

DEVONPORT CITY COUNCIL

STREET TRADING BY-LAW BY-LAW NO. 1 OF 2010

This By-Law of the Devonport City Council is made under section 145, of the *Local Government Act 1993* (“the Act”) for the purpose of:

- a) regulating and licensing street trading on public streets.
- b) repealing By-Law No.1 of 2005 pursuant to section 154 of the Act and including street dining in this By-Law.

PART 1 - PRELIMINARY

Short title

1. This By-Law may be cited as the Street Trading By-Law Number 1 of 2010.

Application

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

Interpretation

3. In this By-law, unless the contrary intention appears:-

‘**Alfresco dining**’ means the consumption of food or beverages or both by persons seated in an area that is part of a highway;

‘**Authorised Officer**’ means the General Manager and any person appointed by the Council as an officer for the purpose of this by-law;

‘**certificate of registration**’ means the certificate of registration under the Food Act 2003 issued with respect to the food business to which the application for a licence, or a licence, is related;

‘**Council**’ means the Devonport City Council;

‘**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;

‘**highway**’ has the same meaning as under the *Local Government (Highways) Act 1982*;

‘**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;

‘**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 Street Trading Licence is issued;

‘**portable sign**’ means a free standing, portable advertising device, commonly known as a sandwich board sign;

‘**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 in a street 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;

‘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 in any street or 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 current licence;
2. A licence is valid until the 30th day of June 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 –
 - include the full name and residential address of the applicant;
 - specify the location for which the licence is sought;
 - 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;
 - specify the proposed days and hours of trading;
 - specify the proposed goods, wares, merchandise or services in respect of which trading will be carried on;
 - 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;
 - every application should be forwarded to the Council four (4) weeks prior to the date(s) of proposed operation and
 - Be accompanied by a copy of a Certificate of Currency of Insurance for \$10 million Public and Product Liability Cover; and
 - evidence that the insurance policy covers the proposed street trading area .plus
 - any other requirements, terms or conditions that the Council may consider appropriate; and
 - be accompanied by the fee as prescribed under the Fees and Charges Schedule of the Devonport City Council
- (2) In the case of Alfresco Dining the application shall, in addition to those matters set out in sub- paragraph (1) include-

- a plan showing the location and dimensions of the proposed alfresco dining area and of the seating and other furniture and details of the placement of waste bins;
 - evidence of the proposed method for the disposal of waste
 - evidence that the applicant is the proprietor of a registered food business which complies with the requirements of the Food Act 2003
- (3) An Authorised Officer may grant a licence to the proprietor of a business or in the case of Alfresco Dining, to the proprietor of a food business on such terms and conditions as the Authorised Officer thinks fit.
- (4) The 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 to provide street trading in the area of the highway as designated in the licence.

6. Licences and Renewals

- (1) A licence shall be in the form of Schedule 1 Form 2 and shall specify-
- the full name and residential address of the licensee;
 - the licence number
 - the dates of issue and expiration of the licence;
 - the place to which the licence applies;
 - 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;
 - the particulars of the goods, wares, merchandise or services in respect of which trading may be carried on;
 - in the case of a corporation the full name and address of the natural person specified under clause 5(1) of this By-law
 - the days and hours when trading may be carried on and
 - any other requirements, terms or conditions that the Council may consider appropriate.

7. Council May Refuse to issue a Licence

The Council may refuse to issue a licence if:-

- The applicant has committed a breach of this By-Law.
- The proposed activity or place of trading in the opinion of the Council is undesirable;
- The proposed service, stall, stand, furniture, structure, portable sign or vehicle is in the opinion of Council unsuitable in any respect to the location for which the licence is sought;
- 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 City of Devonport for public liability in a sum to be specified by Council.
- 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 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

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 or with the authority of the General Manager.
- (2) An Authorised Officer may issue an infringement notice for this offence.
- (3) An Authorised Officer may give written notice to the licensee 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.
- (4) If the proprietor does not remove any stall, stand, furniture, structure, sign or vehicle specified in the notice under Clause 10 (3), 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. Conditions – In addition to any specific conditions imposed under Clause 5 (3) of this By-Law the following conditions apply to any licence

- (1) A licensee shall-
 - 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 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 shall 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 street 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.

12. Alfresco Dining – In addition to any specific conditions imposed under Clauses 5 (3) and 11 of this By-Law the following conditions apply to any Licence which includes Alfresco Dining.

