

(Extract from Government Gazette (No 162) of 27 August 1999)

LOCAL GOVERNMENT ACT 1995

The Municipality of the City of Joondalup

TRADING IN PUBLIC PLACES LOCAL LAW 1999

Under the powers of the Local Government Act 1995 and by all other powers, the Council of the City of Joondalup resolved to make the following local law on the 13th July, 1999.

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PART 1 - PRELIMINARY

Title

- 1 This local law may be referred to as the City of Joondalup Trading In Public Places Local Law 1999.

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 outdoor dining areas, street markets, trading, and street entertainment, in any street or public place within the district.

Repeal

4 The following by law of the former City of Wanneroo:

By Law T2: Trading In Public Places, published in the Government Gazette -16 March 1990, and amendments;

is repealed on the day this local law comes into operation.

Application

5 This local law applies throughout the district.

Definitions

6 In this local law unless the context requires otherwise:

“Act” means the Local Government Act 1995;

“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;

‘district’ means the district of the local government;

“eating house” means premises which are either registered as an eating house under the Health Act or the subject of an 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;

“licence plan” means a plan attached to and forming part of a licence depicting the parts of a street or public place within which an outdoor dining area may be set up and conducted.

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“licenced outdoor dining area” means the area depicted on a licence plan.

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

“local government” means the City of Joondalup;

“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;

“outdoor 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;

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

“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 an hotel licence, a limited hotel licence, special facility licence or a restaurant licence granted under that Act;

“public place” means 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 of being propelled or drawn, on wheels or tracks, by any means.

PART 2 - LICENCE AND APPROVALS

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) **sub clause deleted.**

- (c) the 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 will 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 outdoor 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 of 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 - OUTDOOR DINING

Prohibition

- 14 (1) No person shall set up or conduct an outdoor dining area in a portion of street or public place:
- (a) that is not adjoined to an eating house;
 - (b) unless the person is the proprietor of an eating house adjoining that outdoor dining area; and
 - (c) unless the person is the holder of a current and valid licence for that outdoor dining area.
- (2) No person shall set up or conduct an outdoor dining area otherwise than in accordance with:
- (a) the licence plan for that outdoor dining area; and
 - (b) any condition specified in the licence for that outdoor dining area.
- (3) No person shall set up or conduct an outdoor dining area that prohibits public access to that area unless that area is located on private land.
- (4) From the date of commencement of this local law:
- (a) No person shall smoke in a licenced outdoor dining area; and

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- (b) Where a licensee of an eating house is aware or could reasonably be expected to be aware that a person is smoking in a licenced outdoor dining area, then the licensee shall:
 - (i) inform the person smoking that the person is committing an offence; and
 - (ii) request the person to leave the licenced outdoor dining area until the person has finished smoking.
 - (c) Licensees must ensure that visible signage is available to indicate to patrons that smoking is prohibited within the licenced outdoor dining area.

Exclusions

- 15 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.

Licence Restrictions

- 16 (1) An outdoor dining licence:
- (a) may only be issued to the proprietor of an eating house, for use of the land immediately adjacent the eating house;
 - (b) is only transferable with the approval of the local government and on payment of the transfer fee;
 - (c) may be renewed in accordance with clause 10.
- (2) A licensee shall not permit the operation of the outdoor 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 outdoor dining licence may only be issued in areas where:
- (a) the positioning of tables and chairs is not in conflict with existing street furniture approved by the local government;

- (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 to not impede pedestrian flow.

Licence Application

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

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- (a) the application 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 outdoor dining area and the means if any, that the outdoor dining area is to be separated from the rest of the street or public place;
 - (ii) the eating house of which the applicant is the proprietor, including any indoor seating areas, the area of food preparation and any counter service, the dimension, location and purpose of all entrances to the eating house;
 - (iii) the dimensions, levels and slope of the adjacent footpath and the location and nature of any street furniture, drainage and utilities in the immediate vicinity of the eating house;
 - (iv) the location and nature of any parking or service bays in the immediate vicinity of the eating house, and the alignment of the adjacent carriageway;
 - (v) the position and dimensions of all tables, chairs and associated furniture and fixtures proposed to be placed in the outdoor dining area;
 - (vi) the position and description of any landscaping, bollards or other objects proposed to be used or displayed in the area for which a licence is sought; and
 - (vii) such other information as the local government may require to assist with the assessment of the application;
- (d) a plan to a scale of 1:200 showing the location of the proposed outdoor dining area and all land and improvements thereon within 30 metres of the boundaries of the eating area, in particular:

