



## **Brisbane City Council**

# FOOTPATH DINING LOCAL LAW 2011



**Brisbane City Council**

**FOOTPATH DINING LOCAL LAW 2011**

made under the  
***City of Brisbane Act 2010***

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## **Part 1 Preliminary**

### **1 Short title**

This local law may be cited as the *Footpath Dining Local Law 2011*.

### **2 Objects**

The objects of this local law are to regulate footpath dining—

- (a) to protect the safe passage of pedestrian traffic along the footpath; and
- (b) to prevent interference with vehicles using any lawful crossing over the footpath; and
- (c) to ensure the safe management of traffic along the road; and
- (d) to protect the safety of diners, people using the footpath and people using the road whether as pedestrians, cyclists or motorists; and
- (e) to protect Council assets and infrastructure and ensure that they are kept clean and free of litter; and
- (f) to minimise adverse impacts on the amenity of the immediate vicinity.

### **3 Definitions**

The dictionary in Schedule 2 defines particular words used in this local law.

### **4 Application**

- (1) This local law —
  - (a) applies to the owner or operator of a food business who occupies or proposes to occupy part of a footpath for the purposes of footpath dining; and
  - (b) applies in addition to, and does not derogate from, other local laws regulating the use of roads and road related areas.<sup>1</sup>
- (2) This local law does not apply to footpath or outdoor dining in the Queen Street Mall, the Chinatown Mall, the Valley Brunswick Street (Valley) Mall, and any other Mall established by Council from time to time.

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<sup>1</sup> For example—Local Law No.1 (Control of Advertisements).

## **Part 2 Permits for Footpath Dining**

### **5 Requirement for Permit**

- (1) A person must not occupy any part of a footpath for footpath dining unless that person holds a current footpath dining permit.

Maximum penalty —50 penalty units.

- (2) A person who is the holder of, or who is acting under, a footpath dining permit must produce that permit together with the permit conditions upon request by an Authorised Person.

Maximum penalty—5 penalty units.

### **6 Application for permit**

- (1) A person who proposes to occupy part of a footpath for footpath dining may apply for a footpath dining permit by lodging with Council either electronically or in paper copy, an application in the approved form, accompanied by the prescribed application fee and all supporting information stated in the approved form to be mandatory.
- (2) Before deciding the application, Council may give the applicant an information request requiring the applicant to provide any further information or documents that Council reasonably requires to decide the application.
- (3) An information request must provide a reasonable period of at least 28 days for the applicant to provide the further information or documents.
- (4) The applicant is taken to have withdrawn the application, if the applicant does not comply with an information request within the stated period.
- (5) An application for a permit is not duly made until the applicant has complied with all the requirements of this section.

### **7 Assessing permit applications**

- (1) Council must consider every permit application having regard to —
  - (a) the general suitability of footpath dining at the proposed location; and
  - (b) the need to maintain safe pedestrian access along and across the footpath; and
  - (c) the safety of vehicles using the carriageway; and
  - (d) whether the proposed footpath dining area design will be safe for diners, pedestrians and road traffic; and
  - (e) the impact of the proposed footpath dining area on public transport and public utility infrastructure in the area; and
  - (g) any applicable Commonwealth, State or Local Government laws, policies, plans, standards, guidelines or other requirements.

- (2) In considering the matters under subparagraph 1, Council may—
  - (a) consult with the operators of adjoining businesses about the application; and
  - (b) consult with other regulatory authorities about the application;

*Examples:*

- (a) *The State Liquor Licensing Division if the food business has or proposes to obtain a liquor licence.*
    - (b) *The Department of Transport and Main Roads if the food business is located on a State controlled road.*
- (3) Council may in a subordinate local law specify additional criteria to those set out in subparagraph (1).

