

LOCAL GOVERNMENT ACT 1995
City of Joondalup
Trading in Public Places Local Law 1999

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Joondalup resolved on _____ to make the “*City of Joondalup Trading in Public Places Amendment Local Law 2008*”.

In this local law, the *City of Joondalup Trading in Public Places Local Law 1999* as published in the *Government Gazette* on 27 August 1999 and amended as published in the *Government Gazette* on 10 July 2000 is referred to as the principal local law. The principal local law is amended as follows—

ARRANGEMENT

PART 1 – PRELIMINARY	Clauses 1 – 4.2
PART 2 – OUTDOOR DINING.....	Clauses 5 – 7
FIRST SCHEDULE.....	Clauses 8 – 8.7

PART 1 – PRELIMINARY

Title

- 1 This local law may be referred to as the *City of Joondalup Trading in Public Places Amendment Local Law 2008*.

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 prohibit the act of smoking in outdoor dining areas that are situated on public property within the City of Joondalup.

Amendment

- 4 The *City of Joondalup Trading in Public Places Local Law 1999* published in the *Government Gazette* on Friday 27 August 1999 and as amended and published in the *Government Gazette* on 10 July 2000, is hereby amended in the following manner:

- 4.1 Insert the following definition:

““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;”.

- 4.2 Insert the following definition:

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

PART 2 – OUTDOOR DINING

Prohibition

5 Clause 14 is amended by deleting clause 14 and inserting in its place the following—

- “14 (1) No person shall set up or conduct an outdoor dining area in a portion of street or public place:
- (i) that is not adjoined to an eating house;
 - (ii) unless the person is the proprietor of an eating house adjoining that outdoor dining area; and
 - (iii) 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—
- (i) the licence plan for that outdoor dining area; and
 - (ii) 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—
- (i) No person shall smoke in a licenced outdoor dining area; and
 - (ii) Where a licensee or employee 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 or employee shall—
 - A. inform the person smoking that the person is committing an offence; and
 - B. request the person to leave the licenced outdoor dining area until the person has finished smoking.
 - (iii) The proprietor commits an offence if requirements under clause 14(4)(ii) are not complied with.
 - (iv) Licensees must ensure that visible signage is available to indicate to patrons that smoking is prohibited within the licenced outdoor dining area.”

Licence Application

6 Clause 17(e)(vi) is amended by deleting the words “and cigarette ends” and inserting the word “and” before the word “foodstuffs”.

6.1 Clause 17(e)(vii) is amended by deleting it in its entirety.

6.2 Clause 17(e)(viii) is amended by deleting the words “, cigarette butts,”.

Outdoor Dining Licence

7 Clause 18 is amended by inserting the word “licence” before the words “plan” and “plans”.

FIRST SCHEDULE

Offences and Modified Penalties

8 Amend the First Schedule in the following manner:

8.1 Delete the Clause Number “14(a)” and insert “14(1)(i)” in its place.

8.2 Delete the Clause Number “14(b)” and insert “14(1)(ii)” in its place.

8.3 Delete the Clause Number “14(c)” and insert “14(1)(iii)” in its place.

8.4 Delete the Clause Number “14(d)” and insert “14(2)” in its place.

8.5 Insert the following new Item:

Item No “4A”, Clause No “14(4)(i)”, Nature of Offence “Smoking in a licenced outdoor dining area”, Modified Penalty “200”.

8.6 Insert the following new Item:

Item No “4B”, Clause No “14(4)(iii)”, Nature of Offence “Failure to ensure requirements under clause 14(4)(ii) are complied with”, Modified Penalty “100”.

8.7 Insert the following new Item:

Item No “4C”, Clause No “14(4)(vi)”, Nature of Offence “Failure to erect visible no smoking signage”, Modified Penalty “50”.