

# Gold Coast City Council



## **Subordinate Local Law No. 11.2 (Roadside Dining) 2008**

It is hereby certified that this is a true and correct copy of  
*Subordinate Local Law No. 11.2 (Roadside Dining) 2008* made, in accordance with the *Local Government Act 1993*, by  
the Council of the City of Gold Coast  
Joe McCabe  
Acting Chief Executive Officer

**Gold Coast City Council  
Subordinate Local Law No. 11.2  
(Roadside Dining) 2008**

Summary of Provisions

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## **Gold Coast City Council Subordinate Local Law No. 11.2 (Roadside Dining) 2008**

### **Part 1 Preliminary**

#### **1 Short title**

This subordinate local law may be cited as *Subordinate Local Law No. 11.2 (Roadside Dining) 2008*.

#### **2 Authorising local law**

This subordinate local law is made pursuant to *Local Law No. 11 (Roads and Malls) 2008*.

#### **3 Object**

The object of this subordinate local law is to assist in the implementation of *Local Law No. 11 (Roads and Malls) 2008* by ensuring that the operation of a prescribed activity being roadside dining does not result in personal injury or property damage or detrimentally affect the amenity of the area in which it is operated.

#### **4 Definitions—the dictionary**

The dictionary in the Schedule (Dictionary) of this subordinate local law defines particular words used in this subordinate local law.

### **Part 2 Roadside dining**

#### **5 Application for a permit**

For the purposes of section 12(1)(c)(iv) (Application for a permit) of *Local Law No. 11 (Roads and Malls) 2008*, an application for a permit for the operation of a prescribed activity being roadside dining must, unless otherwise required by the local government, be accompanied by—

- (a) the name, street address, telephone number, facsimile number and email address of the person to be operating the roadside dining; and
- (b) the trading name, street address, telephone number, facsimile number and email address, registered business name and Australian Company name of the business under which the roadside dining is to be operated; and
- (c) details of the operation of the roadside dining including—
  - (i) the proposed hours of operation of the roadside dining; and

- (ii) the number of tourists and visitors which frequent the area; and
- (iii) the proposed term of the permit; and
- (iv) the area to be used for the roadside dining including dimensions of the area and intended access ways; and
- (d) details, including the design, of any equipment or structure to be used as part of the operation of the roadside dining; and
- (e) any public utility which is located in, on or adjoins the area to be used for the operation of the roadside dining; and
- (f) all public liability insurance policies relating to the operation of the roadside dining; and
- (g) any interference with the use of the local government road, footpath, mall or access to adjoining premises as a result of the operation of the roadside dining; and
- (h) the approval of the chief executive responsible for administering the *Transport Infrastructure Act 1994* if the road is a State controlled road.

## **6 Grant of a permit**

- (1) For the purposes of Schedule 2 (Dictionary) and section 13(1)(g) (Grant of a permit) of *Local Law No. 11 (Roads and Malls) 2008*, the local government is to, in assessing an application for the granting of a permit for the operation of a prescribed activity being roadside dining, have regard to the following assessment criteria—
  - (a) whether the matters which are the subject of the conditions specified in section 7 (Conditions of a permit) of this subordinate local law which are relevant to the operation of the roadside dining can be adequately addressed by the imposition of those conditions; and
  - (b) whether the operation of the roadside dining will not—
    - (i) unduly obstruct pedestrian or vehicular traffic; or
    - (ii) prejudice the maintenance of the local government road, footpath or mall; or
    - (iii) affect the amenity or heritage significance of an area; and
  - (c) whether the roadside dining will—
    - (i) have a visual impact on the area; or
    - (ii) unduly obstruct pedestrian or vehicular traffic; and

- (d) whether the roadside dining will be located—
    - (i) directly in front of that part of the ground floor of the building which is owned or occupied by the applicant for the permit; and
    - (ii) perpendicular to the front alignment of the building measured from the primary load bearing internal sidewalls; and
  - (e) if the roadside dining will involve an area other than an area which is directly outside of the premises which is owned or occupied by the applicant, whether—
    - (i) the area is immediately adjacent to the applicant’s premises; and
    - (ii) the owner and occupier of the adjacent premises have consented in writing to the making of the application for the permit and that consent has not been withdrawn; and
    - (iii) in the opinion of the local government, the use of the area for the operation of the roadside dining is appropriate having regard to—
      - (A) the nature of the adjacent premises; and
      - (B) the amount of roadside dining being operated or approved in the surrounding area; and
      - (C) the amenity of the surrounding area.
- (2) However the local government may grant a permit for the operation of the prescribed activity under subsection (1), even if the operation of the roadside dining does not comply with the assessment criteria specified in subsection (1), if the operation of the roadside dining will substantially increase the commercial activity or the amenity of the area in which the operation of the roadside dining is to be located.

## **7 Conditions of a permit**

For the purposes of section 15(3) (Conditions of a permit) of *Local Law No. 11 (Roads and Malls) 2008*, the local government may impose all or any of the following conditions on a permit for the operation of roadside dining<sup>1</sup>—

- (a) The operation of the roadside dining must not—

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<sup>1</sup> This section prescribes, for the purposes of section 15(3) (Conditions of a permit) of *Local Law No. 11 (Roads and Malls) 2008*, the conditions that will ordinarily be imposed on a permit. However, the local government may, pursuant to section 15(1) (Conditions of a permit) of *Local Law No. 11 (Roads and Malls) 2008*, grant a permit on any conditions the local government considers appropriate.

- (i) create a traffic problem; or
  - (ii) increase an existing traffic problem; or
  - (iii) detrimentally affect the efficiency of the existing road network.
- (b) The operation of the roadside dining must not constitute a risk to road safety.
- (c) The hours of operation of the roadside dining must not detrimentally affect the amenity of the neighbourhood.
- (d) The operation of the roadside dining must comply with all relevant laws, including—
  - (i) the *Environmental Protection Act 1994*; and
  - (ii) the *Environmental Protection (Water) Policy 1997*; and
  - (iii) the *Environmental Protection (Noise) Policy 1997*; and
  - (iv) the *Environmental Protection (Air) Policy 1997*; and
  - (v) the *Environmental Protection (Waste Management) Regulation 2000*.
- (e) The operation of the roadside dining must not constitute a nuisance pursuant to *Local Law No. 8 (Public Health, Safety and Amenity) 2008*.
- (f) All hazardous materials used as part of the operation of the roadside dining must be stored and used in a safe manner.
- (g) Trade waste from the operation of the roadside dining must be disposed of in accordance with an approval under the *Water Act 2000*.
- (h) All waste, including waste water, generated as part of the operation of the roadside dining—
  - (i) must be disposed of in a safe and sanitary manner and in accordance with the *Environmental Protection Act 1994*, *Environmental Protection (Waste Management) Regulation 2000* and the *Water Act 2000*; and
  - (ii) must be disposed of in a manner which maintains the operation of the roadside dining and its surrounds in a clean, tidy, sanitary and hygienic condition; and
  - (iii) including a spillage of a waste, a contaminant or another material must—

- (A) be cleaned up immediately; and
  - (B) not be cleaned up by hosing, sweeping or otherwise releasing the waste, contaminant or material to any stormwater system or waters; and
- (iv) must be kept so as not to attract a pest; and
- (v) must not be disposed of into waters or a watercourse.
- (i) All waste water generated during or from the operation of the roadside dining must be discharged safely to the sewerage system or an on-site sewerage facility.
- (j) Waste containers sufficient to accommodate the collection and storage of all waste generated as part of the operation of the roadside dining must be—
  - (i) provided in the manner and locations specified by the local government; and
  - (ii) regularly cleaned and maintained in a clean, tidy, sanitary and hygienic condition; and
  - (iii) designed and constructed to prevent access to pests and to be easily and effectively cleaned and disinfected.
- (k) The operation of the roadside dining—
  - (i) must maintain and keep clear at all times a minimum clearance of two metres; or
  - (ii) in the case of Orchid Avenue, Surfers Paradise, 2.3 metres.
- (l) The operation of the roadside dining must maintain at all times a minimum setback of 500mm from any part of the kerb.
- (m) No ancillary equipment or a removable umbrella structure other than that which is specified in the permit may be used as part of the operation of the roadside dining.
- (n) A table, chair, ancillary equipment or removable umbrella structure which is used as part of the operation of the roadside dining must—
  - (i) in the opinion of an authorised person, be in good condition and repair; and
  - (ii) comply with the standards specified by the local government; and

- (iii) be sufficiently weighted to prevent the equipment becoming airborne; and
  - (iv) provide a minimum head clearance of 2.2 metres; and
  - (v) not encroach on an area which is under security camera surveillance; and
  - (vi) be removed from a local government road, footpath or mall at the close of business each day, unless otherwise specified by the local government.
- (o) No structure must be fixed to the road, footpath or mall unless approved by the Department of Natural Resources, Mines and Energy.
- (p) Only the area delineated by pavement markers on the road, footpath or mall is to be used for the operation of the roadside dining.
- (q) The area used for the operation of the roadside dining must—
  - (i) be maintained in a clean and sanitary condition at all times; and
  - (ii) not attract fly breeding or vermin infestation; and
  - (iii) be kept free of pests and conditions offering harbourage for pests; and
  - (iv) be located near to toilet facilities.
- (r) The operation of the roadside dining may only be carried out within specified times.
- (s) If any equipment or removable umbrella structure used as part of the operation of the roadside dining or adjoining premises forms a continuous barrier along the kerb, the operation of the roadside dining must provide a gap—
  - (i) with a minimum width of two metres at least every 10 metres or a lesser interval to be specified by the local government; and
  - (ii) to allow pedestrian movement and to preserve open space between commercial premises.
- (t) If the operation of the roadside dining involves an area other than an area which is directly outside of the premises owned or occupied by the holder of the permit, the holder of the permit must—
  - (i) obtain the written consent of the owner and occupier of the adjacent premises to the operation of the roadside dining—

