



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

1787



PERTH, MONDAY, 30 APRIL 2012 No. 66

SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 11.00 AM

© STATE OF WESTERN AUSTRALIA

LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

**HOLIDAY HOMES LOCAL
LAW 2012**

LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012

ARRANGEMENT

PART 1—PRELIMINARY

- 1.1 Title
- 1.2 Commencement
- 1.3 Application
- 1.4 Terms used in this local law

PART 2—REGISTRATION

- 2.1 Registration required
- 2.2 Application for registration
- 2.3 Application details
- 2.4 Determining an application
- 2.5 Relevant considerations in determining an application for registration
- 2.6 Conditions which may be imposed
- 2.7 Imposing conditions under a policy
- 2.8 Compliance with and variation of conditions
- 2.9 Registration period
- 2.10 Renewal of registration
- 2.11 Acting manager
- 2.12 Replacement of manager
- 2.13 Production of certificate of registration
- 2.14 Cancellation

PART 3—OBLIGATIONS ON OWNERS AND MANAGERS

- 3.1 Requirement to give notice of any change
- 3.2 Breach of a condition by an attendant
- 3.3 Register of occupants
- 3.4 Contacting the manager

PART 4—OBJECTIONS AND REVIEWS

- 4.1 Objection and review rights

PART 5—ENFORCEMENT

- 5.1 Offences and penalties
- 5.2 Prescribed offences
- 5.3 Form of notices

Schedule 1—Certificate of registration

Schedule 2—Prescribed offences

LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012

PART 1—PRELIMINARY

Under the powers conferred on it by the *Local Government Act 1995*, the Council of the City of Busselton resolved on 28 March 2012 to make this local law.

PART 1—PRELIMINARY

1.1 Title

This is the *City of Busselton Holiday Homes Local Law 2012*.

1.2 Commencement

This local law commences 3 months after the date of its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Terms used in this local law

In this local law—

Act means the *Local Government Act 1995*;

acting manager, in relation to a holiday home, means the person who is the acting manager of the holiday home, as specified in the certificate of registration for the holiday home, whether or not that person is also the owner of the holiday home;

applicant means an applicant for a registration;

application fee means the application fee for registration that is imposed by the Council under the Act;

attendant means a person who is—

- (a) an occupant; or
- (b) a guest;

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;

CEO means—

- (a) the CEO of the City; and
- (b) any other employee of the City to whom the CEO has delegated his or her powers under this local law;

certificate of registration means a current and valid certificate issued under clause 2.4(2);

City means the City of Busselton;

Council means the council of the City;

district means the district of the City;

dwelling has the meaning given to it in the Local Planning Scheme;

grouped dwelling has the meaning given to it in the Local Planning Scheme;

guest means a person who is on the premises of a holiday home, for social purposes, at the invitation or with the permission of an occupant of the holiday home;

hirer, in relation to a holiday home, means the person who hires the holiday home or who is responsible for the payment for the accommodation of an occupant in the holiday home;

holiday home means a dwelling used, or intended to be used, to accommodate occupants for hire or reward (but does not include a 'Bed and Breakfast', 'Chalet Development', 'Guesthouse', 'Rural Tourist Accommodation' or 'Tourist Accommodation', as defined in Schedule 1 to the Local Planning Scheme);

local government means the City;

Local Planning Scheme means the City of Busselton District Town Planning Scheme No. 20, as amended from time to time;

manager, in relation to a holiday home, means the person who is the manager of the holiday home, as specified in the certificate of registration for the holiday home, whether or not that person is also the owner of the holiday home;

month means calendar month;

occupant means a person who is accommodated in a holiday home for no more than a total of 3 months in any one 12-month period ;

owner—

(a) in relation to a registered holiday home, means the person who is specified as the owner in the certificate of registration of the holiday home; and

(b) in relation to any other holiday home, means the person who is the owner of the holiday home;

premises, in relation to a holiday home, means—

(a) if the holiday home is a single house situated on a single lot, all of the land that comprises that lot; or

(b) if the holiday home is a grouped dwelling, all of the land that is set aside for the exclusive use by the owner of that grouped dwelling;

registered holiday home means a dwelling registered under this local law as a holiday home;

registration means registration, under and for the purposes of this local law, of a dwelling as a holiday home;

registration fee means the fee for registration that is imposed by the City under the Act;

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

relevant law means a written law, as defined in the *Interpretation Act 1994*, that applies to, or in respect of, the use of a holiday home; and

single house has the meaning given to it in the Local Planning Scheme.

