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**SHIRE OF EXMOUTH**

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DOG ACT 1976

**DOGS LOCAL LAWS**

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CEMETERIES ACT 1986

**LOCAL LAW RELATING TO THE EXMOUTH PUBLIC  
CEMETERY**

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LOCAL GOVERNMENT ACT 1995

**LOCAL GOVERNMENT PROPERTY LOCAL LAW**

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**LOCAL LAW RELATING TO REPEAL OF DEFUNCT AND  
OBSOLETE LOCAL LAWS**

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**STANDING ORDERS LOCAL LAW 1999**

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**ACTIVITIES ON THOROUGHFARES AND TRADING IN  
THOROUGHFARES AND PUBLIC PLACES LOCAL LAW**

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## SHIRE OF EXMOUTH

**DOGS LOCAL LAW**

## TABLE OF CONTENTS

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Repeal
- 1.3 Definitions
- 1.4 Application

**PART 2—IMPOUNDING OF DOGS**

- 2.1 Charges and costs
- 2.2 Attendance of pound keeper at pound
- 2.3 Release of impounded dog
- 2.4 No breaking into or destruction of pound

**PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS**

- 3.1 Dogs to be confined
- 3.2 Limitation on the number of dogs

**PART 4—APPROVED KENNEL ESTABLISHMENTS**

- 4.1 Interpretation
- 4.2 Application for licence for approved kennel establishment
- 4.3 Notice of proposed use
- 4.4 Exemption from notice requirements
- 4.5 When application can be determined
- 4.6 Determination of application
- 4.7 Where application cannot be approved
- 4.8 Conditions of approval
- 4.9 Compliance with conditions of approval
- 4.10 Fees
- 4.11 Form of licence
- 4.12 Period of licence
- 4.13 Variation or cancellation of licence
- 4.14 Transfer
- 4.15 Notification
- 4.16 Inspection of kennel

**PART 5—DOGS IN PUBLIC PLACES**

- 5.1 Places where dogs are prohibited absolutely
- 5.2 Places which are dog exercise areas

**PART 6—MISCELLANEOUS**

- 6.1 Offence to excrete

**PART 7—ENFORCEMENT**

- 7.1 Interpretation
- 7.2 Modified penalties
- 7.3 Issue of infringement notice
- 7.4 Failure to pay modified penalty
- 7.5 Payment of modified penalty
- 7.6 Withdrawal of infringement notice
- 7.7 Service

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

**DOG ACT 1976**

## SHIRE OF EXMOUTH

**DOGS LOCAL LAW**

Under the powers conferred by the *Dog Act 1976* and under all other powers enabling it, the Council of the Shire of Exmouth resolved on the Sixteenth day of September 1999 to make the following local law.

**PART 1—PRELIMINARY****1.1 Citation**

This local law may be cited as the Shire of Exmouth Dogs Local Law.

**Provisions of the Dog Act**

Selected provisions of the Dog Act have been included in this document, boxed and hachured, where it is believed these might assist in the interpretation or administration of this Local Law. These insertions are not an official part of the Local Law and should not therefore be included in the gazettal of the Local Law. In the hachured boxes, "s" denotes a section of the *Dog Act 1976*.

**1.2 Repeal**

The Local Laws Relating to Dogs published in the Government Gazettes of 31 October 1968, 10 April 1969, 17 December 1969, 22 May 1971, 9 December 1983 and 17 March 1989 are repealed.

**1.3 Definitions**

In this local law unless the context otherwise requires—

"Act" means the *Dog Act 1976*;

"authorized person" means a person authorized by the local government to perform all or any of the functions conferred on an authorized person under this local law;

"CEO" means the Chief Executive Officer of the local government;

"local government" means the Shire of Exmouth;

"pound keeper" means a person authorized by the local government to perform all or any of the functions conferred on a "pound keeper" under this local law;

"Regulations" means the *Dog Regulations 1976*;

"thoroughfare" has the meaning given to it in section 1.4 of the *Local Government Act 1995*; and

"town planning scheme" means a town planning scheme made by the local government under the *Town Planning and Development Act 1928* which applies throughout the whole or a part of the district.

**1.4 Application**

This local law applies throughout the district.

**PART 2—IMPOUNDING OF DOGS****2.1 Charges and costs**

The following are to be imposed and determined by the local government under sections 6.16—6.19 of the *Local Government Act 1995*—

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

**2.2 Attendance of pound keeper at pound**

The pound keeper is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the CEO.

**2.3 Release of impounded dog**

(1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.

(2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence—

- (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
- (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

**2.4 No breaking into or destruction of pound**

A person who—

- (a) unless he or she is the pound keeper or a person authorized to do so, releases or attempts to release a dog from a pound; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof—
  - (i) any pound; or
  - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog, commits an offence.

**Penalty:** Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

**PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS****3.1 Dogs to be confined**

(1) An occupier of premises on which a dog is kept must—

- (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
- (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
- (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with a proper latch or other means of fastening it;
- (d) maintain the fence and all gates and doors in the fence in good order and condition; and
- (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.

(2) Where an occupier fails to comply with subclause (1), he or she commits an offence.

**Penalty:** Where the dog kept is a dangerous dog, \$2,000; otherwise \$1,000.

**3.2 Limitation on the number of dogs**

(1) This clause does not apply to premises which have been—

- (a) licensed under Part 4 as an approved kennel establishment; or
- (b) granted an exemption under section 26(3) of the Act.

(2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—

- (a) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a townsite; or
- (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated outside a townsite.

**PART 4—APPROVED KENNEL ESTABLISHMENTS****4.1 Interpretation**

In this Part and in Schedule 2—

“licence” means a licence to keep an approved kennel establishment on premises;

“licensee” means the holder of a licence;

“premises”, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

“transferee” means a person who applies for the transfer of a licence to her or him under clause 4.14.

**4.2 Application for licence for approved kennel establishment**

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

**4.3 Notice of proposed use**

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

- (2) The notices in subclause (1) must specify that—
- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
  - (b) the application and plans and specifications may be inspected at the offices of the local government.
- (3) Where—
- (a) the notices given under subclause (1) do not clearly identify the premises; or
  - (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

#### **4.4 Exemption from notice requirements**

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a town planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

#### **4.5 When application can be determined**

An application for a licence is not to be determined by the local government until—

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

#### **4.6 Determination of application**

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

#### **4.7 Where application cannot be approved**

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

#### **4.8 Conditions of approval**

(1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.

(2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

#### **4.9 Compliance with conditions of approval**

A licensee who does not comply with the conditions of a licence commits an offence.

**Penalty:** Where a dog involved in the contravention is a dangerous dog, \$2,000 and a daily penalty of \$200; otherwise \$1,000 and a daily penalty of \$100.

#### **4.10 Fees**

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.

(4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16—6.19 of the *Local Government Act 1995*.

#### **4.11 Form of licence**

The licence is to be in the form determined by the local government and is to be issued to the licensee.

#### **4.12 Period of licence**

(1) The period of effect of a licence is set out in section 27(5) of the Act.

(2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.

(3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### **4.13 Variation or cancellation of licence**

(1) The local government may vary the conditions of a licence.

(2) The local government may cancel a licence—

- (a) on the request of the licensee;
- (b) following a breach of the Act, the Regulations or this local law; or
- (c) if the licensee is not a fit and proper person.

(3) The date a licence is cancelled is to be, in the case of—

- (a) paragraph (a) of subclause (2), the date requested by the licensee; or
- (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.

(4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### **4.14 Transfer**

(1) An application for the transfer of a valid licence from the licensee to another person must be—

- (a) made in the form determined by the local government;
- (b) made by the transferee;
- (c) made with the written consent of the licensee; and
- (d) lodged with the local government together with—
  - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
  - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).

(2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).

(3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.

(4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### **4.15 Notification**

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

#### **4.16 Inspection of kennel**

With the consent of the occupier, an authorized person may inspect an approved kennel establishment at any time.

### **PART 5—DOGS IN PUBLIC PLACES**

#### **5.1 Places where dogs are prohibited absolutely**

(1) Dogs are prohibited absolutely from entering or being in any of the following places—

- (a) where so indicated by a sign, a public building;
- (b) a theatre or picture gardens;
- (c) all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993*;

- (d) a public swimming pool; and
- (e) Exmouth Light aircraft strip.

(2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.

**Penalty:** Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

## 5.2 Places which are dog exercise areas

(1) Subject to clause 5.1 and subclause (2) of this clause, for the purposes of sections 31 and 32 of the Act, the following are dog exercise areas—

Exmouth Townsite Pt. Reserve No. 29066 Willersdorf Road situated on the immediate west side of the Willersdorf Road thoroughfare commencing at a point located 206 metres east thence 300 metres north of the north eastern corner of the intersection of Willersdorf Road and Murat Road thence west for 80 metres thence north for 50 metres then east for 80 metres then south for 50 metres returning to the commencing point.

(2) Subclause (1) does not apply to—

- (a) land which has been set apart as a children's playground;
- (b) an area being used for sporting or other activities, as permitted by the local government, during the times of such use; or
- (c) a car park.

## PART 6—MISCELLANEOUS

### 6.1 Offence to excrete

(1) A dog must not excrete on—

- (a) any thoroughfare or other public place; or
- (b) any land which is not a public place without the consent of the occupier.

(2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.

**Penalty:** \$200.

(3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

## PART 7—ENFORCEMENT

### 7.1 Interpretation

In this Part—

“infringement notice” means the notice referred to in clause 7.3; and

“notice of withdrawal” means the notice referred to in clause 7.6(1).

### 7.2 Modified penalties

(1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.

(2) The amount appearing in the third column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if—

- (a) the dog is not a dangerous dog; or
- (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.

(3) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

### 7.3 Issue of infringement notice

Where an authorized person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 7 of the First Schedule of the Regulations.

### 7.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

### 7.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.



**7.6 Withdrawal of infringement notice**

- (1) Whether or not the modified penalty has been paid, an authorized person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.
- (2) A person authorized to issue an infringement notice under clause 7.3 cannot sign or send a notice of withdrawal.

**7.7 Service**

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

**Schedule 1**

(clause 4.2)

*Local laws relating to dogs*

**APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT**

I/we (full name) .....  
 of (postal address) .....  
 .....  
 (telephone number) .....  
 (facsimile number) .....  
 (E-mail address) .....  
 .....

Apply for a licence for an approved kennel establishment at (address of premises) .....  
 For (number and breed of dogs) .....  
 \*(insert name of person) ..... will be residing at the premises on and from (insert date) .....  
 \*(insert name of person) .....will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at .....  
 ..... (insert address of residence)  
 on and from ..... (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside—
  - (i) at the premises; or
  - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as ....., in the keeping of dogs at the proposed kennel establishment.

Signature of applicant.....  
 Date.....

\*delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27.5 of the Dog Act.

OFFICE USE ONLY

Application fee paid on *[insert date]*.

**Schedule 2**

(clause 4.8(1))

**CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT**

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than—
  - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
  - (ii) 10m from any dwelling; and
  - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
  - (i) at least 100mm above the surface of the surrounding ground;
  - (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
  - (i) 2m; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zinalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorized person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
  - (i) at the premises; or
  - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

**Schedule 3**

(clause 7.2)

**OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES**

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
2.4(a)	Attempting to or causing the unauthorized release of a dog from a pound	200	400
2.4(b)&(c)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	200	
3.1	Failing to provide means for effectively confining a dog	50	200
4.9	Failing to comply with the conditions of a licence	100	200
5.1(2)	Dog in place from which prohibited absolutely	200	400
6.1(2)	Dog excreting in prohibited place	40	

\_\_\_\_\_

Dated this 20th day of January 2000.

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

M. S. PURSLOW, President.  
K. J. GRAHAM, Chief Executive Officer.

\_\_\_\_\_

**CEMETERIES ACT 1986**

## SHIRE OF EXMOUTH

**LOCAL LAWS RELATING TO THE EXMOUTH PUBLIC CEMETERY**

Under the powers conferred by the Cemeteries Act 1986, the Shire of Exmouth resolved on the Sixteenth day of September 1999 to adopt the Model Local Law (Cemeteries) 1998 published in the *Government Gazette* on 12 May 1998 in relation to the Exmouth Public Cemetery, with such modifications as are here set out.

**Clause 1.3**

Insert after "The following Local Laws are repealed:—" — "Exmouth Public Cemetery By-laws published in the Government gazette of 19 August 1965, as amended."

**Clause 3.2**

Delete

**Clause 3.4 (1)**

Delete " or crematorium within the cemetery"

**Clause 4.2**

Delete " ,or crematorium"

**Clause 4.3**

Delete " or crematorium,"

**Clause 5.1, para (a)**

Delete " or cremation"

**Clause 5.2**

Delete "or cremation" and "or clause 3.2"

**Clause 5.6, para (d)**

Delete

**Part 5, Division 2**

Delete

**Clause 5.12**

In subclause (1), delete—

- "Memorial Wall
- Garden of Remembrance
- Ground Niche
- Memorial Rose. Tree or Shrub
- Family Shrub
- Memorial Desk
- Granite Seat
- Book of Remembrance
- Memorial Gardens"

**Clause 5.13**

Delete

**Clause 5.14**

Delete

**Clause 7.12**

Delete and substitute—

"7.12 A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40 (2) of the Act"

**Part 7, Division 2**

Delete

**Part 7, Division 3**

Delete

Dated this 20th day of January 2000.

The Common Seal of the Shire of Exmouth was hereunto affixed by authority of a decision of the Council in the presence of—

M. S. PURSLOW, President.  
K. J. GRAHAM, Chief Executive Officer.

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**CEMETERIES LOCAL LAW 1999**

## SHIRE OF EXMOUTH

## ARRANGEMENT

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Interpretation
- 1.3 Repeal

**PART 2—ADMINISTRATION**

- 2.1 Powers and Functions of CEO

**PART 3—APPLICATION FOR FUNERALS**

- 3.1 Application for Burial
- 3.2 Deleted
- 3.3 Applications to be Accompanied by Certificates etc
- 3.4 Certificate of Identification
- 3.5 Minimum Notice Required

**PART 4—FUNERAL DIRECTORS**

- 4.1 Funeral Director's Licence Expiry
- 4.2 Single Funeral Permits
- 4.3 Application Refusal

**PART 5 - FUNERALS***Division 1—General*

- 5.1 Requirements for Funerals and Coffins
- 5.2 Funeral Processions
- 5.3 Vehicle Entry Restricted
- 5.4 Vehicle Access and Speed Limitations
- 5.5 Offenders may be Expelled
- 5.6 Conduct of Funeral by Board

*Division 2 - Cremation*

- 5.7 Deleted
- 5.8 Deleted
- 5.9 Deleted
- 5.10 Deleted
- 5.11 Deleted

*Division 3 - Placement of Ashes*

- 5.12 Disposal of Ashes
- 5.13 Deleted
- 5.14 Deleted

**PART 6—BURIALS**

- 6.1 Depth of Graves
- 6.2 Mausoleum, etc

**PART 7—MEMORIALS AND OTHER WORK***Division 1—General*

- 7.1 Application for Monumental Work
- 7.2 Placement of Monumental Work
- 7.3 Removal of Rubbish
- 7.4 Operation of Work
- 7.5 Removal of Sand, Soil or Loam
- 7.6 Hours of Work
- 7.7 Unfinished Work
- 7.8 Use of Wood
- 7.9 Plants and Trees
- 7.10 Supervision

7.11 Australian War Graves

7.12 Placing of Glass Domes and Vases

*Division 2—Lawn Section*

7.13 Deleted

7.14 Deleted

*Division 3—Memorial Plaque Section*

7.15 Deleted

*Division 4—Licensing of Monumental Masons*

7.16 Monumental Mason's Licence

7.16 Expiry Date, Non-Transferability

7.17 Carrying out Monumental Work

7.18 Responsibilities of the Holder of a Monumental Mason's Licence

7.20 Cancellation of a Monumental Mason's Licence

**PART 8—GENERAL**

8.1 Animals

8.2 Guide Dogs

8.3 Damaging and Removing of Objects

8.4 Withered Flowers

8.5 Littering and Vandalism

8.6 Advertising

8.7 Obeying Signs and Directions

8.8 Removal from the Cemetery

**PART 9—OFFENCES AND MODIFIED PENALTY**

9.1 General

9.2 Modified Penalties

**First Schedule**—Modified Penalties

**Second Schedule**—Infringement Notice

**Third Schedule**—Withdrawal of Infringement Notice

**CEMETERIES ACT 1986**

## SHIRE OF EXMOUTH

**LOCAL LAWS RELATING TO THE EXMOUTH PUBLIC CEMETERY****PART 1—PRELIMINARY****1.1 Citation**

This Local Law may be cited as the *Shire of Exmouth Cemeteries Local Law 1999*.

