

DEVONPORT CITY COUNCIL

STREET TRADING BY-LAW BY-LAW NO. 1 OF 2020

This by-law of the Devonport City Council is made under section 145, of the *Local Government Act 1993* for the purpose of regulating and licensing street trading on highways and in public places within the Devonport municipality.

PART 1 - PRELIMINARY

1 Short title

This by-law may be cited as the Street Trading By-Law Number 1 of 2020.

2 Application

This by-law applies to street trading in the Devonport municipal area.

3 Interpretation

In this by-law, unless the contrary intention appears:

'Act' means the *Local Government Act 1993*;

'Alfresco Dining' means the consumption of food or beverages or both by persons seated in an area that is part of a highway or public place;

'Authorised Officer' means the General Manager and any employee of the Council appointed by the General Manager for the purpose of this by-law;

'Council' means the Devonport City Council;

'fee unit' means the sum as prescribed under the provisions of the *Fee Unit Act 1997*;

'food business' has the same meaning as provided in the *Food Act 2003*;

'furniture' includes chairs, tables, trestles, umbrellas; screens, barriers, awnings, waste bins, planter boxes, heaters and portable lighting;

'General Manager' means the General Manager of the Council appointed pursuant to section 61 of the Act;

'highway' means any highway or road shown on the map maintained by Council pursuant to section 208 of the Act;

'infringement notice' has the same meaning as under the *Monetary Penalties Enforcement Act 2005*;

'licence' means a street trading licence issued by an Authorised Officer under this by-law;

'licenced area' means part of a highway or public place which has been approved by the Council on the issuing of a licence as an area that may be used for street trading or Alfresco Dining;

'licensee' means the person to whom a licence has been granted pursuant to this by-law;

'penalty unit' means the sum as prescribed under the provisions of the *Penalty Units and other Penalties Act 1987*;

'premises' means the premises with respect to which a licence is issued;

'portable sign' means a free standing, portable advertising device, commonly known as a sandwich board sign;

'public place' includes:

- (a) all public land as defined by section 177A(1) of the Act and as recorded by the Council in accordance with section 177A(2) of the Act;
- (b) any other land owned by Council;
- (c) any land in which council has an interest including by way of lease or license;
- (d) all marinas, jetties, bridges, wharves, and any other similar structure owned or under the control of Council.

'road' means a road (which is not a highway) with a constructed surface suitable for use of four-wheeled vehicles or an area set aside by the Council as a parking place for vehicles;

'street rubbish bin' means a rubbish bin installed by the Council on the footpath.

'stall' means a movable or temporarily fixed structure, stand or table in, on or from which goods, wares, merchandise or services are sold or offered for sale;

'street trading' means selling or offering for sale goods, wares, merchandise or services on a highway or other public place and includes displaying goods, wares or merchandise for the purpose of offering them for sale, inviting offers for sale, soliciting orders or carrying out any other transaction therein, and includes Alfresco Dining but does not include:

the sale of food by an itinerant vendor under the authority of a temporary food licence under the *Food Act 2003*;

'Street Trading Policy' means the Street Trading Policy adopted by Council on 22 July 2019 or as subsequently amended or superseded;

'vehicle' includes every conveyance, not being a train, boat, aircraft or wheelchair and every object capable of being propelled or drawn on wheels or tracks by any means.

PART 2 – LICENCES AND APPLICATIONS

4 Licences

- (1) No person shall carry on street trading on any highway or in a public place unless that person:
 - (a) is the holder of a valid licence; and
 - (b) is acting in compliance with the requirements, terms and conditions of a valid licence;
- (2) A licence is valid until the 31st day of July next after it is granted or until its revocation pursuant to this by-law, whichever is earlier.