PART 2— REGISTRATION

Division 1—Applying for registration

2.1 Registration required

(1) A person must not use a dwelling, or allow a dwelling to be used, as a holiday home—

(a) unless planning approval has been granted under the Local Planning Scheme to use the dwelling as a holiday home;

(b) unless the dwelling is registered as a holiday home under this local law; and

(c) other than in accordance with—

(i) the conditions of the registration; and

(ii) the provisions of this local law.

(2) Registration does not affect the obligations of an owner or a manager, or any other person, to comply with a relevant law.

2.2 Application for registration

(1) An application for registration of a holiday home must—

(a) be in writing;

(b) be in the form determined by the CEO;

(c) be made by, or on behalf of, the owner of the holiday home;

(d) be signed by the owner of the holiday home;

(e) nominate a natural person, who may or may not be the owner, to be the proposed manager of the holiday home;

(f) nominate a natural person, who may or may not be the owner, to be the proposed acting manager of the holiday home;

(g) contain the details specified in clause 2.3; and

(h) be forwarded to the CEO, together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.

(2) The CEO or an authorised person may require an applicant to give local public notice of the application for registration.

(3) The local government may refuse to consider an application for registration which is not in accordance with subclause (1).

2.3 Application details

The details that must be included in an application for registration of a holiday home are—

(a) a site plan of the premises;

(b) a floor plan of the holiday home;

(c) the location and title details of the holiday home;

- (d) the number of bedrooms proposed to be used at any time for short stay accommodation;
- (e) the maximum number of occupants to be accommodated at any time in the holiday home;
- (f) the details of any proposed on-site parking bays on the premises;
- (g) the name, address and contact details of the owner of the holiday home and his or her phone number at which he or she may be contacted;
- (h) in relation to each of the proposed manager and the proposed acting manager—
 - (i) confirmation that he or she accepted appointment by the owner as manager (which may be contingent on the Council's approval of the application for registration); and
 - (ii) his or her name, address and contact details, including the phone number at which he or she may be contacted at any time of the day or night;
- (i) an undertaking from the proposed manager of the holiday home that he or she—
 - (i) is to have the day-to-day management of the holiday home; and
 - (ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home;
- (j) an undertaking from the proposed acting manager of the holiday home that, while undertaking the functions of the manager, he or she—
 - (i) is to have the day-to-day management of the holiday home; and
 - (ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home; and
- (k) any other information requested by the CEO or an authorised person that is reasonably related to the application for registration.

2.4 Determining an application

- (1) The Council may—
 - (a) approve an application for registration unconditionally or subject to conditions; or
 - (b) refuse to approve an application for registration.
- (2) If the Council approves an application for registration, it is to issue to the applicant a certificate of registration in the form prescribed in Schedule 1 or in a similar form as determined by the Council from time to time.
- (3) If the Council refuses to approve an application for registration, 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 registration, or which are to be taken to be imposed on registration, that clause does not limit the power of the Council to impose other conditions on registration under subclause (1)(a).
- (5) Where a clause of this local law refers to the grounds on which an application for registration may be or is to be refused, the clause does not limit the power of the Council to refuse the application for a permit on other grounds under subclause (1)(b).

