicable after the decision to cancel the permit is made—

- (a) to give to the permit holder written notice of, and written reasons for, its decision to cancel the permit; and
- (b) inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision to cancel the permit.

2.16 Production of permit

A permit holder shall immediately produce his or her permit when requested to do so by an authorised person.

2.17 Transfer of permit

(1) A permit is only transferable with the written approval of the local government and upon payment of the applicable transfer fee.

(2) An application for the transfer of a valid permit is to—

- (a) be in the form determined by the local government;
- (b) provide the information required by the form or by any clause of this local law;
- (c) be signed by the permit holder and the proposed transferee of the permit; and
- (d) be forwarded to the local government together with any applicable transfer fee.

(3) The local government may refuse to consider or determine an application for the transfer of a permit, which is not in accordance with subclause (2).

(4) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to such terms and conditions as it sees fit.

(5) If the local government approves the transfer of a permit it may specify that the transferee shall become the permit holder—

- (a) from the date of the approval;
- (b) from a specified date other than the date of approval; or
- (c) upon the satisfaction of stipulated conditions.

2.18 Exemption from requirement to pay fee

The local government may waive any fee required to be paid by a permit holder on making an application for or on the issue of a permit, where the permit holder is a charitable organisation or incorporated association.

PART 3—OUTDOOR DINING**3.1 Permit required**

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

- (a) other than in a portion of a street or public place adjoining a registered food business;
- (b) unless the person is the proprietor of the registered food business referred to in paragraph (a) or acting on the proprietor's behalf;
- (c) unless the outdoor dining area is the subject of a valid and current outdoor dining permit; and
- (d) otherwise than in accordance with the permit and any terms and conditions of the permit.

3.2 Exemptions

- (1) The provisions of Part 3 do not apply to—
 - (a) an outdoor dining area located on private property; or
 - (b) special events such as a street festival, carnival or other occasional activity, which require an approval under another written local law.
- (2) The local government may otherwise exempt a person or class of persons in writing from the requirement to obtain a permit under this Part.
- (3) An exemption under subclause (2) may be exercised—
 - (a) on the application of a person; or
 - (b) at the local government's discretion.
- (4) An exemption under subclause (2) may be given subject to such conditions the local government sees fit.
- (5) A decision by the local government to approve or refuse an application for exemption made pursuant to subclause (2) is not a decision to which the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply.

3.3 Permit restrictions

- (1) An outdoor dining permit may only be issued to the proprietor of a registered food business, for use of the land immediately adjacent to the registered food business.
- (2) The issue of a permit does not confer exclusive possession or use of that portion of the street or public place that is the subject of the permit.
- (3) An outdoor dining permit may only be issued in areas where—
 - (a) the positioning of tables and chairs for outdoor dining is not in conflict with existing street furniture approved by the local government; and
 - (b) there is sufficient space in the existing footpath to accommodate tables and chairs and other furniture and fittings required for the outdoor dining area, so as not to impede pedestrian flow.

3.4 Permit application

- (1) An application for an outdoor dining permit shall be made in accordance with clause 2.3 and additionally shall be accompanied by—
 - (a) a plan and specification of the proposed outdoor dining area showing—
 - (i) the location and dimensions of the proposed outdoor dining area and the means by which the outdoor dining area is to be separated from the balance of the street or public place;
 - (ii) the position of all tables, chairs and other structures proposed to be provided in the outdoor dining area and which of such items, if any, are to be retained within the outdoor dining area at all times;
 - (b) a plan and specification showing the outdoor dining area and all land and improvements thereon within thirty metres of the boundaries of the outdoor dining area including any public facility and parking restrictions; and
 - (c) a colour photograph or photographs of the tables, chairs and other structures to be set up in the outdoor dining area.