5 Applications for Licences

- (1) An application for a licence shall be in writing in the form set out in Schedule 1 Form 1 and shall –
 - (a) include the full name and residential address of the applicant;
 - (b) specify the location for which the licence is sought;
 - (c) be accompanied by an accurate plan that shows the dimensions in square metres and description of any proposed stall, stand, furniture, structure, portable sign or vehicle which may be used for trading;
 - (d) specify the proposed days and hours of trading;
 - (e) specify the proposed goods, wares, merchandise or services in respect of which trading will be carried on;
 - (f) where the applicant is a corporation specify the full name and address of the natural person who is to comply with the provisions of this by-law;
 - (g) be forwarded to the Council four (4) weeks prior to the date(s) of proposed operation;
 - (h) be accompanied by a copy of a Certificate of Currency of Insurance for Public and Product Liability Cover;
 - (i) evidence that the insurance policy covers the proposed licenced area;
 - (j) address any other requirements, terms or conditions that the Council may consider appropriate; and
 - (k) be accompanied by the fee per application of 16 Fee Units and a fee of 8 Fee Units per square metres of highway or public place to which the application for a licence relates.
- (2) In the case of Alfresco Dining the application shall, in addition to those matters set out at Clause 5(1) include:
 - (a) a plan showing the location and dimensions of the proposed Alfresco Dining licenced area and of the seating and other furniture and details of the placement of waste bins;
 - (b) evidence of the proposed method for the disposal of waste; and
 - (c) evidence that the applicant is the proprietor of a food business which complies with the requirements of the *Food Act 2003*.
- (3) In addition to the standard conditions set out a Clause 11 and Clause 12 of this by-law, an Authorised Officer may grant a licence for street trading on such terms and conditions as the Authorised Officer thinks fit.
- (4) An Authorised Officer may refuse to grant a licence and is to advise the applicant in writing of the reasons for the refusal.
- (5) The granting of a licence only permits the licensee carry on street trading within the licenced area.

6 Form of Licences

- (1) A licence shall be in the form of Schedule 1 Form 2 and shall specify-
- (a) the full name and residential address of the licensee;
 - (b) the licence number;
 - (c) the dates of issue and expiration of the licence;
 - (d) the place to which the licence applies;
 - (e) the number type, form and construction as the case may be for any stall, stand, furniture, structure, portable sign or vehicle which may be used for trading;
 - (f) the particulars of the goods, wares, merchandise or services in respect of which trading may be carried on;
 - (g) in the case of a corporation the full name and address of the natural person specified under Clause 5(1) of this by-law;
 - (h) the days and hours when trading may be carried on; and
 - (i) any other requirements, terms or conditions that the Council may consider appropriate.

7 Refusal to issue a Licence

- (1) An Authorised Officer may refuse to issue a licence if:
- (a) the applicant has committed a breach of this by-law;
 - (b) the proposed activity, place of trading or service, stall, stand, furniture, structure, portable sign or vehicle is not in accordance with the provisions of the Street Trading Guidelines;
 - (c) it has not been provided with a Certificate of Currency for a policy of insurance in the name of the applicant or licensee and the Devonport City Council for public liability in a sum to be specified by Council.
 - (d) the application does not comply with the requirements of Clause 5 of this by-law.

8 Revocation of a Licence

- (1) An Authorised Officer may revoke a licence if the licensee does not comply with:
- (a) the terms and conditions of the licence; or
 - (b) the provisions of this by-law.
- (2) An Authorised Officer:
- (a) may revoke a licence immediately if a licensee breaches any clauses in this By-law; or

- (b) is to give the licensee two (2) days prior notice in writing of a revocation of the licence for any other breach of the terms and conditions of the licence.

9 Licence not Transferable

- (1) A licence is not transferable.

10 Street Trading Without a Licence

- (1) A person must not engage in street trading or cause or permit any service or allow any stall, stand, furniture, structure, portable sign or vehicle to be placed on a highway that could reasonably be used for street trading except in accordance with the conditions of a current licence.

PENALTY: 3 penalty units

- (2) An Authorised Officer may give written notice to a person that any stall, stand, furniture, structure, portable sign or vehicle placed on a highway in contravention of this by-law must be removed within 24 hours.
- (3) A person must not fail to comply with the requirements of a written notice issued by an Authorised Officer pursuant to Clause 10(2).

PENALTY: 3 penalty units

- (4) If a person does not remove any stall, stand, furniture, structure, sign or vehicle specified in the notice under Clause 10(2), an Authorised Officer may remove the merchandise and store it in a safe location until any penalty or fine payable under this by-law together with the cost to Council of the storage, has been paid to Council.

