



CITY OF VINCENT

LOCAL GOVERNMENT ACT 1995

TRADING IN PUBLIC PLACES LOCAL LAW 2008

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SCHEDULE 1

LOCAL GOVERNMENT ACT 1995

CITY OF VINCENT

TRADING IN PUBLIC PLACES LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Vincent resolved on 26 February 2008 to make the following local law.

PART 1 – PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Vincent Trading in Public Places Local Law 2008*.

1.2 Objective

- (1) The objective of this local law is to provide for the regulation, control and management of trading activities, outdoor eating facilities, stalls, displays of goods and items and 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 control trading activities and street entertainment in any street or public place within the district.

1.3 Commencement

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

1.4 Repeal

- (1) The following local laws adopted by the City of Vincent -
 - (a) *Local Law Relating to Alfresco Dining*, published in the *Government Gazette* on 30 April 1998;
 - (b) *Local Law Relating to Display of Items on a Footpath*, published in the *Government Gazette* on 14 June 2000 and as amended and published in the *Government Gazette* on 2 March 2001 and 4 January 2002;
 - (c) *Local Law Relating to Street Trading*, published in the *Government Gazette* on 22 December 1998;

are repealed on the day this local law comes into operation.

1.5 Application

This local law applies throughout the district.

1.6 Interpretation

In this local law unless the context requires otherwise:

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

“applicant” means a person who applies for a permit under this local law;

“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 any fee which may be imposed as a condition of approval of an application;

“authorised person” means a person authorised by the local government under section 9.10 of the Act, to perform any of the functions of an authorised person under this local law;

“carriageway” means the paved or made portion of a thoroughfare used or intended for use by vehicles;

“CEO” means the Chief Executive Officer of the local government;

“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;

“district” means the district of the local government;

“footpath” means a path set aside for use by pedestrians and cyclists that is on a thoroughfare, and includes all that part of a thoroughfare lying between the edge of the carriageway and the property boundary nearest to that edge on the same side of the thoroughfare;

“goods” shall have the same meaning given to it in section 3.38 of the Act;

“hire” includes offer to hire or expose for hire;

“kerb” includes the edge of a carriageway;

“local government” means the City of Vincent;

“local government property” means anything except a thoroughfare -

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an otherwise unvested facility under section 3.53 of the Act;

“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 the physical, mental or social well-being of another person of normal susceptibility;
- (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;

“permit” means a permit issued under this local law;

“permit holder” means a person who holds a valid permit;

“person” does not include the local government;

“planning approval” means an approval issued under a Town planning scheme;

“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 person enabling its use for private purposes and includes any building or structure thereon;

“public facility” includes any light, power or telephone pole, fire hydrant, drain, sump, tree, sign, traffic light, parking device or meter, shelter, seat, telephone box, letter boxes, public toilet or any work provided by a statutory body or authority, in any street or public place;

“public place” includes any thoroughfare or place which the public are allowed to use, whether the thoroughfare or place is or is not on private property and includes, parklands, squares, reserves, beaches, and other lands set apart for the use and enjoyment of the public, including local government property, but does not include premises on private property from which trading is lawfully conducted under a written law;

“street” means a thoroughfare;

“Town planning scheme” means a Town planning scheme of the local government made under the *Planning and Development Act 2005*;

“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,

“valid”, in relation to a permit issued under this local law means current and for which all the associated fees have been paid in full;

“vehicle” includes –

- (a) every conveyance, not being a train, boat, aircraft or wheelchair, and every object capable of being propelled or drawn on wheels, tracks or by any means;
- (b) an animal being driven or ridden; and
- (c) a vehicle described in the *Road Traffic Act 1974*;

“verge” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare.

1.7 Fees and charges

All fees and charges under this Local Law shall be determined by the local government from time to time in accordance with sections 6.16 to 6.19 of the Act.

PART 2 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and Traders

2.1 Definitions

In this Division, unless the context requires otherwise –

“Assistant” means a person who carries out trading on behalf of the permit holder in accordance with the permit issued to the permit holder;

“charitable organisation” means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium;

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

“newspaper” means any paper containing public news, intelligence or occurrences, or any remarks or observations therein printed for sale and published periodically, or in parts or numbers, at intervals not exceeding seven days between the publication of any two such papers, parts or numbers;

“stall” means a moveable or temporary fixed structure, stand or table in, on or from which goods, wares, merchandise or services are displayed or sold or hired or offered for sale or hire;

“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; and

“trader’s permit” means a permit issued to a trader.

