



STAFF REPORT

TO: Environment & Planning Committee

FROM: Tracy Waddington, Environmental Health Officer

REFERENCE: E502

SUBJECT: **TRADING IN PUBLIC PLACES BYLAW 2010- REPORT REP10-05-23** - Report prepared for meeting of 20 May 2010

1. BACKGROUND

- 1.1 This report is the final step in the bylaw making process that was necessary to update the Tasman District Council Consolidated Bylaw Chapter 6: Trading in Streets and Public Places 2005.
- 1.2 There were no submissions received during the period of consultation.
- 1.3 The consequential changes to Council's Schedule of Charges were part of the consultative process of this bylaw and no submissions were received. These changes will be incorporated into the Annual Plan.

2. RECOMMENDATION

THAT the Tasman District Council ratifies the "Draft Consolidated Bylaw Chapter 6: Trading in Public Places 2010" as attached in Appendix 1, and that the draft Bylaw be adopted by Council and come into force on 1 July 2010.

Tracy Waddington
Environmental Health Officer



Tasman District Council Consolidated Bylaw

Chapter 6

Draft Trading in Public Places 2010

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Tasman District Council

Trading In Public Places Bylaw 2010

1 Introduction

- (a) This Bylaw is the Trading in Public Places Bylaw for Tasman District Council.
- (b) This Bylaw shall come into effect on 1 July 2010.

2 Repeal

That on the coming into effect of this Bylaw the Tasman District Council Bylaw "Trading in Streets & Public Places 2005" shall be repealed.

3 Definitions

"Advertisement" means any poster, placard, handbill, writing, picture, painting, engraving, carving, illuminated sign, hoarding, billboard, flat or other device erected or displayed for the purpose of attracting the attention of passers-by and includes all parts, portions, units, and materials, together with the frame, support, structure, background or anchorage thereof.

"Busker" means any itinerant musician, actor, entertainer or other person who performs in an outdoor setting for the benefit of the public generally, whether such performance is free, for a fixed payment, or for contributions from the audience.

"Commercial Services" means the soliciting of patronage to passers-by for, or provision of, any service which is offered or provided, on payment of a fee, charge or other valuable consideration, including an invitation to make a gratuitous contribution, and includes the taking and selling of photographs, the production and sale of personal portraits, the telling of fortunes, the soliciting of commercial sexual services, and any other service of any kind whatsoever.

"Council" means the Tasman District Council.

"Footpath" means so much of any street as is laid out or constructed by authority of the Council primarily for pedestrians, and includes the edging, kerbing and channelling, and includes any area of land owned or controlled by the Council which is set aside for the convenience of pedestrians generally, as a square, place, plaza or public access way.

"Hawker" means any person who carries or takes about any goods, wares or merchandise for speculative sale to any person, whether or not that sale is intended to be conducted on public or private property;
BUT does not include any person who in response to an invitation to call conducts a sale of any goods, wares or merchandise on private property, AND does not include any person who operates a mobile shop.

"Mobile Shop" means a vehicle, whether self-propelled or not, from which goods, wares or merchandise (including food) are offered or exposed for sale, or from which such goods, wares, merchandise may be ordered; while such vehicle is in any public place; 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 such goods, wares or merchandise.

“Mobile Trading” includes:

- (a) Hawking or peddling;
- (b) Trading from a mobile shop.

“Officer” means any person employed and duly authorised by the Tasman District Council;

“Poster Tower” means any structure, wall or other erection set aside by the Council specifically for use by the public for the display of posters or other advertisements giving notice of coming events.

“Public Place” means all streets and public car parks owned or controlled by the Council and all parks, gardens and reserves under the control of Council.

“Religious or Political Organisation” means any religious organisation or political party and includes any person or persons who are members or representatives of such organisation.

“Street” means the whole of any land which has been laid out by or vested in the Council for the purposes of a road or street, every access way or service lane under the control of the Council and every square or place intended for use by vehicles.

“Street Stall” means any vehicle, table, or other construction or erection which pursuant to a licence to occupy issued by the Council is authorised to occupy a dedicated site within the District, and includes an outdoor dining area established with the authority of the Council on any footpath or other public place.

“Trading” means buying or selling of goods or services, or offering to buy, sell or exchange goods or services.

4 Application

- (a) Every application for a licence pursuant to this Bylaw must be in such form as required by the Council and as detailed in Schedule 1 of this Bylaw and be accompanied by the relevant fee as prescribed in Council’s Schedule of Charges.
- (b) Notwithstanding the above, Council may, where appropriate, accept applications for authority which are not in the specified format via e-mail.