**1.2 Interpretation**

In this Local Law unless the context otherwise requires—

“ashes” means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

“authorised officer” means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this Local Law;

“CEO” means the chief executive officer for the time being, of the Board;

“Funeral Director” means a person holding a current funeral director’s licence;

“Board” means the Shire of Exmouth;

“mausoleum” means a building or construction wholly above or partially above and below ground level, so constructed as to allow the deposition of dead bodies into a compartment in the wall or floor and being sealed from view;

“monumental mason” means a person holding a current monumental mason’s licence;

“personal representative” means the administrator or executor of an estate of a deceased person;

“set fee” refers to fees and charges set by a resolution of the Board and published in the Government Gazette, under section 53 of the Act;

“single funeral permit” means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit.

“vault” means a below ground lined grave with one or more sealed compartments constructed to specifications approved from time to time by the Board.

**1.3 Repeal**

The following Local Law is repealed—

Exmouth Public Cemetery By-laws published in the *Government Gazette* of 19 August 1965, as amended.

**PART 2—ADMINISTRATION****2.1 Powers and Functions of CEO**

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

**PART 3—APPLICATION FOR FUNERALS****3.1 Application for Burial**

(1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.

(2) An application under subclause (1) is to be accompanied by the set fee.

**3.2 Deleted****3.3 Applications to be Accompanied by Certificates etc**

All applications referred to in clauses 3.1 and 3.2 shall be accompanied by either a medical certificate of death or a Coroner’s order of burial, and a certificate issued under clause 3.4, in respect of the body.

**3.4 Certificate of Identification**

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—

(a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed;

or

(b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body.



(2) Where—

- (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed;
- or
- (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body,

then the Funeral Director shall complete a certificate in the form determined by the Board from time to time.

### **3.5 Minimum Notice Required**

All bookings to hold a funeral shall be made with the Board at least twenty four hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

## **PART 4—FUNERAL DIRECTORS**

### **4.1 Funeral Director's Licence Expiry**

A funeral director's licence shall expire on the 30th day of June in each year.

### **4.2 Single Funeral Permits**

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

### **4.3 Application Refusal**

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

## **PART 5—FUNERALS**

### *Division 1—General*

### **5.1 Requirements for Funerals and Coffins**

A person shall not bring a dead body into the cemetery unless—

- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this Local Law;
  - (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid;
- and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

### **5.2 Funeral Processions**

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under clause 3.1 shall pay the set fee for being late.

### **5.3 Vehicle Entry Restricted**

- (1) Subject to clause 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

### **5.4 Vehicle Access and Speed Limitations**

Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed of 25km per hour.

### **5.5 Offenders may be Expelled**

A person committing an offence under clause 5.4 may be expelled from the cemetery by the CEO or an authorised officer.

### **5.6 Conduct of Funeral by Board**

When conducting a funeral under section 22 of the Act the Board may—

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;
- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) deleted
- (e) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (f) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this Local Law;
- (g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

*Division 2—Cremation***5.7 to 5.11 Deleted***Division 3—Placement of Ashes***5.12 Disposal of Ashes**

(1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee the Board may grant permission for the ashes to be disposed of by one of the following methods—

Niche Wall

Family Grave

Scattering to the Winds

Other memorials approved by the Board

(2) Subject to sub-clauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.

(3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided—

(a) the person requesting the placement of the ashes has the permission of the Board; and

(b) the ashes are placed within an area set aside for that purpose by the Board.

(4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

**5.13 Deleted****5.14 Deleted****PART 6—BURIALS****6.1 Depth of Graves**

(1) A person shall not bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is—

(a) subject to paragraph (b), less than 750mm, unless that person has the permission of an authorised officer; or

(b) in any circumstances less than 600mm.

(2) The permission of the authorised officer in sub-clause (1) (a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

**6.2 Mausoleum, etc**

(1) A person other than the Board shall not construct a brick grave, crypt, vault or mausoleum within the cemetery.

(2) A person may request the Board to construct a vault or mausoleum within the cemetery which vault or mausoleum shall at all times remain the property of the Board.

(3) An application under subclause (2) shall be in writing and shall be accompanied by payment of the set fee.

(4) A person shall not place a dead body in a mausoleum except—

(a) in a closed coffin; and

(b) in a soundly constructed chamber; and

(c) in accordance with sub-clause (5).

(5) The number of burials in a chamber must not exceed the number for which the chamber was designed.

**PART 7—MEMORIALS AND OTHER WORK***Division 1—General***7.1 Application for Monumental Work**

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

**7.2 Placement of Monumental Work**

Every memorial shall be placed on proper and substantial foundations.

**7.3 Removal of Rubbish**

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

**7.4 Operation of Work**

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

**7.5 Removal of Sand, Soil or Loam**

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

**7.6 Hours of Work**

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

**7.7 Unfinished Work**

Should any work by masons or others be not completed before 6pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

**7.8 Use of Wood**

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

**7.9 Plants and Trees**

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the CEO.

**7.10 Supervision**

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

**7.11 Australian War Graves**

Notwithstanding anything in this Local Law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

**7.12 Placing of Glass Domes and Vases**

A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40 (2) of the Act.

*Division 2—Lawn Section***7.13 Deleted****7.14 Deleted****7.15 Deleted***Division 4—Licensing of Monumental Masons***7.16 Monumental Mason's Licence**

(1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under sub-clause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this Local Law and such conditions as the Board shall specify upon the issue of that licence.

**7.17 Expiry Date, Non-Transferability**

A monumental mason's licence—

- (a) shall, subject to clause 7.22, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

**7.18 Carrying out Monumental Work**

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.16 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

**7.19 Responsibilities of the Holder of a Monumental Mason's Licence**

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this Local Law, the Act and any other written law which may affect the carrying out of monumental works.

**7.20 Cancellation of a Monumental Mason's Licence**

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this Local Law, the Act or any other written law which may affect the carrying out of monumental works;
- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
- (c) that the holder of the licence has purported to transfer the licence issued to that holder.

(2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

(3) An aggrieved person whose licence has been terminated under subclause (1) may appeal to a Local Court against a decision of the Board under this clause in the manner stated in section 19 (3) of the Act.

**PART 8—GENERAL****8.1 Animals**

Subject to clause 8.2, a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

**8.2 Guide Dogs**

Clause 8.1 shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

**8.3 Damaging and Removing of Objects**

Subject to clause 8.4, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

**8.4 Withered Flowers**

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

**8.5 Littering and Vandalism**

A person shall not—

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

**8.6 Advertising**

A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the Board which consent may be granted subject to such conditions as the Board thinks fit.

**8.7 Obeying Signs and Directions**

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

**8.8 Removal from the Cemetery**

Any person failing to comply with any provisions of this Local Law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in addition to any penalty provided by this Local Law be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

**PART 9—OFFENCES AND MODIFIED PENALTIES****9.1 General**

A person who commits a breach of any provisions of this Local Law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

**9.2 Modified Penalties**

(1) The offences specified in the First Schedule are offences which may be dealt with under section 63 of the Act.

(2) The modified penalty payable in respect of an offence specified in the First Schedule is set out in the fourth column of the First Schedule.

(3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.

(4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

**First Schedule**

CEMETERIES ACT 1986

Shire of Exmouth

*Cemeteries Local Law 1999*

**MODIFIED PENALTIES**

Item No	Clause	Nature of Offence	Modified Penalty
1	5.4	Excessive speed	\$50.00
2	5.4	Unauthorised use—driving of vehicles	\$50.00
3	7.3	Placing and removal of rubbish and surplus materials	\$50.00
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
5	8.1	Animal at large	\$50.00
6	8.5	Dumping of Rubbish	\$50.00
7	8.6	Unauthorised advertising, and/or trading	\$50.00
8	8.7	Disobeying sign or lawful direction	\$50.00

**Second Schedule**

CEMETERIES ACT 1986

Shire of Exmouth

*Cemeteries Local Law 1999*

**INFRINGEMENT NOTICE**

TO: .....

(Name)

.....

(Address)

.....

It is alleged that at .....hours on .....day  
of .....19..... at .....

.....

you committed the offence indicated below by an (x) in breach of clause..... of the Shire of Exmouth Cemeteries Local Law 1999.

.....

(Authorised Person)

Offence:

Animal at large

Dumping rubbish

Excessive speed in vehicle

Leaving uncompleted works in an untidy or unsafe condition

Non removal of rubbish

Unauthorised advertising or trading

Unauthorised vehicle use

Disobeying sign or lawful direction

Other offence: .....

\$.....

You may dispose of this matter:

By payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Exmouth at Lot 863 Maidstone Crescent, Exmouth, WA, between the hours of 9am to 4:30pm Monday to Friday.

Please make cheques payable to Shire of Exmouth. Payments by mail should be addressed to:

The Chief Executive Officer

Shire of Exmouth

PO Box 21

EXMOUTH WA 6707

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

***Third Schedule***  
**CEMETERIES ACT 1986**  
**Shire of Exmouth**  
*Cemeteries Local Law 1999*  
**WITHDRAWAL OF INFRINGEMENT NOTICE**

No. ....

..... Date:...../...../.....

To (1) .....

Infringement Notice No. ....dated ...../...../..... for the alleged offence of (2)

.....

Penalty (3) \$ ..... is withdrawn.

(Delete whichever does not apply)

\* No further action will be taken

\* It is proposed to institute court proceedings for the alleged offence.

- \_\_\_\_\_
- (1) Insert name and address of alleged offender
  - (2) Insert short particulars of offence alleged
  - (3) Insert amount of penalty prescribed
- .....
- (Authorised Person)

\_\_\_\_\_

## LOCAL GOVERNMENT ACT 1995

## SHIRE OF EXMOUTH

**LOCAL GOVERNMENT PROPERTY LOCAL LAW**

## TABLE OF CONTENTS

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Definitions
- 1.3 Interpretation
- 1.4 Application
- 1.5 Repeal

**PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY***Division 1—Determinations*

- 2.1 Determinations as to use of local government property
- 2.2 Procedure for making a determination
- 2.3 Discretion to erect sign
- 2.4 Determination to be complied with
- 2.5 Register of determinations
- 2.6 Amendment or revocation of a determination

*Division 2—Activities which may be pursued or prohibited under a determination*

- 2.7 Activities which may be pursued on specified local government property
- 2.8 Activities which may be prohibited on specified local government property

*Division 3—Transitional*

- 2.9 Signs taken to be determinations

**PART 3—PERMITS***Division 1—Preliminary*

- 3.1 Application of Part

*Division 2—Applying for a permit*

- 3.2 Application for permit
- 3.3 Decision on application for permit

*Division 3—Conditions*

- 3.4 Conditions which may be imposed on a permit
- 3.5 Imposing conditions under a policy
- 3.6 Compliance with and variation of conditions

*Division 4—General*

- 3.7 Agreement for building
- 3.8 Duration of permit
- 3.9 Renewal of permit
- 3.10 Transfer of permit
- 3.11 Production of permit
- 3.12 Cancellation of permit

*Division 5—When a permit is required*

- 3.13 Activities needing a permit
- 3.14 Permit required to camp outside a facility
- 3.15 Permit required for possession and consumption of liquor

*Division 6—Responsibilities of permit holder*

- 3.16 Responsibilities of permit holder

**PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY***Division 1—Behaviour on and interference with local government property*

- 4.1 Behaviour which interferes with others
- 4.2 Behaviour detrimental to property
- 4.3 Taking or injuring any fauna
- 4.4 Intoxicated persons not to enter local government property
- 4.5 No prohibited drugs

*Division 2—Signs*

- 4.6 Signs

**PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY***Division 1—Swimming pool areas*

- 5.1 When entry must be refused

*Division 2—Beaches*

- 5.2 Powers of surf life saving club members
- 5.3 Authorizing other persons
- 5.4 Persons to comply with signs and directions

*Division 3—Fenced or closed property*

- 5.5 No entry to fenced or closed local government property

*Division 4—Toilet blocks and change rooms*

- 5.6 Only specified gender to use entry of toilet block or change room

*Division 5—Aerodrome (airport)*

- 5.7 Access of animals restricted

**PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY**

- 6.1 No unauthorized entry to function

**PART 7—OBJECTIONS AND APPEALS**

- 7.1 Application of Division 1, Part 9 of the Act

**PART 8—MISCELLANEOUS**

- 8.1 Authorized person to be obeyed
- 8.2 Persons may be directed to leave local government property
- 8.3 Disposal of lost property
- 8.4 Liability for damage to local government property

**PART 9—ENFORCEMENT***Division 1—Notices given under this local law*

- 9.1 Offence to fail to comply with notice
- 9.2 Local government may undertake requirements of notice

*Division 2—Offences and penalties*

## Subdivision 1—General

- 9.3 Offences and general penalty

## Subdivision 2—Infringement notices and modified penalties

- 9.4 Prescribed offences
- 9.5 Form of notices

*Division 3—Evidence in legal proceedings*

- 9.6 Evidence of a determination

**SCHEDULE 1—PRESCRIBED OFFENCES****SCHEDULE 2—DETERMINATIONS**



**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF EXMOUTH

**LOCAL GOVERNMENT PROPERTY LOCAL LAW**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Exmouth resolved on the Sixteenth day of September 1999 to make the following local law.