## **8 Deciding permit applications**

- (1) Council may—
  - (a) approve the permit application; or
  - (b) approve the permit application subject to conditions; or
  - (c) refuse the application.
- (2) Council must give the applicant a written notice “*an approval notice*” within 7 days of deciding to approve the permit application under either subsection (1)(a) or (1)(b).
- (3) The approval notice must inform the applicant of the decision and state that a permit will be issued after Council receives—
  - (a) the prescribed annual occupation fee; and
  - (b) evidence that the applicant has taken out public liability insurance to a minimum value as stated in Council’s Footpath Dining Permit Guide, naming Brisbane City Council as an interested party.
- (4) After the applicant has complied with subparagraph (3) Council must give the applicant a footpath dining permit.
- (5) If Council refuses the application under subsection (1)(c) it must give the applicant a decision notice about the refusal.

## **9 Subject matter for permit conditions**

- (1) Without limiting Council’s power to impose conditions under this local law, the conditions of a footpath dining permit may do any or all of the following—
  - (a) require the permit holder to take out and maintain public liability insurance to a minimum value as stated in Council’s Footpath Dining Permit Guide, naming Brisbane City Council as an interested party;
  - (b) define the area of the footpath which the permit holder is permitted to use for footpath dining;
  - (c) prescribe the dimensions and location of the pedestrian access path which

- must not be obstructed;
  - (d) prescribe the critical dimensions for footpath dining property in the permitted area;
  - (e) state the hours of operation for footpath dining.
- (2) Council may, in a subordinate local law, specify conditions which may be imposed on footpath dining permits.

## **10 Compliance with conditions of permit**

The permit holder and any person acting under the permit must not contravene a condition of the permit.

Maximum penalty—50 penalty units.

## **11 Term of permit**

A permit commences and terminates on the date specified on the permit.

## **12 Renewal of permit**

A person may renew a footpath dining permit for a further term by lodging with Council, either electronically or in paper form, a completed permit renewal form together with the prescribed annual application and occupation fee before the expiry date of the current permit.

## **13 Transfer of a Permit**

- (1) If a permit holder sells or leases the food business to which the footpath dining permit relates, the new owner may apply to Council for a transfer of the footpath dining permit.
- (2) A transfer application must be—
  - (a) made in the approved form; and
  - (b) supported by enough information to allow Council to decide the application; and
  - (c) accompanied by the prescribed fee.
- (3) Council may decide the application for transfer of a permit as if it were a new permit application, and in that case Sections 6, 7 and 8 of this local law will apply to the assessment and decision about the application for transfer.

## **14 Variation of permit conditions by application**

- (1) The holder of a footpath dining permit may at any time apply to Council to add,

vary or remove a condition of the permit.

- (2) The application must be—
  - (a) made in the approved form; and
  - (b) supported by enough information to allow Council to decide the application; and
  - (d) accompanied by the prescribed fee.
- (3) Before deciding the application, Council may give the applicant an information request requiring the applicant to provide any further information or documents that Council reasonably requires to decide the application.
- (4) An information request must state a reasonable period of at least 28 days for the applicant to provide the further information or documents.
- (5) The applicant is taken to have withdrawn the application, if the applicant does not comply with an information request within the stated period.
- (6) In deciding whether to grant or refuse the application, Council may have regard to the criteria for assessing permit applications set out in section 7 of this local law.
- (7) Council may—
  - (a) approve the application; or
  - (b) refuse the application.
- (8) If Council decides to approve the application it must inform the permit holder and give the permit holder a new permit showing the new set of conditions.
- (9) If Council decides to refuse the application it must give the permit holder a decision notice about the decision.

## **15 Variation of conditions of permit by Council**

- (1) Council may add, vary or remove a permit condition whenever Council considers it necessary or appropriate.