3.5 Outdoor dining permit

An outdoor dining permit shall—

- (a) be issued in the form determined by the local government;
- (b) include an endorsed copy of the plan or plans detailing the location and dimensions of the outdoor dining area, plus any furniture and equipment required for the operation of the outdoor dining area, as approved by the local government;
- (c) include the days and hours of operation of the outdoor dining area; and
- (d) detail any terms and conditions of the permit, which in addition to the matters set out in clause 2.6, may include—
 - (i) the number, type, form and construction, as the case may be, of any furniture which may be used in the outdoor dining area;
 - (ii) the care, maintenance and cleaning of any furniture used in the outdoor dining area;

- (iii) the removal and storage of furniture used in the outdoor dining area prior to the closure of the adjacent food business;
- (iv) the requirement to maintain pedestrian access between the outdoor dining area and the adjacent registered food business;
- (v) the outdoor dining area not impeding or obstructing a public place used by either pedestrians or vehicles;
- (vi) the requirement to maintain clear sight lines for vehicles entering or leaving a thoroughfare or a vehicle crossing;
- (vii) restrictions on the placement of advertising on furniture within the outdoor dining area;
- (viii) the payment of all fees, charges, rates and taxes levied or incurred as a result of the establishment and operation of the outdoor dining area;
- (ix) the payment of costs associated with the local government preparing the public place for use as an outdoor dining area, including but not limited to the reshaping of footpaths and marking the boundaries of the outdoor dining area.

3.6 Transfer of registered food business

Without detracting from clause 2.9, a permit shall expire if the proprietor of the registered food business adjoining the outdoor dining area changes, unless a transfer of the permit is first approved by the local government.

3.7 Cancellation of an outdoor dining permit

(1) Without detracting from clause 2.15 the local government may cancel an outdoor dining permit where—

- (a) there is a lapse or cancellation of the food business registration issued under the *Food Act*; or
- (b) the setting up or conduct of, the outdoor dining area, is determined by the local government to pose a threat to the interests of the public, any adjacent property owner or occupier, or cause a nuisance because of the behaviour of customers.

(2) A decision to cancel a permit in accordance with subclause (1)(b) shall not be made without first having advised the permit holder of the nature of any complaint or concern and having given the permit holder an opportunity to respond to the same.

3.8 Responsibilities of permit holder

A proprietor who is the person named in a permit shall—

- (a) ensure that the outdoor dining area is conducted at all times in accordance with the provisions of this local law;
- (b) ensure that the outdoor dining area is kept in a clean and tidy condition at all times;
- (c) ensure a minimum width of 1.5 metres is kept clear for pedestrian access through the outdoor dining area;
- (d) maintain the chairs, tables and other structures set up in the outdoor dining area in good and serviceable condition at all times;
- (e) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the street or public place arising from the conduct of the outdoor dining area and the local government may recover such costs from the proprietor in a court of competent jurisdiction as a debt owing to it;
- (f) display the permit in a conspicuous place in the adjoining registered food business; and
- (g) ensure that the operation of the outdoor dining area does not extend beyond the specified portion of the street or public place detailed in the plans approved as part of the permit.

PART 4—STREET MARKETS

4.1 Permit required

A person shall not set up or conduct a street market in a street or public place—

- (a) unless the person is the holder of a valid and current street market permit; and
- (b) otherwise than in accordance with—
 - (i) the terms and conditions of the permit; and
 - (ii) the provisions of this local law.

4.2 Permit restrictions

The issue of a street market permit does not confer exclusive possession or use of that portion of the street or reserve, the subject of the permit.

4.3 Permit application

(1) An application for a street market permit shall be made in accordance with clause 2.3 and shall additionally be accompanied by—

- (a) a copy of the planning approval issued by the local government;

- (b) a plan or plans to a scale of 1:100 showing—
 - (i) the location and dimensions of the proposed area to be used for the street market;
 - (ii) the dimensions of the thoroughfare including the footpath and the location and nature of any street furniture, trees, utilities, parking or service bays in the area;
 - (iii) the position and dimensions of all proposed market stalls;
- (c) a management plan outlining the operation of the street market including—
 - (i) the proposed days and times of operation;
 - (ii) the proposed type and form of any advertising devices to be used;
 - (iii) details of how the operational responsibilities of the permit holder will be met;
- (d) the nature and extent of any activity relating to street entertainment.

4.4 Street market permit

A street market permit shall—

- (a) be issued in the form determined by the local government;
- (b) include an endorsed copy of the plan or plans detailing the location where any furniture displays and other equipment may be placed for the operation of the street market;
- (c) include the days and hours of operation of the street market; and
- (d) detail any terms and conditions of the permit.

