

THE OPOTIKI DISTRICT COUNCIL TRADING IN PUBLIC PLACES BYLAW 2008

EXPLANATORY NOTE

The Opotiki District Council Trading in Public Places Bylaw 2008 was made in accordance with the Local Government Act 2002. The purpose of the Bylaw is to regulate the conduct of persons selling goods and services on streets, roads, footpaths and other public places and to regulate the conduct of persons using vehicles to sell goods and services to the public.

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The Opotiki District Council

Trading in Public Places Bylaw 2008

This Bylaw is made in accordance with the Local Government Act 2002.

1. Title

This Bylaw shall be known as "The Opotiki District Council Trading in Public Places Bylaw 2008."

2. Commencement

This Bylaw shall come into force on the 1st day of July 2008.

3. Repeals

As from the date that this Bylaw comes into force the Opotiki District Council Bylaw 1990 Chapter 4 Mobile or Travelling Shops and Hawker and Itinerant Traders shall be repealed.

4. Interpretations

For the purposes of this Bylaw the following Interpretations shall apply:

Authorised Officer means any person warranted by the Council in accordance with the Local Government Act 2002 to enforce this Bylaw and includes an Enforcement Officer

Council means the Opotiki District Council.

Enforcement Officer means an Enforcement Officer appointed to such office by the Council pursuant to the Local Government Act 2002.

Chief Executive means the Chief Executive of the Opotiki District Council or a person acting under delegated authority on behalf of the Chief Executive and includes any person for the time being appointed by the Council to perform the duties or a particular duty of the Chief Executive.

Goods means any product or service

Hawker means any person who carries or takes about any goods, wares or merchandise for sale, without being invited to call and not in response to any previous order for such goods; and includes any person who exposes such goods for sale or solicits the custom of any other person.

Keeper in relation to any mobile or travelling shop, stand or stall means the person by whom or on whose behalf any business is carried on by means of that mobile or travelling shop, stand or stall.

Licence means a licence issued by the Council authorising the licensee to conduct any business as a hawker or as a keeper of a mobile or travelling shop, stand or stall and referred to as a Trading licence.

Licensee means the holder of any licence issued under this Bylaw.

Mobile or Travelling Shop, Stand or Stall means a vehicle or stand or stall whether self-propelled or not, from which goods, wares or merchandise are offered or exposed for sale in the road or a public place or from which goods, wares or merchandise may be ordered in the road or a public place (whether or not in pursuance of any invitation to call with the goods, wares or merchandise) or from which services are offered for sale in the road or a public place and includes any vehicle on or from which food is sold for consumption in

or at the vehicle, but does not include any vehicle used for the purpose of transporting and delivering goods, wares or merchandise pursuant to a prior order placed for the delivery of the goods, wares or merchandise.

Motor vehicle shall have the meaning given to it in Section 2 of the Land Transport Act 1998.

Public Place means any place that, at any material time, is under the control of Council and is open to or being used by the public, whether free or on payment of a charge, and includes any road.

Road has the meaning assigned to it under the Land Transport Act 1998. It also means all land lying between the boundaries of a road including the footpath and berms

Service Delivery Vehicle means any vehicle being used for the purposes of delivering goods to the premises of any business or organisation and does not involve the sale of the goods to the general public in any public places.

Trading Licence – means the same as a “Licence” above

5. Licence Required

- 5.1 No person shall engage in trading in any public place without first obtaining a Trading Licence from the Council.

6 Application for Licence

- 6.1 Applications for a Trading Licence shall be made in writing to the Council.
- 6.2 In making the application, the Council will require the applicant to provide all information necessary to determine the application, including but not limited to:
- (a) Full name of person or registered company in whose name the Trading Licence is to be issued; and
 - (b) The postal address for receipt of information; and
 - (c) Residential address; and
 - (d) Registration number of vehicle to be used; and
 - (e) Confirmation of a current warrant of fitness and registration for the vehicle where applicable; and
 - (f) Trading Name of the Company/Business; and
 - (g) Name of the Owner/Manager/Company Director(s), and in the case of a Company or similar entity, date of registration/incorporation; and
 - (h) Contact telephone number(s); and
 - (i) Details of the nature of the business and/or goods to be sold.

