

LOCAL GOVERNMENT ACT 1995
CONTROL OF VEHICLES (OFF-ROAD AREAS) ACT 1978

SHIRE OF GINGIN

**CONTROL OF VEHICLES
(OFF-ROAD AREAS)
LOCAL LAW 2020**

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Under the power conferred by the *Control of Vehicles (Off-road Areas) Act 1978*, the *Local Government Act 1995* and under all other powers enabling it, the local government of the Shire of Gingin resolved on 16 March 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This is the *Shire of Gingin Control of Vehicles (Off-road Areas) Local Law 2020*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Terms used

(1) In this local law, unless the context otherwise requires—

authorised person means a person appointed by the local government under section 38(3) of the *Control of Vehicles (Off-road Areas) Act*, or appointed under section 9.10 of the *Local Government Act*, to perform any of the functions of an authorised person under this local law;

CEO means the chief executive officer of the local government;

commencement day means the day on which this local law comes into operation under clause 1.2;

Council means the council of the local government;

Control of Vehicles (Off-road Areas) Act means the *Control of Vehicles (Off-road Areas) Act 1978*;

Control of Vehicles (Off-road Areas) Regulations means the *Control of Vehicles (Off-road Areas) Regulations 1979*;

district means the district of the local government;

drive has the meaning in the *Control of Vehicles (Off-road Areas) Act*;

fauna means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes, in relation to any such animal—

(a) any class of animal or individual members;

(b) the eggs or larvae; or

(c) the carcass, skin, plumage or fur;

infrastructure means any thing installed or placed on the Off-road Vehicle Area by the local government or any public authority, including a curb, bollard, pole, gate, fence, sign, bin, structure or building;

local government means the Shire of Gingin;

Local Government Act means the *Local Government Act 1995*;

Local Government Regulations means the *Local Government (Functions and General) Regulations 1996*;

local public notice means notice given in accordance with the procedure set out in section 1.7 of the *Local Government Act*;

nuisance means—

- (a) an activity or condition which is harmful or annoying and which may give rise to legal liability in the tort of public or private nuisance at common law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her right to use or occupy the Off-road Vehicle Area; or
- (c) an interference which causes material damage to the Off-road Vehicle Area or to any infrastructure;

Off-road Vehicle Area means any off-road vehicle area declared as a Permitted Area under section 12 of the *Control of Vehicles (Off-road Areas) Act*, within the district of the local government;

owner, in relation to property, or a vehicle, means—

- (a) the person who is entitled to possession of the property, or the vehicle; or
- (b) if there are several persons entitled to its immediate possession, the person whose entitlement is paramount;

permit means a permit issued under this local law;

permitted area has the meaning in the *Control of Vehicles (Off-road Areas) Act*;

permit holder means a person who holds a valid permit;

public authority has the meaning in the *Control of Vehicles (Off-road Areas) Act*;

ramp means a ramp, device or any other thing, designed or used to perform a stunt, make a jump or to propel a vehicle into the air;

sandboard means a board, sled or any other thing, designed or used for sand surfing or sandboarding;

trading means—

- (a) the selling or hiring of, the offering for sale or hire of, or the soliciting of orders for, goods or services in the Off-road Vehicle Area; or
- (b) displaying goods in the Off-road Vehicle Area for the purpose of—
 - (i) offering them for sale or hire;
 - (ii) inviting offers for their sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them, and includes the setting up of a stall, or the conducting of a business at a stall; and

vehicle has the meaning in the *Control of Vehicles (Off-road Areas) Act*.

(2) A term that is used in this local law and is not defined in clause 1.4(1) has the meaning in the *Control of Vehicles (Off-road Areas) Act* or, if not defined in the *Control of Vehicles (Off-road Areas) Act*, the meaning in the *Local Government Act*.

1.5 Meaning of 'on'

In this local law a reference to 'on the Off-road Vehicle Area' or to 'in the Off-road Vehicle Area' includes 'on or in the Off-road Vehicle Area'.

PART 2—OFF-ROAD VEHICLE AREA

Division 1—Entry to the Off-road Vehicle Area

2.1 Entry restrictions

(1) A person must not—

- (a) enter the Off-road Vehicle Area unless the fee or charge (if any) imposed by the local government in relation to use of, or admission to the area has been paid;
- (b) enter or remain on the Off-road Vehicle Area except on those days and during those times when access is available to the public; or
- (c) enter any area of the Off-road Vehicle Area that has been fenced off or closed to the public.

(2) Subclause (1) does not apply in any of the circumstances referred to in clause 2.5(2)(b), (c) or (d).

2.2 Refusal of entry

(1) An authorised person may refuse to allow entry to the Off-road Vehicle Area to any person whom he or she reasonably suspects has behaved in a manner contrary to the provisions of this local law.