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- (i) the development and use of abutting properties, including the location of any pedestrian or service access to those sites, the alignment of the building facade and the location of any windows;
 - (ii) the footpath and carriageway alignment, vehicle crossovers and any on-street parking provisions or restrictions;
 - (iii) any street furniture or other structures situated in the verge area including any power poles, bollards, phone booths, bus shelters, fire hydrants, street trees or free standing signage;
- (e) a management plan outlining the operations of the outdoor dining area including:
- (i) the manner in which foodstuffs and other dining accessories are to be conveyed to and protected from contamination in the dining area;
 - (ii) the proposed days and times of operation;
 - (iii) the proposed type and form of any advertising devices to be used;
 - (iv) arrangements for serving alcohol;
 - (v) the location where, tables, chairs, furniture and equipment used on the outdoor dining area, will be stored during periods when the outdoor dining area is not open for business;
 - (vi) the daily cleaning of the licensed area and immediate surrounds by sweeping, washing and/or scrubbing of the paved surface including removal and disposal of all rubbish and foodstuffs; Amd
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 - (vii) **sub clause deleted** Amd
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 - (viii) details of how customers will be encouraged not to throw rubbish or foodstuffs onto the paved area subject of the licence. Amd
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Outdoor Dining Licence

18 An outdoor dining licence shall:

- (a) include an endorsed copy of the licence plan or licence plans detailing the location and number of tables and chairs, plus any other furniture and equipment required for the operation of the outdoor dining area, as approved by the local government; and Amd
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- (b) include the days and hours of operation;
- (c) be issued on approval of the application and payment of the licence fee. Amd
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Term and Validity of Licence

- 19 (1) Subject to clauses 12 and 20 and except where otherwise stated in the local law, an outdoor dining licence remains valid until:
- (a) the expiration of one year from date of issue;
 - (b) the proprietor of the eating house changes;
 - (c) approved changes are made to an existing licence, including increase or reduction in area subject of the licence, furniture or equipment used or conditions under which the licence was granted;
 - (d) the public liability insurance policy required in accordance with clause 48 lapses, is cancelled or is no longer in operation;
 - (e) the licence is cancelled by the local government;

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

Cancellation of an Outdoor Dining Licence

- 20 (1) In addition to the provisions of clause 12 the local government may cancel an outdoor dining licence where:
- (a) there is a lapse or cancellation of the eating house licence issued under the Health 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 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 same.

Responsibilities of Licensee

- 21 (1) The licensee shall:
- (a) manage the area subject of the outdoor dining licence:
 - (i) in accordance with all conditions imposed by the licence; and

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- (ii) in accordance with the approved management plan submitted at time of application and subsequent approved amendments thereto;
 - (b) keep the outdoor dining area free of any obstacle or matter likely to cause injury to persons or property;
 - (c) ensure furniture and equipment remains within the outdoor dining area and location approved on the plan endorsed as part of the licence and does not impede pedestrian flow or access;
 - (d) repair any damage to the surface area, fixtures, fittings or utility services caused as a result of or attributable to the outdoor dining area and any associated activities;
 - (e) all fees, charges, rates and taxes, levied or incurred as a result of the establishment and operation of the outdoor dining area;
 - (f) ensure trading within the outdoor dining area is limited to only the operating hours stated in the licence;
 - (g) remove daily all tables, chairs and non permanent fixtures and fittings from within the outdoor dining area at the conclusion of operating hours.
 - (h) pay all and any costs associated with the alteration, removal, repair, reinstatement, or reconstruction of all or part of the outdoor dining area arising from any works proposed or done in the thoroughfare by or on behalf of a government department, instrumentality of the Crown or the local government and shall not have any claim for compensation or damages as a result of any disruption to business or loss incurred due to such works.
- (2) On cessation of the licence, the licensee shall:
- (a) remove all furniture, equipment, structures and other things placed in or adjacent the area subject of the outdoor dining licence and reinstate the area to the satisfaction of the local government; and
 - (b) pay all costs to complete the reinstatement works required by sub clause 2(a).

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 or 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 Applications shall be in the form provided and shall be forwarded to the local government together with:
- (a) the application 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 operations 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;

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- (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;
- (c) detail any terms and conditions of the licence approval;
- (e) be issued on approval of the application and payment of the licence fee.