4.5 Responsibilities of permit holder

(1) The permit holder shall, prior to commencing operation of the street market, obtain relevant approvals and make arrangements as follows—

- (a) obtain approval from the local government and Western Australia Police Service for the closure of public streets to vehicular traffic, in the location and during the hours of operation of the street market, where required;
- (b) lodge a copy of the approved plans of the street market with the Department of Fire and Emergency Services or other appropriate fire management authority;
- (c) ensure adequate refuse collection arrangements have been made to the satisfaction of the local government;
- (d) where required, obtain approvals under the *Health (Public Building) Regulations 1992*, including but not limited to a certificate of approval and a certificate of electrical compliance;
- (e) obtain approval from the local government in relation to public entertainment aspects of the street market.

(2) The permit holder shall, during the operation of the street market, including setting up and dismantling times—

- (a) maintain pedestrian access through and beyond the street market area;
- (b) maintain access to adjacent building entries;
- (c) maintain access to existing or approved outdoor dining areas associated with adjacent building entries;
- (d) maintain adequate access for emergency vehicles through or to the permit area;
- (e) stabilise all structures and furniture provided and used in the operation of the markets at all times and remove such structures and furniture when not in use;
- (f) manage noise levels from any associated music, announcements, and the like, in accordance with any permit condition, so as not to cause a nuisance;
- (g) maintain the permit area clean and free from rubbish;
- (h) ensure the street market does not extend beyond the specified portion of street or public place detailed in the plans approved and endorsed as part of the permit; and
- (i) provide separate sanitary facilities for food stall staff.

(3) The permit holder shall at the conclusion of each street market, ensure that all structures and equipment used in the operation of the street market, are removed and the area returned to the condition it was before the commencement of the street market, to the satisfaction of the local government.

PART 5—STREET TRADING

5.1 Permit required

(1) Subject to subclause (2), a person shall not carry on trading in any street or public place—

- (a) unless the person is the holder of a valid and current street trading permit or is an assistant specified in the permit; and
- (b) otherwise than in accordance with—
 - (i) the terms and conditions of the permit; and
 - (ii) the provisions of this local law.

(2) Subclause (1) does not apply to trading in a street market that is the subject of a valid and current street market permit issued by the local government.

5.2 Permit restrictions

The issue of a street trading permit does not confer exclusive possession or use of that portion of the street or public place the subject of the permit.

5.3 Permit application

An application for a street trading permit shall be made in accordance with clause 2.3 and shall additionally be accompanied by—

- (a) details of the number of assistants to be employed in the street trading activity ;
- (b) plans of the proposed location;
- (c) days and hours of operation;
- (d) proposed goods, wares, merchandise or services for which trading will be carried on;
- (e) detailed, accurate plan and description of any proposed stall, stand, table, structure or vehicle to be used for trading; and
- (f) name and address of the person responsible for complying with any conditions imposed by the permit, where the applicant is a corporation.

5.4 Street trading permit

In addition to the requirements stipulated in Part 2, a street trading permit shall—

- (a) include the location, days and hours of operation and for mobile traders may include a predetermined approved route or area;
- (b) detail the goods, wares, merchandise or services for which trading is approved under the permit; and
- (c) limit the number of persons who may carry on trading at any one time.

5.5 Responsibilities of permit holder

(1) The permit holder shall—

- (a) not carry on any trading activity beyond the specified portion of the public place detailed in the plans approved as part of the permit;
- (b) ensure that the permit area is attended either by the permit holder or an assistant, at all times when trading is being undertaken;
- (c) keep any stall, stand, table, structure or vehicle specified in the permit in a clean, safe condition and in good repair;
- (d) ensure a minimum width of 1.5 metres is kept clear for pedestrian access;
- (e) keep the location specified in the permit free from refuse and rubbish;
- (f) remove any stall, merchandise and signs from the location specified in the permit and leave the location clean and vacant—
 - (i) at the conclusion of the permitted hours of operation specified in the permit; and
 - (ii) whenever the trading is not taking place on the location to which the permit applies.

