

# TOWN OF KWINANA

## URBAN ENVIRONMENT AND NUISANCE LOCAL LAW

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# **LOCAL GOVERNMENT ACT 1995**

## **TOWN OF KWINANA**

### **URBAN ENVIRONMENT AND NUISANCE LOCAL LAW**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Town of Kwinana* resolved on 9 July 2003 to make the following local law.

#### **PART 1 - PRELIMINARY**

##### **1.1 Citation**

This local law may be cited as the Town of Kwinana Urban Environment and Nuisance Local Law.

##### **1.2 Application**

This local law applies throughout the district.

##### **1.3 Definitions**

In this local law unless the context otherwise requires –

"**Act**" means the *Local Government Act 1995*;

"**CEO**" means the chief executive officer of the local government;

"**Council**" means the council of the local government;

"**district**" means the district of the local government;

"**disused**" means in relation to anything, that the thing –

- (a) is not in use for the purpose for which it was designed or appears to have been designed or intended for; or
- (b) has been stored or left stationary on land in the district for more than 1 month.

"**graffiti**" means any unauthorised inscription, word, figure, picture or design that is sprayed, marked, cut, posted, pasted or otherwise affixed, drawn or painted on any surface of public, private or local government property;

"**livestock**" means animals kept for farming, amusement or domestic purposes;

"**local government**" means the *Town of Kwinana*;

"**local government property**" means anything except a thoroughfare –

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an "otherwise unvested facility" within section 3.53 of the Act;

**"lot"** has the meaning given to it in the *Town Planning and Development Act 1928*;

**"nuisance"** includes –

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person in her or his ownership or occupation of land; and
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**"person"** does not include the local government;

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

**"swimming pool"** means a place or premises provided for the purpose of swimming, wading or like activities which the public are not entitled to use and includes a spa or similar device.

**"unsightly"** has the meaning given to it in and for the purposes of the *Local Government Act 1995*.

**"vehicle"** includes –

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise;
- (b) an animal being ridden or driven,  
but excludes –
- (c) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (d) a pram, a stroller or a similar device.

#### **1.4 Repeal**

The following local laws are repealed:

- (a) Local Law Relating to Pest Plants published in the Government Gazette of 10 January 1986 and amended in the Government Gazette of 16 September 1988;
- (b) Draft Model By-Law Relating to Old Refrigerators and Cabinets No 8 published in the Government Gazette of 23 August 1962;
- (c) Local Government Model By-Law (Deposit of Refuse and Litter) No 16 published in the Government Gazette of 10 February 1966
- (d) Local Law Relating to Removal of Refuse, Litter, Vehicle Bodies & Disused Materials from Land published in the Government Gazette of 20 August 1982;
- (e) Local Law Relating to Vehicle Wrecking No 17 published in the Government Gazette of 10 February 1966.

## PART 2 – GENERAL – NOISE, LIGHT AND VIBRATIONS

### Division 1 - Amusements

#### 2.1 Definitions

In this Division –

**"Amusement"** means any thing usually conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere.

#### 2.2 Nuisance

A person shall not provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

#### 2.3 Abatement by authorized person

Subject to Subdivision 3 of Division 3 of Part 3 of the Act, an authorized person may enter on any land where an amusement is provided or conducted and may do any act or thing reasonably required to abate a nuisance referred to in clause 2.2.

### Division 2 – Light

#### 2.4 Emission or reflection of light

- (1) Where artificial light is emitted or reflected from anything on a lot so as to contravene the requirements of Australian Standard AS4282 entitled “Control of obtrusive effects of outdoor lighting”, then every owner and occupier of the lot commits an offence.
- (2) Where natural light is reflected from anything on a lot so as to create or be a nuisance to any –
  - (a) owner or occupier of land; or
  - (b) person using a thoroughfare as a thoroughfare,then every owner and occupier of the lot commits an offence.
- (3) All lighting installations as defined within the Australian Standard AS4282 must be maintained in good working order and repair at all times.

#### 2.5 Use of floodlights

An owner and or occupier of a lot on which floodlights, lighting installations or other exterior lights are erected or used shall not allow the floodlights or other exterior lights to shine directly onto an adjoining lot.

#### 2.6 Notice

The local government may give a notice to the owner and or occupier of a lot -

- (a) requiring that any reflective surfaces creating a nuisance within clause 2.4(2) be painted or otherwise treated so as to abate the nuisance; and
- (b) on which floodlights, lighting installations or other exterior lights are erected, requiring that -
  - (i) the hours of use of the lighting be limited to the hours specified in the notice; or
  - (ii) the direction in which the lights are shining be altered as specified in the notice.