(2) A refusal under subclause (1) can be for any period of up to 12 months as determined by an authorised person.

2.3 Direction to leave

An authorised person who reasonably suspects that a person has contravened a provision of any written law in respect of the Off-road Vehicle Area may direct the person to leave the Off-road Vehicle Area.

*Division 2—Activities on Off-road Vehicle Area***2.4 Activities requiring a permit**

(1) A person must not without a permit—

- (a) carry on trading on the Off-road Vehicle Area, unless the trading is conducted by a person who has a permit to carry on trading on the Off-road Vehicle Area under any written law; or
- (b) conduct a function or public event, or undertake any promotional activity, on the Off-road Vehicle Area.

(2) The CEO or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.

2.5 Using or driving a vehicle

(1) A person must not—

- (a) use or drive a vehicle in the Off-road Vehicle Area, other than in an area designated for vehicle use;
- (b) permit any person under the age of 16 years to use or drive a vehicle in the Off-road Vehicle Area, unless that person is under the supervision of an adult; and
- (c) use or drive a vehicle in the Off-road Vehicle Area, at a speed that exceeds the speed limit applicable to the area where the vehicle is being driven.

(2) The use or driving of a vehicle in circumstances that would otherwise be contrary to the provisions of clause 2.5(1)(a) or clause 2.5(1)(c) is permitted—

- (a) where the vehicle is used or intended to be used for the conveyance of an incapacitated person and is designed for use solely for that purpose;
- (b) for purposes connected with providing medical treatment or responding to an injury or illness, or preventing, controlling, or extinguishing a fire;
- (c) by an authorised person in the course of performing a function under a written law;
- (d) by a person performing a function of a public authority under a written law; or
- (e) by the holder of a permit issued under this local law, or a permit referred to in clause 2.4(1)(a), in accordance with the terms of the permit.

2.6 Using or riding a sandboard

A person must not use or ride a sandboard in the Off-road Vehicle Area other than in an area designated for sandboarding.

2.7 Ramps prohibited

A person must not erect or place, or allow to be erected or placed, any ramp or structure in the Off-road Vehicle Area, without the approval of the local government.

*Division 3—Behaviour on Off-road Vehicle Area***2.8 Behaviour which interferes with others**

(1) Unless authorised by the local government or an authorised person, a person must not, on the Off-road Vehicle Area, behave in a manner which—

- (a) is likely to or does interfere with, interrupt or disturb the enjoyment of a person who might use, or who is using the Off-road Vehicle Area;
- (b) is likely to endanger a person who might use, or who is using the Off-road Vehicle Area; or
- (c) creates a nuisance.

(2) Subclause (1) does not apply in any of the circumstances referred to in clause 2.5(2)(b), clause 2.5(2)(c) or clause 2.5(2)(d).

2.9 Behaviour detrimental to Off-road Vehicle Area

(1) In this clause, ‘**detrimental to the Off-road Vehicle Area**’, includes—

- (a) interfering with any thing from the Off-road Vehicle Area (such as a rock, plant, equipment, infrastructure, fence, post or sign) provided for the use, enjoyment or safety of any person;
- (b) destroying, interfering with or damaging any thing on the Off-road Vehicle Area, (such as a plant, equipment, infrastructure, fence, post or sign) provided for the use, enjoyment or safety of any person;
- (c) interfering with or altering the natural structure of a sand dune within the Off-road Vehicle Area (including moving, digging or redirecting sand, soil or earth to create a hole or build a mound); or
- (d) causing environmental harm to or a nuisance to or on the Off-road Vehicle Area.

(2) Unless authorised by the local government or an authorised person, a person must not, on the Off-road Vehicle Area, behave in a manner which is or might be detrimental to the Off-road Vehicle Area.

(3) Subclause (2) does not apply in any of the circumstances referred to in clause 2.5(2)(b), clause 2.5(2)(c) or clause 2.5(2)(d).

2.10 Taking or injuring any fauna

A person must not take, injure or kill, or attempt to take, injure or kill, any fauna which is on or above the Off-road Vehicle Area unless that person is authorised under a written law to do so.

2.11 Intoxicated persons not to enter

A person must not enter, or remain on, the Off-road Vehicle Area while intoxicated or under the influence of an illegal drug.

Division 4—Signs

2.12 Signs

- (1) The local government may erect a sign on the Off-road vehicle Area specifying any conditions of use which apply to the Off-road vehicle Area.
- (2) A condition of use specified on a sign must not be inconsistent with any provision of this local law.
- (3) A person must comply with a sign erected under subclause (1).

