

City of Kwinana
Dogs Local Law 2010
(as amended 2016)



TOWN OF KWINANA

DOGS LOCAL LAW 2010

Note: This version is a compilation of the Town of Kwinana Dogs Local Law 2010 published in the Government Gazette on 19 November 2010, as amended by the City of Kwinana Dogs Amendment Local Law 2016 published in the Government Gazette of 26 July 2016.

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SCHEDULE 1

**DOG ACT 1976
LOCAL GOVERNMENT ACT 1995
TOWN OF KWINANA
DOGS LOCAL LAW 2010
(as amended 2016)**

Note: This version is a compilation of the Town of Kwinana Dogs Local Law 2010 published in the Government Gazette on 19 November 2010, as amended by the City of Kwinana Dogs Amendment Local Law 2016 published in the Government Gazette of 26 July 2016.

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Kwinana resolved on 10 November 2010 to adopt the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Kwinana Dogs Local Law 2010*.

1.2 Objective

The objective of this local law is to provide for the regulation, control and management of the keeping of dogs and kennel establishments within the district.

1.3 Commencement

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

1.4 Repeal

The *Town of Kwinana Dogs Local Law* published in the *Government Gazette* on 1 February 2002 is repealed.

1.5 Application

This local law applies throughout the district.

1.6 Definitions

In this local law unless the context otherwise requires -

Act means the Dog Act 1976;

authorised person means a person authorised by the local government to perform all or any of the functions conferred on an authorised person under this local law and includes a person appointed under section 29(1) of the Act;

CEO means the Chief Executive Officer of the local government;

District means the district of the local government;

dog management facility has the meaning given to it in the Act;

local government means the City of Kwinana;

local planning scheme means a local planning scheme made by the local government under the Planning and Development Act 2005 which applies throughout the whole or a part of the district.

owner has the meaning given to it in the Act;

person liable for the control of the dog has the meaning given to it in the Act;

premises has the meaning given to it in the Act;

public place has the meaning given to it in the Act;

Regulations means the Dog Regulations 2013; and

thoroughfare has the meaning given to it in the Local Government Act 1995.

1.7 Fees, charges and costs

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

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; ~~and~~
- (c) the costs incurred by the operator of a dog management facility under section 30A(1) of the Act for the microchipping of a dog prior to release if so required under sections 21 or 22 of the Act; and
- (d) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

PART 2 - IMPOUNDING OF DOGS

2.1 Dog management facility and impounding of dogs

- (1) The local government may establish and maintain one or more dog management facilities for impounding dogs seized pursuant to the provisions of the Act or this local law.
- (2) The location of a dog management facility to be used by the local government shall be advertised from time to time in a newspaper circulating in the district.
- (3) A dog seized by an authorised person may be placed in a dog management facility.

2.2 Attendance of authorised officer at dog management facility

An authorised officer is to be in attendance at the dog management facility for the release of dogs at the times and on the days of the week as are determined by the CEO.

2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to an authorised person.
- (2) The authorised officer is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the authorised officer, satisfactory evidence –
 - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
 - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

PART 3 - REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

3.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must -
 - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with:
 - (i) an efficient self-closing mechanism;
 - (ii) an efficient self-latching mechanism attached to the inside of the gate or door; and
 - (iii) a mechanism which enables the gate or door to be permanently locked;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
 - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) For the purpose of section 51(d) of the Act, the specified area to which this clause applies is the district.

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

Penalty: \$1,000

3.2 Maximum number of dogs

- (1) This clause does not apply to premises which have been –
- (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act; 2 dogs over the age of 3 months and the young of those dogs under that age.

PART 4 - APPROVED KENNEL ESTABLISHMENTS

4.1 Definitions

In this Part and in Schedule 2 -

applicant means a person who applies for a licence;

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

licensee means the holder of a licence;

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

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

4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form as determined by the local government from time to time, and must be lodged with the local government together with -

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

4.3 Notice of proposed use

- (1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged –
 - (a) once in a newspaper circulating in the district; and
 - (b) to the owners and occupiers of any premises adjoining the premises.
- (2) The notices in subclause (1) must specify that –
 - (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
 - (b) the application and plans and specifications may be inspected at the offices of the local government.
- (3) Where –
 - (a) the notices given under subclause (1) do not clearly identify the premises; or
 - (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

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

4.4 Exemption from notice requirements

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

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

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

4.5 When application can be determined

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

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

4.6 Determination of application

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

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

4.7 Where application cannot be approved

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

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

4.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions as determined by the local government from time to time and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions.

4.9 Compliance with conditions of approval

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

4.10 Fees

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

- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 - 6.19 of the *Local Government Act 1995*.

4.11 Form of licence

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

4.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

4.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence –
 - (a) on the request of the licensee;
 - (b) following a breach of the Act, the Regulations, or this local law; or
 - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of –
 - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
 - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be –
 - (a) made in the form determined by the local government;
 - (b) made by the transferee;
 - (c) made with the written consent of the licensee; and
 - (d) lodged with the local government together with –

- (i) written evidence that a person will reside at or within reasonably close proximity to the premises that are the subject of the licence; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.15 Notification

The local government is to give written notice to -

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

4.16 Inspection of kennel

An authorised person may inspect an approved kennel establishment -

- (a) at any time with the consent of the occupier; or
- (b) In accordance with sections 12A(2) or 12A(4) of the Act.

PART 5 - DOGS IN PUBLIC PLACE

Repealed in Government Gazette 134 of 26 July 2016

5.1 Places where dogs are prohibited absolutely *Repealed in Government Gazette 134 of 26 July 2016*

5.2 Places which are dog exercise areas *Repealed in Government Gazette 134 of 26 July 2016*

PART 6 - MISCELLANEOUS

6.1 Offence to foul a street or public place

- (1) A dog must not excrete on –
 - (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if –
 - (a) the excrement is removed immediately by that person and disposed of on private land with the consent of the occupier or in such other manner as the local government may approve; or
 - (b) they dispose of the dog excrement into a receptacle or bin on a park, reserve or land, specifically provided for holding dog excrement by the local government.

PART 7 - ENFORCEMENT

7.1 Definitions

In this Part -

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

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

7.2 Modified penalties

- (1) The offences contained in Schedule 1 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 1 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is not a dangerous dog.
- (3) The amount appearing in the fourth column of Schedule 1 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

7.3 Issue of infringement notice

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form determined by the local government from time to time.

7.4 Failure to pay modified penalty

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

7.5 Payment of modified penalty

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

7.6 Withdrawal of infringement notice

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form determined by the local government from time to time.
- (2) A person authorised to issue an infringement notice under clause 7.3 cannot sign or send a notice of withdrawal.

7.7 Service of infringement notice or notice of withdrawal

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

**SCHEDULE 1
Prescribed Offences**

Item No	Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
1	3.1(3)	Failing to provide means for effectively confining a dog	200	500
2	3.2(2)	Keeping a number of dogs in excess of those permitted	200	500
3	4.9	Failing to comply with the conditions of a licence	200	500
4	6.1(2)	Dog excreting in a prohibited place	200	200
5		All other offences not specified	200	500

Dated: 10 November 2010.

The common seal of the Town of Kwinana was affixed by the authority of a resolution of the Council in the presence of –

CAROL ADAMS
Mayor

NEIL HARTLEY
Chief Executive Officer