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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) approved 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;
- (c) the public liability insurance policy required in accordance with clause 48 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 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 Australian Police Service for the closure of the public streets to vehicular traffic, where the markets are to be held and during the hours 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 arrangements 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 Buildings) Regulations 1992, including a :
 - (i) Maximum Occupation Certificate; and
 - (ii) Electrical Compliance Certificate;
 - (e) obtain approval from the local government in relation to any 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 outdoor 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 the 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 that person is the holder of a valid and current street trading licence or 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 public place detailed in the plan 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 Applications shall be in the form provided for the purpose and shall be forwarded to the local government together with the:
- (a) application fee;
 - (b) number of assistants to be employed in the trading at any one time;
 - (c) plans of the proposed location, plus 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 licence, where the applicant is a corporation.

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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 pre-determined 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;
- (f) be issued on approval of the application and payment of the licence fee.

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Term and Validity of Licence

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

- (a) the expiry date stated in the licence is reached;
- (b) approved changes are made to an existing licence, including an increase or reduction in area subject of the licence, or conditions under which the licence was granted;
- (c) the public liability insurance policy, where required in accordance with clause 48 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 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) keep the location specified in the licence free from refuse and rubbish;

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- (e) have the licence available at all operation times and produce the licence to any authorised person or any police officer when requested; and
 - (f) remove any stall, merchandise and signs from the location to which the licence applies and leave that location clean and vacant:
 - (i) at the conclusion of the permitted hours of operation specified in the licence; and
 - (ii) whenever 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) attempt to trade within 500 metres of a shop or permanent place of business that is open and has for sale goods, wares, merchandise or services being offered and approved for sale under a stall or street traders' licence;
 - (c) cause, permit or suffer any nuisance to exist, arise or continue on or from the location to which the licence applies;
 - (d) deposit, place or store any goods, wares or merchandise on any street or public place, other than on the location to which the licence applies;
 - (e) obstruct the free passage of pedestrians on any footpath or pedestrian accessway;
 - (f) 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 licenced area;
 - (g) erect and maintain any signs in accordance with sub clause (f) so as to obscure any other signage on or adjacent to the licenced area;
 - (h) cry out or shout about or permit any other person to cry out or shout about any goods, wares, merchandise or services in any street or other public place;
 - (i) 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;

- (j) 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;
- (k) 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
- (l) use or permit to be used apparatus or device including flap or shelf whereby the dimensions of the stall are increased beyond that specified in the licence.

PART 6 - STREET ENTERTAINMENT

Prohibition

- 34 A person shall not, in any public place, engage in any form of street entertainment:
- (a) unless that person is the holder of a valid and current street entertainment licence; and
 - (b) other than in accordance with:
 - (i) the terms and conditions of the licence; and
 - (ii) the provisions of this local law.

Licence Restrictions

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

Licence Application

- 36 An application for a street entertainment licence shall be in the form provided for the purpose and shall be forwarded to the local government together with:
- (a) the application fee;
 - (b) the nature of the proposed street entertainment;

- (c) any musical instrument or amplifier proposed to be used;
- (d) the 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

37 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;
- (d) detail any other terms and conditions imposed with the licence
- (e) be issued on approval of the application and payment of the licence fee.

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Term and Validity of Licence

38 (1) Subject to clause 12 and except where otherwise stated in the local law, a street entertainment licence remains valid until:

- (a) the expiry time and date stated in the licence is reached;
- (b) the public liability insurance policy, where required in accordance with clause 48 lapses, is cancelled or is no longer in operation;
- (c) the licence is cancelled by the local government;

and in any of these events, an application must first be made and a new licence issued before any street entertainment can take place.

Responsibilities of Licensee

39 (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;

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- (c) does not cause a nuisance to any other street entertainment or activity approved by the local government;
- (d) does not have more than 4 people participating in any one performance, unless specifically authorised by endorsement of the licence; Amd
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- (e) 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
- (f) 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 or 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;
- (g) 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 Sundays between 10.00pm and 9.00am the following Monday; Amd
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- (h) complies at all times with the Environmental Protection (Noise) Regulations 1997.
- (2) A 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

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- (e) move at least 40 metres from the performance location at the completion of the performance and not return to that same location within 2 hours; Amd
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 - (f) comply with the terms and conditions of the licence. Amd
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- (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 a 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 0.25m², displaying the name of the performance; or
 - (ii) standard business cards;
 - (d) perform in any 1 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 4 hours but cannot return to the same site until 2 hours after the previous performance that day; Amd
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 - (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

40 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 received about a performance or the amenity of a performance location;

- (b) an authorised person has concerns with the content or material used in the performance;
- (c) the licensee fails to meet any of the responsibilities detailed in clause 39.