(2) The permit holder shall not—

- (a) engage in or permit any trading in any goods, wares, merchandise or services other than those specified in the permit;
- (b) cause, permit or suffer any nuisance to exist, arise or continue on or from the location to which the permit applies;
- (c) cause, permit or store any goods, wares, merchandise on any street or public place, other than on the location to which the permit applies;
- (d) obstruct the free passage of pedestrians on any footpath or pedestrian accessway;
- (e) use or display or permit to be used or displayed any advertisement, placard, poster, streamer, sign or signboard on or about the location specified in the permit other than price tickets or labels on the permitted place not exceeding a total of 0.25 square metres within the permit area;
- (f) erect and maintain signs, other than in accordance with subclause (e), so as to obscure any other signage on or adjacent to the permit area;
- (g) cry out, shout about or permit any other person to cry out or shout about any goods, wares, merchandise or services in any street or public place;
- (h) use or permit to be used any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound, on or from the permitted place specified in the permit, unless approved by the local government;
- (i) use or permit to be used any record, tape, radio, bell, musical instrument or other instrument or device capable of being heard beyond the boundaries of the permitted place specified in the permit, unless approved by the local government;
- (j) use or permit to be used any flashing or intermittent lighting apparatus or device on or from the permitted place specified in the permit, unless approved by the local government; or
- (k) use or permit to be used apparatus or device including flap or shelf whereby the dimension of the stall area increases beyond that specified in the permit.

PART 6—STREET ENTERTAINMENT**6.1 Permit required**

A person shall not in any public place, engage in any form of street entertainment—

- (a) unless the person is the holder of a valid and current street entertainment permit; and
- (b) otherwise than in accordance with—
 - (i) the terms and conditions of the permit; and
 - (ii) the provisions of this local law.

6.2 Permit restrictions

The issue of a street entertainment permit does not confer exclusive possession or use of that portion of the street or public place the subject of the permit.

6.3 Permit application

An application for a street entertainment permit shall be made in accordance with clause 2.3 and additionally shall specify—

- (a) the nature of the proposed street entertainment;
- (b) any musical instrument or amplifier proposed to be used;
- (c) the number of people involved in the proposed street entertainment; and
- (d) the name and date of birth of anyone proposed to be involved in the performance who is under 14 years of age.

6.4 Street entertainment permit

A street entertainment permit shall—

- (a) be issued on the form used for the purpose;
- (b) include details of the location and equipment that can be used for the street entertainment, as approved by the local government;
- (c) include the days and permitted times for the street entertainment; and
- (d) detail any other terms and conditions imposed with the permit.

6.5 Responsibilities of permit holder

(1) The permit holder shall ensure that the street entertainment—

- (a) does not extend beyond the specified portion of the street or public place approved in the permit;
- (b) does not prevent or impede pedestrian flow or access to and along footpaths, entry or exit to shops and other buildings;
- (c) does not prevent or impede vehicular flow or access to and along any street, entry or exit to any service delivery area;
- (d) does not cause a nuisance to any other street entertainment or activity approved by the local government;
- (e) does not have more than 4 people participating in any one performance;
- (f) unless otherwise approved, does not include any person under the age of 14 years—
 - (i) during school hours, on school days; or
 - (ii) between 7.00pm and 6.00am;
- (g) does not include, involve or permit—
 - (i) anything that is offensive or obscene;
 - (ii) the use of fire;
 - (iii) any weapon or object with sharp edges, including knives and swords;
 - (iv) any motorised machinery that emits a loud noise in its operation or is not suitable in the location (e.g. chainsaw);
 - (v) any other activity, object or matter whatsoever that endangers the safety of the public or the performer; or
 - (vi) cruelty to an animal.
- (h) does not include any amplification unless specifically approved and endorsed on the permit and in any event will not be permitted on Monday to Saturday, before 7.00am or after 10.00pm and on Sunday before 9.00am or after 10.00pm; and
- (i) complies at all times with the *Environmental Protection (Noise) Regulations 1997*.

(2) The permit holder shall—

- (a) use the allocated space and location to perform during the days and times specified in the permit or vacate the location;
- (b) ensure a valid permit number is visibly displayed during each performance; and
- (c) comply at all times with a direction of an authorised person.

