



# Southland District Council

Trading in Public Places Bylaw 2023

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**Document Revision**

<b>Date</b>	<b>Amendment</b>	<b>Amended by</b>	<b>Approved by</b>	<b>Approval date</b>
13 Dec 2023	New omnibus Trading in Public Places Bylaw 2023	Strategy and Policy	Council	13 Dec 2023

## 1. Title and commencement

- 1.1 This bylaw is the Southland District Council Trading in Public Places Bylaw 2023.
- 1.2 This bylaw comes into force on 1 January 2024.

## 2. Application

- 2.1 This bylaw regulates trading, including mobile trading and alfresco dining, in all public places under the control of Southland District Council including roads, footpaths, and berms, parks, reserves, and open spaces.
- 2.2 This bylaw also regulates the placement of signs or objects on footpaths and berms but otherwise excludes roads, roadway, and road reserves; parks, reserves or open spaces owned or controlled by Council.
- 2.3 Signage on private land is regulated under the Southland District Plan and not this bylaw.

## 3. Purpose

- 3.1 The purpose of this bylaw is to:
  - (a) protect the public from nuisance;
  - (b) ensure that public places are safe and used in ways that promote community vitality and public enjoyment; and
  - (c) regulate trading activity in public places.
- 3.2 This bylaw is made pursuant to Sections 145 and 146 of the Local Government Act 2002.

## 4. Revocation

- 4.1 The Southland District Council Trading in Public Places Bylaw 2013, Signs and Objects on Roads and Footpaths Bylaw 2016 and Alfresco Dining Policy 2015 are hereby revoked (if not already lapsed).

## 5. Interpretation

- 5.1 In this bylaw unless the context otherwise requires:

**Act** means the Local Government Act 2002

**Alfresco dining** means the serving and eating of food in a public space, namely footpaths, in open air or under a tent, marquee or other temporary shelter

**Authorised officer** means any officer of Council or other person authorised (including through appointment or delegation) under sections 174 or 177 or clause 32 of Schedule 7 of the Local Government Act 2002 to administer and enforce this bylaw, and includes a parking warden appointed by Council under section 128D of the Land Transport Act 1998 and a police officer

**Berm** means the grassed area that sits between the road and either the footpath or the property boundary but does not include unformed (paper) roads

**Charitable entity** has the meaning that it has in section 4(1) of the Charities Act 2005

**Chief executive** means the chief executive of Southland District Council

**Council** means Southland District Council and includes any person authorised by Council to act on its behalf

**District** means the District of Southland as administered by Southland District Council

**Flag sign** means a flag with advertising

**Food** has the meaning that it has in section 2 of the Food Act 2014

**Food registration** has the meaning that it has in section 9 and section 48 of the Food Act 2014

**Footpath** means a path or way principally deigned for, and used by, pedestrians

**Furniture** includes but is not limited to chairs, tables and related items for a commercial operation, including, but not limited to, umbrellas, shade awnings, screens, barriers, heaters and planter boxes

**Goods** means any product or service

**Historic heritage** has the meaning that it has in section 2(1) of the Resource Management Act 1991

**Mobile trading** means a vehicle or vessel, whether self-propelled or not, standing in a public place and from which goods or services are offered or exposed/displayed for sale. It is a temporary trading activity from a location that can be vacated once trading has ended for the day. Examples include stalls, kiosks, coffee carts and food trucks

**Person** includes a company, body corporate and incorporated or unincorporated society or any other entity where the context requires

**Public place** means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it and includes roads whether or not under the control of the Council and vehicles in those public places

**Reserve** includes every reserve under the Reserves Act 1977

**Retail display** means the outdoor display of goods sold from a business

**Roadway** means the part of the road intended to be used by vehicles

**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 goods to the general public in any public place

**Sign** means words or any pictorial or other representation or notice on any material or object. This does not include any illuminated sign which will be regulated under the provisions of the Southland District Plan

