

# **HOBART CITY COUNCIL**

## **SALAMANCA MARKET BY-LAW**

### **BY-LAW No. 1 of 2022**

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**HOBART CITY COUNCIL**  
**SALAMANCA MARKET BY-LAW**  
**BY-LAW No. 1 of 2022**

**PART 1 – PRELIMINARY**

1. This by-law is made pursuant to section 145 of the Act for the purpose of managing and controlling conduct in relation to the Salamanca Market.
2. This by-law may be cited as the Salamanca Market By-law.
3. This by-law applies to Salamanca Place in Hobart and the surrounding road reserve, including the footpaths.
4. In this by-law:
  - Act** means the *Local Government Act 1993*;
  - authorised officer** means an employee or contractor of the Council authorised by the Chief Executive Officer for the purposes of this by-law, and any reference to an authorised officer in this by-law includes the Market Supervisor;
  - bicycle** has the same meaning as in the Road Rules;
  - Chief Executive Officer** has the same meaning as ‘General Manager’ under the Act;
  - Council** means Hobart City Council;
  - Fee Unit** means the sum as prescribed under the provisions of *the Fee Unit Act 1997*;
  - market area** means that part of Salamanca Place, Hobart which is closed to facilitate the Salamanca Market being held, including the surrounding footpaths and other land under the control of the Council, or

any part of it, as specified in a market notice;

**market day** means the period of time on any day on which Salamanca Place, or any part of it, is closed to facilitate the Salamanca Market being held, as specified in a market notice;

**market notice** means a notice published pursuant to section 189(2) of the Act;

**Market Supervisor** means any person who is authorised by the Chief Executive Officer to act in that capacity;

**meeting** means any assembly of people and includes a parade, performance, spectacle, entertainment, exhibition, rally, march, demonstration or other event which causes or is likely to cause people to assemble;

**motor vehicle** has the same meaning as in the Road Rules;

**motorised scooter** has the same meaning as in the Road Rules;

**municipal area** has the same meaning as it does in the Act;

**occupy and occupying** includes:

- (a) to place tables and chairs, umbrellas, signs or barriers to enable the service of food or beverages;
- (b) to fence or divide any part of a market area to exclude members of the public; and
- (c) to erect any temporary structure;

**owner** means, in relation to a vehicle:

- (a) the person or people who are registered as the owner of a vehicle under the *Vehicle and Traffic Act 1999*, or any corresponding enactment or ordinance of a State or Territory of the Commonwealth; or
- (b) a person who has use of the vehicle under a hiring or a hire-purchase agreement;

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

**permit** means:

- (a) a current permit or other written approval (including a booking confirmation provided by electronic means) granted pursuant to this by-law;

providing that:

- (b) if the permit or written approval was issued for a certain time period, that time period has not expired; or
- (c) if the permit or written approval was issued for a certain event, that event has not yet taken place;

**permit holder** means a person who holds a permit;

**person** means an individual, partnership, corporation or other legal entity (other than the Crown) and their authorised contractors and employees;

**Road Rules** means the *Road Rules 2019*;

**Salamanca Market** means any market operated by the Council pursuant to section 189(1)(a) of the Act and held on Salamanca Place, Hobart;

**scooter** has the same meaning as in the Road Rules;

**signboard** means any board, sign, plaque, or banner which in any way makes an announcement or is an advertisement for any restaurant, shop, place of business, product, wares or any other thing which is not permanently attached to any building or other structure;

**stallholder** means a person who has entered into a stallholder agreement;

**stallholder agreement** means a current agreement entered into between a person and the Council, pursuant to section 189(1)(a) of the Act to operate in the market area;

**stall site** means part of the market area which has been designated by the Council or the Market Supervisor as an area to be used for a stall at the Salamanca Market;

**vehicle** has the same meaning as in the Road Rules;

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

**wheeled recreational device** has the same meaning as in the Road Rules.

## **PART 2 – STALLHOLDERS**

### **Obligations of stallholders**

5. A stallholder must comply with the terms of the stallholder agreement.

Penalty: 2 penalty units

### **Waste and refuse**

6. A stallholder must not dispose of or leave any dirt, filth, offal or trade waste or any other refuse in any stall site or within the market area.