PART 7 - SECURED SUM

Security for Restoration and Reinstatement

- 41 (1) For the purpose of ensuring that an outdoor 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 a 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 purposes of this clause.

Use by the Local Government of Secured Sum

- 42 (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.

- (2) 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. The reinstatement costs to be recouped by the City from the licensee, shall be limited to the total costs actually incurred by the City in completing the reinstatement works under this clause.
- (3) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 41 to meet costs under this clause.
- (4) 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 41.
- (5) 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.

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PART 8 - MISCELLANEOUS

Notice Requiring Works to be Done To Remedy Breach

- 43 (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 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 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 41;
 - (b) from the licensee in a 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 outdoor dining area or street market location, licenced in accordance with this local law.
 - (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) A notice referred to in sub clauses (1) and (2) shall be served in accordance with clause 45.
 - (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 granted by the licence shall be suspended in accordance with clause (13)(2).

Serving of Notice

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

Limit on Liability

- 46 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

- 47 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

- 48 (1) Where, as a condition of a licence, the licensee is required to provide a public liability insurance policy and keep that insurance policy current for the duration of the licence, it is also a condition of the licence that the City will respond to any actions, suits, claims, damages, losses and expenses caused by or arising from the negligence of the City and the licensee will respond to any suits, claims, damages, losses and expenses caused by or arising from the negligence of the licensee. In such circumstances the licensee shall also —
- (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 for a minimum value of \$10 million or such greater amount as is considered appropriate to the risk involved;
 - (c) include a clause in the policy which prevents the policy from being cancelled without the written consent of the local government;
 - (d) 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;
 - (e) 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 current certificate of insurance within 2 working days as requested in accordance with sub clause (1) commits an offence.

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Date of Birth to be Given on Demand

- 49 Clause deleted.

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PART 9- OFFENCES AND PENALTIES

Offences

- 50 (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 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

51 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

52 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

53 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 a Court of Petty Sessions.

Records to be Kept

54 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 a 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.

Outdoor Dining

- 3 Applicants seeking the issue of planning approval and a licence to conduct Outdoor Dining, should refer to the “Guidelines For Outdoor Dining”, which provide information on specific issues for particular areas, plus a wide range of general outdoor dining matters. Prior reference to the “Guidelines For Outdoor Dining” will assist in completing the application.

FIRST SCHEDULE
CITY OF JOONDALUP**TRADING IN PUBLIC PLACES LOCAL LAW 1999****Offences and Modified Penalties**

Item No	Clause No	Nature of Offence	Modified Penalty \$	
PART 3 – OUTDOOR DINING				
1	14(1)(a)	Set up or conduct outdoor dining area in portion of street or public place not adjoining eating house.	100	Amd GG No 168 22.09.09
2	14(1)(b)	Set up or conduct outdoor dining area not being proprietor of adjoining eating house.	100	Amd GG No 168 22.09.09
3	14(1)(c)	Set up or conduct outdoor dining area without licence.	100	Amd GG No 168 22.09.09
4	14(2)	Set up or conduct outdoor dining area contrary to licence plan or licence conditions.	100	Amd GG No 168 22.09.09
4A	14(4)(a)	Smoking in a licenced outdoor dining area	200	Amd GG No 168 22.09.09
4B	14(4)(b)	Failure of licensee to comply with requirements under clause 14(4)(b).	100	Amd GG No 168 22.09.09
4C	14(4)(iii)	Failure to erect visible no smoking signage.	50	Amd GG No 168 22.09.09
5	16(2)	Permit operation of outdoor dining area to extend beyond area approved as part of the licence.	100	
6	21(1)(a)(i)	Fail to manage outdoor dining area in accordance with conditions of licence.	100	
7	21(1)(a)(ii)	Fail to manage outdoor dining area in accordance with approved management plan.	100	
8	21(1)(b)	Fail to keep licenced area free of any obstacle or matter likely to cause injury to persons or property.	100	
9	21(1)(c)	Fail to ensure furniture or equipment remains in licenced area and not impede pedestrian flow.	100	
10	21(1)(d)	Fail to repair damage to surface area, fixtures, fittings or utility services caused by outdoor dining operation.	100	
11	21(1)(f)	Fail to ensure trading in outdoor dining area is limited to operating hours stated in licence.	100	