The licensee must ensure that:

- 1) the licensed alfresco dining area and the area immediately adjacent to it is at all times kept in a clean, tidy and sanitary condition; and
- 2) any area between the premises and the licensed alfresco dining area is kept in a clean and sanitary condition and is kept safe for the passage of pedestrians.
- 3) the licensee does not use existing street rubbish bins for the disposal of table waste.
- 4) without limiting what is required in order to comply with Clause 12(1) of this by-law, the licensee must:
 - a) regularly empty waste bins, and
wash the pavement at least daily; and
 - b) immediately a table is vacated clean and wash away any liquid, food debris, broken glass, cigarette butts or waste from the area; and
 - c) immediately remove all materials that might cause a pedestrian to slip or trip; and
keep the area free from obstacles.
 - d) have and maintain in the licensee's premises, kitchens licensed by the Environmental Services Department under the Food Act 2003 and Food Safety Standards

PART 4 - MISCELLANEOUS

13. Insurances

- (1) An applicant for a licence and a licensee is to take out and maintain at all times public and products liability insurance that covers the area designated for street trading before the applicant is issued with a licence.
- (2) The insurance cover is to be for the minimum sum of \$10 million and be in a form acceptable to the Council and with an insurer acceptable to the Council.
- (3) A licensee must produce the insurance policy required under Clause 13(1) to an Authorised Officer within 48 hours of request for the same.
- (4) An Authorised Officer may issue an infringement notice for this offence; and
- (5) An Authorised Officer may revoke a licence immediately if:
 - (a) a licence holder 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 area designated for street dining during the term of the licence.

14. Indemnity

A licensee must at all times indemnify and keep indemnified the Council against liability for any loss or damage to any property or any damages, moneys, costs, expenses, actions and claims arising out of personal injury to any person made or sustained against the Council where such loss, damages, moneys, costs, expenses, actions and claims arise from any cause whatsoever other than the negligence of the Council or its servants or agents.

15. Offences

- (1) A person who breaches or fails to comply with any term or condition imposed in or applicable to the licence under clause 5 (3), 11 and 12 of this By-Law is guilty of an offence under this by-law.
- (2) A person who breaches any other provision of this by-law is guilty of an offence under this by-law.
- (3) The penalty for an offence under this By-law shall be a fine not exceeding 3 penalty units and in the case of a continuing offence a daily fine not exceeding 1 penalty unit
- (4) 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 any provision of this by-law or any breach of any terms or conditions of a licence.
- (2) An infringement notice may be issued in respect of any breach of a provision of this by-law or any breach of any terms or conditions of a licence and the penalty payable on the infringement notice is 3 penalty units.

An infringement notice is sufficiently issued 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
- (3) 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 .
- (4) The Monetary Penalties Enforcement Act 2005 applies to an infringement notice issued under this by-law.
- (5) 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.

17. Repeal

By-Law No. 1 of 2005 ‘Street Dining By-Law’ is repealed pursuant to Section 154 of the Act.

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 area:.....

TYPE OF PERMIT REQUIRED

- A-frame sign Trade Goods Alfresco Dining Other

DOCUMENTS REQUIRED

- Insurance – Certificate of Currency (must show \$10 million public liability)
- Food premises Registration (required if applying for Alfresco Dining Area)
- Plan showing location of proposed street trading operation

11. Attach plan showing the location of the proposed street trading 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 a minimum sum of \$10 million Public and Product Liability; and

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

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

15. Annual Fee Calculated:

Fees associated with the issuing of a Street Traders licence are detailed in the Council's Schedule of Fees and Charges and are reviewed on an annual basis.

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.

DECLARATION

The applicant named in this application form hereby agrees by signing this form to indemnify and to hold harmless the City of Devonport and/or its 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, or any of them, arising out of or in relation to the Street Trading Licence (if) issued in response to this application and during the period(s) that any further permit renewal applies.

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 Licencee/s:

Site of Premises:

Location of licensed street trading area:

.....

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

.....

Area m² to be licensed:

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 2009**
- Compliance with the Street Trading Policy 2009**
- 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 30th June 2010.



Ian McCallum
GENERAL MANAGER
DEVONPORT CITY COUNCIL

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

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 of200... with respect to the above premises; and/or the provision of Council's Street Trading By-Law, namely

Particulars of Offence Penalty Units

.....

.....

.....

Continuing Offence: a daily fine not exceeding one (1) Penalty Unit

1 Penalty Unit is worth \$

Name of Issuing Council Officer Signature

..... Position in Council

PROCEDURE FOR PAYMENT OF PENALTY

Make payments to:-

Council Office – 44-48 best Street, Devonport

Mon – Fri 8.30a.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, 44-48 Best Street, Devonport.