Penalty: 2 penalty units

### **Cleanliness of stalls**

7. A stallholder, during its occupation of a stall site, must maintain that stall site in a clean and sanitary condition.

Penalty: 2 penalty units

### **Production of a stallholder agreement**

8. A stallholder must produce evidence of the stallholder agreement immediately when requested to do so by a police officer or an authorised officer, and the stallholder must answer all questions which are reasonably necessary to establish that the person holds a

stallholder agreement in good faith.

Penalty: 2 penalty units

### **PART 3 – PROHIBITIONS**

#### ***Division 1 – Control of stall sites & other market areas***

##### **Occupation of stall site**

9. A person must not occupy a stall site unless they have entered into a stallholder agreement and have been allocated that stall site for that market day by the Market Supervisor.

Penalty: 2 penalty units

##### **Occupation of market area**

10. A person must not occupy any market area, other than a stall site, unless they have entered into a stallholder agreement or have been granted a permit to do so.

Penalty: 2 penalty units

##### **Surrender of stall site or market area**

11. Any person who is using or occupying a stall site or any market area in breach of this by-law must immediately cease using or occupying the stall site or market area as directed to do so by the Market Supervisor.

Penalty: 5 penalty units

#### ***Division 2 – Commercial conduct***

**Offer wares or services**

12. A person must not offer or expose for sale any wares or offer any services in a market area, whether in exchange for money or otherwise, unless the person has entered into a stallholder agreement.

Penalty: 2 penalty units

**Setting up stalls**

13. A person must not set up, place, keep, maintain or park any stall in a market area to sell wares or to pursue any business, trade or employment unless the person has entered into a stallholder agreement.

Penalty: 2 penalty units

**Display of items**

14. A person must not adhere, display, exhibit, promote a petition or distribute any advertisement, book, card, handbill, notice, pamphlet, paper, picture, placard, sticker or other thing whatsoever in a market area, except:
- (a) on any area specifically designated by the Council or the Chief Executive Officer for that purpose; or
  - (b) if the person has obtained a permit to do so.

Penalty: 2 penalty units

**Prohibited item, ware or service in the market area**

15. A person must not in the market area display, sell or offer for sale any item, ware or service that may reasonably be considered by an authorised officer to be indecent, obscene or offensive.

Penalty: 2 penalty units

***Division 3 – Control of animals***

16. This Division does not apply to guide dogs as defined in the *Guide Dogs Guide Dogs and Hearing Dogs Act 1967 (Tas)* or an assistance animal as defined in the *Disability Discrimination Act 1992 (Cth)*.

**Control of animals in market areas**

17. A person who is the owner or keeper of an animal must not allow the animal to be in a market area, including on or inside a vehicle, unless the animal is suitably secured in an area which has been designated by the Chief Executive Officer or Market Supervisor for that type of animal.

Penalty: 2 penalty units

***Division 4 – Control of vehicles***

**Driving in a market area**

18. A person must not drive a motor vehicle in the market area between 5.30 am and 6.00 pm on a market day unless, the person is a stallholder or permit holder or a person who is working with or assisting the stallholder or permit holder and that person is complying with any direction of an authorised officer.

Penalty: 2 penalty units

**Parking in a market area**

19. A person must not park a motor vehicle in the market area between



5.30 am and 6.00 pm on a market day unless, the person is a stallholder or permit holder, or a person who is working with or assisting the stallholder or permit holder, and that person is complying with any direction of an authorised officer.

Penalty: 2 penalty units

### **Other vehicles**

20. A person must not use a wheeled recreational device, bicycle, scooter or motorised scooter in the market area, other than to park them in an area which has been designated by the Chief Executive Officer or Market Supervisor for that purpose.

Penalty: 2 penalty units

### **Powers of authorised officers**

21. An authorised officer may:
- (a) give reasonable directions to the driver, user or the occupants of a vehicle in a market area;
  - (b) prohibit any vehicle from being taken or being allowed to remain on any part of a market area; or
  - (c) require any vehicle to be removed from any road or place in a market area.

