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# TOWN OF CAMBRIDGE

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LOCAL LAWS

## TRADING IN PUBLIC PLACES LOCAL LAW 2016

**LOCAL GOVERNMENT ACT 1995**

## TOWN OF CAMBRIDGE

**TRADING IN PUBLIC PLACES LOCAL LAW 2016**

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## LOCAL GOVERNMENT ACT 1995

## TOWN OF CAMBRIDGE

## TRADING IN PUBLIC PLACES LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Council of the Town of Cambridge resolved on 22 November 2016 to make the following local law.

## PART 1—PRELIMINARY

**1.1 Title**

This is the *Town of Cambridge Trading in Public Places Local Law 2016*.

**1.2 Commencement**

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

**1.3 Purpose and Effect**

- (1) The purpose of this local law is to provide for the regulation, control and management of outdoor eating facilities, stalls, traders and entertainers in any street or public place within the district by establishing the requirements with which persons must comply in order to undertake those activities.
- (2) The effect of this local law is to establish the requirements with which persons desiring to conduct business in the district must comply.

**1.4 Repeal**

- (1) The *Town of Cambridge Trading In Public Places Local Law* published in the *Government Gazette* on 22 March 2002 and all amendments thereto are hereby repealed on the day this local law comes into operation.
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

**1.5 Application**

This local law applies throughout the district of the Town of Cambridge.

**1.6 Definitions**

- (1) 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 permit and which relates to the lodgement, assessment and determination of the application but does not include the permit fee;

**Authorised Person** means a person appointed by the local government under section of the Act, to perform any of the functions of an Authorised Person under this local law and any member of the Western Australian Police Service;

**district** means the district of the local government;

**Food Act** means the *Food Act 2008*;

**food premises** means a food business which is registered under the *Food Act 2008*;

**Health Act** means the *Health Act 1911*;

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

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

**local government** means the Town of Cambridge;

**notice** means a notice issued in accordance with Part 5 of this local law;

**nuisance** means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the nuisance;

**person** means any person, company, public body, association or body of persons corporate or unincorporated and includes an owner, occupier, licensee and permit holder, but 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 food premises; or
- (b) the holder of a licence granted under the *Liquor Control Act 1988* 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** 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, but does not include premises on private property from which trading is lawfully conducted under a written law;

**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 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;

**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; and

**written law** has the same meaning given to it by section 5 of the *Interpretation Act 1984* and includes this local law.

(2) Any other expression used in this local law and not defined herein must have the meaning given to it in the *Local Government Act 1995*, the *Local Government (Miscellaneous Provisions) Act 1960*, *Food Act 2008*, *Building Act 2011* and the *Health Act 1911*, unless the context requires otherwise.

## PART 2—TRADING IN THOROUGHFARES AND PUBLIC PLACES

### *Division 1—Stallholders and Traders*

#### 2.1 Definitions

In this Division, unless the context requires otherwise—

**Competition Principles Agreement** means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

**stallholder** means a person in charge of a stall;

**stallholder's permit** means a permit issued to a stallholder;

**trader** means a person who carries on trading;

**trader's permit** means a permit issued to a trader; and

**trading** includes—

- (a) the selling or hiring of, the offering for sale or hire of, or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of—
  - (i) offering them for sale or hire;
  - (ii) inviting offers for their sale or hire;
  - (iii) soliciting orders for them; or
  - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and—
  - (i) offering goods or services for sale or hire;
  - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services; or
  - (iii) carrying out any other transaction in relation to goods or services.

**2.2 Stallholder's permit**

- (1) A person must not conduct a stall on a public place unless that person is—
  - (a) the holder of a valid stallholder's permit; or
  - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit must—
  - (a) state the full name and address of the applicant;
  - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
  - (c) specify the proposed location of the stall;
  - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
  - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
  - (f) be accompanied by an accurate plan and description of the proposed stall.

**2.3 Trader's permit**

- (1) A person must not carry on trading unless that person is—
  - (a) the holder of a valid trader's permit; or
  - (b) an assistant specified in a valid trader's permit.
- (2) Every application for a trader's permit must—
  - (a) state the full name and address of the applicant;
  - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
  - (c) specify the location or locations in which the applicant proposes to trade;
  - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
  - (e) specify the proposed goods or services which will be traded; and
  - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.

