

LOCAL GOVERNMENT ACT 1995

City of Bayswater

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND
TRADING LOCAL LAW 2020**

LOCAL GOVERNMENT ACT 1995

City of Bayswater

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING
LOCAL LAW 2020**

TABLE OF CONTENTS

PART 1 - PRELIMINARY

- 1.1 Title*
- 1.2 Definitions*
- 1.3 Application*
- 1.4 Repeal*
- 1.5 Commencement*
- 1.6 Transition*

PART 2 – GENERAL ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

- Division 1 - General*
 - 2.1. General prohibitions*
 - 2.2 General activities allowed with a permit -*
- Division 2- Liquor*
 - 2.3 No possession and consumption of liquor on thoroughfare*
- Division 3 - Vehicle crossing*
 - 2.4 Permit required*
 - 2.5 Removal of redundant crossing*

PART 3 - VERGE TREATMENTS

- 3.1 Permissible verge treatments*
- 3.2 Only permissible verge treatment to be installed*
- 3.3 Obligations of owner or occupier*
- 3.4 Notice to owner or occupier*

PART 4 - PUBLIC WORKS AND CLOSED THOROUGHFARES

- 4.1 Power to carry out public works on verge*
- 4.2 No driving on a closed thoroughfare*

PART 5 - PROPERTY NUMBERS AND FENCING

- 5.1 Interpretation*
- 5.2 Assignment of numbers*
- 5.3 Public place - Item 4(1) of Division 1, Schedule 3.1 of Act*

PART 6 - LOCAL GOVERNMENT SIGNS

- 6.1 Signs*

PART 7 - ADVERTISING SIGNS ON THOROUGHFARES

- 7.1 Interpretation*
- 7.2 Signs requiring a permit*
- 7.3 Signs exempt from the requirement to obtain a permit*
- 7.4 Conditions which apply to all signs*

7.5 Conditions On Election Signs

PART 8 - OBSTRUCTING ANIMALS OR SHOPPING TROLLEYS

- 8.1 *Interpretation*
- 8.2 *Leaving an animal in public place*
- 8.3 *Prohibitions relating to animals*
- 8.4 *Shopping trolley to be marked*
- 8.5 *Person not to leave trolley in public place*
- 8.6 *Retailer to remove abandoned trolley*
- 8.7 *Retailer taken to own trolley*

PART 9 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

- 9.1 *Interpretation*
- 9.2 *Stallholders permits and traders permits*
- 9.3 *Exemptions to the requirement to have a permit*
- 9.4 *Conduct of stallholders and traders*
- 9.5 *Waived fee*

Division 2 - Street entertainers

- 9.6 *Interpretation*
- 9.7 *Performing in a public place*
- 9.8 *Performances that require a permit*
- 9.9 *Designated Busking Area*
- 9.10 *Procedure for making a determination*

Division 3- Filming

- 9.11 *Film Permit*
- 9.12 *Duration of permit*
- 9.13 *Waived fee*

PART 10 - OUTDOOR ALFRESCO DINING AREA

- 10.1 *Interpretation*
- 10.2 *Removal of alfresco dining area unlawfully conducted*
- 10.3 *Use of an alfresco dining area by the public*
- 10.4 *Temporary removal of alfresco dining area may be requested*

PART 11 - PERMITS

- 11.1 *Application for a permit*
- 11.2 *Discretion in determining an application for a permit*
- 11.3 *Security for restoration and reinstatement*
- 11.4 *Permit exemptions*
- 11.5 *Cancellation of permit*
- 11.6 *Compliance with and variation of conditions*
- 11.7 *Duration of permit*
- 11.8 *Renewal of permit*
- 11.9 *Transfer of permit*
- 11.10 *Production of permit*

PART 12 - OBJECTIONS AND APPEALS

- 12.1 *Application of Part 9 Division 1 of the Act*

PART 13 - MISCELLANEOUS NOTICES

- 13.1 *Notice to repair damage to thoroughfare*

13.2 *Notice to remove a thing unlawfully placed on thoroughfare*

PART 14 - ENFORCEMENT

14.1 *Offence to fail to comply with notice*

SCHEDULE 1 - PRESCRIBED OFFENCES

Local Government Act 1995

City of Bayswater

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING
LOCAL LAW 2020**

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the Council of the City of Bayswater resolved on 23 February 2021 to make the following local law.

PART 1 - PRELIMINARY

1.1 Title

This local law may be cited as the *City of Bayswater Activities in Thoroughfares and Public Places and Trading Local Law 2020*.