7 Licence Fees and Charges

- 7.1 The Council may prescribe fees and or charges for a Trading Licences and/or site rentals. Fees and or charges may differ for any class of licence as prescribed in the Council's Annual Plan Fees and Charges.
- 7.2 The Licence fee shall be a separate charge from any rental income from licensing of a portion of an approved site.
- 7.3 At its discretion, the Council may issue temporary licences upon payment of such fee or charges whether per day or otherwise and subject to such conditions as it considers reasonable.

8 Licence Conditions

8.1 In granting a Trading Licence, the Council may impose such conditions as it considers reasonable and desirable. The following conditions shall be imposed in every licence issued under this Bylaw:

- (a) The mobile or travelling shop, stall, or stand shall comply with the Food Hygiene Regulations 1974.
- (b) The provisions of the Transport Act 1962, the Traffic Regulations 1976 and any amendments thereto must be coupled with.
- (c) The mobile or travelling shop shall not be permitted to stand or remain stationary in any street save except for such reasonable time it is required for the transaction of business with any customers.
- (d) No mobile or travelling shop shall park or trade within 200m of any shop or business selling the same or similar goods.
- (e) The mobile or travelling shop shall not be parked in such a manner as to create a traffic hazard.
- (f) Trading generally shall be restricted to the hours of daylight between dawn and dusk. During periods when daylight savings is in operation, trading shall be restricted to the hours between dawn and 9.00pm.
- (g) No licences or operators of a mobile or travelling shop, stall or stand shall carry on any trade on any reserve under the control of Council without the prior written consent of Council.
- (h) The operator of the mobile or travelling shop, stall or stand shall be responsible for all litter generated by the operation by ensuring:
 - (i) That litter bin or bins are provided in the vicinity of the vehicle, stall or stand; and
 - (ii) that before moving on, all litter bins and any litter in the vicinity is picked up and disposed of
- (i) The licence may be subject to any special conditions that Council may impose from time to time during the currency of the licence.
- (j) The mobile or travelling shop operator shall have current public liability insurance cover to the value of one (1) million dollars.

8.2 The holder of the licence (the licensee) shall observe the conditions of the licence.

8.3 Every licensee shall, notwithstanding the conditions of the licence, upon being requested to do so by an authorised officer, alter his or her sales site or position to any other site or position as directed by the authorised officer.

8.4 Every licensee shall hold a Trading Licence for each trading activity in the Opotiki District at any one time. If operating multiple trading activities in the Opotiki District at any one time, then each trading activity will require a Trading Licence.

8.5 No licensee shall carry on, permit or suffer to be carried on any trade or business on, beside or near any State Highway in the District administered by the Council unless prior written consent for the carrying of such trade or business has been given by Transit New Zealand ; and such use shall be in accordance with any conditions required by Transit New Zealand.

9 Food Hygiene Requirements

- 9.1 If food is being sold, the licensee shall comply with the food conduct requirements set out in Part 2 and the First Schedule of the Food Hygiene Regulations 1974 or any other related or appropriate enactments to the satisfaction of the Environmental Health Officer or any other authorised officer.
- 9.2 Clause 9.1 shall not apply in any case where the Environmental Health Officer or any other authorised Officer is satisfied that compliance with clause 9.1 would be unreasonable and impracticable having regard to the type of food being sold.

10 Production of Licence

- 10.1 The licensee shall carry the Trading Licence at all times when engaged in trading and shall show it to any authorised officer on demand.
- 10.2 Every licensee keeper of a mobile or travelling shop, stand or stall shall have his or her current licence prominently displayed in or on some part of the vehicle stall or stand at all times while it is being used for trading.

11 Trading in Certain Streets, Areas or in Certain Goods may be Prohibited

- 11.1 The Council may from time to time by resolution:
- (a) Prohibit any licensee from carrying on business in any specified road or public place or part thereof, or any locality or part thereof.
 - (b) Prescribe the hours of the day and days of the week during or on which sales may not be made by any licensee.
 - (c) Restrict the types or classes of goods that may be offered for sale by any licensee.
 - (d) Exempt or waive any prohibition, prescription or restriction otherwise imposed pursuant to this provision of this Bylaw.
- 11.2 Every licensee shall comply with any prohibition, prescription or restriction made under subclause (11-1) hereof notwithstanding that such prohibition, prescription or restriction may be given after the issue of his or her licence.