2.2 Stallholder's permit

- (1) A person shall 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 shall –
 - (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:
 - (i) the proposed stall; and
 - (ii) the proposed location of the proposed stall and the area in a radius of approximately 10 metres around that location, showing on a scale of approximately 1:100 the location of all carriageways, footpaths, verges, street furniture, bins, light poles, parking signs, traffic lights, other impediments to pedestrian traffic and premises abutting any verge or footpath.

2.3 Trader's permit

- (1) A person shall 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 shall –
 - (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.
- (3) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

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 for that purpose.

2.5 Matters to be considered in determining application

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

- (a) the stall or trading would –
 - (i) obstruct the visibility or clear sightlines of any person at an intersection on a thoroughfare; or
 - (ii) impede pedestrian access; and
- (b) the stall or any proposed structure or vehicle which may be used by a trader may obstruct or impede the use of the public place for the purpose for which it was designed.

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;
 - (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 sum or bond of a value determined by the local government to secure compliance with the terms and conditions of the permit and the forfeiture of that sum or bond on non-compliance;
 - (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 or the conditions of the permit, 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 shall apply to the nominee as if he or she was the permit holder.

2.7 Exemptions from requirement to pay fee

- (1) 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.
- (2) 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 shall –
- (a) comply with the terms and conditions of her or his permit;
 - (b) 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;
 - (c) not display a permit unless it is a valid permit;
 - (d) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Trade Measurement Act 2006*; and
 - (e) in the case of a stallholder:
 - (i) maintain the stall, vehicle or structure in a safe and serviceable condition; and
 - (ii) ensure that the area of the stall, vehicle or structure is kept in a clean and tidy condition.
- (2) A stallholder or trader shall be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the thoroughfare or public place arising from the conduct of the stall or the carrying on of the trading and the local government may recover such costs from the permit holder in a Court of competent jurisdiction as a debt owing to it.
- (3) A stallholder or trader shall 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 or cause a nuisance;
 - (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;
 - (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;
 - (e) sell or provide goods or services other than those specified in the permit;
 - (f) cry out or shout about, or permit any other person to cry out or shout about, any goods or services in any public place; or
 - (g) use, or permit to be used, any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound in any public place, unless approved by the local government.

Division 2 - Street Entertainers

2.9 Definitions

In this Division, unless the context requires otherwise –

“entertainer’s permit” means a permit issued to a person who wishes to perform in a public place;

“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 holder” means the holder of a valid entertainer’s permit;

“permitted area” means the area or areas, specified in an entertainer’s permit, in which the permit holder may perform;

“permitted time” means the time or times, specified in an entertainer’s permit, during which the permit holder may perform;

“solicit” in relation to money, means actively seeking or calling for a donation from another person, but does not include a non verbal invitation by a permit holder to place a donation in a receptacle within the permitted area; and

“permit free entertainer zone” means an allocated area where an entertainer can perform without the need for a permit.

2.10 Permit free entertainer zone

(1) A performer or performance group shall register their contact details with the City of Vincent prior to performing within the Permit Free Entertainer Zone;

(2) A permit to perform is not required within the Permit Free Entertainer Zone;

(3) The performer must perform in accordance with the City’s Risk Management Guidelines and Code of Practice for Street Performers;

(4) An authorised person can require a street performer to cease performing if they are not complying with the Risk Management Guidelines and Code of Practice for Street Performers;

(5) Performers may only perform at prescribed locations in the Permit Free Entertainment Zone which are delineated by the City; and

(6) The City can designate any public space as a Permit Free Entertainer Zone.

2.11 Entertainer's permit required to perform

- (1) A person shall not perform in a public place outside of the Permit Free Entertainer Zone without a valid entertainer's permit.
- (2) Every application for an entertainer's permit shall –
 - (a) state the full name and address of the applicant;
 - (b) specify the nature of the proposed performance;
 - (c) specify whether any amplifiers, sound equipment or sound instruments are to be used in the proposed performance; and
 - (d) specify the number of people involved in the proposed performance, including the name and date of birth of anyone proposed to be involved in the performance who is under 14 years of age.
- (3) A person under the age of 14 years is not to perform, unless authorised by the local government;
 - (a) during school hours on school days; or
 - (b) between 7.00pm one day and 6.00am the following day.

