

HOBART CITY COUNCIL

SALAMANCA MARKET BY-LAW

BY-LAW 1 of 2010

BY-LAW MADE UNDER SECTION 145

OF THE LOCAL GOVERNMENT ACT 1993

FOR THE PURPOSE OF

REGULATING AND CONTROLLING CONDUCT IN THE SALAMANCA MARKET

PART 1- PRELIMINARY

Short Title

1. This by-law may be cited as the Salamanca Market By-law.

Interpretation

2. In this by-law: -

"**Act**" means the *Local Government Act 1993*

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

"**Busking Licence for Salamanca Market**" means a licence obtained under this by-law authorising a person to busk in the market area, including the terms and conditions for that Licence;

"**Council**" means Hobart City Council;

"**footpath**" means that part of the highway reservation so constructed as to facilitate the movement of pedestrians;

"**General Manager**" means the General Manager of the Council appointed pursuant to section 61 of the Act;

"**guide dog**" means a guide dog as defined by the *Guide Dogs and Hearing Dogs Act 1967* and a dog training to be a guide dog;

"**hearing dog**" means a hearing dog as defined by the *Guide Dogs and Hearing Dogs Act 1967*; and a dog training to be a hearing dog;

"**highway**" includes a highway reservation, footpath, nature strip or a mall;

"**licence**" means a licence obtained under this by-law;

"**Manager Environmental Health**" means the Manager Environmental Health of the Council appointed pursuant to section 64 of the Local Government Act 1993;

"**market**" means the Salamanca Place Market, as constituted pursuant to section 189 of the *Local Government Act 1993*;

"**market area**" means that part of Salamanca Place which is closed on any day as specified in a market notice;

"**market day**" means the period of time on any day on which the Salamanca market area is closed to provide a place for the sale of goods and for entertainment, notice of which has been given by a

market notice;

"**market notice**" means a notice to operate a market in a newspaper published in the City of Hobart pursuant to section 189 (2) of the *Local Government Act 1993*;

"**market supervisor**" means any person who is authorised by the General Manager to act in that capacity;

"**meeting**" includes a parade, performance, rally, march, or demonstration;

"**motor vehicle**" has the same meaning as section 3(1) of the *Vehicle and Traffic Act 1999*;

"**occupy**" means to place on or in the market area, road or footpath any temporary or mobile structures, wares, goods, chattels, items, tables and chairs, or build any structure for sale, to enable the service of food or beverages or for any other purpose or to fence off any part of the market area to exclude members of the public, or to undertake any other activity in the market area;

"**owner**" includes: -

- a) in the case of a motor vehicle within the meaning of the Traffic Act 1925 -
 - i. a joint owner or part owner;
 - ii. a person who has the use of the vehicle under a hiring or a hire purchase agreement and
 - iii. a person in whose name as owner the vehicle is registered under that Act or any corresponding enactment of a State or Territory of the Commonwealth; and
- b) in the case of any other vehicles -
 - i. a joint owner or part owner;
 - ii. a person who has the use of the vehicle under a hiring or a hire purchase agreement; and
 - iii. a person who is in charge of the vehicle;

at the time at which there was a contravention of this by-law with the vehicle;

"**penalty unit**" has the same meaning as section 4 of the *Penalty Units and Other Penalties Act 1987*;

"**permit**" means a permit obtained from Council under this by-law;

"**permit holder**" means a person who has obtained a licence, permit or written authority from the Council for any purpose under this by-law;

"**road**" means a road with a constructed surface suitable for the use of four-wheeled motor cars or an area set aside by the Council as a parking place for vehicles;

"**Sharp**" for the purposes of Clause 26 means an object or device having a sharp point or protuberance or cutting edge capable of cutting or piercing the skin or having potential to become a Sharp.

"**speaker's corner**" means that part of the market area set aside by the General Manager exclusively for public speaking;

"**stallholder**" means any person who has entered into a licence agreement with the Council to occupy part of the market area on market day;

"**stall site**" means part of the market area let to a stallholder

"**use**" in relation to a bicycle means use, take, ride, or be in charge of, a bicycle;

"**use**" in relation to a skateboard means use or ride a skateboard;

"**vehicle**" has the same meaning as section 3 (1) of the *Traffic Act 1925*;

"**wares**" includes any subscription, good, thing, article, or matter, and any food, or article of food, within the meaning of the *Food Act 2003*.

