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LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

**TRADING IN PUBLIC PLACES
LOCAL LAW 2000**

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TRADING IN PUBLIC PLACES LOCAL LAW 2000

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LOCAL GOVERNMENT ACT 1995

CITY OF SUBIACO

TRADING IN PUBLIC PLACES LOCAL LAW 2000

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 27 June 2000 to make the following local law.

PART 1—PRELIMINARY**Title**

1. This local law may be cited as the City of Subiaco Trading in Public Places Local Law 2000.

Commencement

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

Purpose

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

Repeal

4. (1) The City of Subiaco Local Law No 49 Relating to Alfresco Dining and published in the *Government Gazette*, 16 October 1997 and amended from time to time, is repealed;

(2) The City of Subiaco Local Law No 50 Relating to Street Trading and published in the *Government Gazette*, 16 October and amended from time to time, is repealed;

(3) The City of Subiaco Local No 46 Relating to Stalls and published in the *Government Gazette*, 26 June 1981 and amended from time to time, is repealed;

(4) The City of Subiaco Local Law No 47 Relating to Hawkers and published in the *Government Gazette*, 2 July 1982 and amended from time to time, is repealed;

(5) The City of Subiaco Local Law No 13 Relating to Street Entertainers and published in the *Government Gazette*, 13 May 1994 and amended from time to time, is repealed;

Application

5. This local law applies throughout the district.

Interpretation

6. In this local law unless the context otherwise requires—

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

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

“**alfresco dining licence**” means a licence issued under this local law to set up and conduct an alfresco dining area;

“**applicant**” means a person who applies for a licence;

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

“**authorised person**” means a person authorised 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;

“**commercial participant**” means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

“**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 council pursuant to section 22 of the Health Act;

“**eating house**” means premises which are either registered as an eating house under the Health Act or the subject of a hotel licence, a limited hotel licence, special facility licence or a restaurant licence granted under the Liquor Act;

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

“**hire**” includes offer to hire and expose for hire;

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

“**licensee**” means the holder of a licence;

“**licence fee**” means the fee payable pursuant upon the issue of a licence;

“**Liquor Act**” means the Liquor Licensing Act 1988 and includes any regulations made under that Act;

“**local government**” means the City of Subiaco;

“**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) any thing 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) any thing 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 any thing 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;

“**private property**” means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or 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**”—

- (a) includes the owner, the occupier and any person having the management or control of any eating house; or
- (b) the holder of a licence granted under the Liquor Act where the premises in question is the subject of a hotel licence, a limited hotel licence, special facility licence or a restaurant licence granted under that Act;

“**public place**” includes any thoroughfare or place which the public are allowed to use, whether the thoroughfare or place is or is not on private property and includes, parklands, squares, reserves, beaches, and other lands set apart for the use and enjoyment of the public, including all lands which belong to or which are vested in, or are under the care control or management of the local government;

“**stall**” means a movable or temporarily fixed structure, stand or table in, on or from which goods, wares, merchandise, produce or services are sold or offered for sale 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 licence**” means a licence issued under this local law to engage in street entertainment;

“**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 trading licence**” means a licence issued under this local law to carry on trading in a street or public place;

“**trading**” means selling or hiring goods, wares, merchandise or services, in a street or other public place or carrying out any transactions therein and includes 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—TRADING IN THOROUGHFARES AND PUBLIC PLACES

Planning approval

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

Determination of application

8. (1) The local government may refuse an application for a licence, where—

- (a) it does not comply with the application requirements under this local law;

- (b) the needs of the district for which the licence is sought are adequately catered for by established shops or other persons to whom licences have already been issued;
 - (c) proposed activity or place of trading is considered by the local government to be undesirable; or
 - (d) 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 licence is sought.
- (2) The local government may, in respect of an application for a licence—
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.

Licence issue

9. (1) On approval of an application for a licence, a licence shall be issued in the form used by the local government for that purpose. A licence may include plans and other supporting documentation as required by this local law.

(2) A licence shall not be valid until such time as any public liability insurance policy, required as a condition of licence, has been put into effect and a certificate of currency covering the period of the licence has been lodged with the local government.