1.2 Definitions

In this local law-

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;

built-up area has the meaning given to it in the *Road Traffic Code 2000*;

bulk rubbish container means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government's regular rubbish collection service;

business day means any day other than a Saturday, Sunday or public holiday in Western Australia;

carriageway has the meaning given to it in the *Road Traffic Code 2000*;

CEO means the Chief Executive Officer of the City of Bayswater;

charity has the meaning given to it in the *Charities Act 2013 (Commonwealth)*;

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

Council means the council of the local government;

crossing means a crossing giving access from a public thoroughfare to -

- (a) private land; or
- (b) a private thoroughfare serving private land;

district means the district of the local government;

food business has the meaning given to it in the *Food Act 2008*;

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

garden means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

intersection has the meaning given to it in the *Road Traffic Code 2000*;

kerb includes the edge of a carriageway;

lawn means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

liquor has the meaning given to it in the *Liquor Control Act 1988*;

local government means the City of Bayswater;

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;

local public notice means a notice to be published in a newspaper circulating generally throughout the district;

lot has the meaning given to it in the *Planning and Development Act 2005*;

nuisance means –

- (a) any activity or condition which is harmful or annoying to any third party or which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) any unreasonable interference with the use and enjoyment of a person or his or her ownership or occupation of land; or

- (c) any interference which causes damage to land or other property on the land affected by the nuisance;

owner or **occupier** in relation to land has the meaning given to those expressions in the Act and 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;

permissible verge treatment means any one of the treatments described in clause 3.1;

person means any person, company, public body, association or body of persons corporate or unincorporated and includes an owner, occupier, licensee and permit holder, but does not include the local government;

plant means any member, alive or dead, of the plant kingdom or the fungus kingdom and includes the following —

- (a) any viable or non-viable ovule, seed, pollen or spore of a plant;
- (b) any part, product or genetic material of a plant from which another plant could be produced; or
- (c) any other part of a plant;

private property means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or is the subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;

policy means a policy of the local government adopted by the Council.

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;

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

temporary crossing means a crossing approved by the local government in accordance with the Act (Schedule 9.1) and the *Local Government (Uniform Local Provisions) Regulations 1996*.

thoroughfare has the meaning given to it in the Act;

town planning scheme means a town planning scheme of the local government made under the *Planning and Development Act 2005*;

vehicle crossing means a crossing approved by the local government in accordance with the Act (Schedule 9.1) and the *Local Government (Uniform Local Provisions) Regulations 1996*;

verge means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath;

vehicle means a vehicle as defined in the *Road Traffic (Administration) Act 2008* but does not include a motorised wheelchair as defined in the *Road Traffic (Vehicles) Regulations 2014*; and excludes a shopping trolley.

water course means a brook, stream or constructed channel; and

written law has the meaning given to it in the *Interpretation Act 1984* and includes this local law.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

- (1) This local law repeals the *City of Bayswater Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* as published in the *Government Gazette* on 3 January 2001, and as amended in the *Government Gazette* on 28 December 2001, 14 August 2007 and 13 June 2008.
- (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 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.6 Transition

A permit granted under a repealed version of this local law prior to the commencement date is taken to be a valid permit.

1.7 Assistance animals

This local law is subject to any written law and any law of the Commonwealth about assistance animals as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth).

PART 2 – GENERAL ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - General

2.1. General prohibitions

A person shall not -

- (a) plant any plant (other than grasses or similar plants) within 6m of an intersection';
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) where there is no footpath, plant any plant (except grass or a similar plant) on a thoroughfare within 2m of a carriageway;
- (d) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, fence, street furniture or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (e) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; and
- (f) in a public place commit any act or use any object so as to create a nuisance.

2.2 General activities allowed with a permit -

(1) A person shall not, without a permit –

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) unless as part of a permissible verge treatment under this local law, deposit anything on a verge, except for:
 - (i) removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government; or
 - (ii) a delivery of mulch, sand or similar product and then only for a period of 7 days;

- (c) cause any obstruction to a vehicle or a person using a thoroughfare;
 - (d) cause any obstruction to a water channel or a water course in a thoroughfare;
 - (e) place or drain a noxious or dangerous fluid onto a thoroughfare;
 - (f) damage a thoroughfare or any structure, sign or similar thing erected on a thoroughfare;
 - (g) light any fire or burn anything on a thoroughfare;
 - (h) fell, damage or kill any tree on a thoroughfare;
 - (i) unless installing, or in order to maintain, a permissible verge treatment lay pipes under or provide taps on any verge;
 - (j) erect or use in or on any building, structure or land abutting a thoroughfare any hoist, crane or other similar thing for use over the thoroughfare or use a hoist or crane or other similar thing from a vehicle to any building, structure or land abutting a thoroughfare;
 - (k) place or cause to be placed on a thoroughfare a bulk rubbish container, scaffolding, portable toilets or other materials associated with a building site or property adjoining the thoroughfare;
 - (l) interfere with the soil of, or anything in, a thoroughfare or take anything from a thoroughfare;
 - (m) install a full or part road closure on any thoroughfare or portion of a thoroughfare;
 - (n) use the local government's electricity in a thoroughfare or public place;
 - (o) use a loud hailer or an amplified speaker system in a thoroughfare or public place;
or
 - (p) place any play equipment in a thoroughfare or attach any play equipment to a street tree on the verge such as a swing.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person for a permit.