- (A) once every 12 months; or
  - (B) if the adjacent premises is transferred to a new owner or occupier, immediately upon the transfer taking effect; and
- (ii) notify the local government immediately upon becoming aware that the—
  - (A) adjacent premises is being or has been transferred to a new owner or occupier; or
  - (B) the consent of the owner or occupier of the adjacent premises has been withdrawn or, in the case of a new owner or occupier, not been granted; and
- (iii) not operate the roadside dining outside the adjacent premises if the consent of the owner or occupier of the adjacent premises has been withdrawn or, in the case of a new owner or occupier, has not been granted.
- (u) No goods or materials are to be stored or displayed at any time as part of the operation of the roadside dining.
- (v) No live entertainment or amplified music system must be positioned so that the music is directed towards a road, footpath or mall, unless approved by an authorised person.
- (w) The operation of the roadside dining must not inhibit—
  - (i) the effectiveness of any road sign or traffic control device; and
  - (ii) access to any public utility; and
  - (iii) access to a kerb ramp or pedestrian crossing.
- (x) Lighting and heating used as part of the operation of the roadside dining must comply with the standards specified by the local government.
- (y) The permit issued by the local government must be prominently displayed so as to be clearly visible from the local government road, footpath or mall during the hours of operation of the roadside dining.
- (z) The holder of the permit is responsible for the cost of any repairs required to the local government road, footpath or mall over and above the costs associated with normal wear and tear.
- (aa) The person operating the roadside dining must hold a public liability insurance policy for at least \$10 million or another amount specified by

the local government in respect of the operation of the roadside dining, which notes the local government's interest as an insured party.

- (ab) The holder of the permit must comply with any requirement of the local government or the State government associated with the carrying out of work to the road, footpath or mall.
- (ac) The operation of the roadside dining must be adequately managed to ensure compliance with *Local Law No. 11 (Roads and Malls) 2008*, this subordinate local law and the permit conditions.
- (ad) The operation of the roadside dining must not breach a provision of a local law or a subordinate local law.

## **Part 3                      Enforcement**

### **8                      Records to be kept**

For the purposes of section 25(2)(b) (Inspection of a prescribed activity) of *Local Law No. 11 (Roads and Malls) 2008*—

- (a) records must be kept by the person operating the roadside dining; and
- (b) the records must contain copies of details of—
  - (i) any public liability insurance policies relating to the operation of the roadside dining; and
  - (ii) if the operation of the roadside dining involves an area other than an area which is directly outside of the premises owned or occupied by the holder of the permit, the written consent of the owner and occupier of the adjacent premises; and
- (c) the records must be kept for a period of 7 years.

## Schedule      Dictionary

section 4

**contaminant** has the meaning given in the *Environmental Protection Act 1994*.

**hazardous material** means a substance which—

- (a) because of its chemical, biochemical, microbiological or radiological properties, temperature or state of compression could in sufficient concentration cause—
  - (i) harm to human health and safety or personal injury; or
  - (ii) property damage; or
  - (iii) environmental harm or environmental nuisance; and
- (b) includes—
  - (i) a hazardous substance; and
  - (ii) a dangerous good; and
  - (iii) a scheduled poison.

**hazardous substance** has the meaning given in the *Workplace Health and Safety Regulation 1997*.

**on-site sewerage facility** has the meaning given in the *Plumbing and Drainage Act 2002*.

**pest** includes vermin and an insect.

**public utility** has the meaning given in the local government's planning scheme.

**scheduled poison** has the meaning given in the *Standard for the Uniform Scheduling of Drugs and Poisons*.

**sewerage system** has the meaning given in the *Plumbing and Drainage Act 2002*.

**vermin** means rats, mice, guinea pigs and other rodents capable of carrying or transmitting a notifiable disease, but does not include a protected animal within the meaning of the *Nature Conservation Act 1992*.

**waste** has the meaning given in the *Environmental Protection Act 1994*.

**waste water** means a liquid waste.

**watercourse** has the meaning given in the *Water Act 2000*.