Licence renewal

10. Prior to the expiry of an alfresco dining licence, a street market licence or a street trading licence, the licensee may apply for the renewal of a licence, without having to resubmit details required at the time of the initial application.

Licence fees

11. (1) All licence 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 licence, the licensee shall not be entitled to a refund of licence fees for the remainder of the licence period.

Cancellation of licence

12. The local government may cancel any licence if—

- (a) anything purporting to be done in accordance with the licence is not done in conformity with the conditions of the licence;
- (b) the licensee is convicted of an offence against this local law;
- (c) the licensee fails to maintain the required public liability insurance cover indemnifying the local government against damages; or
- (d) the licensee fails to abide by a notice served in accordance with Part 8, requiring works to be undertaken or changes to the arrangements or operation of the activity, subject of the licence.

Suspension of licensee rights and privileges

13. (1) The rights and privileges granted to a licensee on the issue of a licence, shall be automatically suspended, where the public liability insurance required as a condition of a licence, lapses, is cancelled or is no longer current.

(2) The rights and privileges granted to a licensee on the issue of a licence, may be suspended by the local government for the purpose and duration or any works, proposed or done in or adjacent to the area subject of the licence, by or on behalf of a Government department, instrumentality of the Crown or the local government.

PART 3—ALFRESCO DINING**Prohibition**

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

- (a) other than in a portion of a street or public place adjacent to an eating house;
- (b) unless the person is the proprietor of an eating house referred to in paragraph (a);
- (c) unless the person is the holder of a valid and current alfresco dining licence; and
- (d) otherwise than in accordance with the licence plan and any terms and conditions set out in, or applying in respect of, the licence.

Exclusions

15. The provisions of Part 3 do not apply to—

- (a) an alfresco 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.

Licence restrictions

16. (1) An alfresco dining licence—

- (a) may only be issued to the proprietor of an eating house, for use of the land adjacent to the eating house;
- (b) is only transferable with the approval of the local government and on payment of the transfer fee; and
- (c) may be renewed in accordance with clause 10.

- (2) A licensee shall not permit the operation of the alfresco dining area to extend beyond the specified portion of a street or public place detailed in the plans approved as part of the licence.
- (3) The issue of a licence does not confer exclusive possession or use of that portion of the street or public place, the subject of the licence.
- (4) An alfresco dining licence may only be issued in areas where—
- the positioning of tables and chairs is not in conflict with existing street furniture approved by the local government; and
 - there is sufficient space in the existing footpath to accommodate tables and chairs and other furniture and fittings required for the alfresco dining area, so as not to impede pedestrian flow.

Licence application

17. An application for an alfresco dining licence shall be in the form provided for the purpose and shall be forwarded to the local government together with—

- an application fee and licence fee;
- a plan and specification of the proposed eating area on a scale of 1:50 showing—
 - the location and dimensions of the proposed alfresco dining area and the means by which the alfresco dining area is to be separated from the balance of the street or public place;
 - the position of all tables, chairs and other structures proposed to be provided in the alfresco dining area and which of such items, if any, are to be retained within the alfresco dining area at all times;
- a plan and specification on a scale of 1:200 showing the alfresco dining area and all land and improvements thereon within thirty metres of the boundaries of the alfresco dining area including any public facility and parking restrictions;
- a colour photograph or photographs of the tables, chairs and other structures to be set up in the alfresco dining area;
- a written statement of the manner in which foodstuffs and other dining accessories are to be conveyed to and protected from contamination within the alfresco dining area;
- written particulars of arrangements made in respect of public liability insurance; and
- any other information the local government considers necessary in the circumstances of the case.

Alfresco dining licence

18. An alfresco dining licence shall—

- be issued on the form used for the purpose;
- include an endorsed copy of the plan or plans detailing the location and number of tables and chairs, plus any other furniture and equipment required for the operation of the alfresco dining area, as approved by the local government;
- include the days and hours of operation; and
- detail any terms and conditions of the licence approval.