Division 2- Liquor

2.3 No possession and consumption of liquor on thoroughfare

- (1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless –

- (a) that is permitted under the *Liquor Control Act 1988* or under another written law; or
 - (b) the person is doing so in accordance with a permit.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 3 - Vehicle crossing

2.4 Permit required

- (1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains, footpath and trees where –
- (a) a crossing does not exist; or
 - (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.
- (2) The person responsible for the works in subclause (1) is taken to be –
- (a) the person named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
 - (b) the registered proprietor of the lot, if no building permit has been issued under the *Building Act 2011* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

2.5 Removal of redundant crossing

- (1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.
- (2) The local government may give written notice to the owner or occupier of a lot requiring them to –
- (a) remove any part of or all of a crossing which does not give access to the lot; and
 - (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal,

within the period of time stated in the notice, and the owner or occupier of the lot shall comply with that notice.

PART 3 - VERGE TREATMENTS

3.1 Permissible verge treatments

- (1) An owner or occupier of private property which abuts on a verge may, on that part of the verge directly in front of her or his private property, install a permissible verge treatment.
- (2) A permissible verge treatment is –
 - (a) the planting and maintenance of a lawn;
 - (b) the planting and maintenance of a garden;
provided that –
 - (i) the garden does not contain any poisonous plants;
 - (ii) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land abutting the thoroughfare for access to or from the thoroughfare; and
 - (iii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge abutting the kerb; or
 - (c) the installation of one of the following–
 - (i) low plant ground cover;
 - (ii) shrubs that do not restrict sight lines;
 - (iii) paving (comprising no more than 30% of the verge area excluding driveways and footpaths) which allows for infiltration; and
 - (iv) woodchips.

3.2 Only permissible verge treatment to be installed

- (1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.
- (2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each taken to have installed and maintained that verge treatment for the purposes of this local law.

3.3 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment shall keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment

is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment.

3.4 Notice to owner or occupier

- (1) If in the opinion of an authorised person a verge treatment poses a safety hazard or does not comply with this local law, the local government may require the owner or occupier of the private property which abuts the verge to undertake work to meet the requirements or to remove the verge treatment.
- (2) An authorised person may give a notice in writing to the owner or the occupier of a lot abutting on a verge to make good, within the time specified in the notice, any breach of a provision of this Part.

PART 4 - PUBLIC WORKS AND CLOSED THOROUGHFARES

4.1 Power to carry out public works on verge

Where the local government or an authority empowered to do so under a written law disturbs a verge, the local government or the authority -

- (a) is not liable to compensate any person for that disturbance;
- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any –
 - (i) verge treatment and, in particular, any plant or other hard surface; or
 - (ii) sprinklers, pipes or other reticulation equipment.

4.2 No driving on a closed thoroughfare

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless –
 - (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
 - (b) the person has first obtained a permit.
- (2) In this clause "**closed thoroughfare**" means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

PART 5 PROPERTY NUMBERS AND FENCING

5.1 Interpretation

In this Part - "**number**" means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

5.2 Assignment of numbers

The local government may assign a number to a lot in the district and may assign another number to the lot instead of that previously assigned.

5.3 Public place - Item 4(1) of Division 1, Schedule 3.1 of Act

A public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act is a public place as defined in clause 1.2.

PART 6 - LOCAL GOVERNMENT SIGNS

6.1 Signs

- (1) The local government may erect a sign on a public place specifying any conditions of use which apply to that place.
- (2) A person shall comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

PART 7 - ADVERTISING SIGNS ON THOROUGHFARES

7.1 Interpretation

In this Part, unless the context otherwise requires -

"advertising sign" means a sign used for the purpose of advertisement and includes an election sign.

"direction sign" means a sign which indicates the direction of another place, activity or event, but does not include any such sign erected or affixed by the local government or the Commissioner of Main Roads.

"election sign" means an advertising sign or poster, which advertises any aspect of a forthcoming Federal, State or Local Government election or referendum.

"portable direction sign" means a portable free standing direction sign.