5 Trading Prohibitions in Parks and Reserves

Unless permission has been applied for and granted from the appropriate Council departments, trading in **all** parks and reserves (including car parks and roads in Reserves) is prohibited.

6 Sale of Food

The sale of food to the public is prohibited unless a current Certificate of Registration under the *Food Hygiene Regulations 1974* is held.

7 Conditions of Licence

Every licence issued under this Bylaw is subject to such reasonable conditions as the Council may impose and will include the:

- (a) expiry date; and
- (b) class of article or goods permitted to be sold or the type of services to be offered.

Where appropriate, conditions may also include the:

- (a) portion of any public place which the applicant is permitted to occupy; and
- (b) hours during which that person may occupy the public place.

8 Licence Not Transferable

A licence issued under this Bylaw is not transferable to any other person.

9 Mobile Trading

9.1 Mobile Traders to be Licensed

No person may engage in mobile trading without first obtaining a Licence under this Bylaw. The holder of the licence shall comply with the conditions recorded on the licence.

Nothing in this section shall apply to any person engaged in trading solely as a street stall.

9.2 Applications

All applications for a Mobile Trading Licence shall be made on the form supplied by the Council. The applicant will be required to provide such information as is necessary for proper consideration of the application, including but not limited to:

- (a) vehicle warrant or certificate of fitness and registration;

and if applicable:

- (b) electrical certificate;
- (c) LPG installation certificate – from a registered gasfitter.

On being satisfied that the proposed operation meets all of the requirements of the Council's Bylaw and any other applicable laws, bylaws, regulations or rules made by a competent authority and that the fee fixed for issue of the licence has been paid, the Council may include in licences such conditions as it thinks fit.

9.3 Duration of Licences

Mobile trading licences issued under this Bylaw shall be valid for 1 year from the date of issue and if not revoked may be renewed by payment of a further annual fee.

9.4 Licence to be Carried

The holder of a Mobile Trading Licence shall carry the licence at all times while engaged in mobile trading and shall show it to any Officer or Police Officer on demand. The licence will apply only to the vehicle whose registration number is specified on the licence.

The Mobile Trading Licence is valid during any hours specified on the licence.

9.5 Nuisance, Annoyance or Danger to Any Person

The licensee or operator shall operate any mobile shop used in connection with the licence, in such a manner as to avoid causing any nuisance, annoyance or danger to any person.

9.6 Hazardous Substances

All LPG cylinders must be stored securely outside the mobile shop and total no more than 100kg LPG net content. If the mobile shop is likely to be unattended at any time while in a public place, the cylinders shall be secured against tampering.

9.7 Trading Limits

- (a) Unless permission has been applied for and granted from the appropriate Council departments, trading is prohibited in the following areas:
 - (i) all Parks and Reserves (including car parks and roads in Reserves);
 - (ii) Restricted Areas – including the road and adjoining public areas between Martin Farm Road and the Breaker Bay hill; Kaiteriteri; the Rabbit Island reserve; the access road to the Waikoropupu Springs and car park and the access road into Totaranui Camping Grounds;
 - (iii) within 200 metres of another premises selling similar products;
 - (iv) within 50 metres of any intersection or pedestrian crossing where people visiting the site may be placed in danger.
- (b) The licensee or operator of any mobile shop shall not remain stationary in any public place or road except for such time as may be reasonably required for the transaction of business with customers on that occasion, and in any case shall not remain stationary on any one site for a period exceeding 1 hour.
- (c) The licensee or operator shall when requested by any Officer or Police Officer, alter their position or move from place to place on any road or public place as directed.

- (d) Should the licensee or operator fail to comply with the provisions of Condition (b) or if the mobile shop owned or operated by him or under his control is left unattended in any road or public place, it shall be lawful for any officer mentioned in Condition (c) to move the mobile shop to any safe position.

9.8 Litter

The licensee or operator shall remove any litter from the surrounding area of the mobile shop that has been generated by the activities of the operations.

9.9 Licence may be Revoked

A Mobile Trading Licence may be revoked by the Council if the holder of the licence:

- (i) permits a breach of any provision of this Bylaw or any other law, bylaw, regulation or rule made by a competent authority;
- (ii) fails to observe the conditions of the Mobile Trading Licence;

10 Commercial Services

10.1 Commercial Service Providers to be Licensed

No person shall, without first obtaining a Licence under this Bylaw, occupy or use any portion of any public place for the purpose of providing a commercial service.

Every application for a licence shall be in writing on the form supplied by Council and shall clearly state:

- (a) the type of services to be provided;
- (b) the public places where such services are proposed to be provided;
- (c) the time during which the services are to be offered.