Term and Validity of Licence

19. Subject to clauses 12 and 20 and except where otherwise stated in the local law, an alfresco dining licence remain valid until—

- the expiration date of midnight 30th day of June of that year;
- the proprietor of the eating houses changes;
- unapproved changes are made to the existing licence, including increase or reduction in area subject of the licence, furniture or equipment used or conditions under which the licence was granted;
- the public liability insurance policy required in accordance with Clause 49 lapses, is cancelled or is no longer in operation;
- the licence is cancelled by the local government;

in any of these events, an application must first be made and a new licence issued before any alfresco dining area can be set up or business conducted.

Cancellation of an alfresco dining licence

20. (1) In addition to the provisions of clause 12 the local government may cancel an alfresco dining licence where—

- there is a lapse or cancellation of the eating house licence and registration issued under the Health Act; or
- the setting up or conduct of, the alfresco 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 licence in accordance with sub clause (1)(b) shall not be made without first having advised the licensee of the nature of any complaint or concern and having given the licensee an opportunity to respond to the same.

Responsibilities of licensee

21. A proprietor who is the person named in a licence—

- shall ensure that the alfresco dining area is conducted at all times in accordance with the provisions of the this local law;

- (b) shall ensure that the alfresco dining area is kept in a clean and tidy condition at all times;
- (c) ensure a minimum width of 2 metres is kept clear for pedestrian access;
- (d) shall maintain the chairs, tables and other structures set up on the alfresco dining area in good and serviceable condition at all times;
- (e) shall 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 alfresco dining area or the actions of persons in that area and the Council may recover such costs from the proprietor in a court of competent jurisdiction as a debt owing to it;
- (f) shall be solely responsible for payment of all rates and taxes levied upon the land occupied by the alfresco dining area;
- (g) shall display the licence in a conspicuous place in the adjoining eating house and whenever requested by an Environmental Health Officer to do so shall produce the licence to that officer.

PART 4—STREET MARKETS

Prohibition

22. A person shall not set up or conduct a street market—

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

Licence restrictions

23. (1) A street market licence, is only transferable with the approval of the local government and on payment of the transfer fee.

(2) A licensee shall not permit the street market to extend beyond the specified portion of street of public place detailed in the plans approved and endorsed as part of the licence.

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

Licence application

24. (1) Application shall be in the form provided and shall be forwarded to the local government together with—

- (a) the application and licence fee;
- (b) a copy of the planning approval issued by the local government under a town planning scheme;
- (c) a plan or plans to a scale of 1:50 showing—
 - (i) the location and dimensions of the proposed area to be used for the street markets;
 - (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;
- (d) such other information as the local government may require to assist with the assessment of the application;
- (e) a management plan outlining the operation of the street markets 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 licensee will be met;
- (f) the nature and extent of any activity relating to street entertainment.

Street market licence

25. A street market licence shall—

- (a) be issued on the form used for the purpose;
- (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; and
- (d) detail any terms and conditions of the licence approval.

Term and validity of licence

26. (1) Subject to clause 12 and except where otherwise stated in the local law, a street market licence remains valid until—

- (a) the expiry date stated in the licence is reached;
- (b) unapproved changes are made to an existing licence, including any increase or reduction in area subject of the licence, or conditions under which the licence was granted;
- (c) the public liability insurance policy required in accordance with clause 49 lapses, is cancelled or is no longer in operation; or
- (d) the licence is cancelled by the local government,

and, in any of these events, an application must be first be made and a new licence issued before any street market can continue or proposed changes can be made, as the case may be.

Responsibilities of licensee

27. (1) The licensee shall, prior to commencing operations 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, where the markets are to be held and during the house of operation of the street markets;
- (b) lodge a copy of the approved plans of the street market with the Fire and Rescue Service of WA;
- (c) ensure adequate refuse collection arrangement have been made to the satisfaction of the local government;
- (d) where appropriate, have the necessary local government approval in accordance with the Health (Public Building) Regulations 1992, including a—
 - (i) maximum occupation certificate; and
 - (ii) electrical compliance certificate;
- (e) obtain approval from the local government in relation to public entertainment aspects of the street market.