PART 3 – CONDITIONS

11 Standard conditions

- (1) In addition to any specific conditions imposed under Clause 5(3) of this by-law the following standard conditions apply to any licence:

(1) A licensee must:

- (a) Display the current licence in a conspicuous place within the permitted place during the permitted hours of operation;
- (b) Keep the location and any stall, stand, furniture, structure, portable sign or vehicle specified in his or her licence in a clean, safe condition, in good repair and free from rubbish;
- (c) On demand produce his or her licence to any authorised officer or any police officer;
- (d) Remove any non-permanent/non-affixed stall, stand, furniture, structure, vehicle, goods, wares, merchandise and portable signs from the location to which the licence applies and leave that location clean and vacant –

- (i) each day at the conclusion of the permitted hours of operation specified in his or her licence; and
 - (ii) whenever trading is not taking place on the location to which the licence applies.
- (2) A licensee must not:
- (a) cause, permit or suffer any nuisance to exist, arise or continue on or from the location to which the licence applies ;
 - (b) deposit, place or store any goods, wares or merchandise on any highway or other public place other than at the location to which the licence applies;
 - (c) obstruct the free passage of pedestrians on any footpath;
 - (d) create any noise or disturbance at the location to which the licence applies to the annoyance of occupants of nearby premises or passers-by;
 - (e) use or permit to be used any flashing or intermittent lighting apparatus or device on or from the permitted place specified in the licence.
- (3) The licensee agrees to indemnify and keep indemnified and to hold harmless the Devonport City Council including its employees, contractors and agents and each of them, from and against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed, arising out of or in connection with street trading by the licensee pursuant to this licence, except where such actions, costs, claims, charges, expenses or damages have arisen due to the negligence of the Council, its employees, contractors and agents.

12 Standard Condition for Alfresco Dining

- (1) In addition to any specific conditions imposed under Clauses 5(3) and 11 of this by-law the following standard conditions apply to any Licence which includes Alfresco Dining:
- (1) The licensee must:
- (a) ensure that the Alfresco Dining licensed area and the area immediately adjacent to it is at all times kept in a clean, tidy and sanitary condition;
 - (b) ensure that any area between the premises and the Alfresco Dining licensed area is kept in a clean and sanitary condition and is kept safe for the passage of pedestrians;
 - (c) not use street rubbish bins for the disposal of table waste;
 - (d) empty the waste bins of the licensee daily;

- (e) wash the pavement of the Alfresco Dining licenced area and the area between the premises and the Alfresco Dining licensed area daily;
- (f) immediately clean and wash away any liquid, food debris, broken glass, or waste from the licenced area on a table being vacated;
- (g) immediately remove all materials that might cause a pedestrian to slip or trip; and keep the area between the licenced area and the premises free from obstacles; and
- (h) have and maintain in the licensee's premises, required licensing by the Environmental Services Department under the *Food Act 2003* and *Food Safety Standards*.

13 Compliance with Conditions of a Licence

- (1) The licensee of a licence granted pursuant to this by-law must comply with the terms and conditions of that licence.

PENALTY: 3 penalty units and in the case of a continuing offence a daily fine not exceeding 1 penalty unit.

PART 4 – MISCELLANEOUS

14 Insurances

- (1) A licensee is to take out and maintain at all times public and products liability insurance in accordance with Council's Street Trading Policy that covers the street trading licenced area for the period of the licence.

PENALTY: 3 penalty units.

- (2) The insurance cover required by Clause 14(1) is to be for the minimum sum prescribed in Council's Street Trading Policy and be in a form acceptable to the Council and with an insurer acceptable to the Council.

PENALTY: 3 penalty units.

- (3) A licensee must produce the insurance policy required under Clause 14(1) or the relevant Certificate of Currency to an Authorised Officer within 48 hours of a written request for the same.

PENALTY: 3 penalty units.

- (4) An Authorised Officer may revoke a licence immediately if:

- (a) a licensee has refused to allow an Authorised Officer to view a relevant insurance policy or Certificate of Currency; or
- (b) the insurance cover lapses or ceases to cover the licenced area designated for street trading during the term of the licence.