(3) A permit holder shall not—

- (a) reserve or attempt to reserve a location or leave equipment at a location used for performances unless immediately before, during and immediately after a performance.

- (b) sell any goods or services without written approval or permit issued for that purpose;
 - (c) erect or display or permit to be erected or displayed at or near the performance location any sign except—
 - (i) a sign no larger than 0.25 square metres, displaying the name of the performance; or
 - (ii) standard business cards.
- (4) A permit holder who is performing pavement or visual art—
- (a) shall use chalk unless working on paper or card;
 - (b) shall not use spray paint, crayons, permanent markers or other indelible materials; and
 - (c) shall return the location, including the pavement surface, to its former condition.

6.6 Cancellation and variation of street entertainment permit

Without detracting from clauses 2.8 or 2.15, the local government may cancel or vary the terms and conditions of a street entertainment permit, in the event that—

- (a) the performance is considered by an authorised person to adversely affect the enjoyment, convenience or comfort of other persons in a public place;
- (b) the performance constitutes a nuisance; or
- (c) the permit holder fails to meet any of the responsibilities detailed in clause 6.5.

PART 7—SECURED SUM

7.1 Security for restoration and reinstatement

(1) For the purpose of ensuring that an outdoor dining or street market area is properly restored or reinstated, on the expiry of a permit, the local government may require that the permit holder—

- (a) as a condition of a permit;
- (b) before the issue of the permit; or
- (c) before the renewal of a permit,

give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government.

(2) A bond required under subclause (1) is to be paid into an account established by the local government for the purpose of this clause.

7.2 Use by the local government of secured sum

(1) If a permit holder fails to carry out or complete the reinstatement works required by the permit conditions or by a notice served by the local government, either—

- (a) within the time specified in the conditions or notice; or
- (b) where no such time has been specified, a reasonable period of time from the expiration of the permit of the outdoor dining facility specified in the permit conditions; then

the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone.

(2) The permit holder shall be liable to pay to the local government on demand all administrative, legal, contractor and other costs, estimated or incurred by the local government, to restore and reinstate the site or which the local government may be required to pay in respect of works undertaken pursuant to subclause (1).

(3) The local government may obtain payment of the costs required by subclause (2) by applying the proceeds of any bond, bank guarantee or other security provided by the permit holder under clause 7.1 to meet such costs.

(4) The liability of a permit holder to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 7.1.

(5) If the costs incurred by the local government under subclause (2) exceed the bond, bank guarantee or other security provided by the permit holder, the permit holder shall be liable to pay any outstanding costs not covered by the bond, bank guarantee or other security.

PART 8—MISCELLANEOUS

8.1 Notice requiring works to be done to remedy breach

(1) Where the local government requires works to be done—

- (a) to rectify a breach of any provision of a permit or the local law; or
- (b) to rectify damage to a public place as a result of the use of that public place as an outdoor dining area; or
- (c) to change the arrangement or operation of an outdoor dining area considered necessary to maintain public safety, facilitate public works to the footpath or street, or protect the amenity of an adjacent premises;

the local government may give notice in writing to the permit holder—

- (d) advising details of the breach of the local law or works required;

- (e) requiring the permit holder to remedy the breach or do the works required within the time specified in the notice; and
- (f) advising that where the permit holder fails to comply with the requirements of the notice within the time specified, the local government may do the required work at the cost of the permit holder.

(2) A person who fails to comply with a notice issued under subclause (1) commits an offence.

(3) Where the permit holder fails to comply with the requirements of the notice, the local government may by its employees, agents or contractors carry out all works and do all things necessary to comply with the requirements of the notice.

(4) The local government may recover the expenses incurred in carrying out the works in accordance with subclause (3)—

- (a) as a charge against the secured sum lodged for the purpose in accordance with clause 7.1; or
- (b) from the permit holder in court of competent jurisdiction.

8.2 Notice to advise permit holder of planned or emergency works

(1) The local government shall give 14 days notice to an affected permit holder of any planned works to be undertaken by the local government, that will require closure, part closure or access to an outdoor dining area or street market location.