**PART 1—PRELIMINARY****Citation**

1.1 This local law may be cited as the *Shire of Exmouth Local Government Property Local Law*.

**Definitions**

1.2 In this local law unless the context otherwise requires—

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

“**applicant**” means a person who applies for a permit under clause 3.2;

“**authorized person**” means a person authorized by the local government under section 9.10 of the Act to perform any of the functions of an authorized person under this local law;

“**boat**” means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

“**building**” means any building which is local government property and includes a—

(a) hall or room;

(b) corridor, stairway or annexe of any hall or room; and

(c) jetty;

“**CEO**” means the chief executive officer of the local government;

“**commencement day**” means the day on which this local law comes into operation;

“**Council**” means the council of the local government;

“**date of publication**” means, where local public notice is required to be given of a matter under this local law, the date on which notice of the matter is published in a newspaper circulating generally throughout the district;

“**determination**” means a determination made under clause 2.1;

“**district**” means the district of the local government;

“**function**” means an event or activity characterised by all or any of the following—

(a) formal organisation and preparation;

(b) its occurrence is generally advertised or notified in writing to particular persons;

(c) organisation by or on behalf of a club;

(d) payment of a fee to attend it; and

(e) systematic recurrence in relation to the day, time and place;

“**liquor**” has the same meaning as is given to it in section 3 of the *Liquor Licensing Act 1988*;

“**local government**” means the Shire of Exmouth;

“**local government property**” means anything except a thoroughfare—

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

“**Manager**” means the person for the time being employed by the local government to control and manage a pool area or other facility which is local government property and includes the person’s assistant or deputy;

“**permit**” means a permit issued under this local law;

“**permit holder**” means a person who holds a valid permit;

“**person**” does not include the local government;

“**pool area**” means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

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

“**sign**” includes a notice, flag, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols;

“**trading**” means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of—

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any other transaction in relation to them; and

“**vehicle**” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
- (d) a pram, a stroller or a similar device; and
- (e) a boat.

### Interpretation

1.3 In this local law unless the context otherwise requires a reference to local government property includes a reference to any part of that local government property.

### Application

1.4 (1) This local law applies throughout the district and in the sea adjoining the district for a distance of 200 metres seawards from the low water mark at ordinary spring tides (*or shoreline—see Guidance Notes in Local Laws Manual*).

(2) Notwithstanding anything to the contrary in this local law, the local government may—

- (a) hire local government property to any person; or
- (b) enter into an agreement with any person regarding the use of any local government property.

### Repeal

1.5 (1) The following local laws are repealed—

Control and Management of Halls and Equipment and Property under the Control of the Council, published in the *Government Gazettes* of 5 May 1967, 25 October 1967, and 6 November 1981; Safety, Decency, Convenience and Comfort of Persons in Respect to Bathing, published in the *Government Gazette* of 7 September 1966;

Recreation grounds, published in the *Government Gazettes* of 30 July 1969 and 3 July 1981; and Control and Management of the Paltridge Memorial Swimming Pool, published in the *Government Gazettes* of 27 October 1966, 28 December 1967, 25 October 1974 and 23 October 1998.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

## PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

### Division 1—Determinations

#### Determinations as to use of local government property

2.1 (1) The local government may make a determination in accordance with clause 2.2—

- (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
- (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
- (c) as to the matters in clauses 2.7(2) and 2.8(2); and
- (d) as to any matter ancillary or necessary to give effect to a determination.

(2) The determinations in Schedule 2—

- (a) are to be taken to have been made in accordance with clause 2.2;
- (b) may be amended or revoked in accordance with clause 2.6; and
- (c) have effect on the commencement day.

#### Procedure for making a determination

2.2 (1) The local government is to give local public notice of its intention to make a determination.

(2) The local public notice referred to in subclause (1) is to state that—

- (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;

- (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
  - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
- (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
  - (b) amend the proposed determination, in which case subclause (5) will apply; or
  - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
- (a) consider those submissions; and
  - (b) decide—
    - (i) whether or not to amend the proposed determination; or
    - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
- (a) of the effect of the amendments; and
  - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

#### **Discretion to erect sign**

2.3 The local government may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

#### **Determination to be complied with**

2.4 A person shall comply with a determination.

#### **Register of determinations**

2.5 (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.

(2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

#### **Amendment or revocation of a determination**

2.6 (1) The Council may amend or revoke a determination.

(2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.

(3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

#### *Division 2—Activities which may be pursued or prohibited under a determination*

#### **Activities which may be pursued on specified local government property**

2.7 (1) A determination may provide that specified local government property is set aside as an area on which a person may—

- (a) bring, ride or drive an animal;
- (b) take, ride or drive a vehicle, or a particular class of vehicle;
- (c) fly or use a motorised model aeroplane;
- (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
- (e) launch, beach or leave a boat;
- (f) take or use a boat, or a particular class of boat;
- (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
- (h) play or practice—
  - (i) golf or archery;
  - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
  - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and

(j) wear no clothing.

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—

- (a) the days and times during which the activity may be pursued;
- (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
- (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
- (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
- (e) may specify that the activity can be pursued by a class of persons or all persons; and
- (f) may distinguish between different classes of the activity.

#### **Activities which may be prohibited on specified local government property**

2.8 (1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (e) taking or using a boat, or a particular class of boat;
- (f) the playing or practice of—
  - (i) golf, archery, pistol shooting or rifle shooting; or
  - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (h) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.

(2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular—

- (a) the days and times during which the activity is prohibited;
- (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
- (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
- (d) that an activity is prohibited in respect of a class of persons or all persons; and
- (e) may distinguish between different classes of the activity.

(3) In this clause—

“**premises**” means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

#### *Division 3—Transitional*

#### **Signs taken to be determinations**

2.9 (1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

### **PART 3—PERMITS**

#### *Division 1—Preliminary*

#### **Application of Part**

3.1 This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government to do so.

#### *Division 2—Applying for a permit*

#### **Application for permit**

3.2 (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law shall—

- (a) be in the form determined by the local government;

- (b) be signed by the applicant;
  - (c) provide the information required by the form; and
  - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

#### **Decision on application for permit**

3.3 (1) The local government may—

- (a) approve an application for a permit unconditionally or subject to any conditions; or
  - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

#### *Division 3—Conditions*

#### **Conditions which may be imposed on a permit**

3.4 (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee;
  - (b) compliance with a standard or a policy of the local government adopted by the local government;
  - (c) the duration and commencement of the permit;
  - (d) the commencement of the permit being contingent on the happening of an event;
  - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
  - (f) the approval of another application for a permit which may be required by the local government under any written law;
  - (g) the area of the district to which the permit applies;
  - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
  - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—
- (a) when fees and charges are to be paid;
  - (b) payment of a bond against possible damage or cleaning expenses or both;
  - (c) restrictions on the erection of material or external decorations;
  - (d) rules about the use of furniture, plant and effects;
  - (e) limitations on the number of persons who may attend any function in or on local government property;
  - (f) the duration of the hire;
  - (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
  - (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*;
  - (i) whether or not the hire is for the exclusive use of the local government property;
  - (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
  - (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

#### **Imposing conditions under a policy**

3.5 (1) In this clause—

“**policy**” means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

(2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government shall give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

(4) An application for a permit shall be deemed not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

(5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy shall be deemed to be information within section 5.94(u)(i) of the Act.

#### **Compliance with and variation of conditions**

3.6 (1) Where an application for a permit has been approved subject to conditions, the permit holder shall comply with each of those conditions.

(2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

#### *Division 4—General*

#### **Agreement for building**

3.7 Where a person applies for a permit to erect a building on local government property the local government may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

#### **Duration of permit**

3.8 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 permit; or
- (b) cancelled under clause 3.12.

#### **Renewal of permit**

3.9 (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.

(2) The provisions of this Part shall apply to an application for the renewal of a permit *mutatis mutandis*.

#### **Transfer of permit**

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

- (a) be made in writing;
- (b) be signed by the permit holder and the proposed transferee of the permit;
- (c) provide such information as the local government may require to enable the application to be determined; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO.

(4) Where the local government approves the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

#### **Production of permit**

3.11 A permit holder is to produce to an authorized person her or his permit immediately upon being required to do so by that authorized person.

#### **Cancellation of permit**

3.12 (1) Subject to clause 7.1, a permit may be cancelled by the local government if the permit holder has not complied with a—

- (a) condition of the permit; or
- (b) determination or a provision of any written law which may relate to the activity regulated by the permit.

(2) On the cancellation of a permit the permit holder—

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

#### *Division 5—When a permit is required*

#### **Activities needing a permit**

3.13 (1) A person shall not without a permit—

- (a) subject to subclause 3, hire local government property;
- (b) advertise anything by any means on local government property;
- (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
- (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;

- (e) plant any plant or sow any seeds on local government property;
  - (f) carry on any trading on local government property unless the trading is conducted -
  - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
  - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
    - (i) drive or ride or take any vehicle on to local government property; or
    - (ii) park or stand any vehicle on local government property;
  - (h) conduct a function on local government property ;
  - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
  - (j) light a fire on local government property except in a facility provided for that purpose;
  - (k) parachute, hang glide, abseil or base jump from or on to local government property;
  - (l) erect a building or a refuelling site on local government property;
  - (m) make any excavation on or erect or remove any fence on local government property;
  - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person; or
  - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

#### **Permit required to camp outside a facility**

3.14 (1) In this clause—

“**facility**” has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.

(2) This clause does not apply to a facility operated by the local government.

(3) A person shall not without a permit—

- (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
- (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.

(4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

#### **Permit required for possession and consumption of liquor**

3.15 (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless—

- (a) that is permitted under the *Liquor Licensing Act 1988*; and
- (b) a permit has been obtained for that purpose.

(2) Subclause (1) does not apply where the liquor is in a sealed container.

#### *Division 6—Responsibilities of permit holder*

#### **Responsibilities of permit holder**

3.16 A holder of a permit shall in respect of local government property to which the permit relates—

- (a) ensure that an authorized person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (b) leave the local government property in a clean and tidy condition after its use;
- (c) report any damage or defacement of the local government property to the local government; and
- (d) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Licensing Act 1988* for that purpose.

### **PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY**

#### *Division 1—Behaviour on and interference with local government property*

#### **Behaviour which interferes with others**

4.1 A person shall not in or on any local government property behave in a manner which—

- (a) is likely to interfere with the enjoyment of a person who might use the property; or

- (b) interferes with the enjoyment of a person using the property.

#### **Behaviour detrimental to property**

4.2 (1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.

(2) In subclause (1)—

‘detrimental to the property’ includes—

- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
- (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

#### **Taking or injuring any fauna**

4.3 (1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorized under a written law to do so.

(2) In this clause—

“**animal**” means any living thing that is not a human being or plant; and

“**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 member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur.

#### **Intoxicated persons not to enter local government property**

4.4 A person shall not enter or remain on local government property while under the influence of liquor or a prohibited drug.

#### **No prohibited drugs**

4.5 A person shall not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

### *Division 2—Signs*

#### **Signs**

4.6 (1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.

(2) A person shall comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is—

- (a) not to be inconsistent with any provision of this local law or any determination; and
- (b) to be for the purpose of giving notice of the effect of a provision of this local law.

## **PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY**

### **Division 1—Swimming pool areas**

#### **When entry must be refused**

5.1 A Manager or an authorized person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a pool area any person who—

- (a) in her or his opinion is—
  - (i) under the age of 6 years and who is unaccompanied by a responsible person over the age of 14 years;
  - (ii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
  - (iii) under the influence of liquor or a prohibited drug; or
- (b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

### *Division 2—Beaches*

#### **Powers of surf life saving club members**

5.2 (1) Subject to subclause (2), the local government may authorize under section 9.10 of the Act the members of a surf life saving club to perform all or any of the following functions in relation to a beach—

- (a) patrol any beach;
- (b) carry out any activity on any beach;
- (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;



- (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and
  - (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.
- (2) Under subclause (1), the local government shall authorize only those members who have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorized.
- (3) Under subclause (1), the local government may authorize members generally, or in relation to particular times, days or months.

#### **Authorizing other persons**

5.3 (1) A local government may authorize, under section 9.10 of the Act, a person to perform all or any of the functions referred to in clause 5.2(1) in relation to a beach.

(2) Under subclause (1), the local government shall authorize only those persons who, in the reasonable opinion of the local government, are competent to perform the functions referred to in clause 5.2(1) in respect of which they are authorized.

(3) Under subclause (1), the local government may authorize a person generally, or in relation to particular times, days or months.

(4) Where the local government has authorized members of a surf life saving club under clause 5.2(1) and a person under subclause (1) in relation to the same beach, so that they can perform all or any of the functions referred to in clause 5.2(1) contemporaneously, the local government is to specify which authorization is rendered ineffective when both are exercised.

#### **Persons to comply with signs and directions**

5.4 A person shall—

- (a) not act in contravention of any sign erected on a beach under clause 5.2(1)(c);
  - (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained permission to enter from the club; and
  - (c) comply with any direction given under clause 5.2(1)(c) or 5.2(1)(e),
- notwithstanding that the sign or the direction was erected or given, as the case may be, by a person referred to in clause 5.3(1).

#### *Division 3—Fenced or closed property*

#### **No entry to fenced or closed local government property**

5.5 A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorized to do so by the local government.

#### *Division 4—Toilet blocks and change rooms*

Only specified gender to use entry of toilet block or change room

5.6 Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—

- (a) females, then a person of the male gender shall not use that entry of the toilet block or change room; or
- (b) males, then a person of the female gender shall not use that entry of the toilet block or change room.

#### *Division 5—Aerodrome (airport)*

#### **Access of animals restricted**

5.7 (1) A person shall not bring an animal on to an aerodrome unless—

- (a) the person is a person referred to in section 8 of the *Dog Act 1976* acting in accordance with that provision;
  - (b) the animal is being air freighted from the aerodrome;
  - (c) the animal has been air freighted to the aerodrome; or
  - (d) the person is authorized to do so by the local government.
- (2) A person in charge of an animal shall keep the animal under control and shall not allow it to wander at large on the aerodrome.
- (3) If an animal is at any time on an aerodrome in contravention of subclause (2), in addition to the person specified in that subclause, the owner of the animal at that time commits an offence against subclause (2).

**PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY****No unauthorized entry to function**

6.1 (1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorized, except –

- (a) through the proper entrance for that purpose; and
- (b) on payment of the fee chargeable for admission at the time.

(2) The local government may exempt a person from compliance with subclause (1)(b).

**PART 7—OBJECTIONS AND APPEALS****Application of Division 1, Part 9 of the Act**

7.1 When the local government makes a decision as to whether it will—

- (a) grant a person a permit or consent under this local law; or
- (b) renew, vary, or cancel a permit or consent that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

**PART 8—MISCELLANEOUS****Authorized person to be obeyed**

8.1 A person on local government property shall obey any lawful direction of an authorized person and shall not in any way obstruct or hinder an authorized person in the execution of her or his duties.

**Persons may be directed to leave local government property**

8.2 An authorized person may direct a person to leave local government property where she or he reasonably suspects that the person has contravened a provision of any written law.

**Disposal of lost property**

8.3 An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the local government in any manner it thinks fit.

**Liability for damage to local government property**

8.4 (1) Where a person unlawfully damages local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of—

- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
- (b) replacing that property.

(2) Unless there is proof to the contrary, a person is to be taken to have damaged local government property within subclause (1) where—

- (a) a vehicle or a boat caused the damage, the person was the person responsible, at the time the damage occurred, for the control of the vehicle or the boat; or
- (b) the damage occurred under a permit, the person is the permit holder in relation to that permit.

(3) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

**PART 9—ENFORCEMENT***Division 1—Notices given under this local law***Offence to fail to comply with notice**

9.1 Whenever the local government gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.

**Local government may undertake requirements of notice**

9.2 Where a person fails to comply with a notice referred to in clause 9.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

*Division 2—Offences and penalties**Subdivision 1—General***Offences and general penalty**

9.3(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

## Subdivision 2—Infringement notices and modified penalties

**Prescribed offences**

9.4(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

**Form of notices**

9.5 (1) For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

(2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

*Division 3—Evidence in legal proceedings***Evidence of a determination**

9.6 (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.

