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[Legal Notice No.160]**HONIARA CITY COUNCIL (REGULATION OF BUSINESS LICENCES)
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AN ORDINANCE made pursuant to sections 34 and 35 of the Honiara City Act 1999 to provide for the licensing of businesses in Honiara City and for related purposes.

ENACTED by the Honiara City Council as follows –

PART 1 – PRELIMINARY

Short title and
commence-
ment

1. This Ordinance may be cited as the Honiara City Council (Regulation of Business Licences) Ordinance 2011 and commences on the date it is published in the *Gazette*.

Interpretation

2. In this Ordinance, unless the context otherwise requires –

“Act” means the Honiara City Act 1999 (Act No. 2 of 1999);

“authorised officer” means a person authorised in writing under section 19;

“annual licence fee” means the amount in Schedule 2 of the Honiara City Council (Fees, Rates and Charges) Ordinance 2009 that corresponds to the type of business for which the fee is payable;

“appropriate fee” means any fee prescribed in the Honiara City Council (Fees, Rates and Charges) Ordinance 2009 for the purposes of the provision in which the term appears;

“approved form” means a form approved under section 21;

“business licence” means a business licence granted by the Council under section 4(1);

“business” means any business, trade, profession or other occupation, including hawking;

“City Clerk” means the Chief Executive of the Council appointed under section 42(1) of the Act;

“City Fund” means the general fund for Honiara City established under section 39 of the Act;

“council” means the Honiara City Council established under section 4 of the Act;

“licence” in relation to nationally regulated activity, includes permit, lease or other legal authority regulating such activity;

“licence information” means any information provided by an applicant in connection with an application for, or renewal of, a business licence;

“licensee” means a person who has been granted a business licence;

“nationally regulated activity” means any activity or profession required to be licensed under another written law;

“national decision maker” means the person authorised by law to grant a licence for a nationally regulated activity;

“penalty unit” means the value of the monetary penalty as set out in the Penalties Miscellaneous Amendment Act 2009 (No.14 of 2009);

“Planning Scheme” means the Local Planning Scheme applicable to Honiara City approved under the Town and Country Planning Act (Cap. 154).

PART 2 – BUSINESS LICENCES

3. (1) No person shall carry on a business within Honiara City unless the business is licensed under this Ordinance.

Licensing of
business

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction –

- (a) to a fine not exceeding 5,000 penalty units; and
- (b) a fine not exceeding 50 penalty units for each day on which the offence continues from the date on which any notice issued under subsection (3) is ‘served on the person.

(3) If an authorised officer reasonably believes that a person has committed an offence under subsection (2), the officer shall issue and cause to be served on the person a written notice of the commission of the offence.

4. (1) The Council may, upon application by a person (the applicant) in the approved form and accompanied by the appropriate fee –

- (a) grant a business license authorising the licensee to carry on the business while the licence is valid in accordance with this Ordinance, subject to any conditions which the Council may at its discretion impose, in particular conditions requiring that –
 - (i) the business be carried on, or not be carried on, from specified premises or a specified area;
 - (ii) the business be carried on, or not be carried on, during specified hours; or
 - (iii) the business to provide, or not to provide, particular goods or services; or
- (b) refuse to grant a business licence for any grounds listed in subsection (3).

- (2) The Council may –
- (a) require an applicant to provide further information relevant to his or her application; and
 - (b) defer the consideration of the application until the information required under paragraph (a) is provided to it.
- (3) The Council may refuse to grant a business licence on any of the following grounds –
- (a) the carrying on of the business would contravene any law in force in Honiara City or the applicant has not obtained the legal authority required under another written law to carry on the business;
 - (b) the business involves an activity that requires particular skills or qualifications and the applicant fails to satisfy the Council that appropriately skilled or qualified persons would carry out the activity;
 - (c) the business is proposed to be carried on in a zone in which such businesses are not a permitted activity under the Planning Scheme;
 - (d) the applicant is not lawfully entitled to use any premises from which the applicant proposes to carry on the business for that purpose;
 - (e) the premises from which the business is proposed to be carried on do not comply with the Honiara City Council Building Ordinance;
 - (f) any premises from which the business is proposed to be carried on are not fit for that purpose;