## ***Division 5 – Interacting with others***

### **Noisy activities**

22. A person must not in the market area:
- (a) deliver any address or speak to an assembly of people;
  - (b) play any musical instrument or sing;

- (c) use or operate any television, radio, loudspeaker, record player, tape recorder, compact disc player or any other method of amplifying or playing speech and/or music recorded or otherwise;  
or
- (d) conduct any amusement or entertainment for financial reward;  
unless the person has first obtained a permit.

Penalty: 2 penalty units

### **Meetings**

- 23. A person must not conduct, take part or attend a meeting in or on a market area unless that meeting has been authorised by a permit.

Penalty: 2 penalty units

### **Tours**

- 24. A person must not, in a market area, act as a guide to organised tours or to individuals to provide assistance or information about matters including architecture, history and cultural matters unless authorised to do so by a permit.

Penalty: 2 penalty units

### **Sporting activities**

- 25. A person must not engage in sporting activities in a market area, whether or not the participants have paid any fee for participating, unless that sporting activity has been authorised by a permit.

Penalty: 2 penalty units

## ***Division 6 – Miscellaneous***

### **Power to close Salamanca Market**

26. The Chief Executive Officer may close the Salamanca Market at any time and for any reason deemed appropriate by the Chief Executive Officer.

## **PART 4 – PERMITS**

### **Granting permits**

27. A permit may be granted under this by-law by:
- (a) the Chief Executive Officer; or
  - (b) any electronic method authorised by the Chief Executive Officer, including via Council's website or an application operated by or on behalf of Council.
28. No provision of this by-law is to be construed as preventing the Chief Executive Officer from referring any application for a permit to the Council.

### **Applications**

29. Any application for a permit pursuant to this by-law is to be:
- (a) in accordance with any form approved by the Chief Executive Officer;
  - (b) accompanied by the relevant prescribed fee per application, if any, specified in Schedule 2 to this by-law; and
  - (c) where applicable, must be accompanied by the following:
    - (i) a statement in writing of the type of activity proposed to be undertaken by the applicant and the period in which it is proposed to be carried out;

- (ii) a scaled drawing showing the location and extent of the proposed activity;
  - (iii) approvals from relevant authorities;
  - (iv) evidence of current public liability insurance or other relevant insurance; and
  - (v) such other information that the Chief Executive Officer may reasonably require.
30. In deciding whether or not to grant a permit pursuant to this by-law, the Chief Executive Officer may have regard to the following and any other relevant matters:
- (a) the type of activity proposed;
  - (b) the location of that activity;
  - (c) the impact or risk of the proposed activity to public safety, the environment or amenity; and
  - (d) any comments made by any employee of the Council, by a police officer or an employee of the Tasmania Fire Service in relation to the application.

### **Permits**

31. A permit granted under this by-law must be in writing and may be granted under such terms and conditions as the Chief Executive Officer considers appropriate. Those conditions may include:
- (a) a restriction on the type of activity;
  - (b) a restriction on the period in which the activity may be carried out;
  - (c) the precautions to be observed while the activity is being carried out;
  - (d) the requirement for supervision or control of the activity;
  - (e) the record to be kept or notification to be given in relation to any activity carried out pursuant to the permit;

- (f) the payment of a bond to cover any damage to Council property or any cleaning required, or the provision of an indemnity to Council for any other loss or damage; or
- (g) the acceptance of responsibility for any damage to or loss of Council property as a result of the activity.

32. A permit holder must comply with the terms and conditions of the permit.

Penalty (unless otherwise specified): 2 penalty unit

#### **Production of a permit**

33. A permit holder must produce the permit immediately when requested to do so by a police officer or an authorised officer, and the permit holder must answer all questions which are reasonably necessary to establish that the person holds a permit in good faith.

Penalty: 2 penalty units

#### **Variation of permit conditions**

34. The Chief Executive Officer in its sole discretion may vary the conditions of any permit if it is considered appropriate to do so.

35. If the conditions of any permit are varied pursuant to clause 34, the Chief Executive Officer must serve a notice in writing on the permit holder stating:

- (a) the conditions of the permit are varied; and
- (b) the reason or reasons for the variation of the permit conditions.

36. The conditions of a permit will be varied from the date of service of the

notice of the variation.

### **Cancellation of permits**

37. The Council or the Chief Executive Officer may cancel any permit if satisfied in its sole discretion that:
  - (a) a permit holder has breached any of Council's by-laws; or
  - (b) a permit holder has breached a term or condition of the permit.
  