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

- (a) maintain pedestrian access through and beyond the market area;
- (b) maintain access to adjacent building entries;
- (c) retain access to existing or approved alfresco dining areas associated with adjacent building entries;
- (d) maintain adequate access for emergency vehicles through the streets of the licence area;
- (e) stabilise all structures and furniture provided and used in the operation of the markets at all times and removal of such structures and furniture when not in use;
- (f) maintain noise levels from any associated music, announcements, and the like, in accordance with any licence approval condition, so as not to cause a nuisance;
- (g) maintain the area of the markets clean and free from rubbish; and
- (h) provide separate sanitary facilities for food stall staff.

(3) The licensee 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, and to the satisfaction of the local government.

PART 5—STREET TRADING**Prohibition**

28. 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 licence or is an assistant specified in the licence; and
- (b) otherwise than in accordance with—
 - (i) the terms and conditions of the licence; and
 - (ii) the provisions of this local law.

Licence restrictions

29. (1) A street trading licence, is only transferable with the approval of the local government and on payment of the transfer fee.

(2) A licensee shall not permit any trading activity to extend beyond the specified portion of the public place detailed in the plans approved as part of the licence.

(3) The issue of a street trading licence does not confer exclusive possession or use of that portion of the street, or public place subject of the licence.

Licence application

30. Application shall be in the form provided and shall be forwarded to the local government together with—

- (a) the licence fee;
- (b) number of assistants to be employees in the trading at any one time;
- (c) plans of the proposed location, any 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;
- (f) name and address of the person responsible for complying with any conditions imposed by the licence, where the applicant is a corporation; and
- (g) type of sign to be used to display licence name and licence number.

Street trading licence

31. A street trading licence shall—

- (a) be issued on the form used for the purpose;

- (b) include the location, days and hours of operation and for mobile traders may include a predetermined approved route or area;
- (c) detail the goods, wares, merchandise or services for which trading is approved under the licence;
- (d) limit the number of persons that may carry on trading at any time; and
- (e) detail any other terms and conditions imposed with the licence.

Term and validity of licence

32. Subject to clause 12 and except where otherwise stated in the local law, a street trading licence remains valid until—

- (a) the expiry date stated in the licence is reached;
- (b) unapproved changes are made to an existing licence, including increase or reduction in area subject of the licence, or conditions under which the licence was granted; or
- (c) the public liability insurance policy required in accordance with clause 49 lapses, is cancelled or is no longer in operation;
- (d) the licence is cancelled by the local government,

and, in any of these events, an application must be first be made and a new licence issued before any trading can continue or proposed changes can be made, as the case may be.

Responsibilities of licensee

33. (1) The licensee shall—

- (a) display a sign with letters and numerals not less than 5 cm in height in a conspicuous place in the licensed area, indicating the name of the licensee and the licence number;
- (b) ensure that the licensed area is attended either by the licensee or an assistant, at all times when trading is being undertaken;
- (c) keep any stall, stand, table, structure or vehicle specified in the licence in a clean, safe condition and in good repair;
- (d) ensure a minimum width of 2 metres is kept clear for pedestrian access;
- (e) keep the location specified in the licence free from refuse and rubbish;
- (f) have the licence available at all operation times and produce the licence to any authorised person or any police officer when requested; and
- (g) remove any stall, merchandise and signs from the location to which the licence applies and leave the location clean and vacant—
 - (i) at the conclusion of the permitted hours of operation specified in the licence; and
 - (ii) whenever the trading is not taking place on the location to which the licence applies.

(2) The licensee shall not—

- (a) engage in or permit any trading in any goods, wares, merchandise or services other than those specified in the licence;
- (b) cause, permit or suffer any nuisance to exist, arise or continue on or from the location to which the licence applies;
- (c) place or store or permit to remain any goods, wares, merchandise on any street or public place, other than on the location to which the licence 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 licence other than price tickets or labels on the permitted place not exceeding a total of 0.25 square metres of the licensed area;
- (f) erect and maintain signs in accordance with paragraph (e) so as to obscure any other signage on or adjacent to the licensed 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 licence, 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 licence 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 licence; or
- (k) use or permit to be used any apparatus or device including any flap or shelf whereby the dimension of the stall area is increased beyond that specified in the licence.

Exemptions from requirement to pay fee or to obtain a licence

34. The local government may waive any fee required to be paid by a licensee on making an application for or on the issue of a licence by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.