### **Division 3 – Truck and Vehicle Nuisance**

#### **2.7 *Livestock Vehicles***

- (1) A person shall not park a vehicle containing livestock in an urban area or rural townsite for a period in excess of 30 minutes.
- (2) A person shall not park a vehicle which contains or has been used for the carriage of livestock so as to create or be a nuisance to any person, by reason of the odour, noise and or waste emanating from the vehicle.
- (3) If a person parks a vehicle containing livestock in an urban area or rural townsite under and in accordance with subclause (1), then the person does not contravene subclause (2).

#### **2.8 *Truck noise from or impacting on residential land***

- (1) A person shall not start or drive a truck on land zoned, approved or used for residential purposes, or land adjoining residential land, so as to cause a nuisance, between the hours of 10pm and 7am on the following day without first obtaining the written consent of the local government.
- (2) In this clause, a truck means a vehicle having a tare in excess of 2,000 kgs.

### **Division 4 – Bird Nuisance**

#### **2.9 *Restrictions on feeding of birds***

- (1) A person shall not feed a pigeon or other bird –
  - (a) so as to cause a nuisance, or
  - (b) with a food or substance that is not a natural food of a pigeon or other bird.
- (2) Where the an authorized person forms the opinion that a person has not complied with subclause (1) the authorized person may serve the person a notice requiring the person to clean up and properly dispose of any feed or waste products specified in the notice.

### **PART 3 – GRAFFITI**

#### **3.1 *Removal of graffiti***

The local government may cause a notice to be served on an owner and or occupier of land or premises within the district to obliterate any graffiti, which appears on any structure, fence, wall or building and the notice shall specify the requisites to rectify the breach within time specified in the notice.

## PART 4 – PREVENTION OF DUST AND LIQUID WASTE

### 4.1 Definitions

In this Part –

**"dust"** means any visible granular or particulate material which has or has the potential to become airborne and includes organic and non-organic matter and sand, but does not include smoke;

**"equipment"** means equipment, machinery or vehicles used for or in connection with the development of land;

**"land"** includes any building or structure on the land;

**"liquid waste"** means waste from any process or activity, whether useful or useless, that is in liquid form and includes paint, fuel, grease, fat, oil, degreaser solvent, detergent, chemical, animal waste, food waste, effluent and all discharges of liquid to land, air or water that are not otherwise authorised by a written law but does not include uncontaminated stormwater;

**"occupier"** means any person who is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to land to perform any work in relation to any land and without limiting the generality of the foregoing and for the avoidance of doubt includes a builder or contractor.

### 4.2 Prohibited Activities

- (1) An owner and or occupier of land must take effective measures to –
  - (a) stabilise dust on the land;
  - (b) contain all liquid waste on the land;
  - (c) ensure no dust or liquid waste is released or escapes from the land whether by means of wind, water or any other cause; and
  - (d) notify the owners or occupiers of adjoining land in writing 48 hours prior to the commencement of any activity that has the potential to cause the release or escape from the land of dust or liquid waste giving details of;
    - (i) the nature of the activity;
    - (ii) the proposed commencement time, frequency, duration time and location of the activity; and
    - (iii) the name of the person responsible for carrying out the activity and how and where that person may be contacted.
  
- (2) (a) Where the local government forms the opinion that –
  - (i) an owner or occupier has not complied with sub-section (1)(a) or (1)(b); or
  - (ii) the dust or liquid waste has been released or escaped from the owner's or occupier's landthe local government may serve on the owner and or occupier of the land a notice requiring the owner and or occupier to do one or more of the following –
  - (iii) comply with sub-section (1)(a) or (1)(b);

- (iv) clean up and properly dispose of any released or escaped dust or liquid waste;
  - (v) clean up and make good any damage resulting from the released or escaped dust or liquid waste;
  - (vi) take effective measures to stop any further release or escape of dust or liquid waste.
- (b) The requirements set out in a notice issued under sub-section (2)(a) must be complied with -
- (i) within 48 hours of service of the notice where no other time is specified;
  - (ii) within such other period as is specified in the notice; or
  - (iii) immediately, if the notice so specifies.
- (3) Where the local government forms the opinion that dust or liquid waste has escaped or has been released from an activity undertaken on land or as a consequence of the use of equipment on land, the local government may serve a notice on the owner and or occupier of the land and or the operator of the equipment, as the case may be, requiring that the activity or use of the equipment on the land be ceased immediately, for such period as is specified in such notice.
- (4) Where the local government is of the opinion that dust or liquid waste may be released or escape as a result of an activity which is likely to be carried on from any land, the local government may give to the owner and or occupier a notice providing that the activity may only be carried on subject to conditions specified in the notice.