38. If a permit is cancelled pursuant to clause 37, the Chief Executive Officer must serve a notice in writing on the permit holder stating:
  - (a) the permit is cancelled; and
  - (b) the reason or reasons for the cancellation.
  
39. Cancellation of any permit is effective from the date of service of the notice of the cancellation.
  
40. Nothing in this by-law is to be construed as preventing or prohibiting the Council from cancelling any permit if this is required due to the exercise or intended exercise of any local government functions, powers, rights or duties by the Council.

### **Notices**

41. For the purposes of clauses 35 and 38, a notice may be served in any of the following ways:
  - (a) on the permit holder personally;
  - (b) by email to the last known email address of the permit holder;
  - (c) by ordinary post to the last known address of the permit holder; or
  - (d) by notice being given in the public notice section of a newspaper circulating in the Council's municipal area.

42. The date of service of a notice will be:
- (a) if sent by email, the notice is taken to be received at the time the email message is sent unless:
    - (i) the sender receives automated email notification that the email transmission has failed or has been delayed within 2 hours of sending the notice; or
    - (ii) the sender receives automated email notification to the effect that the recipient is not likely to receive the notice until a later date, which will then become the deemed date of receipt.
  - (b) if the permit holder was served by ordinary post, 3 business days from the date the notice was posted; or
  - (c) if the notice was given in a newspaper, the date of the publication of that newspaper.

## **PART 5 – RECOVERY OF COSTS**

### **Expenses incurred**

43. The Council, the Chief Executive Officer, the Market Supervisor and any authorised officer may rectify a breach of this by-law, including any damage to Council property, without ordering the offending person to undertake the rectification works.
44. Any expense incurred by the Council as a result of a failure to comply with or contravention of any of the provisions of this by-law is recoverable by the Council as a debt due to it by the person so failing to comply or contravening this by-law.

## **PART 6 – INFRINGEMENT NOTICES**

45. In this Part:  
**specified offence** means an offence against the clause specified in Column 1 of Schedule 1 to this by-law.
46. An authorised officer may issue an infringement notice to a person in respect of a specified offence and the monetary penalty payable under the infringement notice for that offence is the applicable sum specified in Column 3 adjacent to the offence in of Schedule 1 to this by-law.
47. Different sums may be specified in an infringement notice according to the nature of the offence and whether payment is made within a specified time.
48. An authorised officer may:
- (a) issue an infringement notice to a person who the authorised officer has reason to believe is guilty of a specified offence; and
  - (b) issue one infringement notice in respect of more than one specified offence.
49. The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.
50. In addition to any other method of service, an infringement notice alleging that a vehicle has been used in relation to a specified offence may be served by affixing it to that vehicle.
51. A person who is served with an infringement notice must, within 28 days of the date of service, do one or more of the following:
- (a) pay the monetary penalty in full to the Chief Executive Officer;
  - (b) apply to the Chief Executive Officer for withdrawal of the



- infringement notice;
- (c) apply to the Chief Executive Officer for a variation of payment conditions; or
  - (d) lodge with the Chief Executive Officer a notice of election to have the offence or offences set out in the infringement notice heard and determined by a court.
52. If a person who has been served with an infringement notice fails to take one or more of the actions required by clause 51 within the prescribed time, the infringement may be referred to the Director, Monetary Penalties Enforcement Service.
53. If the owner of the vehicle is issued with an infringement notice pursuant to this by-law, and the owner was not in control of the vehicle at the time the offence was committed, a statutory declaration may be provided to the Chief Executive Officer within 14 days after being served with the infringement notice, pursuant to sections 170(2)(a) and 170(3) of the Act.

## **PART 7 – ENFORCEMENT**

### **Hindering or resisting authorised officers**

54. A person must not obstruct, hinder, abuse, or resist any authorised officer in the market area in the discharge of that authorised officers' duty.

Penalty: 3 penalty units

### **Directions**

55. An authorised officer may give reasonable directions to any person in

relation to their use or treatment of, or presence in a market area.