Examples for subsection (1) —

  1. A footpath dining permit [A] covers a dining area 10.5 metres long. Adjacent premises have a 10.5 metre frontage, but are not used for dining when permit A is granted. Subsequently, a footpath dining permit [B] is sought for the 10.5 metre frontage of the adjacent premises. A gap is required between the two dining areas which will diminish the available area to be shared between the two businesses. Permit A may be varied to distribute the burden of the required gap between dining areas equally between the holders of permit A and permit B.
  2. Reduction of the delineated area of a permit to allow for any or all of the following—
    - (a) street trees to be planted;
    - (b) bus seats or shelters to be installed;
    - (c) bus or taxi zones to be established or moved.
- (2) If Council proposes to add, vary or remove a permit condition under subparagraph (1), Council must give the permit holder a proposed action notice.
- (3) Council must consider any representations in accordance to the proposed action notice in accordance with section 22 of this local law and decide whether to add, vary or remove the permit condition.

- (4) Council must give a decision notice about its decision under subparagraph (3) to the permit holder.
- (5) An addition, variation or removal takes effect from the time specified in the decision notice.

## **16 Revocation or suspension of footpath dining permit.**

- (1) Council may, at any time, revoke or suspend a footpath dining permit for any reason which, in the opinion of Council, justifies the revocation.
- (2) Without limiting the generality of subsection (1), Council may revoke or suspend a footpath dining permit if the permit holder—
  - (a) has contravened a condition of the footpath dining permit; or
  - (b) has not complied with a compliance notice issued under this local law.
- (3) If Council proposes to revoke or suspend a permit under this section, it must give the permit holder a proposed action notice.
- (4) Suspension of a footpath dining permit may be for a stated period of time or until the permit holder complies with an action required by the proposed action notice.
- (5) Council must consider any representations in response to the proposed action notice in accordance with section 22 of this local law and decide —
  - (a) to proceed with the revocation or suspension; or
  - (b) not to proceed with the revocation or suspension; or
  - (c) not to proceed with the revocation or suspension, but to add, vary or remove a condition of the footpath dining permit.
- (6) Council must give a decision notice to the permit holder about a decision under section (5)(a) or (c) and the permit will be revoked, suspended or a permit condition added, varied or removed at the end of the business's normal trading hours on the day on which the notice is served on the permit holder.
- (7) If Council's decision under subsection (5) is suspension of the permit the notice must state—
  - (a) when the suspension period ends; or
  - (b) the action the permit holder is required to carry out in order for the suspension to be lifted.

## **Part 3 Enforcement**

### **17 Oral compliance direction**

- (1) If an authorised person forms the opinion that a person is, or is about to, or has, contravened a requirement of this local law, the authorised person may orally direct that person to do either or both of the following—
  - (a) stop the contravention;

- (b) take specified action to remedy the contravention.

*Example: an oral direction may require the person to remove footpath dining property from the footway completely or to remove it from a part of the footway.*

- (2) An oral direction to remove footpath dining property from the footway must allow the person a reasonable time of at least 30 minutes for the property to be removed.
- (3) A notice may be given under this section in addition to any other action prescribed by this local law.
- (4) A person must comply with a direction under this section.  
Maximum penalty—50 penalty units.

## 18 Written compliance notices<sup>2</sup>

- (1) If an authorised person forms the opinion that a person is, or is about to, or has, contravened a requirement of this local law, the authorised person may give a written notice (a “**compliance notice**”) under this section to the person.
- (2) A notice may be given under this section in addition to any other action prescribed by this local law.
- (3) A compliance notice may do any or all of the following—
- (a) if the contravention is of a continuing or recurrent nature, require the person to stop the contravention;
- (b) whether or not the contravention is of a continuing or recurrent nature, require the person to take specified action, within a time specified in the notice, to remedy the contravention.
- (4) A compliance notice may be served personally or in accordance with the provisions of section 26 of this local law.
- (5) A person must comply with a compliance notice.  
Maximum penalty—200 penalty units.