15 Expenses

- (1) A person who breaches this by-law or any condition imposed hereunder may in addition to any other penalty be required to pay any expenses incurred by the Council in consequence of the breach of this by-law.

16 Infringement Notices

- (1) In this clause –
“specified offence” means an offence against the clause specified in Column 1 of Schedule 2 to this by-law.
- (2) An authorised officer may issue an infringement notice to a person in respect of a specified offence and the monetary penalty payable under the infringement notice for that offence is the applicable sum specified adjacent to the offence in Schedule 2 to this by-law.
- (3) Different sums may be specified in an infringement notice according to the nature of the offence and whether payment is made within a specified time.
- (4) An infringement notice is sufficiently served if it is:
 - (a) given to the person apparently in charge of the business at the premises at the time of issue; or
 - (b) affixed to the premises.
- (5) An Authorised Officer may:
 - (a) issue an infringement notice to a person who the authorised officer has reason to believe is guilty of a specified offence; and
 - (b) issue one infringement notice in respect of more than one specified offence.
- (6) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.
- (7) All monies payable to the Council or General Manager in respect of an infringement notice are a debt to the council and recoverable by law.

SCHEDULE 1

FORM 1

DEVONPORT CITY COUNCIL

APPLICATION FOR A STREET TRADING LICENCE

1. Applicant's full name:
2. Address of applicant:
3. Telephone Number:
4. Email:.....
5. Trading name of Business:.....
6. Address of Premises:
7. Indicate owner [] occupier [] of the premises.
8. Proposed days and hours of trading
Days:.....Hours:.....
9. Specify proposed goods, wares, merchandise or services in respect of which trading will be carried on:.....
.....
10. Dimensions m² of proposed licenced area:

TYPE OF PERMIT REQUIRED

- A-frame sign** **Trade Goods** **Alfresco Dining** **Other**

DOCUMENTS REQUIRED

- Insurance – Certificate of Currency**
- Food premises Registration (required if applying for Alfresco Dining Licenced Area)**
- Plan showing location of proposed street trading operation**

11. Attach plan showing the location of the proposed street trading licenced area, the number, type, form and construction as the case may be for any stall, stand, table, structure or vehicle which may be used for trading.

12. Brief description of street stall, stand, table, structure or vehicle proposed:

.....
.....

Alfresco Dining

8.1 number of chairs 8.2 number of tables

8.3 colours of chairs & tables 8.4 number of umbrellas

8.5 colour of umbrellas

13. Attach:

(1) copy of a Certificate of Currency of Insurance for Public and Product Liability; and

(2) evidence that the policy covers the proposed street trading area.

(3) Evidence of Food Business Registration

14. Outline proposed method for the disposal of waste from Alfresco Dining licenced area.....

15. Annual Fee Calculated:.....

Fees associated with the issuing of a street trading licence are detailed in the Council's Schedule of Fees and Charges and increase in accordance with the provisions of the *Fee Unit Act 1997*.

I/We apply for a licence pursuant to the Street Trading By-Law, a copy of which I/We have read and agree and undertake with the Council that upon the issue of any licence pursuant to this application I/We will abide by the provisions of that By-Law.

INDEMNITY

The applicant(s) named in this application form hereby agrees by the signing of this form to indemnify and keep indemnified and to hold harmless the Devonport City Council including employees, contractors and agents and each of them, from and against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against them, arising out of or in connection with street trading by the applicant(s) pursuant to the Street Trading Licence, if issued, in response to this application and during the period that any further licence renewal applies except where such actions, costs, claims, charges, expenses or damages have arisen due to the negligence of the Council, its employees, contractors and agents.

Dated this day 20

Signature of Applicant/s

SCHEDULE 1

FORM 2

DEVONPORT CITY COUNCIL

STREET TRADING LICENCE

Licence No.:

Name of Licensee/s:

Address of Licensee/s:

Site of Premises:

Location of street trading licenced area:

.....

Description of stall, stand, table, structure or vehicle to be licensed:

.....

Area m² of licenced area:.....