(2) Where the local government is to carry out emergency works in an outdoor dining area or street market location, there shall be no specified time for the giving of notice of the works to the licensee, other than that which is considered reasonable under the circumstances.

(3) Where notice is given under subclause (1) or (2) all rights and privileges of the permit holder shall be suspended in accordance with the terms of the notice and clause 2.12.

8.3 Serving of notice

Notices served under this local law are to be delivered to the permit holder or sent by mail addressed to the permit holder.

PART 9—ENFORCEMENT

9.1 Offences

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

(3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

9.2 Infringement and infringement withdrawal notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*.

9.3 Offence description and modified penalty

The amount appearing in the final column of the First Schedule directly opposite an offence described in that Schedule is the modified penalty for that offence.

9.4 Prosecution for offences

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in the Magistrate's Court of Western Australia.

9.5 Records to be kept

The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

9.6 Right of appeal

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

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

the provisions of Division 1 of Part 9 of the Act apply to that decision.

9.7 Appointment of authorised persons

Unless otherwise expressly stated by the local government, a person appointed by the local government to be an authorised person for the purposes of this local law is taken to have also been appointed by the local government to be an authorised person for the purposes of sections 9.13 and 9.16 of the Act in relation to offences against this local law.

9.8 Direction of authorised person to be obeyed

(1) A permit holder who is given a lawful direction by an authorised person or a police officer shall comply with that direction.

(2) A permit holder shall not obstruct or hinder an authorised person in the performance of that person's duties.

9.9 Removal and impounding of goods

Where an outdoor dining area is conducted without a permit or in contravention of a condition of a permit, any furniture may be removed and impounded by an authorised person in accordance with regulation 29 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1—Offences and modified penalties

[Clauses 9.1, 9.3]

Item No.	Clause No.	Nature of offence	Modified Penalty \$
PART 3—Outdoor Dining			
1	3.1(c)	Set up or conduct outdoor dining area without permit	500
2	3.1(d)	Set up or conduct outdoor dining area contrary to permit plan or conditions	500
3	3.8(b)	Fail to keep outdoor dining area in a clean and tidy condition	250
4	3.8(c)	Fail to ensure a minimum 1.5 metre width clear for pedestrians in outdoor dining area	250
5	3.8(d)	Fail to maintain chairs, tables, and other structures in outdoor dining area in a good and serviceable condition	250
6	3.8(f)	Fail to display permit in a conspicuous place in adjoining registered food business	250
7	3.8(g)	Permit operation of outdoor dining area to extend beyond area approved as part of the permit	250
PART 4—Street Markets			
8	4.1(a)	Set up or conduct street market without permit	500
9	4.1(b)(i)	Set up or conduct street market contrary to licence conditions	500
10	4.5(1)(b)	Fail to lodge copy of approved plans of street market with the Department of Fire and Emergency Services.	250
11	4.5(1)(c)	Fail to make adequate refuse collection arrangements to satisfaction of local government	250
12	4.5(2)(a)	Fail to maintain pedestrian access through and beyond street market area	250
13	4.5(2)(b)	Fail to maintain access to adjacent building entries	250
14	4.5(2)(c)	Fail to retain access to existing or approved outdoor dining areas with adjacent building entries	250
15	4.5(2)(d)	Fail to maintain adequate access for emergency vehicles through permit area	250
16	4.5(2)(e)	Fail to stabilise all structures and furniture used in operation of street market and remove when not in use	500
17	4.5(2)(g)	Fail to maintain permit area clean and free from rubbish	250
18	4.5(2)(h)	Permit operation of street market area to extend beyond area approved as part of the permit	250
19	4.5(3)	Fail to remove all structures and equipment at conclusion of street market	250
PART 5—Street trading			
20	5.1(1)(a)	Trading in a street or public place without a permit	500
21	5.1(1)(b)(i)	Trading in a street or public place contrary to permit conditions	500
22	5.5(1)(a)	Permit trading to extend beyond approved permit area	250
23	5.5(1)(b)	Fail to ensure permit area attended by permit holder or assistant	250