"portable sign" means a portable free standing advertising sign.

"temporary community sign" means a sign relating to an event or activity conducted by a charity or a not for profit organisation with a community or sporting focus.

7.2 Signs requiring a permit

(1) A person shall not, without a permit –

- (a) erect or place an advertising sign on a thoroughfare; or
- (b) post any bill or paint, place or affix any advertisement on a thoroughfare.

7.3 Signs exempt from the requirement to obtain a permit

(1) The following types of signs are exempt from the requirement to obtain a permit under clause 7.2: -

- (a) A portable direction sign which neither exceeds 0.75m in height nor 0.65m in width, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event on the day of that activity or event and provided that no more than three such signs are erected in relation to that place, event or activity;
- (b) A temporary community sign which neither exceeds 0.75m in height nor 0.65m in width, provided that no more than ten temporary community service signs are erected or posted in relation to an event or activity and the sign(s) do not remain in place for more than 16 days;
- (c) A portable sign which neither exceeds 1m in height nor 1m² in area, erected on a public place abutting the building or the business to which the sign relates; provided

that the sign is removed each day at the close of the business and no more than one portable sign is erected in relation to the one business.

- (2) If a sign erected under this sub-clause is placed on a verge outside a private residence, approval of the owner or occupier must be obtained.
- (3) A sign erected under this clause must not be illuminated nor use reflective or fluorescent materials.

7.4 Conditions which apply to all signs

- (1) Notwithstanding anything else in this Part a person shall not erect, place or maintain a sign, or suffer or permit a sign to be erected, placed or maintained -
 - (a) on a footpath, except as approved by an authorised person;
 - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
 - (c) so as to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person;
 - (d) in any location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; and
 - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.
- (2) If the application is for the erection or placement of an election sign the sign must not be erected until the election to which it relates has been officially announced and must be removed within 5 business days of the close of polls on voting day.

7.5 Conditions on election signs

If the local government approves an application for a permit for the erection or placement of an election sign on a thoroughfare, the application is to be taken to be approved subject to the sign

- (a) being erected at least 30m from any intersection;
- (b) being free standing and not being affixed to any existing sign, post, power or light pole, or similar structure;
- (c) being placed so as not to obstruct or impede the reasonable use of a thoroughfare, or access to a place by any person;
- (d) being placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing;
- (e) being maintained in good condition;

- (f) not being erected until the election to which it relates has been officially announced;
- (g) being removed within 24 hours of the close of polls on voting day;
- (h) not being placed within 100m of any works on the thoroughfare;
- (i) being securely installed;
- (j) not being an illuminated sign;
- (k) not incorporating reflective or fluorescent materials; and
- (l) not displaying only part of a message which is to be read with other separate signs in order to obtain the whole message.

PART 8 - OBSTRUCTING ANIMALS OR SHOPPING TROLLEYS

8.1 Interpretation

In this Part-

"retailer" means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

"shopping trolley" means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

8.2 Leaving an animal in public place

- (1) A person shall not leave an animal in a public place unless that person has first obtained a permit or is authorised to do so under a written law.
- (2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

8.3 Prohibitions relating to animals

- (1) In subclause (2), owner in relation to an animal includes –
 - (a) an owner of it;
 - (b) a person in possession of it;
 - (c) a person who has control of it; and
 - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal shall not –
 - (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
 - (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place;
 - (c) train or race the animal on a thoroughfare; or
 - (d) subject to subclause (4), allow an animal to excrete in a public place.
- (3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area, unless that person does so under a permit or under the authority of a written law.
- (4) An owner of an animal does not commit an offence under subclause (2)(d) when any excreta is removed immediately by the owner after excretion has occurred.

8.4 Shopping trolley to be marked

A retailer shall clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

8.5 Person not to leave trolley in public place

A person shall not leave a shopping trolley in a public place other than in an area set aside for the storage of shopping trolleys.

8.6 Retailer to remove abandoned trolley

- (1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.
- (2) A retailer shall remove a shopping trolley within 48 hours of being so advised under subclause (1), unless the retailer -
 - (a) requests the local government to collect and deliver the shopping trolley to the retailer; and
 - (b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

8.7 Retailer taken to own trolley

In the absence of any proof to the contrary, a shopping trolley is taken to belong to a retailer whose name is marked on the trolley.

PART 9 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

9.1 Interpretation

In this Division-

"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;

"mobile food stall" is a stall used for preparing and dispensing food.

"stall" means a movable or temporarily fixed structure, stand, table or vehicle, from which a person carries on trade or commerce in a public place;

"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 on trading;

"trader's permit" means a permit issued to a trader; and

"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;
 - (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.