**2.4 No permit required to sell newspapers**

Notwithstanding any other provision of this local law, a person who sells, or offers for sale, a newspaper is not required to obtain a permit.

**2.5 Relevant considerations in determining application for permit**

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
  - (a) any relevant policies of the local government;
  - (b) the desirability of the proposed activity;
  - (c) the location of the proposed activity;
  - (d) the principles set out in the Competition Principles Agreement; and
  - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—
  - (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
  - (b) that—
    - (i) the applicant is an undischarged bankrupt or is in liquidation;
    - (ii) the applicant has entered into any composition or arrangement with creditors; or
    - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property; or
  - (c) such other grounds as the local government may consider to be relevant in the circumstances of the case.

**2.6 Conditions of permit**

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—
  - (a) the place, the part of the district, or the thoroughfare to which the permit applies;
  - (b) the days and hours during which a permit holder may conduct a stall or trade;
  - (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
  - (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
  - (e) the number of persons and the names of persons permitted to conduct a stall or trade;

- (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
- (g) whether and under what terms the permit is transferable;
- (h) any prohibitions or restrictions concerning the—
  - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder; including—
  - (ii) the use of amplifiers, sound equipment and sound instruments;
  - (iii) the use of signs; and
  - (iv) the use of any lighting apparatus or device;
- (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
- (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
- (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
- (l) the acquisition by the stallholder or trader of public liability insurance;
- (m) the lodgement of a secure sum or bond of a value determined by the local government;
- (n) the period for which the permit is valid; and
- (o) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.

(2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorise another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit must apply to the nominee as if he or she was the permit holder.

## 2.7 Exemptions from requirement to pay fee

(1) In this clause—

**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; and

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

(2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—

- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
- (b) 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.

(3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

## 2.8 Conduct of stallholders and traders

(1) A stallholder while conducting a stall or a trader while trading must—

- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
- (b) not display a permit unless it is a valid permit; and
- (c) when selling goods by weight, carry and use for that purpose, scales which are accurate.

(2) A stallholder or trader must not—

- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
- (b) act in an offensive manner;
- (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
- (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

### *Division 2—Street Entertainers*

## 2.9 Definitions

In this Division, unless the context requires otherwise—

**perform** includes to play a musical instrument, sing, mime, dance, give an acrobatic or aerobic display or entertain, but does not include public speaking;

**permit** means a permit issued for the purpose of clause 2.10;

**permitted area** means the area or areas, specified in a permit, in which the permit holder may perform; and

**permitted time** means the time or times, specified in a permit, during which the permit holder may perform.

#### **2.10 Permit required to perform**

A person must not perform in a public place without a valid permit.

#### **2.11 Variation of permitted area and permitted time**

(1) The local government may by notice in writing to a permit holder vary—

(a) the permitted area;

(b) the permitted time; or

(c) both the permitted area and the permitted time, shown on a permit.

(2) The local government may direct a permit holder to move from one permitted area to another permitted area, if more than one area is specified in a permit.

#### **2.12 Duration of permit**

A permit is valid for a period of 3 months after the date on which it is issued unless it is sooner cancelled under this local law.

#### **2.13 Cancellation of permit**

The local government may cancel a permit if in the opinion of an Authorised Person the volume of sound caused by the permit holder in connection with the performance adversely affects the enjoyment, convenience or comfort of other persons in a public place or the performance otherwise constitutes a nuisance.

#### **2.14 Obligations of permit holder**

A permit holder must not in a public place—

(a) perform wearing dirty, torn or ragged clothing;

(b) act in an offensive manner; or

(c) place, install, erect, play or use any musical instrument or any device which emits music, including a loud speaker or an amplifier—

(i) other than in the permitted area; and

(ii) unless the musical instrument or device is specified in the permit.