## Part 4 Confiscation of Property

### 19 Confiscation of property

- (1) If an Authorised Person has given a person an oral direction or a written compliance notice requiring the person to remove footpath dining property from the footpath or a part of the footpath, and the person has failed to comply with the direction or notice in the time specified, then an Authorised Person may confiscate and remove the property or cause it to be removed into the possession of Council.
- (2) At the time of, or as soon as practicable after the confiscation, an Authorised Person must give the person apparently in charge of the property a confiscation notice.

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<sup>2</sup> A written compliance notice is a remedial notice for the purposes of the *City of Brisbane Act 2010*.

- (3) A confiscation notice must be in writing and must state —
  - (a) the place where the confiscated property has been taken; and
  - (b) what the person needs to do to have the property released.

## **20 Release of property**

Council will release footpath dining property confiscated under section 19 to a person claiming a right to possession of it, if, at a time not sooner than the day following the day of the confiscation and not later than 28 days after the confiscation, the person—

- (a) proves their ownership or right to possession of the property to Council's satisfaction; and
- (b) pays to Council the applicable cost-recovery fee specified in a resolution made by Council under section 99 of the *City of Brisbane Act 2010*.

## **21 Disposal of unclaimed confiscated property**

- (1) If confiscated property is not claimed by the owner within 28 days after the seizure, then Council may offer the property for sale by private treaty, tender, expression of interest or auction.
- (2) An amount realised on sale of confiscated property must be applied—
  - (a) first towards the costs of sale; and
  - (b) secondly towards expenses incurred by Council in relation to the confiscation and holding of the property; and
  - (c) thirdly to the owner of the property.
- (3) If there is no purchaser for confiscated property offered for sale, Council may dispose of the property in any way its sees fit.

# **Part 5 Proposed Action Notices and Reviews of Decisions**

## **22 Proposed action notices**

- (1) This section applies if Council gives a permit holder a proposed action notice—
  - (a) before deciding whether to add, vary or remove permit condition under section 15; or
  - (b) before deciding whether to suspend or revoke a permit under section 16.

- (2) A proposed action notice must—
  - (a) be in writing; and
  - (b) outline the reasons for the proposed action; and
  - (c) state a reasonable period of at least 10 days in which the permit holder may make written representations about the proposed action.
- (3) Within 28 days of the representations being made, Council must—
  - (a) consider all written representations made within the stated period; and
  - (b) decide whether or not to take the proposed action.
- (4) Within 7 days after making a decision under subsection (3), Council must give the permit holder a decision notice.

### **23 Review of a decision relating to a permit**

- (1) An applicant who is given a decision notice about a decision (the “**original decision**”) under any of the following sections may apply to Council to review—
  - (a) the decision to refuse an application for a footpath dining permit under section 8; or
  - (b) the decision to refuse to transfer a footpath dining permit under section 13; or
  - (c) the decision to refuse to add, vary or remove the conditions of a footpath dining permit under section 14; or
  - (e) the decision to add, vary or remove a permit condition under section 15; or
  - (f) the decision to suspend or revoke a footpath dining permit or add to, vary or remove a permit condition under section 16.
- (2) The application for review under subsection (1) (the “**internal review**”) must be—
  - (a) in writing; and
  - (b) received by Council within 10 days of the day on which Council gives the applicant the decision notice about the original decision; and
  - (c) supported by enough information to enable Council to decide the application.
- (3) Within 14 days after receiving an application in accordance with subsection (2), Council must—
  - (a) consider any written submissions properly made by the applicant; and
  - (b) make a decision (the “**review decision**”) to—
    - (i) confirm or revoke the original decision; or
    - (ii) vary the original decision in a way that Council considers appropriate.
- (4) The application for internal review must not be dealt with by—
  - (a) the person who made the original decision, whether or not the person was exercising a delegated power in making the original decision; or

- (b) a person in a less senior office than the person who made the original decision.
- (5) Within 7 days of making the review decision, Council must give the applicant written notice of the decision, stating reasons for the decision to confirm, revoke or vary the original decision.
- (6) An application for review stays an original decision made under section 16 but does not stay any other original decision.
- (7) The review decision takes effect on the date stipulated in the review notice, which must be at least 2 business days after Council gives the review notice.

