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LOCAL GOVERNMENT ACT 1995

CITY OF BUNBURY

**LOCAL LAW RELATING TO
ADVERTISING DEVICES**

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In pursuance of the powers conferred upon it by the abovementioned Act and of all other powers enabling it, the Council of the abovementioned Municipality hereby records having resolved on the 18th December 2001, to make the Local Law Relating to Advertising Devices.

Repeal

All other Local Laws relating to Advertising Devices are hereby repealed.

Citation

This Local Law shall be cited as the City of Bunbury Advertising Devices Local Law.

Definitions

DIVISION 1—PRELIMINARY

1.1 Definitions

1.1.1 In this Local Law, unless the context otherwise requires—

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

“**advertising device**” means any device or thing used for the purpose of advertising any business, function, operation, event, undertaking, product or thing and includes any electoral advertisement;

“**Advertising Devices Policy**” means a policy made by the local government under this Local Law;

“**applicant**” means a person who applies for the licence;

“**Authorised Person**” means any person appointed or authorised by the local government to administer this Local Law;

“**CEO**” means the Chief Executive Officer of the City of Bunbury and includes in the absence of the Chief Executive Officer, the Deputy or Acting Chief Executive Officer;

“**commencement day**” means the day on which this Local Law comes into operation;

“**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;

“**device**” means any object, sign, or thing, whether or not affixed to a structure and includes—

(a) an airborne object anchored to land; and

(b) a vehicle where its primary purpose is advertising;

“**electoral advertisement**” includes a device, which advertises any aspect of a forthcoming Federal, State or local government election or referendum;

“**licence**” means a licence issued by the local government under this Local Law;

“**licensee**” means the person to whom a licence is issued and includes the holder of a valid planning approval referred to in section 2.1.3 of this Local Law;

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

“**person**” and any words applying to any person or individual include a body corporate and in the plural a group of persons and a club, association or body of persons;

“**planning approval**” means an approval given under the City of Bunbury Town Planning Scheme;

“**provisions**” when used in relation to a licence includes such matters as the permitted location, the duration of the licence and such other matters which are not specified in the licence as conditions of the licence;

“**sign**” means a notice, flag, plate, structure or thing on which may be shown words, numbers, expressions or symbols.

Note: “land” has the meaning given to it in the Interpretation Act 1984. More generally, the Interpretation Act 1984 contains various provisions, which assist in the interpretation of this Local Law.

1.1.2 In this Local Law, unless the context otherwise requires a reference to a section is a reference to a section of this Local Law.

DIVISION 2—LICENCES**2.1 Licence Required**

2.1.2 Unless exempted under section 2.2, a person shall not erect, maintain, display or use an advertising device without a valid licence.

2.1.3 Where an advertising device is the subject of a valid planning approval then—

- (a) An application for a licence will still be required in respect of the erection, maintenance, display or use of the advertising device;

2.2 Exemptions

2.2.1 The local government may exempt a person or class of person from the need to have a licence.

2.2.2 An exemption may be—

- (a) made by written notice; or
- (b) specified in the Advertising Devices Policy.

2.2.3 The power to exempt may be exercised—

- (a) on the application of a person; or
- (b) the local government's own initiative.

2.2.4 An exemption under section 2.2.1 may be given subject to whatever conditions the local government thinks fit.

2.2.5 For example, an exemption may apply to, or in respect of—

- (a) a particular event;
- (b) particular goods or services; or
- (c) a period of time.

2.3 Prohibited or Restricted Signs

A person shall not erect, maintain or display a sign—

- (a) that will obstruct the view of traffic on a street or public place;
- (b) that is likely to be confused with, or mistaken for, an official traffic light or sign;
- (c) that omits a flashing, intermittent or sequential light;
- (d) on a tower, mast, chimneystack, spire, dome or similar architectural feature or on a lift machinery room, bulk-head over stairs or other superstructure over the main roof of a building;
- (e) on a building where the stability of the building is likely to be affected by the sign;
- (f) in a position where it unduly obstructs or obscures a person's view from a dwelling of a river, the sea or any other natural feature;
- (g) on land or a roof of a building or verandah other than that on which is conducted a business or profession and to which the sign relates;
- (h) on a light pole, power pole, or verandah post;
- (i) on any land that is used for residential purposes unless exempted under this policy;
- (j) on a tree that is living;
- (k) so as to obstruct access to or from a door, fire escape or window, other than a window designed for the display of goods;
- (l) that contains offensive language or content;

Notwithstanding the above, the local government may approve any sign in the interest of the community.

2.4 Application for Licence

An application for a licence under section 2.1.2 shall be—

- (a) made in the form determined by the local government from time to time and set out in the Advertising Devices Policy ; and
- (b) lodged with any plans, specifications or other matters, which may be required under the Advertising Devices Policy or any written notice.

2.5 Determination of Application

2.5.1 The local government may refuse to determine an application for a licence that is not in accordance with section 2.3.

2.5.2 In determining an application the local government is to have regard to—

- (a) where an Advertising Devices Policy has been made in relation to the class of advertising device which is the subject of the application—
 - (i) the Advertising Devices Policy; and
 - (ii) any other matters which the local government considers to be relevant to the application ;or
- (b) where an Advertising Devices Policy has not been made in relation to the class of advertising device, which is the subject of the application, any matter that the local government considers to be relevant to the application.

2.5.3 The local government may—

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

2.5.4 Notwithstanding anything in this Local Law or in the Advertising Devices Policy which relates to the class of advertising device which is the subject of an application, the local government may approve, unconditionally or subject to any conditions, or refuse to approve an application.

2.5.5 Notwithstanding that a sign may otherwise comply with this Local Law or with the Advertising Devices Policy, the local government may refuse approval if the sign is in the opinion of the local government injurious to the amenity or natural beauty of the area.

2.6 Retrospective Approval

2.6.1 Where an advertising device has been erected, maintained, displayed or used contrary to section 2.1.2, then under section 2.4 the local government may consider and determine an application for a licence in respect of the advertising device notwithstanding the prior erection, maintenance, display or use of the device.

2.6.2 This Local Law is to apply to an application referred to in section 2.6.1 as if the application was made prior to the erection, maintenance, display or use of the advertising device which is the subject of the application.

2.6.3 The local government may approve an application referred to in section 2.6.1, so that the licence is to apply retrospectively—with the result that the erection, maintenance, display or use of the relevant advertising device in accordance with and under the licence, is taken to have been, and is, lawful.

2.7 Notice of Decision on Application

2.7.1 If the local government approves an application, it is to give the applicant a licence in the form determined by the local government from time to time and set out in the Advertising Devices Policy.

2.7.2 If the local government refuses to approve an application, it is to give written notice of that refusal to the applicant.

2.8 Variation of Licence Conditions

2.8.1 A licensee may apply in writing to the local government to vary or remove any of the provisions or conditions of the licence.

2.8.2 The local government may, in respect of an application made under this section—

- (a) refuse the application; or
- (b) approve, in whole or in part, the application on such conditions, if any, as it sees fit.

2.8.3 In determining an application under this section, the local government is to have regard to the Advertising Devices Policy.

2.8.4 Where the local government approves an application under this section it is to advise the licence holder in writing of the approved variation or removal and the provisions and conditions (or either, as the case may be) applying in respect of the licence are to be varied accordingly.

2.9 Compliance with Conditions

2.9.1 Where an application has been approved subject to the conditions, the licensee shall comply with each of those conditions.

2.9.2 Where a licence is deemed to have been issued under section 2.1.2, then the licensee shall comply with the conditions of that licence as varied by that section.

2.9.3 Duration of Licence

A Licence is valid from the date on which it is issued, unless it is—

- (a) otherwise stated in this Local Law or in the licence; or
- (b) sooner cancelled under section 2.13.

2.10 Transfer of Licence

2.10.1 An application for the transfer of a valid licence is to—

- (a) comply with the Advertising Devices Policy; and
- (b) be forwarded to the CEO together with any fee imposed and determined by the local government.

2.10.2 The local government may approve an application for the transfer of a licence, refuse to approve it or approve it subject to any conditions.

2.10.3 Where the local government approves an application for the transfer of a licence, the transfer may be effected by—

- (a) an endorsement on the licence signed by the CEO or an officer authorised by the CEO; or
- (b) issuing to the transferee a licence in the form determined by the local government and set out in the Advertising Devices Policy.

2.10.4 Where the local government approves the transfer of a licence, it is not required to refund any part of any fee paid by the former licensee.

2.11 Production of Licence

A licensee is to produce to an authorised person his or her licence immediately upon being required to do so by that authorised person, or in any case where the licensee cannot produce the licence immediately to that authorised person, within a period of 24 hours.

2.12 Cancellation or Variation of Licence

2.12.1 A licence may be cancelled by the local government on anyone or more of the following grounds—

- (a) the licensee has not complied with—
 - (i) a term or condition of the licence; or
 - (ii) a provision of any written law which may relate to the activity regulated by the licence; or
- (b) if it is relevant to the activity regulated by the licence, the licensee is an insolvent under administration within the meaning of the Corporations Law.

2.12.2 On the cancellation of a licence the licensee—

- (a) is to be taken to have forfeited any fees paid in respect of the licence.

2.12.3 Where the local government has the power to cancel a licence under this section it may, instead, vary a provision or condition of the licence.

2.12.4 The local government may cancel or suspend a licence if the local government or a public authority required access to or near the place over which the licence applies for the purpose of carrying out works in or in the vicinity of that place.

2.13 Obligations

A person who erects, maintains, displays or uses an advertising device shall—

- (a) keep the advertising device clean;
- (b) maintain the advertising device free of dilapidation; and
- (c) comply with any obligations imposed on her or him in relation to an advertising device under the Advertising Devices Policy.

DIVISION 3—ENFORCEMENT

3.1 Interpretation

In this part, unless the context otherwise requires—

“**alleged offender**” means the person who is alleged to have committed a contravention that can lead to impounding;

“**contravention that can lead to impounding**” means anything prescribed under the authority of the Act to be a contravention that can lead to impounding;

“**specified**” in relation to a notice, means specified in the notice;

“**vehicle**” means a vehicle as described in the *Road Traffic Code 2000*.

3.2 Offences and Penalties

3.2.1 It shall be a breach of these Local Laws for any person to hinder or interfere with an Authorised Person acting in the course of a duty, power or function under these Local Laws.

3.2.2 A person who breaches section 2.1.2, 2.3, 2.8, 2.11 or 3.2.1 commits an offence.

3.2.3 A person who commits an offence under section 3.2.2 or against a clause of the Advertising Devices Policy (where the policy states that a breach of the clause is an offence) is liable, upon conviction, to the modified penalties specified in section 3.7.2 or to a maximum penalty of \$5,000.

3.3 Identification

An Authorised Person shall on demand show an identification of that person as such.

3.4 Power to Remove and Impound

3.4.1 An Authorised Person may remove and impound any vehicle or goods involved in a contravention under this Local Law that can under this Local Law or under any other law lead to impounding.

3.4.2 An Authorised Person may use reasonable force to exercise the power referred to in section 3.4.1.

3.4.3 Where an Authorised Person places a vehicle or goods in a local government depot, public pound, or other place set aside for that purpose, the vehicle or goods shall thereafter be dealt with according to law.

3.4.5 Every vehicle or thing seized under this Local Law, an Authorised Person shall enter into a register, provided by the local government for that purpose, details of the time and date, a description of the vehicle or goods and of the place from which it was removed and shall notify the CEO, who shall exhibit on the noticeboard of the local government, notification that a vehicle or goods therein described has been taken into custody and shall, unless the vehicle or goods is sooner recovered, keep that notification exhibited for a period of not less than 7 days.

3.5 Prosecution or Notice

3.5.1 When any vehicle or goods has been impounded under section 3.4, the local government is required to either—

- (a) institute a prosecution against the alleged offender; or
- (b) give the alleged offender notice that the vehicle or goods may be collected from a place specified during such hours as are specified.

3.5.2 If after the expiration of 7 days after the vehicle or goods was removed for impounding, the local government has been unable to give the alleged offender a notice under section 3.5.1(b) because it has been unable, after making reasonable efforts to do so, to find the alleged offender, the local government is to be taken to have given that notice. (Section 3.42 *Local Government Act 1995*).

3.5.3 In an appropriate case the local government may both prosecute and give a notice under section 3.5.1(b).

3.5.4 Where a vehicle or goods has been removed and impounded under section 3.5.1 and a prosecution is instituted, if the alleged offender—

- (a) is not convicted; or
- (b) is convicted but the court does not order that vehicle or goods be confiscated,

and if the vehicle or goods continues to be impounded, the local government is required to give the alleged offender notice that the vehicle or goods may be collected from the place specified during such hours as are specified. (Section 3.44 *Local Government Act 1995*).

3.5.5 A notice referred to in the preceding section is to include a short statement of the effect of the relevant provisions of Sections 3.46, 3.47 and 3.48 of the Act.

3.5.6 A person may recover a seized vehicle or goods from custody by paying to the local government the costs of removing, impounding and keeping the vehicle or goods and the local government may refuse to allow a vehicle or goods impounded under section 3.5.1 to be collected until those costs have been paid. (Section 3.46(1) *Local Government Act 1995*).

3.5.7 The local government may sell or otherwise dispose of any vehicle or goods that has been ordered to be confiscated by a court in a prosecution by the local government. (Section 3.47(1) *Local Government Act 1995*).

3.5.8 The local government may sell or otherwise dispose of an impounded vehicle or goods that has not been collected within the period specified in section 3.5.9 of—

- (a) a notice having been given under section 3.5.1(b) or section 3.5.4 hereof; or
- (b) being impounded if the local government has been unable, after making reasonable efforts to do so, to give that notice to the alleged offender.

3.5.9 The period after which a vehicle or goods may be sold or otherwise disposed of under section 3.5.8 is for a vehicle or goods 2 months.

3.5.10 Section 3.58 of the Act applies to the sale of a vehicle or goods under this section as if they were property referred to in that section of the Act.

3.5.11 Money received by the local government from the sale of a vehicle or goods under section 3.5.8 is to be credited to its trust fund except to the extent required to meet the costs and expenses incurred by the local government in removing, impounding and selling the vehicle or goods. (Section 3.47 *Local Government Act 1995*).

3.6 Recovery of Impounding Expenses

3.6.1 If a vehicle or goods is removed and impounded under section 3.5.1 and the alleged offender is convicted, the local government may take the recovery action referred to in Section 3.48 of the Act.

3.6.2 A person is not entitled to claim, by way of damages or otherwise, against the local government or Authorised Person in respect of any vehicle or goods seized and dealt with under the provisions of this Local Law or against any person who purchases an vehicle or goods sold by the local government under the provisions of this Local Law.

3.7 Prescribed Offences and Infringement Notices

3.7.1 An offence against section 2.1.2, 2.3, 2.8, 2.11, 3.2.1 or against a clause of the Advertising Devices Policy (where the policy states that a breach of the clause is an offence) is a prescribed offence for the purpose of Section 9.16 (1) of the Act.

3.7.2 The modified penalty that is to be specified in an infringement notice given for an offence as described in section 3.2.2 is—

- (a) If a notice under Section 9.15 and 9.16 of the Act has not been served, \$100.
- (b) If a notice under Section 9.15 and 9.16 of the Act has been served, \$250;

3.7.3 For the purpose of this Part—

- (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 shall be in a form determined by the local government from time to time and set out in the Advertising Devices Policy;
- (b) the form of the infringement notice given under Section 9.16 of the Act shall be in the form or substantially in the form of the form referred to in Schedule 1 Form 1 of this Local Law; and

- (c) the form of the notice referred to in Section 9.20 of the Act shall be in a form determined by the local government from time to time and set out in the Advertising Devices Policy.

3.8 Offender for Purposes of Section 2.1.2

3.8.1 In the absence of any proof to the contrary, where the name of a person or business appears on an advertising device, that person or the person who is or owns the business, as the case may be, is deemed to have erected or to be maintaining, displaying or using the advertising device to the purposes of section 2.1.2.

3.8.2 In proceedings for an offence against section 2.1.2, an averment in a complaint that a person has erected, maintained, displayed or used an advertising device is evidence of the fact in the absence of proof to the contrary.

DIVISION 4—TRANSITIONAL

4.1 Advertising Devices Erected Under Former Provisions

4.1.1 In this section—

“**former provisions**” means Sign, Hoardings and Bill Posting Local Laws.

4.1.2 An advertising device which—

- (a) was erected prior to the commencement day; and
- (b) immediately prior to commencement day was permitted under and complied with the former provisions,

is deemed to be the subject of a valid licence for a period not exceeding 12 months from the date of this Local Law being published in the *Government Gazette* and only for so long as the advertising device remains of the same type and continues to comply with former provisions.

4.1.3 An application for a licence under this Local Law must be made for an existing unlicensed advertising device with 6 months of the date of this Local Law being published in the *Government Gazette*.

DIVISION 5—POLICY

5.1 Policy Making Power

5.1.1 The local government may, in accordance with this Division, make the Advertising Devices Policy as to any matter in this Local Law or as to any matter which the local government feels is necessary or convenient for applying, administering or enforcing this Local Law.

5.1.2 Without limiting the generality of section 5.1.1, the Advertising Devices Policy may specify—

- (a) when a licence is not required for an advertising device, and the conditions (if any) to which the exemption is subject;
- (b) the information which is to accompany an application for an advertising device;
- (c) the matters which the local government is to have regard to in determining an application for an advertising device;
- (d) the locations in which an advertising device may be placed, and the requirements attaching to the placement;
- (e) the locations in which an advertising device is not to be placed or is to be restricted in its placement and the requirements attaching to the placement;
- (f) the dimensions and other specifications of a class of advertising device;
- (g) when a breach of a clause of the Advertising Devices Policy is an offence;
- (h) the conditions to which an application can be approved;
- (i) whether or not the conditions in paragraph (h) are to apply automatically on the approval of an application;
- (j) the obligations of a person who erects, maintains, displays or uses an advertising device; and
- (k) any matter ancillary or necessary to give effect to the Advertising Devices Policy.

5.2 Procedure for Making the Advertising Devices Policy

5.2.1 The local government is to give local public notice of its intention to make a policy.

5.2.2 The local public notice referred to in section 5.2.1 is to state that—

- (a) The local government intends to make the Advertising Devices Policy, the purpose and effect of which is summarised in the notice;
- (b) a copy of the proposed Advertising Devices Policy may be inspected and obtained from the offices of the local government; and
- (c) submissions in writing about the proposed Advertising Devices Policy may be lodged with the local government within 28 days after the date of publication.

Note: “local public notice” is defined in Section 1.7 of the Local Government Act 1995.

5.2.3 If no submissions are received in accordance with section 5.2.2(c), the local government is to decide to—

- (a) give local public notice that the proposed Advertising Devices Policy has effect as the Advertising Devices Policy on and from the date of publication;
- (b) amend the proposed Advertising Devices Policy, in which case section 5.2.5 will apply; or
- (c) not continue with the proposed Advertising Devices Policy.

5.2.4 If submissions are received in accordance with section 5.2.2(c) the local government is to

- (a) consider those submissions; and
- (b) decide whether or not to amend the proposed Advertising Devices Policy; or
- (c) not to continue with the proposed Advertising Devices Policy.

5.2.5 If the local government decides to amend the proposed policy, it is to give local public notice—

- (a) of the effect of the amendments, and
- (b) the proposed Advertising Devices Policy has effect as the Advertising Devices Policy on and from the date of publication.

5.2.6 If the local government decides not to amend the proposed Advertising Devices Policy, it is to give local public notice that the proposed policy has effect as the Advertising Devices Policy on and from the date of publication.

5.2.7 A proposed Advertising Devices Policy is to have effect as the Advertising Devices Policy on and from the date of publication of the local public notice referred to in sections 5.2.3, 5.2.5 and 5.2.6.

5.2.8 A decision under section 5.2.3 or 5.2.4 is not to be delegated by the local government.

5.3 Register of Policies

5.3.2 The local government is to keep a register of policies made under this Local Law, and of any amendments to or revocation of policies made under section 5.4;

5.3.3 Sections 5.94 and 5.95 of the Act are to apply to the register referred to in section 5.3.2 and for that purpose the register is deemed to be information within Section 5.94 (u)(I) of the Act.

5.4 Amendment or Revocation of a Policy

5.4.1 The local government may amend or revoke a policy.

5.4.2 The provisions of section 5.4.1 are to apply to an amendment of the Advertising Devices Policy as if the amendment were a proposed Advertising Devices Policy.

5.4.3 If the local government revokes the Advertising Devices Policy it is to give local public notice of the revocation and the Advertising Devices Policy is to cease to have effect on the date of publication.

5.5 Fees and Charges

5.5.1 The local government will by resolution from time to time establish or vary Fees and Charges for the activities associated with the implementation and administration of this Local Law.

5.5.2 Fees will be charged for an individual advertisement, whether or not the advertisement is the subject of an application for a group of advertisements.

5.5.3 Where provision is made for fees to be prescribed, if no fees are prescribed by the local government at the time the same fall due, the CEO shall assess a fee appropriate to cover the administrative expenses involved in the relevant local government function, and as soon as possible thereafter, request the local government to prescribe the relevant fee or fees.

5.5.4 A concession or exemption may be made for the payment of fees by a charitable, religious, educational, childcare or sporting organisation.

5.6 Rights or Objections and Appeal

Where any provision is made for the granting, issuing or giving of any licence, authorisation, registration, approval or consent or the like under this Local Law, or for the refusal, refusal of renewal, or cancellation of the same, or for the imposition of conditions, then the rights of objection and appeal and the procedures associated with them provided for in Part 9 Division 1 of the Act shall apply, together with the relevant provision of the *Local Government (Functions and General) Regulations 1996*.

5.7 Forms

Where provision is made for a form to be prescribed or provided, if none is prescribed or provided then a form appropriate to the circumstances will suffice if it provides information needed by the local government to perform its relevant function under this Local Law.

5.8 Conditions

If provision is made in this Local Law for the granting or issuing of any licence, authorisation, registration, approval or consent or the like subject to conditions, the person to whom the same is granted, issued or given and every other person operating under or within the terms of such licence, authorisation, registration, approval or consent or the like shall comply with such conditions and any failure to comply shall be a breach of this section and subject to the penalties applicable to the relevant section of this Local Law.

Schedule 1

Form 1

Local Government Act 1995

Local Government (Infringement Notices) Regulations 1991

INFRINGEMENT NOTICE

Serial No.

Date...../...../.....

City of Bunbury

To—

(1)
.....

Of—

(2)
.....

It is alleged that on...../...../..... at

(3)
.....you committed the

following offence—

.....
.....
.....
.....
.....
.....

Contrary to the Advertising Devices Local Laws.

The modified penalty for the offence is \$.....

If you do not wish to have a complaint of the above offence heard and determined by a court, you may, within 21 days after this notice is given to you, pay the modified penalty to the council of the City of Bunbury at 4 Stephen Street, Bunbury or P O Box 21.

Name and title of authorised person giving the notice
.....

Signature

- (1) Name of alleged offender
- (2) Address of alleged offender
- (3) Place where offence was allegedly committed