2.5 Relevant considerations in determining an application for registration

- (1) In determining an application for registration, the Council is to have regard to—
 - (a) the conditions of any planning approval that has been granted under the Local Planning Scheme to use the dwelling as a holiday home;
 - (b) the provisions of this local law;
 - (c) any relevant policy of the City; and
 - (d) any other matter that the Council reasonably considers to be relevant in the circumstances of the case.
- (2) The Council must refuse to approve an application for registration if there is no current planning approval under the Local Planning Scheme to use the dwelling or the premises as a holiday home.
- (3) The Council may refuse to approve an application for registration on any one or more of the following grounds—
 - (a) that the owner, the proposed manager or the proposed acting manager has committed a breach of any provision of this local law or of any other relevant law;
 - (b) that the owner, the proposed manager or the proposed acting manager is not a fit and proper person in relation to the proposed holiday home; or
 - (c) any other ground that the Council may reasonably consider to be relevant in the circumstances of the case, including a ground arising from the Council's consideration of the factors set out in clause 2.5(1).

Division 2—Conditions

2.6 Conditions which may be imposed

- The Council may approve an application for registration subject to conditions relating to—
- (a) the payment of a fee imposed by the Council under sections 6.16 to 6.19 of the Act;
 - (b) the commencement and duration of registration;

- (c) the grant of any other approval, in respect of the holiday home, that—
 - (i) is required under any written law; or
 - (ii) that may be required by the City under any written law;
- (d) the maximum number of occupants who may be on the premises at any time;
- (e) the maximum number of attendants who may be on the premises during specified times;
- (f) the number of on-site parking bays at the premises for the exclusive use of attendants;
- (g) the maximum number of vehicles that may be parked on the premises at any time;
- (h) the location and number of bedrooms to be used by the occupants;
 - (i) measures to ensure effective communication to attendants of—
 - (i) the conditions of registration; and
 - (ii) emergency management procedures to apply during an emergency or potential emergency such as a fire emergency or during a natural disaster such as a flood, cyclone or earthquake;
- (j) the provision to the CEO or an authorised person, by the owner or the manager, of details of any proposed change, or any change, to—
 - (i) the owner, the manager or the acting manager ; or
 - (ii) the contact details (including the phone and email contacts) of the owner, the manager or the acting manager;
- (k) ensuring that each of the manager, and the acting manager while undertaking the functions of the manager—
 - (i) is contactable by telephone, at any time of the day or night, using his or her contact details provided to the City; and
 - (ii) will respond, within a reasonable time but in any event within 24 hours to any contact relating to the holiday home; and
- (l) tenancy agreements with occupants that would enable the manager to comply with his or her obligations under clause 3.2.

2.7 Imposing conditions under a policy

(1) In this clause—

policy means a policy of the City adopted by the Council containing conditions subject to which an application for registration may be approved under clause 2.4(1)(a).

(2) Under clause 2.4(1)(a), the Council may approve an application subject to conditions by reference to a policy.

(3) The City is to give to the applicant a copy of the policy, or that part of the policy which is relevant to the application for registration, with the certificate of registration.

(4) An application for registration is to be taken not to have been approved subject to the conditions contained in a policy until the City gives the applicant a copy of the policy or that part of the policy which is relevant to the application.

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

2.8 Compliance with and variation of conditions

(1) Where an application for registration of a holiday home has been approved subject to conditions, or where registration is to be taken to be subject to conditions under this local law, the owner, manager and each attendant of the holiday home, must comply with each of those conditions.

(2) The Council may, after—

- (a) giving the owner or manager written notice of the proposed variation of a condition; and
- (b) taking into account any submissions made by the owner to the CEO within 14 days of the notice under paragraph (a),

vary a condition of registration.

(3) A condition that has been varied under this clause takes effect when written notice of the variation has been given to the owner and the manager.

(4) The owner, manager and each attendant must comply with a condition varied under this clause.

Division 3—General

2.9 Registration period

A registration is valid for one year from the date on which the certificate of registration is issued, unless—

- (a) it is otherwise stated in this local law or on the certificate of registration; or
- (b) registration is cancelled under clause 2.14.

2.10 Renewal of registration

(1) The owner or manager may apply in writing to the CEO in writing before the expiry of a registration for the renewal of the registration.

(2) Subject to subclause (3), the provisions of Divisions 1 and 2 of this Part, and any other provisions of this local law relevant to the registration which is sought to be renewed, apply, with appropriate modifications, to an application for renewal of the registration.

