

## Attachment B - Draft Amendment Local Law

### Local Government Act 1995

#### Town of Claremont

### Activities on Thoroughfares and Public Places Amendment Local Law 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Claremont resolved on 4 March 2008 to make the *Town of Claremont Activities on Thoroughfares and Public Places Amendment Local Law 2008*.

In this local law, the *Town of Claremont Activities on Thoroughfares and Public Places Local Law* as published in the *Government Gazette* on 17 April 2000 and as amended and published in the *Government Gazette* of 27 May 2003 and 20 February 2004 is referred to as the principal local law. The principal local law is amended as follows –

#### 1. Citation

This title may be referred to as the *Town of Claremont Activities on Thoroughfares and Public Places Amendment Local Law 2008*.

#### 2. Part 1 - Clause 1.2 Definitions amended

Part 1 is amended as follows-

In clause 1.2 Definitions by deleting the current definition of “public place” and inserting;

“ **“public place”** includes-

any thoroughfare, pedestrian mall or place which the public are allowed to use, whether or not the thoroughfare or place is on private property; and

local government property.”

and inserting after the definition of “Town Planning Scheme” the following;

“**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.”

#### 3. Repeal – The following local laws are repealed –

“The *Town of Claremont Trading in Public Places Local Law* as published in the *Government Gazette* on 12 May 1999 and as amended and published in the *Government Gazette* of 11 August 2000 is repealed.”

#### 4. Purpose

The purpose of this Local Law is to amend clauses in the *Activities on Thoroughfares and Public Places Local Law* to provide for the regulation, control and management of trading activities, stalls, display of goods and items and traders in any street or public place within the district by establishing the requirements with which persons must comply in order to undertake those activities.

## 5. Part 4 - Amended

Part 4 is amended as follows-

In the title by deleting “Street Entertainers” and insert “Trading”; and, Inserting following Part 4 Division 2 a new Division as follows –

### “Division 3 - Stallholders and Traders

#### 4.14 Interpretation

In this Division unless the context otherwise requires-

“**food business**” shall have the meaning contained within Standard 3.1.1 of *the Food Standards Australia New Zealand , Australia New Zealand Food Standards Code*;

“**stall**” means a movable or temporarily fixed structure, stand, table or vehicle in, on or from which trading is conducted;

“**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 out 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; or
  - (ii) inviting offers for their sale or hire; or
  - (iii) soliciting orders for them; or
  - (iv) carrying out any other transaction in relation to them.
- (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; or
  - (iii) carrying out any other transaction in relation to goods or services,

but does not include the setting up of a stall, or the conducting of a business at a stall, under the authority of a stallholder's permit;

“**utility**” means any public or private body which provides an essential service, such as electricity, gas, water, drainage, sewerage, telecommunications or traffic control, and has equipment on, in or under a public place for that purpose.

#### **4.15 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) An application for a stallholder'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 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;
  - (f) specify the type of advertising material proposed including the size and design of any signs attached to the stall;
  - (g) specify whether any lighting apparatus or device is to be used in connection with the stall;
  - (h) be accompanied by an accurate plan and description of the proposed stall.

#### **4.16 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) An 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.

#### **4.17 Grounds for refusing an application**

- (1) The local government may refuse to approve an application for a permit for the purposes of this Part 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-
  - (d) the applicant is an un-discharged bankrupt, or is in liquidation;
  - (e) the applicant has entered into a composition arrangement with creditors; or
  - (f) a manager, administrator, trustee, receiver, or receiver and manager is appointed in relation to any part of the permit holder's undertakings or property; and
  - (g) any other ground that the local government may consider to be relevant.

#### **4.18 Conditions of a permit**

- (1) If the local government approves an application for a permit under this Part subject to conditions, those conditions may include-
  - a) the area of the district 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) 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; or
  - iv. the use of any lighting apparatus or device;
- h) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
  - i) the care, maintenance and cleaning of the stall or any structure used for trading and the place of the stall or any structure;
  - j) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
  - k) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government;
  - l) the duration and commencement of the permit; and
  - m) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.

#### **4.19 Authorisation of nominee**

- (1) 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.

#### **4.20 Exemptions from requirement to pay a fee**

- (1) In this Division-

**“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 pecuniary 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, or may return any such fee which has been paid, if the stall is conducted or the trading is carried out-
  - a) on a public place adjoining the normal place of business of the applicant; or
  - b) by a charitable organisation that-
    - i) does not involve a commercial participant in the conduct of a stall or trading; and

- ii) operates under a permit where any assistants specified in the permit are members of that charitable organisation.

#### **4.21 Conduct of stallholders and traders**

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

display his or her 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 his or her while conducting a stall or trading;

not display a permit unless it is a valid permit; and

when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.

- (2) A stallholder or trader shall not-

- a) sell or provide goods or services other than those specified in the permit;
- b) deposit or store any goods or things on any part of a public place so as to obstruct or hinder the movement of pedestrians or vehicles;
- c) act in an offensive manner or cause a nuisance;
- d) use, or cause to be used, any apparatus or device including any flap or shelf, so that the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit;
- e) use or display, or permit to be used or displayed, any advertisement, placard, poster, streamer, sign or signboard on or about the location specified on the permit other than-
- f) price tickets or labels; or
- g) in the case of a stall providing information services, public information signs,
- h) but in either case not exceeding 0.25 square metres in area on the stall or any part of the area specified in the permit;
- i) cry out or shout about, or permit any other person to cry out or shout about, any goods or services in any public place;
- j) use, or permit to be used, any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound in any thoroughfare or public place, unless approved by the local government;
- k) use, or permit to be used, any record, tape, radio, bell, musical instrument or other instrument or device capable of being heard beyond the boundaries of the area specified in the permit, unless approved by the local government; or
- l) use or permit to be used any flashing or intermittent lighting apparatus or device, unless approved by the local government. ”

## 6. Part 5 Amended

Part 5 is amended by inserting after clause 5.10 (1) (b) the following;

“5.10 (1) (c) The local government may cancel or suspend a permit if the local government or a utility requires access to or near the place to which a permit applies, for the purposes of carrying out works in or near the vicinity of that place.

- 5.11 Notwithstanding any other provisions of this local law, a requirement to obtain a permit under this local law does not apply to-
- (a) An itinerant newspaper seller or distributor; or
  - (b) The collection of donations for charitable purposes authorised under the charitable collections act 1946; or
  - (c) A special event or trading authorised by the city under another written law or agreement; or
  - (d) A Person conducting a “garage sale” on private property; or
  - (e) A person trading in a street market authorised by the city; or
  - (f) Any other person or class of persons exempted in writing by the city; or
  - (g) A person or class of persons trading on land owned by the Royal Agricultural Society, being land subject to an exemption from rates pursuant to Section 2 of the Royal Agricultural Society Amendment Act 1929, with the exception of a food business.”