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LOCAL GOVERNMENT ACT 1995

SHIRE OF ESPERANCE

**PRIVATE PROPERTY
LOCAL LAW 2003**

LOCAL GOVERNMENT ACT 1995

SHIRE OF ESPERANCE

PRIVATE PROPERTY LOCAL LAW 2003

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FIRST SCHEDULE

Offences and Modified Penalties

LOCAL GOVERNMENT ACT 1995

SHIRE OF ESPERANCE

PRIVATE PROPERTY LOCAL LAW 2003

PART 1—PRELIMINARY

1.1 Title

This local law may be referred to as the *Shire of Esperance Private Property Local Law 2003*.

1.2 Commencement

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

1.3 Purpose and effect

(1) The purpose of this local law is to provide for the regulation, control and management of street numbering, security and floodlighting, vehicle wrecking, fibreglassing, spray painting, private swimming pool inspections, sand drift, rubbish and litter control, land nuisances, driveways, vehicle crossovers and water runoff generally on private property within the district so as to protect the amenity of the area.

(2) The effect of this local law is to establish the requirements for erecting street numbering, security and floodlighting, vehicle wrecking, fibreglassing, spray painting, private swimming pool inspections, sand drift, rubbish and litter control, land nuisances, driveways, vehicle crossovers and water runoff generally on private property within the district.

1.4 Application of local law

This local law applies throughout the district.

1.5 Definitions

In this local law unless the context requires otherwise—

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

“application” means the completed form lodged by a person seeking an approval as required by this local law;

“approval” means a favorable decision of an application which may be subject to conditions issued in writing by the local government which allows a proposal to proceed;

“authorised person” means a person authorised by the local government under section 9.10 of the Act to carry out functions with respect to this local law;

“commercial lot” means any lot situated within a commercial zone as classified by the town planning scheme and includes land predominately used for commercial purposes;

“commercial wrecking” means the activity of wrecking of vehicles or machinery for the purpose of conducting a business by offering vehicles, machinery or parts thereof for purchase, trade, sale or gain;

“district” means the district of the Shire of Esperance;

“floodlight” means a luminaire which emits light within a limited range of directions;

“front boundary” means the boundary that separates the road reserve and a lot adjacent the road reserve;

“gradient” means the change in level represented as a percentage calculated by dividing the change in height (with an increase in height being positive and a decrease in height being negative) by the distance;

“industrial lot” means any lot situated within an industrial zone as classified by the town planning scheme and includes land predominately used for industrial purposes;

“land” means land in the district and includes houses, buildings, works, and structures, in or upon the land;

“litter” includes—

(a) all kinds of rubbish, refuse, junk, garbage or scrap: and

(b) any article or material abandoned or unwanted by the person or owner last in possession thereof;

“local government” means the Shire of Esperance;

“lot” means a defined portion of land for which a separate certificate of title has been issued and includes a strata lot;

- “luminaire” means an apparatus which distributes, filters or transforms the light transmitted from one or more lamps and which includes, except for the lamps themselves, all the parts necessary for fixing and protecting the lamps, and where necessary, circuit auxiliaries with the means of connecting them to the electricity supply;
- “natural angle of repose” means the maximum gradient of an embankment measured as a ratio of height to length for the various soil types as measured and defined in clause 3.1.1 of the Building Code of Australia;
- “nuisance” means—
- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well-being of another person;
 - (b) any thing a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
 - (c) any thing a person does on public or private land which unreasonably detracts from or interferes with the enjoyment or value of land owned by another person, provided that any thing done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law.
- “number” means a number with or without an alphabetical suffix indicating the address of land as assigned by the local government from time to time, in accordance with this local law;
- “person” means any person, company, employer and includes the owner, occupier and licensee;
- “planning approval” means an approval given under a relevant town planning scheme operating in the district from time to time;
- “private property” means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;
- “public lighting” means lighting provided for the purpose of all-night safety and security on public roads cycle paths, footpaths and pedestrian movement areas within public parks and gardens but not including car parks;
- “public place” means any place to which the public has access;
- “reserve” includes parklands, reserves, foreshores and other lands included in or adjoining the district, and set apart for the use and enjoyment of the public and includes parks and other lands acquired for public purposes, and vested in or under the care, control and management of the local government;
- “residential lot” means any lot situated within a residential zone as classified by the town planning scheme and includes land predominately used for residential purposes;
- “retaining wall” means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;
- “rural lot” means any lot situated within a rural zone as classified by the town planning scheme and includes land predominately used for rural purposes;
- “secondary frontage” means in the case of land that has a frontage and access to more than one road, unless the local government otherwise approves, the longer of the boundaries that separates the road reserve and a lot adjacent the road reserve;
- “soil” includes sand, limestone, dust, rock, clay and mulch;
- “special rural lot” means any lot situated within a special rural zone as classified by the town planning scheme;
- “state of disrepair” in relation to wrecking and storage of vehicles, means a vehicle, part, or body of a vehicle or machinery that is disused and generally not working or needs repair for it to work as initially intended or can not be used, driven or applied for the purpose it was manufactured. The term includes a vehicle which is not licensed;
- “swimming pool” has the same meaning as in the *Building Regulations 1989*;
- “town planning scheme” means any town planning scheme for the time being applying zoning or classification to land within the district;
- “vehicle” means any motor vehicle, part of a motor vehicle or machine, truck, bus, motor cycle, motor scooter, semi-trailer or caravan;
- “wreck” includes the dismantling, breaking up, storage and disposal of vehicles and wrecking and wrecked have a corresponding meaning.

PART 2—APPROVALS

2.1 Approval requirements

Where in accordance with this local law an approval is required to enable the performance of an activity, that approval must first be obtained before any work is commenced.

2.2 Planning and other approvals

Where under any written law operating within the district the structure or performance of an activity, requires planning or other approval, the requirement for such approval shall be additional to the requirement for an approval under this local law.

2.3 Application for approval

(1) A person seeking the issue of an approval shall make application on the form provided and used for the purpose and shall forward the application to the local government together with—

- (a) where required, a copy of planning approval issued by the local government under the town planning scheme;
- (b) 3 copies of plans drawn to scale of not less than 1:50 showing the size, position, design, and the method of construction of the retaining wall and any other matter reasonably required by the local government;
- (c) the relevant fee; and
- (d) such other information as may be required by the local government to assist in determining the application.

(2) Where a building licence is also required the Local Government may provide that the form of the application is the form of an application for a building licence and in such instances the application shall be an application for both an approval under this local law and a building licence.

2.4 Determination of application

(1) The local government may refuse an application for an approval that does not comply with the requirements of clause 2.3, and in any event, shall refuse an application where planning approval is required and has not first been obtained under the town planning scheme.

(2) The local government may, in respect of an application for an approval—

- (a) refuse the application; or
- (b) approve the application on such terms and conditions, if any, as it considers appropriate.

2.5 Approval

(1) An approval shall be issued to the person whose name appears on the application and is the owner of the land or acting on behalf of the owner.

(2) The approval shall be issued in the form prescribed or provided by the local government for that purpose.

(3) Where the application is an application for both an approval and a building licence, the issue of a building licence by the local authority shall also be an approval under this local law.

2.6 Fees and charges

All fees and charges applicable under this local law shall be as determined by the local government from time to time in accordance with section 6.16 of the Act.

PART 3—SECURITY AND FLOOD LIGHTING

3.1 Security and floodlights

(1) A person shall not erect or maintain or permit to be erected or maintained, on any private land, a luminaire which—

- (a) causes a level of illumination greater than 1 lux to spill into adjacent land by more than 1m or onto any vertical or horizontal surface of a building thereon; or
- (b) has the main beam angle of any floodlight or security light installed higher than 3m above natural ground level and positioned at a maximum angle of 70 degrees from the vertical plane; or
- (c) in the opinion of the local government because of the glare adversely affects the amenity of adjoining residents or is hazardous to pedestrians or road users.

(2) Paragraphs (a) and (b) of subclause (1) do not apply to a commercial lot or an industrial lot.

3.2 Lighting exclusion

Clause 3.1 does not apply to any luminaires erected or maintained in accordance with any written law operating in the district.

3.3 Tennis court floodlighting

(1) This clause does not apply to a rural lot.

(2) In determining an application in respect of the erection or use of floodlights or other exterior lights for illumination of a tennis court on a lot, the local government shall not approve the application unless—

- (a) the owner of each adjoining lot is given the opportunity to make submissions;
- (b) the mounting height of light fittings is within the following range, and determined by the lamp luminous flux per pole—
 - (i) single court equal to or less than 12,500 lumens per pole—5m;
 - (ii) single court equal to or less than 25,000 lumens per pole—8m;
- (c) approval may be given outside the range detailed in paragraph (b) if considered appropriate to the circumstances;
- (d) light fittings used are of a type mounted horizontally or of a type approved by an authorised person;
- (e) the level of illumination from the floodlights or external lights on any land more than 1m from the lot does not exceed 10 lux; and

- (f) where required by an authorised person, written approval for the erection of the lights or other exterior lights has been obtained from the Commissioner of Main Roads.

3.4 Tennis court floodlight use and other restrictions

Unless otherwise approved, the owner or occupier of a residential lot which has a tennis court and floodlights thereon, shall not—

- (a) permit the floodlights to remain lit after 10 pm; or
(b) hire the court for playing tennis or any other activity for commercial gain.

PART 4—STREET NUMBERING

4.1 Assignment and standard of street numbers

(1) The local government may assign a number to land in a street, thoroughfare or way in the district and may from time to time assign another number instead of that which was previously assigned.

(2) The local government may establish a minimum standard for the display of street numbering in the district and may from time to time establish another standard instead of that which was previously established.

4.2 Street number to be displayed

(1) The owner or occupier of land in the district shall paint or affix and maintain, to a standard not less than that established by the local government, the current street number assigned by the local government, in a conspicuous place on the front of the building, fence, letterbox or gate adjacent to the street fronting the land.

(2) A sign painted on a kerb, adjacent to a property used for residential purposes, depicting the house number and in accordance with specifications approved by the local government is permitted.

4.3 Location of number not to be misleading

(1) The owner or occupier of land shall not place or display a number or the street number of the land in such a way as to cause confusion or be misleading.

(2) Where in the opinion of an authorised person, the location or display of a number or street number causes confusion or is misleading, a notice may be served on the owner or occupier of the land, specifying remedial action to be taken in accordance with clause 10.1.

PART 5—VEHICLE WRECKING, FIBREGLASSING AND SPRAY PAINTING

5.1 Commercial wrecking of vehicles

An owner or occupier of land in the district shall not undertake, permit or suffer the commercial wrecking of vehicles on that land, except in accordance with a planning approval.

5.2 Wrecking and storage of vehicles generally

(1) A person shall not—

- (a) store any vehicle, part or body of a vehicle or machinery, in a state of disrepair or which is disused;
(b) allow to remain on any land or place a vehicle, part or body of a vehicle or machinery, in a state of disrepair or which is disused; or
(c) wreck, dismantle or break up any vehicle, part or body of a vehicle or machinery, unless—
(i) inside a building; or
(ii) in the case of a residential lot or a special rural lot, within an area enclosed by a fence or wall of not less than 1750mm in height and of such a nature as to screen all vehicles, parts or bodies of vehicles or machinery from the street and from adjoining properties.

(2) A person shall not—

- (a) wreck, dismantle or break up any vehicle, part or body of a vehicle or machinery; or
(b) keep in a state of disrepair more than one vehicle,

on a residential lot or a special rural lot without the prior written approval of the local government.

5.3 Disposal of vehicles, parts and machinery

(1) A person shall not dispose of, abandon or leave a vehicle, parts or body of vehicles or machinery except at a place set aside or approved by the local government for the purpose.

(2) A person shall not destroy any portion of a vehicle or machinery by fire so as to cause a nuisance to occupiers of adjacent land by smoke or odour.

5.4 Fibreglassing and spray painting

No person shall—

- (a) apply, use, manufacture or repair fibre reinforced plastics or resins; or
(b) engage in spray painting,

on any land other than an industrial lot except in accordance with the prior written approval of the local government.

PART 6—PRIVATE SWIMMING POOLS**6.1 Private swimming pool inspections**

Where the local government has authorised a swimming pool inspector to inspect private swimming pools in the district—

- (a) no person shall prevent the inspector from undertaking an inspection of a swimming pool on any property; and
- (b) where in the opinion of the inspector reasonable or safe access to the property is not possible because of locked gates, doors and the like or the presence of dogs the local government may by giving not less than 7 days' notice served on the occupier or owner require that the matter which prevented the inspection be removed or remedied to allow the inspection to be undertaken.

PART 7—SAND DRIFT AND LITTER CONTROL**7.1 Wind blown sand**

No person shall allow any land in the district to be kept in such a condition so as to allow soil or dust to be released or escape whether by means of wind, water or other causes, from that land onto adjoining or nearby land.

7.2 Soil to be retained

(1) Unless authorised by a building licence issued under the Local Government (Miscellaneous Provisions) Act 1960 or otherwise authorised by law, no person shall cause land in the district to be excavated, filled or kept in such a condition so as to—

- (a) undermine the land adjoining; or
- (b) to allow the fill to spill onto the land adjoining.

(2) The adjoining land is to be taken to be affected by the events listed in sub clause (1) if—

- (a) the local government considers that the embankment resulting from the fill or excavation exceeds the natural angle of repose of the soil and consequently is likely to result in a change in level of the adjoining land, or
- (b) the local government considers that a change in level has occurred.

(3) Where a person causes a change in the level of land at the boundary, the land so excavated or filled shall be retained to the satisfaction of the local government.

7.3 Litter control on building sites

(1) No person, owner or occupier shall allow or commence or continue the construction of any building works on any land, unless one of the following measures is implemented to prevent building litter or rubbish of any kind whatsoever from being blown from the construction site—

- (a) provide a receptacle of a capacity not less than 4m³ fitted with a lid on site for the disposal of all rubbish; or
- (b) provide an equivalent wire enclosure on site with a lid for the disposal of all rubbish.

(2) All rubbish which is capable of being wind blown and other offensive matter on the construction site is to be placed and kept in the receptacle.

(3) The lid is to be kept secure on the receptacle at all times.

PART 8—OTHER LAND OFFENCES**8.1 Prohibited activities**

(1) An owner or occupier of land must take effective measures to prevent a nuisance from occurring by—

- (a) stabilizing sand on such land;
- (b) ensuring vacant unsightly land is enclosed with a fence or other means suitable to prevent the land from being viewed beyond its boundaries;
- (c) prevent the overgrowth of vegetation, and the accumulation of rubbish and disused material, and ensuring the land remains tidy;
- (d) ensuring land adjoining a thoroughfare is not overgrown, and that no part of any tree or shrub obstructs or otherwise prejudicially affects a thoroughfare under the control of the Shire; or
- (e) ensuring that any tree on the land does not endanger any person or thing on adjoining land.

(2) Where the Shire forms the opinion that an owner or occupier has not complied with sub-clause (1), the Shire may serve on the owner or occupier of the land a notice requiring the owner or occupier to—

- (a) comply with sub-clause (1);
- (b) clean or clear up and make good any damage or other result from the failure to comply with sub-clause (1); or
- (c) take effective measures to stop any further release or escape of sand.

(3) The requirements set out in a notice issued under sub-clause (2) must be complied with by the time or date specified in the notice.

PART 9—DRIVEWAYS AND DRAINAGE

9.1 Road verge and driveway gradients

(1) No person shall on a road reserve adjacent to a residential lot construct or maintain a vehicle crossing to that property which rises up from the road surface edge, kerb or other treatment to the property boundary other than at a 2% gradient without the approval of the local government.

(2) No person shall on a residential lot construct or maintain a driveway connecting a parking bay and a vehicle crossing at a gradient which exceeds the specifications approved by the local government.

9.2 Property drainage

A person shall not allow storm water or other waste water to discharge onto—

- (a) an adjoining lot without the current approval of the adjoining owner; or
- (b) on to a road reserve or other property under the care control and management of the local government without the approval of the local government.

9.3 Water run-off

(1) Subject to the provisions of this clause, where water is running from a paved or made surface on land onto any other land, the Shire may give a notice to the owner or occupier of the first-mentioned land to take such measures as may be specified in the notice to prevent that from occurring or to minimize that run-off.

(2) A person who is given a notice under subclause (1) shall comply with that notice, by the time or date specified in the notice.

(3) Sub-clause (1) does not apply to water which is dripping or running from a building on land onto any other land.

(4) Subject to sub-clause (5) of this clause, the Shire may only serve a notice under sub-clause (1), where it has formed the opinion that the water running from the paved or made surface is causing damage or is causing inconvenience to the owner or occupier of any other land.

(5) No notice may be served by the Shire under sub-clause (1), where there is constructed on the other land a building and all or part of that building is—

- (a) below the level of the paved or made surface from which the water is running; and
- (b) the building or part of that building has not been damp coursed or waterproofed in a manner required by a written law.

(6) When the Shire makes a decision to give a notice under this part, the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 apply to that decision.

PART 10—REMEDY FOR BREACH

10.1 Works on private property

(1) Where a breach of any provision of this local law has occurred on private property, the local government may give notice in writing to the owner or occupier of that property—

- (a) advising details of the breach of the local law;
- (b) requiring the owner or occupier that the breach is to be remedied within the time specified in the notice; and
- (c) advising that where the owner or occupier fails to comply with the requirements of the notice within the time specified, the local government may enter the property and do the required work.

(2) Where the owner or occupier of the property fails to comply with the requirements of the notice, the local government may by its employees, agents or contractors enter upon the property and carry out all works and do all things necessary to comply with the requirements of the notice.

(3) The local government may recover the expenses incurred in carrying out the works in accordance with sub-clause (2) from the owner or occupier of the property in a court of competent jurisdiction.

10.2 Limit on liability

A person is not entitled to make any claim by way of damages or otherwise, against the local government, an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government, to enter the land and carry out all or part of the works and do all things necessary that the owner, occupier or holder of a licence was required to do to comply with this local law.

PART 11—PENALTIES

11.1 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) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) Any person who commits an offence under this local law shall be 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.

11.2 Infringement and infringement withdrawal notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*.

11.3 Requirement to comply with section 3.25(1) notice

Where the Shire has given a person a notice under section 3.25 of the Act, in respect to this local law, the person shall comply with that notice.

11.4 Offence description and modified penalty

The amount appearing in the final column of the First Schedule directly opposite an offence described in that Schedule is the modified penalty for that offence.

11.5 Prosecution for offences

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in a court of petty sessions.

11.6 Records to be kept

The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

First Schedule

Shire of Esperance

PRIVATE PROPERTY LOCAL LAW 2003
OFFENCES AND MODIFIED PENALTIES

Clause No.	Nature of Offence	Modified Penalty \$
Part 3 Security and Flood Lighting		
3.1(1)(a)	Erect or maintain on private land a luminaire which spills 1 lux or more illumination into adjacent land/building	100
3.1(1)(b)	Erect or maintain security/floodlight higher than 3m or at greater angle than 70 degrees	100
3.1(1)(c)	Erect or maintain security/floodlight so which effects amenity or is hazardous	100
3.4(a)	Permit tennis court floodlights to remain lit after 10 p.m. or cause a nuisance	100
3.4(b)	Hire the tennis court for tennis or other activity for commercial gain	100
Part 4 Street Numbering		
4.2(1)	Failure to paint/affix/maintain either the current standard or current street number in a conspicuous place on the building, fence/gate to street	100
4.3(1)	Place street number so as to cause confusion or be misleading	100
Part 5 Vehicle Wrecking, Fibreglassing and Spray painting		
5.1	Undertake or permit commercial wrecking of vehicles without planning approval	100
5.2(a)	Store, wreck or allow to remain on land any vehicle, part or body of vehicle or machinery in state of disrepair unless screened from view	100
5.2(b)	Allow to remain on any residential or special rural land more than one vehicle, part or body of vehicle or machinery in state of disrepair	100
5.3(1)	Fail to dispose of vehicle, parts or body of vehicle or machinery at place set aside or approved place	100
5.3(2)	Destroy portion of vehicle or machinery by fire so as to cause nuisance by smoke or odour	100
5.4	Use or manufacture fibreglass or undertake spray painting without approval	100
Part 6 Private Swimming Pools		
6.1(a)	Not allow inspector to inspect swimming pool	100
6.1(b)	Failure to remove impediment to reasonable and safe access	100

Clause No.	Nature of Offence	Modified Penalty \$
Part 7 Sand Drift and Litter Control		
7.1	Failure to prevent soil or dust from being released or escaping	100
7.2(1)	Allowing fill or excavation to effect adjoining land	100
7.2(3)	Failure to retain soil	100
7.3(1)	Failure to provide a suitable litter receptacle or enclosure on a building site	200
7.3(2)	Failure to keep wind blown building rubbish in receptacle or enclosure	100
Part 9 Driveways and Drainage		
9.1(1)	Construct a vehicle crossing at a gradient exceeding maximum allowable	100
9.1(2)	Construct a driveway at a gradient exceeding maximum allowable	100
9.2	Allow storm water to discharge onto adjoining land or road reserve	100
Other Offences Not Prescribed		
11.3	Failure to comply with a notice under section 3.25(1) of the Act	100

Passed at a meeting of the Council of the Shire of Esperance held on 25th March 2003.

The Common Seal of the Shire of Esperance was hereunto affixed in the presence of—

J. M. STARCEVICH, Shire President.
M. S. L. ARCHER, Chief Executive Officer.

On this 29th day of April 2003.

