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LOCAL GOVERNMENT ACT 1995

SHIRE OF KALAMUNDA

**TRADING ON
THOROUGHFARES AND
PUBLIC PLACES LOCAL
LAW 2008**

LOCAL GOVERNMENT ACT 1995

SHIRE OF KALAMUNDA

**TRADING ON THOROUGHFARES AND PUBLIC PLACES
LOCAL LAW 2008**

TABLE OF CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Application
- 1.3 Commencement
- 1.4 Repeal
- 1.5 Interpretation
- 1.6 Permit fees and charges

PART 2—TRADING ON THOROUGHFARES AND PUBLIC PLACES

- 2.1 Person shall not conduct a stall without a permit
- 2.2 Person shall not carry on trading without a permit
- 2.3 No permit required to sell newspaper
- 2.4 Exemptions from requirement to pay fee or to obtain a permit
- 2.5 Conduct of stallholders and traders

PART 3—STALLHOLDER'S AND TRADER'S PERMITS

- 3.1 Application for permit
- 3.2 Decision on application for permit
- 3.3 Relevant considerations in determining application for permit
- 3.4 Grounds on which an application may be refused
- 3.5 Conditions which may be imposed on a permit
- 3.6 Imposing conditions under a policy
- 3.7 Compliance with and variation of conditions
- 3.8 Duration of permit
- 3.9 Renewal of permit
- 3.10 Transfer of permit
- 3.11 Production of permit
- 3.12 Cancellation of permit

PART 4—OFFENCES AND PENALTIES

- 4.1 Offence to fail to comply with notice
- 4.2 Local Government may undertake requirements of notice
- 4.3 Offences and penalties
- 4.4 Modified penalties
- 4.5 Form of notices
- 4.6 Objections and appeals

SCHEDULE—PRESCRIBED OFFENCES

11 July 2008

GOVERNMENT GAZETTE, WA

3243

LOCAL GOVERNMENT ACT 1995

SHIRE OF KALAMUNDA

**TRADING ON THOROUGHFARES AND 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 Shire of Kalamunda resolved on 19 May 2008 to make the following local law.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the *Shire of Kalamunda Trading on Thoroughfares and Public Places Local Law 2008*.

1.2 Application

This local law shall apply throughout the district of the Shire of Kalamunda.

1.3 Commencement

This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

1.4 Repeal

(1) The *Shire of Kalamunda Trading in Thoroughfares and Public Places Local Law* published in the *Government Gazette* on 19 September 2001 is repealed.

(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 Interpretation

In this local law, unless the context otherwise requires—

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

“**applicant**” means a person who applies for a permit;

“**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;

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

“**commencement day**” means the day on which this local law comes into operation;

“**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;

“**Council**” means the council of the local government;

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

“**footpath**” has the meaning given to it in the *Road Traffic Code 2000*;

“**local government**” means the Shire of Kalamunda;

“**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” within section 3.53 of the Act;

“**owner**” or “**occupier**” in relation to land does not include the local government;

“**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;

“**premises**” for the purpose of the definition of “public place”, means a building or similar structure, but does not include a carpark or a similar place;

“**public place**” includes—

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law;

“**Regulations**” means the *Local Government (Functions and General) Regulations 1996*;

“**sign**” includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;

“**stall**” means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, 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;

“**thoroughfare**” has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management or control of the local government;

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

“**trader’s permit**” means a permit issued to a trader;

“**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; or
 - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services,

but does not include—

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or
the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services, or from the person nominated by the purchaser of those pre-ordered goods or services, when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder’s permit;
- (f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from, a person who sells those goods or services;
- (g) the selling or the offering for sale or hire by a person, of goods of her or his own manufacture or services which he or she provides; and
- (h) the selling or hiring or the offering for sale or hire of—
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services,

which are only sold directly to consumers and not through a shop;

“**vehicle**” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (b) a pram, a stroller or a similar device.

1.6 Permit fees and charges

All permit fees and charges applicable under this local law shall be as determined by the local government from time to time, in accordance with section 6.16 of the Act.

11 July 2008

GOVERNMENT GAZETTE, WA

3245

PART 2—TRADING ON THOROUGHFARES AND PUBLIC PLACES**2.1 Person shall not conduct a stall without a permit**

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.

2.2 Person shall not carry on trading without a permit

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.

2.3 No permit required to sell newspaper

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

2.4 Exemptions from requirement to pay fee or to obtain a permit

(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 Part.

2.5 Conduct of stallholders and traders

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

- (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 tested and certified in accordance with the provisions of the *Trade Measurement Act 2006*.

(2) 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;
- (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.

PART 3—STALLHOLDER'S AND TRADER'S PERMITS**3.1 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) 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 the proposed stall.
- (4) 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.
- (5) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (6) The local government may require an applicant to give local public notice of the application for a permit.
- (7) 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.

3.3 Relevant considerations in determining application for permit

In determining an application for a permit, 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.

3.4 Grounds on which an application may be refused

The local government may refuse to approve an application for a permit 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 the applicant is not a desirable or suitable 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 Conditions which may be imposed on a permit

(1) If the local government approves an application for a permit 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) a requirement 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;
- (d) 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;

11 July 2008

GOVERNMENT GAZETTE, WA

3247

- (e) the goods or services in respect of which a permit holder may conduct a stall or trade;
 - (f) the number of persons and the names of persons permitted to conduct a stall or trade;
 - (g) 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;
 - (h) whether and under what terms the permit is transferable;
 - (i) 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;
 - (j) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
 - (k) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
 - (l) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
 - (m) the designation of any place or places where trading is wholly or from time to time prohibited by the local government;
 - (n) the payment of a fee;
 - (o) the duration and commencement of the permit;
 - (p) the commencement of the permit being contingent on the happening of an event;
 - (q) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
 - (r) the approval of another application for a permit which may be required by the local government under any written law;
 - (s) 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;
 - (t) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
 - (u) 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.
- (2) Subclause (1) does not limit the power of the local government to impose other conditions on the permit under clause 3.2(1)(a).

3.6 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 shall 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.

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

3.8 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 the permit; or
- (b) cancelled under clause 3.12.

3.9 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*.

3.10 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
 - (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.
- (5) 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 shall apply to the nominee as if he or she was the permit holder.

3.11 Production of permit

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

3.12 Cancellation of permit

- (1) Subject to clause 4.6, 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; or
 - (b) 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.

PART 4—OFFENCES AND PENALTIES

4.1 Offence to fail to comply with notice

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.

4.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 4.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

4.3 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 shall be liable, upon conviction, to a penalty not exceeding \$5000, 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.

4.4 Modified penalties

- (1) An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.

11 July 2008

GOVERNMENT GAZETTE, WA

3249

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) 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.

4.5 Form of notices

For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is to be in the form of Form 1 of Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is to be in the form of Form 2 of Schedule 1 of the Regulations;
- (c) the form of the withdrawal of infringement notice referred to in section 9.20 of the Act is to be in the form of Form 3 in Schedule 1 of the Regulations.

4.6 Objections and appeals

When the local government makes a decision under this local law as to whether it will—

- (a) grant or refuse to grant a person a permit;
- (b) renew, vary or cancel a permit; or
- (c) give a person a notice under subclause 4(1),

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations shall apply to that decision.

SCHEDULE
PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
2.1	Conducting of stall in public place without a permit	350
2.2	Trading without a permit	350
2.5(1)(a)	Failure of stallholder or trader to display or carry permit	125
2.5(1)(b)	Stallholder or trader not displaying valid permit	125
2.5(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
2.5(2)	Stallholder or trader engaged in prohibited conduct	125
3.7	Failure to comply with a condition of a permit	125
3.11	Failure to produce permit on request of authorised person	125
4.1	Failure to comply with notice given under local law	125

Dated this 11th day of June 2008.

The Common Seal of the Shire of Kalamunda was affixed by authority of a resolution of the Council in the presence of—

DONALD McKECHNIE, Shire President.
DAVID VAUGHAN, Chief Executive Officer.