**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 Council and every place intended for use by vehicles

**Trading activity** means an activity, whether one-off or a series of activities whether temporary or permanent, undertaken by any person or organisation involving the sale of goods in a public place

or the offering of a commercial service for payment, reward or otherwise, including but not limited to:

- (a) stalls
- (b) mobile shops
- (c) outdoor drinking and dining
- (d) outdoor display of goods
- (e) signage
- (f) micromobility rental operations

**Trade, trading and mobile trading** have a corresponding meaning to trading activity

5.2 Any undefined words, phrases or expressions used in this bylaw have the same meaning as in the Act, unless the context plainly requires a different meaning.

## 6. Compliance with other Acts, Plans and Policies

6.1 Compliance with the requirements of this bylaw does not remove the need to comply with the requirements of any act, regulation or other bylaw.

6.2 This bylaw is subject to or in addition to other legislation, including the following:

- Building Act 2004
- Food Act 2014
- Food Regulations 2015
- Health and Safety at Work Act 2015
- Land Transport Act 1998
- Litter Act (1979)
- Local Government Act 2002
- NZ Standard 4121:2001 Design of Access and Mobility - Buildings and Associated Facilities (NZS4121) for accessible journeys and design elements
- Natural and Built Environment Act 2023
- Reserves Act 1977
- Resource Management Act 1991
- Sale and Supply of Alcohol Act (2012)
- Southland District Council bylaws
- Southland District Council's District Plan
- Southland District Council Reserve Management Plans
- or any other Act, Plan or regulation passed in substitution or amendment of the above.

## 7. General conditions

### 7.1 Permission

7.1.1 No person shall in any public place, engage in the sale of goods of any description whatsoever (except as provided in Part 1 clause 10.6 Exemptions), without having first obtained permission from Council.

- 7.1.2 No person undertaking a trading activity may place on the footpath adjacent to the business any furniture for the purpose of alfresco dining without first having obtained permission from Council.
- 7.1.3 Any person undertaking a trading activity may advertise their business by means of signage and retail displays in the immediate vicinity of their premises without having to seek the written permission of Council in each individual case provided the standard conditions listed in Part 3 of this bylaw are met.

## **7.2 Application**

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- 7.2.1 Every person who wishes to obtain permission under this bylaw shall make written application in the form required by Council providing such information in respect of the application as Council may reasonably require.
- 7.2.2 Every application for permission must be accompanied by the fee set out in Council's Schedule of Fees and Charges in respect of such a licence or permit.
- 7.2.3 When deciding whether to issue permission under this bylaw, Council may consider the following matters:
- (a) whether the proposed activity may result in obstruction or hazards to pedestrian or vehicular visibility, access or flow including obstruction of access by emergency, maintenance or utility services
  - (b) whether the proposed activity may pose a risk to public health and safety
  - (c) whether the proposed activity may result in impacts as a result of noise, glare, light spill, odour, or anti-social behaviour
  - (d) whether the proposed activity may have an impact on the appearance and amenity of a public place
  - (e) whether the proposed location of the activity is appropriate given the nature and scale of the activity proposed
  - (f) any impacts of the proposed activity to native fauna, flora and historic heritage
  - (g) the impact of the proposed activity on nearby business premises
  - (h) whether the proposed activity is consistent with all applicable Council policies and plans
- 7.2.4 Any permission issued under this bylaw, in the form of a licence or permit, will be subject to the conditions contained on the application form supplied by Council.
- 7.2.5 Council may, in giving permission, prescribe additional conditions or amend the standard conditions where appropriate that the licence or permit holder must comply with. Any licence or permit holder who fails to comply with any such conditions commits an offence under this bylaw.
- 7.2.6 No permission issued under this bylaw shall be transferable to any other person.
- 7.2.7 All licence holders must ensure that a current licence is prominently displayed at all times while trading.
- 7.2.8 All licences or permits issued under this bylaw must be made available to an authorised officer on request.
- 7.2.9 Every licence or permit holder must, notwithstanding the conditions of the licence or permit, upon being requested to do so by an authorised officer alter his/her position for the purpose of trading to any other position as indicated by the authorised officer.

