

BURNIE CITY COUNCIL
Street Dining By-law
By-law No. 1 of 2020

A By-law of the Burnie City Council made under section 145 of the *Local Government Act 1993* for the purpose of regulating and controlling the conduct of street dining on the highways in the municipal area of Burnie.

Part 1

PRELIMINARY

SHORT TITLE

1. This By-law may be cited as the *Street Dining By-law No. 1 of 2020*.

COMMENCEMENT

2. This By-law commences on the date it is published in the "*Tasmanian Government Gazette*".

APPLICATION

3. This By-law applies to the municipal area of the City of Burnie.

INTERPRETATION

4. In this By-law:

"authorised officer" means an employee of Council authorised by Council for the purposes of this By-law;

"certificate of registration" means the certificate of registration under the *Food Act 2003* issued with respect to the food business to which the application for a licence, or a licence, is related;

"Council" means the Burnie City Council;

"food business" has the meaning assigned to it in the *Food Act 2003*;

"footpath" means that area of a highway between the highway pavement and/or property line paved or unpaved, primarily used by pedestrians;

"furniture" includes chairs, tables, umbrellas, screens, barriers, awnings, waste bins, heaters and portable lighting;

"General Manager" means the General Manager of the Council;

"highway" has the same meaning as under the *Local Government (Highways) Act 1982*;

"infringement notice" means a notice issued by an authorised officer to a person who commits an offence against this By-law;

“penalty unit” means the amount of money set under the *Penalty Units and Other Penalties Act 1987* as amended;

“permit” means a statement in writing with or without conditions issued by an authorised officer authorising an activity regulated by the By-law;

“premises” means the premises with respect to which a certificate of registration is issued to the proprietor of the food business carried on in those premises;

“proprietor” has the same meaning as provided in the *Food Act 2003*;

“street dining” means the consumption of food and or beverages by customers seated in an area on a highway external to a food business;

“street dining permit” means street dining permit issued by the Council in accordance with this By-law;

“street rubbish bins” means rubbish bins installed by the Council on the footpath;

“trading day” means each day that the holder of a street dining permit opens a food business.

Part 2

STREET DINING PERMIT

PLACEMENT OF FURNITURE ON A HIGHWAY

3.

- (1) A person must not cause or permit any furniture to be placed on a highway for the purpose of encouraging or permitting street dining except in accordance with a permit.

Penalty: a fine not exceeding seven (7) penalty units and, in the case of a continuing offence, a daily fine not exceeding one (1) penalty unit.

- (2) A person must not cause or permit any furniture to be placed on a highway such that it unreasonably prevents the free and unrestricted use of the highway by pedestrians.
- (3) A person must not place any furniture on a highway such it obstructs the lawful movement of traffic along the highway.
- (4) A person must not place any furniture on a highway such that is obstructs or may obstruct a motor vehicle entering or leaving land that adjoins the highway.
- (5) A person must not place any furniture on a highway such that it intrudes into any part of the highway that is set aside for parking.
- (6) A person must only place furniture on a highway in a location authorised by the Council in a permit granted in accordance with Clause 4 of this By-law.

APPLICATION FOR A PERMIT

4.

- (1) The proprietor of a food business may apply to the Council for a permit with respect to premises if:-
 - (a) the proprietor holds a certificate of registration with respect to those premises; and
 - (b) those premises adjoin a highway; and
 - (c) the food business includes the sale of food or beverages for human consumption on those premises
- (2) An application for a licence is to be in accordance with Form 1 in Schedule 2 and be lodged with the General Manager and is to be accompanied by the following:-
 - (a) a copy of the current certificate of registration;
 - (b) a copy of the certificate of currency of the public and products insurance referred to in clause 11(1)(a);
 - (c) a drawing with sufficient details to determine the location and extent of the furniture to be placed on the footpath;
 - (d) such other information as an authorised officer may reasonably require or as may be required by any Act or regulation;
 - (e) any applicable fee.
- (3) It is a condition of granting a permit that the applicant has a current certificate of registration.
- (4) The Council may grant a permit to a person on such terms and conditions as it thinks fit.
- (5) The grant of a permit permits the holder of the permit to provide a street dining service.
- (6) Street dining may only take place on a footpath outside a food business.

DISPLAY OF A PERMIT

5. The holder of a street dining permit must display that permit in a prominent location at the entrance to the premises.

Penalty: A fine not exceeding 5 penalty units.

FAILURE TO COMPLY WITH THE CONDITION OF A STREET DINING PERMIT

6. Any person who is the holder of a street dining permit issued pursuant to this By-law and who fails to comply with any condition of that permit is guilty of an offence.

Penalty: A fine not exceeding 10 penalty units.

REVOCAION OF A PERMIT

- 7.
- (1) An authorised officer may revoke a permit if the holder of the permit does not:
 - (a) comply with the terms and conditions of the permit; and/or
 - (b) comply with provisions of this By-law.
 - (2) An authorised officer is to give the permit holder seven (7) days notice in writing of the revocation of a permit.
 - (3) An authorised officer may revoke a permit immediately if a permit holder breaches clause 11 of this By-law.

REMOVAL OF FURNITURE

- 8.
- (1) Any furniture placed on a highway pursuant to a permit granted in accordance with Clause 4 of this By-law must be removed by the holder of a street dining permit within (30) minutes of the food business closing at the end of each trading day.
 - (2) An authorised officer may remove any furniture that is placed on a highway in contravention of clause 3 and store it in a safe location until any penalty that may be payable pursuant to this By-law has been paid to the Council.
 - (3) An authorised officer intending to remove any furniture pursuant to this clause must give an offending permit holder two (2) days written notice of that person's intention to remove the furniture.

