

Extract from City of Bunbury Local Government and Public Property Local Law

PART 7—OUTDOOR EATING AREAS, TRADING OR ENTERTAINING ON STREETS OR OTHER PUBLIC PLACES

Division 1—Outdoor Eating Areas

Interpretation

7.1 In this Division unless the context otherwise requires—

- “**authorised person**” includes any environmental health officer employed by the local government and the CEO or any other person appointed by the council as an authorised person for the purposes of this Division;
- “**eating area**” means an area in which tables, chairs and other structures are provided for the purpose of supplying food or drink to the public or the consumption of food or drink by the public;
- “**eating house**” means any land, premises or place, or any part thereof, on or in which meals are prepared for service or are served to the public for gain or reward. This term does not include any building, tent or other structure used temporarily for the preparation for service or service of meals to the public, at any fair, show, military encampment, races, or other public sports, games or amusements;
- “**Health Act**” means the *Health Act 1911* (as amended) and includes regulations and local laws made thereunder or any subsequent legislation repealing and replacing this legislation;
- “**licence**” means a licence issued by the local government under this Division to set up and conduct an outdoor eating area;
- “**licensee**” means the person who is the holder of a licence;
- “**licence plans**” means plans attached to and forming part of a licence depicting those areas of a street or public place within which an outdoor eating area may be set up and conducted;
- “**outdoor eating area**” means an outdoor eating area in a street or public place;
- “**proprietor**”—
- (1) has the same meaning assigned to it by Section 160 of the Health Act, or
 - (2) means the holder of a licence granted under the *Liquor Licensing Act 1988* where the premises in question are the subject of a Hotel licence, a licence or a Restaurant licence or Extended Trading Permit granted under that Act;
- “**public facility**” means any structure, item or fitting whether in a street or public place that is the property of or has been provided by a Government Department, instrumentality of the Crown or the local government.

Outdoor eating areas located on private property

7.2 This Division does not apply to any outdoor eating area set up or conducted in a place located on private property notwithstanding that the public are allowed to use that place.

Constraints to set up or conduct an outdoor eating area

7.3 No person shall set up or conduct an outdoor eating area in a street or public place—

- (a) other than in a portion of a street or public place adjacent to an eating house;
- (b) unless the person is the proprietor of the eating house referred to in sub-clause (a) of this clause;
- (c) unless the person is the holder of a valid and current licence issued pursuant to this Division; and
- (d) otherwise than in accordance with—
 - (i) licence plans;
 - (ii) statement or declarations within the proprietor’s licence application;
 - (iii) licence conditions; and
 - (iv) full observance of any requirements of the *Health Act 1911*.

Form of application

7.4 The form of application for any licence under this Division shall be in the form determined by the local government.

Application for licence

7.5 A proprietor shall complete an application form when applying for a licence. The form shall—

- (a) include that person’s full name and address;
- (b) be accompanied by specifications and a plan showing the proposed outdoor eating area. The plan shall be at a scale of not less than 1:50 and show—
 - (i) the location and dimensions of the proposed outdoor eating area; and
 - (ii) the position of all tables, chairs and other structures proposed to be provided in the eating area and how such items are to be confined within the outdoor eating area;
- (c) be accompanied by specifications and a plan on a scale of not less than 1:200 showing the outdoor eating area and all structures thereon including any public facility, parking area or parking restriction within 30 metres of the boundaries of the outdoor eating area;

- (d) be accompanied by a coloured photograph or a detailed drawing of the tables, chairs and other structures to be set up in the outdoor eating area;
- (e) provide the local government with written particulars of arrangements made with respect to public risk and any other relevant insurance; and
- (f) provide the local government with any other information that the local government considers necessary in the circumstances of the case.

Determination of application

7.6 The local government or an authorised person may approve an application on such terms and conditions, if any, as it sees fit.

Form of licence

7.7 The form of a licence under this Division shall be in the form determined by the local government.

Refusal of licence

7.8 The local government or an authorised person may refuse to issue a licence if—

- (a) the applicant has at any time failed to comply with any provision of this Division;
- (b) the applicant has failed to comply with any provision of the Health Act;
- (c) any element of the proposed outdoor eating area is contrary to any condition of approval made by resolution of the local government as an adjunct to this Division; or
- (d) the proposed outdoor eating area is in the opinion of the local government undesirable or unsuitable. In the case of subclauses (c) and (d), the local government or an authorised person shall provide the applicant with the reasons in writing.

Conduct of outdoor eating area

7.9 The licensee shall—

- (a) ensure that the outdoor eating area is conducted at all times in accordance with the provisions of this Division and the terms and conditions of the licence;
- (b) maintain the chairs, tables and other structures set up in the outdoor eating area in a clean and serviceable condition at all times;
- (c) maintain the paving of the outdoor eating area in a clean condition, free from staining and ingrained food deposits;
- (d) be solely responsible for all or any costs associated with restoring the street, footpath, public facility, tree or plant within or adjacent to the outdoor eating area where damage has been caused as a result of the conduct of the outdoor eating area;
- (e) not allow for any reason whatsoever business activities associated with the outdoor eating area to obstruct the free passage of pedestrians on any footpath or the free passage of motor vehicles on any street or any part of a footpath used for vehicle crossings, notwithstanding the provisions of this local law;
- (f) not allow the outdoor eating area to be situated in such a way that access from the footpath to kerbside parking is unreasonably obstructed;
- (g) not allow the outdoor eating area equipment to hazardously obstruct the vision of vehicle drivers or pedestrians;
- (h) produce a licence whenever requested to do so by an authorised person; and
- (i) not transfer, assign or dispose of the licence.