## **7.3 Waste management**

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- 7.3.1 Any person undertaking a trading activity in a public place shall consider the following matters:

- (a) impacts of rubbish generated as part of their activity, ensuring it is disposed of in an approved manner and not via the use of Council provided street litter bins
- (b) impacts of damage caused by their activity, ensuring repair or replacement by the licensee is prompt and at no cost to Council.

## 8. Administration

### 8.1 Fees and charges

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- 8.1.1 Council may, from time to time, change or add to the fees and charges for any permit or licence granted under this bylaw. These are set out in Council's Schedule of Fees and Charges.

### 8.2 Delegations

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- 8.2.1 The chief executive may appoint authorised officers of Council.
- 8.2.2 The chief executive and authorised officers may exercise any power, function or duty under this bylaw or carry out any act in order to achieve its effective administration.

### 8.3 Renewal

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- 8.3.1 Prior to the expiry of any permission issued under this bylaw, the person undertaking a trading activity may make application to renew their licence or permit. Provided the applicant has complied with the conditions of the licence or permit, and on payment of the prescribed fee, permission may be renewed at Council's discretion and upon such terms and conditions as Council may consider appropriate.
- 8.3.2 Every license or permit issued under this bylaw shall be issued for a period of not more than 12 months.

## 9. Enforcement and compliance

### 9.1 Suspension or revocation of permission

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- 9.1.1 An authorised officer may at any time for reasons of public health or safety require any licence holder to discontinue the use of any vehicle used in undertaking mobile trading.
- 9.1.2 Council may suspend or revoke any permissions issued under this bylaw if significant breaches of the bylaw are unable to be resolved by other means (such as verbal or written warnings). This action shall be in addition to and not in substitution of any action which may be taken to pursuant to clause 9.2.

### 9.2 Breach of bylaw and penalty

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- 9.2.1 Any person who acts in breach of any provision of this bylaw, or the conditions of any permission granted pursuant to this bylaw, commits an offence and is liable upon conviction to a fine not exceeding \$20,000.
- 9.2.2 Notwithstanding the provisions of clause 9.1, where the offence relates to any display, sign or furniture for the purposes of alfresco dining, an authorised officer may, after giving the owner of the offending object reasonable opportunity to remove the offending object, seize and impound



such object as remains and to hold and deal with same in accordance with the provisions of sections 164, 165, 167 and 168 of the Local Government Act 2002.

- 9.2.3 In accordance with sections 167 and 168 of the Act, Council may return or dispose of property seized and impounded. The person in breach of this bylaw is responsible for any costs associated with disposal of seized property.

### **9.3 Compliance monitoring**

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- 9.3.1 If a complaint is upheld regarding a breach of this bylaw, Council may recover the cost of investigating and resolving the complaint from the party in breach of the bylaw.
- 9.3.2 Where a complaint is not upheld, no costs shall be recovered.

### **9.4 Right of review**

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- 9.4.1 Any person affected by a decision made under this bylaw may apply in writing to the chief executive for a review of this decision within 14 days after receiving notification of the decision.

## Part 1 – Mobile trading

### 10.1 Purpose of Part 1 – Mobile trading

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10.1.1 To regulate the level and intensity of mobile trading activity in public places in order to avoid adverse effects on:

- (a) the primary purpose and use of public places
- (b) public health and safety

### 10.2 Licence required

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10.2.1 No person shall, without first obtaining permission from Council in the form of a licence, stand in or occupy or use any portion of any public place to carry out business as a mobile trader.

10.2.2 Any person who operates more than one mobile trading activity must hold a separate licence for each mobile trading activity.