PART 2 - SALAMANCA MARKET

Division 1 – Road Closure

Road closure on market days

3. 1) The Council may, by notice issued pursuant to section 189 of the Act, close parts or portions of the highways in the Council municipal area known as Salamanca Place, Gladstone Street, Montpelier Retreat and any other highways in the municipal area for the purposes of conducting the market.

- 2) The highway closure referred to in sub-clause 1 is to be between those times required for the successful operation of the market as set out in the market notice.

Salamanca Market not a highway

4. During a market day the market area is not to be deemed a highway for the purposes of the Highways By-Law.

Division 2 – Use of Market Area by Stallholders

Licensing of the market area

5. The General Manager may let the market area for any days or periods and on any reasonable terms and conditions as determined by the General Manager.

Permits not transferable without written consent

6. A stallholder must not without the written consent of the General Manager, assign transfer or deal in any way with any rights or interests or any part of any rights or interests the stallholder may have under a permit issued under this by-law.

Penalty: 10 penalty units

Occupation of stall sites

7. A person must not occupy or take possession of any stall site except that which has been allotted or let to the stallholder by the General Manager.

Penalty: 2 penalty units

Surrender of stall sites

8. Any person who is occupying or who is in possession of part of the market area contrary to this by-law, must immediately surrender possession of the area when directed to do so by the General Manager.

Penalty: 5 penalty units

Production of licences

9. 1) If any stallholder is requested to produce a current licence or permit by the market supervisor the stallholder is to do so within seven days.

2) If any stallholder is requested to produce current identification by the market supervisor the stallholder is to do so immediately.

Use of the market area

10. 1) A person must not solicit, order for, or sell any wares in the market area unless the person is a stallholder or employed by a stallholder or is authorised to do so under an Occupation Licence or another permit issued by the General Manager under this by-law.

Penalty: 5 penalty units

2) A stallholder or a person employed by a stallholder must only solicit, order for or sell any wares in the stallholder's stall site.

Penalty: 5 penalty units

Not to place wares outside site

11. A shallholder must not place any wares for sale outside the boundaries of the stallholder's site.

Penalty: 2 penalty units

Sale of food

12. A stallholder must not sell any food in the market area unless the sale of food on the site has been approved by the General Manager.

Penalty: 2 penalty units

Refuse

13. A stallholder must not allow any dirt, filth, offal, or trade or any other refuse to remain in any stall site occupied by the stallholder or within the market area and, if the stallholder is required by the General Manager to remove any dirt, filth, offal or trade or any other refuse the stallholder will do so immediately.

Penalty: 2 penalty units

Removal of signage

14. The General Manager may require the removal of any advertisement or signboard in the market area.

Division 3 – Occupation and Busking Licences

Occupation of market area

15. 1) A person must not occupy any part of the market area, or road or footpath in or near the market area without a licence, permit or written authority issued under this by-law.

Penalty: 2 penalty units.

Permits not transferable without written consent

16. A person must not without the written consent of the General Manager, assign transfer or deal in any way with any rights or interests or any part of any rights or interests the person may have under a licence, permit or written authority issued under this by-law.

Penalty: 5 penalty units

Busking

17. 1) Upon application, the General Manager may issue a Busking Licence for Salamanca Market to a person upon such terms and conditions as approved by the General Manager.

2) A person must not busk or perform any activity for entertainment in the market area unless:

- a) they are the holder of a Busking Licence for Salamanca Market issued under this by-law; and
- b) it is a market day.

Penalty: 2 penalty units.

3) A person who is the holder of a Busking Licence for Salamanca Market must comply with the terms and conditions for the Busking Licence for Salamanca Market.

Penalty: 2 penalty units.

4) The General Manager may cancel a Busking Licence for Salamanca Market where the holder of the licence fails to comply with the terms and conditions of this licence.

5) During the market day the General Manager may at his/her discretion request a busker to move to another part of the market area, or request a busker to stop operating in part or all of the market area.

Division 4 - Prohibitions**Litter**

18. A person must not throw, drop, leave, or otherwise dispose of any dirt, litter, paper, wood, glass, or any other matter, material, or thing in the market area, except in a receptacle provided by the Council for the disposal of such things.

Penalty: 2 penalty units

Damage to Council property

19. A person must not break, destroy, damage, disfigure, or deface with dye, paint, tar, or other material of any kind whatsoever, any building, fence, notice, fixture or thing owned or under the control of the Council, within the market area.

Penalty: 20 penalty units

Damage to other property

20. A person must not do any act or thing which causes, or is likely to cause, any damage, destruction or disfigurement to any stall site or stallholder's property or wares, or to any other building, fence, notice, fixture or thing within the market area.

Penalty: 20 penalty units

Meetings

21. A person must not conduct or take an active part in a meeting in the market area, except in that part of the market area known as 'speakers corner', unless that person has first obtained the written authority of the General Manager.

Penalty: 1 penalty unit

Noise in the market area

22. A person must not, unless authorized to do so by permit, use or operate any television, radio, loudspeaker, tape recorder, compact disc player or any other method of amplifying or playing speech and/or music recorded or otherwise in such a way as to annoy other people in the market area.

Penalty: 1 penalty unit

Animals in market area

23. A person who is the owner or keeper of a dog, other than a guide dog or hearing dog, or other animal must not:

- a) allow the dog or other animal to be in or remain in the market area: or
- b) lock or enclose the dog or other animal inside a vehicle in the market area.

Penalty: 2 penalty units

Certain activities may be requested to cease

24. 1) The General Manager or an authorized officer may direct a person who is not a stallholder to cease any of the following activities: -

- a) the carrying about, giving out, displaying, or distribution of any handbill, placard, notice, advertisement, picture, postcard, book, brochure, pamphlet, leaflet or petition in the market area, or
- b) the soliciting of donations or the sale of raffle tickets, buttons, and the like in the market area.

2) A person must comply with a direction under sub-clause 1.

Penalty: 1 penalty unit

Certain behaviour prohibited in the market area

25. A person must not in the market area: -

- a) behave riotously, or commit a nuisance; or
- b) play any game of cricket, football, or any other game; or

- c) expectorate, urinate, or defecate; or
- d) drive any vehicle on or over any footway during the hours of operation of the market, as determined by the Council; or
- e) fail, refuse or neglect to comply with any lawful direction of an authorised officer or
- f) obstruct, hinder, or resist an authorised officer in the discharge of their duties; or
- g) a stallholder must not sell or offer for sale any material that may reasonably be considered by an authorized officer to be obscene or offensive.

Penalty: 1 penalty unit

Syringes and Sharps

26. A person must not place, leave or drop any used or unused syringe or any other Sharp in or on the market area.

Penalty: 20 penalty units

Division 4 - Vehicles

Parking in the market area

27. A person must not park a motor vehicle in the market area between 5.30 am and 6.00 pm on market days or between such other hours as set out in the market notice without the permission of the General Manager.

Penalty: 2 penalty units

Power to remove vehicles

28. The General Manager or an authorised officer may order the removal of a motor vehicle parked in the market area contrary to this by-law where:

- a) a notice advising of the closure of highways in the market area has been issued under section 189 of the Act;
- b) appropriate “no parking” signs or other traffic signs are placed on or in the market area for the purposes of closure of the highway; and
- c) the owner of the motor vehicle cannot be located.

Movement of vehicles in the market area

29. 1) The market supervisor, General Manager, or an authorised officer may allow stallholders or people assisting a stallholder to bring motor vehicles into the market area and park them at or adjacent to the part of the Salamanca market area which the stallholder is allowed to use for a short period at the beginning and the end of the market day or at other times.
- 2) In determining when and which motor vehicle may be moved and parked in the market area the market supervisor is to have regard to the need to keep traffic and other congestion to a minimum and to the times of the day when the movement of the motor vehicles will cause the least disruption to the activities in the market area.

Skateboards and bicycles

30. A person must not use a skateboard or bicycle in the market area unless authorised to do so

by permit.

Penalty: 1 penalty unit

Power to stop vehicles

31. 1) The General Manager or an authorised officer may require the driver or user of a vehicle in the market area to stop the vehicle where the General Manager or authorised officer believe on reasonable grounds that the driver, user or occupants of the vehicle have committed an offence under this by-law.
- 2) A person who is the driver or user of a vehicle must not fail or refuse to stop or comply with a direction from the General Manager or an authorised officer to stop.

Penalty: 5 penalty units

Division 5 – Miscellaneous Powers

Power to close market

32. The General Manager may close the market at any time for any reason deemed appropriate by him/her.

General powers

33. 1) The General Manager, market supervisor or an authorised officer may give directions to any person in relation to their use of, behaviour or presence in the market area.
- 2) A person must not fail to comply with a reasonable direction given under sub-clause 1.

Penalty: 3 penalty units.

Power to cancel licences

34. The General Manager may cancel a licence, permit or written authority granted under this by-law, where:
- a) the permit holder breaches a provision of this by-law or commits an offence; or
 - b) the permit holder fails to comply with a term or condition of the licence, permit or written authority; or
 - c) the permit holder fails to comply with the lawful directions of the General Manager or authorised officer; or
 - d) the cancellation is done in accordance with the terms and conditions of the licence, permit or written authority.

PART 3 - POWERS OF COUNCIL AND POLICE OFFICERS

Removal from Council Property

35. (1) Any authorised officer may:
- a) remove any person from the market area, including a footpath or road, or other Council property whom the authorised officer reasonably believes has committed or who is committing an offence under this by-law; and

- b) remove anything which is in the market area, including a footpath or road, or other Council property without the approval of the Council.
- (2) A police officer is authorised to:
- a) assist an authorised officer to carry out any action under clause (1) above; and
 - b) arrest any person who is in the market area, footpath or road, or other Council property whom the police officer reasonably believes has committed or who is committing an offence.

PART 4 - PERMITS AND LICENCES

Occupation of market area

36. 1) Upon application the General Manager may issue a licence, permit or written authority to a person to occupy part of the market area, road or footpath upon such terms and conditions as approved by the General Manager
- 2) A person who is the holder of a licence, permit or written authority under this clause must comply with the terms and conditions set out in that licence, permit or written authority.

Penalty: 2 penalty units.

- 3) The General Manager may cancel a licence, permit or written authority issued under this clause where the holder of the licence, permit or written authority fails to comply with the terms and conditions set out therein.

Occupation licence of market area by existing Salamanca Place traders

37. 1) The General Manager may grant a permit, licence or written authority for any purpose under this by-law.
- 2) Any application for a licence, permit or written authority pursuant to this by-law is to be in writing and where applicable be accompanied by the following: -
- a) a statement in writing of the type of activity proposed to be undertaken by the applicant; and
 - b) a scaled drawing showing the location and extent of the proposed occupation; and
 - c) in the case of an application that involves the sale of food or articles of food, a certificate from the Manager Environmental Health, certifying that the method and manner of selling proposed is to the satisfaction of the Manager Environmental Health; and
 - d) such other information that the General Manager may reasonably require.
- 3) The permit or written authority must specify the authority granted by the permit and may be subject to any or all of the following conditions: -
- a) the period during which the authority may be exercised;
 - b) the manner in which the authority may or may not be exercised;
 - c) the precautions to be observed during the exercise of the authority;

- d) the requirement for supervision or control of the exercise of the permit;
 - e) the record to be kept or notification to be given in relation to the exercise of the authority.
- 4) Licences, permits or written authorities issued under this by-law are in the forms as appearing in the Schedule to this by-law, or in such form as approved by the General Manager.
- 5) In deciding whether or not to grant a licence pursuant to this Part the General Manager may have regard to the following and any other relevant matters: -
- i) the type of activity proposed;
 - ii) the location of that activity;
 - iii) any comments made in relation to the application by an employee of the Council
 - iv) the impact of the proposed activity or occupation on the amenity of the market, market stallholders and patrons and the safe operation of the market.
- 6) A permit, licence or written authority under this by-law may be issued under such terms and conditions as the General Manager may consider appropriate.
- 7) The holder of a licence issued pursuant to this Part must comply with the terms and conditions thereof.
- Penalty: 2 penalty units
- 8) Any application for a permit under this by-law must be made at least 30 days before the day for which the application is being made.
- 9) The General Manager may cancel a licence, permit or written authority issued under this clause where the holder of the licence, permit or written authority fails to comply with the terms and conditions set out therein.
- 10) The General Manager may modify or cancel a licence, permit or written authority issued under this clause if considered necessary by the General Manager.

PART 5 - INFRINGEMENT NOTICES

38. (1) In this clause –
- “**specified offence**” means an offence against the clause specified in column 1 of Schedule 2.
- (2) An infringement notice may be issued in respect of a specified offence and the monetary penalty set out adjacent to the offence in Column 3 of Schedule 2 is the penalty payable under the infringement notice for that offence.
- (3) An authorized officer may –
- a) issue an infringement notice to a person who the authorized officer has reason to believe is guilty of a specified offence; and
 - b) issue on infringement notice in respect of more than one specified offence.
- (4) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.
- (5) In addition to any other method of service, and infringement notice alleging that a vehicle

has been used in relation to a specified offence may be served by affixing it to that vehicle.

PART 6 – RECTIFICATION OF BREACHES AND RECOVERY OF EXPENSES

Offending person to rectify damage or breach

- 39. 1) An authorised officer may order a person to remove any thing, item or structure which offends against this by-law or to rectify any damage or other offence under this by-law.
- 2) If a person fails to comply with an order under sub-clause 1 to the satisfaction of the General Manager the Council may remove or rectify the offence and recover the costs of that removal or rectification from the person/s who committed the offence as a debt payable to the Council.

Council may rectify damage or breach

- 40. 1) The Council may rectify any damage to Council property or property under the care or control of the Council or remove any thing, item or structure which offends against this by-law without ordering the offending person to undertake the rectification works.
- 2) The Council may recover the costs of any rectification works undertaken under sub-clause 1 from the person/s who caused the damage or otherwise offended against this by-law as a debt payable to the Council.

PART 7 – DELEGATION

- 41. Where under this by-law any matter may be determined by the General Manager, the General Manager may in accordance with the Act, delegate to another Council employee the performance of those functions.

SCHEDULE 1 - FORMS

Form 1

LICENCE TO

Full Name of Applicant

Full Residential Address of Applicant
.....

This is to certify that the Applicant is authorised to
.....
.....

pursuant to clause..... of this by-law.

This licence is valid until the day of.....20.....

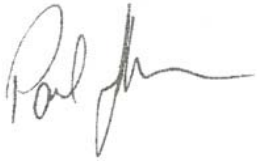
Dated this day of.....20...

.....
(General Manager)

2. INFRINGEMENT NOTICE OFFENCES

Column 1 CLAUSE	Column 2 GENERAL DESCRIPTION OF OFFENCE	Column 3 PENALTY (Penalty units)
6	Transfer of permits without written consent	2.5
7	Occupation of stall site not allotted or let to stallholder	0.5
8	Failure to surrender stall site	1.25
10(1)	Use of market area	1.25
10(2)	Use of market area outside stall site	1.25
11	Placing wares for sale outside stall site boundary	0.5
12	Sale of food without approval	0.5
13	Build up of dirt, filth, offal or trade	0.5
15(1)	Occupation of market area without licence	0.5
16(2)	Busking or performing without licence	0.5
16(3)	Non-compliance with Busking Licence	0.5
17	Littering	0.5
18	Damaging Council property	5
19	Damaging other property	5
20	Conducting or actively participating in a meeting	0.25
21	Making noise in the market area	0.25
22	Animals in the market area	0.5
23(2)	Non compliance with direction	0.25
24	Displaying prohibited behaviour	0.25
25	Leaving unused syringe or sharp	5
26	Parking in the market area	0.5
29	Using skateboard or bicycle in the market area	0.5
30(2)	Failure to comply with direction	1.25
32(2)	Failure to comply with direction	0.75
35(2)	Non compliance with permit	0.5
36(7)	Non compliance with licence	0.25

Certified that the provisions of the By-law are in accordance with the law by



P.A. JACKSON
Legal Practitioner

Dated this 12th day of May 2010
At HOBART

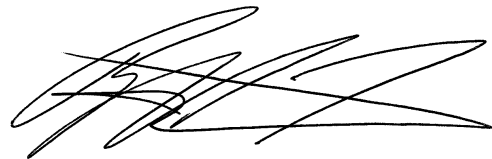
Certified that the By-law is made in accordance with the *Local Government Act 1993* by



N.D. HEATH
General Manager

Dated this 12th day of May 2010
At HOBART

The Common Seal of the HOBART
CITY COUNCIL was hereunto affixed
in the presence of :



R.H.F. VALENTINE
Lord Mayor



N.D. HEATH
General Manager