(2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.

(3) Subclause (2) does not make valid a determination that has not been properly made.

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**Schedule 1**  
**PRESCRIBED OFFENCES**

Clause	Description	Modified Penalty \$
2.4	Failure to comply with determination	100
3.6	Failure to comply with conditions of permit	100
3.13(1)	Failure to obtain a permit	100
3.14(3)	Failure to obtain permit to camp outside a facility	100
3.15(1)	Failure to obtain permit for liquor	100
3.16	Failure of permit holder to comply with responsibilities	100
4.2(1)	Behaviour detrimental to property	100
4.4	Under influence of liquor or prohibited drug	100
4.6(2)	Failure to comply with sign on local government property	100
5.4	Failure to comply with sign or direction on beach	100
5.5	Unauthorized entry to fenced or closed local government property	100
5.6	Gender not specified using entry of toilet block or change room	100
5.7(1)	Unauthorized presence of animal on aerodrome	300
5.7(2)	Animal wandering at large on aerodrome—person in charge	300
5.7(3)	Animal wandering at large on aerodrome—owner	300
6.1(1)	Unauthorized entry to function on local government property	100
9.1	Failure to comply with notice	200

**Schedule 2****DETERMINATIONS**

The following determinations are to be taken to have been made by the local government under clause 2.1.

**PART 1—PRELIMINARY****Definitions**

1.1 In these determinations unless the context otherwise requires –

“**local law**” means the *Local Government Property Local Law* made by the local government;

**Interpretation**

1.2 Unless the context otherwise requires, where a term is used but not defined in a determination and that term is defined in the local law then the term shall have the meaning given to it in the local law.

**Speed of Vehicles on Recreation Grounds**

1.3 Except with the prior written permission of the local government no person shall drive any vehicle or machine of any kind on accessways on Reserves 29066 or 27647 at a speed exceeding 16 kilometres per hour.

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Dated this 20th day of January 2000.

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

M. S. PURSLOW, President.

K. J. GRAHAM, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF EXMOUTH

**LOCAL LAW RELATING TO REPEAL OF DEFUNCT AND  
OBSOLETE LOCAL LAWS MADE UNDER THE LOCAL  
GOVERNMENT ACT 1960 AND EARLIER LEGISLATION**

Under the powers conferred by the Local Government Act 1995 and by all other powers, the Local Government of the Shire of Exmouth resolved to make the following Local Law on the Sixteenth day of September, 1999.

**Repeal**

The following by-laws are repealed—

By-laws relating to—

- Motels, published in the *Government Gazette* of 29 April 1964;
- Old Refrigerators and Cabinets, published in the *Government Gazette* of 29 April 1964;
- Petrol Pumps, published in the *Government Gazette* of 3 August 1966;
- Storage of Inflammable Liquid, published in the *Government Gazette* of 29 April 1964;
- Signs, Hoardings and Billposting, published in the *Government Gazette* of 29 April 1964;
- Deposit of Refuse and Litter, published in the *Government Gazette* of 11 November 1965;
- Clearing of Land and Depositing and Removal of Refuse, Rubbish and Disused Materials, published in the *Government Gazette* of 16 November 1966;
- Holiday Cabins and Chalets, published in the *Government Gazette* of 31 October 1968;
- Vehicle Wrecking, published in the *Government Gazette* of 24 March 1969;
- Sick Leave, published in the *Government Gazette* of 17 November 1972.

Dated this 20th day of January 2000.

The Common Seal of the Shire of Exmouth was affixed in the presense of—

M. S. PURSLOW, President.  
K. J. GRAHAM, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF EXMOUTH

**STANDING ORDERS LOCAL LAW 1999**

Under the powers conferred by the Local Government Act 1995, the Council of the Shire of Exmouth hereby record having resolved on the Sixteenth day of September 1999, to adopt the Standing Orders Local Law published in the *Government Gazette* on 3 April 1998 with such modifications as are set out below:

**Part 1**

1. In clause 1.4, insert "Shire of Exmouth" after "The Standing Orders of the" and "4 June 1982" after "published in the Government Gazette on".

**Part 2**

2. Delete the whole of Part 2.

**Part 3**

3. In subclause 3.2(1), delete paragraphs (a) to (m) and substitute—

- (a) Declaration of opening/Announcement of visitors
- (b) Record of attendance/Apologies/Leave of absence (previously approved)
- (c) Response to previous public questions taken on notice
- (d) Public question time
- (e) Applications for leave of absence
- (f) Petitions and deputations
- (g) Confirmation of minutes
- (h) Announcements by the person presiding without discussion
- (i) Matters for which meeting may be closed
- (j) Reports
- (k) Motions of which previous notice has been given
- (l) Questions by members of which due notice has been given
- (m) New business of an urgent nature introduced by decision of meeting
- (n) Matters behind closed doors
- (o) Closure.

4. Delete clause 3.8.

5. In subclause 3.9(2), delete "four(4)" and substitute "seven (7)".

6. In subclause 3.10(1), delete "four(4)" and substitute "seven (7)".

7. Delete subclause 3.11 and substitute—

**"New business of an urgent nature introduced by decision of meeting"**

In cases of extreme urgency or other special circumstance, matters may, by decision of the members present, be raised without notice and decided by the meeting."

**Part 5**

8. Delete the whole of Part 5.

**Part 9**

9. In clause 9.1—delete the heading "9.1 Members to Rise" and substitute "9.1 Members Wishing to Speak"; and delete the whole of the second sentence.

**Part 10**

10. In clause 10.16, in the last sentence, delete "rises to explain" and substitute "makes a personal explanation".

**Part 14**

11. Delete the whole of Part 14.

**Part 15**

12. In clause 15.3, delete "and be seated".

13. Delete clause 15.8.

**Part 17**

14. In clause 17.6, delete paragraph (b).

**Part 19**

15. Delete subclause 19.1(4).
16. Renumber Parts 3 and 4 to 2 and 3 respectively; and clauses 3.1 to 3.7 to 2.1 to 2.7 respectively; 3.9 to 3.12 to 2.8 to 2.11 respectively; and 4.1 and 4.2 to 3.1 and 3.2 respectively.
17. Renumber Parts 6 to 13 to 4 to 11 respectively; and clauses 6.1 and 6.2 to 4.1 and 4.2 respectively; 7.1 and 7.2 to 5.1 and 5.2 respectively; 8.1 to 8.7 to 6.1 to 6.7 respectively; 9.1 to 9.9 to 7.1 to 7.9 respectively; 10.1 to 10.20 to 8.1 to 8.20 respectively; 11.1 to 11.4 to 9.1 to 9.4 respectively; 12.1 to 12.7 to 10.1 to 10.7 respectively; 13.1 to 13.2 to 11.1 to 11.2 respectively.
18. Renumber Parts 15 to 19 and 12 to 16 respectively; and clauses 15.1 and 15.7 to 12.1 and 12.7 respectively; 15.9 to 12.8; 17.1 to 16.5 to 13.1 to 13.5 respectively; 17.1 to 17.6 to 14.1 to 14.6 respectively; 14.6(c) to 14.6(b); 18.1 and 18.2 to 15.1 and 15.2 respectively; 19.1 to 16.1; 16.1(5) to 16.1(4).

Dated this 20th day of January, 2000.

The Common Seal of the Shire of Exmouth was affixed by authority of a decision of the Council in the presence of—

M. S. PURSLOW, President.  
K. J. GRAHAM, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF EXMOUTH

**STANDING ORDERS LOCAL LAW 1999**

## ARRANGEMENT

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Application
- 1.3 Interpretation
- 1.4 Repeal

**PART 2—BUSINESS OF THE MEETING**

- 2.1 Business to be Specified on Notice Paper
- 2.2 Order of Business
- 2.3 Public Question Time
- 2.4 Petitions
- 2.5 Confirmation of Minutes
- 2.6 Announcements by the Person Presiding Without Discussion
- 2.7 Matters for which Meeting May be Closed
- 2.8 Motions of which Previous Notice has been Given
- 2.9 Questions by Members of which Due Notice has been given.
- 2.10 Urgent Business Approved By the Person Presiding or by Decision
- 2.11 Deputations

**PART 3—PUBLIC ACCESS TO AGENDA MATERIAL**

- 3.1 Inspection Entitlement
- 3.2 Confidentiality of Information Withheld

**PART 4—QUORUM**

- 4.1 Quorum to be Present
- 4.2 Loss of Quorum During a Meeting

**PART 5—KEEPING OF MINUTES**

- 5.1 Content of Minutes
- 5.2 Preservation of Minutes

**PART 6—CONDUCT OF PERSONS AT COUNCIL AND COMMITTEE MEETINGS**

- 6.1 Official Titles to be Used
- 6.2 Members to Occupy Own Seats
- 6.3 Leaving Meetings
- 6.4 Adverse Reflection
- 6.5 Recording of Proceedings
- 6.6 Prevention of Disturbance
- 6.7 Distinguished Visitors

**PART 7—CONDUCT OF MEMBERS DURING DEBATE**

- 7.1 Members to Rise
- 7.2 Priority
- 7.3 The Person Presiding to Take Part in Debates
- 7.4 Relevance
- 7.5 Limitation of Number of Speeches
- 7.6 Limitation of Duration of Speeches
- 7.7 Members Not to Speak After Conclusion of Debate
- 7.8 Members Not to Interrupt
- 7.9 Re-Opening Discussion on Decisions

**PART 8—PROCEDURES FOR DEBATE OF MOTIONS**

- 8.1 Motions to be Stated
- 8.2 Motions to be Supported



- 8.3 Unopposed Business
- 8.4 Only One Substantive Motion Considered
- 8.5 Breaking Down of Complex Questions
- 8.6 Order of Call in Debate
- 8.7 Limit of Debate
- 8.8 Member May Require Questions to be Read
- 8.9 Consent of Secunder Required to Accept Alteration of Wording
- 8.10 Order of Amendments
- 8.11 Amendments Must Not Negate Original Motion
- 8.12 Mover of Motion Not to Speak on Amendment
- 8.13 Substantive Motion
- 8.14 Withdrawal of Motion and Amendments
- 8.15 Limitation of Withdrawal
- 8.16 Personal Explanation
- 8.17 Personal Explanation—When Heard
- 8.18 Ruling on Questions of Personal Explanation
- 8.19 Right of Reply
- 8.20 Right of Reply Provisions

#### **PART 9—PROCEDURAL MOTIONS**

- 9.1 Permissible Procedural Motions
- 9.2 No Debate on Procedural Motions
- 9.3 Procedural Motions—Closing Debate—Who May Move
- 9.4 Procedural Motions—Right of Reply on Substantive Motion

#### **PART 10—EFFECT OF PROCEDURAL MOTIONS**

- 10.1 Council (or Committee) to Proceed to the Next Business—Effect of Motion
- 10.2 Question to be Adjourned—Effect of Motion
- 10.3 Council (or Committee) to Now Adjourn—Effect of Motion
- 10.4 Question to be Put—Effect of Motion
- 10.5 Member to be No Longer Heard—Effect of Motion
- 10.6 Ruling of the Person Presiding Disagreed With—Effect of Motion
- 10.7 Council (or Committee) to Meet Behind Closed Doors—Effect of Motion

#### **PART 11—MAKING DECISIONS**

- 11.1 Question—When Put
- 11.2 Question—Method of Putting

#### **PART 12—PRESERVING ORDER**

- 12.1 The Person Presiding to Preserve Order
- 12.2 Demand for Withdrawal
- 12.3 Points of Order—When to Raise—Procedure
- 12.4 Points of Order—When Valid
- 12.5 Points Of Order—Ruling
- 12.6 Points of Order—Ruling Conclusive, Unless Dissent Motion is Moved
- 12.7 Points of Order Take Precedence
- 12.8 Right of the Person Presiding to Adjourn Without Explanation to Regain Order

#### **PART 13—ADJOURNMENT OF MEETING**

- 13.1 Meeting May be Adjourned
- 13.2 Limit to Moving Adjournment
- 13.3 Unopposed Business—Motion for Adjournment
- 13.4 Withdrawal of Motion for Adjournment
- 13.5 Time To Which Adjourned

#### **PART 14—COMMITTEES OF THE COUNCIL**

- 14.1 Establishment and Appointment of Committees
- 14.2 Appointment of Deputy Committee Members
- 14.3 Presentation of Committee Reports
- 14.4 Reports of Committees—Questions
- 14.5 Permissible Motions on Recommendation From Committee
- 14.6 Standing Orders Apply to Committees

#### **PART 15—ADMINISTRATIVE MATTERS**

- 15.1 Suspension of Standing Orders
- 15.2 Cases not Provided for in Standing Orders

#### **PART 16—COMMON SEAL**

- 16.1 The Council's Common Seal

**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF EXMOUTH

**STANDING ORDERS LOCAL LAW 1999****PART 1—PRELIMINARY****1.1 Citation**

- (1) This Local Law may be cited as the Shire of Exmouth Standing Orders Local Law 1999.  
(2) In the clauses to follow, this Local Law is referred to as “the Standing Orders.”

**1.2 Application**

All meetings of the Council or a committee and other matters as prescribed are to be conducted in accordance with the Act, the Regulations and these Standing Orders.

**1.3 Interpretation**

- (1) In these Standing Orders unless the context otherwise requires—  
“CEO” means the Chief Executive Officer or Acting Chief Executive Officer for the time being of the Shire of Exmouth;  
“committee” means a committee of the Council;  
“Council” means the Council of the Shire of Exmouth;  
“presiding member” means the presiding member of a committee or the deputy presiding member, or a member of the committee when performing a function of the presiding member in accordance with the Act.  
“Regulations” means the *Local Government (Administration) Regulations 1996*.  
“simple majority” is more than 50% of the members present and voting.  
“substantive motion” means an original motion or an original motion as amended, but does not include an amendment or a procedural motion.
- (2) Unless otherwise defined herein the terms and expressions used in the Standing Orders are to have the meaning given to them in the Act and Regulations.

**1.4 Repeal**

The Standing Orders of the Shire of Exmouth published in the Government Gazette on 4 June 1982 are repealed.

**PART 2—BUSINESS OF THE MEETING****2.1 Business to be Specified on Notice Paper**

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the person presiding or a decision of the Council.  
(2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.  
(3) No business is to be transacted at a committee meeting other than that specified in the agenda or given in the notice as the purpose of the meeting, without the approval of the Presiding Member or a decision of the committee.  
(4) No business is to be transacted at an adjourned meeting of the Council or a committee other than that—  
(a) specified in the notice of the meeting which had been adjourned; and  
(b) which remains unresolved;

except in the case of an adjournment to the next ordinary meeting of the Council or the committee, when the business unresolved at the adjourned meeting is to have precedence at that ordinary meeting.

**2.2 Order of Business**

- (1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows—  
(a) Declaration of opening/Announcement of visitors  
(b) Record of attendance/Apologies/Leave of absence (previously approved)  
(c) Response to previous public questions taken on notice  
(d) Public question time  
(e) Applications for leave of absence

- (f) Petitions
- (g) Confirmation of minutes
- (h) Announcements by the person presiding without discussion
- (i) Matters for which meeting may be closed
- (j) Reports
- (k) Motions of which previous notice has been given
- (l) Questions by members of which due notice has been given
- (m) New business of an urgent nature introduced by decision of meeting
- (n) Matters behind closed doors
- (o) Closure.