2.12 Variation of permitted area and permitted time

- (1) The local government or an authorised person 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 an entertainer's permit.
- (2) The local government or an authorised person 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.

2.13 Duration of permit

An entertainer's 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.

2.14 Cancellation of permit

The local government may cancel an entertainer's permit if in the opinion of an authorised person –

- (a) 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

- (b) the performance otherwise constitutes a nuisance.

2.15 Obligations of permit holder or performers within the Permit Free Entertainer Zone

- (1) Performers in the Permit Free Entertainer Zone shall not perform in a public place otherwise than in accordance with the terms and conditions of the Risk Management Guidelines and Code of Practice for Street Performers and without having registered their name, address and telephone number with the City.
- (2) A permit holder shall not perform in a public place otherwise than in accordance with the terms and conditions of her or his entertainers permit
- (3) An authorised person may require a permit holder or performer in a Permit Free Entertainer Zone to cease performing when –
 - (a) The performer/s are deemed to be causing a nuisance or is deemed to be acting inappropriately in a public place;
 - (b) The performer is wearing dirty, torn or ragged clothing or clothing with offensive words, symbols or motifs;
 - (c) The performer/s do not keep their site safe and clean while working;
 - (d) The performer places, installs, erects, plays or uses 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.
 - (e) The performer/s is causing, or is contributing to, undue obstruction to pedestrians and vehicular traffic and entrances to shops or buildings;
 - (f) The performer/s is interfering in any way with an approved entertainment or activity;
 - (g) The performer/s is using dangerous implements or materials as part of a performance and do not have a current Public Liability Certificate as required in Table A of the Risk Management Guidelines and Code of Practice for Street Performers or perform any act that endangers the safety of the public;
 - (h) Perform any act of cruelty to an animal;
 - (i) Allow any person under the age of 14 years to perform during school hours on school days or between 7pm one day and 6am the following day, unless authorised by the local government.
 - (j) A performer is deemed to be acting in contravention to the Risk Management Guidelines and Code of Practice for Street Performers.”

Division 3 - Outdoor Eating Areas

2.16 Definitions

In this Division, unless the context requires otherwise –

“Food Act” means the *Food Act 2008*;

“food business” has the meaning given to it in section 10 of the *Food Act 2008*;

“furniture” means chairs, tables, waiters’ stations, planter boxes, umbrellas, screens, barriers, awnings and any other similar structure or equipment;

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

“licensed premises” has the meaning given to it in section 3(1) of the *Liquor Control Act 1988*;

“outdoor eating area” means an outdoor eating facility or establishment on any part of a public place in which furniture is 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; and

“permit holder” means the person to whom a permit has been issued to establish or conduct an outdoor eating area.

2.17 Permit required to conduct an outdoor eating area

A person shall not establish or conduct an outdoor eating area without a valid permit.

2.18 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 3.5, the local government may consider in addition to any other matter it considers relevant, whether or not –

- (a) the outdoor eating area is conducted in conjunction with and as an extension of food premises or licensed premises which abut the outdoor eating area, and whether the applicant is the person conducting such food premises or licensed premises;
- (b) any abutting food premises are registered as an eating-house in accordance with the Health Act ;
- (c) the use of the abutting food premises or licensed premises as such is permitted under the City planning scheme;
- (d) the outdoor eating area will comply with any local law made under section 172 of the Health Act;
- (e) users of the outdoor eating area will have access to proper and sufficient sanitary and ablutionary conveniences;
- (f) the outdoor eating area would –
 - (i) obstruct the visibility or clear sight lines of any person at an intersection of thoroughfares; or
 - (ii) impede pedestrian access;

- (g) the furniture to be used may obstruct or impede the use of the public place for the purpose for which it was designed; and
- (h) the abutting food premises or licensed premises provide sufficient car parking bays for customers of the outdoor eating area, and in this respect the car parking requirements of the City planning scheme may be used as a guide.

