

5.1.6 LATE ITEM: Review of Process for Outdoor Eating Areas and Display of Goods on Footpaths

Ward:	Both	Date:	23 March 2016
Precinct:	All	File Ref:	SC
Attachments:	Nil		
Tabled Items:	Nil		
Reporting Officer(s):	Gabriela Poezyn, Director Development Services Len Kosova, Chief Executive Officer		
Responsible Officer:	Gabriela Poezyn Director Development Services		

OFFICER RECOMMENDATION:

That Council:

1. **REQUESTS the Chief Executive Officer to prepare an amendment to the City of Vincent’s Trading in Public Places Local Law 2008 for Council’s formal consideration and following public consultation on the 8-yearly review of local laws, in order to give effect to the following changes to the licencing of Outdoor Eating Areas and Display of Goods on Footpaths:**
 - 1.1 **To generally remove the need for the City’s approval of outdoor eating areas and display areas, where those areas comply with existing Local Law and Policy standards and conditions for approval of such areas; and**
 - 1.2 **To specify any circumstances when the City’s approval will still be required;**
2. **NOTES AND ENDORSES Administration’s intent to develop an electronic self-assessment and self-certification tool to assist businesses in the City of Vincent to apply for and obtain licences for outdoor eating areas and outdoor display areas as an interim measure, pending the formal review and revision of the Trading in Public Places Local Law 2008; and**
3. **LISTS for consideration in the Draft 2016/17 Annual Budget a revision and reduction to the fee charged for outdoor eating areas and outdoor display areas, to reflect the self-assessment and self-certification approach referred to in 2 above.**

PURPOSE OF REPORT:

To consider an approach for removing the need for the City’s approval of Outdoor Eating Areas and Display of Goods on Footpaths.

BACKGROUND:

At its Ordinary Meeting held on 8 December 2015, Council considered a Notice of Motion relating to this matter and resolved as follows:

“That Council REQUESTS the Chief Executive Officer to review the City’s rules and requirements relating to outdoor eating areas, to investigate the possibility of removing the need for the City’s approval of those areas, and report back to Council by May 2016”

The need for the City’s approval of outdoor eating areas arises from the Trading in Public Places Local Law 2008, which also mandates the need for approval to display goods on footpaths, for stall holders and traders, and for street entertainers.

Additional guidance on the licencing of outdoor eating areas and display areas (including conditions and specifications) is provided by Policy No. 3.8.1 – Outdoor Eating Areas and Policy No. 3.9.10 – Display of Goods on a Footpath.

Although Council's resolution from December 2015 only required Administration to investigate the possibility of removing the need for the City's approval of outdoor eating areas, Administration expanded its review to also capture display of goods on footpaths, given that similar approval requirements apply and both uses are valuable for place activation.

A Council Member workshop was held on 15 March 2016 where this matter was discussed. At the workshop, it was clear that an appetite exists for removing and simplifying the current licencing requirements for Outdoor Eating Areas and Display of Goods on Footpaths. This can only be done by amending the Trading in Public Places Local Law. Council Members present at the workshop did not indicate any interest to reduce the licencing requirements for Stall Holders and Traders and Street Entertainers, as these were largely viewed as itinerant businesses and not directly contributing to the local business community and economy.

DETAILS:

Outdoor dining areas and display of goods on footpaths create diversity, visual interest and a variety of activity and experiences in the public realm, which all go towards enhancing the atmosphere and vibrancy of a place.

The City's existing regulatory framework provides a comprehensive and prescriptive range of requirements that need to be satisfied prior to or as a condition of approval for outdoor eating areas and the display of goods on footpaths.

Examples of Local Law requirements that need to be satisfied before a licence is issued include:

- health requirements (to ensure that the kitchen and toilet facilities are adequate for the proposed number of persons that will be served from the restaurant and the adjoining alfresco area);
- provisions to indemnify the City in case of damage or injury;
- provisions relating to the layout of the public space proposed to be used (total area, location of area in relation to the street and to ensure pedestrian movement, existing street furniture and items proposed to be placed in the space, including the specifications for awnings, blinds etc.); and
- Management of the area (operating times; requirements for cleanliness and to prevent congestion)

The purpose of these requirements are to protect businesses, customers, the City and members of the public (more broadly) and to ensure that use of the public realm for commercial purposes is equitable and safe.

In its current format, the process requires the City to assess, approve and control outdoor eating areas and the display of goods on footpaths.