PART 6—STREET ENTERTAINMENT**Prohibition**

35. 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 licence; or
 - (b) otherwise than in accordance with—
 - (i) the terms and conditions of the licence; and
 - (ii) the provisions of this local law.

Licence restrictions

36. (1) A street entertainment licence is not transferable.
- (2) A licensee shall not permit the street entertainment to extend beyond the specified portion of the street or public place approved in the licence.
- (3) The issue of a street entertainment licence does not confer exclusive possession or use of that portion of the street or public place, subject of the licence.

Licence application

37. An application for a street entertainment licence shall be in the form provided for the purpose and shall be forward to the local government together with—
- (a) the application and licence fee;
 - (b) the nature of the proposed street entertainment;
 - (c) any musical instrument or amplifier proposed to be used;
 - (d) number of people involved in the proposed street entertainment;
 - (e) the name and date of birth of anyone proposed to be involved in the performance who is under 14 years of age; and
 - (f) any other information that the local government may require.

Street entertainment licence

38. A street entertainment licence 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 licence.

Term and validity of licence

39. Subject to clause 12 and clause 41 and except where otherwise stated in the local law, a street entertainment licence remains valid until—
- (a) the expiry date stated in the licence is reached;
 - (b) the public liability insurance policy required in accordance with clause 49 lapses, is cancelled or is no longer in operation; or
 - (c) the licence is cancelled by the local government;
- and, in any of these events, an application must be first be made and a new licence issued before any street entertainment can take place.

Responsibilities of licensee

40. (1) The licensee shall ensure that the street entertainment—
- (a) does not prevent or impede pedestrian flow or access to and along footpaths, entry or exit to shops and other buildings;
 - (b) does not prevent or impede vehicular flow or access to and along any street, entry or exit to any service delivery area;
 - (c) does not cause a nuisance to any other street entertainment or activity approved by the local government;
 - (d) unless otherwise approved, does not include any person under the age of 14 years—
 - (i) during school hours, on school days;
 - (ii) between 7.00pm and 6.00am; and
 - (e) 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 (eg. chainsaw);
 - (v) any other activity, object or matter whatsoever that endanger the safety of the public or the performer; or
 - (vi) cruelty to an animal.

- (f) does not include any amplification unless specifically approved and endorsed on the licence and in any event will not be permitted at any location between Monday to Saturday, 10.00pm to 7.00am, and between 10.00pm Saturday and 9.00am Sunday; and
 - (g) complies at all times with the Environmental Protection (Noise) Regulations 1997.
- (2) The licensee shall—
- (a) use the allocated space and location to perform during the days and times specified in the licence or vacate the location;
 - (b) produce the licence when requested to do so by an authorised person;
 - (c) ensure a valid licence number is visibly displayed during each performance;
 - (d) comply at all times with a direction of an authorised person; and
 - (e) move at least 50 metres from the performance location at the completion of the performance and not return to that same location within 2 hours.
- (3) A licensee 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 licence 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; or
 - (d) perform in any one location for more than 30 minutes, unless specifically authorised by endorsement on the licence, or the performance is by a pavement or visual artist.
- (4) A licensee who is performing pavement or visual art—
- (a) may perform at the same site for a maximum of 2 hours but cannot return to the same site until 2 hours after the previous performance of that day;
 - (b) shall use chalk unless working on paper or card;
 - (c) shall not use spray paint, crayons, textures or other indelible materials;
 - (d) shall return the location, including the pavement surface, to its former condition.

Cancellation and variation of street entertainment licence

41. In addition to clause 12, the local government may cancel or vary the terms and conditions of a street entertainment licence, in the event that—

- (a) a complaint is made about a performance or the amenity of a performance location;
- (b) an authorised person has concerns with the contact or material used in the performance; or
- (c) the licensee fails to meet any of the responsibilities detailed in clause 40.

PART 7—SECURED SUM

Security for restoration and reinstatement

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

- (a) the licensee—
 - (i) as a condition of a licence; or
 - (ii) before the issue of the licence; or
 - (iii) before the renewal of a licence;

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 sub clause (1) is to be paid into an account established by the local government for the purpose of this clause.