(2) Unless otherwise decided by the members present, the order of business at any special meeting of the Council or at a committee meeting is to be the order in which that business stands in the agenda of the meeting.

(3) Notwithstanding subclauses (1) and (2) in the order of business for any meeting of the Council or a committee, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed.

(4) Notwithstanding subclause (1), the CEO may include on the agenda of a Council or committee meeting in an appropriate place within the order of business any matter which must be decided, or which he or she considers is appropriately decided, by that meeting.

### **2.3 Public Question Time**

(1) A member of the public who raises a question during question time is to state his or her name and address.

(2) A question may be taken on notice by the Council or committee for later response.

(3) When a question is taken on notice under sub-clause (2) a response is to be given to the member of the public in writing by the CEO, and a copy is to be included in the agenda of the next meeting of the Council or committee as the case requires.

### **2.4 Petitions**

A petition, in order to be effective, is to—

- (a) be addressed to the President;
- (b) be made by electors of the district;
- (c) state the request on each page of the petition;
- (d) contain the names, addresses and signatures of the electors making the request, and the date each elector signed;
- (e) contain a summary of the reasons for the request;
- (f) state the name of the person upon whom, and an address at which, notice to the petitioners can be given;
- (g) be in the form prescribed by the Act and Local Government (Constitution) Regulations 1996 if it is—
  - (i) a proposal to change the method of filling the office of President;
  - (ii) a proposal to create a new district or the boundaries of the Local Government;
  - (iii) a request for a poll on a recommended amalgamation;
  - (iv) a submission about changes to wards, the name of a district or ward or the number of councillors for a district or ward.

### **2.5 Confirmation of Minutes**

(1) When minutes of a meeting are submitted to an ordinary meeting of the Council or committee for confirmation, if a member is dissatisfied with the accuracy of the minutes, then he or she is to—

- (a) state the item or items with which he or she is dissatisfied; and
- (b) propose a motion clearly outlining the alternative wording to amend the minutes.

(2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, is not permitted.

### **2.6 Announcements by the Person Presiding Without Discussion**

(1) At any meeting of the Council or a committee the person presiding may announce or raise any matter of interest or relevance to the business of the Council or committee, or propose a change to the order of business.

(2) Any member may move that a change in order of business proposed by the person presiding not be accepted and if carried by a majority of members present, the proposed change in order is not to take place.

### **2.7 Matters for which Meeting May be Closed**

For the convenience of members of the public, the Council or committee may identify by decision, early in the meeting, any matter on the agenda of the meeting to be discussed behind closed doors, and that matter is to be deferred for consideration as the last item of the meeting.

### **2.8 Motions of which Previous Notice has been Given**

- (1) Unless the Act, Regulations or these Standing Orders otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO.
- (2) A notice of motion under subclause (1) is to be given at least seven (7) clear working days before the meeting at which the motion is moved.
- (3) A notice of motion is to relate to the good government of persons in the district.
- (4) The CEO—
  - (a) with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be out of order; or
  - (b) may on his or her own initiative make such amendments to the form but not the substance thereof as will bring the notice of motion into due form; and
  - (c) may under his or her name provide relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.
- (5) No notice of motion is to be out of order because the policy involved is considered to be objectionable.
- (6) A motion of which notice has been given is to lapse unless—
  - (a) the member who gave notice thereof, or some other member authorised by him or her in writing moves the motion when called on; or
  - (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.
- (7) If a notice of motion is given and lapses in the circumstances referred to in subclause (6)(a), notice of motion in the same terms or the same effect is not to be given again for at least 3 months from the date of such lapse.

### **2.9 Questions by Members of which Due Notice has been given.**

- (1) A question on notice is to be given by a member in writing to the CEO at least seven (7) clear working days before the meeting at which it is raised.
- (2) If the question referred to in subclause (1) is in order, the answer is, so far as is practicable, to be included in written form in the agenda of the meeting, or otherwise tabled at that meeting.
- (3) Every question and answer is to be submitted as briefly and concisely as possible and no discussion is to be allowed thereon, unless with the consent of the person presiding.

### **2.10 New business of an urgent nature introduced by decision of meeting**

In cases of extreme urgency or other special circumstance, matters may, by decision of the members present, be raised without notice and decided by the meeting.

### **2.11 Deputations**

- (1) A deputation wishing to be received by the Council or a committee is to apply in writing to the CEO who is to forward the written request to the President, or the Presiding Member as the case may be.
- (2) The President if the request is to attend a Council meeting, or the Presiding Member of the committee, if the request is to attend a meeting of a committee, may either approve the request, in which event the CEO is to invite the deputation to attend a meeting of the Council or committee as the case may be, or may instruct the CEO to refer the request to the Council or committee to decide by simple majority whether or not to receive the deputation.
- (3) A deputation invited to attend a Council or committee meeting—
  - (a) is not to exceed five persons, only two of whom may address the Council or committee, although others may respond to specific questions from the members; and
  - (b) is not to address the Council or committee for a period exceeding 15 minutes without the agreement of the Council or the committee as the case requires.
- (4) Any matter which is the subject of a deputation to the Council or a committee is not to be decided by the Council or that committee until the deputation has completed its presentation.

## **PART 3—PUBLIC ACCESS TO AGENDA MATERIAL**

### **3.1 Inspection Entitlement**

Members of the public have access to agenda material in the terms set out in Regulation 14 of the Regulations.

### **3.2 Confidentiality of Information Withheld**

- (1) Information withheld by the CEO from members of the public under Regulation 14.2, of the Regulations, is to be—
    - (a) identified in the agenda of a Council or committee meeting under the item "Matters for which meeting may be closed"; and
    - (b) marked "confidential" in the agenda.
  - (2) A member of the Council or a committee or an employee of the Council in receipt of confidential information is not to disclose such information to any person other than a member of the Council or the committee or an employee of the Council to the extent necessary for the purpose of carrying out his or her duties.
- Penalty \$5,000.

## PART 4—QUORUM

### 4.1 Quorum to be Present

(1) The Council or a committee is not to transact business at a meeting unless a quorum is present.

### 4.2 Loss of Quorum During a Meeting

(1) If at any time during the course of a meeting of the Council or a committee a quorum is not present—

- (a) in relation to a particular matter because of a member or members leaving the meeting after disclosing a financial interest,  
the matter is adjourned until either—
    - (i) a quorum is present to decide the matter; or
    - (ii) the Minister allows a disclosing member or members to preside at the meeting or to participate in discussions or the decision making procedures relating to the matter under section 5.69 of the Act; or
  - (b) because of a member or members leaving the meeting for reasons other than disclosure of a financial interest, the person presiding is to suspend the proceedings of the meeting for a period of five minutes, and if a quorum is not present at the end of that time, the meeting is deemed to have been adjourned and the person presiding is to reschedule it to some future time or date having regard to the period of notice which needs to be given under the Act, Regulations, or the Standing Orders when calling a meeting of that type.
- (2) Where debate on a motion is interrupted by an adjournment under subclause (1) (b)—
- (a) the debate is to be resumed at the next meeting at the point where it was so interrupted; and
  - (b) in the case of a Council meeting
    - (i) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
    - (ii) the provisions of clause 9.5 apply when the debate is resumed.

## PART 5—KEEPING OF MINUTES

### 5.1 Content of Minutes

In addition to the matters contained in Regulation 11 of the Regulations, the content of minutes of a meeting of the Council or a committee is to include, where an application for approval is declined or the authorisation of a licence, permit, or certificate is otherwise withheld or cancelled, the reasons for the decision.

### 5.2 Preservation of Minutes

Minutes including the agenda of each Council and committee meeting are to be kept as a permanent record of the activities of the local government and are to be transferred to the Public Records Office, being a directorate of the Library and Information Service of Western Australia, in accordance with the retention and disposal policy determined by that office from time to time.

## PART 6—CONDUCT OF PERSONS AT COUNCIL AND COMMITTEE MEETINGS

### 6.1 Official Titles to be Used

Members of the Council are to speak of each other in the Council or committee by their respective titles of President or councillor. Members of the Council, in speaking of or addressing employees, are to designate them by their respective official titles.

### 6.2 Members to Occupy Own Seats

At the first meeting held after each ordinary election day, the CEO is to allot by random draw, a position at the Council table to each councillor and the councillor is to occupy that position when present at meetings of the Council until such time as there is a call by a majority of councillors for a re-allotment of positions.

### 6.3 Leaving Meetings

During the course of a meeting of the Council or a committee no member is to enter or leave the meeting without first advising the person presiding, in order to facilitate the recording in the minutes of the time of entry or departure.

### 6.4 Adverse Reflection

(1) No member of the Council or a committee is to reflect adversely upon a decision of the Council or committee except on a motion that the decision be revoked or changed.

(2) No member of the Council or a committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person.

Penalty \$1,000

(3) If a member of the Council or committee specifically requests, immediately after their use, that any particular words used by a member be recorded in the minutes, the person presiding is to cause the words used to be taken down and read to the meeting for verification and to then be recorded in the minutes.

**6.5 Recording of Proceedings**

(1) No person is to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council.

(2) Subclause (1) does not apply if the record is taken by or at the direction of the CEO, with the permission of the Council or committee.

**6.6 Prevention of Disturbance**

(1) Any member of the public addressing the Council or a committee is to extend due courtesy and respect to the Council or committee and the processes under which they operate and must take direction from the person presiding whenever called upon to do so.

Penalty \$1,000

(2) No person observing a meeting, is to create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.

Penalty \$1,000

**6.7 Distinguished Visitors**

If a distinguished visitor is present at a meeting of the Council or a committee, the person presiding may invite such person to sit beside the person presiding or at the Council table.

**PART 7—CONDUCT OF MEMBERS DURING DEBATE****7.1 Members Wishing to Speak**

Every member of the Council wishing to speak is to indicate by show of hands or other method agreed upon by the Council.

**7.2 Priority**

In the event of two or more members of the Council or a committee wishing to speak at the same time, the person presiding is to decide which member is entitled to be heard first. The decision is not open to discussion or dissent.

**7.3 The Person Presiding to Take Part in Debates**

Unless otherwise prohibited by the Act, and subject to compliance with procedures for the debate of motions contained in these Standing Orders, the person presiding may take part in a discussion of any matter before the Council or committee as the case may be.

**7.4 Relevance**

Every member of the Council or a committee is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.

**7.5 Limitation of Number of Speeches**

No member of the Council is to address the Council more than once on any motion or amendment before the Council except the mover of a substantive motion, in reply, or to a point of order, or in explanation.

**7.6 Limitation of Duration of Speeches**

All addresses are to be limited to a maximum of five minutes. Extension of time is permissible only with the agreement of a simple majority of members present.

**7.7 Members Not to Speak After Conclusion of Debate**

No member of the Council or a committee is to speak to any question after it has been put by the person presiding.

**7.8 Members Not to Interrupt**

No member of the Council or a committee is to interrupt another member of the Council or committee whilst speaking unless:

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 10.16; or
- (d) to move a motion under clause 11(1)(e).

**7.9 Re-Opening Discussion on Decisions**

No member of the Council or a committee is to re-open discussion on any decision of the Council or committee, except for the purpose of moving that the decision be revoked or changed.

**PART 8—PROCEDURES FOR DEBATE OF MOTIONS****8.1 Motions To be Stated**

Any member of the Council or a committee who moves a substantive motion or amendment to a substantive motion is to state the substance of the motion before speaking to it.

**8.2 Motions to be Supported**

No motion or amendment to a substantive motion is open to debate until it has been seconded, or, in the case of a motion to revoke or change the decision made at a Council or a committee meeting, unless the motion has the support required under Regulation 10 of the Regulations.

**8.3 Unopposed Business**

- (1) Upon a motion being moved and seconded, the person presiding may ask the meeting if any member opposes it.
- (2) If no member signifies opposition to the motion the person presiding may declare the motion in subclause (1) carried without debate and without taking a vote on it.
- (3) A motion carried under subclause (2) is to be recorded in the minutes as a unanimous decision of the Council or committee.
- (4) If a member signifies opposition to a motion the motion is to be dealt with according to this Part.
- (5) This clause does not apply to any motion or decision to revoke or change a decision which has been made at a Council or committee meeting.

**8.4 Only One Substantive Motion Considered**

When a substantive motion is under debate at any meeting of the Council or a committee, no further substantive motion is to be accepted.

**8.5 Breaking Down of Complex Questions**

The person presiding may order a complex question to be broken down and put in the form of several motions, which are to be put in sequence.

**8.6 Order of Call in Debate**

The person presiding is to call speakers to a substantive motion in the following order—

- (a) The mover to state the motion;
- (b) A seconder to the motion;
- (c) The mover to speak to the motion;
- (d) The seconder to speak to the motion;
- (e) A speaker against the motion;
- (f) A speaker for the motion;
- (g) Other speakers against and for the motion, alternating in view, if any;
- (h) Mover takes right of reply which closes debate.

**8.7 Limit of Debate**

The person presiding may offer the right of reply and put the motion to the vote if he or she believes sufficient discussion has taken place even though all members may not have spoken.

**8.8 Member May Require Questions to be Read**

Any member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other member whilst speaking.

**8.9 Consent of Secunder Required to Accept Alteration of Wording**

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

**8.10 Order of Amendments**

Any number of amendments may be proposed to a motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn or lost.

**8.11 Amendments Must Not Negate Original Motion**

No amendment to a motion can be moved which negates the original motion or the intent of the original motion.

**8.12 Mover of Motion Not to Speak on Amendment**

On an amendment being moved, any member may speak to the amendment, provided that if the person who moved the substantive motion does choose to speak to the amendment, the right of reply is forfeited by that person.

**8.13 Substantive Motion**

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any member may speak and any further amendment may be moved.

**8.14 Withdrawal of Motion and Amendments**

Council or a committee may, without debate, grant leave to withdraw a motion or amendment upon request of the mover of the motion or amendment and with the approval of the seconder provided that there is no voice expressed to the contrary view by any member, in which case discussion on the motion or amendment is to continue.

**8.15 Limitation of Withdrawal**

Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of members present, until the amendment proposed has been withdrawn or lost.

**8.16 Personal Explanation**

No member is to speak at any meeting of the Council or a committee, except upon the matter before the Council or committee, unless it is to make a personal explanation. Any member of the Council or

committee who is permitted to speak under these circumstances is to confine the observations to a succinct statement relating to a specific part of the former speech which may have been misunderstood. When a member of the Council or committee makes a personal explanation, no reference is to be made to matters unnecessary for that purpose.

#### **8.17 Personal Explanation—When Heard**

A member of the Council or a committee wishing to make a personal explanation of matters referred to by any member of the Council or committee then speaking, is entitled to be heard immediately, if the member of the Council or committee then speaking consents at the time, but if the member of the Council or committee who is speaking declines to give way, the explanation is to be offered at the conclusion of that speech.

#### **8.18 Ruling on Questions of Personal Explanation**

The ruling of the person presiding on the admissibility of a personal explanation is final unless a motion of dissent with the ruling is moved before any other business proceeds.

#### **8.19 Right of Reply**

(1) The mover of a substantive motion has the right of reply. After the mover of the substantive motion has commenced the reply, no other member is to speak on the question.

