

LOCAL GOVERNMENT ACT 1995
City of Joondalup
Local Government and Public Property Local Law 1999

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Joondalup resolved on _____ to make the “*City of Joondalup Local Government and Public Property Amendment Local Law 2008*”.

In this local law, the *City of Joondalup Local Government and Public Property Local Law 1999* as published in the *Government Gazette* on 18 January 2000 and as amended and published in the *Government Gazette* on 15 January 2002, 30 November 2007, 11 January 2008 and 25 January 2008 is referred to as the principal local law. The principal local law is amended as follows—

ARRANGEMENT

PART 1 – PRELIMINARY	Clauses 1 – 4.1
PART 2 – USE OF LOCAL GOVERNMENT PROPERTY	Clause 5
FIRST SCHEDULE	Clauses 6 – 6.1

PART 1 – PRELIMINARY

Title

- 1 This local law may be referred to as the *City of Joondalup Local Government and Public Property Amendment Local Law 2008*.

Commencement

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

Purpose

- 3 The purpose of this local law is to prohibit the act of smoking within 5 metres of the entrances, exits and apertures of all City owned buildings within the City of Joondalup.

Amendment

- 4 The *City of Joondalup Local Government and Public Property Local Law 1999* as published in the *Government Gazette* on 18 January 2000 and as amended and published in the *Government Gazette* on 15 January 2002, 30 November 2007, 11 January 2008 and 25 January 2008 is hereby amended in the following manner:

- 4.1 Insert the following definition:

““aperture” means a man-made opening;”.

PART 2 – USE OF LOCAL GOVERNMENT PROPERTY

- 5 After clause 24, insert the following new title and clause:

“Restrictions outside of local government buildings”

- “24A While outside of any local government building, a person shall not smoke within 5 metres of any entrance, exit or aperture of the building.”

FIRST SCHEDULE

Offences and Modified Penalties

6 Amend the First Schedule in the following manner:

6.1 Insert the following new Item:

Item No “10A”, Clause No “24A”, Nature of Offence “Smoking within 5 metres of entrance, exit or aperture of City owned building.”, Modified Penalty “50”.

LOCAL GOVERNMENT ACT 1995
City of Joondalup
Trading in Public Places Local Law 1999

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Joondalup resolved on _____ to make the “*City of Joondalup Trading in Public Places Amendment Local Law 2008*”.

In this local law, the *City of Joondalup Trading in Public Places Local Law 1999* as published in the *Government Gazette* on 27 August 1999 and amended as published in the *Government Gazette* on 10 July 2000 is referred to as the principal local law. The principal local law is amended as follows—

ARRANGEMENT

PART 1 – PRELIMINARY	Clauses 1 – 4.2
PART 2 – OUTDOOR DINING.....	Clauses 5 – 7
FIRST SCHEDULE.....	Clauses 8 – 8.7

PART 1 – PRELIMINARY

Title

- 1 This local law may be referred to as the *City of Joondalup Trading in Public Places Amendment Local Law 2008*.

Commencement

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

Purpose

- 3 The purpose of this local law is to prohibit the act of smoking in outdoor dining areas that are situated on public property within the City of Joondalup.

Amendment

- 4 The *City of Joondalup Trading in Public Places Local Law 1999* published in the *Government Gazette* on Friday 27 August 1999 and as amended and published in the *Government Gazette* on 10 July 2000, is hereby amended in the following manner:

- 4.1 Insert the following definition:

““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 dining area may be set up and conducted;”.

- 4.2 Insert the following definition:

““licenced outdoor dining area” means the area depicted on a licence plan;”.

PART 2 – OUTDOOR DINING

Prohibition

5 Clause 14 is amended by deleting clause 14 and inserting in its place the following—

- “14
- (1) No person shall set up or conduct an outdoor dining area in a portion of street or public place:
 - (i) that is not adjoined to an eating house;
 - (ii) unless the person is the proprietor of an eating house adjoining that outdoor dining area; and
 - (iii) unless the person is the holder of a current and valid licence for that outdoor dining area.
 - (2) No person shall set up or conduct an outdoor dining area otherwise than in accordance with—
 - (i) the licence plan for that outdoor dining area; and
 - (ii) any condition specified in the licence for that outdoor dining area.
 - (3) No person shall set up or conduct an outdoor dining area that prohibits public access to that area unless that area is located on private land.
 - (4) From the date of commencement of this local law—
 - (i) No person shall smoke in a licenced outdoor dining area; and
 - (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 outdoor dining 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 outdoor dining area until the person has finished smoking.
 - (iii) The proprietor commits an offence if requirements under clause 14(4)(ii) are not complied with.
 - (iv) Licensees must ensure that visible signage is available to indicate to patrons that smoking is prohibited within the licenced outdoor dining area.”

Licence Application

6 Clause 17(e)(vi) is amended by deleting the words “and cigarette ends” and inserting the word “and” before the word “foodstuffs”.

6.1 Clause 17(e)(vii) is amended by deleting it in its entirety.

6.2 Clause 17(e)(viii) is amended by deleting the words “, cigarette butts,”.

Outdoor Dining Licence

- 7 Clause 18 is amended by inserting the word “licence” before the words “plan” and “plans”.