### *Division 3—Outdoor Eating Facilities*

#### **2.15 Definitions**

In this Division, unless the context requires otherwise—

**Facility** means an outdoor eating facility or establishment on any part of a public place 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, but does not include such a facility or establishment on private land;

**permit holder** means the person to whom a permit has been issued for the purpose of clause 2.16.

#### **2.16 Permit required to conduct Facility**

A person must not establish or conduct a Facility without a valid permit.

#### **2.17 Matters to be considered in determining application**

In determining an application for a permit for the purpose of clause 2.16, the local government may consider in addition to any other matter it considers relevant, whether or not—

(a) the Facility is conducted in conjunction with and as an extension of food premises which abut the Facility, and whether the applicant is the person conducting such food premises;

(b) any abutting food premises are registered in accordance with the *Food Act 2008* and whether the use of the premises is permitted under the town planning scheme;

(c) the Facility must comply with any local law made under the *Health Act 1911*;

(d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;

(e) the Facility would—

(i) obstruct the visibility or clear sight lines of any person at an intersection of thoroughfares; or

(ii) impede pedestrian access; and

(f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.



### 2.18 Obligations of permit holder

- (1) The permit holder for a Facility must—
- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law;
  - (b) ensure that the eating area is kept in a clean and tidy condition at all times;
  - (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times; and
  - (d) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.
- (3) In subclause (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

### 2.19 Removal of Facility unlawfully conducted

Where a Facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by an Authorised Person and impounded in accordance with the Act.

### 2.20 Use of Facility by public

- (1) A person must not occupy a chair or otherwise use the equipment in a Facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the Facility.
- (2) A person must leave a Facility when requested to do so by the permit holder.

### 2.21 Temporary removal of Facility may be requested

- (1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an Authorised Person or a member of the Police Service or an emergency service in the event of an emergency.
- (2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

## *Division 4—Itinerant Food Vendors*

### 2.22 Definitions

In this Division, unless the context requires otherwise:—

**itinerant food vendor** means a person who travels along the road looking for customers and who sells food from their vehicle parked temporarily on the road to customers who stop them or come to them while he is so parked;

**itinerant food vendor’s permit** means a permit to conduct an itinerant food vending service issued by the local government under this local law.

### 2.23 Itinerant Food Vendor’s Permit

- (1) An itinerant food vendor must not offer for sale or sell food unless they—
- (a) are the holder of an itinerant food vendor’s permit issued by the Local Government under this clause; and
  - (b) comply with any conditions to which the permit is subject.
- (2) An application seeking the issue of an itinerant food vendor’s permit must be made by the proprietor or, where there is more than one proprietor, by each proprietor; on the approved form and must be forwarded by the applicant to the local government together with the approved fee.
- (3) An application for a food vendor’s permit must be determined by the local government which may approve the application, with or without conditions, or reject the application.
- (4) A permit issued under this clause must, unless cancelled in the meantime in accordance with the provisions of the Act, be valid from the date of issue until the following 30th day of June.

## PART 3—PERMITS

### 3.1 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person must apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law must—
- (a) be in the form determined by the local government;
  - (b) be signed by the applicant;
  - (c) provide the information required by the form; and
  - (d) be forwarded to the local government together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

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

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

### **3.2 Decision on application for permit**

(1) The local government may—

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

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

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

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

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

### **3.3 Conditions which may be imposed on a permit**

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

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public liability insurance in an amount and on terms reasonably required by the local government;
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder; and
- (j) the safe storage, handling, preparation, display and sale of food.

### **3.4 Imposing conditions under a policy**

(1) In this clause—

**policy** means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.2 (1) (a).

(2) Under clause 3.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.2 (2).

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

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

### **3.5 Compliance with and variation of conditions**

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

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

### **3.6 Duration of permit**

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.10.

### **3.7 Renewal of permit**

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

- (2) The provisions of—
- (a) this Part; and
  - (b) any other provision of this local law relevant to the permit which is to be renewed, must apply to an application for the renewal of a permit with all the necessary changes as required.