(2) The right of reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

#### **8.20 Right of Reply Provisions**

The right of reply is governed by the following provisions—

- (a) if no amendment is moved to the substantive motion, the mover may reply at the conclusion of the discussion on the motion;
- (b) if an amendment is moved to the substantive motion the mover of the substantive motion is to take the right of reply at the conclusion of the vote on any amendments;
- (c) the mover of any amendment does not have a right of reply;
- (d) once the right of reply has been taken, there can be no further discussion, nor any other amendment and the original motion or the original motion as amended is immediately put to the vote.

### **PART 9—PROCEDURAL MOTIONS**

#### **9.1 Permissible Procedural Motions**

In addition to proposing a properly worded amendment to a substantive motion, it is permissible for a member to move the following procedural motions—

- (a) that the Council (or committee) proceed to the next business;
- (b) that the question be adjourned;
- (c) that the Council (or committee) now adjourn;
- (d) that the question be now put;
- (e) that the member be no longer heard;
- (f) that the ruling of the person presiding be disagreed with;
- (g) that the Council (or committee) meet behind closed doors, if the meeting or part of the meeting to which the motion relates is a matter in respect of which the meeting may be closed to members of the public under section 5.23 of the Act.

#### **9.2 No Debate on Procedural Motions**

(1) The mover of a motion stated in each of paragraphs (a), (b), (c), (f) and (g) of clause 11.1 may speak to the motion for not more than five minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

(2) The mover of a motion stated in each of paragraphs (d) and (e) of Clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

#### **9.3 Procedural Motions—Closing Debate—Who May Move**

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

#### **9.4 Procedural Motions—Right of Reply on Substantive Motion**

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

### **PART 10—EFFECT OF PROCEDURAL MOTIONS**

#### **10.1 Council (or Committee) to Proceed to the Next Business—Effect of Motion**

The motion “that the Council (or committee) proceed to the next business”, if carried, causes the debate to cease immediately and for the Council (or committee) to move to the next business of the meeting. No decision will be made on the substantive motion being discussed, nor is there any requirement for the matter to be again raised for consideration.



**10.2 Question to be Adjourned—Effect of Motion**

(1) The motion “that the question be adjourned”, if carried, causes all debate on the substantive motion or amendment to cease but to continue at a time stated in the motion.

(2) If the motion is carried at a meeting of the Council -

- (a) the names of members who have spoken on the matter are to be recorded in the minutes; and
- (b) the provisions of clause 9.5 apply when the debate is resumed.

**10.3 Council (or Committee) to Now Adjourn—Effect of Motion**

(1) The motion “that the Council (or committee) now adjourn”, if carried, causes the meeting to stand adjourned until it is re-opened at which time the meeting continues from the point at which it was adjourned, unless the person presiding or a simple majority of members upon vote, determine otherwise.

(2) Where debate on a motion is interrupted by an adjournment under subclause (1)—

- (a) the debate is to be resumed at the next meeting at the point where it was so interrupted; and
- (b) in the case of a Council meeting
  - (i) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
  - (ii) the provisions of clause 9.5 apply when the debate is resumed.

**10.4 Question to be Put—Effect of Motion**

(1) The motion “that the question be now put”, if carried during discussion of a substantive motion without amendment, causes the person presiding to offer the right of reply and then immediately put the matter under consideration without further debate.

(2) This motion, if carried during discussion of an amendment, causes the person presiding to put the amendment to the vote without further debate.

(3) This motion, if lost, causes debate to continue.

**10.5 Member to be No Longer Heard—Effect of Motion**

The motion “that the member be no longer heard”, if carried, causes the person presiding to not allow the speaker against whom the motion has been moved to speak to the current substantive motion or any amendment relating to it, except to exercise the right of reply if the person is the mover of the substantive motion.

**10.6 Ruling of the Person Presiding Disagreed With—Effect of Motion**

The motion “that the ruling of the person presiding be disagreed with”, if carried, causes the ruling of the person presiding about which this motion was moved, to have no effect and for the meeting to proceed accordingly.

**10.7 Council (or Committee) to Meet Behind Closed Doors—Effect of Motion**

(1) Subject to any deferral under clause 3.7 or other decision of the Council or committee, this motion, if carried, causes the general public and any officer or employee the Council or committee determines, to leave the room.

(2) While a decision made under this clause is in force the operation of clause 9.5 limiting the number of speeches a member of the Council may make, is suspended unless the Council decides otherwise.

(3) Upon the public again being admitted to the meeting the person presiding, unless the Council or committee decides otherwise, is to cause the motions passed by the Council or committee whilst it was proceeding behind closed doors to be read out including the vote of a member or members to be recorded in the minutes under section 5.21 of the Act.

(4) A person who is a Council member, a committee member, or an employee is not to publish, or make public any of the discussion taking place on a matter discussed behind closed doors, but this prohibition does not extend to the actual decision made as a result of such discussion and other information properly recorded in the minutes.

Penalty \$5,000

**PART 11—MAKING DECISIONS****11.1 Question—When Put**

When the debate upon any question is concluded and the right of reply has been exercised the person presiding shall immediately put the question to the Council or the committee, and, if so desired by any member of the Council or committee, shall again state it.

**11.2 Question—Method of Putting**

If a decision of the Council or a committee is unclear or in doubt, the person presiding shall put the motion or amendment as often as necessary to determine the decision from a show of hands or other method agreed upon so that no voter's vote is secret, before declaring the decision.

**PART 12—PRESERVING ORDER****12.1 The Person Presiding to Preserve Order**

The person presiding is to preserve order, and may call any member or other person in attendance to order, whenever, in his or her opinion, there is cause for so doing.

**12.2 Demand for Withdrawal**

A member at a meeting of the Council or a committee may be required by the person presiding, or by a decision of the Council or committee, to apologise and unreservedly withdraw any expression which is considered to reflect offensively on another member or an employee, and if the member declines or neglects to do so, the person presiding may refuse to hear the member further upon the matter then under discussion and call upon the next speaker.

**12.3 Points of Order—When to Raise—Procedure**

Upon a matter of order arising during the progress of a debate, any member may raise a point of order including interrupting the speaker. Any member who is speaking when a point of order is raised, is to immediately stop speaking while the person presiding listens to the point of order.

**12.4 Points of Order—When Valid**

The following are to be recognised as valid points of order—

- (a) that the discussion is of a matter not before the Council or committee;
- (b) that offensive or insulting language is being used;
- (c) drawing attention to the violation of any written law, or policy of the Local Government, provided that the member making the point of order states the written law or policy believed to be breached.

**12.5 Points Of Order—Ruling**

The person presiding is to give a decision on any point of order which is raised by either upholding or rejecting the point of order.

**12.6 Points of Order—Ruling Conclusive, Unless Dissent Motion is Moved**

The ruling of the person presiding upon any question of order is final, unless a majority of the members support a motion of dissent with the ruling.

**12.7 Points of Order Take Precedence**

Notwithstanding anything contained in these Standing Orders to the contrary, all points of order take precedence over any other discussion and until decided, suspend the consideration and decision of every other matter.

**12.8 Right of the Person Presiding to Adjourn Without Explanation to Regain Order**

(1) If a meeting ceases to operate in an orderly manner, the person presiding may use discretion to adjourn the meeting for a period of up to fifteen minutes without explanation, for the purpose of regaining order. Upon resumption, debate is to continue at the point at which the meeting was adjourned. If, at any one meeting, the person presiding has cause to further adjourn the meeting, such adjournment may be to a later time on the same day or to any other day.

(2) Where debate of a motion is interrupted by an adjournment under sub-clause (1), in the case of a Council meeting—

- (a) the names of members who have spoken in the matter prior to the adjournment are to be recorded; and
- (b) the provisions of clause 9.5 apply when the debate is resumed.

**PART 13—ADJOURNMENT OF MEETING****13.1 Meeting May be Adjourned**

The Council or a committee may decide to adjourn any meeting to a later time on the same day, or to any other day.

**13.2 Limit to Moving Adjournment**

No member is to move or second more than one motion of adjournment during the same sitting of the Council or committee.

**13.3 Unopposed Business—Motion for Adjournment**

On a motion for the adjournment of the Council or committee, the person presiding, before putting the motion, may seek leave of the Council or committee to proceed to the transaction of unopposed business.

**13.4 Withdrawal of Motion for Adjournment**

A motion or an amendment relating to the adjournment of the Council or a committee may be withdrawn by the mover, with the consent of the seconder, except that if any member objects to the withdrawal, debate of the motion is to continue.

**13.5 Time To Which Adjourned**

The time to which a meeting is adjourned for want of a quorum, by the person presiding to regain order, or by decision of the Council, may be to a specified hour on a particular day or to a time which coincides with the conclusion of another meeting or event on a particular day.

**PART 14—COMMITTEES OF THE COUNCIL****14.1 Establishment and Appointment of Committees**

A committee is not to be established except on a motion setting out the proposed functions of the committee and either—

- (a) the names of the Council members, employees and other persons to be appointed to the committee; or

- (b) the number of Council members, employees and other persons to be appointed to the committee and a provision that they be appointed by a separate motion.

#### **14.2 Appointment of Deputy Committee Members**

(1) The Council may appoint one or more persons to be the deputy or deputies, as the case may be, to act on behalf of a member of a committee whenever that member is unable to be present at a meeting thereof and where two or more deputies are so appointed they are to have seniority in the order determined by the Council.

(2) Where a member of a committee does not attend a meeting thereof a deputy of that member, selected according to seniority, is entitled to attend that meeting in place of the member and act for the member, and while so acting has all the powers of that member.

#### **14.3 Presentation of Committee Reports**

When the report or recommendations of a committee are placed before the Council, the adoption of recommendations of the committee is to be moved by—

- (a) the Presiding Member of the Committee if the Presiding Member is a Council member and is in attendance; or
- (b) a Council member who is a member of the committee, if the Presiding Member of the Committee is not a Council member, or is absent; or
- (c) otherwise, by a Council member who is not a member of the committee.

#### **14.4 Reports of Committees—Questions**

When a recommendation of any committee is submitted for adoption by the Council, any member of the Council may direct questions directly relating to the recommendation through the person presiding to the Presiding Member or to any member of the committee in attendance.

#### **14.5 Permissible Motions on Recommendation From Committee**

A recommendation made by or contained in the minutes of a committee may be adopted by the Council without amendment or modification, failing which, it may be—

- (a) rejected by the Council and replaced by an alternative decision; or
- (b) amended or modified and adopted with such amendment or modification; or
- (c) referred back to the committee for further consideration.

#### **14.6 Standing Orders Apply to Committees**

Where not otherwise specifically provided, these Standing Orders apply generally to the proceedings of committees, except that the following Standing Orders do not apply to the meeting of a committee—

- (a) Clause 8.2, in regard to seating;
- (b) Clause 9.5, limitation on the number of speeches.

### **PART 15—ADMINISTRATIVE MATTERS**

#### **15.1 Suspension of Standing Orders**

(1) The Council or a committee may decide, by simple majority vote, to suspend temporarily one or more of the Standing Orders.

(2) The mover of a motion to suspend temporarily any one or more of the Standing Orders is to state the clause or clauses to be suspended, and the purpose of the suspension.

#### **15.2 Cases not Provided for in Standing Orders**

The person presiding is to decide questions of order, procedure, debate, or otherwise in cases where these Standing Orders and the Act and Regulations are silent. The decision of the person presiding in these cases is final, except where a motion is moved and carried under clause 11.1 (f).

### **PART 16—COMMON SEAL**

#### **16.1 The Council's Common Seal**

(1) The CEO is to have charge of the common seal of the Local Government, and is responsible for the safe custody and proper use of it.

(2) The common seal of the Local Government may only be used on the authority of the Council given either generally or specifically and every document to which the seal is affixed must be signed by the President and the CEO or a senior employee authorised by him or her.

(3) The common seal of the local government is to be affixed to any local law which is made by the local government.

(4) Any person who uses the common seal of the Local Government or a replica thereof without authority commits an offence.

Penalty \$1,000

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF EXMOUTH

**ACTIVITIES ON THOROUGHFARES AND TRADING IN  
THOROUGHFARES AND PUBLIC PLACES LOCAL LAW**

## TABLE OF CONTENTS

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Definitions
- 1.3 Application
- 1.4 Repeal

**PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES***Division 1—General*

- 2.1 General prohibitions
- 2.2 Activities allowed with a permit—general
- 2.3 No possession and consumption of liquor on thoroughfare

*Division 2—Vehicle crossing*

## Subdivision 1—Temporary crossings

- 2.4 Permit required

## Subdivision 2—Redundant vehicle crossings

- 2.5 Removal of redundant crossing.

*Division 3—Verge treatments*

## Subdivision 1—Preliminary

- 2.6 Interpretation
- 2.7 Application

## Subdivision 2—Permissible verge treatments

- 2.8 Permissible verge treatments
- 2.9 Only permissible verge treatments to be installed
- 2.10 Obligations of owner or occupier
- 2.11 Notice to owner or occupier

## Subdivision 3—Existing verge treatments

- 2.12 Transitional provision

## Subdivision 4—Public works

- 2.13 Power to carry out public works on verge

*Division 4—Property numbers*

## Subdivision 1—Preliminary

- 2.14 Interpretation

## Subdivision 2—Assignment and marking of numbers

- 2.15 Assignment of numbers

*Division 5—Fencing*

- 2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act

*Division 6—Signs erected by the local government*

- 2.17 Signs
- 2.18 Transitional

*Division 7—Driving on a closed thoroughfare*

- 2.19 No driving on closed thoroughfare

**PART 3—ADVERTISING SIGNS ON THOROUGHFARES***Division 1—Preliminary*

- 3.1 Interpretation

*Division 2—Permit*

- 3.2 Advertising signs and portable direction signs  
3.3 Matters to be considered in determining application for permit

*Division 3—Conditions on permit*

- 3.4 Conditions on portable sign  
3.5 Conditions on election sign

**PART 4—OBSTRUCTING ANIMALS OR VEHICLES***Division 1—Animals and vehicles*

- 4.1 Leaving animal or vehicle in public place or on local government property  
4.2 Prohibitions relating to animals

**PART 5—ROADSIDE CONSERVATION***Division 1—Preliminary*

- 5.1 Interpretation  
5.2 Application

*Division 2—Flora roads*

- 5.3 Declaration of flora road  
5.4 Construction works on flora roads  
5.5 Signposting of flora roads  
5.6 Driving only on carriageway of flora roads

*Division 3—Special environmental areas*

- 5.7 Designation of special environmental areas  
5.8 Marking of special environmental areas

*Division 4—Planting in thoroughfares*

- 5.9 Permit to plant  
5.10 Relevant considerations in determining application

*Division 5—Clearance of vegetation*

- 5.11 Permit to clear  
5.12 Application for permit

*Division 6—Fire management*

- 5.13 Permit to burn thoroughfare  
5.14 Application for permit  
5.15 When application for permit can be approved  
5.16 Prohibitions on burning

*Division 7—Firebreaks*

- 5.17 Permit for firebreaks on thoroughfares  
5.18 Application for permit cannot be approved

*Division 8—Commercial wildflower harvesting on thoroughfares*

- 5.19 General prohibition on commercial wildflower harvesting  
5.20 Permit for revegetation projects

**PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES***Division 1—Stallholders and traders**Subdivision 1—Preliminary*

- 6.1 Interpretation

**Subdivision 2—Permits**

- 6.2 Stallholder's permit
- 6.3 Trader's permit
- 6.4 No permit required to sell newspaper
- 6.5 Relevant considerations in determining application for permit
- 6.6 Conditions of permit
- 6.7 Exemptions from requirement to pay fee or to obtain a permit

**Subdivision 3—Conduct of stallholders and traders**

- 6.8 Conduct of stallholders and traders

*Division 2—Outdoor eating facilities on public places*

- 6.9 Interpretation
- 6.10 Permit required to conduct Facility
- 6.11 Matters to be considered in determining application
- 6.12 Obligations of permit holder
- 6.13 Removal of Facility unlawfully conducted
- 6.14 Use of Facility by public
- 6.15 Temporary removal of Facility may be requested

**PART 7—PERMITS***Division 1—Applying for a permit*

- 7.1 Application for permit
- 7.2 Decision on application for permit

*Division 2—Conditions*

- 7.3 Conditions which may be imposed on a permit
- 7.4 Imposing conditions under a policy
- 7.5 Compliance with and variation of conditions

*Division 3—General*

- 7.6 Duration of permit
- 7.6 Renewal of permit
- 7.8 Transfer of permit
- 7.9 Production of permit
- 7.10 Cancellation of permit

**PART 8—OBJECTIONS AND APPEALS**

- 8.1 Application of Part 9 Division 1 of Act

**PART 9—MISCELLANEOUS NOTICES**

- 9.1 Notice to redirect or repair sprinkler
- 9.2 Hazardous plants
- 9.3 Notice to repair damage to thoroughfare
- 9.4 Notice to remove thing unlawfully placed on thoroughfare

**PART 10—ENFORCEMENT***Division 1—Notices given under this local law*

- 10.1 Offence to fail to comply with notice
- 10.2 Local government may undertake requirements of notice

*Division 2—Offences and penalties***Subdivision 1 — General**

- 10.3 Offences

**Subdivision 2—Infringement notices and modified penalties**

- 10.4 Prescribed offences
- 10.5 Forms

**SCHEDULE 1  
PRESCRIBED OFFENCES**

## LOCAL GOVERNMENT ACT 1995

## SHIRE OF EXMOUTH

**ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Exmouth resolved on the Sixteenth day of September 1999, to make the following local law.

**PART 1—PRELIMINARY****1.1 Citations**

This local law may be cited as the Shire of Exmouth Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

**1.2 Definitions**

In this local law unless the context otherwise requires—

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

“**applicant**” means a person who applies for a permit;

“**authorized person**” means a person authorized by the local government under section 9.10 of the Act to perform any of the functions of an authorized person under this local law;

“**built-up area**” has the meaning given to it in the *Road Traffic Code 1975*;

“**bulk rubbish container**” means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government’s regular domestic rubbish collection service;

“**carriageway**” means the paved or made portion of a thoroughfare used or intended for use by vehicles;

“**CEO**” means the chief executive officer of the local government;

“**commencement day**” means the day on which this local law comes into operation;

“**Council**” means the council of the local government;

“**crossing**” means a crossing giving access from a public thoroughfare to—

(a) private land; or

(b) a private thoroughfare serving private land;

“**district**” means the district of the local government;

“**footpath**” means the paved or made portion of a thoroughfare used or intended for use by pedestrians and cyclists;

“**garden**” means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

“**intersection**” has the meaning given to it in the *Road Traffic Code 1975*;

“**kerb**” includes the edge of a carriageway;

“**lawn**” means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

“**liquor**” has the meaning given to it in section 3 of the *Liquor Licensing Act 1988*;

“**local government**” means the Shire of Exmouth;

“**local government property**” means anything except a thoroughfare—

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

“**lot**” has the meaning given to it in the *Town Planning and Development Act 1928*;

“**owner**” or “**occupier**” in relation to land does not include the local government;

“**permissible verge treatment**” means any one of the 4 treatments described in clause 2.8(2), and includes any reticulation pipes and sprinklers;

“**permit**” means a permit issued under this local law;

“**permit holder**” means a person who holds a valid permit;

- “**person**” does not include the local government;
- “**premises**” for the purpose of the definition of “public place” in both this clause and clause 6.1, means a building or similar structure, but does not include a carpark or a similar place;
- “**public place**” includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include—
- (a) premises on private property from which trading is lawfully conducted under a written law; and
  - (b) local government property;
- “**Regulations**” means the *Local Government (Functions and General) Regulations 1996*;
- “**sign**” includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;
- “**town planning scheme**” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*;
- “**townsite**” means the townsite of Exmouth which is—
- (a) constituted under section 26(2) of the *Land Administration Act 1997*; or
  - (b) referred to in clause 37 of Schedule 9.3 of the Act;
- “**vehicle**” includes—
- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
  - (b) an animal being ridden or driven,
- but excludes—
- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
  - (b) a pram, a stroller or a similar device; and
- “**verge**” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath.

### 1.3 Application

This local law applies throughout the district.

### 1.4 Repeal

(1) The following local laws are repealed—

By-laws Relating to—

- Prevention of Damage to Streets, published in the Government Gazette of 29 April 1964;
- Removal and Disposal of Obstructing Animals or Vehicles, published in the Government Gazette of 29 April 1964;
- Control of Hawkers, published in the Government Gazette of 29 April 1964;
- Access Across Footpaths, Damage to Kerbing and Footpaths, published in the Government Gazette of 8 December 1966; and
- Street Lawns and Gardens, published in the Government Gazette of 14 June 1967.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2) specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

## PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

### *Division 1—General*

#### 2.1 General prohibitions

A person shall not—

- (a) plant any plant which exceeds or which may exceed 0.75m in height on a thoroughfare so that the plant is within 6m of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
  - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
  - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2m of a carriageway;
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;



- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any skateboard, rollerblades or similar device.

## **2.2 Activities allowed with a permit—general**

(1) A person shall not, without a permit—

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
- (d) cause any obstruction to a water channel or a water course in a thoroughfare;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
- (f) damage a thoroughfare;
- (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
- (h) fell any tree onto a thoroughfare;
- (i) unless installing a permissible verge treatment—
  - (i) lay pipes under or provide taps on any verge; or
  - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
- (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
- (k) on a public place use anything or do anything so as to create a nuisance;
- (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
- (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.

(2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

## **2.3 No possession and consumption of liquor on thoroughfare**

(1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless—

- (a) that is permitted under the *Liquor Licensing Act 1988* or under another written law; or
- (b) the person is doing so in accordance with a permit.

(2) Subclause (1) does not apply where the liquor is in a sealed container.

### *Division 2—Vehicle crossing*

#### Subdivision 1—Temporary crossings

## **2.4 Permit required**

(1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where—

- (a) a crossing does not exist; or
- (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.

(2) The “person responsible for the works” in subclause (1) is to be taken to be—

- (a) the builder named on the building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960*, if one has been issued in relation to the works; or
- (b) the registered proprietor of the lot, if no building licence has been issued under the *Local Government (Miscellaneous Provisions) Act 1960* in relation to the works.

(3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

#### Subdivision 2—Redundant vehicle crossings

## **2.5 Removal of redundant crossing**

(1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.

(2) The local government may give written notice to the owner or occupier of a lot requiring her or him to—

- (a) remove any part of or all of a crossing which does not give access to the lot; and

(b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal,  
within the period of time stated in the notice, and the owner or occupier of the lot shall comply with that notice.

*Division 3—Verge treatments*

*Subdivision 1—Preliminary*

**2.6 Interpretation**

In this Division, unless the context otherwise requires—

“**acceptable material**” means any material which will create a hard surface, and which appears on a list of acceptable materials maintained by the local government.

**2.7 Application**

This Division only applies to the townsite.

*Subdivision 2—Permissible verge treatments*

**2.8 Permissible verge treatments**

(1) An owner or occupier of land which abuts on a verge may on that part of the verge directly in front of her or his land install a permissible verge treatment.

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
  - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare; and
  - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
- (c) the installation of an acceptable material; or
- (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

**2.9 Only permissible verge treatments to be installed**

(1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.

(2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.10.

**2.10 Obligations of owner or occupier**

An owner or occupier who installs or maintains a permissible verge treatment shall—

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) not place any obstruction on or around the verge treatment; and
- (c) not disturb a footpath on the verge.

**2.11 Notice to owner or occupier**

The local government may give a notice in writing to the owner or the occupier of a lot abutting on a verge to make good, within the time specified in the notice, any breach of a provision of this Division.

*Subdivision 3—Existing verge treatments*

**2.12 Transitional provision**

(1) In this clause—

“**former provisions**” means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.

(2) A verge treatment which—

- (a) was installed prior to the commencement day; and
- (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions,

is to be taken to be a permissible verge treatment for so long as the verge treatment remains of the same type and continues to comply with the former provisions.

*Subdivision 4—Public works*

**2.13 Power to carry out public works on verge**

Where the local government or an authority empowered to do so under a written law disturbs a verge, the local government or the authority—

- (a) is not liable to compensate any person for that disturbance;

- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any—
  - (i) verge treatment and, in particular, any plant or any acceptable material or other hard surface; or
  - (ii) sprinklers, pipes or other reticulation equipment.

*Division 4—Property numbers*

Subdivision 1—Preliminary

### 2.14 Interpretation

In this Division, unless the context requires otherwise—

“**Number**” means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2—Assignment and marking of numbers

### 2.15 Assignment of numbers

The local government may assign a Number to a lot in the district and may assign another Number to the lot instead of that previously assigned.

*Division 5—Fencing*

### 2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act—

- (a) a public place, as that term is defined in clause 1.2; and
- (b) local government property.

*Division 6—Signs erected by the local government*

### 2.17 Signs

- (1) A local government may erect a sign on a public place specifying any conditions of use which apply to that place.
- (2) A person shall comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

### 2.18 Transitional

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under clause 2.17 if—

- (a) the sign specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; and
- (b) the condition of use specified is not inconsistent with any provision of this local law.

*Division 7—Driving on a closed thoroughfare*

### 2.19 No driving on closed thoroughfare

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless—
  - (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
  - (b) the person has first obtained a permit.
- (2) In this clause—
 

“**closed thoroughfare**” means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

## PART 3—ADVERTISING SIGNS ON THOROUGHFARES

*Division 1—Preliminary*

### 3.1 Interpretation

In this Part, unless the context otherwise requires—

“**advertising sign**” means a sign used for the purpose of advertisement and includes an “election sign”;

“**direction sign**” means a sign which indicates the direction of another place, activity or event, but does not include any such sign erected or affixed by the local government or the Commissioner of Main Roads;

“**election sign**” means a sign or poster which advertises any aspect of a forthcoming Federal, State or Local Government election; and

“**portable direction sign**” means a portable free standing direction sign; and  
“**portable sign**” means a portable free standing advertising sign.

*Division 2 —Permit*

**3.2 Advertising signs and portable direction signs**

- (1) A person shall not, without a permit—
- (a) erect or place an advertising sign on a thoroughfare; or
  - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m<sup>2</sup> in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.
- (3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—
- (a) on a footpath;
  - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
  - (c) on or within 3m of a carriageway;
  - (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
  - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

**3.3 Matters to be considered in determining application for permit**

In determining an application for a permit for the purpose of clause 3.2(1), the local government is to have regard to—

- (a) any other written law regulating the erection or placement of signs within the district;
- (b) the dimensions of the sign;
- (c) other advertising signs already approved or erected in the vicinity of the proposed location of the sign;
- (d) whether or not the sign will create a hazard to persons using a thoroughfare; and
- (e) the amount of the public liability insurance cover, if any, to be obtained by the applicant.

*Division 3—Conditions on permit*

**3.4 Conditions on portable sign**

If the local government approves an application for a permit for a portable sign, the application is to be taken to be approved subject to the following conditions—

- (a) the portable sign shall—
  - (i) not exceed 1m in height;
  - (ii) not exceed an area of 1m<sup>2</sup> on any side;
  - (iii) relate only to the business activity described on the permit;
  - (iv) contain letters not less than 200mm in height;
  - (v) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;
  - (vi) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
  - (vii) be secured in position in accordance with any requirements of the local government;
  - (viii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and
  - (ix) be maintained in good condition; and
- (a) no more than one portable sign shall be erected in relation to the one building or business.

**3.5 Conditions on election sign**

If the local government approves an application for a permit for the erection or placement of an election sign on a thoroughfare, the application is to be taken to be approved subject to the sign—

- (a) being erected at least 30m from any intersection;
- (b) being free standing and not being affixed to any existing sign, post, power or light pole, or similar structure;
- (c) being placed so as not to obstruct or impede the reasonable use of a thoroughfare, or access to a place by any person;
- (d) being placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing;
- (e) being maintained in good condition;
- (f) not being erected until the election to which it relates has been officially announced;

- (g) being removed within 24 hours of the close of polls on voting day;
- (h) not being placed within 100m of any works on the thoroughfare;
- (i) being securely installed;
- (j) not being an illuminated sign;
- (k) not incorporating reflective or fluorescent materials; and
- (l) not displaying only part of a message which is to be read with other separate signs in order to obtain the whole message.

## **PART 4—OBSTRUCTING ANIMALS OR VEHICLES**

### *Division 1—Animals and vehicles*

#### **4.1 Leaving animal or vehicle in public place or on local government property**

- (1) A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place or on local government property so that it obstructs the use of any part of that public place or local government property, unless that person has first obtained a permit or is authorized to do so under a written law.
- (2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.
- (3) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

#### **4.2 Prohibitions relating to animals**

- (1) In subclause (2), “owner” in relation to an animal includes—
  - (a) an owner of it;
  - (b) a person in possession of it;
  - (c) a person who has control of it; and
  - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal shall not—
  - (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
  - (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
  - (c) train or race the animal on a thoroughfare.
- (3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area, unless that person does so under a permit or under the authority of a written law.

## **PART 5 — ROADSIDE CONSERVATION**

### *Division 1—Preliminary*

#### **5.1 Interpretation**

In this Part—

“**MRWA**” means Main Roads Western Australia;

“**protected flora**” has the meaning given to it in section 6(1) of the *Wildlife Conservation Act 1950*;

“**rare flora**” has the meaning given to it in section 23F of the *Wildlife Conservation Act 1950*;

“**Roadside Conservation Committee**” means the Roadside Conservation Committee established under the Land Resource Policy Council within the Office of Premier and Cabinet; and

“**special environmental area**” means an area designated as such under clause 5.7.

#### **5.2 Application**

This Part does not apply to the townsites.

### *Division 2—Flora roads*

#### **5.3 Declaration of flora road**

The local government may declare a thoroughfare which has, in the opinion of the local government, high quality roadside vegetation to be a flora road.

#### **5.4 Construction works on flora roads**

Construction and maintenance work carried out by the local government on a flora road is to be in accordance with the ‘Code of Practice for Roadside Conservation and Road Maintenance’ prepared by the Roadside Conservation Committee.

#### **5.5 Signposting of flora roads**

The local government may signpost flora roads with the standard MRWA ‘flora road’ sign.

#### **5.6 Driving only on carriageway of flora roads**

- (1) A person driving or riding a vehicle on a flora road shall only drive or ride the vehicle on the carriageway.

- (2) Subclause (1) does not apply where—
- (a) conditions on the thoroughfare do not reasonably permit a vehicle to remain on the carriageway;
  - (b) there is no carriageway; or
  - (c) an exemption from the application of subclause (1) has been obtained from the local government.

*Division 3—Special environmental areas*

**5.7 Designation of special environmental areas**

The local government may designate a thoroughfare, or any part of a thoroughfare, as a special environmental area which—

- (a) as protected flora or rare flora; or
- (b) in the opinion of the local government, has environmental, aesthetic or cultural significance.

**5.8 Marking of special environmental areas**

The local government is to mark and keep a register of each thoroughfare, or part of a thoroughfare, designated as a special environmental area.

*Division 4—Planting in thoroughfares*

**5.9 Permit to plant**

A person shall not plant any plant or sow any seeds in a thoroughfare without first obtaining a permit.

**5.10 Relevant considerations in determining application**

In determining an application for a permit for the purpose of clause 5.9, the local government is to have regard to—

- (a) existing vegetation within that part of the thoroughfare in which the planting is to take place; and
- (b) the diversity of species and the prevalence of the species which are to be planted or sown.

*Division 5—Clearance of vegetation*

**5.11 Permit to clear**

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 1m of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

**5.12 Application for permit**

In addition to the requirements of clause 7.1(2), a person making an application for a permit for the purpose of clause 5.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

*Division 6—Fire management*

**5.13 Permit to burn thoroughfare**

A person shall not burn part of a thoroughfare without first obtaining a permit or unless acting under the authority of any other written law.

**5.14 Application for permit**

In addition to the requirements of clause 7.1(2), an application for a permit for the purposes of clause 5.13 shall—

- (a) include a sketch plan showing the portions of a thoroughfare which are proposed to be burned; and
- (b) advise of the estimated fire intensity and the measures to be taken to protect upper storey vegetation from the burn.

**5.15 When application for permit can be approved**

The local government may approve an application for a permit for the purpose of clause 5.13 only if the burning of the particular part of the thoroughfare will—

- (a) reduce a fire hazard and alternative means of reducing that hazard, such as slashing or the use of herbicides, are considered by the local government to be not feasible or more detrimental to native flora and fauna than burning; or
- (b) in the opinion of the local government, be beneficial for the preservation and conservation of native flora and fauna.

**5.16 Prohibitions on burning**

Notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 5.13 is not to be approved by the local government—

- (a) for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna; or

- (b) in any year to any person for any part of a thoroughfare which is on the opposite side of the carriageway to that portion of the thoroughfare for which a permit to burn has been approved in the same year.

*Division 7—Firebreaks*

**5.17 Permit for firebreaks on thoroughfares**

A person shall not construct a firebreak on a thoroughfare without first obtaining a permit.

**5.18 When application for permit cannot be approved**

- (1) The local government is not to approve an application for a permit for the purpose of clause 5.17 where the thoroughfare is less than 20m wide.
- (2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

*Division 8—Commercial wildflower harvesting on thoroughfares*

**5.19 General prohibition on commercial wildflower harvesting**

Subject to clause 5.20, a person shall not commercially harvest native flora on a thoroughfare.

**5.20 Permit for revegetation projects**

- (1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.
- (2) The local government may approve an application for a permit under subclause (1) only where—
- (a) the seed is required for a revegetation project in any part of the district; and
  - (b) the thoroughfare, or the relevant part of it, is not a special environmental area.
- (3) Unless the local government specifically provides to the contrary on a permit, if the local government approves an application for a permit for the purpose of subclause (1) it is to be taken to be approved subject to the following conditions—
- (a) the collection of the seed is to be carried out so as not to endanger the long time survival of the native flora on the thoroughfare; and
  - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

**PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES**

*Division 1—Stallholders and traders*

Subdivision 1—Preliminary

**6.1 Interpretation**

In this Division, unless the context otherwise requires—

“**Competition Principles Agreement**” means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

“**public place**” includes—

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law.

“**stall**” means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

“**stallholder**” means a person in charge of a stall;

“**stallholder’s permit**” means a permit issued to a stallholder;

“**trader**” means a person who carries on trading;

“**trader’s permit**” means a permit issued to a trader; and

“**trading**” includes—

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place 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
- (c) the going from place to place, whether or not public places, and—
  - (i) offering goods or services for sale or hire;
  - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services; or
  - (iii) carrying out any other transaction in relation to goods or services,

but does not include—

- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (g) the selling or hiring or the offering for sale or hire of—
  - (i) goods by a person who represents a manufacturer of the goods; or
  - (ii) services by a person who represents a provider of the services, which are sold directly to consumers and not through a shop.

#### Subdivision 2—Permits

##### **6.2 Stallholder's permit**

- (1) A person shall not conduct a stall on a public place unless that person is—
  - (a) the holder of a valid stallholder's permit; or
  - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit shall—
  - (a) state the full name and address of the applicant;
  - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
  - (c) specify the proposed location of the stall;
  - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
  - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
  - (f) be accompanied by an accurate plan and description of the proposed stall.

##### **6.3 Trader's permit**

- (1) A person shall not carry on trading unless that person is—
  - (a) the holder of a valid trader's permit; or
  - (b) an assistant specified in a valid trader's permit.
- (2) Every application for a trader's permit shall—
  - (a) state the full name and address of the applicant;
  - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
  - (c) specify the location or locations in which the applicant proposes to trade;
  - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
  - (e) specify the proposed goods or services which will be traded; and
  - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.
- (3) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

##### **6.4 No permit required to sell newspaper**

Notwithstanding any other provision of this local law, a person who sells, or offers for sale, a newspaper is not required to obtain a permit.

##### **6.5 Relevant considerations in determining application for permit**

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
  - (a) any relevant policies of the local government;
  - (b) the desirability of the proposed activity;
  - (c) the location of the proposed activity;
  - (d) the principles set out in the Competition Principles Agreement; and
  - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—
  - (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;



- (b) that the applicant is not a desirable or suitable person to hold a permit;
- (c) that—
  - (i) the applicant is an undischarged bankrupt or is in liquidation;
  - (ii) the applicant has entered into any composition or arrangement with creditors; or
  - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property; or
- (d) that the needs of the district, or the part for which the permit is sought, are adequately catered for by established shops or by persons who have valid permits to carry on trading or to conduct a stall; or
- (e) such other grounds as the local government may consider to be relevant in the circumstances of the case.

### 6.6 Conditions of permit

(1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—

- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
- (b) the days and hours during which a permit holder may conduct a stall or trade;
- (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
- (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
- (e) the number of persons and the names of persons permitted to conduct a stall or trade;
- (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
- (g) whether and under what terms the permit is transferable;
- (h) any prohibitions or restrictions concerning the—
  - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
  - (ii) the use of amplifiers, sound equipment and sound instruments;
  - (iii) the use of signs; and
  - (iv) the use of any lighting apparatus or device;
- (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
- (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
- (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
- (l) the acquisition by the stallholder or trader of public risk insurance;
- (m) the period for which the permit is valid; and
- (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.

(2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

### 6.7 Exemptions from requirement to pay fee or to obtain a permit

(1) In this clause—

**“charitable organisation”** means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

**“commercial participant”** means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

(2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—

- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
- (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.

(3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

## Subdivision 3 — Conduct of stallholders and traders

**6.8 Conduct of stallholders and traders**

- (1) A stallholder while conducting a stall or a trader while trading shall—
- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
  - (b) not display a permit unless it is a valid permit; and
  - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.
- (2) A stallholder or trader shall not—
- (a) attempt to conduct a business within a distance of 300m of any shop or permanent place of business and has for sale any goods or services of the kind being offered for sale by the stallholder or trader.
  - (b) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
  - (c) act in an offensive manner;
  - (d) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
  - (e) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

*Division 2—Outdoor eating facilities on public places***6.9 Interpretation**

In this Division—

“**Facility**” means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;

“**permit holder**” means the person to whom a permit has been issued for the purpose of clause 6.10; and

“**public place**” has the meaning given to it in clause 6.1.

**6.10 Permit required to conduct Facility**

A person shall not establish or conduct a Facility without a permit.

**6.11 Matters to be considered in determining application**

In determining an application for a permit for the purpose of clause 6.10, the local government may consider in addition to any other matter it considers relevant, whether or not—

- (a) the Facility is conducted in conjunction with and as an extension of food premises which abut on the Facility, and whether the applicant is the person conducting such food premises;
- (b) any abutting food premises are registered in accordance with the *Health Act 1911* and whether the use of the premises is permitted under the town planning scheme;
- (c) the Facility will comply with any local law made under section 172 of the *Health Act 1911*;
- (d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the Facility would—
  - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
  - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

**6.12 Obligations of permit holder**

(1) The permit holder for a Facility shall—

- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law and any local law made under section 172 of the *Health Act 1911*;
- (b) ensure that the eating area is kept in a clean and tidy condition at all times;
- (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
- (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility; and
- (e) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.

(2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.

(3) In subclause (2), "work" includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

#### **6.13 Removal of Facility unlawfully conducted**

Where a Facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by an authorized person and impounded in accordance with the Act.

#### **6.14 Use of Facility by public**

(1) A person shall not occupy a chair or otherwise use the equipment in a Facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the Facility.

(2) A person shall leave a Facility when requested to do so by the permit holder.

#### **6.15 Temporary removal of Facility may be requested**

(1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an authorized person or a member of the Police Service or an emergency service in the event of an emergency.

(2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

### **PART 7— PERMITS**

#### *Division 1—Applying for a permit*

##### **7.1 Application for permit**

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law shall—

- (a) be in the form determined by the local government;
- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The local government may require an applicant to give local public notice of the application for a permit.

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

##### **7.2 Decision on application for permit**

(1) The local government may—

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

(2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.

(3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

#### *Division 2 — Conditions*

##### **7.3 Conditions which may be imposed on a permit**

The local government may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;
- (f) the area of the district to which the permit applies;

- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

#### **7.4 Imposing conditions under a policy**

(1) In this clause—

“**policy**” means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 7.2(1)(a).

(2) Under clause 7.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 7.2(2).

(4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

(5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

#### **7.5 Compliance with and variation of conditions**

(1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.

(2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

#### *Division 3—General*

#### **7.6 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 permit; or
- (b) cancelled under clause 7.10.

#### **7.7 Renewal of permit**

(1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.

(2) The provisions of—

- (a) this Part; and
- (b) any other provision of this local law relevant to the permit which is to be renewed,

shall apply to an application for the renewal of a permit *mutatis mutandis*.

#### **7.8 Transfer of permit**

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

- (a) be made in writing;
- (b) be signed by the permit holder and the proposed transferee of the permit;
- (c) provide such information as the local government may require to enable the application to be determined; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by—

- (a) an endorsement on the permit signed by the CEO; or
- (b) issuing to the transferee a permit in the form determined by the local government.

(4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

#### **7.9 Production of permit**

A permit holder is to produce to an authorized person her or his permit immediately upon being required to do so by that authorized person.

#### **7.10 Cancellation of permit**

(1) Subject to clause 8.1, a permit may be cancelled by the local government on any one or more of the following grounds—

- (a) the permit holder has not complied with a—
  - (i) condition of the permit; or

- (ii) provision of any written law which may relate to the activity regulated by the permit; or
- (b) if it is relevant to the activity regulated by the permit—
  - (i) the permit holder has become bankrupt, or gone into liquidation;
  - (ii) the permit holder has entered into any composition or arrangement with creditors; or
  - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.
- (2) On the cancellation of a permit the permit holder—
  - (a) shall return the permit as soon as practicable to the local government; and
  - (b) is to be taken to have forfeited any fees paid in respect of the permit.

## **PART 8—OBJECTIONS AND APPEALS**

### **8.1 Application of Part 9 Division 1 of Act**

When the local government makes a decision—

- (a) under clause 7.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

## **PART 9 — MISCELLANEOUS NOTICES**

### **9.1 Notice to redirect or repair sprinkler**

Where a lawn or a garden is being watered with a sprinkler which is on the lawn or the garden, in a manner which causes or may cause an inconvenience or obstruction to any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the lawn or the garden, requiring the owner or the occupier or both to move or alter the direction of the sprinkler or other watering equipment.

### **9.2 Hazardous plants**

(1) Where a plant in a garden creates or may create a hazard for any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the garden to remove, cut, move or otherwise deal with that plant so as to remove the hazard.

(2) Subclause (1) does not apply where the plant was planted by the local government.

### **9.3 Notice to repair damage to thoroughfare**

Where any portion of a thoroughfare has been damaged, the local government may by notice to the person who caused the damage order the person to repair or replace that portion of the thoroughfare to the satisfaction of the local government.

### **9.4 Notice to remove thing unlawfully placed on thoroughfare**

Where any thing is placed on a thoroughfare in contravention of this local law, the local government may by notice in writing to the owner or the occupier of the property which abuts on that portion of the thoroughfare where the thing has been placed, or such other person who may be responsible for the thing being so placed, require the relevant person to remove the thing.

## **PART 10—ENFORCEMENT**

### *Division 1—Notices given under this local law*

#### **10.1 Offence to fail to comply with notice**

Whenever the local government gives a notice under this local law requiring a person to do any thing, if the person fails to comply with the notice, the person commits an offence.

#### **10.2 Local government may undertake requirements of notice**

Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

### *Division 2—Offences and penalties*

#### *Subdivision 1—General*

#### **10.3 Offences**

(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

## Subdivision 2—Infringement notices and modified penalties

**10.4 Prescribed offences**

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

**10.5 Forms**

Unless otherwise specified, for the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

**Schedule 1**  
**PRESCRIBED OFFENCES**

Clause	Description	Modified Penalty \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 6m of intersection	100
2.1(b)	Damaging lawn or garden	100
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	100
2.1(d)	Placing hazardous substance on footpath	100
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	100
2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre	100
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	100
2.2(1)(b)	Throwing or placing anything on a verge without a permit	100
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	100
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	200
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	200
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(h)	Felling tree onto thoroughfare without a permit	100
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	100
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	100
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	100
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	100
2.3(1)	Consumption or possession of liquor on thoroughfare	100
2.4(1)	Failure to obtain permit for temporary crossing	200
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	300
2.9(1)	Installation of verge treatment other than permissible verge treatment	200
2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
2.11	Failure to comply with notice to rectify default	100
2.17(2)	Failure to comply with sign on public place	100
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	300
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	100
3.2(3)	Erecting or placing of advertising sign in a prohibited area	100
4.1(1)	Animal or vehicle obstructing a public place or local government property	100
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	100
4.2(2)(b)	Animal on public place with infectious disease	100
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	100
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	100
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	200
5.9	Planting in thoroughfare without a permit	200
5.11	Failure to obtain permit to clear a thoroughfare	500

Clause	Description	Modified Penalty \$
5.13	Burning of thoroughfare without a permit	500
5.17	Construction of firebreak on thoroughfare without a permit	500
5.19	Commercial harvesting of native flora on thoroughfare	500
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	300
6.2(1)	Conducting of stall in public place without a permit	300
6.3(1)	Trading without a permit	300
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	100
6.8(1)(b)	Stallholder or trader not displaying valid permit	100
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	100
6.8(2)	Stallholder or trader engaged in prohibited conduct	100
6.10	Establishment or conduct of outdoor eating facility without a permit	300
6.12	Failure of permit holder of outdoor eating facility to comply with obligations	100
6.14(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	50
6.14(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	50
7.5	Failure to comply with a condition of a permit	100
7.9	Failure to produce permit on request of authorized person	100
10.1	Failure to comply with notice given under local law	100

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Dated this 20th day of January 2000.

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

M. S. PURSLOW, President.  
K. J. GRAHAM, Chief Executive Officer.

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