2.19 Obligations of permit holder

- (1) The permit holder for an outdoor eating area shall –
 - (a) comply with the terms and conditions of the permit to establish and conduct the outdoor eating area;
 - (b) ensure that the outdoor eating area is conducted at all times in accordance with the provisions of this local law and any local law made under section 172 of the Health Act;
 - (c) ensure that the eating area is kept in a clean and tidy condition at all times;
 - (d) maintain the furniture in the eating area in a good, clean and serviceable condition at all times;
 - (e) be solely responsible for all and any costs reinstatement or reconstruction of any part of the public place arising from the conduct of the outdoor eating area;
 - (f) on the expiration of or cancellation of a permit to establish or conduct an outdoor eating area, the permit holder shall at his or her cost, reinstate or restore the public place on which the outdoor eating area is established or conducted, to a condition consistent with its condition prior to the commencement of the outdoor eating area and which is to the reasonable satisfaction of the local government; and
 - (g) be solely responsible for all rates and taxes levied upon the land occupied by the outdoor eating area.
- (2) Whenever, in the opinion of the local government or an authorised person, any work is required to be carried out to an outdoor eating area, the local government or authorised person may give a notice to the permit holder for the outdoor eating area 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 an outdoor eating area.

2.20 Removal of an outdoor eating area unlawfully conducted

Where an outdoor eating area is conducted without a permit, or in contravention of a condition of a permit, any furniture may be removed by a City Ranger or Authorised Officer and impounded in accordance with the Act.

2.21 Use of an outdoor eating area by public

- (1) A person shall not occupy a chair or otherwise use the furniture in an outdoor eating area the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the permit holder of the outdoor eating area.
- (2) A person shall leave an outdoor eating area when requested to do so by the permit holder or an authorised person.

2.22 Temporary removal of an outdoor eating area may be requested

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

Division 4 – Display of Goods on a Footpath

2.23 Definitions

In this Division, unless the context otherwise requires:

“permit holder” means the person to whom a goods permit has been issued;

“goods permit” means a permit to display goods; and

“goods” has the meaning given to it in the Act.

2.24 Permit period

The local government may grant approval for the display of goods for one year or three years, whichever the applicant chooses on the application for a goods permit.

2.25 Goods permit

- (1) A person shall not display goods on a footpath unless that person is the holder of a valid goods permit.
- (2) Every application for a goods permit shall –
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed permitted area of the goods;
 - (c) be accompanied by an accurate plan and description of:
 - (i) the proposed goods; and
 - (ii) the proposed location of the goods and the area in a radius of approximately 10 metres around that location showing on a scale of approximately 1:100 the location of all carriageways, footpaths, verges,

street furniture, bins, light poles, parking signs, traffic lights, other impediments to pedestrian traffic and premises abutting any verge or footpath; and

- (d) provide a colour photograph or similar representation of the goods.

2.26 Matters to be considered in determining application

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

- (a) the goods would –
- (i) obstruct the visibility or clear sight lines of any person at an intersection of thoroughfares; or
 - (ii) impede pedestrian access; and
- (b) the goods, may obstruct or impede the use of the footpath for the purpose for which it was designed.

2.27 Obligations of permit holder

The permit holder shall –

- (a) maintain the goods or goods display in a safe condition at all times;
- (b) display the permit number provided by the local government in a conspicuous place on or near the goods or goods display and whenever requested by an authorised person to do so, produce the goods permit to that person;
- (c) ensure that the goods are of a stable design and is not readily moved by the wind, and does not cause any hazard or danger to any person using the thoroughfare;
- (d) only display goods on a footpath which immediately abuts and not extending more than 1 metre from the building, which is occupied by the owner of the goods or in a location approved by the local government and specified in the permit; and
- (e) ensure the free passage of persons using the footpath.

2.28 Safety of persons

A person shall not cause or permit goods to be displayed in such a condition, which in the opinion of an authorised person, causes or is likely to cause injury or danger to any person or damage to the clothing or possessions of any person.

2.29 Removal of goods for works

A permit holder shall ensure that goods are removed from any footpath to permit the footpath to be swept or to permit any other authorised work to be carried out when directed to do so by an authorised person.

2.30 Removal of goods

A person shall remove goods which does not comply with the requirements of this local law, from any footpath when directed to do so by an authorised person.