9.2 Stallholders permits and traders permits

(1) A person shall not carry on trading, including from a stall, unless that person is –

- (a) the holder of a valid permit; or
- (b) an assistant specified in a valid permit.

- (2) Every application for a trader's permit or a stallholder's permit under this section shall:—
- (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants to be engaged by the applicant as well as their names and addresses if already engaged;
 - (c) where the application is for a stallholder's permit specify the proposed location or locations of the stall(s);
 - (d) where the application is for a trader's permit specify the location or locations in which the applicant proposes to trade;
 - (e) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (f) specify the proposed goods or services that will be traded; and
 - (g) where the application is for a stallholder's permit the application must be accompanied by an accurate plan and description of the proposed stall.
- (3) If the application is for a mobile food stall the applicant must—
- (a) hold a current *Food Act 2008* Certificate of Registration from a Western Australian Local Government; and
 - (b) provide a copy of the manufacturer's specifications for any generators to be used with any application made under clause 9.2(2).

9.3 Exemptions to the requirement to have a permit

No permit is required—

- (a) to sell or offer for sale, a newspaper or magazine; or
- (b) by an itinerant food vehicle, selling food or drink from the roadway, that travels from place to place to engage in trade, provided that the vehicle does not stay in one location other than while executing a sale;
- (c) if the trader or stallholder has obtained written approval to trade at a community event approved by the local government;
- (d) to carry on trading from a premises on private property from which trading is lawfully conducted under a written law, which does not include trading conducted from a carpark or a similar place.

9.4 Conduct of stallholders and traders

While conducting a stall or trading activities, the holder of a stallholder's permit or a trader's permit shall—

- (a) display their permit in a conspicuous place on the stall or, if the permit holder is trading without a stall, carry the permit;
- (b) not display a permit unless it is a valid permit;
- (c) not deposit or store any box or basket whether containing goods or not on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
- (d) not act in an offensive manner; and
- (e) not use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall are increased beyond those specified in the permit.

9.5 Waived fee

The local government may waive any fee imposed under section 6.16 of the Act for a stallholder's permit or a trader's permit:

- (a) if the applicant intends to engage in trade or commerce on a portion of a public place adjoining the normal place of business of the applicant;
- (b) if the application for a permit is on behalf of a charity or a not for profit organisation with a community or sporting focus; or
- (c) in support of an initiative or program approved by the local government.

Division 2 - Street entertainers

9.6 Interpretation

In this Division —

“busker” or **“street entertainer”** means a person who performs in a public place whether or not for monetary donations; and

“perform” includes play a musical instrument, sing, mime, dance, give an acrobatic, aerobic or other display or entertain, but does not include public speaking.

9.7 Performing in a public place

- (1) Buskers and street entertainers must only perform in public places that have been designated as a busking and street entertainment area.
- (2) A person under the age of 15 years should not perform in any part of a performance in a public place:

- a) during school hours;
 - b) between 7.00 pm and 6.00 am; and
 - c) unless accompanied by an adult at all times.
- (3) Amplification may only be used in a public place determine to be an area where amplification is permitted in line with clause 9.12 or if a permit has been obtain in line with clause 9.10.
- (4) Buskers and street entertainers must only perform in public places which do not unduly interfere with vehicular or pedestrian traffic, public amenities or cause undue obstruction to traders or delivery vehicles.
- (5) Buskers and street entertainers may not advertise goods for sale or associate themselves with such advertising in conjunction with their performance in a public place, with the exception of their own material.
- (6) Buskers and street entertainers who perform in a public place must comply with directions issued by members of the Western Australian Police Force or an authorised officer. If in the opinion of an authorised officer or police officer-
- (a) the busker or street entertainer is causing a nuisance;
 - (b) the noise level is too high;
 - (c) the busker or street entertainer has failed to keep their site safe and clean while working;
 - (d) the busker or street entertainer is causing undue obstruction to pedestrians or vehicular traffic and entrances to shops or buildings;
 - (e) the busker or street entertainer is interfering in any way with an approved entertainment or activity; or
 - (f) the busker or street entertainer is using dangerous implements or materials as part of a performance and does not have a valid permit.
- (7) A person may be prohibited from performing in a public place in the district by a written notice from an authorised person.

9.8 Performances that require a permit

- (1) Buskers and street entertainers who perform in a public place outside of a designated busking area must apply for a permit.

- (2) Buskers and street entertainers who are performing in a public place within a designated area, where amplification is normally not permitted, must apply for a permit if using amplification.
- (3) Buskers and street entertainers who use dangerous materials and implements must hold a current permit to use these items while they perform in a public place.
- (4) All general conditions applying to buskers and street entertainers in this Division apply to the holders of a permit.