12 Licence not Transferable

- 12.1 No Licence issued under this Part of this Bylaw shall be transferable to any other person.

13 Revocation of Licence

- 13.1 A Trading Licence may be revoked by the Council if the licensee:
- (a) Permits a breach of this Part of the Bylaw or any other law, bylaw, regulation or rule made by a Statutory Authority or Agency
 - (b) Fails to observe the conditions of the Trading Licence;
 - (c) Permits any unlicensed person to operate as a trader in connection with the trading operation usually carried out by the licensee.

14 Exemptions

- 14.1 The exemptions allowed under this Bylaw are as follows:

- (a) If you own a fishing boat registered under Section 103 of the Fisheries Act 1996 then you or a person appointed by you may sell fresh fish caught from that boat or within the immediate vicinity of where the boat is moored, berthed or beached. Any fresh fish or shellfish taken from that boat to be sold must be caught in accordance with the conditions of the fishing permit;
- (b) Service delivery vehicles including milk vendors;
- (c) Any market, stall or stand which has a current approval under any other Bylaw, legislation, resource consent or specific resolution of the Council.

15 Serving of Orders and Notices

- 15.1 Except as otherwise provided for in any other enactment, where any notice, order, or other document is required to be served on any person for the purposes of this Bylaw, service may be effected by delivering it personally to the person or by sending it by registered post to that person's last known residential or business address.
- 15.2 If the person is absent from New Zealand the order, notice, or other document may be served on the person's agent in the manner referred to in 15.1.
- 15.3 If the order, notice, or other document relates to land or buildings, then the order, notice, or other document should be served on the person who owns that land or buildings. However, if that person is not known or is absent from New Zealand, or has no known agent in New Zealand, the order or notice may be:
 - (a) Served on the person who is occupying the land or buildings; or
 - (b) If there is no person in occupation, put up on some conspicuous part of the land or buildings.It is not necessary in that notice to name the occupier or the owner of that land or buildings.
- 15.4 Where an order or notice is sent by registered post, the order or notice shall be sent so as to arrive no later than the latest time on which such order or notice is required to be served.
- 15.5 Any order or notice issued shall state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of an authorised officer.

16. Offences And Breaches

- 16.1 Any person commits a breach of this Bylaw who:
 - (a) Does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by this Bylaw;
 - (b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Bylaw, ought to be done by that person at the time and in the manner provided by this Bylaw;
 - (c) Does not refrain from doing anything which under this Bylaw they are required to abstain from doing;
 - (d) Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in this Bylaw;
 - (e) Refuses or neglects to comply with any notice given to that person under this Bylaw;
 - (f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon that officer by this Bylaw; or
 - (g) Fails to comply with any notice or direction given under this Bylaw.

16.2 Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an authorised officer, provide their full name and address.

17 Penalties for Breach of Bylaw

17.1 Every person who commits an offence against this Bylaw is liable to:

(a) The penalty set out in the Local Government Act 2002.

(b) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty.

17.2 In accordance with the Local Government Act 2002 the Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.

18 Notices

18.1 The Council may give notice to any person in breach of this Bylaw to carry out any remedial action in order to comply with the Bylaw and every such notice shall given the time by which the remedial action is to be carried out, and may be extended from time to time.

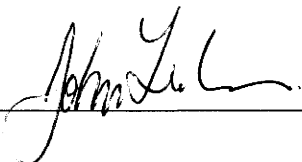
19. Dispensing Powers

19.1 Where in the opinion of the Council full compliance with any of the provisions of this Bylaw would needlessly or injuriously affect any person, or the course or operation of the business of, or bring loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the special application of that person, dispense with the full compliance with the provisions of this Bylaw; provided that any other terms or conditions (if any) that the Council may deem fit to impose shall be complied with by that person.

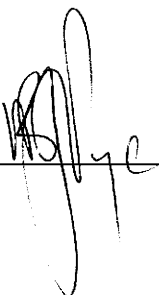
This Bylaw was duly made by the Opotiki District Council by a resolution passed on the 11th day of March 2008 and was confirmed following consideration of community submissions received during a special consultative procedure by a resolution { No 461 } passed on the 17th day of June 2008.



The common Seal of the Opotiki District Council
was here to affixed in the presence of



Mayor



Chief Executive

