



Trading in Public Places Bylaw 2019

Explanatory Note

The objective of this Bylaw is to:

- (i) regulate the conduct of:
 - (a) Trading in public places, including selling goods and/or services in streets, reserves and other public places; and
 - (b) Mobile or temporary trading, including using vehicles to sell goods and/or services in those public places; and
- (ii) to protect, promote and maintain public health and safety.

The Bylaw is made pursuant to Sections 146(a)(vi) and 145(b) of the Local Government Act 2002.

Western Bay of Plenty District Council
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Authority

Pursuant to the powers vested in it under Section 146(a)(vi) of the Local Government Act 2002, the Western Bay of Plenty District Council makes this Bylaw.

Title

This Bylaw may be cited as the Western Bay of Plenty District Council Trading in Public Places Bylaw 2019 and shall come into force on 30 September 2019.

Repeal

The Western Bay of Plenty District Trading in Public Places Bylaw 2014 is repealed

Bylaw Structure

This Bylaw comprises the document.

Scope

This Bylaw applies to the whole of the district administered by Western Bay of Plenty District Council, and other locations that are controlled by Western Bay of Plenty District Council, now and in the future. This bylaw is intended to regulate the trading of goods and/or services in streets, reserves and other public places and promote the health, safety and convenience of the public.

Validation

The Western Bay of Plenty District Council Trading in Public Places Bylaw 2019 was duly made at a meeting of the Western Bay of Plenty District Council held on 29 August 2019, after completion of the Special Consultative Procedure, and will come into force on 30 September 2019.

Savings

All approvals, permits, and other acts of authority (including any resolutions of the Council) which originated under the Western Bay of Plenty District Council Trading in Public Places Bylaw 2014, and all applications, and other acts of parties and generally all documents, matters, acts, and things which so originated and are continuing at the commencement of this Bylaw, continue for the purposes of this Bylaw to have full force and effect.

The revocation of the Western Bay of Plenty District Council Trading in Public Places Bylaw 2014 does not prevent any legal proceedings, criminal or civil, being taken to enforce that bylaw and such proceedings continue to be dealt with and completed as if that bylaw had not been revoked.



Western Bay of Plenty District Council

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Definitions

For the purposes of this Bylaw, the following definitions shall apply:

Authorised Officer – means a Police Officer or any person (including a Parking Warden) for the time being appointed by Council to carry out or exercise the duties, offices or powers of Council referred to in or granted by this Bylaw and in acting as provided by the Bylaw shall act as an agent for Council.

Goods – means any product, display or performance being offered for pecuniary gain.

Licence – means a licence for the purposes of the temporary activities provisions in the Western Bay of Plenty District Plan.

Person/s – includes a corporation, sole person, or a body of persons whether corporate or non-corporate.

Public Places –

(a) means a place –

(i) that is under the control of the territorial authority; and

(ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and

(b) includes –

(i) a road, whether or not the road is under the control of a territorial authority; and

(ii) any part of a public place.

Service Delivery Vehicle – means any vehicle being used for the purpose 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 place.

For the purposes of this Bylaw, the word “shall” refers to practices that are mandatory for compliance with the Bylaw while the word “should” refers to practices which are advised or recommended.



1. Licences - General

- 1.1. No person on any street, reserve or in any other public place shall engage in the sale of goods of any description whatsoever (except as provided in Clause 10: Exemptions) without having first obtained a licence from Council.

2. Licence Applications

- 2.1. Every person who wishes to engage in trade in a public place shall apply to the authorised officer of Council in writing for a licence. The information to be supplied by the applicant shall include as a minimum:
- (a) Name, address, telephone number and email address of the applicant.
 - (b) Name, address, telephone number and email address of all person/s engaged in the proposed trading of goods and services.
 - (c) The location/site of the proposed trading activity.
 - (d) The type of goods and services being offered for sale.
 - (e) The hours and duration that the licence is sought for.
 - (f) The type and registration numbers of the vehicle/s if applicable.
 - (g) Evidence addressing matters referred to in clause 4 decision-making criteria "issuing of licences".



3. Licence Details

- 3.1. The authorised officer of Council in granting any licence may impose conditions. The conditions imposed may include, but are not restricted to, any of the following:
- (a) Time and place.
 - (b) Duration of the licence.
 - (c) Suitability and size of place of trading.
 - (d) Types of goods/services for sale.
 - (e) Type of operation.
 - (f) Persons entitled to operate business.
 - (g) Safety and hygiene requirements.
 - (h) Type and number of approved signage.
 - (i) Use of musical chimes or other audible devices for attracting customers.
 - (j) Litter, cleanliness.
 - (k) A requirement that the licence is prominently displayed during trading hours.
 - (l) Site fee.