9.9 Designated Busking Area

The local government may make a determination in accordance with clause 9.12 that an area is a designated busking and street entertainment area.

9.10 Procedure for making a determination

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state—
 - (a) that the local government intends to make a determination that an area is a designated busking and street entertainment area;
 - (b) the area covered by the determination;
 - (c) whether amplification is permitted and any other limitations on noise levels;
 - (d) that a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (e) that submissions in writing about the proposed determination may be lodged with the local government within 21 days of the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(e), the Council may decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(e) the Council is to—
 - (a) consider those submissions; and decide—
 - (b) whether or not to amend the proposed determination; or
 - (c) not to continue with the proposed determination.

- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A decision under this clause is not to be delegated by the Council.

Division 3- Filming

9.11 Film Permit

- (1) A permit is required for filming in a public place.
- (2) Subclause 1 does not apply to filming that is for a personal or non-commercial purpose.

9.12 Duration of permit

A permit is valid for a period of 3 months after the date on which it is issued unless it is specified otherwise in the permit.

9.13 Waived fee

The local government may waive any fee imposed under section 6.16 of the Act for a filming permit if the applicant is currently enrolled as a student at a secondary or tertiary educational institution.

PART 10 - OUTDOOR ALFRESCO DINING AREA

10.1 Interpretation

- (1) Subject to having first obtained a permit under this local law a person may set up or conduct an alfresco dining area on a footpath or other public place provided that—
 - (a) The alfresco dining area abuts a food business;
 - (b) The alfresco dining area is conducted in conjunction with or as an extension of the abutting food business;
 - (c) The abutting food business is registered in accordance with the *Food Act 2008* and the use of the premises of the food business is permitted or approved under a town planning scheme;
 - (d) The alfresco dining area complies with the *Australia New Zealand Food Standards Code*, *Tobacco Products Control Act 2006*, *Liquor Control Act 1988*; and
 - (e) The alfresco dining area complies with any other written law or policy regulating outdoor eating facilities on public places within the district.
- (2) Subclause 1 does not apply to an alfresco dining area located on private property.

10.2 Removal of alfresco dining area unlawfully conducted

Where an alfresco dining area is conducted in contravention of this local law or a condition of its permit any tables, chairs, umbrellas or other equipment may be removed by an authorised person and impounded in accordance with the Act.

10.3 Use of an alfresco dining area by the public

- (1) A person shall not occupy a chair or otherwise use the equipment in an alfresco dining area unless the person uses them for the purpose of consuming food or drinks provided by the permit holder.
- (2) A person shall leave an alfresco dining area when requested to do so by the permit holder.

10.4 Temporary removal of alfresco dining area may be requested

- (1) A permit holder is to temporarily remove the chairs, tables and other structures set up on the alfresco dining area when requested to do so on reasonable grounds, including for street events, by an authorised person or a member of the Western Australia Police Force or an emergency service.
- (2) A permit holder operator may replace the chairs, tables and other structures removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

PART 11 - PERMITS

11.1 Application for a 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 local government 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) The local government may require an applicant to provide additional information related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the applicant has not complied with subclauses (3) or (4).
- (6) 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.
- (7) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

11.2 Discretion in determining an application for a permit

The local government may approve an application for a permit, may refuse to approve it or may approve it subject to such conditions as it thinks fit.

11.3 Security for restoration and reinstatement

- (1) Without limiting clause 11.2, the local government may require the payment of a bond, or the provision of a bank guarantee, for the sum determined by the local government -
 - (a) as a condition of a permit;
 - (b) before the issue of a permit;

for the purposes of ensuring that -

- (c) a public place can be repaired or reinstated where a permit issued for an activity may cause damage to the public place; or
 - (d) conditions of approval in so far as they relate to the public place are complied with; or
 - (e) a combination of (c) and (d).
- (2) Except where a bank guarantee has been approved, a bond required under subclause (1) is to be paid into an account established by the local government for the purposes of this clause.
 - (3) A bond, or bank guarantee, required under subclause (1) shall be returned to the permit holder if the local government is satisfied that the activity has not caused damage to the public place used for the activity and that the conditions of approval in so far as they relate to the public place have been complied with.

11.4 Permit exemptions

The local government may exempt a person or a class of persons or activity, whether or not in relation to a specified public place, from the requirements to hold a permit.