PART 3—PERMITS

Division 1—Applying for a permit

3.1 Application for a permit

- (1) A person who is required to obtain a permit under this local law must apply for the permit in accordance with subclause (2).
- (2) An application for a permit must—
 - (a) be in the form determined by the CEO;
 - (b) state the full name and address of the applicant;
 - (c) be signed by the applicant;
 - (d) contain the information required by the form;
 - (e) contain any other information required for that particular type of permit under this local law; and
 - (f) be forwarded to the local government together with any fee imposed by the local government under sections 6.16 to 6.19 of the *Local Government Act*.
- (3) Before determining an application for a permit, the CEO or an authorised person may require the applicant to provide additional information reasonably related to the application.
- (4) The CEO or an authorised person may require an applicant to give local public notice of the application for a permit.
- (5) The CEO or an authorised person may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

3.2 Decision on application for permit

- (1) The CEO or an authorised person, in respect of an application for a permit, may—
 - (a) grant the application unconditionally or subject to any conditions; or
 - (b) refuse to grant the application.
- (2) If an application for a permit is granted, the CEO or an authorised person is to issue to the applicant a permit in the form determined by the CEO.
- (3) If an application for a permit is refused, the CEO or an authorised person must give written notice of that refusal to the applicant.
- (4) The CEO or an authorised person may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the applicant, or the date specified in the notice, whichever is the later.

3.3 General restrictions on grant of permit

- (1) The CEO or an authorised person must not grant a permit if there are reasonable grounds for believing that the carrying on of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.
- (2) The CEO or an authorised person must not grant a permit unless the CEO or the authorised person is satisfied that—
 - (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the permit;
 - (b) the area at which the activity is to be provided is suitable for that purpose;
 - (c) a permit or similar authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
 - (d) the applicant is a fit and proper person to carry on the activity.
- (3) The CEO or an authorised person must not grant a permit to an applicant if the applicant has been found guilty of an offence under this local law unless the CEO or an authorised person is satisfied that there are exceptional reasons for doing so.

3.4 Compliance with a permit

A permit holder must comply with the terms and conditions (if any) of the permit.

*Division 2—General***3.5 Duration of permit**

A permit is valid for one year from the date on which it is issued unless it is—

- (a) otherwise stated in this local law or in the terms and conditions of the permit; or
- (b) cancelled under clause 3.7.

3.6 Transfer of permit

(1) An application for the transfer of a valid permit is—

- (a) to be made in writing;
- (b) to be signed by the permit holder and the proposed transferee of the permit;
- (c) to include whatever information that the CEO or an authorised person may require to enable the application to be determined; and
- (d) to be forwarded to the CEO together with any fee imposed by the local government under sections 6.16 to 6.19 of the *Local Government Act*.

(2) The CEO or an authorised person may, in respect of an application for the transfer of a permit—

- (a) approve the application unconditionally or subject to any conditions; or
- (b) refuse the application.

(3) If an application for the transfer of a permit is granted—

- (a) the transfer is to be effected by an endorsement on the permit signed by the CEO or an authorised person;
- (b) the CEO or an authorised person is to give the applicant written notice of the decision to grant the application, including a copy of any endorsement on the permit under paragraph (a); and
- (c) the local government is not required to refund any part of any fee paid by the former permit holder.

(4) If an application for transfer of a permit is refused, the CEO or an authorised person must give the applicant written notice of the decision.

3.7 Cancellation or suspension of permit

(1) A permit may be cancelled by the local government if—

- (a) the permit holder has not complied with a condition of the permit;
- (b) the permit holder has not complied with a provision of any written law which relates to the activity regulated by the permit;
- (c) the permit holder without the approval of the CEO or authorised person, has transferred or assigned, or sought to transfer or assign, the permit; or
- (d) a written law is amended or repealed in a manner which is inconsistent with the terms and conditions of the permit and which renders the permit invalid, ineffective or contrary to law.

(2) If a permit is cancelled under subclause (1), the permit holder—

- (a) must return the permit to the local government as soon as practicable; and
- (b) is taken to have forfeited any fees paid in respect of the permit.

3.8 Nominee of permit holder

If a permit holder by reason of illness, accident or other sufficient cause is unable to carry on an activity authorised by a permit, the local government may, at the request of the permit holder, authorise another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit apply as if the nominee was the permit holder.

PART 4—OBJECTIONS AND APPEALS**4.1 Objection and appeal rights**

Where the local government, the CEO or an authorised person makes a decision whether—

- (a) to grant a person a permit or an approval; or
- (b) to amend, transfer or cancel a permit or an approval that a person has under this local law,

the provisions of Division 1 of Part 9 of the *Local Government Act* and regulation 33 of the *Local Government Regulations* apply to that decision.