(3) The Council may waive, in a particular case or in one or more classes of cases, any of the requirements applying to an application for renewal of a registration.

2.11 Acting manager

(1) The acting manager is to undertake the functions of the manager only—

(a) if the manager gives the City prior written notice of the period during which the acting manager is to undertake the functions of the manager; and

(b) during the period specified in that notice—but not exceeding 30 days in any calendar year unless otherwise determined in writing by the Council.

(2) The provisions of this local law that apply to the manager are to be taken to apply to the acting manager while he or she is undertaking the functions of the manager.

2.12 Replacement of manager

(1) This clause applies where—

(a) the owner is not also the manager of a registered holiday home; and

(b) the owner wishes to replace the manager either—

(i) with a new manager; or

(ii) by personally taking over the role of manager.

(2) An application to replace a manager must—

(a) be made before the expiry of the registration;

(b) be made in writing;

(c) be signed by the owner and, if applicable, the proposed new manager;

(d) include the details as are required under clause 2.3(h);

(e) include the undertaking described in clause 2.3(i);

(f) provide such information as the CEO or an authorised person may reasonably require to enable the application to be determined; and

(g) be forwarded to the CEO, together with the fee imposed by the Council under sections 6.16-6.19 of the Act.

(3) The Council may—

(a) approve an application to replace a manager, unconditionally or subject to conditions; or

(b) refuse to approve an application to replace a manager.

(4) Where the Council approves an application to replace a manager, the replacement is to be effected by—

(a) an endorsement on the certificate of registration signed by the CEO or an authorised person; or

(b) the CEO or an authorised person issuing to the transferee a fresh certificate of registration.

2.13 Production of certificate of registration

The manager of a holiday home must produce to the CEO or an authorised person the certificate of registration of the holiday home immediately on being required to do so by the CEO or that authorised person.

2.14 Cancellation

(1) A registration is taken to have been cancelled if, and on the date that—

(a) the owner whose name appears on the certificate of registration ceases to be the owner of the holiday home; or

(b) the manager whose name appears on the certificate of registration ceases to be the manager of the holiday home—unless an application to replace that manager has been approved by the Council under clause 2.12.

(2) A registration may be cancelled by the Council if—

(a) the owner, manager or an attendant has not complied with—

(i) a condition of the registration;

(ii) a provision of this local law; or

(iii) any relevant law; or

(b) the Council is satisfied, on the basis of complaints or other evidence of excessive noise, antisocial behaviour or other nuisances, that the continuing operation of the holiday home is not in the best interests of the City.

(3) If a registration is cancelled, the CEO must give the owner and the manager written notice of the cancellation.

(4) Cancellation under subclause (2) takes effect when the written notice is given to the owner and manager.

- (5) If a registration is cancelled—
- (a) the owner must return the certificate of registration to the CEO within 14 days of being given the written notice of cancellation; and
 - (b) the City is not required to refund any part of a fee paid in respect of the cancelled registration.

PART 3—OBLIGATIONS ON OWNERS AND MANAGERS

3.1 Requirement to give notice of any change

An owner and a manager must inform the CEO in writing, within 24 hours, of any change or proposed change that would affect the currency of—

- (a) the details submitted with the application for registration and any application for renewal of registration or for replacement of a manager; or
- (b) any condition imposed or varied under clauses 2.6, 2.7, 2.8 and 2.11.

3.2 Breach of a condition by an attendant

(1) In this clause, **breach** means breach by an attendant of—

- (a) a condition of registration;
- (b) this local law; or
- (c) a relevant law.

(2) Within 24 hours of—

- (a) the CEO or an authorised person giving written notice to the manager of a breach;
- (b) the manager becoming aware of a breach; or
- (c) the manager becoming aware of circumstances that would reasonably enable the manager to determine that a breach had occurred,

the manager must ensure that—

- (d) the occupant's tenancy is terminated; and
- (e) the occupant vacates the holiday home.