11.5 Cancellation of permit

- (1) A permit may be cancelled by the local government if the permit holder has not complied with -
 - (a) a condition of the permit; or
 - (b) a provision of this local law or any other written law which may relate to the activity regulated by the permit.
- (2) The local government may cancel or suspend the 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.
- (3) If the local government cancels or suspends a permit under this clause, it is to give written notice of that cancellation or suspension to the permit holder and the cancellation or suspension will take effect from the date of the notification.
- (4) On the cancellation of a permit the permit holder -
 - (a) shall return the permit as soon as practicable to the local government; and
 - (b) subject to clause (5), is to be taken to have forfeited any fees paid in respect of the permit.
- (5) Where a permit is cancelled or suspended through no fault of the permit holder, the local government may refund to the permit holder all or part of the fee in respect of what would otherwise have been the balance of the term of the permit.

11.6 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 or a policy, the permit holder shall comply with each of those conditions.

- (2) The local government may at any time, and whether or not requested by the permit holder to do so, vary the conditions of a permit.
- (3) If the local government varies a permit under this clause, it is to give written notice of that variation to the permit holder and the variation will take effect from the date of the notification.
- (4) On the variation of a permit the permit holder shall comply with the conditions of the permit as varied.

11.7 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 this local law or in the permit; or
- (b) the permit is cancelled under this local law.

11.8 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 this Part and any other relevant provision of this local law shall apply to an application for the renewal of a permit with all necessary changes as required.

11.9 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 local government 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.

11.10 Production of permit

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

PART 12 - OBJECTIONS AND APPEALS

12.1 Application of Part 9 Division 1 of the Act

- (1) When the local government makes a decision in relation to –
 - (a) the granting, renewal, variation, cancellation or suspension of a permit under this local law; or
 - (b) using the proceeds of a bond under clause 14.2,the objection and review provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.
- (2) Under these provisions, an affected person may have the right to object to, or to appeal against, a decision of the local government.

PART 13 - MISCELLANEOUS NOTICES

13.1 Notice to repair damage to thoroughfare

Where any portion of a thoroughfare has been damaged, the local government may by notice to the person who caused the damage order the person to repair or replace that portion of the thoroughfare to the satisfaction of the local government.

13.2 Notice to remove a thing unlawfully placed on thoroughfare

Where anything is placed on a thoroughfare in contravention of this local law, the local government may by notice in writing to the owner or the occupier of the private property which abuts on that portion of the thoroughfare where the thing has been placed, or such other person who may be responsible for the thing being so placed, require the relevant person to remove the thing.

PART 14 - ENFORCEMENT

14.1 Offence to fail to comply with notice

Whenever the local government gives a notice under this local law requiring a person to do anything, if the person fails to comply with the notice, the person commits an offence.

14.2 Local government may undertake requirements of notice

- (1) Where a person fails to comply with a notice referred to in clause 14.1, 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.
- (2) The local government may apply the proceeds of any bond given as a condition of approval under clause 11.3 to meet the costs under this clause incurred by the local government.
- (3) The liability of the permit holder to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 11.3.

14.3 Offences

- (1) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000 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.

14.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 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 Schedule 1.

14.5 Forms

Unless otherwise specified, 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 that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice of withdrawal of infringement notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1 – Prescribed offences and modified penalties

[Clause 14.3]

An authorised person who has reason to believe that a person has committed a prescribed offence against this local law may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

ITEM NUMBER	CLAUSE	NATURE OF OFFENCE	MODIFIED PENALTY \$
1	2.1(a)	Plant any plant (except grasses or a similar plant) within 6m of an intersection;	150
2	2.1(b)	Damaging lawn or garden	150
3	2.1(c)	Where there is no footpath, plant any plant (except grass or a similar plant) on a thoroughfare within 2m of a carriageway;	150
4	2.1(d)	Damaging or interfering with any signpost or structure on thoroughfare	450
5	2.1(e)	Playing games so as to impede vehicles or persons on thoroughfare	150
6	2.1(f)	Creating a nuisance on a thoroughfare	150
7	2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	150
8	2.2(1)(b)	Depositing anything on a verge (except a permissible verge treatment) without a permit	150
9	2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	150
10	2.2(1)(d)	Causing obstruction to water channel or water course on thoroughfare without a permit	300
11	2.2(1)(e)	Placing or draining noxious or dangerous fluid on thoroughfare without a permit	300
12	2.2(1)(f)	Damaging thoroughfare or any sign or structure on thoroughfare without a permit	150
13	2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	450
14	2.2(1)(h)	Damaging, killing or felling any tree onto thoroughfare without a permit	500
15	2.2(1)(i)	Installing pipes under or providing taps on any verge without a permit	150
16	2.2(1)(j)	Installing or using a hoist or other thing on a structure or land or vehicle for use over a thoroughfare without a permit	150
17	2.2(1)(k)	Placing a bulk rubbish container, scaffolding, portable toilets or other materials on a thoroughfare without a permit	150