PART 3 – OUTDOOR DINING (CONTINUED)

12	21(1)(g)	Fail to remove tables and chairs and non permanent fixtures and fittings at conclusion of operating hours.	100
13	21(2)(a)	Fail to remove all equipment, structures and other things and reinstate area to satisfaction of local government on cessation of licence.	100
14	21(2)(b)	Fail to pay all costs for complete reinstatement works.	100

PART 4 – STREET MARKETS

15	22(a)	Set up or conduct street market without licence	100
16	22(b)(i)	Set up or conduct street market contrary to licence conditions	100
17	22(b)(ii)	Set up or conduct street market contrary to local law	100
18	23(2)	Permit operation of street market area to extend beyond area approved as part of the licence.	100
19	27(1)(a)	Fail to obtain approval from local government and Police to close streets where markets held during market times.	100
20	27(1)(b)	Fail to lodge copy of approved plans of street markets with Fire and Rescue Services of WA.	100
21	27(1)(c)	Fail to make adequate refuse collection arrangements to satisfaction of local government.	100
22	27(1)(d)(i)	Fail to obtain approval under Health (Public Buildings) Regulations 1992 – Maximum Occupation Certificate.	100
23	27(1)(d)(ii)	Fail to obtain approval under Health (Public Buildings) Regulations 1992 –Electrical Compliance Certificate and Certificate of Approval.	100
24	27(1)(e)	Fail to obtain approval in relation to any public entertainment aspects of the street markets.	100
25	27(2)(a)	Fail to maintain pedestrian access through and beyond market area.	100
26	27(2)(b)	Fail to maintain access to adjacent building entries.	100
27	27(2)(c)	Fail to retain access to existing or approved outdoor dining areas with adjacent building entries.	100
28	27(2)(d)	Fail to maintain adequate access for emergency vehicles through the streets of the licenced area.	100
29	27(2)(e)	Fail to stabilise all structures and furniture used in operation of markets and remove same when not in use.	100

PART 4 – STREET MARKETS (CONTINUED)

30	27(2)(f)	Fail to maintain noise levels from music, announcements and the like so as not to cause a nuisance.	100
31	27(2)(g)	Fail to maintain area of markets clean and free from rubbish.	100
32	27(2)(h)	Fail to provide separate sanitary facilities for food stall staff.	100
33	27(3)	Fail to remove all structures and equipment at conclusion of street market.	100

PART 5 – STREET TRADING

34	28(a)	Trading in a street or public place without a licence	100
35	28(b)(i)	Trading in a street or public place contrary to licence conditions.	100
36	28(b)(ii)	Trading in a street or public place contrary to local law.	100
37	29(3)	Permit trading to extend beyond area approved as part of the licence.	100
38	33(1)(a)	Fail to display sign indicating licensee name and licence number.	50
39	33(1)(b)	Fail to have licenced area attended when trading.	50
40	33(1)(c)	Fail to keep any stall, stand, table, structure, or vehicle in clean, safe condition and good repair.	100
41	33(1)(d)	Fail to keep location specified in licence free from refuse and rubbish.	100
42	33(1)(e)	Fail to have licence available at all operation times and produce when requested by authorised person or police officer.	50
43	33(1)(f)(i)	Fail to remove any stall, merchandise and signs and leave location clean at conclusion of operation hours.	100
44	33(1)(f)(ii)	Fail to remove any stall, merchandise and signs and leave location vacant whenever trading is not taking place.	100
45	33(2)(a)	Trade in any goods, wares, merchandise not specified in the licence.	100
46	33(2)(b)	Attempt to trade within 500 metres of a shop that is open and has for sale any goods, wares, merchandise or services offered by a stall or street trader's licence.	100
47	33(2)(c)	Cause or permit any nuisance to exist, arise, or continue from the licence location.	100
48	33(2)(d)	Deposit, place or store any goods, wares or merchandise on any street or public place other than the licence location.	100
49	33(2)(e)	Obstruct free passage of pedestrians on footpath or accessway.	100