FIRST SCHEDULE

Offences and Modified Penalties

- 8 Amend the First Schedule in the following manner:

8.1 Delete the Clause Number “14(a)” and insert “14(1)(i)” in its place.

8.2 Delete the Clause Number “14(b)” and insert “14(1)(ii)” in its place.

8.3 Delete the Clause Number “14(c)” and insert “14(1)(iii)” in its place.

8.4 Delete the Clause Number “14(d)” and insert “14(2)” in its place.

8.5 Insert the following new Item:

Item No “4A”, Clause No “14(4)(i)”, Nature of Offence “Smoking in a licenced outdoor dining area”, Modified Penalty “200”.

8.6 Insert the following new Item:

Item No “4B”, Clause No “14(4)(iii)”, Nature of Offence “Failure to ensure requirements under clause 14(4)(ii) are complied with”, Modified Penalty “100”.

8.7 Insert the following new Item:

Item No “4C”, Clause No “14(4)(vi)”, Nature of Offence “Failure to erect visible no smoking signage”, Modified Penalty “50”.

MEETING DATE: 10 June 2008

TRADING IN PUBLIC PLACES AMENDMENT LOCAL LAW 10047

WARD: North Ward

RESPONSIBLE Ian Cowie
DIRECTOR: Governance and Strategy

PURPOSE/EXECUTIVE SUMMARY

To provide Council with a draft copy of the *Trading in Public Places Amendment Local Law 2008* relating to a smoking ban in alfresco areas for consideration and approval.

It is recommended that Council approves the draft content of the proposed Amendment Local Law and agrees to its release for a six-week public consultation period.

BACKGROUND

At the meeting of Council on 15 April 2008, Council resolved the following:

“AGREES in principle to the introduction of a smoking ban within alfresco areas throughout the City of Joondalup; and

SUPPORTS the drafting of a local law amendment for Council’s consideration that involves a ban applying across the entire local government area and includes offences for both proprietors and individuals.”

Accordingly, an Amendment to the City’s *Trading in Public Places Local Law 1999* has been drafted for Council’s consideration and approval, (provided at Attachment 1).

DETAILS

The report presented to Council on 15 April 2008 (*COJ053-04/08 refers*) referred to the recent City of Fremantle approach as a case study for the implementation of a smoking prohibition within alfresco areas located on public property. Provided at Attachment 1 is a copy of the City’s proposed Amendment Local Law which has been drafted on the basis of the City of Fremantle approach (with some modification). It was considered appropriate that the City reflect as closely as possible the Fremantle Amendment given that legal advice was obtained by Fremantle on drafting matters before undertaking their Amendment process.

The modification made by the City is the removal of a six month phase-in period. This is because the City considers the public consultation process as a sufficient means of raising awareness prior to introducing a ban. Also, applying a phased approach would be contrary to the manner in which the City has introduced other bans, most notably its “smoke-free beaches” initiative, which utilised an immediate implementation approach. In addition, there are only 12 businesses within the City of Joondalup that would be subject to the ban. Direct correspondence with these businesses would ensure they are fully informed. They will also have access to City Officers who can respond to any questions or concerns.

Purpose and effect of Amendment Local Law:

Pursuant to section 3.12(2) of the *Local Government Act 1995*, the following purpose and effect applies to the proposed *Trading in Public Places Amendment Local Law 2008*:

Purpose - The purpose of this local law is to prohibit the act of smoking in outdoor dining areas that are situated on public property within the City of Joondalup.

Effect - The effect of this local law is that patrons to restaurants and cafes within the City of Joondalup will be prohibited from smoking in licenced outdoor dining areas situated on public property.

Issues and options considered:

Option 1: Approve the Amendment Local Law and agree to its release for public consultation

It is recommended that Council pursues this option in order for the City to effectively gauge public opinion on the issue and to determine the extent of support within the general and business communities.

Option 2: Do not approve the Amendment and request changes to the document

This option is *not* recommended as due consideration has been given to the drafting of the Amendment.

Option 3: Do not approve the Amendment

This option is *not* recommended given the 'in principle' support Council provided for the initiative at its April Meeting.

Link to Strategic Plan:

Objective 5.2 - To facilitate healthy lifestyles within the community.

Outcome - The Joondalup community is provided with opportunities to lead a healthy lifestyle.

Legislation – Statutory Provisions:

Relevant Legislation:

Local Government Act – section 3.12

City of Joondalup Trading in Public Places Local Law – clauses 14 and 50(3).

Risk Management considerations:

There is a risk that business owners affected by the ban's introduction will oppose the proposed Amendment given that it is not applicable to all businesses that provide outdoor dining areas (where such areas are located on private property). Despite such a concern, in the City of Fremantle's experience strong support was received from the business community regarding the ban's introduction, as it was believed that customers who do not smoke will appreciate a business that provides a smoke-free outdoor environment.

Financial/Budget Implications:

Any consultation process undertaken will incur costs to the City. Most consultation processes for local law amendments require approximately \$5,000 to pursue, including Statewide and local notification as well as mail-outs and general administrative costs.

Policy implications:

The proposed Amendment relates to a general policy considered by Council in relation to smoking prohibitions in public open space.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Consultation will be undertaken should Council choose to pursue option 1.

COMMENT

Not Applicable.

ATTACHMENTS

Attachment 1: City of Joondalup *Trading in Public Places Amendment Local Law 2008*.
Attachment 2: Process for amending Local Laws.

VOTING REQUIREMENTS

Simple Majority.

RECOMMENDATION

That Council:

APPROVES the Draft City of Joondalup Trading in Public Places Amendment Local Law 2008 in the manner prescribed in Attachment 1 and AGREES to its release for a six-week public consultation period.

Signature of Originating Manager

Signature of Originating Director

LOCAL LAW PROCESS – FLOW CHART (s. 3.12)