10.2 Conditions

Every licence issued shall be subject to such conditions as the Council may impose. Without limiting the generality of the foregoing, the Council may impose conditions in relation to:

- (a) the duration of the licence;
- (b) the public place or places in which the applicant is permitted to trade;
- (c) the hours and duration of time each day during which the applicant may trade;
- (d) the type of service permitted to be offered.

No person shall trade except in conformity with the terms of such licence.

10.3 Evidence of Licence

The holder of a Commercial Services Licence shall carry the licence at all times while engaged in offering a commercial service and shall show it to any Officer or Police Officer on demand.

10.4 Withdrawal of Licence

The Council, or the Police, may at any time for reasons of public health or safety withdraw any licence issued, or require that the services provided in a particular public place cease for such period as the Council or Police deem necessary.

11 Begging/Soliciting Donations and Selling Lottery Tickets

11.1 Authority Required

No person shall, without the written authority of the Council occupy any portion of:

- (a) any public place for the purpose of begging or for the soliciting of donations or other gratuitous contributions, or gifts of any kind, whether or not the soliciting involves the exchange of any token or other item;
- (b) any footpath or any other public place for the purpose of selling tickets in any lottery (as defined within the Gambling Act 2003).

11.2 Approved Organisations

Authority to undertake any activity prohibited by 11.1 above will only be granted where the Council is satisfied that the activity is by or on behalf of a local school, sporting club, community group, or a local or nationally recognised charity.

12 Busking

12.1 Permit Required

No person shall perform as a busker in any public place without having first obtained a permit to do so. Permits will not be issued to anyone under the age of 14 years without the consent of a parent or caregiver. Proof of age may be required.

12.2 Performing Restrictions

No person shall while performing as a busker in any public place:

- (a) occupy any footpath adjacent to any retail or other commercial premises without the consent of the owner or manager of such premises;
- (b) occupy any footpath or pedestrian way in such a way as to obstruct or impede the free movement of pedestrians along the footpath, or way or through the public place;
- (c) allow the persons forming the audience to obstruct or impede the free movement of pedestrians along the footpath or way or through the public place;
- (d) use language or behaviour which is abusive, insulting, threatening or offensive;
- (e) undertake or perform any busking activity which generates any noise which in the opinion of any Officer or Police Officer unreasonably interferes with the peace, comfort and/or convenience of any person or persons; or

- (f) continue to occupy any place or site on a footpath or in any public place for longer than 30 minutes in any 2 hour period, or after being requested by an Officer or Police Officer, to move to another place or site.

12.3 Non-Compliance

An Officer or Police Officer may require any busker who has not obtained a permit to busk, or who is not complying with the provisions of this clause to cease busking.

13 Public Speaking

13.1 Permit Required

No person shall perform as a public speaker in any public place without having first obtained a permit to do so.

13.2 Performing Restrictions

No person shall, while performing as a public speaker in any public place:

- (a) occupy any footpath adjacent to any retail or other commercial premises without the consent of the owner or manager of such premises;
- (b) occupy any footpath or pedestrian walkway in such a way as to obstruct or impede the free movement of pedestrians along the footpath, or way or through the public place;
- (c) allow the persons forming the audience to obstruct or impede the free movement of pedestrians along the footpath or way or through the public place;
- (d) use language or behaviour which is abusive, insulting, threatening or offensive;
- (e) undertake or perform any public speaking activity which generates any noise which in the opinion of any Officer or Police Officer unreasonably interferes with the peace, comfort and/or convenience of any person or persons; or
- (f) continue to occupy any place or site on a footpath or in any public place for longer than 30 minutes in any 2 hour period, or after being requested by an Officer or Police Officer, to move to another place or site.

13.3 Non-Compliance

An Officer or Police Officer may require any public speaker who has not obtained a permit, or who is not complying with the provisions of this clause to cease the activity.

Council may prohibit religious and political organisations from operating in certain locations or at certain times.

14 Retail Displays on Footpaths

Unless permission has been applied for and granted from the appropriate Council departments no person, being the operator of a business within a designated commercial area, shall place, erect, or establish on the footpath adjacent to the said business any display, whether of goods sold from the business or not, except in conjunction with, and as part of any general promotion or other like event within the said designated commercial area.

Provided that no person shall establish on the footpath any display which due to its design or location on the footpath constitutes a hazard for pedestrians or which reduces the width of the footpath available for pedestrians to less than 2 metres.