Alfresco Dining included / not included

Terms and Conditions under which the Premises are Registered and the License is granted:

- Compliance with the Street Trading By-Law 2020**
- Compliance with the Street Trading Policy**
- Compliance with the Food Act 2003**
- Notify Devonport City Council on any change of ownership.**

You may appeal against any of the conditions of licence/registration within 14 days of the date of issue, by writing to:

The Magistrate
Court of Petty Sessions
8 Griffiths Street
DEVONPORT 7310

This License will remain in force from the date of issue, expiring on the 1st July

.....
Matthew Atkins
GENERAL MANAGER
DEVONPORT CITY COUNCIL

Date:/...../20.....

SCHEDULE 1

FORM 3

DEVONPORT CITY COUNCIL

STREET TRADING INFRINGEMENT NOTICE

Infringement Notice No.: Issue Date:/...../.....

Issued to (Full Names):

Address:

Address of Premises:

.....

It is alleged that at am/pm approximately on day, the day of 20..... at

you/your firm were found to be in breach of the terms and conditions of the Street Trading Licence No. issued on the day of20... with respect to the above premises; and/or the provision of Council's Street Trading By-Law, namely

<u>Particulars of Offence</u>	Penalty Units
.....
.....
.....

1 Penalty Unit is worth \$

Name of Issuing Council Officer Signature

..... Position in Council

PROCEDURE FOR PAYMENT OF PENALTY

Make payments to:

Council Office – 137 Rooke Street, Devonport

Mon – Fri 8.45a.m. – 4.30 p.m.

THIS NOTICE MUST BE RETURNED WITH PAYMENT

Cheques and Money Orders should be crossed, marked “Not Negotiable” and be made payable to Devonport City Council.

If paid by cheque, payment shall be deemed not to be made unless and until the cheque is honoured on presentation. Post dated cheques will not be accepted.

No receipt will be forwarded to you unless requested.

OPTIONS FOR DEALING WITH THIS INFRINGEMENT NOTICE

You must within 28 days of the date of this notice, do one of the following:

- Pay the penalty in the infringement in full;
- Apply to the General Manager for the withdrawal of the infringement notice;
- Apply to the General Manager for a variation of the payment conditions; or
- Lodge a notice of election in accordance with the *Monetary Penalties Enforcement Act 2005* to have the offence(s) set out in the infringement heard and determined by a court.

DEEMED CONVICTION

If, after 28 days you have not lodged a notice of election for a court hearing and the infringement notice has not been withdrawn, you will be taken to be convicted of the offence(s) set out in the infringement notice. You will also be taken to have been convicted of the offence if you pay the penalty in part or in full.

ENFORCEMENT

If you are taken to be convicted and do not pay, either in full or as arranged under a variation of payment conditions, further fees will apply, and the monetary penalty may be enforced under the *Monetary Penalties Enforcement Act 2005*.

ELECT A COURT HEARING

If you wish to have the offence(s) to which this infringement notice relates, heard and determined by a court, or you wish to argue that the penalty should be reduced, you must lodge a written notice to elect a court hearing with the General Manager.

The form, in which a notice of election is to be made, can be obtained from the Devonport City Council Offices, 137 Rooke Street, Devonport.

SCHEDULE 2

1: CLAUSE	2: DESCRIPTION OF OFFENCE	3: PENALTY TO BE APPLIED IF PAID WITHIN 21 DAYS (PENALTY UNITS)	4: MAXIMUM PENALTY (PENALTY UNITS)
10(1)	street trading without a licence	1	2
10(3)	fail to comply with request from an Authorised Officer to remove	1	2
13(1)	fail to comply with conditions of a licence	1	2
14(1)	failure of a licensee to take out and maintain at all times public and products liability insurance	1	2
14(2)	failure to take out insurance cover to the minimum sum required or with an insurer acceptable to	1	2
14(3)	failure to provide insurance policy to an Authorised Officer within 48 hours of request	0.5	1

Certified that the provisions of this By-Law are in accordance with the law by:



Nathan John Street

Solicitor

Dated 03/07/2020

At Hobart

Certified that this By-Law is made in accordance with the *Local Government Act* 1993 by:



Matthew Atkins
General Manager

Dated 9/7/20

At Devonport

The common seal of the Devonport City Council was affixed on in the presence of:



Matthew Atkins
General Manager



Cr Annette Rockliff
Mayor

Dated: 9/7/20