3.3 Register of occupants

The manager must—

- (a) maintain a register comprising details—
 - (i) each hirer's name, address, contact details and, if applicable, length of the stay in the holiday home; and
 - (ii) of each other occupant's name; and
- (b) give the CEO or an authorised person such access to the register as may reasonably be required by the CEO or the authorised person for the purpose of administering or enforcing this local law.

3.4 Contacting the manager

(1) The manager must be contactable at all reasonable times, using the contact details provided to the CEO or an authorised person.

(2) The manager must respond within a reasonable time but in any event within 24 hours to any contact relating to the holiday home.

PART 4—OBJECTIONS AND REVIEWS

4.1 Objection and review rights

A person adversely affected by a decision made under Part 2 may be entitled to object against, or to apply for a review of, the decision under the Act.

PART 5—ENFORCEMENT

5.1 Offences and penalties

(1) A person who breaches a provision of this local law commits an offence.

(2) A person who commits an offence is liable—

- (a) to a penalty of \$5,000; and
- (b) if the offence is of a continuing nature, a further penalty of \$500 in respect of each day or part of a day during which the offence has continued.

5.2 Prescribed offences

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of clause 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 2.

5.3 Form of notices

- (1) 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 set out in Schedule 1 of the Regulations.
- (2) The form of the infringement notice given under section 9.16 of the Act is set out in Form 2 in Schedule 1 of the Regulations.
- (3) The form of the notice referred to in section 9.20 of the Act is that set out in Form 3 in Schedule 1 of the Regulations.

Schedule 1**CERTIFICATE OF REGISTRATION**

[Clause 2.4(2)]

*City of Busselton***HOLIDAY HOMES LOCAL LAW 2012
CERTIFICATE OF REGISTRATION**

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

This certifies that the dwelling at.....
(address of holiday home)owned by.....
(name/s of owner/s)managed by and
(name of manager) (name of acting manager)

is registered as a holiday home which may be used to accommodate occupants for hire or reward in accordance with—

- (a) the provisions of the *Holiday Homes Local Law 2012*;
- (b) any other relevant law; and
- (c) the conditions set out on the back of this certificate.

.....
Signature of CEO/CEO's delegate.**Notes:**

1. *An application for registration of a holiday home cannot be approved unless planning approval has been granted under the City of Busselton District Town Planning Scheme No. 20 to use the dwelling as a holiday home.*
2. *Registration of a holiday home does not affect the rights and obligations of an owner or occupier under the by-laws of a strata company, including any requirement to obtain approval, or to comply with any restrictions, in connection with the use of a dwelling as a holiday home.*

CONDITIONS OF REGISTRATION

This registration is subject to the following conditions—

- 1.
- 2.
3. etc

Schedule 2**PRESCRIBED OFFENCES**

[Clause 5.2]

Clause	Description	Modified penalty
2.1(1)	Using, or allowing to be used, as a holiday home, a dwelling not registered as a holiday home	\$400.00
2.8(1)	Failure to comply with a condition of registration	\$300.00
2.8(3)	Failure to comply with a varied condition of registration	\$300.00
2.13	Failure to produce certificate of registration when required to do so	\$250.00
2.14(5)(a)	Failure to return the certificate of registration after registration cancelled	\$150.00
3.1	Failure to inform CEO of any change or proposed change affecting registration details	\$300.00

Clause	Description	Modified penalty
3.2(2)(d)	Failure to terminate occupant's tenancy for a breach	\$300.00
3.2(2)(e)	Failure to ensure occupant vacates the holiday home for breach of a condition of registration	\$300.00
3.3(a)	Failure to maintain a register	\$200.00
3.3(b)	Failure to give CEO or an authorised person access to the register	\$300.00
3.4(2)	Failure of a manager to respond, within the required time, to a contact	\$300.00

This local law was made at the meeting of the Council of the City of Busselton held on 28 March 2012.

The Common Seal of the City of Busselton was affixed in the presence of—

IAN WILLIAM STUBBS, Mayor.
MICHAEL STEPHEN LEE ARCHER, Chief Executive Officer.

On 19 April 2012.