Use by the local government of secured sum

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

- (a) within the time specified in those conditions;
- (b) where no such time has been specified, a reasonable period of time from the expiration of the licence of the outdoor dining facility specified in the licence conditions; or
- (c) within 14 days or such other time as specified in the notice given by the local government to the licensee, 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.

(3) The licensee shall 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 under this clause.

(4) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 42 to meet costs under this clause.

(5) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 42.

(6) A person, or licensee is not entitled to make any claim by way of damages or otherwise, against an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government, to enter the land and carry out all or part of the works and do all things necessary that the licensee was required to do to comply with this local law.

PART 8—MISCELLANEOUS

Notice requiring works to be done to remedy breach

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

- (a) to rectify a breach of any provision of a licence; or
- (b) to change the arrangement or operation of an alfresco 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 licensee—

- (i) advising details of the breach of the local law or works required;
- (ii) requiring the licensee to remedy the breach or do the works required within the time specified in the notice; and
- (iii) advising that where the licensee fails to comply with the requirements of the notice within the time specified, the local government may do the required work.

(2) Where the licensee 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.

(3) The local government may recover the expenses incurred in carrying out the works in accordance with sub-clause (2)—

- (a) as a charge against the secured sum lodged for the purpose in accordance with clause 42; and
- (b) from the licensee in court of competent jurisdiction.

Notice to advise licensee of planned or emergency works

44. (1) The local government shall give 14 days notice of any planned works to be undertaken by the local government, that will require closure, part closure or access to an alfresco dining area or street market location, licensed in accordance with this local law.

(2) Where the local government is to carry out emergency works in an alfresco 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) A notice referred to in sub clauses (1) and (2) shall be served in accordance with clause 46.

(4) The licensee shall not have any claim for compensation or damages as a result of any disruption to business or loss incurred due to any works, actions or activity whatsoever referred to in sub clauses (1) and (2) and all rights and privileges by the licence shall be suspended in accordance with clause 13 (2).

Serving of notice

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

Limit of liability

47. A licensee, or other person is not entitled to make any claim by way of damages or otherwise against the local government, an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government, to carry out all or part of the works and do all things necessary that the licensee was required to do to comply with this local law.

Works in public property

48. A person shall not carry out any works of a structural nature, within the street or public place without first obtaining written permission from the local government, in accordance with regulation 17 of the Local Government (Uniform Local Provisions) Regulations 1996.

Public liability insurance and indemnity

49. (1) Where, as a condition of a licence, the licensee is required to provide public liability insurance policy, indemnifying the local government against all actions, suit, claims, damages, losses and expenses made against or incurred by the local government arising from any activity, action, or thing performed or erected in accordance with the licence and keep that insurance policy current for the duration of the licence, the licensee shall—

- (a) enter into an agreement with the local government to provide and maintain the required public liability insurance protection;
- (b) take out a public liability insurance policy in the name of the licensee and the local government for minimum of \$5 million dollars or such other amount as considered appropriate to the risk involved;
- (c) include a clause in the policy which requires both the licensee and the insurance company to advise the local government if the policy lapses, is cancelled or is no longer in operation; and
- (d) on the request of an authorised person, provide for inspection, a certificate of currency for the required insurance policy.

(2) A licensee who refuses or cannot provide a certificate of currency of insurance within 2 days as requested in accordance with sub clause (1) commits an offence.

Date of birth

50. (1) An authorised person or member of the Police Service who finds a person committing, or who on reasonable grounds suspects of having committed a breach of the provisions of this local law, may demand from the person that person's date of birth.

(2) A person who refuses to give his or her date of birth, or who states a false date of birth on a demand being made, commits an offence.

PART 9—OFFENCES AND PENALTIES

Offences

51. (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 clause specified in the First Schedule 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.

Infringement and infringement withdrawal notices

52. 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.

Offence description and modified penalty

53. 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.

Prosecution for offences

54. 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 Court of Petty Sessions.

Records to be kept

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

Footnotes—

Right of appeal

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

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

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 apply to that decision.

Appointment of Authorised Persons, and Certificate of Appointment

2. Both the appointment of authorised persons and issue of certificate of appointment detailing what duties and responsibilities the person is authorised to perform shall be in accordance with section 9.10 of the Local Government Act 1995.