CLEANLINESS

- 9.
- (1) The permit holder must ensure that the area covered by the permit and the area immediately adjacent is at all times clean, tidy and in a sanitary condition.
 - (2) Without limiting what is required in order to comply with clause 8(1) of this By-law, the permit holder must regularly empty waste bins, wash the pavement on a daily basis, and immediately a table is vacated clean away any liquid, food, debris, broken glass, cigarette butts or waste from the table and wipe the surface of the table.

Penalty: A fine not exceeding three (3) penalty units and in the case of a continuing offence, a further daily fine not exceeding one (1) penalty unit.

STREET RUBBISH BINS

10. A permit holder must not use existing street rubbish bins for the disposal of table waste.

Penalty: A fine not exceeding three (3) penalty units and in the case of a continuing offence, a further daily fine not exceeding one (1) penalty unit.

INSURANCES

11.

- (1) (a) An applicant for a street dining permit must have a current public liability and products liability insurance policy that covers the area designated for street dining before the applicant is issued with a permit.

(b) The insurance cover is to be for a minimum sum of ten (\$10) million dollars and be in a form acceptable to Council.
- (2) (a) A permit holder must produce a Certificate of Currency of the insurance referred to in clause 10(1)(a) if requested by an authorised officer.

Penalty: A fine not exceeding 5 penalty units.

(b) A copy of the Certificate of Currency is to be prominently displayed on the premises.

Penalty: A fine not exceeding 2 penalty units.
- (3) An authorised officer may cancel a permit immediately if:
 - (a) a permit holder refused to allow an authorised officer to view relevant certificate of insurance; or
 - (b) the insurance cover lapses during the term of the permit.

Part 3

INFRINGEMENT NOTICES

INFRINGEMENT NOTICE

12.

- (1) An authorised officer may:
 - (a) Issue an infringement notice to a person that the authorised officer has reason to believe is guilty of a specified offence;
 - (b) Issue one infringement notice in respect of more than one specified offence;
 - (c) Impose a monetary penalty for the specified offence in respect of which the infringement notice is issued.
- (2) Infringement notices may be issued in respect of the offences specified in Column 1 of Schedule 2 to this By-law and the penalty specified in Column 2 opposite the offence is the penalty payable under an infringement notice issued in respect of that offence.
- (3) In order to avoid the infringement notice being referred to the Director Monetary Penalties Enforcement Services for enforcement action the person issued with an infringement must either:

(a) pay the total amount of the monetary penalty stated on the infringement notice to;

or

(b) lodge a notice of election to have the offence heard by a Court with;

the General Manager within 28 days of the date of service on the notice.

- (5) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this By-law.
- (6) All monies payable to the Council or General Manager under this By-law are a debt due to the Council and recoverable at law.

Schedule 1 – Street Dining By-law No. 1 of 2020

INFRINGEMENT NOTICE OFFENCES

CLAUSE	GENERAL DESCRIPTION OF OFFENCE	PENALTY (Penalty Units)
3(1)	Placing furniture on a highway without permit	3.5
5	Failure to display permit	2.5
6	Failure to comply with permit conditions	5
9(2)	Licensee using street rubbish bins	1.5 + 0.5 per day
10	Use of street rubbish bins	1.5 + 0.5 per day
11(2)(a)	Licensee failing to produce policy of insurance	2.5
11(2)(b)	Failure to display Certificate of Currency	1

Schedule 2 – Street Dining By-Lay No. 1 of 2020

FORMS

FORM 1

BURNIE CITY COUNCIL
Application for a Street Dining Licence

1. Applicant's full name:
2. Address of applicant:
3. Trading name of Business:
4. Telephone number:
5. Address of Premises:
6. Indicate (.....) owner (.....) occupier of the premises.
7. Attach plan showing the location of the proposed street dining area, size, number and location of screens, tables and chairs proposed, together with placement of waste bins.
8. Brief description of street furniture proposed:
 - 8.1 number of chairs:
 - 8.2 number of tables:
 - 8.3 colours of chairs and tables:
 - 8.4 number of umbrellas:
 - 8.5 colour of umbrellas:
9. Outline proposed method for the disposal of waste:
10. period for which licence is sought:-
 - to the expiration of the certificate of registration of the food business
 - to/...../..... (being an earlier date)
11. Attach:-
 - 11.1 a copy of a current certificate issued by the Council in respect of the food business pursuant to the *Food Act 2003*
 - 11.2 a copy of the certificate of currency of the public and products insurance referred to in clause 11 (1)(a)
 - 11.3 a drawing with sufficient detail to determine the location and extent of the furniture to be placed on the footpath

I/we apply for a licence pursuant to the Street Dining By-law, a copy of which I/we have read and agreed and undertake that upon the issue of any licence pursuant to this application I/we will abide by the provisions of that By-law.

Dated this day of 2

Signature of Applicant/s
.....

The Street Dining By-law, By-law No. 1 of 2020:

Was certified as being in accordance with the *Local Government Act 1993* by Andrew Wardlaw, General Manager.

Was certified as being in accordance with the law by Geoff Tremayne, Legal Practitioner.

The common seal of the Burnie City Council has been hereunto affixed pursuant to a resolution of the Council passed on the 28th day of January 2020 in the presence of A Wardlaw, General Manager.

Dated 6th February 2020 at Burnie.