The Trading in Public Places Local Law requires a business owner to apply for approval of an outdoor eating area or display area, and for an approval (if granted) to be issued in a form approved by the City. On these terms, it is possible to move towards a self-assessment and self-certification model of licencing, by including all of the existing standards and conditions as criteria that need to be checked, certified and complied with by each business intending to operate an outdoor eating area or display goods on a footpath. These requirements can be incorporated into an electronic self-assessment and self-certification tool that places the onus and obligation on business owners to accurately describe their proposed activity, thus enabling the City to take more of a monitoring and compliance role – in turn reducing the need to charge the existing fees for cost-recovery.

The current Local Law has been entirely constructed around the need for an application, assessment and approval of outdoor eating areas and display areas. This need for approval 'in all cases' can only be eliminated or converted to a need for approval 'by exception' if the Local Law is amended.

CONSULTATION/ADVERTISING:

No public consultation has been undertaken in preparing this report to Council.

Public consultation (minimum 6 weeks) will need to occur this year in respect of the review of the Trading in Public Places Local Law. If (either at that time or in response to submissions received) Council proposes to amend or revoke the Local Law, then it will need to embark on an additional public consultation process to specifically invite comment on the amendment(s) or revocation proposed.

LEGAL/POLICY:

The Trading in Public Places Law 2008 is due for its 8-yearly review this year, in accordance with Section 3.16 of the *Local Government Act 1995*. If Council decides to amend the Local Law after it has completed the review process stipulated under s. 3.16, then it must initiate the formal Local Law amendment process prescribed by s. 3.12 of the Act.

As previously stated, guidance on outdoor eating areas and display of goods on footpaths is also provided by Council's Policies No. 3.8.1 and No. 3.9.10.

RISK MANAGEMENT IMPLICATIONS:

Low/Medium: Whilst the proposed move towards self-assessment, self-certification and eventual removal of the need for City approval of outdoor eating areas and display areas is not without its risks, Administration's view is that:

- Those risks can be mitigated and managed through the self-certification obligations, simplification of the current regulatory framework and through proactive monitoring and enforcement by the City;
- The City is already exposed to these risks by being involved in the assessment and approval process by effectively warranting (through its approval) that everything is in order and acceptable; and
- The Local Law includes a right for the City to take action in respect of any identified risk or non-compliance, which right would not be fettered through either self-certification or removing the need for approval altogether.

STRATEGIC IMPLICATIONS:

This initiative will contribute to the following objective from the City's *Strategic Community Plan 2013-2023*:

"Economic Development

2.1.1 *Promote business development and the City of Vincent as a place for investment appropriate to the vision for the City."*

SUSTAINABILITY IMPLICATIONS:

Not applicable

FINANCIAL/BUDGET IMPLICATIONS:

Under the City's 2015/16 Budget, the following fees and charges apply to outdoor eating areas and display of goods on footpaths:

<u>Outdoor Eating Area:</u>	Initial Application - \$220
	Annual Licence Renewal - \$73
	Transfer of Annual Licence - \$73
	Charge/m2 - \$88
	Brass Delineation Plates - \$27/plate
	Amendment Fee (for changing 25% or less) - \$114
	Amendment Fee (for changing more than 25%) - \$218

Display of Goods on Footpath: \$78 (1 year licence) or \$130 (3 year licence)

These fees are in addition to the fees that apply for licencing and inspection of a food business under the *Food Act 2008*.

The City currently receives approximately \$130,000 p.a. in income from annual licence fees associated with outdoor eating areas and display of goods on footpaths. These fees both reflect and offset the cost of the City administering the current licencing framework. However, if this framework is adapted into a self-assessment and self-certification approach then the fees charged by the City could be dramatically reduced, to reflect the lesser resourcing requirements for the City to itself assess and issue approvals.

COMMENTS:

Administration supports amending the Trading in Public Places Local Law to generally remove the need for the City's approval for outdoor eating areas and display areas, where those areas comply with existing standards and conditions. However, such an amendment to the Local Law will likely take in excess of 12 months to progress and will ultimately need to be approved by the WA Parliament through its Joint Standing Committee on Delegated Legislation.

In the meantime, Administration is intending to develop an electronic self-assessment and self-certification tool to allow businesses to (themselves) assess, certify and obtain an approval under the Local Law for outdoor eating areas and display areas. This will involve some expenditure to develop, test and implement the tool, which would occur in the current financial year, to (ideally) prepare for implementing this new approach in the 2016/17 financial year. Implementing the tool would in turn then justify a reduction in fees charged by the City for licencing of these activities, recognising that the onus and obligation to assess and achieve compliance would move from the City to the business operator.

A streamlined approvals process, would empower businesses to adapt to changing rules and economic/customer conditions, and would create a more attractive statutory framework for doing business in and with the City of Vincent.

It is recommended that Council adopts the Officer Recommendation.