PART 5 – STREET TRADING (CONTINUED)

50	33(2)(f)	Use, display or permit advertisement outside licence location, larger than approved size and for goods, merchandise or services not approved in the licence.	100
51	33(2)(g)	Erect and maintain signs so as to obscure other signage on or adjacent the licenced area.	100
52	33(2)(h)	Cry out or shout about goods, merchandise or services in street or public place.	100
53	33(2)(i)	Use or permit use of loud hailer, microphone amplifier or sound apparatus, outside licence location without approval.	100
54	33(2)(j)	Use or permit use of any record, tape, radio or musical instrument to be heard outside licenced location without approval.	100
55	33(2)(k)	Use or permit use of any flashing or intermittent lighting apparatus or device on or from licenced area.	100
56	33(2)(l)	Use or permit use of any apparatus to increase dimensions of a stall beyond that specified in the licence.	100

PART 6 STREET ENTERTAINMENT

57	34(a)	Engage in street entertainment without a licence.	100
58	34(b)(i)	Engage in street entertainment contrary to licence conditions.	100
59	34(b)(ii)	Engage in street entertainment contrary to local law.	100
60	35(2)	Permit street entertainment to extend beyond area approved as part of the licence.	50
61	39(1)(a)	Permit the performance to impede pedestrian flow or access to and along footpaths, entry or exit to shops or other buildings.	100
62	39(1)(b)	Permit the performance to impede vehicular flow or access to and along any street, entry or exit to service delivery area.	100
63	39(1)(c)	Permit the performance to cause a nuisance to any other street entertainment or activity approved by the local government.	100
64	39(1)(d)	Have more than 4 people participating in any performance without approval.	100
65	39(1)(e)(i)	Permit the performance to include persons under 14 years of age, during school hours on a school day, without approval.	100
66	39(1)(e)(ii)	Permit the performance to include persons under 14 year's of age on school days between 7.00pm and 6.00am, without approval.	100
67	39(1)(f)(i)	Permit the performance to involve anything that is offensive or obscene.	100
68	39(1)(f)(ii)	Permit the performance to involve the use of fire.	100

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PART 6 STREET ENTERTAINMENT (CONTINUED)

69	39(1)(f)(iii)	Permit the performance to involve any weapon or object with sharp edges, including knives or swords.	100	
70	39(1)(f)(iv)	Permit the performance to involve any motorised machinery which emits a loud noise not suitable for the location.	100	
71	39(1)(f)(v)	Permit the performance to involve any matter whatsoever that endangers the safety of the public or performer.	100	
72	39(1)(f)(vi)	Permit the performance to involve cruelty to animals.	100	
73	39(1)(g)	Permit the performance to include amplification outside permitted times.	100	
74	39(2)(a)	Fail to use allocated space and location to perform during days and times in licence or vacate the location.	100	
75	39(2)(b)	Fail to produce the licence when requested by an authorised person.	100	
76	39(2)(c)	Fail to display valid licence number during each performance.	100	
77	39(2)(d)	Fail to comply with direction of an authorised person.	100	
78	39(2)(e)	Fail to move 40 metres from performance location at end of performance.	100	Amd GG No 136 10.07.00
79	39(3)(a)	Reserve or leave equipment at performance location unless immediately before, during or after.	100	
80	39(3)(b)	Sell any goods or services without approval or licence for the purpose.	100	
81	39(3)(c)	Erect or permit to be erected or displayed a sign larger than that approved.	100	
81A	39(2)(f)	Fail to comply with terms and conditions of licence.	100	Amd GG No 136 10.07.00
82	39(3)(d)	Perform in 1 location for more than 30 minutes without approval.	100	
83	39(4)(a)	Performance by a pavement or visual artist, in 1 location for more than 4 hours or return to same location within 2 hours of the last performance.	100	Amd GG No 136 10.07.00
84	39(4)(b)	Use of materials other than chalk by a pavement or visual artist, unless working on card or paper.	200	
85	39(4)(c)	Use of spray paint, crayons, textures or other indelible materials, by a pavement or visual artist.	200	
86	39(4)(d)	Failure of a pavement or visual artist, to return the location including pavement, to its former condition.	200	

PART 8 MISCELLANEOUS

88		Other offences not specified.	100	Amd GG No 136 10.07.00
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