15 Advertising

15.1 Advertising Prohibited Without Authority

No person shall for the purpose of advertising, place, affix or display any "advertisement" in a public place other than on a dedicated "poster tower"; or write, paint, chalk, spray or etch on, or otherwise mark any street, footpath, tree or structure which is administered by or under the control of the Council, without the authority of the Council or as provided by any licence to occupy issued by the Council which specifically authorises such advertising.

Authority to undertake such advertising will only be granted where the Council is satisfied that the advertisement is for an identifiable public or community purpose, will cause no detraction from the amenities of the District nor inhibit or interfere with the use of the immediate area by the public, and will not cause harm to or otherwise damage the thing on which the advertisement is to be fixed or made.

The foregoing Bylaw was made by the Tasman District Council at a meeting of the Council held on _____

In witness whereof the Common Seal of the Tasman District Council was hereunto affixed in the presence of:

Mayor

SCHEDULE 1 – FORMS

Form 1: Application for Mobile Trading Licence

Form 2: Mobile Trading Licence

Form 3: Application for Hawkers Licence

Form 4: Hawkers Licence

Form 5: Application for Commercial Services Licence

Form 6: Commercial Services Licence

Form 7: Application for permit to solicit donations or sell lottery tickets

Form 8: Permit to solicit Donations or sell Lottery Tickets

Form 9: Application for Buskers Permit

Form 10: Buskers Permit

Form 11: Public Speaking Application Form

Form 12: Public Speaking Permit

FORM 2

Mobile Trading Licence

The person named herein is authorised to operate a Mobile Shop within Tasman District subject to the terms and conditions as set out.

Full name of licence holder: _____

Address: _____

Registration number of vehicle used:

Goods permitted to be sold:

Expiry date: _____

Special conditions (if any)

Signed: _____

Date: _____

General Licence Conditions

1. The holder of a Mobile Trading Licence shall carry the licence at all times
2. The licence will apply only to the vehicle whose registration number is specified on the licence.
3. Trading is prohibited in the following areas:
 - (i) all Parks and Reserves (including car parks and roads in Reserves);
 - (ii) Restricted Areas – including the road and adjoining public areas between Martin Farm Road and the Breaker Bay hill; Kaiteriteri; the Rabbit Island reserve; the access road to the Waikoropupu Springs and car park and the access road into Totaranui Camping Grounds;
 - (iii) within 200 metres of another premises selling similar products;
 - (iv) within 50 metres of any intersection or pedestrian crossing where people visiting the site may be placed in danger.
4. No trading is allowed on State Highways, except with the specific consent of NZTA (C/- Opus Consultants, phone 548 1099).
5. The licensee or operator of any mobile shop shall not remain stationary on any one site for a period exceeding 1 hour.
6. The operator of the Mobile Shop shall ensure that the area in which trading is carried out is cleaned up when trading is finished.

Form 3
Application Form
Hawker's Licence

Full Name: _____

Address: _____

Phone: _____

Email: _____

Occupation: _____

Date Of Birth: _____ Place Of Birth: _____

Nature of goods to be offered for sale:

Address of premises to be used for the preparation or storage of any food:

Date: _____

Applicant's Signature _____

FORM 4

Hawker's Licence

The person named herein is authorised to ply the trade of a hawker within Tasman District Council subject to the terms and conditions as set out.

Full name of licence holder: _____

Address: _____

Registration number of vehicle used:

Goods permitted to be sold:

Expiry date: _____

Special conditions (if any)

Signed: _____

Date: _____

Licence Conditions

1. This licence must be available on demand, to any Officer or Police Officer.
2. No trade is allowed on any reserve without the specific consent of the Council.
3. No trade is allowed on the State Highway, except with the specific consent of NZTA (C/O Opus Consultants, phone 548 1099).
4. The Council may limit the class of goods to be sold, and the hours or days during which business can be carried out.

Form 5

Application Form

Provision of Commercial Services

Full Name: _____

Address: _____

Phone: _____

Email: _____

Occupation: _____

Date Of Birth: _____ Place Of Birth: _____

Nature of service to be offered:

The area of the District in which the service is to be offered:

Date/s on which the service is to be offered: _____

The time of the day during which the service is to be offered: _____

Date: _____

Applicant's Signature

FORM 6

Commercial Services Licence

Licence Holder: _____

Licence Expiry Date: _____

Authorised Service: _____

Area of Operation: _____

Date of Operation: _____

Time of Operation: _____

Special Conditions (if any) _____

Date of Issue: _____

Signed: _____

Date: _____

Licence Conditions

1. This Licence is to be available on demand to any Officer or Police Officer.
2. No trade is allowed on any reserve without the specific consent of the Council.
3. No trade is allowed on the State Highway, except with the specific consent of NZTA (C/O Opus Consultants, phone 548 1099).
4. This Licence is not transferable.