## **Part 6                      Miscellaneous**

### **24      Subordinate local laws**

Council may make subordinate local laws about any or all of the following—

- (a) information and materials required for a permit application;
- (b) additional criteria against which a permit application may be considered;
- (c) conditions applicable to permits;
- (d) any other matter about which this local law specifically allows for subordinate local laws.

### **25      Electronic Communication**

- (1) This section applies if an application or submission has been made in an approved form.
- (2) If the person making the application or submission lodges it with Council electronically, the person is deemed to have given consent for Council to give the person any information or notice about their application or submission by electronic means.
- (3) Council may elect to give the person any information or notice electronically or in paper copy.

### **26      Giving of Notice**

Whenever this local law requires written notice to be given —

- (a) the requirement for writing is satisfied whether the notice is given by paper copy or electronically; and
- (b) if the notice is given by post, the provisions of the *Acts Interpretation Act 1954* section 39 — Service of Documents, and section 39A — Meaning of service by post etc, will apply to the giving of the notice; and

- (c) if the notice is given electronically, the provisions of the *Electronic Communications (Queensland) Act 2001* will apply to the time and place of despatch and receipt.

## **Part 7                      Transitional and Repeal Provisions**

### **27      Local law amended**

Schedule 1 amends the *Parking and Control of Traffic Local Law*.

### **28      Existing permits**

A permit under section 5A of Part 3 of the *Parking and Control of Traffic Local Law* that is in force immediately before the commencement of this Part is taken to be a footpath dining permit under this local law; and the provisions of this local law will govern any such permit.

## **Schedule 1      Local Law Amended**

Section 27

### **Parking and Control of Traffic Local Law**

**1      Part 3, Section 5A—**

*omit.*

**2      Part 3, Section 9A—**

*omit.*

## Schedule 2 Dictionary

**“the Act”** means the *City of Brisbane Act 2010*.

**“Approved” form** means a paper copy or electronic form approved by the Chief Executive Officer for this local law.

**“Authorised Person”** means an appropriately qualified person appointed as an authorised person by Council under the *City of Brisbane Act 2010* to exercise the powers or functions of an authorised person under local government related laws.

**“carriageway”** means that part of the road set apart for vehicular traffic.

**“City”** means the area comprised in the City of Brisbane under the *City of Brisbane Act 2010*.

**“Council”** means the Brisbane City Council.

**“decision notice”** about a decision means a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) how to apply for a review of the decision.

**“food business”** means a business for the supply of food and/or drink to patrons, whether it is the primary business carried out at the premises or is ancillary to another business, and includes, but is not limited to, a restaurant, café, coffee shop or take away food store.

**“footpath”** means the land between the property alignment and the kerb of the carriageway of a road that is designated for, or has one of its main uses, use by pedestrians.

**“footpath dining”** means the use of the footpath as an area for patrons of a food business operating in premises on a road to consume food and or drink.

*Examples:*

*sidewalk café;*

*convenience store with tables on the footpath;*

*takeaway food store with tables on the footpath.*

**“footpath dining property”** means the fittings and fixtures used for footpath dining and includes but is not limited to, tables, chairs, dining utensils, umbrellas, planter boxes and awnings.

**“pedestrian”** includes—

- (d) a person walking; and
- (e) a person in a motorised wheelchair that can not travel over 10km/h; and
- (f) a person in a non-motorised wheelchair; and
- (g) a person pushing a pram or a stroller;
- (h) a person pushing a motorised or non-motorised wheelchair; and
- (i) a person in or on a wheeled recreational device or wheeled toy.

**“prescribed fee”** means the fee prescribed for an application under this local law in the Schedule of Fees and Charges to Council’s annual budget.

**“road”** has the meaning given in the *Transport Operations (Road Use Management) Act 1995*.

**“vehicle”** has the meaning given in section 15 of the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*.