18	2.2(1)(l)	Interfering with, or taking, the soil or anything from a thoroughfare without a permit	150
19	2.2(1)(m)	Installing a road closure on thoroughfare without a permit	150
20	2.2(1)(n)	Using the local government's electricity in thoroughfare or public place without a permit	150
21	2.2(1)(o)	Using a loud speaker or amplified speaker in thoroughfare or public place without a permit	150
22	2.3(1)	Consumption or possession of liquor on thoroughfare	150
23	2.4(1)	Failure to obtain permit for temporary crossing	300
24	2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	450
25	3.2(1)	Installation of verge treatment other than permissible verge treatment	300
26	3.3	Failure to maintain permissible verge treatment	150
27	3.4(1)	Failure to comply with notice to rectify a verge treatment	150
28	4.2(1)	Driving or taking a vehicle on a closed thoroughfare	450
29	6.1(1)	Failure to comply with sign on public place	150
30	7.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	150
31	7.4(1)	Failure to comply with conditions which apply to all signs	150
32	8.2(1)	Leaving an animal in a public place	150
33	8.3(2)(a)	Animal on thoroughfare when not led, ridden or driven	150
34	8.3(2)(b)	Animal on public place with infectious disease	150
35	8.3(2)(c)	Training or racing animal on thoroughfare	150
36	8.3(2)(d)	Allowing an animal to excrete in a public place	150
37	8.3(3)	Horse led, ridden or driven on thoroughfare in built-up area	150
38	8.4	Failure by a retailer to clearly mark its name or its trading name on any shopping trolley made available for the use of customers.	150
39	8.5	Person leaving shopping trolley in public place other than trolley bay	450
40	8.6(2)	Failure to remove shopping trolley upon being advised of location	450
41	9.2(1)	Conducting of stall in public place without a permit	450
42	9.2(1)	Trading without a permit	450

43	9.4	Stallholder or trader not displaying valid permit	150
44	9.4	Stallholder or trader engaged in prohibited conduct	150
45	9.7	Performers failing to comply with obligations	150
46	9.7	Failure of performer to move onto another area when directed	150
47	9.8	Performances without a permit where one is required	150
48	9.9	Filming without a permit	150
49	10.1	Conducting an outdoor alfresco dining area in breach of these local laws or a condition of a permit	450
50	10.3(2)	Failure to leave outdoor eating facility when requested to do so by facility operator	75
51	11.6	Failure to comply with a condition of a permit	150
52	11.10	Failure to produce permit on request of authorised person	150
53	14.1	Failure to comply with notice given under local law	150

Dated 29 of March 2021

The Common Seal of the
[insert name of local government]
was affixed by authority of a
resolution of the Council in the
presence of:



DAN BULL
MAYOR



ANDREW BRIEN
CHIEF EXECUTIVE OFFICER

Notice of Undertaking – *Thoroughfares and Public Places and Trading Local Law 2020*

The Council of the City of Bayswater resolves to undertake to the Joint Standing Committee on Delegated Legislation that:

1. When the local law is next reviewed and amended, correct the typographical errors in clauses 7.4(2); 9.7(3) and 9.7(6).

Typographical errors

Clause 7.4(2)

The retention of clause 7.4(2) creates confusion in the regulation of election signs in the City flowing from its inconsistency with clause 7.S(g). The City overlooked its deletion after the insertion of clause 7.5, which is meant to replace it and it should be deleted.

Clause 9.7(3)

Clause 9.7(3) states:

(2) Amplification may only be used in a public place determine to be an area where amplification is permitted in line with clause 9.12 or if a permit has been obtain in line with clause 9.10.

In the first line, 'determine' should be 'determined' and in the third line, 'obtain' should be 'obtained'.

Clause 9.7(6)

Clause 9.7(6) states:

(6) Buskers and street entertainers who perform in a public place must comply with directions issued by members of the Western Australian Police Force or an authorised officer. If in the opinion of an authorised officer or police officer-

(a) the busker or street entertainer is causing a nuisance;

(b) the noise level is too high;

(c) the busker or street entertainer has failed to keep their site safe and clean while working;

(d) the busker or street entertainer is causing undue obstruction to pedestrians or vehicular traffic and entrances to shops or buildings;

(e) the busker or street entertainer is interfering in any way with an approved entertainment or activity; or

(f) the busker or street entertainer is using dangerous implements or materials as part of a performance and does not have a valid permit.

To make sense, in the third line under (6), the full stop should be removed and 'If' should be 'if'.

2. Ensure all consequential amendments arising from the undertaking will be made.
3. Where the local law is made publicly available by the City, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertaking.