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# CITY OF ROCKINGHAM

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LOCAL GOVERNMENT ACT 1995

## REPEAL LOCAL LAW 2001

### ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW 2001

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BUSH FIRES ACT 1954

## BUSH FIRE CONTROL AND BUSH FIRE BRIGADES LOCAL LAW 2001



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**LOCAL GOVERNMENT ACT 1995****CITY OF ROCKINGHAM****REPEAL LOCAL LAW 2001**

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the City of Rockingham resolved on 23 October 2001 to make the following local law.

**PART 1—PRELIMINARY**

1. This local law may be cited as the *City of Rockingham Repeal Local Law 2001*.

**PART 2—REPEAL**

2. This local law repeals the following local law—

Name of Local Law	Date Gazetted
Height of Building and Site Coverage	30 October 1963

Dated 29 October 2001

The Common Seal of the City of Rockingham was affixed by authority of a resolution of the Council in the presence of—

B. W. SAMMELS, Deputy Mayor.

G. G. HOLLAND, Chief Executive Officer.

## LOCAL GOVERNMENT ACT 1995

## CITY OF ROCKINGHAM

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2001**

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## LOCAL GOVERNMENT ACT 1995

## CITY OF ROCKINGHAM

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES  
AND TRADING LOCAL LAW 2001

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Rockingham resolved on 23 October 2001 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *City of Rockingham Activities in Thoroughfares and Public Places and Trading Local Law 2001*.

## 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;

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

“**built-up area**” has the meaning given to it in the *Road Traffic Code 2000*;

“**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**” has the meaning given to it in the *Road Traffic Code 2000*;

“**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**” has the meaning given to it in the *Road Traffic Code 2000*;

“**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 2000*;

“**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 City of Rockingham;

“**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;

“**local public notice**” has the meaning given by 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 2.7(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 5.1, 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;

“**thoroughfare**” has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;

“**town planning scheme**” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*;

“**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;

“**verge**” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath; and

“**works**” means constructing, building, placing, reconstructing, rebuilding, replacing, extending, enlarging, adding to or otherwise altering or repairing, a building, fence or other structure or portion of a building, fence or other structure.

### 1.3 Application

This local law applies throughout the district.

### 1.4 Repeal

(1) The following local laws are repealed—

- (a) Removal and Disposal of Obstructing Animals or Vehicles, published in the *Government Gazette* on 29 May 1963 and amendments;
- (b) Street Performers, published in the *Government Gazette* on 30 March 1999;
- (c) Traders, published in the *Government Gazette* on 4 March 1994;
- (d) Amusements, published in the *Government Gazette* on 17 December 1968.

(2) Section 3.1(a)(iii), subsections 3.2(p)(i) to (vi) inclusive, section 5.3(a) and section 6.32 of the local law relating to Signs, Hoardings and Bill Posting, published in the *Government Gazette* on 7 December 1990 and amendments, are repealed.

### 1.5 Continued policies

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 taken to continue or to have continued under the relevant replacement provisions of this local law.

## PART 2—ACTIVITIES IN 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 10m 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 in accordance with the terms and conditions and 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;
- (h) fell any tree or part of a tree onto a thoroughfare;
- (i) unless installing, or in order to maintain, 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 including, 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 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.

## Subdivision 2—Permissible verge treatments

**2.7 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 or using a driveway on land adjacent to the thoroughfare for access to or from 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).

**2.8 Only permissible verge treatments to be installed**

(1) An owner or occupier of a lot 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 2.9.

**2.9 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.

**2.10 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

**2.11 Transitional provision**

(1) In this clause—

“**former provisions**” means the provisions of any 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 provisions are 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

### 2.12 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

### 2.13 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

### 2.14 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*

### 2.15 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*

### 2.16 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.

### 2.17 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 2.16 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*

### 2.18 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—

“**advertisement**” means any sign, letter, word, number, figure, motif, crest, emblem, logo or design or any combination thereof advertising any property, business, profession, organisation, association, function, candidate for election policy, political party, group, service, operation, event, proposal, election, undertaking, product, goods, price, place, date, time or thing whatsoever;

“**advertising sign**” means a sign, hoarding, signboard, awning, blind, lamp or illuminated sign or other structure or device 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 or portable direction 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  $0.5\text{m}^2$  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 or portable direction 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  $1\text{m}^2$  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
- (b) 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, VEHICLES OR SHOPPING TROLLEYS**

### *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 authorised to do so under a written law.

(2) A person will not contravene subclause (1) where the animal is secured and tethered and is removed after 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) A person 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.

### *Division 2—Shopping trolleys*

#### **4.3 Interpretation**

In this Division—

“**retailer**” means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

“**shopping trolley**” means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

#### **4.4 Shopping trolley to be marked**

A retailer shall clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

#### 4.5 Person not to leave trolley in public place

A person shall not leave a shopping trolley in a public place other than in an area set aside for the storage of shopping trolleys.

#### 4.6 Retailer to remove abandoned trolley

(1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) the retailer whose name is marked on the trolley of the location of the shopping trolley.

(2) A retailer shall remove a shopping trolley within 24 hours of being so advised under subclause (1), unless the retailer—

- (a) requests the local government to collect and deliver the shopping trolley to the retailer; and
- (b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

#### 4.7 Retailer taken to own trolley

In the absence of any proof to the contrary, a shopping trolley is to be taken to belong to a retailer whose name is marked on the trolley.

### PART 5—TRADING IN THOROUGHFARES AND PUBLIC PLACES

#### *Division 1—Stallholders and traders*

##### Subdivision 1—Preliminary

#### 5.1 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 may include a mall within a shopping centre; 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; or
  - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services,

but does not include—

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or  
the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services or from the person nominated by the purchaser of those pre-ordered goods or services when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder’s permit;
- (f) 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;

- (g) 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
- (h) 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

##### 5.2 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.

##### 5.3 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) In approving an application for a permit the local government may impose such conditions on the permit as it thinks fit, which may 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.

##### 5.4 No permit required to sell newspaper

Notwithstanding any other provision of this local law, a person who sells, or offers for sale, a newspaper only is not required to obtain a permit.

##### 5.5 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) such other grounds as the local government may consider to be relevant in the circumstances of the case.

### 5.6 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 musical 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 of 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 authorise another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

### 5.7 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

#### 5.8 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) 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;
- (b) act in an offensive manner;
- (c) 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
- (d) 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—Street entertainers*

Subdivision 1—Preliminary

**5.9 Interpretation**

In this Division, unless the context otherwise requires—

“**perform**” includes to play a musical instrument, sing, mime, dance, give an acrobatic or aerobic display or entertain, but does not include public speaking;

“**permit**” means a permit issued for the purpose of clause 5.10;

“**permitted area**” means the area or areas, specified in a permit, in which the permit holder may perform; and

“**permitted time**” means the time or times, specified in a permit, during which the permit holder may perform.

Subdivision 2—Permits

**5.10 Permit required to perform**

A person shall not perform in a public place without a permit.

**5.11 Variation of permitted area and permitted time**

(1) The local government may by notice in writing to a permit holder vary—

- (a) the permitted area;
- (b) the permitted time; or
- (c) both the permitted area and the permitted time,

shown on a permit.

(2) The local government may direct a permit holder to move from one permitted area to another permitted area, if more than one area is specified in a permit.

**5.12 Duration of permit**

A permit is valid for a period of 3 months after the date on which it is issued unless it is sooner cancelled under this local law.

**5.13 Cancellation of permit**

The CEO may cancel a permit if in her or his opinion the volume of sound caused by the permit holder in connection with the performance adversely affects the enjoyment, convenience or comfort of other persons in a public place, or if, in her or his opinion, or in the opinion of an authorised person, the performance otherwise constitutes a nuisance.

**5.14 Obligations of permit holder**

A permit holder shall not in a public place—

- (a) perform wearing dirty, torn or ragged clothing;
- (b) act in an offensive manner; or
- (c) place, install, erect, play or use any musical instrument or any device which emits music, including a loud speaker or an amplifier—
  - (i) other than in the permitted area; and
  - (ii) unless the musical instrument or device is specified in the permit.

*Division 3—Outdoor eating facilities on public places*

**5.15 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 5.16; and

“**public place**” has the meaning given to it in clause 5.1.

**5.16 Permit required to conduct Facility**

A person shall not establish or conduct a Facility without a permit.

**5.17 Matters to be considered in determining application**

In determining an application for a permit for the purpose of clause 5.16, 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 of any person at any intersection of thoroughfares; 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.

**5.18 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.

**5.19 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 authorised person and impounded in accordance with the Act.

**5.20 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.

**5.21 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 authorised person or a member of the Police Service or an emergency service.

(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 6—PERMITS***Division 1—Applying for a permit***6.1 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).

(6) The local government may either call for applications or invite tenders in respect of permit applications in relation to any part of the local law.

### **6.2 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*

### **6.3 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.

### **6.4 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 6.2(1)(a).

(2) Under clause 6.2(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 6.2(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.

### **6.5 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***6.6 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 6.10.

**6.7 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*.

**6.8 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 fresh 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.

**6.9 Production of permit**

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

**6.10 Cancellation of permit**

(1) Subject to clause 7.1, a permit may be cancelled by the local government if 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.

(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 7—OBJECTIONS AND APPEALS****7.1 Application of Part 9 Division 1 of Act**

When the local government makes a decision—

- (a) under clause 6.2(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 8— MISCELLANEOUS NOTICES****8.1 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.

**8.2 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.

**8.3 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.

**8.4 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 9—ENFORCEMENT***Division 1—Notices given under this local law***9.1 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.

**9.2 Local government may undertake requirements of notice**

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 that person, as a debt, the costs incurred in so doing.

*Division 2—Offences and penalties**Subdivision 1—General***9.3 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***9.4 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 authorised 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.

**9.5 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 10m 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

Clause	Description	Modified Penalty \$
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
2.8(1)	Installation of verge treatment other than permissible verge treatment	200
2.9	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
2.10	Failure to comply with notice to rectify default	100
2.16(2)	Failure to comply with sign on public place	100
2.18(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
4.5	Person leaving shopping trolley in public place other than trolley bay	100
4.6(2)	Failure to remove shopping trolley upon being advised of location	100
5.2(1)	Conducting of stall in public place without a permit	300
5.3(1)	Trading without a permit	300
5.8(1)(a)	Failure of stallholder or trader to display or carry permit	100

<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
5.8(1)(b)	Stallholder or trader not displaying valid permit	100
5.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	100
5.8(2)	Stallholder or trader engaged in prohibited conduct	100
5.10	Performing in a public place without a permit	100
5.11(2)	Failure of performer to move onto another area when directed	100
5.14	Failure of performer to comply with obligations	100
5.16	Establishment or conduct of outdoor eating facility without a permit	300
5.18	Failure of permit holder of outdoor eating facility to comply with obligations	100
5.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	50
5.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	50
6.5	Failure to comply with a condition of a permit	100
6.9	Failure to produce permit on request of authorised person	100
9.1	Failure to comply with notice given under local law	100

Dated 29 October 2001.

The Common Seal of the City of Rockingham was affixed by authority of a resolution of the Council in the presence of—

B. W. SAMMELS, Deputy Mayor.  
G. G. HOLLAND, Chief Executive Officer.

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## BUSH FIRES ACT 1954

## CITY OF ROCKINGHAM

**BUSH FIRE CONTROL AND BUSH FIRE BRIGADES  
LOCAL LAW 2001**

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## BUSH FIRES ACT 1954

## CITY OF ROCKINGHAM

**BUSH FIRE CONTROL AND BUSH FIRE BRIGADES  
LOCAL LAW 2001**

Under the powers conferred by the *Bush Fires Act 1954* and under all other powers enabling it, the Council of the City of Rockingham resolved on 23 October 2001 to make the following local law.

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

This local law may be cited as the *City of Rockingham Bush Fire Control and Bush Fire Brigades Local Law 2001*.

**1.2 Definitions**

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

“**Act**” means the *Bush Fires Act 1954*;

“**authorised officer**” means the Fire Management Officer, the Chief Bush Fire Control Officer, the Deputy Chief Bushfire Control Officer, a Fire Control Officer or the Manager Health Services;

“**Authority**” means the Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*;

“**brigade area**” is defined in clause 3.2(1)(b);

“**brigade member**” means a fire fighting member, associate member or a cadet member of a bush fire brigade;

“**brigade officer**” means a person holding a position referred to in clause 3.2(1)(c), whether or not he or she was appointed by the local government or elected at an annual general meeting of a bush fire brigade or otherwise appointed to the position;

“**Bush Fire Advisory Committee**” means the persons appointed to a bush fire advisory committee under and in accordance with section 67 of the Act;

“**bush fire brigade**” is defined in section 7 of the Act;

“**Bush Fire Operating Procedures**” means the Bush Fire Operating Procedures adopted by the local government as amended from time to time;

“**CEO**” means the Chief Executive Officer of the City of Rockingham;

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

“**designated bush fire prone area**” means land which has been declared by appropriate legislation to be likely to be subject to bush fires.

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

“**fire fighting member**” is defined in clause 5.2;

“**firebreak period**” means the time between 30 November of one year and 31 May of the following year inclusive;

“**flammable matter**” includes all forms of vegetation both living and dead, and any other flammable materials or combustible matter;

“**Incident Management Team**” means a person or group of persons appointed by the Officer in Charge of a fire or incident to assist him or her to manage the fire or incident;

“**local government**” means the City of Rockingham;

“**normal brigade activities**” is defined by section 35A of the Act

“**Officer in Charge of a fire or incident**” means the Chief Bushfire Control Officer, Deputy Chief Bushfire Control Officer, brigade officer or a brigade member who takes charge of the operations for controlling and extinguishing a bush fire or for preventing the spread or extension of a bush fire.

“**Regulations**” means Regulations made under the Act; and

“**Rules**” means the Rules Governing the Operation of Bush Fire Brigades set out in the City of Rockingham Policy and Procedures Manual.

(2) In this local law, unless the context otherwise requires, a reference to—

(a) a Captain;

(b) a First Lieutenant;

- (c) a Second Lieutenant;
- (d) any additional Lieutenants;
- (e) an Equipment Officer;
- (f) a Secretary.
- (g) a Treasurer; or
- (h) a Secretary/Treasurer combined,

means a person holding that position in a bush fire brigade.

### 1.3 Repeal

The City of Rockingham Local Laws relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades published in the *Government Gazette* on 22 June 1990 is repealed.

### 1.4 Application

This local law applies throughout the district.

## PART 2—BUSH FIRE CONTROL

### 2.1 Firebreaks to be cleared

All owners and occupiers of land within the district of the City of Rockingham shall, prior to the commencement of and during the firebreak period each year, clear all flammable matter, on land owned or occupied by them in accordance with the following requirements—

- (a) land within a townsite or within any other area subdivided for residential purposes firebreaks not less than two (2) metres wide and three (3) metres high, and thereafter the owner or occupier of that land shall maintain the firebreaks clear of all flammable material immediately inside all external boundaries of the land up to and including the expiry date of the firebreak period in the following year;
- (b) rural or semi rural land within the district of the City of Rockingham—
  - (i) firebreaks of a minimum width of 3 metres and a height of 4 metres are to be cleared immediately inside all external boundaries of the land.
  - (ii) firebreaks of a minimum width of 5 metres and a height of 4 metres immediately surrounding all buildings situated on the land.
  - (iii) firebreaks no less than 5 metres in width and 4 metres in height are to be cleared surrounding all haystacks and any place where flammable liquids and gas products are kept on the land.
  - (iv) in addition to (i), (ii) and (iii) above where the area of land exceeds 10 hectares, the local government may require firebreaks no less than 5 metres in width and 4 metres in height to be cleared to ensure that no area of land within firebreaks exceeds 10 hectares in area.
  - (v) in addition to the above the local government may, by notice in writing, require an owner or occupier to act as and when specified in the notice with respect to anything which is upon land and which in the opinion of the local government is or is likely to be conducive to the outbreak of a bush fire or the spread or extension of a bush fire.
- (c) All firebreaks must be cleared on or before the commencement of the firebreak period in any year and thereafter maintained clear of flammable matter up to and including the expiry date of the firebreak period in the following year.

### 2.2 Methods of Clearing Land

(1) In the rural and special rural areas of the district, the practice of controlled protective burning of all types of vegetation, in accordance with the requirement of the *Bush Fire Act 1954* is permitted, subject to the following conditions—

- (a) Burning is only permitted in special rural areas in order to reduce fuel loads associated with the accumulation of leaf litter, fallen trees and branches, etc. Every care must be taken not to damage mature standing vegetation as this could be construed as clearing, which is prohibited without written permission from the local government or its authorised officer having first been obtained;
- (b) Burning of cleared vegetation is prohibited without written permission of the local government or its authorised officer having first been obtained.
- (c) Importing of cleared vegetation for burning is prohibited without the written permission of the local government having first been obtained.

(2) In the urban areas of the district (which include residential, special residential, commercial and industrial land) the following conditions apply—

- (a) burning of rubbish and refuse is prohibited (includes incineration);
- (b) burning of cleared vegetation is prohibited;
- (c) the practice of protective burning of vacant land is prohibited without the written permission of the local government or its authorised officer having first been obtained. An application to burn must include reasons why fuel reduction cannot be achieved by mowing, slashing, ploughing or other means.

### 2.3 Variation in Fire Protection Methods

If for any reason the owner or occupier considers it impractical to clear firebreaks or comply with other fire protection measures in accordance with this local law, the owner or occupier may apply in

writing to the local government no later than 4 November in any year for a variation. If permission is not granted in writing by the local government or its duly authorised Officer, the owner or occupier must comply with the requirements of this local law. A variation granted by the local government shall only remain in force until 31 May next, immediately following the date of grant of the variation.

#### **2.4 Designated Bush Fire Prone Area**

For the purposes of Australian Standard 3959-1999, Construction of Buildings in Bush Fire Prone Areas, and the Building Code of Australia, the area bounded by East Dixon Road in the north to Ennis Avenue then south along Ennis Avenue, east along the south eastern boundary of the district, then north along the eastern boundary of the district to Mundijong Road then north northwest to Millar Road and following the northern boundary along Millar Road, along Mandurah Road, to Dixon Road east to Ennis Avenue is deemed to be a bushfire prone area.

#### **2.5 Powers of the local government**

Where an owner or occupier of land fails or neglects to comply with any requirement of this local law within the time specified in this local law, the local government may by its officers with such servants, workers and contractors, vehicles and machinery as the officers deem necessary enter upon land and do all such things as are necessary to ensure compliance with this local law and may recover the costs and expenses of doing so in a Court of Competent Jurisdiction from the owner or occupier of the land pursuant to the Act, in addition to any penalty which might be imposed.

#### **2.6 Offences**

A person who fails to comply with any provision of this local law commits an offence and shall, upon conviction, be liable to a penalty as prescribed in the Bush Fires Act 1954.

### **PART 3—ESTABLISHMENT OF BUSH FIRE BRIGADES**

#### *Division 1—Establishment of a bush fire brigade*

##### **3.1 Establishment of a bush fire brigade**

(1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.

(2) A bush fire brigade is established on the date of the local government's decision under subclause (1).

##### **3.2 Name and officers of bush fire brigade**

(1) On establishing a bush fire brigade under clause 3.1(1) the local government is to—

- (a) give a name to the bush fire brigade;
- (b) specify the area in which the bush fire brigade is primarily responsible for carrying out the normal brigade activities (the "brigade area"); and
- (c) appoint—
  - (i) a Captain;
  - (ii) a First Lieutenant;
  - (iii) a Second Lieutenant;
  - (iv) additional Lieutenants if the local government considers it necessary;
  - (v) an Equipment Officer;
  - (vi) a Secretary; and
  - (vii) a Treasurer; or
  - (viii) a Secretary/Treasurer combined.

(2) When considering the appointment of persons to the positions in subclause (1)(c), the local government is to have regard to the qualifications and experience which may be required to fill each position.

(3) A person appointed to a position pursuant to subclause (1)(c) is to be taken to be a brigade member.

(4) The appointments referred to in subclause (1)(c) expire at the completion of the first annual general meeting of the bush fire brigade. An election is to be held at that meeting by the members of the Brigade for appointments expiring at the next Annual General Meeting.

(5) If a position referred to in subclause (1)(c) becomes vacant prior to the completion of the first annual general meeting, then the Brigade members are to vote for a replacement member to fill the position.

#### *Division 2—Command at a fire*

##### **3.3 Ranks within the bush fire brigade**

(1) Where under the Act and Bush Fire Operating Procedures members of the bush fire brigade have command of a fire, unless a bushfire control officer is in attendance at the fire, the Captain has full control over other persons fighting the fire, and is to issue instructions as to the methods to be adopted by the firefighters. In the absence of the Captain, the first Lieutenant, and in the absence of the first, the second Lieutenant and so on, in the order of seniority determined, is to exercise all the powers and duties of the Captain.

(2) Where a bushfire control officer is in attendance at a fire which the members of the bush fire brigade have command of under the Act and the Bush Fire Operating Procedures, the most senior bushfire control officer has full control over other persons fighting the fire and is to issue instructions as to the methods to be adopted by the fire fighters.

(3) At any fire or incident, an Incident Management Team may be established to assist the Officer in Charge of a fire or incident.

*Division 3—Application of Rules to a bush fire brigade*

**3.4 Rules**

(1) The Rules govern the operation of a bush fire brigade.

(2) A bush fire brigade and each brigade member is to comply with the Rules.

**3.5 Variation of Rules**

(1) The local government may vary the Rules in their application to all bush fire brigades in the district or in respect of a particular bush fire brigade.

(2) The Rules, as varied, have effect on and from the date of a decision under subclause (1).

(3) The local government is to notify a bush fire brigade of any variation to the Rules as soon as practicable after making a decision under subclause (1).

*Division 4—Transitional*

**3.6 Existing Bush Fire Brigades**

(1) Where a local government has established a bush fire brigade prior to the commencement date, then on and from the commencement day—

(a) the bush fire brigade is to be taken to be a bush fire brigade established under and in accordance with this local law;

(b) the provisions of this local law apply to the bush fire brigade save for clause 3.2; and

(c) any rules governing the operation of the bush fire brigade are to be taken to have been repealed and substituted with the Rules.

(2) In this clause—

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

*Division 5—Dissolution of bush fire brigade*

**3.7 Dissolution of bush fire brigade**

In accordance with section 41(3) of the Act, the local government may cancel the registration of a bush fire brigade if it is of the opinion that the bush fire brigade is not complying with the Act, this local law, the Bush Fire Operating Procedures or the Rules, or is not achieving the objectives for which it was established.

**3.8 New arrangement after dissolution**

If a local government cancels the registration of a bush fire brigade, alternative fire control arrangements are to be made in respect of the brigade area.

**PART 4—ORGANISATION AND MAINTENANCE OF BUSH FIRE BRIGADES**

*Division 1—Local government responsibility*

**4.1 Local government responsible for structure**

The Council is to ensure that there is an appropriate structure through which the organisation of bush fire brigades is maintained.

**4.2 Officers to be supplied with Act**

The local government is to supply each brigade officer with a copy of the Act, the Regulations, the Bush Fire Operating Procedures, this local law and any other written laws which may be relevant to the performance of the brigade officers' functions, and any amendments which are made thereto from time to time.

*Division 2—Chief Bush Fire Control Officer*

**4.3 Managerial role of Chief Bush Fire Control Officer**

Subject to any directions by the local government the Chief Bush Fire Control Officer has primary managerial responsibility for the organisation and maintenance of bush fire brigades in the district.

**4.4 Chief Bush Fire Control Officer may attend meetings**

The Chief Bush Fire Control Officer or her or his nominee (who is to be a bush fire control officer) may attend as a non-voting representative of the local government at any meeting of a bush fire brigade.

#### **4.5 Duties of Chief Bush Fire Control Officer**

The duties of the Chief Bush Fire Control Officer include—

- (a) provide leadership to volunteer bush fire brigades in the district;
- (b) monitor bush fire brigades' resourcing, equipment (including protective clothing) and training levels and report thereon with recommendations at least once a year to the local government;
- (c) liaise with the local government concerning fire prevention / suppression matters generally and any directions to be issued by the local government to bush fire control officers (including those who issue permits to burn) bush fire brigades or brigade officers;
- (d) ensure that all bush fire brigades in the district are registered with the local government and that lists of brigade members are maintained.

#### *Division 3—Annual general meetings of bush fire brigades*

#### **4.6 Holding of annual general meeting**

A bush fire brigade is to hold its annual general meeting during the month of March each year.

#### **4.7 Nomination of bush fire control officers to Bush Fire Advisory Committee**

At the annual general meeting of a bush fire brigade, one brigade member is to be nominated to the Bush Fire Advisory Committee as the brigade representative, and one member as a 'proxy' representative until the next annual general meeting of the Brigade.

#### **4.8 Minutes to be tabled before the Bush Fire Advisory Committee**

- (1) The Secretary is to forward a copy of the minutes of the annual general meeting of a bush fire brigade to the Chief Bush Fire Control Officer within one month after the meeting.
- (2) The Chief Bush Fire Control Officer is to table the minutes of a bush fire brigade's annual general meeting at the next meeting of the Bush Fire Advisory Committee following their receipt under subclause (1).

#### *Division 4—Bush Fire Advisory Committee*

#### **4.9 Functions of Advisory Committee**

The Bush Fire Advisory Committee is to have the functions set out in section 67 of the Act and is to include such number of nominees of the bush fire brigades as is determined by the local government.

#### **4.10 Advisory Committee to nominate bush fire control officers**

As soon as practicable after the annual general meeting of each bush fire brigade in the district, the Bush Fire Advisory Committee is to nominate to the local government from the persons nominated by each bush fire brigade a person for the position of a bush fire control officer for that brigade's area.

#### **4.11 Local government to have regard to nominees**

When considering persons for the position of a bush fire control officer, the local government is to have regard to those persons nominated by the Bush Fire Advisory Committee, but is not bound to appoint the persons nominated.

#### **4.12 Advisory Committee to consider bush fire brigade motions**

The Bush Fire Advisory Committee is to make recommendations to the local government on all motions received by the Bush Fire Advisory Committee from bush fire brigades in the district.

### **PART 5—TYPES OF BUSH FIRE BRIGADE MEMBERSHIP**

#### **5.1 Types of membership of bush fire brigade**

The membership of a bush fire brigade consists of the following—

- (a) fire fighting members;
- (b) associate members;
- (c) cadet members; and
- (d) honorary life members.

#### **5.2 Fire fighting members**

Fire fighting members are those persons being at least 16 years of age who undertake all normal brigade activities.

#### **5.3 Associate members**

Associate members are those persons who are willing and able to supply free vehicular transport for fire fighting members or fire fighting equipment, or who are prepared to render other assistance required by the bush fire brigade.

#### **5.4 Cadet members**

Cadet members are—

- (a) to be aged 11 to 15 years;
- (b) to be admitted to membership only with the consent of their parent or guardian;

- (c) admitted for the purpose of training and are not to attend or be in attendance at an uncontrolled fire or other emergency incident;
- (d) to be supervised by a fire fighting member when undertaking normal brigade activities as defined by paragraphs (c), (d), (e), (f) and (g) of section 35A of the Act;
- (e) ineligible to vote at bush fire brigade meetings;
- (f) not to be assigned ranks under the Authority's rank structure.

#### **5.5 Honorary life member**

- (1.) The bush fire brigade may by a simple majority resolution appoint a person as an honorary life member in recognition of services by that person to the bush fire brigade.
- (2.) No membership fees are to be payable by an honorary life member.

#### **5.6 Notification of membership**

No later than 31 May in each year, the bush fire brigade is to report to the Chief Fire Control Officer the name, contact details and type of membership of each brigade member.

### **PART 6—APPOINTMENT DISMISSAL AND MANAGEMENT OF MEMBERS**

#### **6.1 Rules to govern**

The appointment, dismissal and management of brigade members by the bush fire brigade are governed by the Rules as set out in the City of Rockingham Policy and Procedures Manual.

### **PART 7—EQUIPMENT OF BUSH FIRES BRIGADES**

#### **7.1 Policies of local government**

The local government may make policies under which it—

- (a) provides funding to bush fire brigades in the district for the purchase of protective clothing, equipment and appliances; and
- (b) keeps bush fire brigades informed of opportunities for funding from other bodies.

#### **7.2 Equipment in brigade area**

Not later than 31 May in each year, every bush fire brigade in the district is to report to the local government the nature, quantity and quality of all protective clothing, equipment and appliances of the bush fire brigade which are generally available within the brigade area (or at a station of the bush fire brigade).

#### **7.3 Funding from local government budget**

A request to the local government from a bush fire brigade for funding of protective clothing, equipment or appliances needs is to be received by the local government by 31 March in order to be considered in the next following local government budget, and is to be accompanied by the last audited financial statement and a current statement of assets and liabilities of the bush fire brigade.

#### **7.4 Consideration in the local government budget**

The local government may approve or refuse an application for funding made under clause 7.3 depending upon the assessment of budget priorities for the year in question.

Dated 29 October 2001.

The Common Seal of the City of Rockingham was affixed by authority of a resolution of the Council in the presence of—

B. W. SAMMELS, Deputy Mayor.  
G. G. HOLLAND, Chief Executive Officer.

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