First Schedule

CITY OF SUBIACO

TRADING IN PUBLIC PLACES LOCAL LAW 2000

OFFENCES AND MODIFIED PENALTIES

Clause	Description	Modified Penalty \$
Part 3—Alfresco Dining		
14(a)	Set up or conduct alfresco dining area in portion of street or public place not adjoining eating house	100
14(b)	Set up or conduct alfresco dining area not being proprietor of adjoining eating house	100
14(c)	Set up or conduct alfresco dining area without licence	100
14(d)	Set up or conduct alfresco dining area contrary to licence plan or licence conditions	100

Clause	Description	Modified Penalty \$
16(2)	Permit operation of alfresco dining area to extend beyond area approved as part of the licence	100
21(1)(b)	Fail to keep licensed area in a clean and tidy condition	100
21(1)(c)	Fail to ensure a minimum 2 metre width clear for pedestrians	100
21(1)(d)	Fail to maintain chairs, tables, and other structures in the alfresco dining area in a good and serviceable condition	100
21(1)(g)	Fail to display licence in a conspicuous place in the adjoining eating house and produce when requested by an authorised person or police officer	100
Part 4—Street Markets		
22(a)	Set up or conduct street market without licence	100
22(b)(i)	Set up or conduct street market contrary to licence conditions	100
22(b)(ii)	Set up or conduct street market contrary to local law	100
23(2)	Permit operation of street market area to extend beyond area approved as part of the licence	100
27(1)(a)	Fail to obtain approval from local government and Police to close streets where markets held during market times	100
27(1)(b)	Fail to lodge copy of approved plans of street markets with Fire and Rescue Services of WA	100
27(1)(c)	Fail to make adequate refuse collection arrangements to satisfaction of local government	100
27(1)(d)(i)	Fail to obtain approval under Health (Public Buildings) Regulations 1992—Maximum Accommodation Certificate	100
27(1)(d)(ii)	Fail to obtain approval under Health (Public Buildings) Regulations 1992—Electrical Compliance Certificate and Certificate of Approval	100
27(1)(e)	Fail to obtain approval in relation to any public entertainment aspects of the street market	100
27(2)(a)	Fail to maintain pedestrian access through and beyond market area	100
27(2)(b)	Fail to maintain access to adjacent building entries	100
27(2)(c)	Fail to retain access to existing or approved outdoor dining areas with adjacent building entries	100
27(2)(d)	Fail to maintain adequate access for emergency vehicles through the streets of the licensed area	100
27(2)(e)	Fail to stabilise all structures and furniture used in operation of markets and remove the same when not in use	100
27(2)(f)	Fail to maintain noise levels from music, announcements and the like so as not to cause a nuisance	100
27(2)(g)	Fail to maintain area of markets clean and free from rubbish	100
27(2)(h)	Fail to provide separate sanitary facilities for food stall staff	100
27(3)	Fail to remove all structures and equipment at conclusions of street market	100
Part 5—Street Trading		
28(a)	Trading in a street or public place without a licence	100
28(b)(i)	Trading in a street or public place contrary to licence conditions	100
28(b)(ii)	Trading in a street or public place contrary to local law	100
29(3)	Permit trading to extend beyond area approved as part of the licence	100
33(1)(a)	Fail to display sign indicating licensee name and licence number	50
33(1)(b)	Fail to have licensed area attended when trading	50
33(1)(c)	Fail to keep any stall, stand, table or structure, or vehicles in clean and safe condition and good repair	100
33(1)(d)	Fail to ensure a minimum width of 2 metres is kept clear for pedestrian access	100
33(1)(e)	Fail to keep location specified in licence free from refuse and rubbish	100
33(1)(f)	Fail to have licence available at all operation times and produce when requested by an authorised person or police officer	50
33(1)(f)(i)	Fail to remove any stall, merchandise and signs and leave location clean at conclusion of operation hours	100
33(1)(f)(ii)	Fail to remove any stall, merchandise and signs and leave location vacant whenever trading is not taking place	100
33(2)(a)	Trade in any goods, wares, merchandise and signs and leave location vacant whenever trading is not taking place	100
33(2)(b)	Cause or permit any nuisance to exist, or continue from the licence location	100
33(2)(c)	Deposit, place or store any goods, wares or merchandise on any street or public place other than the licence location	100