### 10.3 Application

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10.3.1 Every person who wishes to obtain a licence under this bylaw must make written application, on a form supplied by Council, to obtain a licence to the authorised officer of Council.

10.3.2 If an applicant wishes to sell food for human consumption, the application must be accompanied by a copy of a current food registration or notice of exemption.

10.3.3 The information to be supplied by the applicant may include any of the following, but not be restricted to:

- (a) name and address of the applicant
- (b) name and address of the person(s) selling the goods
- (c) location/site
- (d) contact details of the applicant
- (e) type of goods and/or services for sale
- (f) trading hours
- (g) type of vehicle(s) and registration numbers if applicable

### 10.4 Licence details

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10.4.1 The authorised officer in granting any licence may impose conditions. The conditions imposed may include, but not be restricted to, any of the following:

- (a) the location to which the licence applies
- (b) the duration of the licence
- (c) type of trading activity allowed by the licence
- (d) the hours of trade allowed by the licence
- (e) the names of persons entitled to sell
- (f) food safety and legislation requirements
- (g) use of signage
- (h) litter, cleanliness
- (i) name and address to be conspicuously displayed
- (j) site rental

## 10.5 Restrictions

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10.5.1 Council may, by resolution, prohibit mobile traders from operating in any specified public place within the District; and may limit or restrict the classes or types of goods or services that may be offered for sale; and may limit the hours or days on which any such business may be carried out.

## 10.6 Exemptions

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10.6.1 The exemptions allowed for under this bylaw are as follows:

- (a) selling or disposal by commercial fishermen of fish in accordance with the Fisheries Act 1996.
- (b) service delivery vehicles.
- (c) any market, stall or stand which has a current permission under any other bylaw, legislation, resource consent, specific resolution of Council, or written permission by an authorised officer.
- (d) any stall or stand operated by a local or nationally recognised charitable entity, or a not for profit community organisation.

## Part 2 – Alfresco dining

### 11.1 Purpose of Part 2 – Alfresco dining

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11.1.1 To regulate the use of street dining furniture so as to keep streets clean, safe and not hindering pedestrian flow.

### 11.2 Licence required

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11.2.1 No operator of a business may place on the footpath adjacent to the business any furniture for the purpose of alfresco dining without first having obtained permission in the form of a licence from Council.

### 11.3 Application

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11.3.1 Every person who wishes to obtain a licence under this bylaw must make written application to obtain a licence to the authorised officer of Council.

11.3.2 The information to be supplied by the applicant may include, but will not be restricted to, any of the following:

- (a) a map of the location including any street plantings/trees and Council-owned street furniture.
- (b) a sketch showing the location of any proposed chairs, umbrellas, outdoor heating devices and any other furniture that will be used in this activity.
- (c) proposed hours of operation.
- (d) letters of support obtained from the adjoining (on either side of the location and the same side of the street) business owners or lessees. Council staff can request other nearby business/lessees' opinions if the alfresco dining furniture is likely to have an effect on them.
- (e) proof of current food registration
- (f) proof of valid alcohol licence (if applicable).
- (g) proof of public liability insurance

11.3.3 Any building as defined in section eight of the Building Act (2004) that is required for this activity shall require a building consent unless it is exempted by Schedule 1 of the Building Act (2004).

11.3.4 If the restaurateur holds an On Licence for their restaurant, they must show that they intend to either obtain a new alcohol licence for the alfresco dining area, or how they will ensure alcohol is not served or consumed in that area.