- (g) within the 2 years immediately before the date on which the Council received the application for the licence, any of the following is convicted of an offence under this Ordinance –
 - (i) the applicant;
 - (ii) if the applicant is a partnership, any partner of the applicant; or
 - (iii) if the applicant is a corporation, any director of the applicant;
 - (h) the Council is satisfied that carrying on of the business would be detrimental to the health, welfare, or convenience of the inhabitants of Honiara City;
 - (i) the Council is satisfied that carrying on of the business would be detrimental to the order or good government of Honiara City; or
 - (j) any other reason which the Council is satisfied to be in the public interest.
- (4) If a business would involve a nationally regulated activity, the Council may not refuse to grant a business licence for that business on any ground that –
- (a) is substantially the same as a ground required or permitted to be taken into account by the relevant national decision maker in deciding to licence the activity;
 - (b) is exempted under the law regulating that activity.

(5) The Council must not issue a business licence unless the applicant has paid –

- (a) if the application is granted before 1 July in the year for which the licence is sought, the full annual licence fee; or
- (b) if the application is granted after 1 July in the year for which the licence is sought, an amount equivalent to half of the annual licence fee.

5. A business licence is not transferrable unless the transfer is authorised under the law that regulates the nationally regulated activity. Licence not transferrable

6. (1) A business licence is valid from 1 January to 31 December in each year or the date on which it is first granted until 31 December in the same year, subject to its revocation or renewal under this Ordinance. Duration of business licence and annual licence fees

(2) No business licence shall be issued or renewed unless the applicable annual licence fee prescribed in s4(5) is paid.

7. The City Clerk or an officer authorised by the City Clerk must issue the business licence in the approved form specifying the following – Form of business licence

- (a) the name and contact details of the licensee;
- (b) the type of business for which it is granted;
- (c) the period during which it is current;
- (d) any conditions imposed under subsection 4(1)(a).

8. (1) A licensee which carries on a business in breach of any condition of the business licence commits an offence and is liable on conviction – Licensee to comply with licence conditions

- (a) to a fine not exceeding 5,000 penalty units; and
- (b) to a fine not exceeding 50 penalty units for each day on which the offence continues from the date on which a notice issued under subsection (1) is served

(2) If an authorised officer reasonably believes that a person has committed an offence under subsection (1), the officer shall issue and cause to be served on the person a written notice of the commission of the offence.

Licensee to display licence

9. (1) A licensee, other than a licensed hawker, who fails to display a copy of the licence in a conspicuous place at the main premises from which the business to which the licence relates is carried on commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units.

(2) A licensed hawker who fails to carry the licence while hawking commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units.

Licensee to notify changes to licence information

10. A licensee who fails to notify the Council of any material change to the licence information as soon as possible after becoming aware of such change commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units.

Council may revoke or vary conditions on business licence

11. The Council may revoke a business licence or vary the conditions on a business licence if –

- (a) any licence information provided by the licensee, or cause to be provided by the licensee, was, at the time it was provided, false or incorrect and the licensee failed to notify the Council of the false information and correct the information in writing;
- (b) the licensee contravenes a licence condition;
- (c) the licensee is not lawfully entitled to occupy or use any premises from which the licensee is carrying on the business;
- (d) if the licence for the nationally regulated activity has expired or has been cancelled under the laws regulating such activity;

- (e) any of the following is convicted of an offence under this Ordinance –
 - (i) the licensee;
 - (ii) for a licensee partnership, any partner of the applicant; or
 - (iii) for a licensee corporation, any director of the applicant

12. (1) The Council may, upon application by the licensee in the approved form and accompanied by the appropriate fee – Renewal of business licence

- (a) renew the business licence, subject to any new or varied conditions; or
- (b) refuse to renew the licence

(2) The Council may –

- (a) require an applicant to provide further information relevant to the renewal application; and
- (b) defer the consideration of the application until the information required under paragraph (a) is provided to it.

(3) If an application for renewal has been lodged but has not been determined by 31 December in any year, the licence is taken to be renewed until the renewal application is granted or refused.

(4) The Council must not issue a new business licence unless the applicant has paid the required annual fee.

(5) The Council may refuse to renew a business licence on any grounds under section 15.

PART 3 – MISCELLANEOUS

Appeal against
decisions -
nationally
regulated
activities

13. (1) A person aggrieved by a decision mentioned in subsection (2) if the decision was made in relation to a business that would involve a nationally regulated activity may, in the approved form, appeal within 28 days of the decision to the Minister.