2.31 Unlawful placement of goods

- (1) A person who places, causes or permits to be placed on any footpath any goods which does not comply with the requirements of this local law, commits an offence.
- (2) A person who places, causes or permits to be placed on any footpath any goods which obstructs or may obstruct the use of the footpath commits an offence, unless the person proves they had lawful authority to so place the goods.

PART 3 - PERMITS

3.1 Application of part

This Part applies to an application for a permit under this local law and to permits issued under this local law.

3.2 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall –
 - (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 CEO 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 –
 - (a) which is not in accordance with subclause (2).

- (b) which, in the case of:
 - (i) an application for a stallholder's permit, is not in accordance with clause 2.2(2);
 - (ii) an application for a trader's permit, is not in accordance with clause 2.3(2); or
 - (iii) an application for an entertainer's permit, is not in accordance with 2.10(2); or
 - (iv) an application for a sign permit, is not in accordance with clause 2.24(2);
- (c) which is not accompanied by the plans and specification and the application fee;
- (d) which is not properly completed; or
- (e) where any required plan, specification or photograph does not in the opinion of the CEO or an authorised person, contain sufficient information or is not sufficiently clear to enable the local government to properly consider the application.

3.3 Relevant considerations in determining application for permit

- (1) Where a clause of this local law refers to matters which the local government is to have regard to in determining an application for a permit, the local government shall have regard to those matters prior to making a decision on an application for a permit under clause 3.5 and, in addition, may have regard to the following matters:
 - (a) the desirability of the proposed activity;
 - (b) the location of the proposed activity;
 - (c) the principles set out in the Competition Principles Agreement; and
 - (d) such other matters as the local government may consider to be relevant in the circumstances of the case.

3.4 Grounds on which an application may be refused

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 within the preceding 5 years the applicant has committed a breach of any provision of this local law, or of any other written law relevant to the activity in respect of which the permit is sought;
- (b) that the applicant is not a fit and proper person to hold a permit;
- (c) 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
- (d) such other grounds as the local government may consider to be relevant in the circumstances of the case.

3.5 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).

3.6 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;
- (j) the safe storage, handling, preparation, display and sale of food; and
- (k) the safe display or erection of furniture, goods or other things related to an activity.

3.7 Compliance with 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 shall comply with each of those conditions.
- (2) If the local government varies the terms or conditions of a permit, the permit holder shall comply with those terms or conditions as varied.

3.8 Amendment of permit conditions

- (1) A permit holder may apply in writing to the local government to amend any of the terms or conditions of the permit.
- (2) The local government may, in respect of an application under sub-clause (1) –
 - (a) amend the permit, either in accordance with the application or otherwise as it sees fit; or
 - (b) refuse to amend the permit.
- (3) The local government may, at any time, amend any of the terms or conditions of a permit.
- (4) If the local government amends a permit under this clause, it is to notify the permit holder in writing of the amendment as soon as practicable after the amendment is made and, unless otherwise specified in the amendment, the amended term or condition, or both, of the permit apply from the date of notification.
- (5) If the local government amends a permit otherwise than in accordance with an application from the permit holder, it is, as soon as practicable after the decision to amend is made –
 - (a) to give to the permit holder written notice of, and written reasons for, its decision to amend; and

- (b) inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision.

- (6) In this clause, 'amend' has the meaning given to it in section 5 of the Interpretation Act 1984.

3.9 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 3.13.

3.10 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,

shall apply to an application for the renewal of a permit *mutatis mutandis*.

3.11 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 CEO 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 the CEO or 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.

3.12 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.

3.13 Cancellation of permit

- (1) Subject to clause 8.1, 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 any required public liability insurance or ceases to indemnify 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) shall 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.

3.14 Suspension of permit holder rights and privileges

- (1) The rights and privileges granted to a permit holder on the issue of a permit, shall 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 of and during the carrying out of any works by or on behalf of the State, or an agency or instrumentality of the Crown, or the local government, in or adjacent to the area the subject of the permit.

3.15 Planning approval

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

PART 4 - BOND OR SECURITY

4.1 Security for restoration and reinstatement

(1) For the purpose of ensuring that an outdoor eating area is properly restored or reinstated under clause 2.18(1)(f), on the expiry or cancellation 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 sub-clause (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 bond or security

(1) If a permit holder fails to carry out or complete the restoration or reinstatement works required by clause 2.18(1)(f), the permit conditions or by a notice served by the local government–

- (a) within the time specified in those conditions;
- (b) where no such time has been specified, a reasonable period of time from the expiration or cancellation of the permit to establish or conduct the outdoor eating area; 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 or reinstatement work or so much of that work as remains undone.