4. Issuing of Licences

- 4.1. A licence may be declined where it is considered that appropriate standards of convenience, safety, visual amenity or civic values (including enabling the continuance of a flourishing retail precinct) would not be met by granting a licence.
- 4.2. Criteria for consideration includes, but is not limited to, the following factors:
- Prior applications and past performance. Issues of non-compliance or non-payment will be considered.
 - The location requested. Licences will be site-specific, but in general trading sites need to have parking and should not be in dangerous roadside positions. The type of operation will be considered.
 - Safety of road users. Sites should be assessed and approved by an authorised person from Council's roading team or with the express permission on the New Zealand Transport Agency (where trading is proposed on or beside rural sections of State Highways).



- The proximity of location to similar traders, shops or services. Traders should not operate within 300m of a similar trader or shop.
- Signage proposed. Signage is restricted to vehicle sign-writing and one sandwich board or flag positioned adjacent to the vehicle.
- Evidence of industry standards or good practice met, as appropriate. A separate food licence may be required.
- Impact on neighbouring area. Applicants have identified potential noise, transport, and safety impacts for the area and the potential benefits to the area.
- The cultural appropriateness of the trading and the site proposed. Where staff have concerns these may be discussed with the relevant Tangata Whenua representative.

Council reserves the exclusive right to require such information as it deems necessary to determine the outcome of an application.

5. Fees

- 5.1. Council may prescribe fees for licences. Fees are set through the Annual Plan process and are set at a level to cover the costs of licensing administration and enforcement of the bylaw.

6. Production of Licence

- 6.1. A valid licence must be prominently displayed, at the place of trade, at all times when the licence holder is engaged in the sale of goods and services.
- 6.2. Every licence holder shall, notwithstanding the conditions of the licence, comply with any lawful instruction given by an authorised officer of Council or a Police Officer.
- 6.3. Any person trading in a public place without a licence issued by Council shall, when required to do so by an authorised officer of Council or a Police Officer, remove all trade goods, signs, stalls, vehicles and other equipment used by the person for trading in the public place.

7. Conditions of Licence

- 7.1. Any person who trades in a way that does not conform with any of the terms and conditions of the licence shall be considered to have committed an offence under this Bylaw.
- 7.2. Every licensee shall be responsible for the actions of his/her employees or agents while trading under the terms of the license.



8. Offences

- 8.1. Any person who undertakes either of (a) or (b) below commits an offence under this Bylaw:
- (a) Trading in a public place without a licence.
 - (b) Trading in a public place while in breach of any condition of the trader's licence.
- 8.2. Any person found to be in breach of the Bylaw shall be subject to the penalties set out in Section 242 of the Local Government Act 2002.

Advice note: Western Bay of Plenty District Council's District Plan requirements may also apply to trading undertaken in relation to this bylaw.

9. Licence Not Transferable

- 9.1 No licence issued under this Bylaw shall be transferable to any other person.

10. Exemptions

- 10.1 The following exemptions are allowed under this Bylaw:
- (a) service delivery vehicles including milk vendors.
 - (b) any current trading enterprise licensed by Council at the coming into force of this Bylaw, until such licence expires.
 - (c) charitable activities (including any stall, stand or vehicle where food is being prepared and/or goods sold to raise money or where subscriptions, collections or donations are being solicited by non-profit groups) which do not involve pecuniary gain to any person, provided that, in the opinion of an authorised officer of Council, the size, scope, regularity of the occurrence or other circumstance associated with the activity in light of the purpose of this bylaw may require the trading activity to apply for a licence. For the avoidance of doubt, trading as a charitable activity shall not be in breach of this bylaw unless the activity is continued after a Council officer provides advice that a licence shall be required.

11. General

- 11.1 Notwithstanding any of the foregoing provisions of this Bylaw, Council may from time to time prohibit the activities of traders, whether or not they hold a licence, in any specific public place either totally or within certain stated days or times and may likewise restrict the class of goods or services that may be provided. For the avoidance of doubt, no compensation is payable.



- 11.2 Where Council deems appropriate at its sole discretion, it may waive the provisions of this bylaw in writing for any specific public place either totally or within certain stated days or times, for a specific event.