(2) The following decisions of the Council are appealable under subsection (1) –

- (a) refusal to grant a business licence;
- (b) imposing of conditions of a business licence;
- (c) revocation of a business licence;
- (d) imposing new conditions or variation of existing conditions on a business licence;
- (e) refusal to renew a business licence; or
- (f) renewal of a business licence subject to modified conditions

(3) Subject to the remainder of this section, the Minister may hear and determine the appeal and dismiss the appeal or make the following decisions –

- (a) affirm the decision of the Council;
- (b) for an appeal against a decision to refuse the granting a business licence, order the Council to grant or renew the business licence;
- (c) for an appeal against a decision to grant a business licence subject to conditions, order the Council to remove or modify any of the conditions;

- (d) for an appeal against a decision by the Council to revoke a business licence, order the Council to re-instate the business licence with effect from the date on which the revocation took effect;
- (e) for an appeal against a decision to modify the conditions on a business licence, order the Council to re-instate the original conditions with effect from the date on which the modification took effect;
- (f) for an appeal against a decision by the Council to refuse to renew a business licence, order the Council to renew the business licence; or
- (g) for an appeal against a decision to renew a business licence subject to modified conditions, order the Council to renew the business licence subject to the original conditions.

(4) The Minister shall not make a decision under paragraphs (3)(b) to (g) unless the decision is required in the national interest.

(5) In considering whether an order under paragraphs (3)(b) to (g) is required in the national interest, the Minister shall consult with the relevant decision maker.

(6) The Council shall comply with any order under subsection (3).

False or
Misleading
Information

14. A person who makes any false or misleading statement, or causes such information to be provided on his or her behalf –

- (a) in any licence information; or
- (b) to an authorised officer when performing any functions under this Ordinance,

commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units.

General powers
of authorised
officers

15. (1) An authorised officer may, at all reasonable times, with the consent of the owner or occupier of any business premises or otherwise with warrant, enter and inspect the premises on which the authorised officer reasonably believes that a business is being carried out for any purpose connected with the enforcement of this Ordinance.

(2) An authorised officer may request a person whom the officer reasonably believes is carrying on a business to provide his name and address to the officer.

Powers of
enforcement
officers to
arrest without
warrant

16. (1) For the purposes of section 37 of the Act, an enforcement officer employed under that section may, without warrant, arrest –

- (a) any person who is committing or about to commit or whom the officer suspects upon reasonable grounds of having committed an offence under this Ordinance; or
- (b) any person for whom the officer has reasonable cause to believe a warrant of arrest has been issued with respect to an offence under this Ordinance.

(2) An enforcement officer shall, without unnecessary delay, take any person arrested under subsection (1) to a police officer, or to the nearest police station to be detained, charged or released on bail or to be taken to the Magistrate's court.

- 17.** (1) An authorised officer may prosecute any offence under this Ordinance in the magistrate’s court. Authorised officers may prosecute offences
- (2) A person who is an authorised officer for the purposes of subsection (1) has the right to appear before a magistrate and the power to conduct proceedings in the magistrate’s court in respect of any offence under this Ordinance.
- 18.** All monetary penalties collected pursuant to this Ordinance shall be paid into the City Fund. Penalties payable to Council
- 19.** The City Clerk may, in writing, authorise any officer or employee of the Council or any other person for the purposes of this Ordinance. Authorised officers
- 20.** (1) The Council may delegate any of its powers under this Ordinance to an officer or employee of the Council. Delegations
- (2) The City Clerk may delegate any powers delegated to him or her by the Council under subsection (1).
- 21.** The Council may approve forms for the purposes of this Ordinance. Forms
- 22.** (1) The Honiara City (Licensing of Businesses) Ordinance (LN42/1990) is repealed. Repeal and savings
- (2) A business licence granted under an Ordinance repealed under subsection (1) before the commencement of this Ordinance is taken to be granted under this Ordinance.

Passed by the Honiara City Council this 24th day of November, 2011.

Cr. Israel Maeoli
Mayor
HONIARA CITY COUNCIL

Assented to by the Minister for Home Affairs this fifth day of November, 2011.

HON. MANASSEH MAELANGA
DEPUTY PRIME MINISTER AND MINISTER FOR HOME AFFAIRS