### **3.8 Transfer of permit**

- (1) An application for the transfer of a valid permit is to—
- (a) be made in writing;
  - (b) be signed by the permit holder and the proposed transferee of the permit;
  - (c) provide such information as the local government may require to enable the application to be determined; and
  - (d) be forwarded to the local government together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by—
- (a) an endorsement on the permit signed by an Authorised Person; or
  - (b) issuing to the transferee a permit in the form determined by the local government.
- (4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

### **3.9 Production of permit**

A permit holder is to produce to an Authorised Person their permit immediately upon being required to do so by that Authorised Person.

### **3.10 Cancellation of permit**

- (1) Subject to clause 5.6 a permit may be cancelled by the local government on any one or more of the following grounds—
- (a) the permit holder has not complied with a—
    - (i) condition of the permit; or
    - (ii) provision of any written law which may relate to the activity regulated by the permit;
  - (b) the permit holder is convicted of an offence against this local law;
  - (c) the permit holder fails to maintain the required public liability insurance cover indemnifying the local government against damages; or
  - (d) if it is relevant to the activity regulated by the permit—
    - (i) the permit holder has become bankrupt, or gone into liquidation;
    - (ii) the permit holder has entered into any composition or arrangement with creditors; or
    - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.
- (2) On the cancellation of a permit the permit holder—
- (a) must return the permit as soon as practicable to the local government; and
  - (b) is to be taken to have forfeited any fees paid in respect of the permit.

### **3.11 Suspension of Permit Holder Rights and Privileges**

- (1) The rights and privileges granted to a permit holder on the issue of a permit, must be automatically suspended, where the public liability insurance required as a condition of a permit, lapses, is cancelled or is no longer current.
- (2) The rights and privileges granted to a permit holder on the issue of a permit, 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 permit, by or on behalf of a Government department, instrumentality of the Crown or the local government.

### **3.12 Planning Approval**

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

## **PART 4—SECURE SUM**

### **4.1 Security for Restoration and Reinstatement**

- (1) For the purpose of ensuring that an outdoor eating facility or street market area is properly restored or reinstated, on the expiry of a permit, the local government may require that the applicant or permit holder—
- (a) as a condition of a permit; or
  - (b) before the issue of a permit; or
  - (c) before the renewal of a permit;

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

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

#### **4.2 Use by the Local Government of Secured Sum**

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

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

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

(2) The permit holder must 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.

(3) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the permit holder under clause 4.1 to meet costs under this clause.

(4) The liability of a permit holder to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 4.1.

## **PART 5—NOTICES AND INSURANCE**

### *Division 1—Notices*

#### **5.1 Notice Requiring Works to be Done to Remedy Breach**

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

- (a) to rectify a breach of any provision of a permit; or
- (b) to change the arrangement or operation of an outdoor eating facility considered necessary to maintain public safety, facilitate public works to the footpath or street, or protect the amenity of an adjacent premises;
- (c) the local government may give notice in writing to the permit holder—
  - (i) advising details of the breach of the local law or works required;
  - (ii) requiring the permit holder to remedy the breach or do the works required within the time specified in the notice; and
  - (iii) advising that where the permit holder fails to comply with the requirements of the notice within the time specified, the local government may do the required work.

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

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

- (a) as a charge against the secured sum lodged for the purpose in accordance with clause 4.1; or
- (b) from the permit holder in a court of competent jurisdiction.

(4) A person who fails to comply with a notice issued pursuant to this local law commits an offence.

#### **5.2 Notice to Advise Permit Holder of Planned or Emergency Works**

(1) The local government must give 7 days notice of any planned works to be undertaken by the local government, that will require closure, part closure or access to an outdoor eating facility or street market location, approved in accordance with this local law.

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

(3) A notice referred to in subclauses (1) and (2) must be served in accordance with clause 5.3.

(4) The permit holder must 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 subclauses (1) and (2) and all rights and privileges granted by the permit must be suspended in accordance with clause 3.11 (2).

#### **5.3 Serving of Notices**

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

#### **5.4 Works on Public Property**

A person must 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*.

*Division 2—Insurance***5.5 Public Liability Insurance and Indemnity**

(1) Where, as a condition of a permit, the applicant, permit holder or the property owner is required to provide a public liability insurance policy, indemnifying the local government against all actions, suits, 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 permit and keep that insurance policy current for the duration of the permit or at all times, the permit or approval holder or the property owner must—

- (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 permit holder for a minimum value of 10 million dollars or such other amount as the local government considers appropriate to the risk and liability 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 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 permit holder or a property owner who refuses or cannot provide a current certificate of insurance 14 days prior to the commencement of any activity, action or thing performed or erected in accordance with the permit, as requested in accordance with subclause (1) commits an offence.

*Division 3—Right of Appeal and Review***5.6 Right of Appeal and Review**

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, or
- (c) give a person a notice,

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

**PART 6—GENERAL****6.1 Persons may be directed to leave local government property**

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

**6.2 Disposal of lost property**

(1) An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the local government in any manner it thinks fit.

(2) Neither the local government nor any local government employee or any Authorised Person must in any way be responsible for any articles or money lost, stolen, damaged or destroyed whilst on or in any local government property or building.

**6.3 Impounding of goods and recovery of expenses**

The local government may—

- (a) impound goods in accordance with regulation 29 of the *Local Government (Functions and General) Regulations 1996*, and
- (b) withhold impounded or confiscated goods until costs are paid, dispose of impounded, confiscated or uncollected goods and recover impounding fees, in accordance with sections 3.46, 3.47 and 3.48 of the Act.

**6.4 Liability for damage to local government property**

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

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

(2) Unless there is proof to the contrary, a person is to be taken to have damaged local government property within subclause (1) where—

- (a) a vehicle caused the damage, the person was the person responsible, at the time the damage occurred, for the control of the vehicle; or

- (b) the damage occurred under a permit or approval, the person responsible is the permit or approval holder in relation to that permit.
- (3) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

## PART 7—ENFORCEMENT

### 7.1 Offences and Penalties

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law must be liable, upon conviction, to a penalty not less than \$500 and 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.

### 7.2 Modified Penalties

- (1) An offence against a clause specified in Schedule 1 of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (3) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in schedule 1.
- (3) Before giving an infringement notice to a person in respect of the commission of a prescribed offence, an Authorised Person should be satisfied that—
- commission of the prescribed offence is a relatively minor matter; and
  - only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

### 7.3 Form of Notices

For the purposes of this local law—

- the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- the form of the notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

## Schedule 1 PRESCRIBED OFFENCES

[clause 7.2]

Item No.	Clause No.	Nature of offence	Modified Penalty \$
1.	2.2(1)	Conducting of a stall in public place without a valid permit	500
2.	2.3(1)	Trading without a valid permit	500
3.	2.8(1)(a)	Failing of stallholder or trader to display or carry permit	250
4.	2.8(1)(b)	Stallholder or trader not displaying a valid permit	250
5.	2.8(1)(c)	Stallholder or trader not carrying accurate scales when selling goods by weight	250
6.	2.8(2)	Stallholder or trader engaged in prohibited conduct	500
7.	2.10	Performing in a public place without a valid permit	250
8.	2.11(2)	Failing of a performer to move onto another area when directed	250
9.	2.14	Failing of a performer to comply with obligations	250
10.	2.16	Establishment or conduct of a Facility without a valid permit	500
11.	2.18	Permit holder of a Facility failing to comply with obligations	250
12.	2.20(1)	Use of a chair or equipment in a Facility without purchase of food or drink from facility	250
13.	2.20(2)	Failing to leave a Facility when requested to do so by permit holder	250
14.	2.23(1)(a)	Offering food for sale or selling food by an itinerant food vendor without a permit	500
15.	3.5(1)	Failing to comply with a condition of a permit	500

<b>Item No.</b>	<b>Clause No.</b>	<b>Nature of offence</b>	<b>Modified Penalty \$</b>
16.	5.1(4)	Failing to comply with requirements of a notice	500
17.	7.1	Other offences not specified	250

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Dated this 30th day of November 2016.

The Common Seal of the Town of Cambridge was affixed by authority of a resolution of the Council in the presence of—

KERI SHANNON, Mayor.  
JASON BUCKLEY, Chief Executive Officer.

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