56. A person must not fail to comply with a reasonable direction from an authorised officer given under this by-law.

Penalty: 3 penalty units

### **Removal from market areas**

57. The Market Supervisor or any authorised officer may:
- (a) remove any person from a market area whom the authorised officer reasonably believes has committed or who is committing an offence under this by-law; and
  - (b) remove any thing which the authorised officer reasonably believes is: in a market area without a permit, in breach of a permit or in breach of this by-law.

### **Assistance of police officers**

58. A police officer is authorised to:
- (a) assist the Market Supervisor or an authorised officer to carry out any action under clause 57;
  - (b) remove any person from the market area whom the police officer reasonably believes has committed or who is committing an offence under this by-law;
  - (c) remove any thing which is in the market area without a permit, in breach of a permit or in breach of this by-law; and
  - (d) arrest any person who is in a market area whom the police officer reasonably believes has committed or who is committing an offence under this by-law.

### **Signage**

59. The Chief Executive Officer or Market Supervisor, or any person acting under their direction, may remove or direct the removal of any advertisement or signboard in the market area.
60. A person must comply with a direction given under clause 59.

Penalty: 3 penalty unit

### **Removal and sale of vehicles**

61. If an authorised officer reasonably believes that there has been a breach of clause 19 of this by-law, the authorised officer may:
  - (a) remove the vehicle; and
  - (b) if following its removal pursuant to clause 61(a) the vehicle has not been collected for a period of 28 days, the vehicle may be sold or destroyed by Council at its discretion.
62. If a vehicle is sold pursuant to clause 61(b), Council may retain from the sale proceeds any expenses associated with the sale of the vehicle, including any auctioneer's fees.
63. If a vehicle is destroyed pursuant to clause 61(b) or if the sale proceeds are less than the total of the amounts specified in clause 62, the balance must be paid by the owner of the vehicle and are recoverable by the Council as a debt due to it.

**SCHEDULE 1 - INFRINGEMENT NOTICE OFFENCES**

<b>1: CLAUSE</b>	<b>2: DESCRIPTION</b>	<b>3: PENALTY (penalty units)</b>
<b>PART 2 – STALLHOLDERS</b>		
5	Obligations of stallholders	0.5
6	Waste and refuse	0.5
7	Cleanliness of stalls	0.5
8	Failure to produce stallholder agreement	0.5
<b>PART 3 – PROHIBITIONS</b>		
9	Occupation of stall site	0.5
10	Occupation of market area	0.5
11	Surrender of stall site or market area	0.5
12	Offer wares or services	0.5
13	Setting up stalls	0.5
14	Display of items	0.5
15	Prohibited item, ware or service in a market area	0.5
17	Control of animals in market areas	0.5
18	Driving in a market area	0.5
19	Parking in a market area	1
20	Other vehicles	0.5
22	Noisy activities	0.5
23	Meetings	0.5
24	Tours	0.5

1: CLAUSE	2: DESCRIPTION	3: PENALTY (penalty units)
25	Sporting activities	0.5
<b>PART 4 – PERMITS</b>		
32	Failure to comply with permit	0.5
33	Failure to produce a permit	2
<b>PART 7 – ENFORCEMENT</b>		
54	Hindering or resisting authorised officers	0.75
56	Directions by authorised officers	0.75
60	Signage	0.5

**SCHEDULE 2 – PRESCRIBED FEES**

<b>1: CLAUSE</b>	<b>2: DESCRIPTION</b>	<b>3: FEE (fee units)</b>
10	Occupy market area	0
14	Display of items	0
22	Noisy activities	0
23	Meetings	0
24	Tours	0
25	Sporting activities	0

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



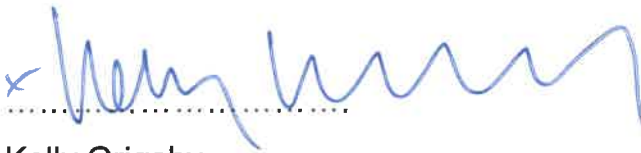
N. J. STREET

Solicitor

Dated 29 July 2022

At Hobart

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



Kelly Grigsby

Chief Executive Officer

Dated 28 July 2022

At Hobart

The common seal of the Hobart City Council was affixed on in the presence of:



G.G. Doyle

Head of City Projects

Dated: 1 August 2022



P.A. JACKSON

Manager Legal & Governance