PART 5—ENFORCEMENT*Division 1—Notices***5.1 Liability for damage**

(1) If a person unlawfully damages or interferes with, the Off-road Vehicle Area or any infrastructure on the Off-road Vehicle Area, the local government or an authorised person may, by notice in writing to the person, require the person within the time specified in the notice to, at the option of the local government, pay the costs of—

- (a) reinstating the Off-road Vehicle Area, or the infrastructure, to the state it was in prior to the occurrence of the damage or interference; or
- (b) replacing that infrastructure.

(2) If a person given a notice under subclause (1) fails to comply with the notice, the local government may recover the costs referred to in the notice as a debt due to it.

5.2 Notice to remove

If any thing is erected or placed on the Off-road Vehicle Area contrary to this local law, the local government or an authorised person may give a notice to—

- (a) the owner of the thing; or
- (b) any other person who may be responsible for the thing being erected or placed,

requiring the person who is given the notice to remove the thing in the manner (if any) and within the time specified in the notice.

Division 2—Offences and penalties

5.3 Offences

(1) A person who—

- (a) fails to do anything required or directed to be done under this local law; or
- (b) fails to comply with a notice given to him or her under this local law; or
- (c) does an act or omits to do an act contrary to this local law,

commits an offence.

(2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$100.

5.4 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 37 of the *Control of Vehicles (Off-road Areas) Act*.

(2) The amount appearing in the final column of Schedule 1 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

5.5 Form of notices

(1) The issue of infringement notices, their withdrawal and the payment of modified penalties are dealt with in the *Control of Vehicles (Off-road Areas) Act*.

(2) An infringement notice in respect of an offence against this local law may be given under section 37(1) of the *Control of Vehicles (Off-road Areas) Act* and is to be given in the form of Form 3 in Schedule 1 to the *Control of Vehicles (Off-road Areas) Regulations*.

(3) A notice sent under section 37(5) of the *Control of Vehicles (Off-road Areas) Act* withdrawing an infringement notice is to be in the form of Form 4 in Schedule 1 to the *Control of Vehicles (Off-road Areas) Regulations*.

Schedule 1

PRESCRIBED OFFENCES

[Clause 5.4(1)]

Item No.	Clause No.	Description of Offence	Modified Penalty
1	2.1(1)(a)	Failing to pay fee or charge for use of, or admission to, the Off-road Vehicle Area	\$50
2	2.1(1)(b)	Unauthorised entry to the Off-road Vehicle Area	\$50
3	2.1(1)(c)	Unauthorised entry to an area of the Off-road Vehicle Area fenced off or closed to the public	\$50
4	2.4(1)(a)	Carrying on trading in the Off-road Vehicle Area without a permit	\$50
5	2.4(1)(b)	Conducting a function or undertaking a promotional activity on the Off-road Vehicle Area without a permit	\$50
6	2.5(1)(a)	Using or driving a vehicle in the Off-road Vehicle Area, other than in an area designated for vehicle use	\$50
7	2.5(1)(b)	Permitting a person under the age of 16 years to use or drive a vehicle in the Off-road Vehicle Area, without supervision of an adult	\$50
8	2.5(1)(c)	Using or driving a vehicle in the Off-road Vehicle Area in excess of the speed limit	\$50
9	2.6	Using or riding a sandboard in the Off-road Vehicle Area other than in an area designated for sandboarding	\$50
10	2.7	Erecting, placing or allowing to be erected or placed, any ramp or structure on the Off-road Vehicle Area	\$50

Item No.	Clause No.	Description of Offence	Modified Penalty
11	2.8(1)(a)	Behaviour on the Off-road Vehicle Area which interferes with others	\$50
12	2.8(1)(b)	Behaviour on the Off-road Vehicle Area which endangers others	\$50
13	2.8(1)(c)	Behaviour on the Off-road Vehicle Area which creates a nuisance	\$50
14	2.9(2)	Behaviour on the Off-road Vehicle Area detrimental to the Off-road Vehicle Area	\$50
15	2.10	Taking or injuring fauna on the Off-road Vehicle Area	\$50
16	2.12(3)	Failure to comply with a sign regarding conditions of use of the Off-road Vehicle Area	\$50
17	3.4	Failure to comply with terms and conditions of a permit	\$50
18	5.3(1)(a)	Failure to comply with a direction	\$50
19	5.3(1)(b)	Failure to comply with a notice	\$50

Dated this Sixteenth day of March 2021.

The Common Seal of the Shire of Gingin was affixed by authority of a resolution of the Council in the presence of—

COLIN WAYNE FEWSTER, Shire President.
AARON JOSEPH COOK, Chief Executive Officer.