(2) The permit holder shall pay to the local government on demand all administrative, legal, contractor and other costs, estimated or incurred by the local government, to restore or reinstate the public place or which the local government may be required to pay under this clause.

(3) The local government may apply the proceeds of any bond or call upon any 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 - MISCELLANEOUS

5.1 Notice requiring works to be done

- (1) Where a permit holder has breached any term or condition of her or his permit or a provision of this local law, the local government may require works to be done by the permit holder to rectify that breach and for that purpose may give a notice to the permit holder –
 - (a) identifying the breach;
 - (b) requiring the permit holder to rectify the breach or do specified works within a specified time so as to remedy the breach; and
 - (c) 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 at the expense of the permit holder. .
- (2) Where, in the opinion of an authorised person, it is necessary to change the location, arrangement or operation of an outdoor eating area so as to maintain public safety, facilitate public works to the footpath or public place, or to protect the amenity of adjacent premises, the authorised person may give a notice to the permit holder –
 - (a) notifying the permit holder of the details of the change in location, arrangement or operation of the outdoor eating area;
 - (b) requiring the permit holder to effect, whether by works or otherwise, the change in location, arrangement or operation of the outdoor eating area; and
 - (c) 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 at the expense of the permit holder.
- (3) Where the permit holder fails to comply with the requirements of a notice issued under subclause (1) or (2), 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.
- (4) The local government may recover the expenses incurred in carrying out the works in accordance with subclause (3):
 - (a) where a bond, bank guarantee or other security has been given under clause 4.1, by applying the proceeds of any bond or calling upon any bank guarantee or other security to meet those expenses; or
 - (b) from the permit holder as a debt due to the local government, in a court of competent jurisdiction.

5.2 Notice to advise permit holder of planned or emergency works

- (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 eating area which is the subject of a valid permit.
- (2) Where the local government is to carry out emergency works in a public place where there is an outdoor eating area, advertising sign or stall which is the subject of a valid permit, there is no requirement to give notice of the works to the permit holder, other than that which is considered reasonable under the circumstances.
- (3) A notice referred to in sub-clauses (1) and (2) shall be given in accordance with the Act.

5.3 Works on public property

A person shall not carry out any works of a structural nature, within a thoroughfare 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*.

5.4 Public liability insurance and indemnity

- (1) Where, as a condition of a permit, a permit holder is required to obtain and maintain a public liability insurance policy, the permit holder shall –
 - (a) enter into an agreement with the local government to provide and maintain the required public liability insurance cover during the entire time that the permit is in place;
 - (b) take out a public liability insurance policy in the name of the permit holder, covering the permit holders legal liabilities in respect of 'the permit holder's usual business activities including the provision of an outdoor eating area (alfresco dining) on footpaths or other trading places which may or may not be under the ownership, care, custody and control of the local government;
 - (c) advise the local government should the permit holder cancel or modify or fail to renew the public liability insurance cover during the period of the licence;
 - (d) provide the local government with a Certificate of Currency confirming that the public liability insurance cover is in place as per the requirements of Clause 5.4(1) prior to issuing of the permit;
 - (e) ensure that, as a minimum, the permit holder's public liability insurance policy has a limit of liability of \$5 million (five million dollars), or such other amount as the local government considers appropriate to the risk and liability involved. At the discretion of the local government, the limit of liability required may be increased at the policy renewal date;
 - (f) ensure that the public liability insurer of the permit holder is a reputable insurer licensed to conduct insurance business in Australia in accordance with the guidelines issued by the Australian Prudential Regulatory Authority (APRA).
- (2) A permit holder who refuses to or does not comply with subclause (1)(e) or (1)(f) commits an offence.

PART 6 - GENERAL

6.1 Authorised person to be obeyed

A permit holder who is given a lawful direction by an authorised person or a member of the WA Police Service, shall comply with that direction.

6.2 Persons may be directed to leave local government property

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

6.3 Lost goods

No local government employee or any authorised person shall in any way be responsible for any goods or money lost, stolen, damaged or destroyed whilst on any local government property or thoroughfare.