Form 7
Application Form
Soliciting Donations or Selling Lottery Tickets

Application for a permit to solicit donations/sell lottery tickets (*delete whichever is not applicable*) within public places in the Tasman District Council.

Full Name: _____

Address: _____

Phone: _____

Email: _____

Name of the organisation on whose behalf the activity will be undertaken: _____

Charity or certificate of Incorporation Number: _____

Dept. Internal Affairs Licence No. (if applicable): _____

Location of sites from which it is proposed to operate:

Date(s) on which it is proposed to undertake the activities:

Applicant's Signature: _____

Date: _____

Form 8

Permit

Soliciting Donations/Selling Lottery Tickets in a Public Place

Full name of permit holder: _____

Address: _____

Organisation Represented: _____

Charity or certificate of Incorporation Number: _____

Dept. Internal Affairs Licence No. (if applicable): _____

Date of Activity: _____

Special Conditions (if any)

Signed: _____

Date: _____

Permit Conditions

1. This Permit is to be available on demand to any Officer or Police Officer.
2. This Permit is not transferable.

Form 9

Application Form

Busking

Full Name: _____

Address: _____

Phone: _____

Email: _____

Occupation: _____

Date of Birth: _____

Instrument(s): _____

Proposed Date/s: _____

Proposed Location(s): _____

Proposed Time of Performance: _____

Parent/caregiver consent (if applicant is under 14 years of age):

I, _____ consent to _____

(full name)

(full name)

being issued with a busking permit. _____(signature)

Signature of Applicant: _____ Date: _____

FORM 10

Busking Permit

Permit Holder: _____

Permit Expiry Date: _____

Instrument(s): _____

Area of Operation: _____

Date/s of Operation: _____

Time of Operation: _____

Special Conditions (if any) _____

Date of Issue: _____

Issuing Officer: _____

Signed: _____

Date: _____

General Conditions

1. Buskers must carry their busking permit and show it to any Officer or Police Officer on request.
2. No busker shall:
 - (a) occupy any footpath adjacent to any retail or other commercial premises without the consent of the owner or manager of such premises;
 - (b) occupy any footpath or pedestrian way in such a way as to obstruct or impede the free movement of pedestrians along the footpath, or way or through the public place;
 - (c) allow the persons forming the audience to obstruct or impede the free movement of pedestrians along the footpath or way or through the public place;
 - (d) use language or behaviour which is abusive, insulting, threatening or offensive;
 - (e) undertake or perform any busking activity which generates any noise which in the opinion of any Officer or Police Officer unreasonably interferes with the peace, comfort and/or convenience of any person or persons; or
 - (f) continue to occupy any place or site on a footpath or in any public place for longer than 30 minutes in any 2 hour period, or after being requested by an Officer or Police Officer, to move to another place or site.

Form 11

Public Speaking Application Form

Full Name: _____

Address: _____

Phone: _____

Email: _____

Occupation: _____

Date of Birth: _____

Instrument(s): _____

Proposed Location(s): _____

Proposed Date/s: _____

Proposed Time/s: _____

Parent/caregiver consent (if applicant is under 14 years of age)

I, _____ consent to _____

(full name)

(full name)

being issued with a Public Speaking Permit.

(signature)

Signature of Applicant: _____ Date: _____

FORM 12

Public Speaking Permit

Permit Holder: _____

Permit Expiry Date: _____

Area of Operation: _____

Date/s of Operation: _____

Time of Operation: _____

Special Conditions (if any) _____

Date of Issue: _____

Issuing Officer: _____

Signed: _____

Date: _____

General Conditions

1. Public Speakers must carry their Public Speaking Permit and show it to any Officer or Police Officer on request.
2. No Public Speaker shall:
 - (a) occupy any footpath adjacent to any retail or other commercial premises without the consent of the owner or manager of such premises;
 - (b) occupy any footpath or pedestrian way in such a way as to obstruct or impede the free movement of pedestrians along the footpath, or way or through the public place;
 - (c) allow the persons forming the audience to obstruct or impede the free movement of pedestrians along the footpath or way or through the public place;
 - (d) use language or behaviour which is abusive, insulting, threatening or offensive;
 - (e) undertake or perform any public speaking activity which generates any noise which in the opinion of any Officer or Police Officer unreasonably interferes with the peace, comfort and/or convenience of any person or persons; or
 - (f) continue to occupy any place or site on a footpath or in any public place for longer than 30 minutes in any 2 hour period, or after being requested by an Officer or Police Officer, to move to another place or site.