

LOCAL GOVERNMENT ACT 1995
City of Fremantle
LOCAL LAWS RELATING TO OUTDOOR EATING AREAS
AMENDMENT LOCAL LAW 2007

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Fremantle resolved on 28 November 2007 to make the following local law.

The City of Fremantle Local Laws Relating to Outdoor Eating Areas as published in the *Government Gazette* on 6 May 1998 and as amended and published in the *Government Gazette* on 24 December 2004 is referred to as the principal local law. The principal local law is amended as follows.

Commencement

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

Clause 1

2. Clause 1 is amended by—

(a) deleting the definitions of “Licence”, “Licensee”, “Licence Plan” and “Public Place”; and

(b) inserting the following definitions at the appropriate alphabetical position—

“Licence” means a licence issued under these local laws;

“Licensee” means the holder of a licence issued under these local laws;

“Licence plan” means a plan attached to and forming part of a licence depicting the parts of a street or public place within which an outdoor eating area may be set up and conducted;

“Licenced area” means the area depicted on a licence plan;

“No smoking area” means a part of an outdoor eating area where smoking is not permitted and no smoking signs are displayed;

“No smoking sign” means a sign displaying the phrase “no smoking” or “smoking prohibited” in letter that are at least 20 mm in height or the symbol designated in Australian Standard 2899.1—1986 indicating smoking is prohibited and having a diameter of at least 70 mm;

“Outdoor eating area” means a part of a thoroughfare or public place in which tables, chairs and other structures are provided for the purpose of the supply of food or drink to the public or the consumption of food or drink by the public;

“Public place” means a place to which the public have access whether or not on private property.

“Thoroughfare” means a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end;”

Clause 4

3. Clause 4 is amended by deleting clause 4 and inserting in its place the following—

“4. (a) No person shall set up or conduct an outdoor eating area in a thoroughfare or public place unless—

(i) the person is the proprietor of an eating house adjoining that outdoor eating area; and

(ii) the person is the holder of a licence for that outdoor eating area.

(b) No person shall set up or conduct an outdoor eating area otherwise than in accordance with—

(i) the licence plan for that outdoor eating area; or

(ii) any condition specified in the licence for that outdoor eating area.

(c) For a period of six months from the date of commencement of this local law—

(i) The proprietor of an eating house adjoining an outdoor eating area shall ensure that at least half of the licenced area is set aside as a no smoking area;

(ii) No person shall smoke in a part of a licenced area set aside as a no smoking area; and

(iii) Where a licensee or employee of an eating house is aware or could reasonably be expected to be aware that a person is smoking in a part of a licenced area set aside as a no smoking area, then the licensee or employee shall—

A. inform the person smoking that the person is committing an offence; and

B. request the person to leave the no smoking area until the person has finished smoking.

(d) After the expiration of six months from the date of commencement of this local law—

(i) No person shall smoke in a licenced area.

(ii) Where a licensee or employee of an eating house is aware or could reasonably be expected to be aware that a person is smoking in a licenced area, then the licensee or employee shall—

A. inform the person smoking that the person is committing an offence; and

B. request the person to leave the licenced area until the person has finished smoking.

(e) No person shall set up or conduct an outdoor eating area that prohibits public access to that area unless that area is located on private land.”

Clause 12

4. Clause 12 is amended by deleting clause 12 and inserting in its place the following—

“12. A person who commits a breach of these local laws commits an offence and is liable on conviction to a maximum penalty of—

(a) \$2,000 in the case of a breach of local law 4(c) or 4(d);

(b) \$5,000 in the case of a breach of any other local law; and

(c) where the offence is of a continuing nature, an additional \$500 in respect of each day or part of a day during which the offence has continued.”