Clause	Description	Modified Penalty \$
33(2)(d)	Obstruct free passage of pedestrians on footpath or accessway	100
33(2)(e)	Use, display or permit advertisement outside licence location, larger than approved size and for goods, merchandise or services not approved in the licence	100
33(2)(f)	Erect and maintain signs so as to obscure other signage on or adjacent the licensed area.	100
33(2)(g)	Cry out or shout about goods, merchandise or services in street or public place	100
33(2)(h)	Use or permit use of loud hailer, microphone amplifier or sound apparatus, outside licence location without approval	100
33(2)(i)	Use or permit use of nay record, tape, radio or musical instrument to be heard outside licensed location without approval	100
33(2)(j)	Use of permit use of any flashing or intermittent lighting apparatus or device on or from licensed area	100
33(2)(k)	Use or permit use of any apparatus to increase dimensions of a stall beyond that specified in the licence	100
Part 6—Street Entertainment		
35(a)	Engage in street entertainment without a licence	100
35(b)(i)	Engage in street entertainment contrary to licence conditions	100
35(b)(ii)	Engage in street entertainment contrary to local law	100
36(2)	Permit street entertainment to extend beyond area approved as part of the licence	50
40(1)(a)	Permit the performance to impeded pedestrian flow or access to and along footpaths, entry or exit to shops or other buildings	100
40(1)(b)	Permit the performance to impede vehicular flow or access to and along any street, entry or exit to service delivery area.	100
40(1)(c)	Permit the performance to cause a nuisance to any other street entertainment or activity approved by the local government	100
40(1)(d)	Have more than 4 people participating in any performance	100
40(1)(d)(i)	Permit the performance to include persons under 14 years of age, during school hours on a school day, without approval	100
40(1)(d)(ii)	Permit the performance to include person under 14 years of age, on school days between 7.00pm and 6.00am, without approval	100
40(1)(e)(i)	Permit the performance to involve anything that is offensive or obscene	100
40(1)(e)(ii)	Permit the performance to involve the use of fire	100
40(1)(e)(iii)	Permit the performance to involve any weapon or object with sharp edges, including knives or swords	100
40(1)(e)(iv)	Permit the performance to involve any motorised machinery which emits a loud noise not suitable for the location	100
40(1)(e)(v)	Permit the performance to involve any matter whatsoever that endangers the safety of the public or performer	100
40(1)(e)(vi)	Permit the performance to involve cruelty to animals	100
40(1)(f)	Permit the performance to include amplification outside permitted times	100
40(2)(a)	Fail to use allocated space and location to perform during days and time in licence or vacate the location	100
40(2)(b)	Fail to produce the licence when requested by the authorised person	100
40(2)(c)	Fail to display valid licence number during each performance	100
40(2)(d)	Fail to comply with the direction of an authorised person	100
40(2)(e)	Fail to move 50 metres from performance location at end of performance or return to same location within 2 hours	100
40(3)(a)	Reserve or leave equipment at performance location unless immediately before, during or after	100
40(3)(b)	Sell any goods or services without approval or licence for the purpose	100
40(3)(c)	Erect or permit to be erected or displayed a sign larger than that approved	100
40(3)(d)	Perform in a location for more than 30 minutes without approval	100
40(4)(a)	Performance by a pavement or visual artist, in 1 location for more than 2 hours or return to same location within 2 hours of the last performance	100
40(4)(b)	Use of materials other than chalk by a pavement or visual artist, unless working on card or paper	200
40(4)(c)	Use of spray paint, crayons or other indelible materials, by a pavement or visual artist	200
40(4)(d)	Failure of a pavement or visual artist, to return the location including pavement, to its former condition	200

Clause	Description	Modified Penalty \$
Part 8—Miscellaneous		
50(2)	Refusal to give date of birth or give a false on a deemed being made	100
	Other offences not specified	100

Dated: 27th day of June 2000.

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

TONY (AV) COSTA, Mayor.
CHESTER BURTON, Chief Executive Officer.



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