Item No.	Clause No.	Nature of offence	Modified Penalty \$
24	5.5(1)(c)	Fail to keep any stall, stand, table or structure, or vehicles in clean, safe condition and good repair	250
25	5.5(1)(d)	Fail to ensure a minimum width of 1.5 metres kept clear for pedestrian access	250
26	5.5(1)(e)	Fail to keep location specified in permit free from refuse and rubbish	250
27	5.5(1)(f)(i)	Fail to remove any stall, merchandise and signs and leave location clean at conclusion of operation hours	250
28	5.5(1)(f)(ii)	Fail to remove any stall, merchandise and signs and leave location vacant whenever trading is not taking place	250
29	5.5(2)(a)	Trading in goods, wares, merchandise or services not specified in permit	250
30	5.5(2)(b)	Cause or permit nuisance to exist, arise or continue from the permit location	250
31	5.5(2)(c)	Deposit, place or store any goods, wares or merchandise on any street or public place other than the permit location	250
32	5.5(2)(d)	Obstruct free passage of pedestrians on footpath or accessway	250
33	5.5(2)(f)	Erect and maintain signs so as to obscure other signage on or adjacent the permit area.	250
34	5.5(2)(g)	Cry out or shout about goods, merchandise or services in street or public place	250
35	5.5(2)(h)	Use or permit use of loud hailer, microphone amplifier or sound apparatus, outside permit location without approval	250
36	5.5(2)(i)	Use or permit use of any record, tape, radio or musical instrument to be heard outside permit location without approval	250
37	5.5(2)(j)	Use of permit use of any flashing or intermittent lighting apparatus or device on or from permit area without approval	250

PART 6—Street Entertainment

38	6.1(a)	Engage in street entertainment without a permit	500
39	6.1(b)(i)	Engage in street entertainment contrary to permit terms or conditions	500
40	6.5(1)(a)	Allow street entertainment to extend beyond permit area	250
41	6.5(1)(b)	Permit street entertainment to impede pedestrian flow or access to and along footpaths, entry or exit to shops or other buildings	250
42	6.5(1)(c)	Permit street entertainment to impede vehicular flow or access to and along any street, entry or exit to service delivery area.	250
43	6.5(1)(d)	Permit street entertainment to cause a nuisance to any other street entertainment or activity approved by the local government	250
44	6.5(1)(f)(i)	Permit street entertainment to include persons under 14 years of age, during school hours on a school day, without approval	250
45	6.5(1)(f)(ii)	Permit street entertainment to include person under 14 years of age, on school days between 7.00pm and 6.00am, without approval	250
46	6.5(1)(g)(i)	Permit street entertainment to involve anything that is offensive or obscene	250
47	6.5(1)(g)(ii)	Permit street entertainment to involve the use of fire	250
48	6.5(1)(g)(iii)	Permit street entertainment to involve any weapon or object with sharp edges, including knives or swords	250
49	6.5(1)(g)(iv)	Permit street entertainment to involve motorised machinery	250
50	6.5(1)(g)(v)	Permit street entertainment to endanger safety of the public or performer	500
51	6.5(1)(g)(vi)	Permit street entertainment to involve cruelty to animals	500
52	6.5(1)(h)	Permit street entertainment to involve amplification without approval	500
53	6.5(2)(b)	Failure to display valid permit number	250

Item No.	Clause No.	Nature of offence	Modified Penalty \$
54	6.5(2)(c)	Fail to comply with the direction of an authorised person	250
55	6.5(3)(a)	Reserve or leave equipment at performance location unless immediately before, during or after performance	250
56	6.5(3)(b)	Sale of goods or services without approval or permit	500
57	6.5(4)(a)	Use of materials other than chalk by a pavement or visual artist, unless working on card or paper	500
58	6.5(4)(c)	Failure of a pavement or visual artist, to return the location including pavement, to its former condition	250
PART 8—Miscellaneous			
59	8.1(2)	Failure to comply with notice	250
60	9.1(1)	Failure to do anything required or directed to be done or do any prohibited thing	250

Dated: 5 December 2014.

The Common Seal of the City of Subiaco was affixed in the presence of—

STEPHEN TINDALE, Chief Executive Officer.
HEATHER HENDERSON, Mayor.