### 11.4 Licence details

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11.4.1 The authorised officer, in granting any licence, may impose conditions. The conditions imposed will require, but not be restricted to, the following:

- (a) a minimum of 1.5 metres of footpath must be made available for pedestrian use at all times.
- (b) furniture, including heating devices, must be located and secured in such a way as to not present a danger to any pedestrian or building and must be suitable for all weather conditions and continuous use

- (c) furniture must be confined to the footpath directly outside the licence holder's premises unless written permission has been given by Council.
- (d) furniture must be moveable, not permanently fixed, and must be stored inside the premises at the end of each trading day.
- (e) where the applicant for a licence to occupy a public place is the holder of an On Licence, then the occupation of the public place may not commence until such time as the applicant has sought and obtained an alcohol licence for the sale and consumption of liquor in the alfresco dining specified area.

## Part 3 – Retail displays and signs on footpaths

### 12.1 Purpose of Part 3 – retail displays and signs on footpaths

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- 12.1.1 To regulate the placement of retail displays and signage on footpaths and berms under the control of Council to avoid the creation of adverse traffic, pedestrian and public safety concerns.
- 12.1.2 This bylaw does not regulate the placement of signs or objects on roads, roadway, and road reserves; parks, reserves or open spaces owned or controlled by Council.
- 12.1.3 Signs and objects on private land are regulated under the Southland District Plan, and not this bylaw.

### 12.2 Permit required

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- 12.2.1 Operators of a business may place any retail display and up to a maximum of two signs, only one of which can be a sandwich board style sign, on a footpath without a permit.
- 12.2.2 No operator of a business may place on a footpath without a permit:
- (a) more than two signs
  - (b) any retail displays or signs which do not meet the conditions listed in section 12.3.

### 12.3 Conditions

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#### 12.3.1 Standard conditions

- 12.3.1.1 To be approved under this bylaw without a permit, any retail display, or sign or part thereof, must:
- (a) be placed in such a way so that its design or location on the footpath does not constitute a hazard for pedestrians
  - (b) be placed to ensure a minimum 1.5 metres continuous, straight-line width of the footpath remains clear for pedestrian access
  - (c) not be permanently established on the footpath and must be removed daily at the close of business.
  - (d) not be illuminated or lit in any way
  - (e) must advertise or relate to the business activity outside which it is placed
  - (f) be maintained in good repair and condition
  - (g) be located in such a way so that access to fire exits, fire hydrants, shop doorways, parking meters, rubbish receptacles, street furniture and bicycle stands is kept clear at all times.

#### 12.3.2 Specific conditions for retail displays

- 12.3.2.1 The operator of a business may place or erect, on the footpath adjacent to the business one retail display with goods sold from the business, provided that any display which due to its design or location on the footpath does not constitute a hazard for pedestrians.
- 12.3.2.2 Any display on the footpath must be placed to ensure a minimum 1.5 metres continuous, straight-line width of the footpath remains clear for pedestrian access.

12.3.2.3 Food displays must comply with any requirements of Council's environmental health team and the Food Act 2014.

### **12.3.3 Specific conditions for signs**

12.3.3.1 To be approved under this bylaw without a permit:

- (a) footpath signs must not exceed one metre in height or 60 centimetres in width and must be so located as not to unreasonably impede safe and efficient pedestrian flow. These must be placed either against the shop frontage or against the kerb (e.g. not a mixture of both).
- (b) flag signage must not exceed three metres in height or 90 centimetres in width and must be placed against the shop frontage, unless written permission is obtained from Council

### **12.3.4 Removal**

12.3.4.1 An authorised officer may at any time request that any retail display or sign be shifted or removed if:

- (a) it poses a risk to public safety or it is causing an obstruction or distraction to pedestrians or motorists; or
- (b) it breaches the conditions contained in section 12.3 of this bylaw.

12.3.4.2 Failure to comply with such a request will result in any offending signs being removed and held by Council for collection.

## **12.4 Exemptions**

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12.4.1 Any temporary sign associated with a single event not exceeding six days in a row, such as a cultural, social, sporting or educational activity, is exempted from the requirement to obtain a permit or permission under this bylaw so long as it is erected, installed and displayed in a public place in accordance with all the relevant conditions in section 12.3 of this bylaw, and is removed after the activity ceases.