## **PART 5 – STORMWATER AND WASTEWATER MANAGEMENT**

### ***5.1 Containment of stormwater and wastewater***

The owner or occupier of a lot shall ensure that all rainwater, wastewater or stormwater received by the lot and any building, house or structure on the lot is contained within the lot and is not permitted to discharge onto, or run-off into, or cause damage to any structures, on an adjacent lot, thoroughfare, right of way, public place or reserve.

### ***5.2 Guttering and downpipes***

- (1) The owner or occupier of a lot shall ensure that each building or house on the lot is provided with adequate guttering and downpipes sufficient to receive, without overflow, all rainwater from the roof of the building or house, in accordance with AS 3500—National Plumbing and Drainage Code, Part 3.2—Stormwater drainage—Acceptable solutions.
- (2) The owner or occupier of a lot shall ensure that all guttering and downpipes to each building or house on the lot are maintained in a good state of repair and free from obstruction.



### **5.3 *Rainwater disposal systems***

- (1) The owner or occupier of a lot shall ensure that all rainwater from the roof of each building or house on the lot, or the overflow from rainwater storage tanks is discharged into subsurface rainwater disposal systems, or by other methods approved by the local government, in accordance with AS 3500.
- (2) The owner or occupier of a lot shall ensure that all rainwater from paved areas of the lot is discharged into subsurface rainwater disposal systems of adequate capacity in accordance with AS 3500.
- (3) The owner or occupier of a lot shall ensure that all subsurface rainwater disposal systems on the lot are maintained in a good state of repair and free from obstruction.

### **5.4 *Containment and disposal of swimming pool and other wastewater***

- (1) Wastewater and backwash water from swimming pool filtration systems or other water storage systems shall be contained within, and disposed onto or into the lot on which the swimming pool is located.
- (2) A soakwell system having a minimum capacity of 140 litres, and located a minimum of 1.8 metres away from any building and lot boundaries satisfies the requirement of sub-clause (1).

## **PART 6—UNSIGHTLY LAND AND DISUSED MATERIALS**

### **6.1 *Removal of refuse and disused materials***

- (1) The owner or occupier of a lot shall not keep, or permit to remain on the lot, any refuse, rubbish or disused material of whatsoever nature or kind which in the opinion of the local government or an authorised person is likely to give the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.
- (2) The local government or an authorised person may give notice in writing to the owner or occupier of a lot requiring the removal of refuse, rubbish or disused material from the lot within the time specified in the notice.

### **6.2 *Removal of unsightly overgrowth of vegetation***

- (1) The owner or occupier of a lot shall not permit to remain on a lot any unsightly overgrowth of vegetation that gives the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.
- (2) The local government or an authorised person may give notice in writing to the owner or occupier of a lot requiring the removal of the overgrowth of vegetation within the time specified in the notice.

### **6.3 Storage of vehicles and machinery**

The owner or occupier of a lot shall not—

- (a) store or allow to remain on any lot, a vehicle, part or body of a vehicle or machinery, in a state of disrepair;
- (b) wreck, dismantle or break up any vehicle, part or body of a vehicle or machinery; unless—
  - (i) inside a building; or
  - (ii) within an area enclosed by a fence or wall of not less than 2 metres 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; or
- (c) wreck, dismantle or break up a vehicle so as to cause a nuisance.

### **6.4 Disposing of disused refrigerators or similar containers**

A person shall not place, leave or dispose of a disused refrigerator, ice-chest, ice-box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first -

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid; or
- (b) rendering every door and lid incapable of being fastened; and
- (c) removing any refrigerants as per requirements of the Environment Protection (Ozone Protection) Policy 2000.

## **PART 7—HAZARDOUS MATERIALS**

### **7.1 Hazardous plants and trees**

- (1) Where a plant or tree in a lot presents a hazard, or endangers or may endanger any person or thing on an adjoining lot, thoroughfare, public place or reserve, the local government or an authorized person may give a notice to the owner or the occupier of the lot to remove, cut, move or otherwise deal with that plant or tree so as to remove the danger or hazard.
- (2) Where a plant or tree in a lot presents a serious and immediate danger to any person or thing in a thoroughfare, public place or reserve, the local government or an authorised person may take any remedial action it considers appropriate in order to make a plant or tree safe without having given the owner or occupier notice as required by Part 10 of this local law.
- (3) Any costs incurred by the local government for remedial action taken in terms of subclause (2) cannot be recovered by the local government.

## **7.2 *Cyclonic Activities***

- (1) Where in any circumstance there is likely to be a danger to the public or property which may result from cyclonic activity, the local government or an authorized person may give a notice to the owner or the occupier of the lot specifying measures to prevent or minimize any danger or hazard.
- (2) Where a circumstance represents serious and immediate danger to the public or property, the local government or an authorised person may take any remedial action it considers appropriate to prevent or minimize the danger or hazard without having given the owner or occupier notice as required by Part 10 of this local law.
- (3) Any costs incurred by the local government for remedial action taken in terms of subclause (2) cannot be recovered by the local government.

## **PART 8—PRIVATE WORKS**

### **8.1 *Private works on, over or under public places***

- (1) A person shall not construct anything on, over or under a public thoroughfare or other public place that is local government property without first obtaining written permission from the local government.
- (2) The local government may grant permission to construct anything on, over or under a public thoroughfare or other public place that is local government property, subject to conditions.
- (3) One of the conditions of approval given under subclause (2) must be that the ordinary and reasonable use of the public thoroughfare or public place for the purpose to which it is dedicated is not to be permanently or unreasonably obstructed.
- (4) A person who constructs anything in accordance with approval given under subclause (2) is required to –
  - (a) maintain it; and
  - (b) obtain from an insurance company approved by the local government an insurance policy, in the joint names of the local government and the person, indemnifying the local government of any claim for damages which may arise in, or out of, its construction, maintenance or use.
- (5) The local government may give notice to a person who constructs anything on, over or under a public thoroughfare or other public place to maintain, move, remove or otherwise deal with that construction.

## **PART 9 – OBJECTIONS AND APPEALS**

### **9.1 *Application of Part 9 Division 1 of the Act***

When the local government makes a decision under clause 2.6 or 2.8 (1) the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

## **PART 10 - ENFORCEMENT**

### **Division 1 - Notices given under this local law**

#### ***10.1 Offence to fail to comply with notice***

Whenever the local government gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.

#### ***10.2 Local government may undertake requirements of notice***

Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

### **Division 2 - Offences and penalties**

#### **Subdivision 1 - General**

#### ***10.3 Offences and general penalty***

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

#### **Subdivision 2 - Infringement notices and modified penalties**

#### ***10.4 Prescribed offences***

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that –
  - (a) commission of the prescribed offence is a relatively minor matter; and
  - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

### **10.5 Form of notices**

For the purposes of this local law -

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

**SCHEDULE 1**

**PRESCRIBED OFFENCES**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>MODIFIED PENALTY First Offence \$</b>	<b>MODIFIED PENALTY Subsequent Offences \$</b>
2.2	Conducting an amusement so as to create a nuisance	250	500
2.4 (1)	Emitting light contravening AS4282	250	500
2.5	Erection or use of lighting installations other than in accordance with requirements	250	500
2.7 (1)	Parking a livestock vehicle in an urban area or rural townsite in excess of 30 minutes	250	500
2.8 (1)	Starting or driving a truck on residential land, or adjoining residential land, without consent	250	500
2.9(1)(a)	Feeding a pigeon or bird causing a nuisance	250	500
2.9(1)(b)	Feeding a pigeon or bird a food/substance that is not a natural food	250	500
4.2(1)	Release or escape of dust or liquid waste from land	250	500
5.1	Failure to ensure that all rainwater or storm water received by a lot and any building, house or structure on the lot, is contained within the lot	250	500
5.2(2)	Failure to maintain all guttering and down pipes in a good state of repair and free from obstruction	250	500
5.3(1)	Failure to maintain all subsurface rainwater disposal systems in a good state of repair and free from obstruction	250	500
5.4(1)	Failure to contain or dispose of swimming pool wastewater on the lot on which the swimming pool is located	250	500
6.3(a)	Store or allow to remain on land any vehicle, part or body or machinery in state of disrepair	250	500
6.3(b)(i)	Wreck, dismantle or break up any vehicle, part or body or machinery not in a building	250	500
6.3(b)(ii)	Wreck, dismantle or break up any vehicle, part or body or machinery not behind fence or screened from street	250	500
6.3(c)	Wreck, dismantle or break up a vehicle so as to cause a nuisance	250	500