Period of licence

7.10 A licence is valid for the period between the date of issue and the following 31 August, or until its revocation.

Licence fees and charges

7.11 The licence fees and charges shall be paid by the licensee to the local government prior to the issuing of the licence.

Revocation of licence

7.12 The local government or an authorised person may revoke a licence if—

- (a) the licensee breaches clause 7.3 or clause 7.9;
- (b) the licensee breaches any provision of the Health Act; or
- (c) the local government or a Crown agency, instrumentality or department requires access to the place to which a licence applies for the purpose of carrying out works on, over or under that place.

Refund of fees from revoked licence

7.13 Where a licence is revoked the local government or an authorised person shall if requested provide the licensee with written reasons for the revocation and shall refund the fee having first deducted the fee applicable to the period from the issuing of the licence to the revocation thereof.

STANDARD CONDITIONS **OUTDOOR EATING AREAS**

1. Obstruction of Footpaths

Outdoor Eating Areas shall not obstruct pedestrian movement. A minimum clear footpath width of at least 1.5 metres shall be maintained in all cases. All tables, chairs and other furniture shall be no closer than 1.5 metres from the building line unless otherwise approved by the CEO or Manager Health in consideration of traffic sightlines. In any circumstance, pedestrians shall be able to make normal use of the footpath without being obliged to step onto the road at any point, or make other unwarranted detours.

2. Street Furniture

Except as otherwise approved by the CEO or Manager Health, tables, chairs and other furniture associated with an Outdoor Eating Area shall be removed from any street or public place at the close of business.

Tables, chairs and other furniture shall have rounded edges and corners and any furniture (umbrellas etc) shall be fixed in a manner that prevents them from being blown into the road or onto the footpath. Where umbrellas are used, there shall be a minimum height of 2.3 metres from the lowest part of the canopy to the pavement, maintained at all times.

An applicant or person conducting an Outdoor Eating Area wishing to secure tables, chairs or other furniture to the paving or to any other Council owned fixture shall be in possession of the written approval of the CEO or Executive Manager – City Development to do so before any work is carried out.

A licensee shall not erect or use signs except in accordance with the City of Bunbury Local Laws relating to Signs, Hoarding and Bill Posting. (Note: The local laws prohibit the erecting of a sandwich board sign in a street or public place).

3. Toilet Facilities

An applicant for an Outdoor Eating Area licence shall demonstrate that the premises has toilets available for the use of patrons, in sufficient numbers as specified in the Building Code of Australia. For the purpose of calculation both the indoor and the outdoor eating areas associated with the premises shall be considered to be part of the building.

4. Amendment of Licensed Area

The outdoor eating area may, at any time, be amended by the CEO or Executive Manager – City Development to allow changes to the footpath or parking area. For example, the

provision of pedestrian crossing nibs, street furniture or other works necessary for the safe and orderly management of pedestrians and vehicles.

5. Insurance

The applicant shall effect and maintain during the term of the Outdoor Eating area licence, a public risk policy with an insurance company approved by Council in an amount of not less than ten million dollars (\$10m) and in the joint names of Council and the applicant.

Before the issuing of a licence, the applicant shall produce to Council the original policy of insurance. Receipts for payment of premiums and the certificate of currency shall be produced upon request and upon renewal of the policy.

6. Consumption of alcohol

Where alcohol is served it shall be served to the table and the patrons must remain seated at all times while it is being consumed.

7. Transfer of Licence

The sale of business or transfer of interests, which include an Outdoor Eating Area licence, will require a new licence application and Council approval. Providing that the new owner has met the conditions contained in the Local Laws and this work procedure, such approval will not be unreasonably withheld.

City of Bunbury
Local Government and Public Property Local Law

APPLICATION FOR LICENCE

To: City of Bunbury

I,..... (Full Name)

of.....(Residential Address)

.....

.....(Postal Address)

.....(Occupation)

Hereby make application for a licence to set up and conduct an outdoor eating area pursuant to Part 7 Division 1 (Outdoor Eating Areas) of the City of Bunbury Local Government and Public Property Local Laws.

I, hereby declare that the following details are true and correct-

1. I am the proprietor of the eating house known as:
.....
.....and located at:.....
.....
2. Location of proposed outdoor eating area:.....
.....
3. Description of eating house adjacent to proposed outdoor eating area-
.....
4. Proposed licence period:.....
5. Proposed days and times of operation.....
.....
6. Proposed number of tables.....
7. Proposed number of chairs.....
8. Proposed number of other structures.....
.....
9. Description of tables and chairs and other structures including materials and dimensions:
.....
.....
10. Description of other structures including materials and dimensions:
.....
11. I have read and understood Council's conditions relating to outdoor eating areas.
12. Other information provided by applicant:
.....
.....

The following are attached -

- (a) Specifications and a plan showing the proposed outdoor eating area. The plan shall be at a scale of not less than 1:50 and show-
 - (i) the location and dimensions of the proposed outdoor eating area, and
 - (ii) the position of all tables, chairs and other structures proposed to be provided in the outdoor eating area and how such items are to be confined within the outdoor eating area:
- (b) specifications and a plan on a scale of not less than 1:200 showing the eating area and all structures thereon including any public facility, parking area or parking restriction within 30 metres of the boundaries of the outdoor eating area;
- (c) a colour photograph or a detailed drawing of the tables, chairs and other structures to be set up in the outdoor eating area;
- (d) written particulars of arrangements made with respect to public risk insurance.

I enclose-

- (a) the license application fee of \$.....
- (b) additional charges of \$.....

Dated the day of

.....
(Signature of Applicant)