6.4 Liability for damage to local government property or thoroughfare

- (1) Where a person unlawfully damages local government property or a thoroughfare, 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 or thoroughfare to the state it was in prior to the occurrence of the damage; or
 - (b) replacing that property.
- (2) On a failure to comply with a notice issued under sub-clause (1), the local government may recover the costs referred to in the notice as a debt due to it in a court of competent jurisdiction.

PART 7- OFFENCES AND PENALTIES

7.1 Offences

- (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) Whenever the local government gives a notice under this local law requiring a person to do any thing, if the person fails to comply with the notice, the person commits an offence.
- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not less than \$250 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 Prescribed offences and modified penalties

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount appearing in the final column of Schedule 1 directly opposite an offence described in that Schedule is the modified penalty for that offence.

7.3 Forms of Infringement and withdrawal notices

For the purposes of this local law –

- (a) where a vehicle is involved in the commission of an offence, the form of the infringement notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- (b) the form of the infringement notice referred to in sections 9.16 and 9.17 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (c) the form of the withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 8 - OBJECTIONS AND APPEALS

8.1 Objections and Appeals

When the local government makes a decision –

- (a) under clause 3.5(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

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

**SCHEDULE 1
PRESCRIBED OFFENCES**

Clause No	Description of Offence	Modified Penalty \$
2.2 (1)	Conducting stall in public place without a permit	250
2.3 (1)	Trading without a permit	250
2.8(1)(a)	Failure of stallholder or trader to comply with terms or conditions of permit	250
2.8 (1)(b)	Failure of stallholder or trader to display or carry permit	100
2.8 (1)(c)	Stallholder or trader not displaying valid permit	100
2.8 (1)(d)	Stallholder or trader not carrying certified scales when selling goods by weight	100
2.8 (3)	Stallholder or trader engaged in prohibited conduct	250
2.10 (1)	Performing in a public place outside of the Permit Free Entertainer Zone without a permit	250
2.11 (2)	Failure of performer to move onto another area when directed	100
2.14	Failure of performer to comply with obligations	100
2.16	Establishment or conduct of outdoor eating area without a permit	250
2.18	Failure of permit holder of outdoor eating area to comply with obligations	250
2.20 (1)	Use of furniture of outdoor eating area without purchase of food or drink from permit holder	100
2.20 (2)	Failure to leave outdoor eating area when requested to do so by permit holder	100
2.24 (1)	Displaying goods on a footpath without a permit	250
2.26 (a)	Failing to maintain goods in a safe and serviceable condition at all times	100
2.26 (b)	Refusing to conspicuously display the permit number on or near the goods or goods display	50
2.26 (c)	Failure to display goods in accordance with conditions of permit	100
2.26 (d)	Displaying the goods more than 1 metre from the adjacent building or in a location not approved by the local government	100
2.26 (e)	Failing to ensure the free passage of persons using the footpath	100
2.27	Permitting goods to be displayed in an unsafe or dangerous manner	250
2.28	Refusing or failing to remove goods to allow sweeping or cleaning	100
2.29	Refusing or failure to remove goods when requested to do so	250
2.30 (1)	Placing or permitting goods contrary to the requirements of the local law	250
2.30 (2)	Placing or permitting an item so as to obstruct a footpath without lawful authority	250
3.7 (1) & (2)	Failure to comply with a condition of a permit	250

Clause No	Description of Offence	Modified Penalty \$
3.12	Failure to produce a permit when requested to do so	100
5.3	Carrying out works in thoroughfare without permission	250
6.1 (1)	Failure to obey a lawful direction of an authorised person	250
6.2	Failing to leave local government property when directed to do so	250
7.1 (2)	Failure to comply with notice	250
7.1	All other offences not described above	100

Dated this 26th day of February 2008.

The Common Seal of the City of Vincent was affixed by authority of a resolution of the Council in the presence of —

NICK CATANIA, JP, Mayor

JOHN GIORGI, JP, Chief Executive Officer

SCHEDULE OF AMENDMENTS

Date of Council Resolution	Date of Gazettal	Amendment Local Law
08.07.08	07.10.08	Trading In Public Places Amendment Local Law 2008
10.02.09	27.02.09	Trading In Public Places Amendment Local Law 2009
16.12.14	16.01.15	Trading in Public Places Amendment Local Law 2014